

INVESTIGATION POLICY

1. Introduction

Complaints concerning the operation of public passenger vehicles can arise from various sources; this policy is intended to provide guidance to Compliance Officers involved in the investigation of complaints for alleged breaches of the Passenger Transport Act and its associated Regulations. These include regulatory complaints, fraud (Taxi Transport Subsidy Scheme -TTSS) and complaints of a sexual nature.

The investigation process must follow a logical sequence and establish whether there is sufficient evidence to sustain the allegations.

2. Fraud and Corruption Prevention Policy

The Department of Transport (the Department) will **not** tolerate corrupt conduct.

The Department is committed to dealing effectively with identified and potential threats of fraud and corruption. Fraud and corruption are an ever present threat to public officials and therefore must be a concern to all Compliance Officers.

Departmental officers are not permitted to accept bribes or inducements (no matter how trivial these may be). Departmental officers are expected to act honestly and with impartiality as public officers.

Corrupt conduct can involve:

- dishonest or partial use of official power or position;
- a breach of public trust ; or
- misuse of information or material acquired in the course of official duties.

Corrupt conduct also includes the conduct of people who are not public officials and the conduct of former public officials, where their behaviour could adversely affect the impartial or honest exercise of official functions. Corrupt conduct is a deliberate or intentional act, **not** negligence or a mistake.

It is the Department's policy to report any suspected corrupt conduct to the ICAC and/or the NSW Police.

Officers should ensure that they have read and understood the Department's Fraud and Corruption Prevention Policy available on the Intranet- <http://intranet/guides/>.

3. Receiving a Complaint

A member of the public may make a complaint against a public passenger vehicle driver, operator or a person believed to be involved in breaches of the *Passenger Transport Act 1990* and associated Regulations in any of the following ways:

- i. to the taxi complaints hotline (1800 648 478)
- ii. transport info line (131500)
- iii. to the Department;
- iv. to the relevant taxi network, bus company or accredited operator;
- v. by Ministerial correspondence.

In all circumstances where the complaint is against a taxi driver or operator it **must** be recorded in the Customer Feedback Management System (CFMS). It should be noted only taxi related complaints are recorded on CFMS.

4. Investigation Process

- 4.1 On receipt of a complaint, the investigator allocated to the case is to **immediately** contact the complainant and advise that the complaint has been received.
- 4.2 In discussion with the complainant the investigating officer should determine if the alleged offence is of such a nature that it should be referred to the NSW Police for investigation and prosecution. (**See Section 5** - Complaints under investigation by the NSW Police.)
- 4.3 The investigator is to advise the complainant that they will be required to provide a detailed statement to establish evidence of the offence.
- 4.4 The investigator must determine what other information (including additional statements from the complainant and/or witnesses, reports, documents and any other material) is required to complete the investigation.
- 4.5 The investigator must ensure the complainant is assured that confidentiality is paramount during the investigation process.
- 4.6 The investigator is to provide feedback to the complainant on possible outcomes following the investigation. This would include the type of action that can be taken in regard to the alleged offence and the attendance of court or Administrative Decisions Tribunal (ADT) by the complainant and witnesses.
- 4.7 **Throughout the investigation it is imperative that CFMS is updated as to the progress of the investigation. It is the responsibility of the investigating officer and the Team Leader to ensure that the outcomes are recorded and the CFI closed off at the completion of the investigation. (Taxi matters only.)**

- 4.8 When investigating a complaint the investigating officer must consider:
- i. the allegations;
 - ii. the seriousness of the offence;
 - iii. the matters raised in the person of interests response;
 - iv. the account of any witnesses or other material supporting or disputing the complaint or the driver's response;
 - v. assess the credibility of the complainant, the person of interest and any witnesses or material obtained;
 - vi. a driver's or operator's history,
 - vii. if the person of interest, if not authorised or accredited has had previous complaints
 - viii. the impact on the complainant and likelihood that the person of interest may re-offend;
 - ix. complainant's willingness to attend court/ADT to give evidence.
- 4.9 After investigating a complaint the investigating officer is to prepare a full report to be forwarded to the Team Leader with the findings so that action can be determined. The report is to be completed using the attached format **Annexure A**. (Sexual complaints **must** be referred to the Manager, Compliance).

5 Interview Process

- 5.1 Where a statement is to be obtained from a complainant or a witness to the incident, the interview will be conducted by **two Department of Transport officers**.
- 5.2 All persons subject to investigation must be invited to participate in an interview. The interview is to be conducted by **two Department of Transport officers** (no-one other than Departmental officers are to be used in the interview process). Any person has the right to refuse interview and is free to terminate any interview at any time. The person subject to investigation is permitted to be accompanied by a support person or legal representative at the interview.
- 5.3 The method of interview will be as follows:
- 1) Electronically Recorded Interview of Suspected Person (ERISP)** all complaints of a sexual nature, fraud (TTSS) and any other matters of a serious nature.
 - 2) TYPED:** all other matters.
- (ERISP may be used in all instances if preferred.)**
- 5.4 A copy of the interview is to be provided to the person of interest at the time of interview if it is TYPED or as soon as possible if recorded on ERISP. (The person that has been interviewed should be given the option of waiting for the ERISP disk to be copied or to have it sent by post within 48 hours.)

6 Complaints under investigation by the NSW Police

- 6.1 If a complaint is under investigation by NSW Police, the investigator is to request pertinent information from the investigating police officer (information required would include documents such as fact sheets, charge sheets and statements). The Departmental investigating officer must obtain an event number from the complainant and a report from the NSW Police Insurance Service Unit or Local Area Commander.
- 6.2 **Under no circumstances** is the Department to investigate an incident already under investigation by NSW Police. The investigating officer, in consultation with the respective Team Leader and Manager, Compliance, is to consider suspension of a driver authority if the police indicate court action is pending.
- 6.3 The investigating officer should keep appropriate records to ensure the Department is kept appropriately informed throughout the police investigation.

All relevant information and progress reports should be recorded accurately in TIMS.

7 Complaints of a Sexual Nature

- 7.1 The Department of Transport will accept and investigate all complaints alleging any of the following types of conduct by a driver of a public passenger vehicle. Only NSW Police and the Department of Transport can investigate these complaints:
- i) Sexual assault;
 - ii) Sexual harassment;
 - iii) Touching inappropriately;
 - iv) Making suggestive remarks;
 - v) Telling sexual jokes;
 - vi) Leering and staring inappropriately;
 - vii) Displaying or showing offensive pictures in a taxi;
 - viii) Interrogating someone about their sexual activities or private life.
- 7.2 The complainant should be encouraged to report complaints of a sexual nature to NSW Police.
- 7.3 The investigator must ensure that the classification of the complaint is recorded on CFMS under the correct offence description (for taxi drivers) and recorded correctly on TIMS and on file for all other drivers.
- 7.4 If the investigator believes the incident is not of a sexual nature, they must ensure that the offence is removed and replaced with the appropriate classification.
- 7.5 The Manager, Compliance must approve any change of classification, prior to amendments being made.

- 7.6 The investigator is to close/defer the Customer Feedback Information (CFI) when notified that NSW Police is investigating any alleged offence. All notes are to include this information. At the completion of the investigation the CFI must be re-opened for notation of any police action. (Taxi matters only.)
- 7.7 Investigations concerning complaints of a sexual nature are to be conducted as described in Sections 3 & 4.
- 7.8 Only the Manager, Compliance can approve recommendations concerning reported complaints of a sexual nature. Under no circumstances can a complaint of a sexual nature be closed without being signed off by the Manager, Compliance.**

8 Management of CFMS and Re-classification of Complaint (taxi matters only)

- 8.1 The investigator must ensure that the classification of any complaint is recorded on CFMS as the **correct** offence (for taxi drivers) and recorded correctly on TIMS and on file for all other drivers.
- 8.2 If the investigator believes the incident is classified incorrectly the offence must be removed and replaced with the appropriate classification.
- 8.3 If the offence is not a sexual matter, the Manager, Compliance must approve any change of classification prior to amendments being made.
- 8.4 The investigator is to close/defer the complaint when notified that NSW Police are investigating the alleged offence and notes are to be included indicating this (suspension of the driver authority should be considered at this point). At the completion of the investigation the complaint must be re-opened for notation of police action and any further action considered appropriate by the Department.

9 Preparing the Report

- 9.1 An investigation report should be concise and readable. The following points should be observed when writing a report:
The report must achieve its objective, which is to answer the questions raised - whether the allegations are founded or not.
- 9.2 The report **MUST** be designed to assist the Team Leader make informed recommendations to the Manager, Compliance on any action to be taken, based on the factual findings of the investigation (i.e. retraining, cancellation/suspension, prosecution etc).
- 9.3 The report must be logical, detailed and accurate. It should not include facts or irrelevant information not directly related to the allegation, or personal opinions. The Team Leader and Manager, Compliance must be able to rely on the facts set out in the report to make an informed, unbiased and logical decision.

- 9.4 The structure of the report needs to be clear and concise – with easily accessible references to the information used in the investigation. The pages should be clearly numbered, dates and witnesses should be accurate and there should not be any spelling or grammatical mistakes. Failing to write in a clear and coherent fashion may raise questions by the Team Leader and Manager, Compliance as to the presence of other critical errors in the content or methodology of the report/investigation.
- 9.5 The report should contain simple and direct language to describe the facts and to develop the analysis of the situation. In order for a final determination, which reflects the outcomes of the investigation, to be made by the Team Leader and Manager, Compliance the facts of the case need to be clearly spelled out and the analysis logical and precise.
- 9.6 When preparing the report, the following styles should be avoided:
- Ambiguous language;
 - Abbreviations or acronyms;
 - Long or complex sentences;
 - Characterisations or descriptions which could denote bias.
- 9.7 At the completion of a report, it can assist to set aside the report and then re-read it. This can enable the writer to identify any gaps or errors in the report. Before submitting the report, the following questions should be considered:
- Would ANYONE be able to understand the report?
 - Is the report coherently and concisely written?
 - Does the report fulfill the requirements of the Team Leader and Manager, in order to assist them make a final determination?

Note:

Upon receiving the investigation report, the Team Leader should ensure that the following elements, including those which ensure procedural fairness, are present:

- The person of interest was informed of the allegations.
- The Compliance Officer was independent and had no vested interest in the outcome of the investigation.
- The Compliance Officer approached the investigation with an open mind and did not prejudice any of the parties.
- The language used is impartial and unbiased.
- The parties were given an opportunity to be accompanied or assisted during the investigation.
- The methods used to gather facts and the presentation of the facts were sound.
- The key witnesses have been identified and interviewed.
- All relevant documents have been examined.
- The key investigative issues have been thoroughly explored (i.e. who, what, where, when, why, how).

- The Compliance Officer properly identified gaps and challenged inconsistencies in evidence.
- The Compliance Officer filtered the information and only included information that directly relates to the allegations.
- The onus and burden of proof have been properly understood and applied
- The investigation report is concise and is not a complete retelling of the investigation.
- Spelling and grammar are correct and there are no critical inaccuracies.
- The investigation report is well organised
- The investigation report meets the requirements of the Government Information Public Access Act and privacy laws.

If any of these elements are in doubt, the Team Leader should discuss them with the Compliance Officer. Any discrepancies/shortcomings should be rectified prior to the Team Leader making a recommendation to the Manager, Compliance.

10 Recommendations

- 10.1 After investigating a complaint the investigating officer may recommend any of the following:
- i prosecution;
 - ii cancellation/suspension/variation of a driver or operator (may include Notice to Show Cause);
 - iii retraining of a driver or operator;
 - iv referral to NSW Police (**see section 5**);
 - v an infringement notice to be issued (see Penalty Notice and Caution Policy document);
 - vi formal warning issued to a driver or operator (**a warning can only be issued if it has been established beyond reasonable doubt that the incident took place**);
 - vii no further action; and /or
 - viii any other action deemed appropriate under the circumstances.
- 10.2 The recommendation must relate to the allegations and evidence contained in the report. It must be coherent (logical and easy to follow), clear (written in plain language), concise, and appropriate to the facts as stated. The recommendation is to enable the Team Leader or Manager to determine the course of action to be taken as a result of the investigation.
- 10.3 When considering any action to be taken against a driver or operator, several issues need to be taken into consideration. Apart from clear regulatory breaches, continual complaints against a driver raise questions as to whether a driver is of 'good repute', 'fit and proper' and has sufficient responsibility and aptitude to be the holder of a Public Passenger Vehicle Authority.
- Good Repute: The Administrative Decisions Tribunal (ADT) says that **repute** is the subjective opinion others have on a person's character (eg from neighbours or work colleagues). A person's **good repute** is usually evidenced by references or testimonials.

- Fit and Proper: It is impossible to fix a set definition. One way to view this qualification is that a person is **not fit and proper** to carry on a particular vocation.
- Responsibility: This is in many ways similar to *fit and proper*, but while the two may overlap, each must be considered separately. To be able to attest to a person having *sufficient responsibility* to drive in accordance with law and custom, you must look at a person's suitability and experience.
- Aptitude: This can simply be described as whether the person has the requisite **skill** as a driver. It may apply to drivers who are required to demonstrate that they have achieved a certain level of competency or industrial training.
- Custom: This relates to meeting industry standards for the acceptable conduct and competencies a driver should exhibit.

11 Resulting Action

- 11.1 In determining any action to be taken in relation to the findings of a complaint, the Team Leader or Manager is to assess the burdens of proof as found during the investigation. The required burden of proof must be met for a particular action to proceed.
- 11.2 If proceeding to prosecution/infringement or caution refer to Infringement and Caution Policy.
- 11.3 If an offence is proven and can be dealt with by way of infringement, an infringement notice is to be issued. The matter can only be dealt with by way of summons where it would be more appropriate to do so and with prior approval of the Manager Compliance.
- 11.4 Administrative action can use the lesser burden of proof 'On the Balance of Probabilities' ie action taken in the ADT (suspension, cancellation), action taken against a TTSS participant, action taken against an ATIS examiner.

12 Notification of Result

In an instance of a person subject to investigation that required the matter to be proven 'Beyond Reasonable Doubt' for action, but where the matter was proven on the 'Balance of Probabilities': a formal notification should be issued to that person reminding them of the consequences of such behavior should such an allegation be founded. **See annexure "B"**

13 Notification to Complainant

- 13.1 During the course of the investigation the officer conducting the investigation should provide appropriate feedback to the complainant on the progress of the investigation.
- 13.2 Once the complaint has been investigated and a recommendation has been approved, the investigating officer must contact the complainant and provide feedback on the outcome of the investigation.

13.3 The investigating officer must ensure CFMS has been updated appropriately (in the case of taxi drivers) and recorded correctly on TIMS and on file for all other persons.

14 Incorrectly Allocated Complaints

If it is identified that a taxi network is investigating a matter of a sexual nature or other complaints of a serious nature, the network should be contacted to ensure that DoT investigates appropriate cases.

15 File Reviews (drivers and operators only)

File reviews are to be conducted when the record of complaints against a driver or operator is considered excessive and allowing them to continue to hold a driver authority or accreditation for a public passenger vehicle is not considered to be in the best interests of the travelling public.

File reviews do not need to be conducted using the formal interview process. The driver or operator under review must be advised that DoT is concerned about their complaints history and is reviewing their suitability to remain the holder of a public passenger vehicle authority or operator accreditation. The driver or operator must be invited for interview.

The object of the review is to seek explanation from a driver or operator as to the reasons for the excessive complaints, **not** to reinvestigate individual complaints. The driver or operator will be given the opportunity to respond in full should a Notice to Show Cause be issued with an attached Statement of Reasons.

However, should a file review be conducted in conjunction with a new complaint that complaint is to be investigated using the processes detailed in Sections 3 & 4.

ANNEXURE 'A'
INVESTIGATION REPORT

Complainant: *Name*

Person of Interest: *Can be driver, operator, TTSS participant or member of the public*

Authority Number: *If a driver*

Accreditation number: *If an operator*

CFI Number: *If allocated*

Allegation(s):

The allegation/s which formed the subject of the investigation.

Alleged Breach:

Which section/clause of the Passenger Transport Act/Regulation it is alleged has been breached

Investigation:

This should include all the information gathered during the investigation. It should be in a chronological order, be concise, accurate and only relevant information should be included.

All interview results and evidence gathered should be included in this section.

Comment:

This can include comments relating to any underlying factors which may have led to the allegations being made or other information that may assist in the determination of any action to be taken. These should only be relevant to the complaint

Recommendation:

The recommendation must relate to the allegations and evidence contained in the report. It must be coherent, clear, concise, and appropriate to the facts as stated. The recommendation is to enable the Team Leader or Manager to determine what course of action should be taken as a result of the investigation. The required burden of proof that must be met.

- *To proceed to **prosecution/infringement** the offence must be proven 'Beyond Reasonable Doubt'*
- *To issue a **caution** for the offence it must be proven 'Beyond Reasonable Doubt' (the same burden of proof is required for a Caution as it is for a Prosecution)*
- ***Administrative** action can use the lesser burden of proof 'On the Balance of Probabilities' i.e. action taken in the ADT, action taken against a TTSS participant, action taken against an ATIS examiner.*

10 - Investigation

ANNEXURE 'B'

Name
Address
Address

NOTIFICATION OF RESULT

Dear *Name*

I refer to a recent interview between yourself and Officers of the Department of Transport on *date* in relation to *the allegation/s which formed the subject of the investigation*

After careful consideration and perusal of the evidence before the Department, it has been determined that no further action will be taken in this instance.

However, you are advised that under *section/clause of the Passenger Transport Act/Regulation it is alleged has been breached*

All documentation in relation to this matter has been placed on Department files.

Yours sincerely,

Name
Team Leader, Compliance