

· Introduction

These guidelines are intended to give effect to the uniform resolution of complaints against University staff regarding bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment or other workplace conflicts.

· Application

These guidelines apply to all staff at the University of the Sunshine Coast, and students and visitors where a formal complaint of bullying, discrimination, harassment or sexual harassment is raised against a staff member of the University.

· Scope

The requirements of these guidelines will not apply where there are other specific policies or guidelines in place for dealing with the matter, e.g. misconduct, unsatisfactory performance or public interest disclosures.

For staff covered by the Enterprise Agreement, any complaint arising from the application of any provision of the Enterprise Agreement, as current at the time, or the National Employment Standards under the *Fair Work Act 2009* (Cth) will be dealt with under the Dispute Resolution Procedures of the Enterprise Agreement and the requirements of these guidelines will not apply.

· Definitions

A complaint is a grievance about any type of work-related problem that is causing distress. The complaint may arise from a decision, act or omission by staff within the University, which is considered by the complainant to be wrong, mistaken, unjust or discriminatory.

The complainant is the staff member(s) notifying a complaint, or student(s) or visitor(s) notifying a complaint relating to bullying, discrimination, harassment or sexual harassment by a staff member(s) of the University.

Conciliation is the process through which the parties involved in any allegation, with assistance from a neutral person (a conciliator), discuss the issues in order to develop options and consider alternatives with the goal of reaching a consensual agreement or outcome.

A conciliator is an appropriately qualified person, appointed by the Director, Human Resources to conciliate between the parties in a non-judgemental and independent manner. In some circumstances, an external person may be appointed as a conciliator.

A grievance is a concern or complaint about an act, behaviour, omission, situation or decision, which an individual believes is unfair or unjustified.

An investigator is a person appointed by the Director, Human Resources to investigate a formal complaint. In some circumstances, an external person may be appointed as an investigator.

Mediation is the process through which the parties involved in a dispute or allegations are assisted by a mediator to assist them to reach an agreement which settles the dispute. Mediation encourages negotiation in a non-threatening environment.

A mediator is an appropriately qualified person, appointed by the Director, Human Resources to mediate between the parties in a non-judgemental and independent manner. In some circumstances, an external person may be appointed as a mediator.

The respondent is the staff member(s) of the University against whom the complaint is made.

Parties to the complaint include the complainant, respondent, witnesses, and relevant supervisor or manager.

An informal complaint is a complaint that is normally dealt with by the work unit and is normally in relation to a complaint arising from minor workplace conflicts or work unit decisions. It may be advised either verbally or in writing. If not resolved in the work unit, an informal complaint may be escalated to the relevant Executive Member. If the complaint remains unresolved, it may be escalated to a formal complaint.

A formal complaint is a complaint arising from alleged bullying, discrimination, harassment or sexual harassment or perceived unfair decisions or treatment, or an unresolved informal complaint. The management of formal complaints is coordinated by Human Resources. A formal complaint may be advised verbally or in writing. If advised verbally, a Human Resources representative will assist the complainant to document the complaint. A formal complaint by a student against a staff member will normally be reported to Student Wellbeing in the first instance.

In these procedures 'Human Resource representative' includes the Director, Human Resources, Human Resources Consultants and Advisers.

5. Principles of Complaint Handling

DESIGNATED OFFICER

Director, Human Resources

LAST AMENDED

3 March 2020

STATUS

Active

In all matters, the University will act and make decisions in a way compatible with human rights, as defined in the Human Rights Act 2019 (Qld).

5.1 Procedural fairness

Complainants have the right to have their complaint dealt with fairly, constructively, expeditiously, confidentially, and through the application of the principles of procedural fairness, without reprisal.

Procedural fairness includes:

- The respondent(s) being informed of any allegations made in a complaint against them;
- Parties to the complaint being advised of the procedures that apply to the management of the complaint;
- Parties to the complaint being informed of those people involved and responsible for handling the complaint;
- All parties to the complaint having a right to be heard;
- The respondent being provided with an opportunity to respond;
- Relevant submissions by parties to the complaint being fully considered before a decision is made;
- A full and proper investigation of the facts;
- The complainant and the respondent being advised of the outcome of any investigation.

5.2 Confidentiality

Complaints and information arising from the handling of complaints must be treated confidentially. There should be limited disclosure of information relating to a complaint and only to those who are legitimately involved in the process of resolving the complaint.

Any breaches of confidentiality, careless or otherwise, on the part of any of the parties involved in the management of the complaint may be considered as misconduct or serious misconduct and may be subject to further action by the University.

5.3 Early notification and expeditious process

A complaint should be raised as early as possible following the incident giving rise to the complaint. Complaints should be dealt with expeditiously to ensure early resolution of the issue and minimal disruption to the workplace.

5.4 Good faith participation by all parties

All parties are required to participate in the complaint management process in good faith. Where a staff member refuses to participate in the process, the Director, Human Resources may direct the staff member to participate in the process, as necessary.

5.5 Representation

At any time during the complaint management process, the complainant or respondent may seek assistance from, or be accompanied by, a representative or support person who is either a staff member, or an officer or staff member of the Union, excluding a person who is currently a practising solicitor or barrister.

5.6 University's duty of care

Whenever possible, the wishes of the complainant in relation to the resolution of the complaint are taken into account. However, this may not be possible in some circumstances, for example, where the complaint is of such a serious nature that formal action is required beyond the wishes of the complainant. For example, a complaint may involve allegedly unlawful behaviour and/or the University's duty of care may be compromised if no action is taken.

In addition, the University may be obliged, for legal reasons, to investigate a complaint which is raised with it that does not result in a formal complaint being made under this policy and procedures.

5.7 Protection from victimisation

The University will endeavour to protect staff and students from any victimisation or repercussions for reporting issues in good faith. Parties to the complaint will be advised that victimisation of any individual/s arising from the complaint will not be tolerated and the matter will be referred to the Vice-Chancellor and President if victimisation is demonstrated to have occurred. The matter may be dealt with as misconduct or serious misconduct.

5.8 Vexatious and malicious complaints

Most complaints are motivated by genuine concern about perceived inappropriate or unfair behaviour or actions. However, on some occasions a complaint may be frivolous, vexatious or malicious, i.e. designed to harass or annoy, to cause delay or detriment, or for any other wrongful purpose.

Complainants should not instigate complaints that are frivolous, vexatious or malicious. A staff member who makes an allegation, which they have reason to believe to be false, or a staff member who makes a frivolous allegation, may be subject to disciplinary processes, and the matter may be dealt with as misconduct or serious misconduct.

Complaints should not be made in response to or in retaliation for management instituting counselling or disciplinary processes as part of management's duty to manage. Such responses / retaliation may be subject to disciplinary processes, and the matter may be dealt with as misconduct or serious misconduct.

Students who make frivolous, vexatious or malicious complaints may be referred to the PVC(Students).

· Procedures

6.1 Introduction

Where the respondent to a complaint is the Vice-Chancellor and President, these procedures will not apply and the complaint will be referred to the Chancellor for resolution in conjunction with the Director, Human Resources.

In the first instance, an individual may attempt to resolve the matter personally. If this option is chosen, an individual will complain or object to the behaviour or action directly with the respondent(s) involved, making it clear that the behaviour or action is offensive and unacceptable. This may be done in writing, for example by email, or directly in person, in which case it is recommended that the complainant keep a record of the discussion.

All informal complaints will be managed by the relevant work unit. Human Resources will provide support and advice as requested.

All formal complaints will be managed by Human Resources in conjunction with, as appropriate, the relevant Senior Staff member, a relevant Executive Member, or Vice-Chancellor and President as appropriate.

At any stage during the complaint management process, strategies used to resolve a complaint may include, but need not be limited to, any of the following:

1. individual or group interviews;
2. mediation;
3. counselling services;
4. conciliation meetings between the parties;
5. investigation;
6. referral for disciplinary action.

The University reserves the right to refer a complaint to be dealt with under the University's Enterprise Agreement misconduct procedures at any point during the complaint management process.

The University may suspend a staff member from duty, with or without pay, at any time during the complaint management process in accordance with the University's Enterprise Agreement in place at the time, or the relevant contract of employment.

6.2 Investigations

Where an investigation is required to resolve a formal complaint, the University has the sole discretion to choose an appropriate internal or external investigator to undertake the investigation.

Parties to the complaint have the right to nominate witnesses or identify other people who can assist with resolving the complaint.

The investigator will provide a written report including findings and recommendations which may be used by the University to initiate disciplinary action in accordance with the Enterprise Agreement.

The parties to the complaint will be advised of the relevant findings of the investigation.

6.3 Informal Complaints

Informal complaints will be dealt with at the work unit level through discussions with the relevant parties, normally within 10 days of the complaint being received. Informal complaints may be made verbally or in writing.

The complainant should initiate an informal discussion with their Supervisor or relevant Senior Staff member and outline the complaint and the grounds for making it. The complainant should also express their desired outcomes. If the complaint is against the relevant Senior Staff member, the complainant may initiate the informal discussion with the relevant Executive Member.

If further information is required to understand or resolve the complaint, the complainant must provide this information.

If the complaint remains unresolved at the work unit level, the complaint may be referred to the relevant Executive Member to make a decision.

Should the complaint be referred, all documentation is to be provided to the relevant Executive Member, who may decide to resolve the complaint in accordance with 6.1 above. The Executive Member's decision will be final.

If the complaint remains unresolved it may be escalated into a formal complaint.

The outcome of the complaint management process will be advised in writing to all parties to the complaint.

6.4 Formal Complaints

Formal complaints should be submitted through the relevant Senior Staff member, or Student Wellbeing, and in instances where the relevant Senior Staff member is the respondent, to the relevant Executive Member.

Formal complaints of bullying, discrimination, harassment or sexual harassment concerning the relevant Executive Member should be forwarded directly to the Vice-Chancellor and President who will liaise with a Human Resources representative to manage the complaint.

A formal complaint would normally be made within two months of the last occurrence of the alleged behaviour.

Upon receipt of a formal complaint, the relevant Senior Staff member, or Student Wellbeing, will provide Human Resources with details of the complaint including all supporting documents and submissions.

A Human Resources representative, in consultation with the relevant Senior Staff member or relevant Executive Member, will determine whether the complaint is prima facie genuine and whether it should be dealt with in accordance with these guidelines or some other specific University procedure such as misconduct or unsatisfactory performance procedures or the Public Interest Disclosures policy.

If the complaint is not considered to be genuine, or the complaint is deemed vexatious or malicious, the Director, Human Resources may choose not to proceed further with the matter and notify the parties accordingly.

If the complaint is considered to be genuine, a Human Resources representative will consult with the relevant Senior Staff member or Executive Member to determine how the complaint is to be resolved. This may include referring to the local work unit to deal with, if the complaint is deemed to be an informal complaint.

The complainant will be advised, normally within four weeks of the University receiving the complaint, about the manner in which the complaint will be handled. Human Resources will provide regular updates to the complainant on the progress of the complaint.

The results of the complaint management process will be documented by a Human Resources representative, giving appropriate consideration to any relevant human rights. All parties to the complaint will be advised of the outcome in writing.

6.5 Communication of Outcome

The University will notify the complainant and respondent of the outcome of the complaint at the conclusion of the complaint management process. The advice will include details of the process that was undertaken to reach a conclusion, and the reasons for the decision. Where the complainant is a student, Human Resources will advise the PVC (Students) of the decision.

6.6 Disciplinary Action

Where the outcome of the complaint management process is a recommendation that a party is referred for disciplinary action for misconduct or serious misconduct, a Human Resources representative will consult with the Vice-Chancellor and President.

For staff covered by the Enterprise Agreement, any subsequent action taken by the Vice-Chancellor and President will be in accordance with the relevant misconduct or serious misconduct procedures in the Enterprise Agreement, as current at the time of the complaint.

For staff not covered by the Enterprise Agreement, any subsequent action taken by the Vice-Chancellor and President will be in accordance with the provisions of their Contract of Employment.

6.7 Conflict of Interest

Parties to the complaint management process, including those engaged to manage the complaint, must declare if a conflict of interest exists.

Any participant in the complaint management process who perceives a possible conflict of interest should discuss the matter with the Director, Human Resources who will determine what action is appropriate, and may disqualify a person from participating.

6.8 Public interest disclosures

The relevant state legislation is designed to deal with disclosures about serious matters such as corruption, maladministration or serious and substantial waste of public money.

Staff wishing to make a public interest disclosure should do so in accordance with the University's Public Interest Disclosures policy.

6.9 Complaints received from previous staff members

Complaints received from previous staff members within six months of the conclusion of their employment, may be considered by the University on a case by case basis.

6.10 Anonymous complaints

The University will not generally act on anonymous complaints about staff unless the issues raised are serious and sufficient information is provided to warrant further enquiry into the allegations.

Depending on the nature of the complaint, the University may refer the details of the complaint to other external agencies for investigation as necessary.

If staff are not comfortable or able to report internally or to an external authority, they may report it to USC's external and independent whistleblowing service provider. Your Call Whistleblowing Solutions ("Your Call") receives and manages disclosures with confidentiality and impartiality.

This option allows staff to:

- remain completely anonymous; or
- identify themselves to Your Call only; or
- identify themselves to both Your Call and USC.

The Your Call reporting options include:

- Website: <https://www.yourcall.com.au/report> (available 24/7 using USC's unique identifier code: USC)
- Telephone: 1300 790 228 relevant number 9am and 12am, recognised business days, AEST

Your Call remains the intermediary at all times, receiving and forwarding communication between all parties, the Director, Human Resources and nominated HR staff.

Further information is located at Human Resources – Staff Conduct and Compliance website.

6.11 Record Keeping

Records of formal complaints, including all investigation reports, will be maintained by Human Resources.

Records of informal complaints resolved at the work unit or at the Executive level, must be maintained by the relevant work units.

Records in relation to complaints must be kept in accordance with the Public Records Act 2002. Further information is available from the University's Records Management Services unit.

6.12 Training

Information and training on complaint management principles and these procedures will be provided to University staff as required.

6.13 Alternative Avenues for Lodging Complaints

Staff are encouraged to use these procedures initially to resolve a complaint. Complainants are also encouraged to seek advice from Human Resources, Student Services & Engagement, or the Student Ombudsman about any issue of concern to them.

Alternative avenues for dispute resolution may be considered and these could include:

1. Complaints regarding the decisions and actions taken by USC with respect to these Guidelines – Queensland Ombudsman Unlawful discrimination - the Australian Human Rights Commission, or the Queensland Human Rights Commission
2. Workplace bullying – Workplace Health and Safety Queensland (WHSQ), WorkCover Queensland (WCQ), Fair Work Commission, the Police
3. Health, Safety and Wellbeing - refer to Director, Human Resources
4. The Dispute Resolution Procedures of the Enterprise Agreement
5. Fair Work

END

RELATED DOCUMENTS

Public Interest Disclosures - Governing Policy
Staff Code of Conduct - Governing Policy
Student Grievance Resolution - Governing Policy

RELATED LEGISLATION / STANDARDS

USC Enterprise Agreement
Fair Work Act 2009 (Cth)
Human Rights Act 2019 (Qld)