

Incident Investigation Procedure

1. Purpose

This procedure outlines the steps to follow to investigate an incident that involves a NDIS participant.

All incidents reportable to the NDIS Quality and Safeguards Commission must be investigated in accordance with this procedure.

2. Scope

This procedure applies to all ICH representatives including key management personnel, Directors, full time workers, part time workers, casual workers, contractors, volunteers and students. For the purpose of this procedure, these persons shall be referred to as workers.

3. Definition

Reportable incident: any incident which involves:

- The death, serious injury, abuse or neglect of a participant while being supported.
- Unlawful sexual or physical contact with, or assault of, a participant while being supported.
- Sexual misconduct committed against, or in the presence of, a participant while being supported, including grooming of the person for sexual activity.
- Use of a restrictive practice in relation to a person with disability where the use is not in accordance with an authorisation (however described) of a state or territory in relation to the person, or if it is used according to that authorisation but not in accordance with a behaviour support plan for the person with disability.

4. Procedure

4.1 Preliminary assessment

A preliminary assessment must be performed which focuses on:

- Establishing a specific and accurate account of the incident and identifying potential witnesses.
- If appropriate, arranging for the relevant worker to be stood down or moved to an alternative role, pending the investigation.

The immediate needs of the participant are to be taken care of, including:

- Providing appropriate medical attention or first aid if necessary, including a forensic medical assessment if appropriate
- Separating the alleged worker involved
- Any other appropriate support.

The support needs of other participants should also be considered, remembering they are not just potential witnesses.

Appropriate reporting requirements must be followed, including:

- The NDIS Quality and Safeguards Commission (reportable incidents)
- The police (anything illegal such as assault, sexual misconduct or fraud).

Relevant evidence should be preserved, including physical or documentary evidence (take photos and record descriptions of injuries if appropriate) which may be critical to an investigation by police or service provider.

4.2 Plan the investigation

The following steps are relevant or should be taken as part of planning the investigation:

- A manager should be appointed to coordinate the investigation. Where possible, this should be someone separate to the team supporting the participant.
- Where the matter has been referred to police for possible criminal charges, the police should be checked with prior to starting an investigation.
- Relevant parties should be kept informed of the progress throughout the investigation.
- The purpose and scope of the investigation should be clearly outlined.
- The preliminary assessment should be reviewed, including incident reports, all known details, circumstances, timeframes and witnesses.
- An investigator should be appointed - incidents involving worker to participant assaults, serious unexplained injuries or potentially criminal conduct, are best handled by an external investigator, ideally someone experienced in interacting with persons with a disability.
- Determine the framework for the investigation, including:
 - Scope and purchase
 - Timeframes
 - Resources required
 - Any requirements or conditions to ensure maximum feasible involvement of the participant
 - Arrangements for an interview with the participant with the presence of a support person
 - Witnesses to be interviewed and the order of interviews
 - Arrangements to interview the alleged perpetrator

- Documentary evidence to be reviewed by the investigator
- Arrangements for site visits
- Arrangements to obtain expert evidence, e.g. a forensic medical assessment
- Plans for communicating with other participants, families and workers
- Reporting and reviewing arrangements (for more complex investigations)
- A plan for effective communications with the participant, their family and advocate.

4.3 Investigation

When conducting an investigation:

- Interview the participant in a way the person can understand, ensuring:
 - It is explained why the discussion is taking place.
 - It is explained that the person has the right to ask for a break or end the discussion at any time.
 - The person is regularly checked on to see if they would like a break.
 - The use of open-ended questions rather than questions likely to result in 'yes' or 'no' answers.
 - The use of clear and brief questions, using short words and sentences.
 - That complicated concepts or information are broken down into smaller chunks for easier understanding.
 - The person is asked to repeat the questions in their own words (if they have sufficient verbal skills).
 - The person is allowed enough time to answer the question.
- The investigator should understand the key elements of investigations:
 - Principles of procedural fairness.
 - Confidentiality and privacy.
 - The civil standard of proof.
 - Appropriate interview techniques, including avoiding leading questions.
 - The evidence that is relevant to the facts at issue.
 - Weighing the evidence according to the type of evidence.
 - Recording the interview.
- The investigation process should:
 - Balance formality with flexibility
 - Consider all possible scenarios and causes in detail, along with all types of evidence.

- The investigation report should include:
 - A description of the matter being investigated.
 - Details of the allegations.
 - Details about the investigation, e.g. the witnesses interviewed.
 - An outline of the documentary evidence considered.
 - A Summary of the key evidence
 - Conclusions and findings based on the salient evidence, while taking care to distinguish findings of facts and findings of opinion.

4.4 Decision making and investigation response

Upon completion of an investigation, the investigation manager should scrutinise the investigation report, carefully considering whether:

- The findings are well founded.
- The investigator has provided a clear and strong case based on reasonable probability.
- The events are likely to have happened according to one view or another.
- All possible evidence has been sought and considered, and the investigation does not rely on a single piece of evidence or opinion such as a forensic medical report.
- The findings and recommendations include both matters of evidence and matters of outcomes (for participants and workers).

The investigation should also address any underlying patterns or causes of the incident so that systemic and practice improvements can be implemented to minimise the occurrence of similar incidents.

Where findings of evidence relate to alleged worker to participant assault and whether allegations have been sustained or not sustained, the following language is recommended:

- ‘Sustained’—used when there is sufficient evidence that the reported conduct occurred.
- ‘Not sustained - insufficient evidence’ - used when there is some evidence that the reported conduct occurred but not enough evidence to make a conclusive finding.
- ‘Non-sustained - lack of evidence of weight’ - used when there is no evidence of weight that the reported conduct occurred.

Findings of outcomes should be considered from the participant’s perspective in order to acknowledge and remedy the situation.

The participant should be advised - at least in broad terms - of the decisions and actions resulting from the investigation, including actions taken or planned, to prevent future occurrences.

The investigation manager should draw up an action plan to address the matters and monitor the plan until all actions are finalised.

Appropriate action should be taken if an allegation against a worker is sustained—the worker must not work again in the same setting.

Where an allegation was not sustained, it should be considered whether it is appropriate for the worker to continue working with the participant.

All investigations, whether allegations are sustained or not, serve as opportunities for continuous improvement. Where an incident relate to a worker who lacks skills in managing behaviours of concern or not seeking the required support needed for complex work, the following may be considered:

- Additional training opportunities.
- Improved supervision.
- Reviewing and refining support plans for certain participants.

5. Review

This procedure shall be reviewed every 2 years or after an incident requiring investigation.

6. Related Documents

Policies

ICH NDIS Incident Management Policy
ICH Incident Management Procedure

References

CentroAssist Policy Portal
NDIS (Quality Indicators) Guidelines (Cth)
National Disability Insurance Scheme Act (Cth)
Crimes Act 1914 (Cth)
NDIS (Incident Management and Reportable Incidents) Rules 2018 (Cth)