



## Policy Directive 40

# Internal Investigations

Superseded by Misconduct Investigations Procedures - Central and Local on 4 May 2011

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### 1. Purpose

This Policy Directive is to establish clear guidelines and procedures for internal investigations within the Adult Custodial Division of the Department of Corrective Services.

### 2. Context

The Department of Corrective Services will carry out internal investigations.

### 3. Authority

The Internal Investigations Unit (IIU) carries out its functions under the authority of the Commissioner of the Department of Corrective Services through the Assistant Commissioner Professional Standards.

### 4. Principles

Internal investigations should uphold the principles of natural justice, transparency of process and accountability; and assist the Department to maintain a high level of professional standards in meeting its responsibilities to the community, staff, clients and other stakeholders.

### 5. Role and Responsibility of Internal Investigations Unit

The Commissioner may direct the Manager of the IIU to conduct an investigation into any matter arising from or that impacts upon the Department of Corrective Services.

- 5.1 The Manager IIU is directly accountable to the Assistant Commissioner Professional Standards for ongoing operations.
- 5.2 The Assistant Commissioner Professional Standards may direct the Manager of the IIU to conduct an investigation into any matter arising from or that impacts upon the Adult Custodial Division or Acacia Prison.
- 5.3 The Investigation Review Committee (IRC) may direct the Manager of the IIU to conduct an investigation into any matter arising from or that impacts upon the Adult Custodial Division or Acacia Prison.
- 5.4 The Manager of the IIU will investigate matters referred in accordance with the [Policy Directive 41](#) dealing with "Reporting of Incidents and other matters".
- 5.5 Matters that are believed to be criminal offences will be referred to the WA Police Service.
- 5.6 Matters that are identified as criminal offences during the course of an IIU investigation will be referred to the appropriate branch of the WA Police Service.

- 5.7 The IIU will cooperate and assist members of the Corruption and Crime Commission, the WA Police Service and other law enforcement agencies in their investigations into the incidents and events that occur within or impact upon the Adult Custodial Division or Acacia Prison.
- 5.8 The IIU will liaise with those law enforcement agencies at the conclusion of their (law enforcement agencies) investigations in order to determine if an internal administrative action or internal investigation is required. If further action is deemed necessary the matter will be referred to the IRC.
- 5.9 The IRC oversees the conduct and outcomes of all investigations carried out by the IIU. The IRC reports to the Commissioner.
- 5.10 All new complaints will be referred to the IRC.

## **6. Investigation Process**

- 6.1 Internal investigations will be conducted in accordance with all relevant legislation including, but not restricted to, the *Prisons Act 1981*, *Public Sector Management Act 1994*, Adult Custodial Rules, Policy Directives, Operational Instructions and the IIU Charter.
- 6.2 The IIU will interview all persons considered by the person conducting the investigation as having, or suspected of having, any relevance to the particular investigation.
- 6.3 The IIU will access and gather all documentation reasonably considered as having any relevance to the particular incident under investigation.
- 6.4 The IIU will access any part of a prison and/or any equipment or building or other facility that the Department of Corrective Services has under its control that is reasonably considered to have any relevance to an investigation.
- 6.5 The IIU will do such other things, in accordance with the law and the department's policies and procedures, reasonably considered necessary for the efficient and effective conduct of the investigation.
- 6.6 The IIU will co-operate fully with law enforcement or other related agencies in the conduct of all investigations in which they have a legitimate interest.

## **7. General responsibilities of Staff involved in an Investigation**

### **All staff will:**

- 7.1 Be honest and truthful at all times.
- 7.2 Maintain confidentiality at all times. All staff involved in the investigation, including respondents, complainants, witnesses, independent representatives and support persons must maintain confidentiality at all times and must not discuss or divulge matters associated with an investigation unless it is for the purposes of the

investigation in accordance with approved procedures, obtaining legal advice or is required by law.

## **8. Additional Responsibilities of Investigation Witnesses**

### **An investigation witness will:**

- 8.1 Co-operate and provide every reasonable assistance to the investigators.
- 8.2 Make him or herself available to be interviewed in relation to the matter under investigation at a reasonable time and place nominated by the investigators.

### **Investigation witnesses should note that:**

- 8.3 Where practical, all interviews will be recorded on audiotape or videotape. An audiotape or videotape recording of an interview provides an indisputable record of interview.
- 8.4 They are required to provide all information that the witness knows about anything relating to the matter under investigation to the investigators when the witness is interviewed by the IIU or, if not known at that time, as soon as reasonably possible thereafter.
- 8.5 They are required to inform the investigators of any document or thing, whether or not in the custody or control of that witness, that may be relevant to the investigation when the witness is interviewed by the IIU or, if not known at that time, as soon as reasonably possible thereafter.
- 8.6 They are required to provide any document or thing, that may be relevant to the investigation and which is in the custody or control of the witness, to the investigators when the witness is interviewed by the IIU or, if not known at that time, as soon as reasonably possible thereafter.
- 8.7 They are required to supply the names of all persons whom the witness reasonably believes may possess information about the matter being investigated to the investigators when the witness is interviewed by the IIU or, if not known at that time, as soon as reasonably possible thereafter.
- 8.8 A failure to abide by any general and/or additional duty may amount to an act of serious misconduct. Disciplinary action may be taken against any staff member (other than Acacia Prison staff) who commits an act of misconduct in accordance with the provisions of the *Prisons Act 1981* or the *Public Sector Management Act 1994*.
- 8.9 They may have a support person present during the interview provided the presence of the support person does not delay the interview. The IIU will endeavour to provide the witness with a minimum of 24 hours notice prior to an interview taking place, unless exceptional circumstances determined by the IIU dictate otherwise. If a support person is not identified at the time the interview is to take place, then the investigator, at this/her discretion, may commence the interview without delay, this will result in the witness being required to participate in the interview without having a support person present.

8.10 The support person cannot be involved in the matter under investigation either as a witness or co-respondent. The support person is present to support the witness and is not to take an active role in the interview or answer questions on behalf of the witness.

## **9. The Rights of a Person Subject to Investigation ("the respondent")**

9.1 This section only applies to persons that have been advised in writing that they are the subject of the investigation ("the respondent").

9.2 The respondent will be advised in writing of the nature of the allegation and advised that an investigation has commenced into that allegation. However, the particular circumstances of an operation may require a delay in informing the respondent. Such exceptional circumstances may include situations where the person is suspected of engaging in criminal conduct.

9.3 The respondent will be provided with an opportunity to respond to the allegation prior to the completion of the investigation.

9.4 The respondent is not obliged to participate in the investigation process or to participate in an interview.

9.5 If the respondent agrees to be interviewed, he/she will:

9.5.1 be given notice of the date, time and location of the interview

9.5.2 be advised that he/she may, if he/she chooses, have an independent representative (see section 10.1), capable of providing advice to the respondent, present for the duration of the interview

9.5.3 be provided with a copy of any document or documents to be examined during the interview before the commencement of the interview

9.5.4 be advised that if he/she believes he/she does not have the capacity to effectively speak on his/her own behalf due to language, cultural or medical reasons, he/she may request the assistance of an interpreter or other suitable person during any interview. Arrangements for the attendance of any such person at the interview must be made in consultation with the investigators.

9.6 At the interview:

Where practical, all interviews will be recorded on audiotape or videotape. An audiotape or videotape recording of an interview provides an indisputable record of interview.

9.6.1 At the commencement of the interview he/she will be advised that he/she has the right to remain silent.

9.6.2 The respondent is not obliged to answer any question, or to provide any information or document or thing to the investigator.

9.6.3 He/she is entitled to end the interview at any time.

9.7 At the completion of the interview:

9.7.1 He/she will be provided with a copy of the audiotape or videotape of the interview. The respondent is entitled to a copy of the interview transcript (if available) upon request.

9.7.2 If the respondent has any complaints about the manner in which the interview was conducted he/she should lodge their complaint with the Executive Director Prisons.

## 10. Independent Representative

10.1 The independent representative cannot be involved in the matter under investigation either as a witness or co respondent.

## 11. Support for Investigation Witnesses

11.1 The Department of Corrective Services is committed to supporting and protecting investigation witnesses who may be subject to reprisal from their fellow employees. This support and protection is coordinated through the office of the Internal Witness Support Coordinator.

11.2 The Internal Witness Support Coordinator is contactable by email at [iwsc@correctiveservices.wa.gov.au](mailto:iwsc@correctiveservices.wa.gov.au). Information about the service and full contact details are available on the Intranet (CSinet) under Standards and Compliance > .

## 12. Key related Legislation/Policies

- [Prisons Act 1981](#)
- [Public Sector Management Act 1994](#)
- [Policy Directive 41](#)
- Internal Investigations Charter

## 13. Review

A review of this policy is to be carried out annually.

Policy Sponsor:

Assistant Commissioner Custodial Operations

Contact Person:

Manager IIU