

YMCA NSW

Investigation Procedure



1. Document control

Overview	The <i>Investigation Procedure</i> outlines the steps YMCA NSW will take to effectively assess and investigate different types of incidents, including but not limited to, child protection, Work Health & Safety (WHS), buildings and facilities and workplace conduct incidents.
Scope	All YMCA NSW staff including paid employees, volunteers, Board Directors, student placements, consultants or contractors engaged by YMCA NSW and clients of YMCA NSW.
Procedure owner	Chief Risk Officer
Parent Policy	Chief Executive Officer
Date of approval	08 November 2016
Date of implementation	08 November 2016
Review date	08 November 2018

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2. Policy statement

YMCA NSW is committed to providing a safe environment and positive experience for all people within its premises and involved with its activities and programs. In order to do this, YMCA NSW staff must be able to promptly identify, respond to and manage all incidents that occur. This Policy provides for the prompt and accurate reporting of incidents, comprehensive reviews and investigations where required, corrective action strategies, ongoing follow up and analysis of actions and identification of any new issues that arise. YMCA NSW fosters and promotes organisational learning from incidents to reduce the risk of future incidents occurring and to provide both immediate and ongoing support for all staff, clients and others affected.

3. Definitions

Term	Definition
Staff member	Any person YMCA NSW employs or engages – including paid employees, volunteers, Board Directors, contractors, consultants and student placements
Employee	Paid employees of YMCA NSW
Volunteer	Unpaid volunteers, student placements and Board Directors.
Client	Any user of YMCA NSW services – children's services, recreation services, camping services and community programs including children, young people, vulnerable adults, parents/guardians and facility users
Child or young person	A person under the age of 18 years of age
Vulnerable Adult	An adult, aged 18 years or over: <ul style="list-style-type: none"> • who is or may be in need of personal care or community services due to their age, illness or disability • who is, or may be, unable to take care of themselves or unable to protect themselves against harm or exploitation
Incident	An event that results in or had the potential to result in harm to any person, property, equipment, the surrounding environment or the wider organisation. Examples include injury, illness, alleged child abuse, verbal or physical altercations, complaints, evacuations, natural weather events, chemical spills, theft etc.
Reportable Incident	An incident that must be reported to a funding or governing body, as part of a contractual or regulatory obligation e.g. Council partner, Department of Families and Community Services, Australian Children's Education and Care Quality Authority (ACECQA), NSW Ombudsman, SafeWork NSW, WorkSafe ACT
Serious Incident	An incident that may include (but is not limited to): <ul style="list-style-type: none"> • Death or permanent disablement • Child abuse or serious sexual or physical assault • A near miss that could have resulted in the points above • A serious allegation made against a staff member

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	<ul style="list-style-type: none"> • Serious threats made by or against staff members, clients or other persons, that place people or property at risk of significant harm • Any event causing public outrage, alarm or negative publicity • Major interference with normal business operations • Major non-compliance or legal action against YMCA NSW
Allegation	A statement, made with or without giving proof, that someone has done something wrong or illegal
Investigation	A careful examination/search in order to discover facts or gain information and identify the root causes of an incident
Informal investigation	<p>Involves gathering all the facts and issues about an incident, including who was involved, what happened, when it happened, where it happened, why it happened, and how it happened.</p> <p>Some circumstances of when an informal investigation might be conducted include:</p> <ul style="list-style-type: none"> • The issues concern a misunderstanding of YMCA NSW policy • The incident stems from a lack of communication between the complaining employee and their supervisor, or a co-worker • The situation doesn't need any additional information or resources to reach a resolution.
Formal investigation	Involves an appointed investigator (internal or external) conducting an investigation and preparing an investigation report that includes findings in relation to the incident and conduct in question
Subject of investigation	The person whose conduct has been called into question or about whom allegations have been made

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4. Procedure flowchart

1. Assess - determine the level of investigation required i.e. formal or informal, external or internal

2. Plan - identify the purpose of your investigation, what evidence needs to be gathered and how it will be obtained

3. Gather evidence - e.g. relevant records (such as reports, photos, diagrams, CCTV footage), interviews with witnesses, the person/s involved, subject experts etc.

4. Analyse evidence and prepare a report - describe the incident/allegations you investigated, make findings, identify systemic weaknesses if appropriate and make recommendations

5. Advise and invite a response - to the investigation findings from the subject/s of the investigation

6. Finalise the matter - implement any required actions in consultation with relevant parties

7. Keep records - securely store complete and organised information in relation to the matter

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5. Procedure details

5.1. Assessment of incident/allegation

All incidents/allegations are to be assessed to determine the level of investigation required. After the assessment of a matter, a decision will be made about whether to conduct a formal or informal investigation.

The level of investigation will be determined by:

- The nature of the incident/allegation
- How serious the incident/allegation is and the significance it has for the organisation and those involved
- Whether the incident/allegation as reported is trivial, frivolous or vexatious
- The time that has elapsed since the incident/allegation
- Whether it indicates the existence of systemic issues
- Whether it is one of a series of incidents, indicating a pattern of behaviour, ongoing risk or a widespread problem.

All Work, Health & Safety (WHS) incidents require investigation, however the level of investigation will be determined by the consequence rating. For example, Insignificant and Minor incidents may only need a visual or verbal investigation and to be documented on the incident log, while Moderate/Major/Catastrophic incidents require a formal investigation to be conducted. (For more information on risk ratings please refer to the *Risk Management Procedure*.)

A formal investigation involves an investigator being appointed to conduct the investigation, prepare an investigation report and make findings in relation to the incident and conduct in question. If a decision is made to proceed with a formal investigation, YMCA NSW will determine whether the matter will be investigated internally, or if an external investigator is to be engaged. This decision will be made taking into account the nature of the incident, whether internal capacity and resources are available, and the appropriate timeframe for completion of the matter under the circumstances.

In some cases, external agencies will conduct their own investigations e.g. Workers Compensation investigations will be conducted by the Workers Compensation Insurer to determine liability, the NSW Ombudsman or Family and Community Services may choose to conduct its own investigation, and/or the NSW Police may conduct enquiries if a matter potentially concerns criminal conduct.

There may be some circumstances where the need for action by another organisation, such as Police or the courts, may legitimately delay the commencement and/or finalisation of a YMCA NSW investigation. If Police, the courts and/or Family & Community Services have been advised of and/or are dealing with the matter, clearance to proceed will be obtained prior to YMCA NSW commencing an internal investigation.

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If a matter is considered a Critical Incident or involves the safeguarding of children, young people or vulnerable adults, the decision about whether a formal or informal investigation is to be conducted will be made at a Critical Incident Team Meeting. If it is decided that an informal investigation is appropriate, this will be conducted under the direction of the relevant business unit e.g. Human Resources or the Child Protection Unit.

With less serious matters, a staff member may be directed to conduct less formal enquiries, however under no circumstances may a staff member commence an investigation, unless directed and under the guidance of management.

5.2 Investigation principles

5.2.1 Confidentiality and impartiality

Investigations will be conducted:

- with the utmost confidentiality, involving only those people who have an identified need to know about the matter, with a caution to participants involved in the process; and
- without bias, in an impartial, independent and objective manner.

In the event of a serious incident, management must be notified immediately. However, no staff member is to speak to anyone involved (e.g. witnesses, parents, Council, school, media etc.), tamper with an incident scene or undertake an investigation until directed by a Critical Incident Team member. This requirement is to preserve the integrity of the incident scene, particularly if it is to be inspected by the Police, SafeWork NSW, WorkSafe ACT or an insurance company.

If an external party is being engaged to conduct the investigation on behalf of YMCA NSW, a Confidentiality Agreement must be signed by this party, prior to their engagement.

Serious incidents may require legal intervention and will then be subject to Legal Privilege. If this occurs, all staff member involvement is to cease immediately (including any investigations), unless directed by the YMCA NSW Chief Executive Officer or their delegate.

5.2.2 Procedural fairness

YMCA NSW applies procedural fairness in its investigations to ensure fair and reasonable decision making. This means that any person, whose rights, interests or legitimate expectations may be affected by an investigation finding, is entitled to an adequate opportunity to be heard. In order to respond, the person is entitled to know the grounds on which that decision or finding has been made.

Procedural fairness requires the decision-maker or investigator to:

- Inform the subject of the investigation about any allegation/s about their conduct
- Respect and allow for their right to be heard
- Not have a personal interest in the outcome

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- Act only on the basis of well-reasoned probative evidence
- Make sound decisions in good faith and without bias
- Consider any person whose interests may be affected by the decision.

5.2.3 Vulnerable adults and Culturally and Linguistically Diverse (CALD) considerations

When conducting an investigation involving anyone considered a vulnerable adult or from a CALD background, a critical part of obtaining accurate and comprehensive information is to ascertain the relevance and influence of individual circumstances.

Any person who is essential to an investigation and who is considered to be a vulnerable adult, or is from a CALD background, will be offered assistance and support, such as a support worker or professional interpreter, to enable them to appropriately participate in the process.

5.2.4 Rights of the staff member who is the subject of an allegation

A staff member who is the subject of an allegation has the right to:

- Be informed of any allegation/s, as soon as is practicable
- Be offered support such as the Employee Assistance Program, throughout the investigation process
- Be provided with updates regarding the investigation, as applicable
- Be provided with adequate notice to attend an interview – minimum 24 hours
- Have the option of a support person, who is not in any way involved in the investigation, present for any interviews or review meetings
- Respond to any allegations at interview and/or in writing
- Be offered support to return to work if applicable.

Where misconduct has been alleged or observed, a written notice should be provided to the staff member informing them of the Manager's intention to investigate the matter further.

The written notice must:

- include details about the alleged misconduct
- advise that further investigation will be undertaken and
- request that the staff member respond.

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5.3 Investigation process

5.3.1 Investigation stages

The investigation process involves four main stages:

1. Planning – identifying the information and evidence required for the investigation and stakeholders to be consulted in a documented Investigation Plan
2. Evidence gathering – obtaining and assessing information and evidence (including conducting interviews, talking to witnesses, the person/s involved and managers), and reviewing this to consider whether the description of the incident or allegation/s accurately and fully cover the conduct in question, now that further information has been obtained
3. Responding to incidents/allegations – giving the staff member the opportunity to provide a response
4. Analysing and reporting – analysing and recording information/evidence in the report, making a finding, identifying systemic weaknesses and making relevant recommendations for action, to improve practice, or the policies and systems that underpin the practice/s in question.

The WHS investigation tools and information sheet are available on the WHS section of the Intranet, (located under the Support Services → Human Resources tabs), to provide guidance in conducting a WHS investigation.

In cases involving serious misconduct, management may decide that the staff member/s in question not be required to attend work, or that they perform alternative duties, until the investigation has been completed.

5.3.2 Evidence and information gathering

During the investigation process, the appointed investigator will collect all available relevant information, in order to make evidence-based findings about the incident, including whether the alleged conduct took place, while also ensuring that complete records of the matter are collated and documented.

To be able to establish the context in which the incident/alleged conduct took place and reach evidence-based findings, the investigator will gather relevant information and evidence from:

- Any available records across a range of formats e.g. physical and electronic
- Any persons who may have been the target of the incident or alleged conduct, including children (if applicable)
- Any staff member(s) involved
- Witnesses, including other staff and children at the relevant YMCA NSW service
- Any other available sources and relevant persons/organisations
- Records of the scene, such as photos or a sketch.

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5.3.3 Conducting interviews

Each person to be interviewed must be interviewed separately from other involved parties, in order to not contaminate the evidence obtained and compromise the investigation. Interviews may be conducted in person or over the phone, depending on the circumstances.

If the incident involves children who need to be interviewed, they will be interviewed in the presence of a parent/guardian. Any interview with a parent is to take place either not the presence of their child or children who are to be interviewed, or after the child or children have been interviewed. This is so that what the child/children say is not contaminated by having heard what their parents have said at the interview.

The purpose of an interview is to:

- Clarify matters and provide information
- Gather information to assist in the investigation
- Advise the staff member, who is the subject of the investigation, about the conduct in question or allegation/s and allow them to respond (if applicable).

Sufficient information about the conduct in question and/or each separate allegation, based on the available information, must be provided to the subject of the investigation, so they have the opportunity to respond in full to each allegation. The staff member may be given the opportunity, to respond to the conduct in question or allegation/s during an interview, or by completing a written statement or response.

A staff member who is involved in an incident, or the subject of the allegation/s, may wish to have a support person present if they are interviewed. This support person is invited to observe but will be advised not to interrupt the interview and to keep the details confidential. The appropriateness of the support person will also be considered. For example, a witness in an investigation or with any other conflict of interest will not be considered an appropriate support person and will not be permitted to act in that capacity.

5.3.5 Notifying staff members of allegation/s about their conduct

Staff members who are the subject of an investigation and may be impacted adversely will be advised about the conduct in question or allegation/s and notified of:

- The investigation process
- Their rights and obligations
- Their support options.

The point at which a staff member is told about the conduct in question or allegation/s and given an opportunity to respond can be critical to the success of an investigation and can also impact the degree and duration of stress experienced by the staff member.

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The timing of the written advice of the allegations will:

- Depend on the nature of the investigation and the related investigative actions in progress
- Be determined by the investigator, who will balance the relevant factors of the case.

5.3.6 Making findings and recommendations

After assessing all the information gathered during an investigation, a finding will be made in relation to each incident or allegation. Findings reflect the strength or weight of the evidence gathered. The following important factors are considered when analysing the information:

- Whether the information has come from a reliable source
- If the information is relevant to the incident and its context
- If the information is consistent with other accounts from either the same or different sources
- Whether the information is confirmed by other sources
- How much time has elapsed between the event and obtaining the information
- How opinion, bias and and/or conflicts of interest may impact on the information provided by any participant (e.g. victim, staff member, witness).

After the draft investigation report is complete, a meeting is held by relevant internal stakeholders to discuss the investigation findings and determine further actions, identified systemic weaknesses, recommendations, responsibilities and timeframes.

5.3.7 Notifying the subject of an investigation or other involved stakeholders of the completion of an investigation

At the completion of an investigation, YMCA NSW will formally advise the subject of an investigation and any other stakeholders or interested parties involved (if applicable), that the investigation has been completed.

The subject of the investigation will be advised of:

- The preliminary findings of the investigation
- Their right to respond and provide further information or statements (as applicable)
- Any external notifications that will take place as a result of the investigation.

These parties will be provided with 7 – 14 days to provide a response to the preliminary findings. Should the subject of the investigation or other parties respond to the preliminary findings, the additional information provided will be considered and added to the records on the matter, before final findings are decided.

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A final letter will be provided to anyone who is the subject of allegations to advise them of the investigation outcome and of any resulting external notifications, such as the NSW Ombudsman, WHS etc.

A staff member involved in an investigation will be given support in their return to work. If there are employment related issues, information about the investigation will be passed on to Human Resources for their consideration and if necessary, further action.

Involved parties, such as the parents of affected children or witnesses who have assisted with the investigation, may be contacted to advise them of the investigation process and outcome, prior to closure of the investigation. The nature of the information provided and how detailed it is will be dependent on confidentiality requirements, the sensitivity of the matter, whether it is appropriate to provide such information and whether there is a need to do so.

5.3.4 Record keeping

The investigating business area must maintain a central investigation file, which is a complete record of the investigation, documenting every step, including discussions, phone calls, interviews and conclusions made during the course of the investigation. This file must be in the form of a digital file (consistent with the record keeping system in place) and may also include a physical file, as required. All records involving human resources will be filed under the appropriate staff member's personal file.

Any actions arising from a WHS investigation must be placed on the WHS Risk Management Action Plan (RMAP). The RMAP records the risk rating and identifies the corrective action plans, staff member or manager responsible, and the timeframe for the actions to be completed.

This information must be stored securely to prevent unauthorised access, damage or alteration and to maintain confidentiality. This information must be treated in the strictest confidence by the manager responsible for the investigation.

6. Implications

A failure to investigate an incident may have serious safety, legal and/or reputational implications for YMCA NSW. YMCA NSW is regulated by and has reporting obligations to organisations such as the NSW Ombudsman, SafeWork NSW, WorkSafe ACT and the Fair Work Commission.

Any failure by a staff member to cooperate with a YMCA NSW investigation process will be regarded as serious by YMCA NSW and may lead to disciplinary action.

7. Records Maintenance

Complete records of each matter will be maintained and securely stored by the WHS, Human Resources and Child Protection Unit, and will be disposed of in accordance with legislative requirements.

Records of informal investigations and reviews will be stored in accordance with the requirements of the relevant business area.

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8. Interactions with related documents

Related policies	Link to the policy
<i>YMCA NSW Standards of Conduct</i>	
<i>Safe Behaviours Policy</i>	
<i>YMCA NSW Safeguarding Children, Young People and Vulnerable Adults Policy</i>	
<i>YMCA NSW Work Health & Safety Policy</i>	
<i>Privacy Policy</i>	

Other documentation	

9. Monitoring, Evaluation and Review

This Procedure will be reviewed concurrently with the *Incident Reporting and Management Policy*

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