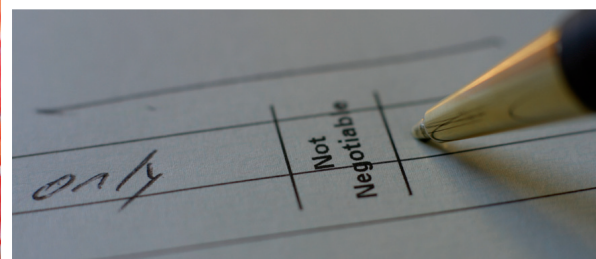




Australian Government

AUSTRALIAN GOVERNMENT INVESTIGATIONS STANDARDS

2011



© Commonwealth of Australia 2011

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, 3–5 National Circuit, Barton ACT 2600 or posted at www.ag.gov.au/cca



Australian Government

AUSTRALIAN GOVERNMENT INVESTIGATIONS STANDARDS

August 2011

FOREWORD



The *Australian Government Investigation Standards* (AGIS) have been revised through a working group commissioned by the Heads of Commonwealth Operational Law Enforcement Agencies (HOCOLEA) and chaired by the Australian Federal Police. In developing the revised AGIS, the working group decided to expand the breadth of its consultation to also include agencies not within HOCOLEA.

The AGIS is a cornerstone of the Australian Government's fraud control policy and is the minimum standard for agencies' conducting investigations relating to the programs and legislation they administer. The AGIS is mandatory for all agencies required to comply with the *Financial Management and Accountability Act 1997*.

The new AGIS recognises the diverse context within which Australian Government agencies operate and the more prominent role non criminal sanctions play in investigative responses. The concepts defined in AGIS are designed to allow agencies (both large and small) to apply them to their own operations and to maintain a minimum quality standard within investigations.

The revision of AGIS has focussed on developing a more concise document, which provides a basis for more measurable and achievable standards. In issuing these revised standards, HOCOLEA believe that their implementation will provide a benchmark for investigative practices as well as supporting quality reviews and improvements across Australian Government agencies.

I would like to recognise all departments and agencies for their contribution to the process, in particular, the members of the AGIS Working Group.

A handwritten signature in black ink that reads "T. W. Negus". The signature is stylized, with a large loop for the letter 'N' and a long horizontal stroke at the end.

T. W. Negus APM
Commissioner
Australian Federal Police

TABLE OF CONTENTS

FOREWORD	III	3. INVESTIGATION MANAGEMENT	9
1. OPERATING FRAMEWORK	1	INTRODUCTION	9
INTRODUCTION	1	STANDARDS	9
STANDARDS	1	3.1 Investigation management	9
1.1 Investigation policy	1	3.2 Investigation commencement	9
1.2 Performance measures	1	3.3 Planning phase	9
1.3 Commonwealth policy standards	2	3.4 Risk management	10
1.4 Legal framework	2	3.5 Implementation phase	10
1.5 Investigator qualifications	2	3.6 Investigation closure	11
1.6 Agency relationships	2	3.7 Quality assurance reviews of investigations	12
1.7 Information sharing	2	4. INVESTIGATION PRACTICES	13
1.8 International inquiries and foreign evidence	3	INTRODUCTION	13
1.9 Ethical conduct	3	STANDARDS	13
1.10 Media	3	4.1 Witnesses	13
2. IDENTIFICATION OF BREACHES AND CASE SELECTION	5	4.2 Formal interview	14
INTRODUCTION	5	4.3 Search warrants	15
STANDARDS	5	4.4 Coercive powers	15
2.1 Receiving and recording alleged, apparent or potential Breaches	5	4.5 Physical evidence/exhibits	15
2.2 Evaluation of referrals or conduct identified as allegedly, apparently or potentially breaching the law	5	4.6 Surveillance	17
2.3 Accepting matters for investigation	6	4.7 Human information sources	18
2.4 Referral of matters to the AFP	7		
2.5 Referral to Australian Commission for Law Enforcement Integrity (ACLEI)	8		
2.6 Intelligence	8		

1. OPERATING FRAMEWORK

INTRODUCTION

The Australian Government Investigations Standards (AGIS) establish the minimum standards for Australian Government agencies (agencies) conducting investigations. Where the AGIS are in conflict with law, the legislative requirement will prevail. AGIS applies to all stages of an investigation.

An investigation is a process of seeking information relevant to an alleged, apparent or potential breach of the law, involving possible judicial proceedings. The primary purpose of an investigation is to gather admissible evidence for any subsequent action, whether under criminal, civil penalty, civil, disciplinary or administrative sanctions. Investigations can also result in prevention and/or disruption action.

The term investigation can also include intelligence processes which directly support the gathering of admissible evidence.

This section outlines recommended minimum standards for the following:

- investigation policy and performance measurement
- prosecution policy of the Commonwealth
- access to legislation
- investigator qualifications
- agency relationships
- foreign and international inquiries
- ethical standards, and
- media considerations.

STANDARDS

Whilst conducting an investigation, agencies should comply with the following minimum standards.

1.1 Investigation policy

The agency is to have clear written policy in regard to its investigative function. The policy should include:

- a statement regarding the agency's objectives in carrying out its investigation functions and use of sanctions
- a clear definition of activities applicable to the agency to which the AGIS apply. This should include a description of compliance activities that are not generally considered investigations by the agency
- a statement regarding the agency's responsibility to manage matters that are considered minor or routine, and
- a statement regarding the agency's responsibility to refer criminal matters to the Australian Federal Police (AFP). This should include consideration of joint agency investigation teams, where appropriate.

1.2 Performance measures

Performance measures should be created in order to monitor the investigations and sanctions undertaken by the agency. Major performance measures may include:

- *Brief quality (criminal)*. A yearly satisfaction survey from Commonwealth Director of Public Prosecutions (CDPP) in regard to the quality of the briefs of evidence submitted by the agency.
- *Brief quality (non-criminal)*. Outcome reports from Australian Government Solicitors (AGS) or relevant prosecuting authority.
- *Brief quality (criminal and non-criminal)*. The number and type of judicial comment, both favourable and unfavourable, received about

the conduct of investigations by the agency (published and unpublished).

- *Compliance with AGIS standards.* Outcomes from any quality assurance reviews conducted in accordance with AGIS.
- *Efficiency and Effectiveness.* Comparisons and analyses of:
 - the number and type of investigations
 - sanctions across financial year periods, or
 - agencies performance indicators.

1.3 Commonwealth policy standards

Agencies should have regard to the requirements of the following Commonwealth policies:

- Prosecution Policy of the Commonwealth
- The *Legal Services Directions 2005*
- The Commonwealth Fraud Control Guidelines, and
- Protective Security Policy Framework.

1.4 Legal framework

Agencies are to have access to up-to-date versions of all relevant laws and Ministerial Directives.

1.5 Investigator qualifications

The minimum level of training or qualification recommended for investigations staff are:

- Certificate IV in Government (Investigation), or its equivalent, as set out in the Public Services Training Package (PSP04). This qualification should be obtained before an officer is primarily engaged as an investigator; otherwise the officer should be under the supervision of a qualified investigator.
- Diploma of Government (Investigation), or equivalent, as set out in the Public Services Training Package (PSP04) for staff primarily engaged in the coordination and supervision of investigations.

Agencies must ensure that employees who are primarily engaged in intelligence collection possess or attain relevant qualifications or training to effectively carry out their duties.

1.6 Agency relationships

Agencies should have written procedures regarding liaison with other agencies. These procedures should be available to other agencies and should include:

- requirements for contact between agencies to be recorded appropriately, and
- requirements for all interagency correspondence to comply with relevant Australian Government and agency standards, particularly in relation to physical security and security classification.

Agencies may choose to develop Memoranda of Understanding (MoU), Service Agreements or investigation-specific Joint Agency Agreements.

1.7 Information sharing

Sharing information is to be done accordance with the *Privacy Act 1988* and any secrecy provisions within legislation that may govern information sharing.

Agencies should have documented procedures for responding to requests for information from other agencies including:

- the type and nature of information held by the agency
- a standard request form which should be completed by requesting agencies and electronic submission should be facilitated
- a standard format for responses to a request for information should be used. This response should inform the recipient agency of any legislative provisions governing the further use and disclosure of that information
- record keeping relating to the information released, and

- Where appropriate a single point of contact should be nominated by each agency.

1.8 International inquiries and foreign evidence

1.8.1 Outgoing requests to foreign law enforcement agencies for information and evidence

Agencies should have written procedures for making outgoing requests for information from foreign agencies. Outgoing requests for information can be made on an informal basis and on a formal basis through the mutual assistance regime. The decision to seek information on an informal or formal basis will depend on the type of information sought.

As a general rule, information required for an investigation that does not involve the use of compulsory powers, such as the issue of a subpoena or search warrant, can be obtained on an informal basis. Where the use of a compulsory power is required to obtain the material or the assistance, or where evidence is sought in a form that is admissible under the Foreign Evidence Act 1994, a request will need to be prepared and submitted under the formal mutual assistance regime.

Written procedures should include:

- procedures for making informal requests to Interpol through the National Central Bureau operated by the AFP, and
- procedures for making formal requests under the mutual assistance regime through the International Crime Cooperation Central Authority in the Attorney-General's Department (AGD).

1.8.2 Incoming requests from foreign law enforcement agencies for information and evidence

Agencies should have written procedures for responding to incoming requests from foreign agencies. This should include:

- procedures for determining whether the information can be provided and whether it can be provided on an informal basis or a formal basis

- procedure for liaising with AGD in regards to formal requests from foreign countries under the mutual assistance regime
- Australian government policy in regard to providing information to foreign agencies where the death penalty may be involved, and
- all communications with Interpol must be through the National Central Bureau operated by the AFP.

1.9 Ethical conduct

Agencies must conduct investigations in accordance with the following:

- Australian Public Service (APS) Values, and
- APS Code of Conduct.

Agencies are required to have a procedure governing the manner in which complaints concerning the conduct of its investigations are handled. These procedures should ensure that complaints are handled in a timely, appropriate and comprehensive manner.

1.10 Media

Agencies are to have written procedures regarding liaison with the media and the release of media statements in regard to investigations. These procedures should include reference to the following:

- media management strategies being considered within investigation plans
- during an investigation, if media interest is foreseen, the agency media area or spokesperson should be briefed on the circumstances of the investigation
- the briefing material should be provided by the officer in charge of the investigation (or delegate) and should indicate what information can be provided to the media
- only the media spokesperson should have contact with the media. Other staff of the agency should not provide information to the media unless authorised by the senior executive management or the media area

- the information released to the media should not:
 - prejudice a person's right to a fair hearing or the legal process
 - impinge upon the privacy or safety of others involved in the investigation
 - prejudice any actions taken or future actions of the agency or other agencies.
- with regard to multi-agency operations, a common approach to the media needs to be agreed between agencies prior to any publicity and ministerial correspondence.

2. IDENTIFICATION OF BREACHES AND CASE SELECTION

INTRODUCTION

The AGIS establishes the recommended minimum standards for agencies in receiving and evaluating referrals or conduct identified as allegedly, apparently or potentially breaching the law.

Alleged, apparent or potential breaches of the law can be identified from a variety of sources including, but not restricted to:

- members of the public
- agency intelligence activities
- staff of Australian Government or State/Territory agencies
- State/Territory police services
- internal or external audit or review processes
- internal fraud control mechanisms
- government or ministerial referrals, or
- overseas governments or agencies.

STANDARDS

Agencies should comply with the following minimum standards.

2.1 Receiving and recording alleged, apparent or potential Breaches

Agencies where appropriate should have an email address, phone number, fax number or online system for receiving information or referrals from the public. These should be published on the agency's website.

Agencies must have an electronic system for recording the receipt of referrals or conduct identified as allegedly, apparently or potentially breaching the law. Agencies should have a written procedure covering the receipt of referrals or conduct identified as allegedly, apparently or potentially breaching the law. The procedure should include how the matter is to be recorded within the agency including:

- level of access and confidentiality
- who is responsible for its evaluation and assessment
- timeframes for evaluation and assessment
- who should be notified when the matter is received by the agency and when and how this notification should occur
- the need to maintain appropriate confidentiality unless disclosure is required as part of the consideration and investigation of the matter, and
- the process for dealing with, encouraging and supporting information regarding alleged, apparent or potential breaches which come from within the agency.

A template should be included in the procedure which covers the receipt and recording of referrals or conduct identified as allegedly, apparently or potentially breaching the law.

2.2 Evaluation of referrals or conduct identified as allegedly, apparently or potentially breaching the law

Agencies are to have a written procedure covering the initial evaluation and actioning of each matter that has been received or identified. This procedure must include:

- the position(s) within the agency responsible for making the initial evaluation
- time frames for initial evaluation of matters, including describing matters that require an immediate decision and/or response (*Agencies need to be mindful of the difficulties caused when matters are not dealt with or referred promptly. These can include loss of evidence, further damage caused by the continuation of the offence and an increased chance of an unsuccessful outcome.*)
- the processes for dealing with referrals or conduct identified as allegedly, apparently or potentially breaching the law requiring an immediate decision and/or response

- processes for maximising the attainment of accessible relevant information from within the agency - where the collection would not jeopardise any investigation
- there should be a template for the evaluation which includes:
 - summary of the matter including the information reviewed, including an incident type, whether the matter has previously been identified by the agency and, if relevant, financial value of the matter
 - political or public sensitivities
 - agency investigative and overall priorities
 - legislative requirements
 - risks associated with not undertaking an investigation, such as continuation of offences, effect on agency programs and reputation
 - experience of similar cases or case law
 - the effect of any other relevant advice
 - where an investigation relates to a 'security incident', advice should be immediately sought from the AFP, and a report should be forwarded to Australian Security Intelligence Organisation (ASIO), in accordance with the *Protective Security Policy Framework*
 - whether an investigation by the agency would be a conflict of interest if undertaken by the agency itself
 - options and recommendations, including:
 - possible criminal, civil penalty, civil disciplinary and administrative sanctions (or a combination of these sanctions)
 - no further action on all or some of the issues
 - referring the matter to an investigation unit within the agency for investigation
 - seeking further advice from the AFP, relevant legal/law enforcement bodies or external counsel
 - if the matter has been identified by a nominated senior person within the agency as a matter of particular seriousness, complexity or sensitivity, and where CDPP resources and priorities permit, further advice may be sought from CDPP
 - referral to the responsible State or Territory police service for investigation if the matter involves offences under State and Territory law
 - matters of a politically sensitive nature, deemed appropriate for referral to the AFP, should be referred in accordance with the AFP's referral guidelines.

2.3 Accepting matters for investigation

The agency should appoint positions responsible for making decisions regarding the evaluation and acceptance of investigations. It is recommended that these positions are at the SES level, where responsibility can be delegated to other employees.

Agencies may form a committee to inform and oversight the decisions and recommendations following the initial evaluation process.

Agencies that receive referrals or identify conduct as allegedly, apparently or potentially breaching the law requiring immediate actions, may form committees to oversight decision making regarding the responses taken.

It is not necessary for employees to hold the AGIS minimum training requirements for the decision-making responsibilities outlined in this section.

Decisions following the evaluation process must comply with the following principles for selecting cases, specifically:

- administer and enforce legislation in a coherent, consistent and objective manner
- operate as transparently as possible so as to be accountable to the Government and the public
- take appropriate action against offenders and contraveners, and

- operate efficiently, effectively and ethically within its resources.

2.4 Referral of matters to the AFP

If a matter is considered by the agency as a serious crime or complex criminal investigation it must be referred to the AFP in accordance with the AFP referral process published on the website www.afp.gov.au, except where:

- the agency has the capacity and the appropriate skills and resources needed to investigate serious crimes or conduct complex criminal investigations and meet the requirements of the CDPP in gathering evidence and preparing briefs of evidence, or
- where the issue involves alleged breaches of the *Commonwealth Electoral Act 1918*.

The existence of any one of the following factors is an indication that the matter is a serious crime.

A serious crime is a crime:

- which involved a significant degree of criminality on the part of the offender
- the Commonwealth or the community expects will be dealt with by prosecution which is conducted in public before a court and usually carries the risk of imprisonment
- produced significant real or potential harm to Commonwealth or the community, or
- is of such a nature or magnitude prosecution is required to deter potential offenders.

A significant degree of criminality can be evidenced by the crime involving certain factors, including and not limited to:

- criminal behaviour by corrupt Commonwealth officers
- bribing of Commonwealth officers
- links to international, entities or actions.
- multiple offenders acting together in an organised way to perpetrate the crime

- the use of false names or false documents, or
- the repeated commission of deliberate offences over a number of years.

A significant harm to the community can be evidenced by the crime involving certain factors, including but not limited to:

- the threatening of the integrity of the Commonwealth, Commonwealth officers or important Government institutions
- impact on the economy, resources, assets, environment or well being of Australia or Australians
- significant or potentially significant monetary or property loss to the Commonwealth, or
- bribery, corruption or attempted bribery or corruption of a Commonwealth employee or contractor to a Commonwealth agency

The existence of any one of the following factors is an indication that the matter is a complex investigation:

- a serious breach of trust by a Commonwealth employee or contractor of a Commonwealth agency
- use of sophisticated techniques or technology to avoid detection where investigation of the matter requires specialised skills and technology
- elements of a criminal conspiracy
- known or suspected criminal activity against more than one Commonwealth agency
- activities which could affect wider aspects of Commonwealth law enforcement (e.g. illegal immigration, money laundering)
- the possibility of action being taken under the *Proceeds of Crime Act 2002*, or
- conflicts of interest and/or politically sensitive matters.

2.5 Referral to Australian Commission for Law Enforcement Integrity (ACLEI)

Where an agency that is subject to the *Law Enforcement Integrity Commissioner ACT 2006* has an obligation to notify a corruption issue to ACLEI it must do so in accordance with this legislation.

2.6 Intelligence

Where relevant, agencies should have a policy outlining the use of intelligence in identifying conduct which allegedly, apparently or potentially breaches the law. This should include:

- electronically recording matters in a manner that facilitates the identification of trends, risks or convergences that can be readily retrieved and linked to new information
- a process for creating and disseminating intelligence reports to other agencies where appropriate. A standard Intelligence Report template should be developed by each agency, and
- establishing a single point of contact for receiving and disseminating intelligence.

3. INVESTIGATION MANAGEMENT

INTRODUCTION

The AGIS establishes the minimum standards for the effective and efficient management of investigations. The recommended minimum standards should ensure that agencies can withstand scrutiny of their investigative processes, which can occur through court process, by the media, by the public and by Government.

STANDARDS

3.1 Investigation management

Agencies must employ investigation management procedures which are based on project management principles of managing resources, processes, work to be undertaken, time and outcomes.

Agencies should have an electronic investigation management system available and provide training in its use. An investigation management system should include the ability to:

- record investigation plans, investigation activity and management of tasks
- assist in exhibit management, and
- facilitate the preparation of briefs of evidence.

Agencies are to incorporate the following concepts into investigation management procedures.

3.2 Investigation commencement

Agencies must ensure that any instructions, comments, observations or views relating to decisions or actions resulting in an investigation being accepted by the agency, in accordance with Chapter 2, are communicated to the assigned investigations team.

This would include detailing the intended scope of the investigation, expected outcomes,

available resources, reporting arrangements and relevant stakeholders.

All relevant documentation should be provided to the investigations team in a timely manner.

3.3 Planning phase

Each investigation should commence with an overall planning process and where possible result in a written investigation plan. This plan should be referred to and updated during the investigation.

Agencies which are required to commence investigations in urgent circumstances may do so without a written plan, however planning considerations during the course of the investigation should be appropriately recorded in accordance with the requirements of this section.

The planning process should (where appropriate):

- outline objectives of the investigation, potential contraventions or conduct to be investigated, scope of investigation, possible outcomes from investigation
- identify and manage risks
- consider options for resolution and whether urgent injunctive proceedings or preventative actions are required
- identify elements of offence(s) or civil contraventions
- identify possible inquiries, sources and methods to be utilised to obtain relevant information and/or evidence as appropriate
- identify available and/or required resources
- outline work phases, timelines and milestones, and
- establish the structure of the investigation team including reporting lines, communication tools, identify need for specialist assistance from internal or external experts (IT, accountants, lawyers, subject matter experts etc.).

Agencies should have a standard investigations plan template.

3.4 Risk management

Agencies should ensure risk management is incorporated in decision making throughout an investigation. This is particularly important in the following areas:

- initial evaluation (Chapter 2)
- investigation/ project planning
- critical decisions, and
- activity involving occupational health and safety risk.

Risk management procedures must comply with Australian and New Zealand Risk Management Standard (AS/NZ ISO 31000:2009).

3.5 Implementation phase

During the investigation it is necessary to ensure that all work is conducted in accordance with the governance and practices defined in Chapters 1 and 4 and the investigations plan defined above.

The following practices should be employed during an investigation.

3.5.1 Activity recording

It is essential that the recording of activity in relation to an investigation (interviews, contact with witnesses, meetings, preparation of briefing papers, obtaining documents, use of compulsory powers, decisions, etc.) occurs during the investigation. Activity during investigations should be recorded electronically or in written form on a suitable investigations management system using case notes, chronologies or running sheets.

All exhibits should be managed in accordance with details set out in Chapter 4 of these guidelines.

3.5.2 Situation reporting

The progress of an investigation should be reported to relevant people within the agency

on a regular basis. The reporting process should be considered and defined at the investigation planning phase. These progress reports should include progress achieved, deviations from initial plans, problems/risks and future actions.

3.5.3 Supervisors review of investigations

Supervisors should review investigations at appropriate intervals to ensure adherence with the AGIS and investigation plans.

3.5.4 File and information management

All documents and information must be kept and filed according to agency procedures. Files and electronic cases must be maintained and stored in accordance with agency procedures, the *Archives Act 1983* and the *Protective Security Policy Framework*.

Only personnel with the appropriate level of security clearance and demonstrated need to know should have access to investigation files.

Separate files should be raised for each investigation.

3.5.5 Critical decisions

Critical decisions are those decisions made during the course of an investigation that lead to a significant change of direction in the investigation, resources involved in the investigation or any decision that may impact on the investigation achieving the stated outcomes for the investigation. These decisions can arise as a result of external developments, evidence that has or has not been obtained or change of strategy.

All critical decisions made during an investigation should be made by an appropriate officer and documented on the investigation file or electronic system. This documentation should include:

- the decision itself including the reason for the decision, person making the decision and the date of the decision
- information relied on to make the decision, and
- any expected or potential significant impact of the decision.

3.5.6 Operational orders or tactical plans

Agencies must prepare a tactical plan prior to any significant operational activity including the execution of search warrants or arrests to ensure safety of all persons involved and achievement of objectives.

Agencies which undertake these activities should have a standard template for this purpose.

3.6 Investigation closure

Investigations can have a number of outcomes, including taking no further action, the preparation of a brief of evidence or disruption/preventative activities.

Where a brief of evidence is required the following standards should be met.

3.6.1 Brief preparation

A brief of evidence should be prepared to a standard that will maximise the possibility of success in criminal, civil penalty, civil, administrative or disciplinary proceedings.

It is acknowledged that variations exist between jurisdictions as to the requirements for the preparation, presentation and/or submission of briefs of evidence. The following standards are a generic guide to the preparation of briefs of evidence irrespective of jurisdiction.

All briefs of evidence must comply with the following:

- applicable laws of evidence
- rules of court applicable to the jurisdiction where litigation takes place
- *Prosecution Policy of the Commonwealth*
- *CDPP Guidelines on Brief Preparation*
- *Legal Services Directions 2005*
- *Guidelines on Disclosure to CDPP by Investigative Agencies*, and
- applicable disclosure requirements in the jurisdiction.

The investigator must ensure that a brief of evidence is well organised to assist

the prosecution. It is necessary that the investigation plan is used to identify and collect this evidence.

Agencies should have a written procedure relevant to preparation of briefs of evidence. The procedure should include:

- responsibility for preparing the brief of evidence, and
- review and authorisation process for submission of the completed brief of evidence to the CDPP or external counsel, including:
 - evidence assessment to ensure the brief contains sufficient evidence to substantiate the offence or civil contravention provisions, and
 - completion of a brief checklist to ensure the brief is of a high standard.

3.6.2 Finalising investigations

Agencies are to have written procedures relating to finalising the investigation following legal proceedings, disruption or prevention actions or decision to take no further action. This procedure should include:

- recording investigation results, including:
 - outcomes from criminal, civil penalty, civil, administrative or disciplinary proceedings
 - summary of advice from CDPP or relevant legal counsel that criminal, civil penalty, civil, administrative or disciplinary proceedings should not commence
 - decision and reasons for not submitting a brief of evidence to CDPP or pursuing criminal, civil penalty, civil, administrative or disciplinary sanctions, and
 - any subsequent action taken by the agency following CDPP decision not to prosecute.
- procedure, where appropriate and lawful, for advising the complainant(s) of the outcome of an investigation

- procedure for return or disposal of all property and exhibits obtained during the investigation
- procedure for preparation of an investigation closure report or formal debriefing to critically analyse the investigation and provide a basis for improving systems, procedures and methodology
- a standard template should be used for this report/debrief and include:
 - analysis of results achieved against objectives
 - lessons learnt (positive and negative) including training, legal, and resourcing or methodology issues, and
 - appropriate follow up actions.

3.7 Quality assurance reviews of investigations

The purpose of a Quality Assurance Review (QAR) is to establish whether the investigation was conducted in a way that complied with AGIS.

A QAR should be conducted in close cooperation with the agency that conducted the investigation.

A QAR should be done following a request by the agency responsible for the investigation or as requested by the Attorney General's Department, in the following manner:

- The AFP is responsible for conducting QARs of criminal investigations.
- QARs relating to non-criminal investigation can be conducted by another agency with the necessary skills and capacity.
- Where a QAR considers issues that are relevant to the CDPP or external counsel, such as the adequacy of the preparation of a brief, the agency conducting the QAR should consult with prosecuting authority.
- Agencies should be given an opportunity to comment on the draft QAR report. The agency's comments will be incorporated into the final report.
- Finalised QAR reports should be sent to the CEO of the relevant agency or delegated position.
- Results of the QAR process, together with an analysis of best practice and deficiencies identified, should be provided to the Australian Institute of Criminology (AIC).

4. INVESTIGATION PRACTICES

INTRODUCTION

Whilst undertaking an investigation, it is important to obtain and record the best evidence available to maximise the possibility of a successful outcome for the investigation. All evidence collected must be reliable and relevant to the aims of the investigation.

The AGIS establishes the recommended minimum standards in regard to:

- procedures and methodologies for obtaining, recording and storing relevant and admissible evidence, and
- the exercise of legislated powers and authority in the conduct of investigations.

The powers and procedures of investigators in each agency may differ considerably. This section is concerned with those practices that should be generic to all agencies.

STANDARDS

Agencies should comply with the following recommended minimum standards.

4.1 Witnesses

4.1.1. Obtaining information

Obtaining information from witnesses should be conducted in accordance with the following principles.

- Witnesses or potential witnesses should be identified and prioritised during the investigation planning.
- Witnesses should be interviewed as soon as is appropriate in accordance with the investigations plan to ensure the best recall of events.
- A witness statement or affidavit should be obtained and signed at the time of the interview or as soon as possible after the interview. Witness statements or affidavits should include all relevant and exculpatory information.

- The investigator taking the statement should apply the rules concerning admissibility of evidence pursuant to the *Evidence Act 1995* or other laws relevant to the jurisdiction in which the matter may proceed to court. If the investigator is uncertain regarding the admissibility of information it should be included and highlighted for attention of CDPP or prosecuting agency.
- A parent/guardian or a responsible adult must be present during an interview of persons under 18 years of age. The parent/guardian should co-sign any statement or affidavit obtained.
- Witnesses who have a limited understanding of English should be offered the services of an accredited interpreter. The witness statement or affidavit should be prepared in the language spoken by the witness. A copy of this statement should then be translated into English.
- Where a witness wishes to change part of his/her statement or affidavit after signing, or wishes to add further information, a supplementary statement/affidavit must be prepared. The original document must be retained and included in the brief of evidence.

4.1.2 Content of witness statements/affidavit

A witness statement/affidavit is an account of the events that have occurred. The format of a witness statement/affidavit should be consistent throughout the agency and should comply with the applicable requirements of the jurisdiction where any court proceedings will occur. Witness statements/affidavits should contain the following:

- *Date*: The statement must be dated. The date under the signature on the last page is the date the statement is signed by the witness.
- *Heading*: "Statement in the matter of ..."
- *Personal Details of Witness*: The personal details of a witness should be provided

to comply with the requirements of the jurisdiction where any court proceeding will occur.

- *Format:* If practicable a witness statement/affidavit should be typed. Each paragraph should be numbered.
- *Jurat or declaration:* A witness statement or affidavit must include a jurat or declaration which is required by the jurisdiction where court proceeding is likely to occur.
- *Body:* Include all relevant observations and conversations relevant to the elements of the offence being investigated.
- *Conversations:* Relevant conversations should be recorded in the first person, i.e. "I said... He said ...". If a witness is unable to recall the exact conversation, the phrase "Words to the effect" or "I can't recall the exact words however..." may be utilised prior to setting out the witness's recollection of the conversation in the first person.
- *Exhibits:* Where relevant, a witness statement/affidavit must fully describe physical exhibits and ensure that all handling of these is fully described to ensure evidence continuity is presented.
- *Signature of the person making the statement:* Signing of a witness statement/affidavit must be done in accordance with the requirements of the jurisdiction where any court proceeding is likely to occur.
- *Witness to the Signature:* The signing of the statement/affidavit by the person making it should be witnessed by another person. This person should also sign the statement/ affidavit.
- Statements/affidavits of investigators should be prepared in accordance with the above principles. Content of investigator statements must also include all relevant information including interaction with suspects, handling of exhibits, participation on search warrants and any other information relevant to the elements of the offence or civil contravention.

4.1.3 Expert witnesses

It may be necessary at times during an investigation to use an independent expert witness. The selection of an expert should be made following consideration of the person's standing, qualifications, capabilities and relevant experience. The following should be considered when using expert witnesses:

- It is important that expert witnesses are quarantined from the investigation to ensure that their expert opinion is impartial.
- If experts are to examine material that has a security classification, consideration of requiring a non-disclosure agreement prior to commencing work on the investigation should be given.
- The expert witness' statement/affidavit should provide a full list of their formal qualifications and a summary of their relevant experience.
- Any relevant legal advice obtained regarding using an expert should be recorded.
- Court practice notes or case law relating to expert witnesses.

4.2 Formal interview

Record of interviews with suspected offenders or contraveners must be conducted in accordance with the following:

- Investigators conducting a record of interview must have satisfied the AGIS minimum training requirements.
- Part 1C of the *Crimes Act 1914* or relevant legislative requirement.
- An interview guide including all legislative requirements should be used.
- An interview plan should be prepared, where possible, before any suspect interview. The plan should cover the elements of the offence/s or civil contravention and any anticipated or known defences.

4.3 Search warrants

All activity relating to search warrants must be conducted:

- in accordance with the legislation under which the warrant was obtained, and
- in consultation with the CDPP Search Warrant Manual.

4.4 Coercive powers

Agencies must have a written procedure for using any coercive powers during investigations. This procedure should address:

- consideration of alternative methods to obtain required information
- authorisation procedure
- the possibility of seeking advice from the CDPP or Australian Government Solicitor (AGS) prior to exercising coercive powers. This will be relevant in matters of particular seriousness, complexity or sensitivity where an agreement has been reached with the CDPP to provide advice during the investigation, and
- requirement for a critical decision to be recorded on the case management file.

Agencies must ensure that any officer exercising coercive powers has sufficient training and knowledge of these powers.

Ongoing training, awareness sessions and knowledge assessments must be completed by officers exercising coercive powers as appropriate to the officer's role and level of powers conferred.

4.5 Physical evidence/exhibits

4.5.1 Exhibit handling procedures

Agencies exhibit handling procedures must comply with the following guidelines:

- *Evidence Act 1995* or applicable laws of evidence
- relevant case law

- guidelines for execution of search warrants by AFP on behalf of Commonwealth departments and agencies, and
- CDPP Search Warrant Manual.

The principles outlined below will assist in meeting the above requirements.

4.5.2 Obtaining physical evidence

When an investigator decides that material held by the agency is relevant to the investigation this material should be treated as evidence until no longer required for the investigation and/or prosecution. The security and continuity must be maintained from seizure to disposal. An auditable record of the exhibits must be maintained at all times.

When collecting evidence, consideration should be given to:

- preserving forensic evidence – such as fingerprints, DNA, drug analysis
- health and safety of investigators and the public generally, and
- protecting investigators from allegations of impropriety. Video or voice recording of seizure processes should be considered in relevant circumstances (e.g., counting of money).

The investigator in charge of a scene where property is being seized under warrant, or other compulsory power, should arrange for a record of the scene to be created. This record should identify locations where property was found.

4.5.3 Computer or digital evidence

The obtaining of evidence from a computer or a digital device should be conducted by a person with sufficient training or qualifications to ensure preservation and admissibility in court.

4.5.4 Property seizure record (or property receipt record)

At any time when property is taken by an agency relevant to an investigation, a document acknowledging receipt of the property must be prepared by the officers involved and a signed copy provided to the person responsible for the property. Details of property seized should

be recorded contemporaneously. This record should include the following:

- date, time, place of seizure (or possession)
- name of person providing the item
- name of owner or responsible person
- name of person taking possession of the item
- full description of the item, including any identifying marks and recording damage, and
- full description of the location from where it was taken.

The property owner or responsible person should be given a copy of the receipt regardless of whether they sign the receipt/record. Receipts (signed and dated) should be maintained on the investigation file.

It is the responsibility of all officers handling property to ensure continuity of the evidence. This continuity must be appropriately documented within investigator and witness statements/affidavits.

4.5.5 Exhibit register

Agencies are responsible for exhibit storage, recording, monitoring and reporting of property obtained during their investigations. The following procedures should be followed:

- The exhibit should be recorded in a manual or electronic Exhibit Register and allocated an exhibit number. The information in the Exhibit Register should include the full details as recorded on the property seizure record.
- Any subsequent movements of the exhibit should be recorded in the Exhibit Register. This must include the date, the name and signature of the person taking the exhibit, the reason and the destination.
- Wherever possible, a perishable exhibit should be photographed and returned to the owner as soon as practicable, unless legal requirements prevent this from occurring. It may be necessary to take a representative sample for testing and for later use in evidence.

- A designated Exhibit Registrar/Unit should maintain the Exhibit Register. The nominated person should maintain and audit the Exhibit Register and the exhibit room or storage area. This person needs to have an appropriate security clearance and be independent of investigations.
- Original exhibits should not be attached to witness statements/affidavits or provided to the prosecuting authority. Once obtained, it is the responsibility of the agency to maintain these exhibits until required at court, returned to the owner, or lawfully destroyed.

4.5.6 Preservation and continuity record keeping

It is essential that the physical integrity of exhibits and a reliable record of continuity is maintained. The following principles represent best practice and should be incorporated in to agency practice. Specifically:

- All property should be seized in the presence of two officers, unless exceptional circumstances exist, these should be documented as soon as possible.
- Appropriate packaging must be used to protect any item of property and this packaging should be sealed using tamper evident packaging to protect the integrity of the exhibit.
- A systematic and reliable procedure must be used for labelling and sealing exhibits. Such a system must be robust enough to reduce the opportunity for, or rebut any allegations of mishandling or inappropriate behaviour by investigators. Labels should include the following details:
 - exhibit number
 - seal number or bar-coded identifier
 - time, date and place of seizure
 - name of the officer who originally obtained the exhibit, and
 - full description of the exhibit.

4.5.7 Disposal of exhibits/return of evidence

Return to agency file - In many cases, documentary evidence obtained in the course of an investigation will have been provided by the investigating agency itself. The original documents should, where possible, be returned to the files of origin following the conclusion of the investigation/prosecution period. Where this is not possible documents must be maintained in accordance with the *Archives Act 1983*.

Return to owner - Subject to any contrary order of a court, an exhibit should be returned to its lawful owner if the reason for its seizure no longer exists or the exhibit is not going to be used in evidence or retention period specified in relevant legislation has expired. This section does not apply to those things forfeitable to the Australian Government or subject to a dispute of ownership.

Where an exhibit is returned, a receipt should be obtained containing the following:

- name and signature of the person returning the property
- name, address and signature of the person to whom the property is being returned
- time, date and place of the return of property
- a full description of the property being returned, and
- the appropriate seizure and exhibit number.

Three copies of the receipt should be produced – one to the owner, one on the investigations file, and one provided to the Exhibits Registrar/ Unit.

4.5.8 Destruction/disposal of exhibits

On completion of court proceedings, where an owner requests that an exhibit be destroyed, the investigator should take a signed statement authorising the destruction which should include a full description of the item to be destroyed. A copy of that statement should be placed in the Exhibit Register.

Where an item has no owner, or it would be unlawful to return an exhibit to the owner, or the exhibit is subject to a condemnation order

by the court, the case officer should forward written recommendations to the Exhibit Registrar regarding appropriate disposal of the exhibit.

All exhibits seized by the AFP must be returned to the AFP for destruction.

4.5.9 Audit of exhibit registry

The agency must have a documented procedure for conducting formal audits of its Exhibits Registry to ensure:

- the accuracy of the records
- independent scrutiny of the procedures associated with possession of exhibits by an agency
- the security of the exhibits meets with agency policy, and
- continuity of evidence has been maintained.

The Agency must ensure that an audit regime is in place that should incorporate audit of:

- minimum of 10% of overall holdings annually
- quarterly audit of high risks items including drugs, cash and firearms, and
- 100% stock take within a three year period.

4.6 Surveillance

Agencies who use any form of surveillance, including physical and electronic, must have written policy or procedures giving consideration to:

- Surveillance should only be conducted by personnel who have undertaken the appropriate training or under supervision.
- A critical decision to utilise surveillance should be recorded, with consideration given to risk management issues, as per Chapter 3. Agency approval to conduct or contract surveillance should be obtained from an appropriate level.
- The surveillance must have a lawful objective.
- The collection of personal information using covert surveillance must be conducted

in accordance with the *Privacy Act 1988*. Surveillance notes and records are official Australian Government records and are subject to certain provisions in the *Crimes Act 1914* and the *Archives Act 1983*. Surveillance files should be classified and stored in accordance with the *Protective Security Framework Policy*.

- When the agency contracts out their surveillance needs, the service provider must adhere to the agency guidelines on surveillance. The agency must ensure all material obtained is provided to the agency for appropriate storage and security.

4.7 Human information sources

Human sources are people who supply or agree to supply information to the agency in relation to investigations and their identity may need to be protected due to:

- the likelihood of the human source and/or persons associated with the human source being put at risk should the nature of the human sources' relationship with the agency become known, and
- the nature, significance or sensitivity of the information being provided.

Agencies which utilise human sources must have written procedures relating to the management of human sources. The procedures should have regard to the following issues:

- formation of a committee which meets regularly to make decisions regarding the use and registering of human sources and to review human source management practices
- standardised criteria to determine if human sources should be registered. A standard risk management methodology should be incorporated into this decision process
- procedures for registering human sources including a personal profile of the human source (including any known criminal history), assessments of motivation, appropriate warnings, and evaluation of

the human source plus the allocation of an human source number

- procedures to prevent and address opportunities or allegations of corruption or misconduct that may arise from a relationship with a human source
- referral of human sources to the AFP, particularly if they are deemed to be above a medium risk or if a reward is to be paid
- filing of human source files separate from investigation files and any referrals to human sources only by his/her registration number in any investigation file
- security procedures for classifying and handling information about and/or provided by human sources
- the procedures covering contact with human sources
- ethical and legal considerations of utilising human sources
- sharing of information obtained using human sources between relevant agencies and jurisdictions, and
- procedures for payments to informants in regard to rewards, incentives and out of pocket expenses.

