

# Guidelines for Undertaking Inquiries and Investigations

For Matters Involving Care of Past or Current Child Protection Clients

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# **Guidelines for Undertaking Inquiries and Investigations**

For Matters Involving Care of Past or Current Child Protection  
Clients

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# Executive Summary

From time to time the Department becomes aware of allegations of historic abuse in care. At these times there is a need to confirm whether incidents fall within the scope of the client management system (CIMS) and determine a process if the matters fall outside of the scope. For example, CIMS may not have been available at the time the alleged abuse is said to have occurred, or the incident was not formally reported and recorded at the time. The practice to inquire, investigate and work through allegations of historic abuse is complex and there are many components and decision points to consider.

Staff receiving concerns or allegations about possible carer behaviour should always consult the CIMS guidelines first. If the concern or allegation does not fall within the scope of the CIMS guidelines, then this guide should be used.

The Guidelines for Undertaking Inquiries and Investigations for Child Protection Clients (the guidelines) outlines the approach and key actions to be taken on receipt of concerns about possible carer behaviour where an incident does not fall within the scope of the CIMS guidelines.

The guidelines are to be used in situations where the concern or allegations relates to:

1. the care provided to Child Protection clients; and
2. those clients who were in the care of the Department and its predecessors and / or a CSO; and
3. those matters outside of CIMS reporting and incident management requirements<sup>1</sup>.

The guide is intended to support service providers to effectively respond to concerns or allegations about carer behaviour and to be accountable for their actions and decisions.

The intended audience of this guide is:

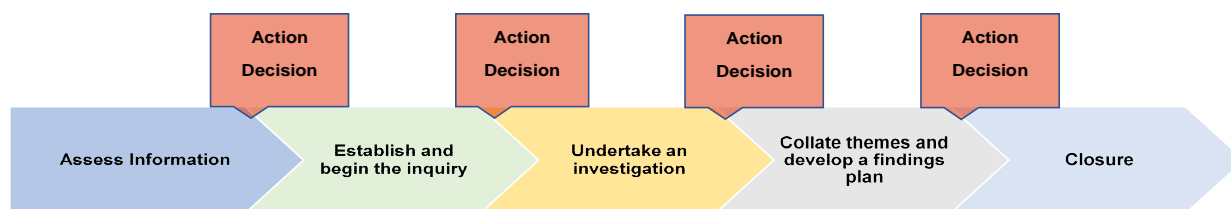
1. service provider staff and management of community service organisations and the department
2. monitoring and oversight staff and management of the department.

Service providers include department-funded organisations and department-delivered services. The guidelines apply to all service providers who deliver programs and activities to Child Protection clients. Department-funded organisations and department-delivered services will follow the same processes and requirements across each of the stages of the guidelines and are equally accountable for their management of inquiries and investigations.

The guidelines explain that effective management of an inquiry and investigation has five stages as outlined in Figure1:

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<sup>1</sup> CIMS captures events or circumstances (1) which occurred during service delivery, (2) which allegedly resulted in harm to clients receiving services delivered or funded by the department, and (3) where the service provider is a current registered CIMS user. Where these conditions are met, **the department and service provider must follow CIMS reporting and incident management processes, including investigation processes; this guide and its processes apply to all other matters.** Please contact [CIMS@dffh.vic.gov.au](mailto:CIMS@dffh.vic.gov.au) to determine if the organisation is a registered CIMS User. Further information can be found in the [Client Incident Management Guide](https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word) <<https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word>>



An overview of each of the five stages follows:

1. Assess information prior to proceeding to an inquiry
  - a. On receipt of information raising concerns about a carer or a care environment, it is important to determine whether to proceed to an inquiry. An assessment of the information received should be undertaken to determine the **robustness** of the source of the information, the likely **reliability** of the information, whether the carer **currently provides care** and associated **risk** assessment, and an initial **client impact** assessment if the information was found to be correct
  - b. Advise the Office of Professional practice by emailing [OPPDirectorate@dffh.vic.gov.au](mailto:OPPDirectorate@dffh.vic.gov.au). The Office of Professional Practice will assist with the process of assessing information, inquiry and investigation.
2. Establish and begin the Inquiry
  - a. Identify all appropriate sources of information and evidence (e.g. witnesses, available records maintained by the service provider or other sources, etc.)
  - b. define and assign tasks to identified staff
  - c. set and manage timeframes for completion of key tasks
  - d. complete thorough review of information.
3. Undertake an investigation
  - a. An investigation is a formal process of collecting information to ascertain the facts, which may inform any subsequent civil, disciplinary or administrative sanctions
  - b. In the context of the guidelines, the purpose of an incident investigation is to determine whether there has been abuse or neglect of a client by a staff member or another client.
4. Collate themes about system, process or procedural change and develop a findings plan
  - a. The inquiry / investigation work that is undertaken should be analysed to determine whether are any changes to Departmental or CSO systems, process or procedure may be required.
5. Closure
  - a. Cumulative information can sometimes determine if a matter is investigated, so it is important to record the initial inquiry as well as any investigation undertaken according to departmental record keeping policy and practice.

The following chapters of these guidelines are structured to align with each of the five stages described above and include additional guidance with regard to the establishment of an oversight group to review the actions undertaken at each of the key stages above, make a clear decision about whether the matter will progress to the next stage and the rationale for this decision, and to finalise and disseminate the findings of an inquiry or investigation.

The guidelines also include an appendix with scenario examples to support decision making about the nature of the incident and the process required. Example templates to assist with undertaking inquiries and investigations are also attached to the guidelines.

If there are any disputes between the service provider and the department about their obligations or interpretation of these guidelines, parties should make use of standard escalation and dispute resolution procedures as appropriate.

## Purpose of the guidelines

The Guide for Undertaking Inquiries and Investigations For Matters Involving Care of Past or Current Child Protection clients (the guidelines) has been developed to assist staff from the Department of Families, Fairness and Housing (the Department) and Community Service Organisations (CSO) with decision making and activities associated with undertaking inquiries and investigations of concerns about:

6. the care provided to Child Protection clients; and
7. those clients who were in the care of the Department and its predecessors and / or a CSO; and
8. those matters outside of CIMS reporting and incident management requirements<sup>2</sup>.

Requests or identification of the need to undertake inquiries and investigations into the care provided to past Child Protection clients may result from concerns being raised about a carer by external agencies or other parts of the Department. An inquiry / investigation may also result from a current client making allegations, the carer has had other children in their care, and concerns about the carer behaviour are such that previous Child Protection clients will be considered in scope for an inquiry / investigation. Other sources include correspondence to a minister or the Department or notification from Victoria Police.

The Department has determined that when concerns about potential carer behaviour are raised and they do not fall within the scope of the current CIMS, that these guidelines will be used to assist in the assessment, decision-making and progression of any inquiries or investigation.

**Note:** for information about undertaking an investigation in response to a new report received from the Department's Intake service about a child or young person, please refer to the Child Protection Manual at <https://www.cpmanual.vic.gov.au/policies-and-procedures/phases/investigation>.

## Scope of the guidelines

The guidelines cover circumstances including:

1. persons who were employed by the Department and its predecessors to care for Child Protection clients or were auspiced by the Department to provide care (e.g. kinship care)
2. persons who were employed by or were auspiced by a CSO to provide care to Child Protection clients
3. that a concern has been raised from an external source or from a past client or current client but the period of time in which the concern pertains to is prior to the implementation of the Department's CIMS. Concerns may include possible conduct or care environment and may include concerns about inappropriate or abusive client to client behaviour
4. that the clients at the time of the concerns were subject to an Interim Accommodation Order, Family Reunification Order, Care by Secretary Order or Long Term Care Order (or the equivalent orders depending on the period that applies to the concern)

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<sup>2</sup> CIMS captures events or circumstances (1) which occurred during service delivery, (2) which allegedly resulted in harm to clients receiving services delivered or funded by the department, and (3) where the service provider is a current registered CIMS user. Where these conditions are met, **the department and service provider must follow CIMS reporting and incident management processes, including investigation processes; this guide and its processes apply to all other matters.** Please contact [CIMS@dffh.vic.gov.au](mailto:CIMS@dffh.vic.gov.au) to determine if the organisation is a registered CIMS User. Further information can be found in the [Client Incident Management Guide](https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word) <<https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word>>

5. that the concern is assessed as requiring follow-up due to the nature of the concern and / or the detail provided and / or the source of the information and / or the assessed risk and impact to a client if the information were to be found to be correct.

**Appendix 1** provides a table to assist decision-making when a CIMS report is required and when these guidelines apply. It also outlines scenarios relating to the status of CSOs and provides guidance to assist in decision-making.

## Aim, Objectives and Principles of the Guidelines

### Aim

The aim of the guidelines are to support Departmental and CSO staff in their decision making, scope and management of an inquiry or investigation when required to undertake a process to determine whether children and young people placed in care by the Department were subject to inappropriate or abusive behaviour by a carer or from another client(s) and, if so, to determine how that might be addressed.

### Objectives

The objectives of the guidelines are to:

1. ensure decision-making in accordance with best practice principles and Departmental policy
2. ensure safe, effective and appropriate inquiry and, as required, investigation of incidents involving Child Protection clients
3. provide an opportunity for Child Protection clients to participate in a restorative process if required
4. determine accountability of the Department and / or service providers to Child Protection clients as required
5. use the insights from inquiry and, as required, investigation processes to support continuous improvement by utilising the findings to identify actions that can be taken to mitigate the risk of abuse occurring in care now and in the future.

### Principles

The following principles underpin the design of the guidelines and the process of undertaking an inquiry and an investigation:

1. **Client-centred and outcome focused** – management of an inquiry and investigation is respectful of the privacy of Child Protection clients and carers and complies with applicable privacy laws. Any investigation is responsive to a client's preferences and needs for support while ensuring due process and natural justice for the carer
2. **Client voice** - all measures should be undertaken to ensure that clients are listened to, heard and understood when they are participating in an investigation. Clients should know how their voice has been used, including what the reasons are if it doesn't lead to any change or outcome
3. **Independent** – undertake inquiries and, as required, investigations, in an open-minded and transparent manner and utilise staff that are not involved with the carer or Child Protection clients thereby avoiding perceived or actual bias and ensuring the integrity and independence of the process
4. **Accountable** – the Department and CSOs are responsible for undertaking inquiries and, as required, investigations. Each party involved in the management of an inquiry or investigation understands their role and responsibilities and will be accountable for decisions or actions taken

regarding the process and any findings. The process utilised is defensible if brought before an external oversight body

5. **Continuous improvement** – the inquiry and investigation process in relation to these matters can facilitate the ongoing identification of issues and implementation of changes that result in better outcomes for current client safety and wellbeing
6. **Proportionate** – the nature of any investigation, review or other actions will be proportionate to the potential harm caused to the client and the risk of future harm to the past or current Child Protection clients.

## Inquiries and investigations

The guidelines outline three key stages when undertaking inquiries and investigations:

1. receipt and assessment of information and decision about whether an inquiry will be undertaken
2. inquiries into what information is held by the Department and / or CSO about the issue raised including whether there are other complaints or concerns that may support the initial information received
3. a decision about whether, after inquiry, the matter should proceed to investigation.

The three phased approach is a purposeful process and requires a decision to be made at each step. Factors for assisting in the decision-making include whether disruption to Child Protection clients' lives is likely to be outweighed by the benefits.

## Decision-making before an inquiry and before an investigation

Decisions should be made about whether to proceed to an inquiry and then whether to proceed to investigation. A range of factors will be considered in each of these steps and are outlined below.

A decision-making tree (see Fig. 1) is contained on the following page to assist with the decisions at each key point.

## Assessment of initial information

On receipt of information raising concerns about a carer or a care environment, it is important to determine whether to proceed to an inquiry. An assessment of the information received should be undertaken to determine the **robustness** of the source of the information, the likely **reliability** of the information, whether the carer **currently provides care** and associated **risk** assessment, and an initial **client impact** assessment if the information was found to be correct. Curiosity is a key element in this assessment. Information should not be assessed on its face value alone and an interest in the range of reasons for providing the information should be considered.

Active consideration of the CIMS process should be included at this step in the process. CIMS captures events or circumstances (1) which occurred during service delivery, (2) which allegedly resulted in harm to Child Protection clients receiving services delivered or funded by the Department and (3) where the service provider is a current registered CIMS user. Where these conditions are met, the Department and service provider must follow CIMS reporting and incident management processes, including investigation processes. These guidelines and its processes apply to all other matters. Please contact [CIMS@dffh.vic.gov.au](mailto:CIMS@dffh.vic.gov.au) to determine if the organisation is a registered CIMS User. Further information can be found in the Client Incident Management Guide <https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word>.

A discussion with the Department's Child Safeguarding Team is required and contact must be made with the Disability Workers Exclusion Scheme Unit. The Child Safeguarding Team can be contacted at (03) 9096 8690 or [carer.register@dhhs.vic.gov.au](mailto:carer.register@dhhs.vic.gov.au).

The Disability Workers Exclusion Scheme Unit can be contacted on (03) 9096 3200 or by email at [dwesu@dhhs.vic.gov.au](mailto:dwesu@dhhs.vic.gov.au).

Contact with the Office of Professional Practice is also required. This can be done by emailing [OPPDIRECTORATE@dffh.vic.gov.au](mailto:OPPDIRECTORATE@dffh.vic.gov.au). The Office of Professional Practice will maintain oversight of all of these situations and provide assistance during the assessment, inquiry and investigation stages.

## Proceed to inquiry?

After assessment of the initial information, it is important to determine whether to proceed to an inquiry or not. This will depend on the nature of the information received.

Factors impacting on the decision to proceed to inquiry may include the:

1. nature and detail of the concerns provided
2. source of the concern, including the likelihood based on the information received that clients may or may not have been at risk
3. does the person currently provide care and what is the assessment of risk to other children?
4. risk to the Department's reputation (including the reputation of any funded CSO that may be involved or impacted by the concerns)
5. prior contact with Victoria Police, as required, and the response from Victoria Police
6. identification of whether the matter / carer is before the Court
7. identification of whether the carer is in scope and remains an active carer either on the Victorian Carer Register, is noted on the Disability Workers Exclusion Scheme or is an active Departmentally auspiced carer, e.g. a kinship carer.

The decision to proceed to inquiry should be made by a delegate who will be part of the oversight group. The formation and responsibilities of the oversight group are outlined later in this document.

## Proceed to investigation?

On completion of the information gathering during the inquiry phase, a decision should then be made about whether to proceed to investigation.

Contact with Victoria Police should be made prior to proceeding. Victoria Police will decide whether:

1. Police will lead the investigation or
2. The Department / CSO will lead the investigation and information to be presented back to Victoria Police for later decision making.

Where Victoria Police decides to investigate, the Department or CSO may be requested to put investigative processes on hold. Staff or Child Protection clients should not be interviewed without direction from Victoria Police that it is safe to proceed.

Factors to consider when making the decision to proceed to investigation include the:

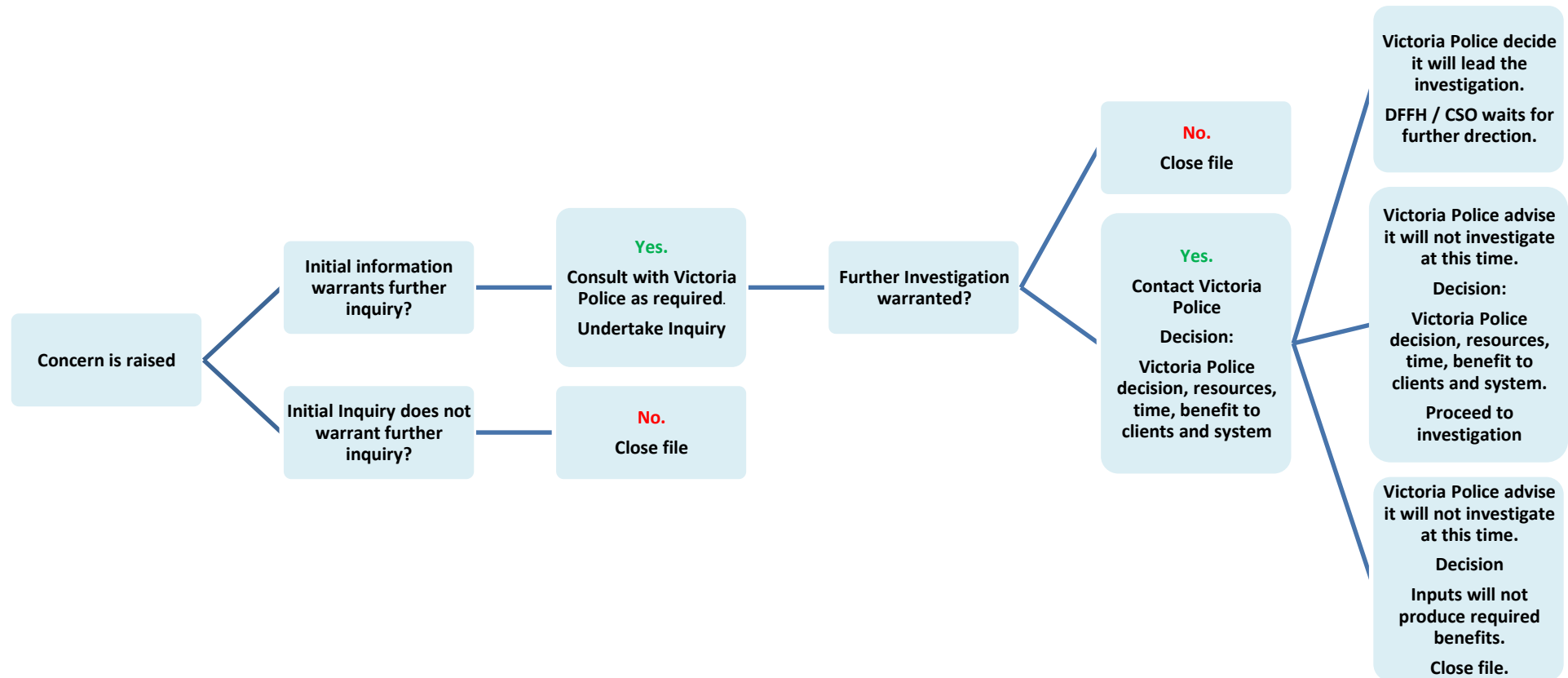
1. nature of the information gathered and whether it warrants further investigation

2. resources required to undertake an investigation (including at a minimum, an Investigation Manager, administrative support, suitably qualified investigator(s) and those providing governance and oversight), and the likely time required
3. benefit to a client when it's likely their life will be disrupted by contact
4. response from Victoria Police
5. identification that the matter is not before the Court
6. the carer is not an active carer on the Victorian Carer Register, is not noted on the Disability Workers Exclusion Scheme and is not an active Departmentally auspiced carer, e.g. a kinship carer.



## Figure 2 Inquiry and Investigation Decision Making Tree

The following decision-making tree should be referred to when considering whether to undertake an inquiry and, as required, an investigation.



## Roles and responsibilities

### Role of the Oversight Group

For each inquiry and following investigation, an oversight group should be established. The members should be decision-makers from within the Department and the relevant CSO(s). Some of the purposes of an oversight group should be to:

#### **Inquiry: Information gathering and decision making**

1. decide the investigation manager
2. coordinate the work required to identify and review any employee or carer files held by the Department and CSOs (as relevant)
3. oversee the collation and review of client files
4. decide whether this matter requires further investigation once all information has been reviewed
5. identify and raise any individual or systemic issues that arise during this process.

#### **Investigation**

In this phase, some of the purposes of an oversight group should be to:

1. decide whether an external investigator(s) should be commissioned or whether internal Departmental and / or CSO staff will be appointed
2. approve the planning for, contact and interviewing of Child Protection clients
3. coordinate services and supports for any Child Protection clients who have been a victim of abuse or other inappropriate behaviour
4. provide strategic coordination advice to enable tasks to be undertaken in a timely manner
5. oversee and provide quality assurance of the investigative process
6. approve the dissemination of information with regards to the investigation as required
7. identify and raise any individual or systemic issues that arise during this process
8. approve the investigation report, dissemination and the findings / recommendations action plan.

#### **Deciding on inquiry/investigation responsibility**

Factors that should be considered when deciding on the person responsible to lead the inquiry / investigation will be determined by:

1. is a CSO involved or was it a kinship care managed solely by the Department?
2. does the CSO still exist either or has it been consolidated into another CSO?
3. has this person had any direct involvement with the clients / carer?

Once an inquiry is completed, another decision about the lead for further inquiries or an investigation should be made by the Department and the CSO(s) involved.

## Role of inquiry / investigation manager

The investigation manager is responsible for coordinating the inquiry and investigation, determining what investigation action is appropriate, providing advice and reporting to the oversight group, and for either drafting, if more than one investigator was involved, or reviewing the investigation report to determine the appropriate outcome and findings. The investigation manager is also responsible for:

- maintaining documented investigations processes in line with these guidelines
- carrying out or commissioning the investigation
- ensuring risk are identified and proposed mitigation strategies are reported to the oversight group
- providing assurance that the investigation has adequately explored the incident and all relevant information
- drafting or reviewing the investigation report and preparing the findings plan for approval by the oversight group.

The Investigation Manager is responsible for delivering the final report, particularly if multiple investigators have been utilised. The investigation manager should carefully consider the investigation report and determine whether it meets the standards outlined in these guidelines. The investigation manager should consider whether the investigation is complete and whether the findings and recommendations made are sound and based on accurate consideration of all the facts. If the investigation report does not meet these expectations, the oversight group should consider whether additional investigation is appropriate in the circumstances. The investigation manager should also attest to, or provide assurance that, the investigation has adequately explored the incident and all relevant information.

Based on the investigation report, the investigation manager should prepare a findings plan, which will focus on whether there are recommended changes to systems, processes or procedures that better ensure the safety of Child Protection clients in the future.

It is recommended that the Investigation Manager hold a minimum qualification of a Certificate IV in Government Investigations.

## Role of the inquiry / investigation staff

Staff undertaking inquiries and investigations may be staff members from the Department or from a CSO or both. Decisions about this should be made by the Department and the CSO(s) involved. External investigators may also be appointed as determined by the oversight group.

When undertaking inquiries or investigations, the role of the investigator is to conduct the inquiry or investigation in accordance with the law, to gather and analyse the facts and evidence that prove or disprove a concern, allegation, event, circumstance or situation, and to enable a fair conclusion to be reached.

The investigator has a duty of care to Child Protection clients and carers who are the subject of an investigation and any others affected by an investigation, to conduct themselves and carry out their role as a reasonable person would when undertaking the inquiry or investigation. They have an obligation to avoid causing harm to others where harm is reasonably foreseeable if care is not taken.

It is recommended that the investigation staff hold a minimum qualification of a Certificate IV in Government Investigations or equivalent.

## Investigator tasks

To undertake a methodical search for facts and evidence that proves or disproves an allegation, event, circumstance, or situation, an investigator should:

- collect information to establish whether an investigation should occur
- collect evidence (facts in issue or facts relevant to the issue), including via methods such as interviewing Child Protection clients, witnesses, carers subject to allegations and other relevant people in a manner that demonstrates an unbiased approach, independence and that perceived or actual conflicts of interest have been properly addressed
- conduct the investigation process in a manner that ensures that Child Protection clients', witnesses' and carers' rights are upheld in accordance with the law and reflect a duty of care
- weigh any facts and evidence that prove or disprove an allegation, event, circumstance, or situation
- write a report with clear, evidenced and defensible recommendations that demonstrates that on the balance of probabilities an allegation, event, circumstance, or situation is substantiated or not substantiated
- where an allegation, event, circumstance, or situation is substantiated, note the appropriate further action to be considered.

## Taking care of yourself and others

The Department is committed to supporting staff health and wellbeing. Undertaking inquiries and, as required, investigations can be an emotionally draining and, at times, a physically tiring process. Staff undertaking inquiries and investigations will gather material that may be distressing. Staff will analyse records, participate in decision-making, possibly interview Child Protection clients and carers and make findings.

Work of this nature has the potential to cause burnout and vicarious trauma. A commitment to focusing on health and wellbeing and engaging in self-care activities are important strategies that staff can utilise to prevent burnout and vicarious trauma.

Staff may access any of the Departmental supports available at [Wellbeing programs and initiatives](#).

Staff may also have their own sources of supports such as internal peer groups or private clinicians. Staff are encouraged to seek out support even when they don't consider they are being affected by the material or the process. It is better to build or maintain resilience and wellbeing than be in a situation where this needs to be rebuilt.

Along with area or divisional supports, other internal guidance and support can also be sought from the Office of Professional Practice through the CP Wellbeing Team CP Wellbeing (DHHS) [CPwellbeing@dhhs.vic.gov.au](mailto:CPwellbeing@dhhs.vic.gov.au) and the Integrated Specialist Practice team OPP Directorate (DFFH) [OPPDirecatorate@dffh.vic.gov.au](mailto:OPPDirecatorate@dffh.vic.gov.au).

Each CSO will have its own supports and services for staff undertaking inquiries or investigations and staff from these agencies should also access these as needed.

It is important that all staff take active care of themselves to prevent burnout, and to ensure that timely and reasonable decisions can be made.

# Assessing information prior to proceeding to an inquiry – Stage 1

## Sources of concern

Information about possible carer behaviour or a care environment that raises concerns about care provided to Child Protection clients could be received from a range of sources, and can include:

1. a reported incident involving current or past clients
2. information received from an external source, including CSOs
3. day to day practice or file reviews where the behaviour of the carer raises concern about the care provided to clients
4. an internal source e.g. another Departmental program area.

## Inquiry assessment

The information or concern will be assessed prior to proceeding to an inquiry. Some of the factors to consider would include:

1. is the source of the information likely to have knowledge and detail about the carer or care environment that the information has been provided about?
2. what is the nature of the information or concern?
3. what is the likely impact on Child Protection clients if the information was found to be correct?
4. is the carer a current carer and regardless of whether or not they have current Child Protection clients in their care, what is the assessed risk to any Child Protection clients?
5. is the period of time referred to prior to the implementation of the Department's CIMS?

Curiosity is a key element in this assessment. Consider why the information is being provided, what might have generated the provision of the information now, has the information been provided previously and if so, what was the outcome, and consider who and how the information or concern is being provided.

Information or concerns should not be assessed on face value alone. Sometimes minor concerns may not be minor when a fulsome and thoughtful review of that information or concern is undertaken.

Consideration must be given to whether this is a Client Incident Management System matter or not.

Checking of the Victorian Carer Register and the Disability Worker Exclusion Scheme must occur at this point also. It is critical to know whether the carer is still able to provide care and whether there are current Child Protection clients in their care or they are delivering services to Child Protection clients. Consultation should occur and advice can be shared about whether the current concerns constitute the requirement for an investigation under a different process.

The Child Safeguarding Team and the Victorian Carer Register can be contacted by telephone at (03) 9096 8690 or by email at [Carer.Register@dhhs.vic.gov.au](mailto:Carer.Register@dhhs.vic.gov.au). The Child Safeguarding Team will also provide advice about whether the initial information constitutes a section 81 or section 82 referral. More information can be found about this process at section 10 of the Client Incident Management System Addendum: Out of Home Care <https://providers.dhhs.vic.gov.au/client-incident-management->

[guide-addendum-out-home-care-word](#). More information about the Victorian Carer register can be found at [Victorian Carer Register - DHHS Service Providers](#).

The Disability Worker Exclusion Scheme Unit can be contacted by telephone at (03) 9096 3203 or email [DWESU@dhhs.vic.gov.au](mailto:DWESU@dhhs.vic.gov.au) for checks and notifications. More information about the Disability Worker Exclusion Scheme can be found at <https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme>.

## Record keeping responsibilities

Cumulative information can sometimes determine if a matter is investigated, so it is important to record the initial inquiry as well as any investigation undertaken.

- Allegations or complaints may be raised through OurBriefings<sup>3</sup>. The matter will be allocated to the appropriate area of the department for investigation and response.
- If the matter has been raised through other processes, the inquiry and any subsequent investigation should be recorded in TRIM EDM. A new Classified file should be established, with the following naming convention so all historical matters may be located more easily in the future: CHILDREN AND YOUTH SERVICES – PROTECTIVE SERVICES – [THE DIVISION] –CARE INVESTIGATION 20XX [year the investigation began] XXXX {surname of person/carer} MATTER.
- If the matter is transferred over to CIMS, cross reference the CIMS incident report number and TRIM number.

Further information can be found at <https://intranet.dhhs.vic.gov.au/recordkeeping>.

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<sup>3</sup> OurBriefings information can be found on the department's [OurBriefings.....intranet.....page](https://intranet.dhhs.vic.gov.au/OurBriefings)  
<<https://intranet.dhhs.vic.gov.au/OurBriefings>>

## Establishing the inquiry – Stage 2

The investigation manager is responsible for preparing the inquiry plan or approach. It is important to consider the actions to be taken and to document decisions / key points prior to commencement. The more time that is spent planning and accounting for all possible avenues of enquiry, sources of evidence and decision-making processes, the more likely the inquiry will be completed effectively.

This planning process should involve:

- identifying all appropriate sources of information and evidence (e.g. witnesses, available records maintained by the service provider or other sources, etc.)
- defining and assigning tasks to identified staff, who may be skilled Child Protection or CSO staff
- setting and managing timeframes for completion of key tasks.

The CIMS policy states that, in relation to current Child Protection clients, incident investigations should occur within 28 days. With historical abuse in care investigations, particularly where large numbers of children may have resided in the household, these timeframes will not be met. If there are current Child Protection clients residing in the household and the client incident report has been initiated by one of those Child Protection clients, the CIMS timeframes should be adhered to in relation to the current Child Protection clients. However, timeframes for completion of tasks in relation to Child Protection clients who no longer reside in the household may take more time.

Throughout the investigation, consider any actual, potential or perceived conflicts of interest that may be held by the investigation manager or other involved parties as they arise, and implement steps to manage identified risks.

**Note:** CIMS captures events or circumstances (1) which occurred during service delivery, (2) which allegedly resulted in harm to clients receiving services delivered or funded by the department, and (3) where the service provider is a current registered CIMS user. Where these conditions are met, **the department and service provider must follow CIMS reporting and incident management processes, including investigation processes; this guide and its processes apply to all other matters.** Please contact [CIMS@dfh.vic.gov.au](mailto:CIMS@dfh.vic.gov.au) to determine if the organisation is a registered CIMS User. Further information can be found in the [Client Incident Management Guide](https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word) <<https://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word>>

## Data gathering

Data about the carer and any children should be gathered and the following systems may have information within them:

1. Client Incident Management System and its predecessor the Critical Client Incident Report Management System and the Quality of Care (QoC) system
2. Feedback Management System and its predecessor, REIMS
3. TRIM for personnel / caregiver files
4. The CSO, as applicable, for its caregiver files
5. Central Records for hard copy client files
6. CRIS / CASIS search for client names, CRIS numbers and client placement dates – this information can be sourced by contacting OurService at <https://ourservice.dhhs.vic.gov.au/ourservice/>



## 7. Victorian Carer Register and Disability Worker Exclusion Scheme.

### Information and data from the Community Sector Organisation - Requesting information under the Service Agreement

Caregivers will mostly have been attached to an agency. Under the CSO's Service Agreement 2020-2024 section 6 enables the Department to seek carer files. A sample Service Agreement is available on the Funded Agency Channel and can be used to assist in the development of the request for a copy of any records for investigation purposes.

### Communication with the CSOs and Victoria Police

If there is an investigation in relation to a current incident involving a current client and a caregiver, communication with the CSO regarding an inquiry into Child Protection clients should primarily focus on notifying the CSO that the Department will seek placement and other data and then carry out file reviews. No interviews or follow up should be done with any person without discussing this with Victoria Police as it may impede or compromise any police investigation.

Where a client has made a complaint, SOCIT should be notified if the complaint is about sexual or physical abuse. SOCIT should be advised of the nature of the complaint, that the Department is undertaking a preliminary review and that the Department will make further contact with them. Victoria Police may decide that the nature of the information warrants their follow up and that Victoria Police will lead the investigation. Consideration should be given to a Reportable Conduct notification completed as appropriate.

Where there is no client complaint, but the information received has been assessed as requiring an inquiry, communication with Victoria Police is as per the decision-making considerations outlined in the guidelines.

### Establishment of a file in TRIM EDRM

A new file should be established in EDRM. It should be a classified file and the following is the proposed naming convention so that all historical matters may be located more easily in the future: CHILDREN AND YOUTH SERVICES – PROTECTIVE SERVICES – [THE DIVISION] –CARE INVESTIGATION 20XX [year the investigation began] XXXX {surname of person/carers} MATTER.

### Record keeping

Cumulative information can sometimes determine if a matter is investigated, so it is important to record the initial inquiry as well as any investigation undertaken. Other than CRIS, there are two pathways available to record the matter:

- Allegations or complaints may be raised through OurBriefings. The matter will be allocated to the appropriate area of the Department for investigation and response
- If the matter has been raised through other processes, the inquiry and any subsequent investigation should be recorded in TRIM EDRM.

Further information can be found at <https://intranet.dhhs.vic.gov.au/recordkeeping>.



# Beginning the inquiry – Stage 2

## Hard copy and CRIS / CASIS file reviews

Carers are likely to have a pattern of behaviour across time and the review of files assists with identifying this. There may be notes or records about incidents that did not at the time appear serious, but once a series of incidents involving a number of children is collated, a pattern of behaviour may emerge.

The purpose of reviewing files is to look for notes or documents that either state or indicate that a child was or may have been harmed while in the care of the caregiver. This process is not designed to be a full file review.

Decide which file reviews should occur first. Decisions may be based on length of placement, or, depending on the nature of the allegations or what data was received from the CIMS / QoCs review, perhaps particular age groups, or gender of the children.

Both the client electronic and hard copy files should be reviewed for completeness of information.

**Attachment 1** provides an example template to write up the file review. It includes the individual child data obtained during the establishment phase and seeks to focus the write-up of the file review to key points of note or interest that would be pertinent to the outcome of an inquiry and decision about an investigation.

## Caregiver file

Reviewing the caregiver file is helpful. These files have the assessment and reaccreditation reports on them, plus they often have records of supervision and other notes about the caregiver of which the Department may not have been aware. The caregiver file will provide a more fulsome picture of the carer from the agency's perspective.

## CRIS File and other information review outcomes

A CRIS File Review Outcome template, **Attachment 2** has been developed to assist with the synthesis of material from the file reviews, CIMS / QoCs and any other data or information that might have been gleaned during the initial period.

The File Review Outcome template has been designed to focus on themes from CIMS / QoCs, specific incidents of harm (recorded or likely), vulnerabilities of the child at the time and anything else found in a file that is of concern.

The content of this template should be concise but provide detail about the themes as it leads into the allegations and the particulars of the allegations that may be investigated. It helps focus on the task at hand and not be distracted by extraneous or irrelevant material.

## Discussion with Victoria Police and the CSO

### Discussion with Victoria Police

As per the decision-tree and decision-making considerations, Victoria Police should be contacted at one or more of the following points:

1. Prior to beginning an inquiry if the information suggests this necessary. Victoria Police may decide the information warrants an investigation and advise that they will lead it.
2. After undertaking the inquiry phase and before proceeding to investigation, Victoria Police may or may not decide that the information warrants an investigation and may decide whether it will lead the investigation or whether the Department / CSO should and report back.

On rare occasions, Victoria Police may advise that no investigation is warranted. There may be a range of reasons why this decision is made. Based on this information, DFFH / CSO should carefully consider whether an investigation will still proceed.

However, continuing to meet with or keep the Police up to date may be useful depending on the nature of the investigation being undertaken.

If not leading the investigation, Victoria Police may remain involved. Thus, the investigation procedure should be undertaken to a high standard in order to provide accurate and factual information / evidence to Victoria Police to enable a decision to be made at a later point.

## Discussion with CSOs

It is recommended that, as appropriate, relationships with CSO involved in an investigation continue. The CSO may have staff who had long-standing relationships with Child Protection clients, and they may be in a good position to assist with contacting Child Protection clients.

The department may negotiate with the Service Provider to share the inquiry and investigation responsibilities Where the Service provider is contractually tied to the department but for services outside of the scope of CIMS; or where the Service provider has been consolidated into another CSO which is contractually tied to the department.

## Creating a timeline

It can be useful to start and keep refining a timeline. If there are several Child Protection clients, it's useful to understand whether placements overlapped, and this can assist with file reviews; including whether there are other Child Protection clients mentioned in the file that is being reviewed. This also assists with understanding who might be witnesses, either directly or indirectly, to a primary victim as well as whether they may also have been victims.

A timeline including key events from the caregiver file can also provide a better understanding of whether there are decisions that are made by an agency about change to carer status or other concerns that might have impacted on placements.

## Completion of stage 2

Once the Inquiry stage has been completed, there should be a good understanding of which Child Protection clients (if any) may have been witnesses, either directly or indirectly, to the abuse that has been reported by the primary victim. There should also be a good understanding of whether there are any other Child Protection clients who have a recorded incident(s) on their files, whether these were dealt with and if so how or any other concerns.

Detailed dates and nature of alleged incidents involving both the primary victim and any witnesses / other potential victims will have been recorded.

Consideration of potential allegations and particulars may be clearer.

There may also be an agreed plan with the CSO and Victoria Police about the next steps.

## Decision-Making to proceed to investigation

As per the introductory sections of the guidelines, on completion of the information gathering during the inquiry phase, a decision should then be made about whether to proceed to investigation. The factors to consider when making this decision include the:

1. nature of the information gathered and whether it warrants further investigation
2. Victoria Police decision-making
3. resources required to undertake an investigation and the likely time required
4. benefit to a client when its likely their life will be disrupted coupled with likely system benefits.

A decision-making tree (see Fig. 1) is provided to assist with the decisions at each key point.

The oversight group is responsible for deciding whether a matter should proceed to investigation.

## Closure

On completion of an inquiry and report to the oversight group, the oversight group may decide that an investigation is not warranted. If this decision is made, all documentation gathered should be filed on the TRIM file. Briefing to senior staff, as required, should be completed advising of the decision to close.

## Record keeping

Cumulative information can sometimes determine if a matter is investigated, so it is important to record the initial inquiry as well as any investigation undertaken. Other than CRIS, there are two pathways available to record the matter:

- Allegations or complaints may be raised through OurBriefings. The matter will be allocated to the appropriate area of the Department for investigation and response
- If the matter has been raised through other processes, the inquiry and any subsequent investigation should be recorded in TRIM EDRM.

Further information can be found at <https://intranet.dhhs.vic.gov.au/recordkeeping>.

## Investigation: Gathering evidence – Stage 3

### CIMS reports, Reportable Conduct Notifications and Section 81 / 82 Referrals for the Suitability Panel's consideration

#### Main purposes of each type of investigation

Before beginning an investigation, investigators need to understand the purpose of each type of investigation so they can plan and conduct the investigation effectively to meet the requirements of each of these schemes.

The following table and diagram on the next page are provided so that during the process of investigation, if CIMS reports need to be generated, there is a clear process to follow. It is also helpful to understand the schemes themselves and the kind of information / evidence that will be required should there be a need to make referrals to these bodies.

Table 1, below, provides an overview of each of the key schemes and these are all inter-related. That is, if a CIMS is generated about reportable conduct, then this conduct must be reported. At the completion of an investigation, there may be a view that a carer should be considered for independent investigation and potential de-registration from the Victorian Carer Register via the Suitability Panel. The table describes what this panel does.

**Table 2: Overview of key Child Safety Schemes**

Client Incident Management System investigation	Reportable Conduct Scheme investigation	Independent Investigation and Suitability Panel
<p>A CIMS investigation determines if there has been abuse or neglect of a client by a staff member (including a carer or volunteer) or another client. Investigations focus on client safety and wellbeing by outlining key actions and system-level responses to incidents.</p> <p>CIMS investigations can include allegations of harm and abuse of all clients, regardless of age.</p>	<p>An RCS investigation establishes facts and makes findings in relation to allegations of reportable conduct against a staff member including a foster / residential or kinship carer or volunteer. RCS investigations are limited to allegations of harm and abuse of children aged up to 18 years when the conduct occurred.</p> <p><a href="https://ccyp.vic.gov.au/reportable-conduct-scheme/">https://ccyp.vic.gov.au/reportable-conduct-scheme/</a></p>	<p>An Independent Investigation determines if a foster carer or out-of-home carer (s74 CYFA) employed or engaged by the out-of-home care agency has physically and/or sexually abused a child placed in their care.</p> <p>The Secretary may refer the matter for hearing to the Suitability Panel. The Suitability Panel hears evidence to determine first, whether the abuse occurred, and secondly, if the carer poses an unacceptable risk of harm to children and should be disqualified from the Victorian Carer Register.</p> <p><a href="http://www.suitabilitypanel.vic.gov.au/">http://www.suitabilitypanel.vic.gov.au/</a></p>

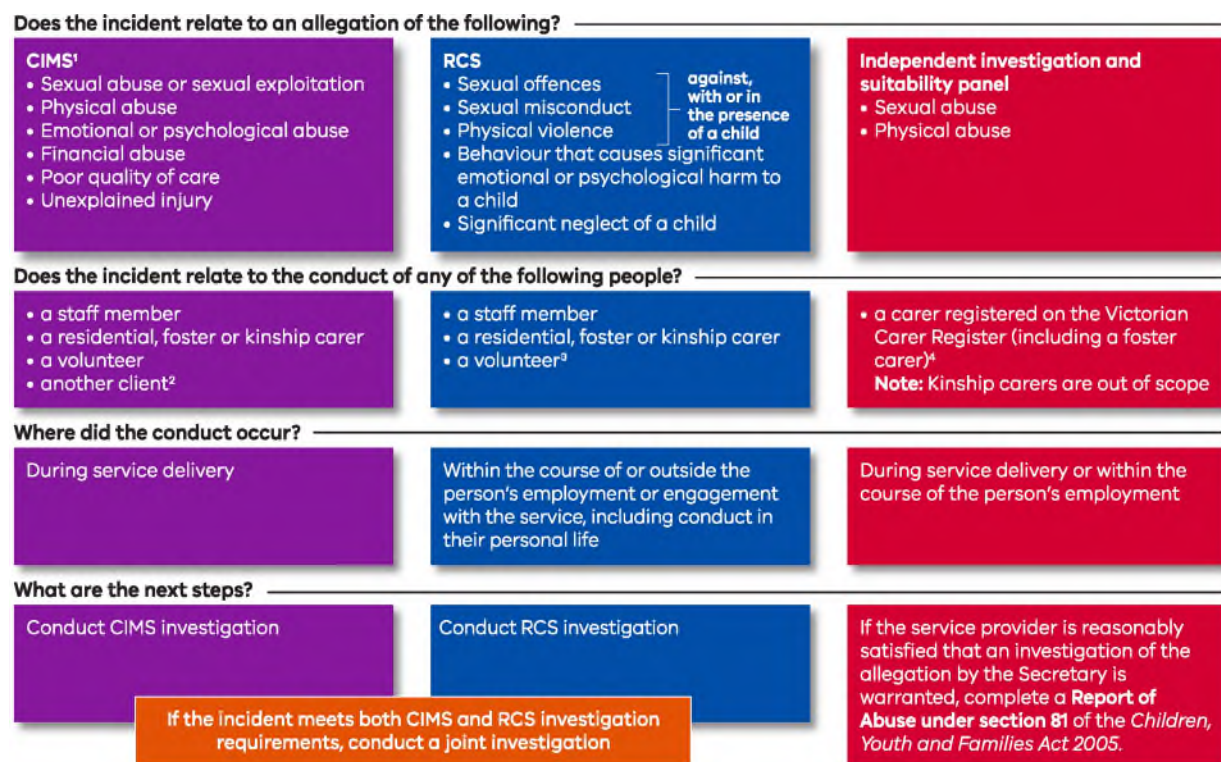
The following diagram provides an overview of the notification pathways for each of these schemes. You should proceed to investigation with an understanding of these schemes, notification pathways and timeframes.

Where you have received an allegation of physical or sexual assault during an investigation, consult with the Child Safeguarding Team at (03) 9096 8690 or by email [carer.register@dhhs.vic.gov.au](mailto:carer.register@dhhs.vic.gov.au) for further advice.

## Notification pathways

### Determining which notification pathway to use following an incident or allegation

**Figure 3: Notification Pathways**



#### Notes for Figure 3

- This is not an exhaustive list of CIMS incident types. See guidance available on the Client incident management system website <<https://providers.DFFH.vic.gov.au/cims>> for more information about identifying, reporting and investigating CIMS incidents.
- Where an incident reported under CIMS includes an unexplained injury it may be unclear if it relates to a person's conduct until an investigation has been completed.
- See s. 74 of the Children, Youth and Families Act 2005, section 3(1) of the Child Wellbeing and Safety Act 2005 and Information sheet 1: About the Victorian Reportable Conduct Scheme available on the Commission for Children and Young People's Reportable Conduct Information Sheet website <https://ccyp.vic.gov.au/child-safety/resources/reportable-conduct-scheme-information-sheets> for definitions. Kinship carers are approved or in accordance with an Order under the Children, Youth and Families Act 2005.
- See s. 74 of the Children, Youth and Families Act 2005 and Allegations of abuse of children in out-of-home care available on the Victorian Carer Register website <<https://providers.DFFH.vic.gov.au/carers-register>>.

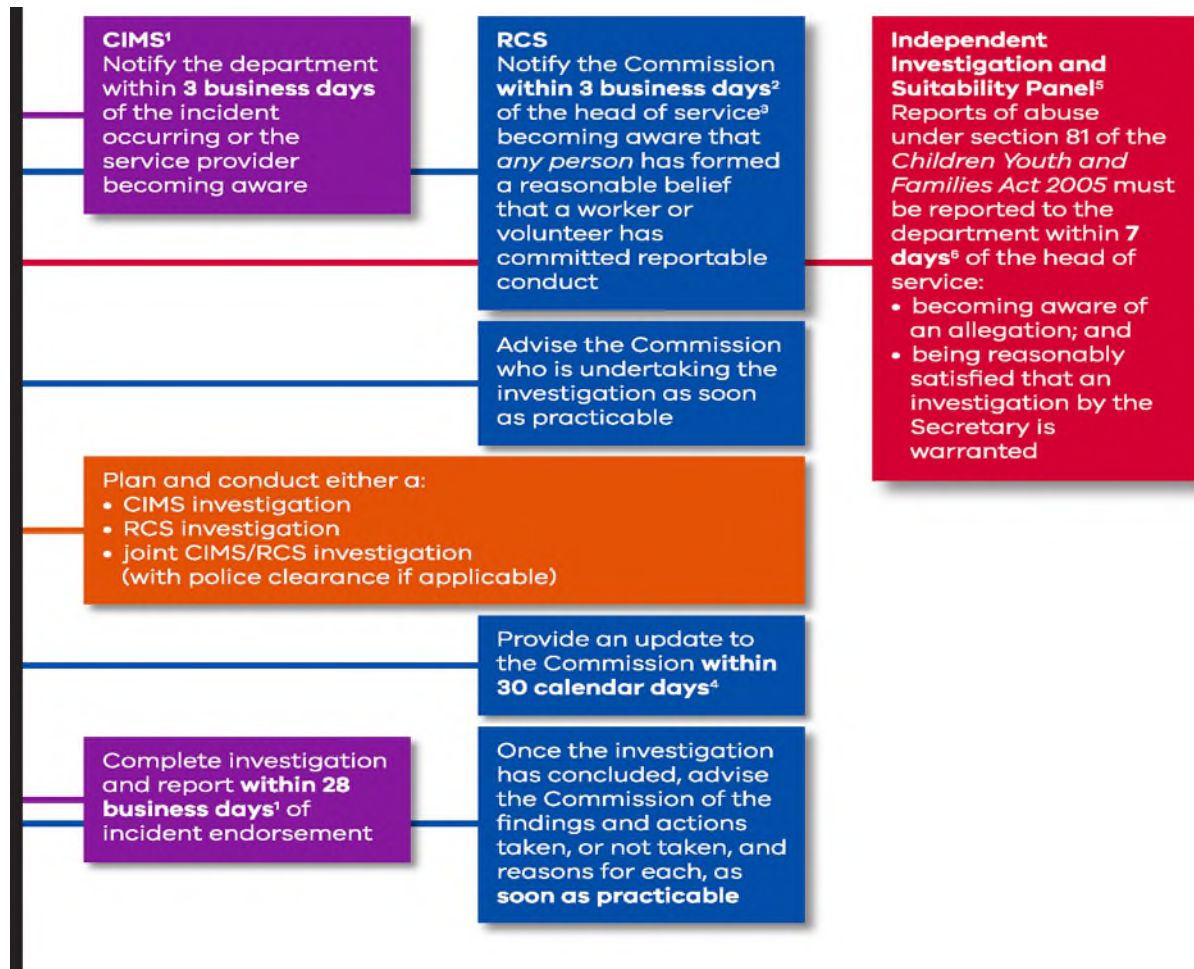


## Important timeframes

Service providers are required to meet the timeframes outlined in the following diagram

**Important:** immediately notify Victoria Police if potentially criminal conduct is identified at any point throughout the investigation.

**Figure 4: Notification Timeframes**



### Notes for Figure 4

1. This timeframe does not include any time an investigation is placed on hold at police request.
2. See s. 16M (1) (a) of the Child Wellbeing and Safety Act 2005.
3. The head of service has certain legal obligations that must be met. See Information Sheet 3: Responsibilities of the head of an organisation available on the Commission for Children and Young People's Reportable Conduct Information Sheet website <<https://ccyp.vic.gov.au/child-safety/resources/reportable-conduct-scheme-information-sheets>>.
4. See s. 16M (1) (b) (i) of the Child Wellbeing and Safety Act 2005.
5. The Secretary and the Suitability Panel are also required to adhere to certain timeframes, including notifying and updating carers before and after investigations. See Allegations of abuse of children in out-of-home care available on the Victorian Carer Register website <<https://providers.DFFH.vic.gov.au/carers-register>>.
6. See s. 81 (2) of the Children, Youth and Families Act 2005.

## Duty of Care during investigations

The investigator has a duty of care to Child Protection clients and carers who are the subject of an investigation, and any others affected by an investigation, to carry out their role as a reasonable person undertaking the inquiry or investigation would conduct themselves. They have an obligation to avoid causing harm to others where harm is reasonably foreseeable if care is not taken. Thus, risk identification and management are a core part of the role.

## Investigation plan

An investigation should have a written investigation plan. The plan is useful for mapping out activities and timeframes and the order in which activities will be undertaken. Should the matter being investigated go to a civil proceeding or tribunal, then being able to demonstrate the planning, the reasons why decisions were made at a particular time and the fluidity of the investigation plan will demonstrate that the investigation was undertaken and completed in an open, unbiased and transparent manner.

The investigation plan should be a living document that evolves as the investigation is undertaken. It should be a record of the:

1. scope and purpose of the investigation
2. timeframes
3. resources required (consider physical resources and staff)
4. requirements or conditions to ensure least possible impact on the client (i.e. try to ensure that the client is only interviewed once), while ensuring that the client is given every opportunity to participate
5. arrangements for interviewing client/s, including consideration of how best to support the client/s to provide their account of the incident, and the involvement of a support person if required
6. arrangements for communicating progress of the investigation with the client/s, with the client guardian and / or their key support person, in writing or otherwise
7. the witnesses to be interviewed (if any) and order of interviews
8. arrangements to provide the person against whom allegations have been made (if any) with the substance of the allegation/s made against them, in writing, at the earliest possible opportunity
9. arrangements to interview the person against whom the allegations are made (if any)
  - documentary evidence to be reviewed by the investigator
  - arrangements for site visits
  - arrangements to obtain expert evidence; for example, a forensic medical assessment
  - determining the approach for timely contact with client/s, families and staff
  - outline a plan for ongoing communication with the person subject to the allegation
  - reporting and review arrangements, especially in the case of more complex investigations.
10. Supports and services should be offered at the beginning of an investigation, during the investigation and on conclusion of an investigation.

The more clearly this information is outlined, the easier it is for parties involved in the investigation to understand their tasks and roles. In addition, a clear investigation plan will assist any future independent party or review body in determining whether the investigation was conducted in a thorough and considered manner.

The CIMS Investigation template is a good tool and can be adapted to suit the particular situation and can be sourced from [DFFH.vic.gov.au/cims](http://DFFH.vic.gov.au/cims).

**Attachment 3** contains some key considerations for investigation managers and investigators when undertaking an investigation. The table in attachment 3 will assist in developing the investigation plan.

## Overview of evidence

It is useful to start thinking about the evidence that is already available and the evidence that needs to be sought. The civil standard of proof, being proof that a fact occurred on 'the balance of probabilities', applies to all civil investigations. This means that an investigation manager must be satisfied that it is more likely than not that the allegation has occurred in order to substantiate it.

## Types of evidence

1. Admissible evidence – hard physical evidence, phones, messages, paper records, photos etc
2. Direct evidence – testimony of a witness who saw the event occur. This is evidence where no inference needs to be drawn regarding the fact
3. Circumstantial evidence – is evidence that relies on an inference to connect it to a conclusion of fact. For example, a person comes inside with a wet umbrella and wet coat, then this is circumstantial evidence of it raining outside
4. Hearsay evidence – a second-hand account of a conversation or action
5. Corroborated evidence – additional evidence of a different kind or character but tending to provide the same point. Corroboration can include: the presence or absence of injuries; evidence from witnesses about matters such as the condition, conduct or complaints made by the client following the time of the alleged incident; and any information or disclosures made by the carer
6. Similar fact evidence – has the alleged perpetrator been investigated for this same or similar behaviour before? Are there other instances where there is a record of same or similar behaviour (e.g. within other Child Protection clients' files)? In a balance of probabilities situation, similar fact evidence could be used if there is other strong evidence
7. Opinion evidence – 'professional' – expert opinion – psychologists, doctors, Child Protection Practitioners, scientists, etc.

## Forming allegations and particulars

Considering allegations and particularising them may be a task that could be started immediately. However, there may be some situations where there is not enough information to make any allegations. In those circumstances, if the investigation is to proceed, consideration could be given to approaching Child Protection clients to discuss their care experience. For those who participate, this will generate both a good level of information about their experience but also provide insight into how a care environment may have continued.

Several allegations may already have been made relating to physical, sexual, or psychological abuse or any of the other abuse types noted in the CIMS guide. There may also be many particulars if there have been a number of incidents that relate to an individual client.

The drafting of the allegations and particulars will assist with identifying the evidence needed.

The allegations and particulars are especially important if / when the carer is interviewed. This ensures procedural fairness and provides the person with an opportunity to be clear about what is being alleged and to respond to those allegations.



Where allegations and particulars cannot be formed, inviting Child Protection clients to share their experience of their care, without using leading questions or prompting / suggesting anything may be an approach. In this instance, careful thought must be given to appearance of bias or conflict of interest.

## Planning and undertaking interviews – the PEACE Model

The PEACE model is a non-accusatory interview structure designed to gain sufficient information, to gather evidence from witnesses and to determine the carer's knowledge, or possible involvement in, a matter under investigation.

In 1984, the United Kingdom's parliament introduced the Police and Criminal Evidence Act (PACE) and accompanying Codes of Practice for police officers. In addition to a radical review of interview procedures, a set of national guidelines was introduced, recommending a structure and style of witness and carer interviews. The model consists of five distinct parts, which are now collectively referred to as the PEACE model.

**Planning and Preparation** – Concentrating on the preparation and planning for an interview and the formulation of aims and objectives.

**Engage and Explain** – Establishing a rapport with the interviewee and engaging the person in conversation.

**Account** – Using prescribed methods to elicit an account from the carer:

- Cognitive Interview - used with cooperative interviewee's and witnesses
- Conversation Management - recommended when cooperation is insufficient for the cognitive interview techniques.

**Closure** – Summary of the main points from an interview, providing an opportunity for the victim, witness or carer to clarify, correct or add to an account.

**Evaluate** – Post interview evaluation of the interview in context of its impact on an investigation.

**Attachment 4** provides more detail about using the PEACE model for interviewing.

## Summarising the interviews

Where several interviews have been undertaken, it may be useful to summarise them into the template attached, as an example, at **Attachment 5**. The template assists to draw out themes.

However, a cautionary note, do not rely on the summaries when writing the final report. It is highly recommended that source documents are accessed for quotes and assessment of evidence etc.

## Gathering physical evidence

There may be a range of physical evidence which can assist in providing context or specific details about the incident or resulting allegation. The collection of physical evidence may include taking photos of locations or equipment or creating diagrams of the location of the alleged incident. Other physical evidence may also include:

- case notes / day books
- mobile phone/s (for example, photos or video)
- computers
- rosters

- emails
- a range of other notes, receipts, financial records etc
- caregiver files – accreditation and reaccreditation reports, permanent care reports, supervision notes
- client files – this would include client incident reports, Abuse in Care / QoC reports
- police files
- the Victorian Carer's Register – check for registration and s79 revocations or s81 or s82 referrals (*Children, Youth and Families Act 2005*).

In each instance, the investigation manager should consider their right to obtain the evidence. In circumstances where the service provider owns the property in question, they are entitled to examine it. If, however, the source of evidence is not owned by the service provider, it will require consent from the owner for it to be examined.

Note that some evidence may be sensitive or required to support day-to-day operations (for example, day books). Investigation managers need to be mindful of operational requirements.

Where it is possible to obtain evidence, the investigation manager must consider how the evidence is captured and retained to preserve the evidence in a secure fashion (refer to the chain of custody guidance below).

## Chain of custody considerations

If physical evidence is gathered as part of the investigation, it is critical to demonstrate that the integrity and chain of custody of the evidence has been maintained. This means avoiding the alteration, substitution or change of condition of evidence sources. This may include:

1. ensuring that the investigation manager has the right to take the original materials. For example, is the relevant physical or electronic evidence owned by the organisation for whom the investigator acts? Does the investigator have authority from the organisation to take that physical or electronic evidence?
2. ensuring that an evidence log is maintained to record:
  - what evidence was collected
  - from whom it was obtained
  - from where it was secured
  - what condition it was in when it was collected
  - when it was collected
  - any instances where other persons took the evidence and for what purpose
3. the evidence should be maintained in a separate, secure location to ensure it is not damaged or removed (including storage of electronic evidence in a secure location, whether for example, in separate, confidential areas on a system, or on a secured USB)
4. the evidence should always be maintained in its original condition to support the absence of alteration, substitution or change of condition. This means that evidence should not:
  - be marked
  - stapled
  - have staples removed
  - be torn or otherwise damaged.

## Evidence matrix

**Attachment 6** provides a basic evidence matrix that could be used to populate the evidence that exists that corroborates the allegation, the evidence that exists that disproves the allegation, and any gaps that exist.

# Investigation: Weighing up evidence – Stage 3

## Briginshaw Principle

According to the 'Briginshaw principle'<sup>4</sup>, the state of being reasonably satisfied on the balance of probabilities that an allegation is substantiated will vary depending on the nature and consequences of the facts in issue. This means that the more serious the allegation and the more serious the potential consequence for the person against whom the allegation has been made, the stronger the evidence must be to conclude that the allegation occurred 'on the balance of probabilities'.

## Balance of Probabilities and Briginshaw Principle

The 'balance of probabilities' relates to whether there is a sufficient amount of evidence to make a reasonable determination that an event occurred.

The Briginshaw Principle refers to the 'nature' of the evidence relied on to decide that on the 'balance of probabilities' an allegation is substantiated or not.

## Assessing evidence

The investigation manager must assess the strength or weight of evidence when making a finding. There are some general considerations that can assist in determining how much weight to place on evidence and to determine a finding. These considerations are not independent of one another, so evidence that satisfies one consideration may very well also satisfy others. These considerations include:

1. Reliability – are the sources of evidence reliable?
2. Relevance – is the evidence relevant?
3. Consistency – is there consistency in the evidence?
4. Corroboration – does the evidence corroborate or not the allegations?
5. Time elapsed between the event and providing information - The more recent an event, the more likely that the evidence of that event will be more detailed. A person's memory may fade with time. Interview techniques such as those described in Attachment 4 can assist with memory retrieval.
6. Opinions of witnesses and bias or conflict of interests – is there bias or a conflict of interest?
7. The carer's account – what did they describe?

**Attachment 7** provides more detail, for consideration, about assessing evidence.

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<sup>4</sup> The principle was first set out in the High Court case *Briginshaw v Briginshaw* (1938) 60 CLR 336 – 'reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the "reasonable satisfaction" of the tribunal'.

## Investigation: Report writing – Stage 3

For any reader of the report to understand the purpose, context, process and findings of the investigation, the investigation report should include all relevant information collated during the investigation. Note that the report may be subject to review by several people, depending on the findings and allegations. Investigations reports should focus on the relevant issues and it should be clear to the reader that these were addressed objectively.

A thorough investigation report will include the following:

1. The relevant policy, procedure or law or authorising body that established the investigation - provide the reader with the context and rationale for the investigation
2. The allegations and particulars are clearly stated
3. The evidence for and against each allegation is clearly stated and an assessment of all evidence has been undertaken with the proper weight given to each piece of evidence
4. The findings of the report are sound, and a decision-maker can rely on this when making their decision
5. Written in the knowledge that the report may be released to Child Protection clients, the carer and other authorities; for example, the Suitability Panel and the Commission for Children and Young People.

Well written reports that contain reliable analysis and subsequent findings align with these guiding principles. **Attachment 8** provides some tips for writing investigation reports.

### Report structure

The following provides an overview of a report structure that could be used.

#### Executive summary

Include a list the allegations, particulars and findings or reason for the investigation

#### Background section:

The background section should include:

1. details of the original incident/s and / or allegation/s and any additional allegations that may have arisen during the investigation
2. the scope and objectives of the investigation as originally defined
3. the investigation plan and any changes that were made over the course of the investigation
4. a list of the evidence gathered and how it was managed securely
5. a list of the interviews conducted and those that were not.

#### Standard of Proof

Briginshaw Principle

Balance of probabilities

#### The evidence

Allegation 1 and particulars

Complainant's evidence

Witnesses evidence

Respondent's evidence

Documents and other evidence – repeat each allegation as required

## Analysis of evidence

For each allegation highlight the key evidence and any conflicting evidence

Discuss the weight given to the conflicting evidence and the reason for preferring one version of another to make a finding.

## Making a finding

For each allegation make a clear statement of finding

It is important that the investigator does not include any language or information which was embellished or is taken out of context. It remains the investigator's role to be impartial and provide the facts determined through a thorough and complete investigation.

Should an investigation be hampered by a lack of evidence or unwilling interviewees, it is recommended that additional lines of enquiry are undertaken prior to concluding the investigation.

The client voice will influence the findings of the investigation. Utilising the investigation findings, the report should identify whether the Department might improve its systems, processes or policies, based on the findings in each case, and how these would contribute to protecting children in care from harm.

Once the investigation report and findings plan has been endorsed by the oversight group, the outcome of the investigation is to be communicated in writing to all relevant parties. This must include:

1. the carer
2. client/s alleged to be victims of the incident and / or allegations
3. any additional service providers involved with clients or alleged perpetrator (e.g. disability carers who may work across multiple providers).

Additional parties may be made aware of the outcome of the investigation at the discretion of the oversight group, with due consideration for privacy and confidentiality.

Following the completion of the investigation, endorsement of the final report and communication of the outcome to all parties, the investigation manager should consider the most appropriate next step. This may include consideration as to whether the findings or outcome of the investigation require further reporting to an oversight body, such as the Disability Services Commissioner, Commissioner for Children and Young People or the Independent Investigator / Suitability Panel.

## Procedural fairness in reports

The report must demonstrate that the investigator has met the following criteria for procedural fairness:

1. The carer was provided with opportunity(ies) to be heard
2. The carer was treated without bias
3. The evidence for and against has been considered and weighting of this is clearly explained

4. The Balance of Probabilities argument is clearly articulated and is related to the nature and standard of the evidence
5. The potential outcome for the carer and the evidence relied on reflects the Briginshaw Principle
6. Findings are made based on the relevant evidence.

## Collating themes about system, process or procedural change – findings plan – Stage 4

The inquiry / investigation work that is undertaken should, where possible, be analysed to determine whether there are any changes to Departmental or CSO systems, process or procedure. Although it is likely that many of the files being reviewed or persons being interviewed were Child Protection clients some years ago, the process may raise the opportunity for current systems, processes or procedures to be further altered or new ones implemented.

The CIMS process has a data analysis component to it and the following sections from that process are equally applicable when considering the findings of an inquiry or investigation undertaken utilising these guidelines.

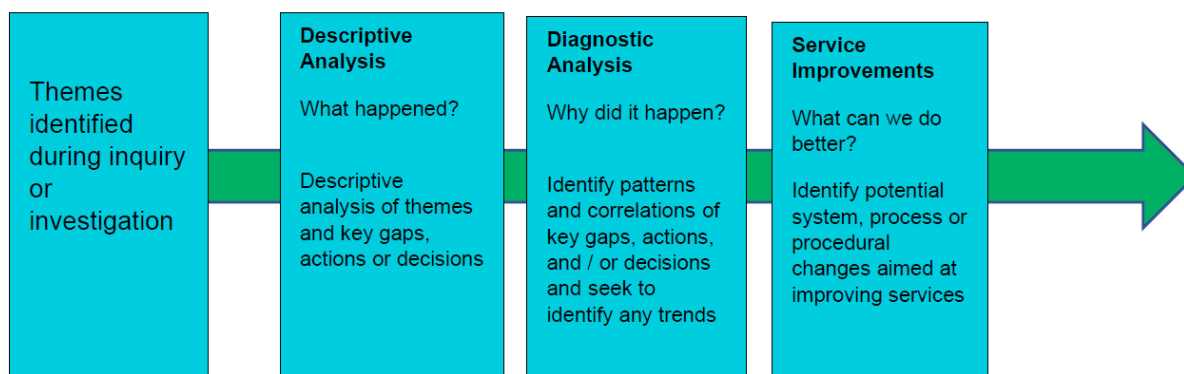
**Descriptive analysis** aims to answer the question: what happened? This section should aim to identify key gaps, actions and decisions that may have contributed to an incident(s) occurring.

**Diagnostic analysis** seeks to answer the question: why did it happen, and could it happen now? It includes analysis that will identify patterns and correlations of key gaps, actions, and / or decisions and seek to identify any trends and themes in these.

**Service improvements** - Understanding why incidents may have occurred and utilise the deeper understanding gained of what happened and why it happened in order to identify potential system, process or procedural changes aimed at improving services and mitigating incident risks.

This process will complete the task of creating a findings plan.

These objectives, activities and outputs are displayed in the below high-level analysis framework shown in Figure 5 following.



## Closure – Stage 5

Once the investigation report and findings plan has been endorsed by the oversight group, the outcome of the investigation is to be communicated in writing to all relevant parties. This must include:

- the carer
- client/s alleged to be victims of the incident and / or allegations
- any service providers who are supporting Child Protection clients, with the clients' consent
- any additional service providers involved with Child Protection clients or carer
- relevant internal programs who may have an interest in the outcome e.g. the Child Safeguarding Team or the Disability Workers Exclusion Scheme.
- Ensure that you have reviewed the diagrams on pages 25 and 26 and made the correct notifications to internal and external bodies as required.

Additional parties may be made aware of the outcome of the investigation at the discretion of the oversight group, with due consideration for privacy and confidentiality.

It is important to report back to any Child Protection clients involved in the investigation about the outcome of the investigation and what change is being suggested to keep children safer in the future. This principle of client voice is contained within the *Department's Client Voice Framework* (2019) and is a responsible and ethical action to take. Feedback to clients about impact or change that their story has generated particularly embodies principle five: the client voice leads to action. Clients should know how their voice is used, including what the reasons are if it doesn't lead to any change or outcome.

### **Clients have told us: (from the Client Voice Framework)**

1. There must be a timely response to actions and questions – otherwise we don't know if anyone was really listening.
2. Having to retell personal stories is traumatising. So much personal information is shared with 'the system' without us knowing where it has gone, and then we have to provide it multiple times, contributing to feelings of powerlessness and vulnerability.

## Record keeping

Cumulative information can sometimes determine if a matter is investigated, so it is important to record the initial inquiry as well as any investigation undertaken. Other than CRIS, there are two pathways available to record the matter:

- Allegations or complaints may be raised through OurBriefings. The matter will be allocated to the appropriate area of the Department for investigation and response
- If the matter has been raised through other processes, the inquiry and any subsequent investigation should be recorded in TRIM EDRM.

Further information can be found at <https://intranet.dhhs.vic.gov.au/recordkeeping>.

## The National Redress Scheme

The National Redress Scheme is available for clients who have experienced sexual abuse while in institutional care. A client may be eligible to apply to this Scheme. Information about this Scheme can



be found at <https://www.nationalredress.gov.au/> and <https://www.nationalredress.gov.au/applying/who-can-apply>. Clients who may be eligible to apply to this scheme should be given information about how to access it. There are associated support services which can assist clients to understand their potential eligibility to apply and receive redress and which provide support with completing applications.

Additionally the website provides a good summation of the range of services that are available for clients seeking support.

## Summary

### Assessment of initial information

On receipt of information raising concerns about a carer or a care environment, it is important to determine whether to proceed to an inquiry. An assessment of the information received should be undertaken to determine the robustness of the source of the information, the likely reliability of the information and an initial client impact assessment if the information was found to be correct.

### Undertaking inquiries and investigations

The inquiry and investigation process should comply with the minimum standards described below.

Inquiries should be purposeful, respect privacy laws, thoughtful, detailed and considered. The outcome of this process will be used as the primary basis for deciding whether to proceed to an investigation or not.

- Each investigation should commence with an overall planning process and result in a written investigation plan, including:
  - scope and purpose of the investigation
  - timeframes
  - the resources required
  - any requirements or conditions to ensure maximum feasible involvement of the client
  - arrangements for an interview with the client, including consideration of how best to support the client to provide their account of the incident, and the involvement of a support person if required
  - arrangements for communicating progress on the investigation with the client and their key support person
  - the witnesses to be interviewed and order of interviews (if any)
  - arrangements to provide the individual identified as the subject of the allegation (if any) with the substance of the allegation(s) made against them
  - arrangements to interview the individual identified as the subject of the allegation (if any)
  - documentary evidence to be reviewed by the investigator
  - arrangements for site visits
  - arrangements to obtain expert evidence, for example, a forensic medical assessment
  - a plan for communicating with other Child Protection clients, families and staff
  - in the case of more complex investigations, reporting and review arrangements.
- The investigation should adopt a person-centred and rights-based approach, considering what is important to the client. Clients should be invited to participate in the investigation process and

obtain the support they need to do so. The investigation must, however, always remain impartial and independent

- The investigation should abide by the standard principles of good investigations:
  - principles of procedural fairness – hear all parties involved in the incident, consider all relevant submissions, act fairly and without bias, and conduct the investigation without undue delay
  - confidentiality and privacy – keep information provided by a witness confidential (unless required to be disclosed by law, in which case the witness should be informed of the potential need to disclose), obtain consent from the person being interviewed to record the interview, provide people with the opportunity to review their statements, and check to make sure their statements are accurate
  - appropriate interview techniques to obtain objective and reliable evidence. Interviews should be professional, planned and sensitive to the interviewee
  - weighing the evidence according to how persuasive and probative it is
  - recording interviews and obtaining witness statements
- An investigation report should be written that clearly explains the investigation process used, the weight and assessment of evidence and lead to a reasonable conclusion.

## Final points

Where Child Protection clients are to be involved or interviewed it is important to ensure their rights are upheld, their privacy respected and that their voice is heard. Where a client voice may not result in a change to systems, policy or procedures, the reason for this should be provided to them. It may be that processes have already been strengthened.

Remember that, as appropriate, clients may be eligible to apply to the National Redress Scheme. Other supports and services should be offered at the beginning of an investigation, during the investigation and on conclusion of an investigation.

The investigation should also be defensible and able to withstand challenge. It is important to remember that investigations may impact negatively on a carer's reputation and / or life. Investigations must be completed to a high standard and uphold the principles of due process and natural justice. The outcome must be reasonable.

Ensure that you maintain your wellbeing and that of others working on an inquiry or investigation.

## Appendix 1

There are a number of pathways for matters to be raised which might require investigation. There are also matters which should be managed through other pathways. The following information provides examples and illustrations for different scenarios.

**Table 1 When to use the guidelines or CIMS - scenarios for issues of concern raised about child protection client/s**

Scenarios	Guidance about the process
<b>IN SCOPE OF CIMS – INCIDENT MANAGEMENT AND INVESTIGATION PROCESSES</b>	
A client of a Department service (Kinship)	Utilise the CIMS process, refer to the CIMS guidance at <ul style="list-style-type: none"> <li>the Department: <a href="https://intranet.dhhs.vic.gov.au/client-incident-management-system">https://intranet.dhhs.vic.gov.au/client-incident-management-system</a></li> </ul>
A client of a service provider required to use CIMS	Use CIMS: <ul style="list-style-type: none"> <li><a href="https://providers.dhhs.vic.gov.au/cims">https://providers.dhhs.vic.gov.au/cims</a></li> </ul>
<b>IN SCOPE FOR THESE GUIDELINES</b>	
Where the Service Provider is not funded and does not exist.	Utilise the process in the guidelines. The Department undertakes all elements of the inquiry and investigation.
Where the Service provider is contractually obligated to the Department but is not required to use CIMS (e.g. no longer delivers in scope services to CIMS).	Utilise the process in the guidelines. The Department may negotiate with the Service Provider to share the inquiry and investigation responsibilities.
Where the Service provider has been consolidated into another CSO which is contractually obligated to the Department.	Utilise the process in the guidelines. The Department may negotiate with the Service Provider to share the inquiry and investigation responsibilities.
Where the Minister and/or Secretary receives correspondence that alleges abuse or poor care of a client for matters outside of CIMS reporting and incident management requirements.	Utilise the process in the guidelines. Record the response in OurBriefings.
Where the Deputy Secretary (Department) raises concerns about a client or group of Child Protection clients in response to business as usual activities for matters outside of CIMS reporting and incident management requirements.	Utilise the process in the guidelines.

Scenarios	Guidance about the process
A client makes a complaint that raises concern for the care of past Child Protection clients.	Utilise the process in the guidelines.
A complaint is received about abuse or poor care of a client where the service provider is not registered in CIMS.	Utilise the process in the guidelines.
Carer de-registered from Victorian Carer Register and Disability Worker Exclusion Scheme.	Utilise the process in the guidelines.
Carer is still registered on the Victorian Carer Register and is not noted on the Disability Workers Exclusion Scheme.	Liaise with the Child Safeguarding Team for further advice and decisions at (03) 9096 8690 or <a href="mailto:Carer.Register@dhhs.vic.gov.au">Carer.Register@dhhs.vic.gov.au</a> . If the carer has current Child Protection clients in the care, consider making a CP report.
Issues of concern raised about a client who is or has also been a client of Disability Services or a Housing Service.	Contact must also be made with these program areas to advise them of the complaint and determine who will lead the process, if required.
Initial inquiries are undertaken, and it is determined that no clients were Departmental clients during the time period in question.	Service provider should utilise these guidelines.

## Scenarios to assist in decision-making

Where the auspicing CSO no longer exists or is no longer funded, the Department will be responsible for deciding whether an inquiry will be undertaken. In the situation where a CSO has been taken over by another CSO, the now primary CSO may advise that it was not the service provider at the time of the concerns and the Department will be responsible for deciding whether an inquiry and / or investigation will be undertaken.

There may be situations where, after initial inquiry, it is determined that there were no past Child Protection clients of the Department placed with the carer, but voluntary respite services to children were provided by an auspicing CSO. In that instance, if the CSO is still operating even after being consolidated with another CSO, the operating CSO will be responsible for deciding whether further inquiry and / or investigation should be undertaken. In this same situation, if a CSO is no longer funded to deliver child protection services but does exist, then that CSO should still decide whether further inquiries and / or investigation should be undertaken. If the CSO no longer exists and is not funded, the record of the information received, inquiry and decision made will be filed in TRIM by the Department.

In the circumstance where a concern is raised in relation to the care of a past client(s) and the carer is a current carer with children in their care, a discussion with the Department's Child Safeguarding Team is required. This team can be contacted at (03) 9096 8690 or [carer.register@dhhs.vic.gov.au](mailto:carer.register@dhhs.vic.gov.au). This team will be able to assist in deciding whether the concerns meet the threshold for an investigation by that team or whether further information should be gathered, and then further consultation occurs later. Consideration should also be given to whether the concern should be raised

as an Intake report and a Child Protection investigation into the care of the current Child Protection clients undertaken. The basis of this decision will depend on the nature and detail of the concerns and the likely impact on the current Child Protection clients if it were to be found to be correct. However, this should be discussed with the Child Safeguarding Team before a report is made.

In the situation where concerns are received and the carer is a current carer but does not currently have Child Protection clients in their care, a discussion with the Child Safeguarding Team is required. This team can be contacted at (03) 9096 8690 or [carer.register@dhhs.vic.gov.au](mailto:carer.register@dhhs.vic.gov.au). This team will be able to assist in deciding whether the concerns meet the threshold for an investigation by that team or whether further information should be gathered, and then further consultation occurs later.

In any of the scenarios outlined above where there is concern that the carer may also have provided Disability services, contact must be made with the Disability Workers Exclusion Scheme Unit on (03) 90296 3200 or by email at [dwesu@dhhs.vic.gov.au](mailto:dwesu@dhhs.vic.gov.au).

Where a concern issue is raised in relation to a carer providing care to Child Protection clients but they have also provided services as a Disability Carer or in the Housing service, then consultation with other program areas must occur to determine which program area will take the lead.