



Triathlon Western Australia

TWA COMPLAINTS PROCEDURE

A complaint can be about an act, behaviour, omission, situation or decision that someone thinks is unfair, unjustified, unlawful and/or a breach of this policy. Complaints will always vary. They may be about individual or group behaviour, they may be extremely serious or relatively minor, they may be about a single incident or a series of incidents, and the person about who the allegation is made may admit to the allegations or emphatically deny them.

Given all of the variables that can arise, a complaint received by TWA from any person, including but not limited to any Member, in relation to conduct of a Member, will be referred directly to an Investigations Officer in accordance with Rule 2.1.2 of TWA's Disciplinary Rules & Procedures Bylaw. A complaint may be received and acted upon regardless to its origin or form, and regardless of whether the complainant is identified in the complaint.

Individuals and organisations to which this policy applies may also pursue their complaint externally under anti-discrimination, child-protection or other relevant legislation.

If at any point in the complaint process an Investigations Officer considers that a complainant has knowingly made an untrue complaint or the complaint is vexatious or malicious, the matter will be referred to the Disciplinary Tribunal for appropriate action. All complaints will be kept confidential and will not be disclosed to another person without the complainant's consent except if law requires disclosure, or if disclosure is necessary to effectively deal with the complaint.

Step 1

As a first step the complainant should try to sort out the problem with the person or people involved if they feel able to do so.

Step 2

If -

- the first step is not possible/reasonable; or
- the complainant is not sure how to handle the problem by themselves; or
- the complainant just wants to talk confidentially about the problem with someone and get some more information about what they can do; or
- the problem continues after the complainant tried to approach the person or people involved, then talk with the Member Protection Officer of TWA, or the CEO of TWA. The Member Protection Officer of TWA, or the CEO of TWA, as the case may be, will –
 - take notes about the complaint (which will be kept in a secure and confidential place);
 - try to sort out the facts of the problem;
 - ask what outcome/how the complainant wants the problem resolved and if they need support;
 - provide possible options for the complainant to resolve the problem;
 - explain how our complaints procedure works;
 - act as a support person if the complainant so wishes;
 - refer the complainant to an appropriate person to help them resolve the problem, if necessary;
 - inform the relevant government authorities and/or police if required by law to do so; and
 - maintain strict confidentiality.

Step 3

After talking with the Member Protection Officer of TWA or the CEO of TWA, as the case may be, a complainant may decide –

- there is no problem;
- the problem is minor and does not wish to take the matter forward;
- to try and work out their own resolution (with or without a support person such as a Member Protection Officer); or
- to seek an informal mediated resolution with the help of a third person (such as a mediator or a manager).

If a complainant wishes to remain anonymous, TWA can't assist to resolve a complaint. TWA has to follow the principles of natural justice and be fair to both sides. This means that the TA or the complainant may be required to provide the person/people complained about with full details of the complaint so they have a fair chance to respond to all the allegations.

Step 4

If the complaint is not resolved to the complainant's satisfaction, the complainant may -

- make a formal complaint in writing to an Investigations Officer in accordance with Rule 2.1.2 of TA's Disciplinary Rules & Procedures By-law; or
- approach a relevant external agency such as an equal opportunity commission, for advice.

TWA may impose an application fee (determined by the TWA Board from time to time) payable by a complainant for the submission and processing of a complaint, where the complaint is referred to the Investigations Officer. The fee must be paid before the Investigations Officer will take any action in relation to the complaint.

Step 5

If the complainant decides to make a formal complaint in writing under Step 4, the Investigations Officer will, on receiving the formal complaint and based on the material the complainant has provided, decide whether -

- they are the most appropriate person to receive and handle the complaint, and to then conduct an investigation;
- the nature and seriousness of the complaint warrants a formal resolution procedure. Some complaints may be of a minor and/or purely personal nature with no connection to the activities of TWA. In these cases, the Investigations Officer may determine that the complaint does not warrant a formal resolution procedure;
- to refer the complaint to an informal or formal mediation session;
- it is more appropriate that the complaint be dealt with by a court or another independent complaints, disciplinary, conciliation or arbitration body or procedure;
- to refer the complaint to a Disciplinary Tribunal under TWA's Disciplinary Rules & Procedures By-law;
- to refer the matter to the police or other appropriate authority; and/or
- to implement any interim administrative or other arrangements that will apply until the complaint process set out in this By-law is completed.

In making the decision(s) outlined above, the Investigations Officer will take into account -

- the matters referred to in Rule 2.1.3 of TWA's Disciplinary Rules & Procedures By-law;
- whether they have had any personal involvement in the circumstances giving rise to the complaint and, if so, whether their ability to impartially manage the complaint is compromised or may appear to be compromised;
- whether, due to the nature of the complaint, specific expertise or experience may be required to manage the complaint;

- the wishes of the complainant, and the wishes of the respondent, regarding the manner in which the complaint should be handled;
- whether, due to the nature of the complaint, the relationship between the complainant and the respondent and any other relevant factors, the complaint should be referred (or should not be referred) to informal or formal mediation or to a hearings tribunal. Relevant factors may include an actual or perceived power imbalance between the complainant and the respondent, the nature of any ongoing working relationship between the complainant and the respondent, and the personal attributes of the complainant and the respondent (for example, if one party does not speak English fluently, some of the possible complaints resolution mechanisms may not be appropriate);
- the nature and sensitivity of any information or other material that must be provided by the complainant, the respondent, and any of the other people involved in the complaint;
- whether the facts of the complaint are in dispute; and
- the urgency of the complaint, including the likelihood and the consequences (if the complaint is ultimately proven) that the complainant will be subject to further unacceptable behaviour while the complaint process set out in this By-law is being conducted.

If the Investigations Officer is the appropriate person to handle the complaint they will, to the extent that these steps are necessary -

- get full information from the complainant about the complaint and how the complainant wants it resolved (if this information has not already been obtained through earlier steps);
- put the information they've received from the complainant to the respondent and ask them to provide their side of the story;
- decide whether they have enough information to determine whether the matter alleged in the complaint did or didn't happen; and/or
- determine what, if any, further action to take.

Step 6

If -

- Investigations Officer decides to conduct an investigation under **Step 5**, they will conduct the investigation in a manner that they consider fit to fully investigate the matter (in accordance with Rule 2.2 of TWA's Disciplinary Rules & Procedures By-law. If the Investigations Officer determines that a person should be charged they will provide a written Notice of Charges and a written Investigation Report to the Chairperson of the Disciplinary Tribunal under Rule 2.4.1 of TWA's Disciplinary Rules & Procedures By-law. The Chairperson will determine what, if any, further action to take in accordance with TWA's Disciplinary Rules & Procedures By-law.
- the complaint is referred to an informal or a formal mediation session under **Step 5**, the mediation session will be conducted in accordance with Attachment D2 or as otherwise agreed by the complainant and the respondent;
- the complaint is referred to Disciplinary Tribunal under **Step 5**, the hearing will be conducted in accordance with the hearing and appeals procedures;
- the complaint is referred to the police or other appropriate authority under **Step 5**, Triathlon WA will use its best endeavours to provide all reasonable assistance lawfully required by the police or other appropriate authority; and
- interim administrative or other arrangements are implemented under **Step 5**, Triathlon WA will periodically review these arrangements to ensure that they are effective.

Any costs relating to the complaint process set out in this Policy (e.g. investigation and/or mediation and/or hearings tribunal) are to be met by [insert organisation and/or individual] unless otherwise stated in TWA's Disciplinary Rules & Procedures By-law.

Step 7

If, under **Step 6**, an informal or formal mediation session is conducted, and the complainant and the respondent(s) cannot reach a mutually acceptable mediated solution to the complaint, the complainant may request that the Investigations Officer reconsider the complaint in accordance with **Step 5**

The complainant or the respondent(s) may be entitled to appeal where -

- under **Step 5**, a decision was made by the Investigations Officer –
 - not to take any action; or
 - to take disciplinary action; or
- under **Step 6**, a decision was made by the Disciplinary Tribunal -
 - not to take any action; or
 - to take disciplinary action.

The grounds for appeal and the process for appeals under this Policy are set out in TWA's Disciplinary Rules & Procedures By-law. If the internal complaints processes set out in this By-law do not achieve a satisfactory resolution/outcome for the complainant, or if the complainant believes it would be impossible to get an impartial resolution within TA, the complainant may choose to approach an external agency such as an equal opportunity commission to assist with a resolution.

Step 8

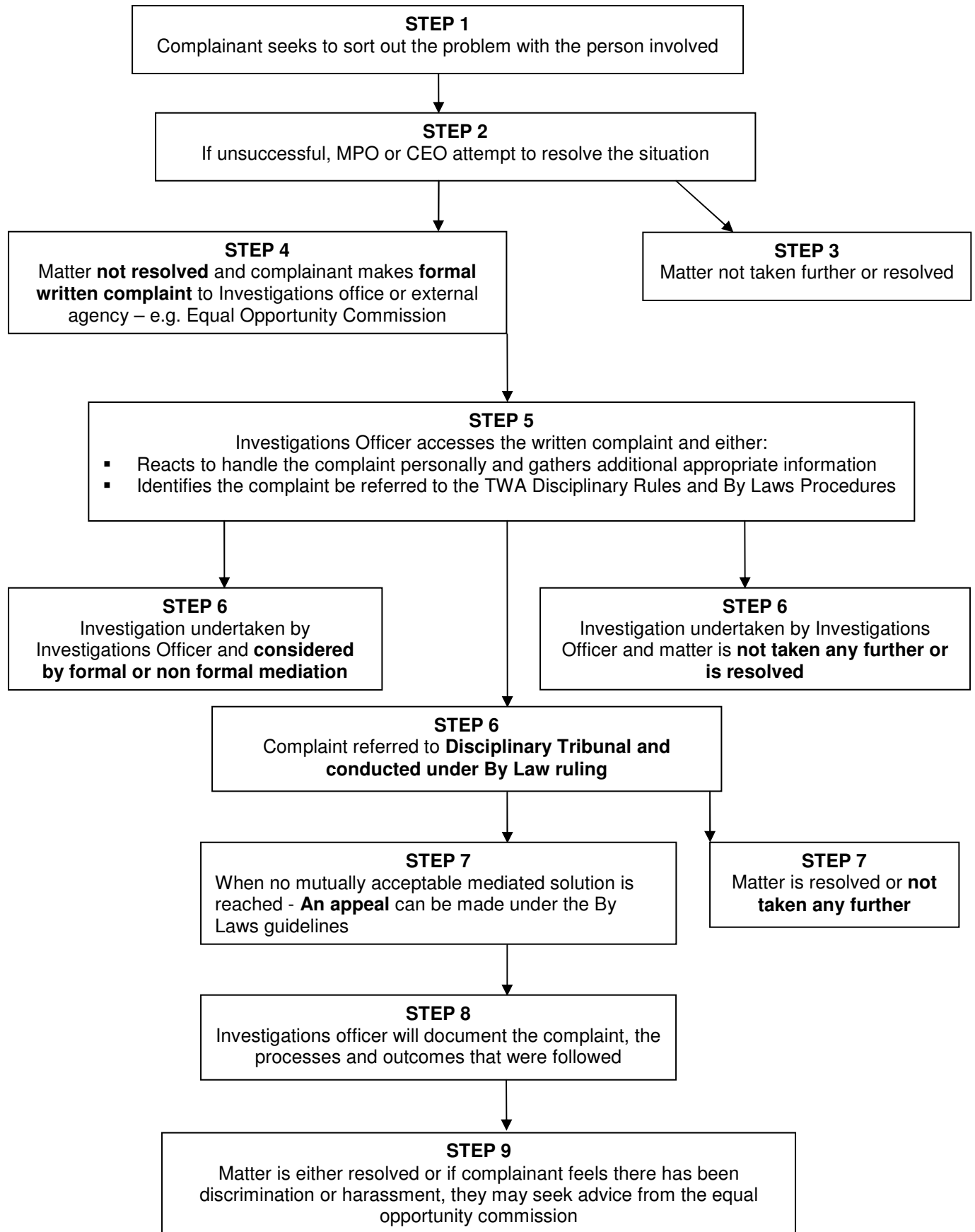
The Investigations Officer will document the complaint, the process followed and the outcome. This document, along with any written Notice of Charges and written Investigations report will be stored in a confidential and secure place. If the complaint was dealt with at a state/district level, the information will be stored in the state association office. If the matter is of a serious nature, or if the matter was escalated to and/or dealt with at the national level, the original document will be stored at the national office with a copy stored at the state office.

Step 9

There may be a range of external options available to the complainant depending on the nature of the complaint. If the complainant feels that they have been harassed or discriminated against, they can seek advice from their State or Territory equal opportunity commission without being obliged to make a formal complaint. If the commission advises the complainant that the problem appears to be a type of harassment that comes within its jurisdiction, the complainant may then make a decision as to whether or not to lodge a formal complaint with the commission. Once a complaint is received by an anti-discrimination commission, an investigation may be conducted. If it appears that unlawful harassment or discrimination has occurred, there may be an attempt to conciliate the complaint confidentially first. If this fails, or is inappropriate, the complaint may go to a formal hearing where a finding will be made as to whether unlawful harassment or discrimination occurred. The tribunal will decide upon what action, if any, will be taken. This could include financial compensation for such things as distress, lost earnings or medical and counselling expenses incurred.

An anti-discrimination commission can decline to investigate a complaint, or dismiss a complaint at any point in the investigation, conciliation or public hearing stages.

Triathlon Western Australia



If the complainant does lodge a complaint under anti-discrimination law, the complainant may use an appropriate person (e.g. an MPIO) as a support person throughout the process. It is also common to have a legal representative, particularly at the hearing stage of a complaint.

MEDIATION

Mediation is a process by which people who are in conflict can be helped to communicate with each other about what is important for them and how to make decisions about resolving their dispute. Mediators provide a supportive atmosphere and method of talking to one another, to assist in sorting out the issues, coming up with acceptable solutions and making mutually satisfactory agreements. This attachment outlines the general procedure of mediation that will be followed by TA. The people involved in a formal complaint [the complainant and respondent(s)] may work out their own resolution of the complaint or seek the assistance of a neutral third person, or a mediator. Mediation may occur either before or after an investigation of the complaint.

Mediation will only be recommended -

- After the complainant and respondent have had their chance to tell their version of events to the Member Protection Officer of TWA or the CEO of TWA on their own; and
- The Member Protection Officer of TWA or the CEO of TA does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the complainant desires; and
- Mediation looks like it will work (i.e. the versions given by the complainant and respondent tally or almost tally and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).

Mediation will **not** be recommended if -

- The respondent has a completely different version of the events and they won't deviate from these;
- The complainant or respondent are unwilling to attempt mediation; or
- Due to the nature of the complaint, the relationship between the complainant and the respondent(s) and any other relevant factors, the complaint is not suitable for mediation.

If mediation is chosen to try and resolve the complaint, the Member Protection Officer of TWA or the CEO of TWA, as the case may be, will, in consultation with the complainant and the respondent(s), arrange for a mediator to mediate the complaint. The Member Protection Officer of TWA, or the CEO of TWA, as the case may be, will notify the respondent(s) that a formal complaint has been made, provide them with details of the complaint and notify them the TWA has decided to refer the matter to mediation to resolve the complaint.

The mediator's role is to assist the complainant and respondent(s) reach an agreement on how to resolve the problem. The mediator, in consultation with the complainant and respondent(s), will choose the procedures to be followed during the mediation. At a minimum, an agenda of issues for discussion will be prepared by the mediator.



Triathlon Western Australia

The mediation will be conducted confidentially and without prejudice to the rights of the complainant and the respondent(s) to pursue an alternative process if the complaint is not resolved. At the end of a successful mediation the mediator will prepare a document that sets out the agreement reached between the complainant and respondent(s) and it will be signed by them as their agreement.

If the formal complaint is not resolved by mediation, the complainant may -

- Write to the Investigations Officer to request that the Investigations Officer consider the complaint in accordance with **Step 5**; or
- Approach an external agency such as an anti-discrimination commission.

INVESTIGATION PROCEDURE

If an investigation needs to be conducted the following steps are to be followed -

- A written brief will be provided to the Investigations Officer to ensure the terms of engagement and scope of the Investigations Officer's role and responsibilities are clear;
- The complainant will be interviewed and the complaint documented in writing;
- The details of the complaint will be conveyed to the person/people complained about [respondent(s)] in full. The respondent(s) must be given sufficient information to enable them to properly respond to the complaint;
- The respondent(s) will be interviewed and given the opportunity to respond. The respondent(s) response to the complaint will be documented in writing;
- If there is a dispute over the facts, then statements from witnesses and other relevant evidence will be obtained to assist in a determination;
- The Investigations Officer will make a finding as to whether the complaint is -
 - substantiated (there is sufficient evidence to support the complaint);
 - inconclusive (there is insufficient evidence either way);
 - unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
 - mischievous, vexatious or knowingly untrue;
- A written Investigation Report to the Chairperson of the Disciplinary Tribunal documenting the complaint, investigation process, evidence, finding and, if requested or required, recommendations and a Notice of Charges;
- A report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the complainant and the respondent(s);
- Both the complainant and the respondent(s) are entitled to support throughout this process from their chosen support person/adviser (e.g. A Member Protection Officer or other person);



Triathlon Western Australia

- The complainant and the respondent(s) may have the right to appeal against any decision based on the investigation. Information on our appeals process is in TWA's Disciplinary Rules & Procedures By-law

More detailed information on conducting internal investigations can be found at www.ausport.gov.au/ethics/policy.asp

INVESTIGATION PROCEDURE - CHILD ABUSE

An allegation of child abuse is a very serious matter and must be handled with a high degree of sensitivity. The initial response to a complaint that a child has allegedly been abused should be immediate if the incident/s are serious or criminal in nature while less serious/urgent allegations should be actioned as soon as possible, preferably within 24 hours.

The following is a basic outline of the key processes to follow. More information can be obtained from the State Government Agency.

Step 1 - Clarify basic details of the allegation

Any complaints, concerns or allegations of child abuse should be made or referred to a Member Protection Officer of TWA or the CEO of TWA. The initial response of the person that receives the complaint from the child (or person on behalf of the child) is crucial to the well-being of the child. It is important for the person receiving the information to -

- Listen to, be supportive and do not dispute what the child says;
- Reassure the child that what has occurred is not the fault of the child;
- Ensure the child is safe;
- Be honest with the child and explain that other people may need to be told in order to stop what is happening; and
- Ensure that what the child says is quite clear but do not elicit detailed information about the abuse.

The person receiving the complaint should avoid suggestive or leading questions.

The person receiving the complaint should obtain and clarify basic details (if possible) such as -

- Child's name, age and address;
- Person's reason for suspecting abuse (observation, injury or other); and
- Names and contact details of all people involved, including witnesses.

Step 2 – Report allegations of a serious or criminal nature

Any individual or organisation to which this policy applies, should immediately report any incident of a serious or a criminal nature to the police and other appropriate authority. If the allegation involves a child at risk of harm, the incident should immediately be reported to the police or other appropriate government agency. The person receiving the complaint may need to report to both the police and the relevant government agency.



Triathlon Western Australia

The relevant State or Territory authority should be contacted for advice if there is **any** doubt about whether the complaint should be reported. If the child's parent/s is suspected of committing the abuse, report the allegation to the relevant government agency.

Step 3 – Protect the child

The Member Protection Officer of TWA or the CEO of TWA, as the case may be, should assess the risks and take interim action to ensure the child's/children's safety. Some options could include redeployment of the alleged offender to a non-child related position, supervision of the alleged offender or removal/suspension from their duties until the allegations are finally determined.

The Member Protection Officer of TWA or the CEO of TWA, as the case may be, should also address the support needs of the person against whom the complaint is made. Supervision of the person should ideally occur with the knowledge of the person. If stood down, it should be made clear to all parties that are aware of the incident that this does not mean the person is guilty and a proper investigation still needs to be undertaken.

Step 4 – Further clarify and investigate allegation

For allegations of a serious or criminal nature (for example, sexual abuse), seek advice from the police and relevant government agency as to whether TA should carry out its own internal investigation (in addition to any police or relevant government agency investigation).

If the police and/or relevant government agency advises that it is appropriate, and then refer the matter to an Investigations Officer.

The Investigations Officer should -

- Contact the parents/carers of the child at an appropriate time and as directed by the police or relevant government agency.
- If appropriate, meet with parents/carers and the child to clarify the incident and offer support on behalf of TA if required (example, professional counselling).
- Meet with the person against whom the allegation refers at an appropriate time and as directed by the relevant authority and give the person an opportunity to explain or respond to the allegation and identify any witnesses and supporting evidence. The person should have an opportunity to invite a support person/adviser to attend at a meeting and should be offered support (example, professional counselling) if necessary.
- Obtain a signed statement and record of interview from the person.
- Make contact with any witnesses and obtain written and signed statements outlining details of the allegation (what happened, when, how). This should only occur following advice from the relevant authority.
- Obtain other information that could assist in making a decision on the allegation.
- The information collected during the investigation should be made available to the relevant authorities.

Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

For allegations of a less serious nature (e.g. verbal abuse), where possible, refer the matter to an Investigations Officer to make contact and meet with each of the people involved to obtain details of



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the allegation. The Investigations Officer should follow the procedure set out in the investigation procedure above. Strict confidentiality, impartiality, fairness and due process must be maintained at all times.

Step 5 – Record and analyse all information

If an internal investigation was conducted under **Step 4**, the Investigations Officer will provide a written Investigation Report to the Chairperson of the Disciplinary Tribunal under Rule 2.4.1 of TWA's Disciplinary Rules & Procedures By-law, as well as a written Notice of Charges, if applicable. The decision-maker(s) will be the Disciplinary Tribunal of TWA and will remain separate and at arm's length from the Investigations Officer. The Disciplinary Tribunal will consider all the information and make a determination in accordance with TWA's Disciplinary Rules & Procedures By-law.

Step 6 – Undertake disciplinary action

For incidents of a serious or criminal nature, consideration must be given to the findings of the police and/or the government agency before making a decision on disciplinary proceedings. If disciplinary action is to be taken, follow the procedures outlined in TWA's Disciplinary Rules & Procedures By-law.

Implement any disciplinary decision recommended by the Disciplinary Tribunal. The action should be immediate. Check with the relevant state government authority to see if TWA needs to forward a report to another body or organisation.

Complete the relevant form in Appendix 1 of this policy.
Retain the original in a secure place and forward a copy to the CEO of TWA.

CHILD ABUSE INVESTIGATION PROCEDURE

