

# Resolution of Complaints (Staff) - Guidelines

## 1. Purpose

1.1 The purpose of these guidelines is to give effect to the uniform resolution of complaints against staff regarding bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment or other workplace conflicts.

## 2. Scope and application

2.1 These guidelines apply to all staff, students and visitors where a complaint of bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment or other workplace conflicts is raised against a staff member of the University.

2.2 These guidelines will not apply where there are other specific policy documents in place for dealing with the matter, e.g. misconduct, unsatisfactory performance or public interest disclosures.

2.3 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.

2.4 Where the respondent to a complaint is the Vice-Chancellor and President, these guidelines will not be applicable and the complaint will be referred to the Chancellor for resolution in conjunction with the Director, People and Culture.

## 3. Definitions

Please refer to the University's Glossary of Terms for policies and procedures.

Definitions of bullying, discrimination, harassment or sexual harassment regarding staff are defined in the *Anti-Discrimination and Freedom from Bullying and Harassment (Staff) - Governing Policy* and *Staff Code of Conduct Policy*. Additional terms and definitions identified below are specific to this policy document and are critical to its effectiveness:

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 a staff member within the University, which is considered by the complainant to be wrong, mistaken, unjust or discriminatory. For example, complaints of alleged bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment or other workplace conflicts.

The complainant is the person(s) (staff, student or visitor) notifying a complaint relating to bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment or other workplace conflicts by a staff member(s) of the University.

Conciliation is a voluntary process in which the parties to a dispute, with the assistance of a conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

Facilitation is a voluntary process in which the parties, with the assistance of a facilitator, identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude at that point or it may continue to assist the parties to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process but may advise on or determine the process of facilitation.

An investigator is a person appointed by the Director, People and Culture to investigate a complaint. In some circumstances, an external person may be appointed as an investigator.

### APPROVAL AUTHORITY

Vice-Chancellor and President

### RESPONSIBLE EXECUTIVE MEMBER

Vice-Chancellor and President

### DESIGNATED OFFICER

Director, People and Culture

### FIRST APPROVED

19 May 2022

### LAST AMENDED

19 May 2022

### REVIEW DATE

19 May 2027

### STATUS

Active

Mediation is a voluntary process in which the parties to a dispute, with the assistance of a mediator, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution but may advise on or determine the process of mediation whereby resolution is attempted.

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.

In these procedures People and Culture representative includes the Director and Deputy Director, People and Culture, and People and Culture Business Partners/Consultants.

Prima facie means based on what at first seems to be true, although it may be proved false later.

## 4. Principles of Complaint Handling

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).

### 4.1 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 examination of the facts; and
- the complainant and the respondent being advised of the outcome of the complaint management process.

### 4.2 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.

### 4.3 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.

### 4.4 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, People and Culture may direct the staff member to participate in the process, as necessary.

### 4.5 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.

### 4.6 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. This may include, a complaint that involves allegedly unlawful behaviour and/or a complaint that may compromise the University's duty of care 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 complaint being made under these guidelines.

#### 4.7 Protection from victimisation

The University will endeavour to protect staff, students and visitors from any victimisation or repercussions for making a complaint in good faith. Parties to the complaint will be advised that victimisation of any individual/s arising from the complaint will not be tolerated. Any victimisation that is demonstrated by staff will be referred to the Vice-Chancellor and President and may be dealt with as misconduct or serious misconduct. Any alleged victimisation by students will be referred to the Pro Vice-Chancellor (Students) for consideration under the Student Misconduct Procedures.

#### 4.8 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. Staff who makes an allegation, which they have reason to believe to be false, or 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 by staff 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 will be considered under the Student Grievance Policy.

#### 4.9 Support

All staff members are encouraged to utilise the University's Employee Assistance Program for confidential counselling. Further, People and Culture is available to provide advice in relation to the complaint management process including the discussion of other relevant supportive measures to reduce risk of victimisation to the complainant.

Students can seek support through Safer Communities or advice from the Student Guild. Further details are found in the Student Grievances – Procedures.

### 5. Complaint Management Process

#### 5.1 Preliminary action

Except for matters relating to alleged bullying, discrimination, harassment, or sexual harassment, an individual, if comfortable doing so, may attempt to resolve the matter personally in the first instance. If this option is chosen, the individual will raise their objection to the behaviour or action directly with the staff member involved, making it clear that they have found the behaviour or action to be offensive and unacceptable, explaining the impact of that behaviour or action on them and requesting that the behaviour or action stops. 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. The individual can seek advice and support from their supervisor or a People and Culture Representative prior to approaching the staff member.

If the individual is not comfortable with approaching the staff member, they should make a complaint as per section 5.2 of these Guidelines.

#### 5.2 Making a complaint

Complaints can be made either verbally or in writing to a relevant supervisor, Cost Centre Manager or a People and Culture representative and should express the complainants desired outcomes. In instances where the relevant Cost Centre Manager is the respondent, complaints should be made to the relevant Executive Member or a People and Culture representative. If advised verbally, a supervisor or People and Culture representative will assist the complainant to document the complaint, as appropriate.

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 the Director, People and Culture to manage the complaint.

It is preferable that complaints are raised as early as possible following the last occurrence of the alleged behaviour or action. Notwithstanding this, all complaints, despite when they occurred, will be assessed to determine the appropriate resolution. However, the length of time since the alleged behaviour or action occurred may impact how the complaint can be adequately addressed.

Complaints received from previous staff members or students, may be considered by the University on a case-by-case basis.

Depending on the nature of the complaint, the University may be required to refer the details of the complaint to other external agencies to manage as necessary.

### 5.2.1 Student complainants

Students are encouraged to lodge complaints against staff members in accordance with the Student Grievance Resolution Policy. A report of the student complaint will then be made to the Director, People and Culture by the Pro Vice-Chancellor (Students) and/or Safer Communities for assessment and resolution in accordance with these Guidelines. However, it is acknowledged that complaints against staff members can also be submitted through a range of other internal mechanisms including the respondent's relevant Cost Centre Manager, for example a Head of School, or Executive member, a People and Culture representative, the Pro Vice-Chancellor (Students), as well as external bodies such as the Office of the Queensland Ombudsman, and the Anti-Discrimination Commission.

### 5.2.2 Anonymous complaints

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

If staff members are not comfortable or able to report internally or to an external authority, they may report it to the University'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 member's to:

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

The Your Call reporting options include:

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

Your Call remains the intermediary, at all times, receiving and forwarding communication between all parties, the Director, People and Culture and nominated People and Culture representatives.

Further information is located at People and Culture – Staff Conduct and Compliance webpage.

### 5.2.3 Public interest disclosures

A public interest disclosure includes a staff member making a disclosure about alleged conduct that relates to corrupt conduct or maladministration or the conduct is negligent or improper management directly or indirectly resulting, or likely to result in a substantial waste of public funds; or anybody may disclose a danger to a person with a disability or to the environment from particular contraventions; or anybody may disclose a reprisal.

An individual wishing to make a public interest disclosure should do so in accordance with the University's Public Interest Disclosures - Governing Policy.

## 5.3 Assessing a complaint

Upon receipt of a complaint, the recipient, in consultation with a People and Culture representative and their Cost Centre Manager, 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 policy document such as unsatisfactory performance or public interest disclosures.

If considered to be genuine and further information is required to understand or resolve the complaint, the complainant must provide this information. Genuine complaints will be considered for resolution.

If the complaint is not considered to be genuine the complaint management process will not proceed further, and parties notified accordingly. Any complaints deemed to be vexatious or malicious, will managed in accordance with section 4.8 of these Guidelines.

If the complaint relates to other specific University policy document such as unsatisfactory performance or public interest disclosures, a referral to these processes should occur without delay.

The University reserves the right to refer a complaint to be dealt with under the University's Enterprise Agreement misconduct and serious misconduct provisions 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.

The complainant will be advised, normally within four weeks of the University receiving the complaint, about the way the complaint will be handled. The relevant supervisor, Cost Centre Manager or a People and Culture representative will provide regular updates to the complainant on the progress of the complaint, as appropriate.

### 5.3.1 Conflict of Interest

Parties to the complaint management process, including those engaged to manage the complaint, must declare if a conflict of interest exists (see Conflict of Interest - Governing Policy).

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

### 5.4 Resolution

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:

- local level resolution;
- individual interviews;
- facilitated group discussions;
- conciliation or mediation between the parties;
- counselling services;
- investigation; or
- referral for disciplinary action.

A People and Culture representative will assist the relevant supervisor and/or Cost Centre Manager with the resolution of the complaint.

#### 5.4.1 Local level resolution

Complaints that can be resolved locally by the relevant work unit normally relate to minor workplace conflicts or work unit decisions. Local level resolution will generally involve individual discussions or facilitation with the relevant parties, normally within 10 business days of the complaint being received. The goal being, to foster a positive professional working relationship between the parties. This may also include reasonable directions such as setting performance goals and standards, and expectations of behaviour or actions in the workplace.

The Cost Centre Manager and a People and Culture representative will provide support to the work unit as appropriate. This may include facilitating group discussions where it is likely a third-party facilitator can assist to encourage a more open dialogue between the staff members.

If the complaint remains unresolved, the complaint should be referred to the relevant Executive Member. All documentation is to be provided to the relevant Executive Member, who may decide to resolve the complaint through further local level resolutions or refer the matter to People and Culture for other resolution. The Executive Member's decision will be final.

#### 5.4.2 Mediation or Conciliation

Mediation or Conciliation between the relevant parties are dispute resolution processes that will generally take place where local level resolution is not suitable, or the complaint remains unresolved following an attempt at local level resolution. Mediation or Conciliation can only take place if all parties are in agreement to participate in the process together, in good faith.

As a general rule:

- mediation is appropriate in circumstances where a formal, structured process is required, that includes a confidential written agreement between the parties at the conclusion of the process. The mediator has no advisory role in this process and should be suitably qualified in the undertaking of mediations;
- conciliation is appropriate in circumstances where an advisory role is required of the conciliator, for example provide advice and suggestions on settlement terms and actively encourage participants to reach an agreement. A People and Culture Representative is often appropriate to conciliate this process;
- neither process is intended to make a finding of fact or wrongdoing.

Where an external dispute resolution practitioner is required, the University has the sole discretion to choose an appropriate external consultant.

#### 5.4.3 Investigations

The nature of complaints that would normally require an investigation include alleged bullying, discrimination, harassment, or sexual harassment. Investigations will be managed by People and Culture in conjunction with, the relevant Supervisor, Cost Centre Manager, a relevant Executive Member, or Vice-Chancellor and President as appropriate. All relevant details of the complaint including all supporting documents and submissions will be provided to People and Culture.

Where an investigation is required, 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 consider disciplinary action for misconduct or serious misconduct.

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

#### 5.4.4 Disciplinary Action

Where there is a recommendation that a party is referred for disciplinary action for misconduct or serious misconduct, the Director, People and Culture will consult with the Vice-Chancellor and President, or nominee.

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

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

#### 5.5 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. Where appropriate and providing due regard to the *Information Privacy Act 2009 (Qld)*, 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, People and Culture will advise the Pro Vice-Chancellor (Students) of the decision.

If a complainant is not satisfied with the decisions and actions taken by the University with respect to the management of their complaint, they can lodge a complaint with the Queensland Ombudsman.

#### 5.6 Record keeping

The results of the complaint management process must be documented.

Records of complaints resolved at the work unit or at the Executive level, must be securely maintained by the relevant work units. Other resolutions will be securely maintained by People and Culture.

Records in relation to complaints must be kept in accordance with the *Public Records Act 2002 (Qld)*. Further information is available from the University's Information Governance unit.

#### 5.7 Training

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

#### 5.8 Alternative avenues for lodging complaints

Staff members are encouraged to use these guidelines initially to resolve a complaint. Complainants are also encouraged to seek advice from People and Culture, Safer Communities, or the Student Ombudsman about any issue of concern to them.

Alternative avenues for dispute resolution may be considered and these could include, but not limited to:

- unlawful discrimination - the Australian Human Rights Commission, or the Queensland Human Rights Commission;
- workplace bullying – Workplace Health and Safety Queensland (WHSQ), WorkCover Queensland (WCQ), Fair Work Commission, the Police;
- Health, Safety and Wellbeing - refer to Director, People and Culture;
- the Dispute Resolution Procedures of the Enterprise Agreement; or
- Fair Work Ombudsmen.

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## RELATED DOCUMENTS

- Abbreviations for University Qualifications - Procedures
- Anti-Discrimination and Freedom from Bullying and Harassment - Governing Policy
- Conduct on University Premises - Operational Policy
- Conflict of Interest - Governing Policy
- Delegations Framework - Governing Policy
- Equity, Diversity and Inclusion - Governing Policy
- Freedom of Speech and Academic Freedom - Governing Policy
- Health, Safety and Wellbeing - Governing Policy
- Intellectual Property - Governing Policy
- Public Interest Disclosures - Governing Policy
- Public Interest Disclosures - Procedures
- Responsible Research Conduct - Governing Policy
- Sexual Assault, Sexual Harassment and Respectful Relationships (Students) - Governing Policy
- Sexual Assault, Sexual Harassment and Respectful Relationships (Students) - Procedures
- Social Media - Operational Policy
- Social Media - Procedures
- Staff Code of Conduct - Governing Policy
- Staff Gifts and Benefits - Operational Policy
- Staff Gifts and Benefits - Procedures
- Student Grievance Resolution - Governing Policy
- University Consultancy Work - Operational Policy
- University Consultancy Work - Procedures
- Working with Vulnerable People (including Child Protection) - Governing Policy

## RELATED LEGISLATION / STANDARDS

- Public Records Act 2002 (Qld)
- University of the Sunshine Coast Enterprise Agreement
- Fair Work Act 2009 (Cth)
- Human Rights Act 2019 (Qld)