



Procedure for dealing with workplace complaints

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Short description	A procedure for the management of concerns and complaints and grievances from staff. To be read in conjunction with the Complaints Policy
Relevant to	All staff and students
Responsible officer	University Secretary
Responsible office	Office of Corporate Governance
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Related University documents	Protocol for Responding to Letters of Demand Fraud, Corruption and Maladministration Policy and Reporting Procedure Charles Sturt University Enterprise Agreement 2005-2008 Charles Sturt University Handbook Academic Regulations Code of Conduct for Staff Code of Conduct for Users of Electronic Facilities Policy on Prevention of Harassment and Bullying Student General Misconduct Rule
Related legislation	<u>Charles Sturt University Act 1989</u> <u>Charles Sturt University By Laws 1995</u> <u>Education for Overseas Students Act 2001 (Clth)</u> <u>Higher Education (Amalgamations) Act 1989 (NSW)</u> <u>Privacy and Personal Information Protection Act 1998 No 133</u> <u>Protected Disclosures Act 1994 No 92</u> <u>Ombudsman Act 1974 (NSW)</u> <u>Ombudsman Regulations 1999 (NSW)</u> <u>Freedom of Information Act 1989 No 5 (NSW)</u> <u>Occupational Health and Safety Act 2000 (NSW)</u> <u>Occupational Health and Safety Regulation 2001 (NSW)</u> <u>Workplace Relations Act 1996 (Clth)</u> <u>Workplace Relations Regulations 2006 (Clth)</u> <u>Anti-Discrimination Act 1977 No 48 (NSW)</u> <u>Disability Discrimination Act 1992 (Clth)</u> <u>Racial Discrimination Act 1975 (Clth)</u> <u>Sex Discrimination Act 1984 (Clth)</u> <u>Age Discrimination Act 2004 (Clth)</u> <u>Employees Liability Act 1991 No 4 (NSW)</u> <u>Employment Protection Act 1982 No 122 (NSW)</u> <u>Workers Compensation Act 1987 No 70</u> <u>Workplace Injury Management and Workers Compensation Act 1998 No 86</u> <u>Workplace Video Surveillance Act 1998 No 52</u> <u>Workplace Relations Amendment (Workchoices) Act 2005</u>
Key words	Regulations, staff, visitor, policy, procedure, legal, complaints, grievance, mediation, bullying, discrimination, misconduct, victimization, vilification, natural justice

1. PURPOSE

The purpose of this Procedure is to establish informal and formal procedures for the handling of concerns and complaints made by staff about workplace issues.

2. SCOPE

2.1 This Procedure applies to staff and students of the University.

3. WHAT IS A WORKPLACE CONCERN OR COMPLAINT?

3.1 A **workplace concern or complaint** is a clear communication by a member of staff of a work-related issue, concern, dispute or complaint, including those involving:

- 3.1.1 the interpretation and application of any policies or procedures governing human resources, including the allocation of work, job design, performance management and matters related to flexible work practices where the specific dispute resolution process within the Enterprise Agreement (EA) is not applicable;
- 3.1.2 a workplace communication or interpersonal conflict;
- 3.1.3 an occupational health and safety issue;
- 3.1.4 an allegation of discrimination, harassment, bullying or vilification – a complaint of this type may represent an allegation of serious misconduct and will be managed under the appropriate EA clause and the Policy on Harassment and Bullying;
- 3.1.5 a question, dispute or difficulty concerning the interpretation, application or operation of policies or agreements where the specific dispute resolution process within the EA is not applicable;
- 3.1.6 A workers compensation claim management issue or injury management issue

4. OTHER DEFINITIONS

In this Policy:

4.1 **Enterprise Agreement** means the Charles Sturt University Enterprise Agreement from time to time.

4.2 **serious misconduct** has the same meaning as set out in the Enterprise Agreement and includes:

- serious misbehaviour or improper conduct of a kind that constitutes a serious impediment to the carrying out of a staff member's duties or to a staff member's colleagues carrying out their duties;
- serious dereliction of the duties required of the academic office or position held by a staff member;
- conviction by a Court of an offence which constitutes a serious impediment of the kind referred to in paragraph (a) hereof; and/or
- theft, bullying, serious assault or sexual harassment.

4.3 **staff** means the continuing or fixed-term or casual employees of the University, including contractors, honorary and adjunct employees.

5. CERTAIN COMPLAINTS EXCLUDED FROM THIS PROCEDURE

- 5.1 This procedure does not apply to the following:
- 5.1.1 a workplace concern arising from an application for promotion by a Faculty, University or Professorial Academic Staff Promotions Committee, made under a fair and proper procedure which shall be dealt with under the appeals provisions of the “Academic Staff Promotions Policy” and associated procedures;
 - 5.1.2 a workplace concern for which an Application to Resolve a Dispute is being dealt with under the provisions of the Workers Compensation Commission;
 - 5.1.3 a workplace concern arising from a decision by the University with respect to a freedom of information application, which shall be dealt with under the provisions of the “Freedom of Information Act” and associated procedures;
 - 5.1.4 a workplace concern regarding corruption, maladministration, fraud or waste, which shall be dealt with under the provisions of the “Reporting Procedures for Fraud, Maladministration and Corruption”;
 - 5.1.5 a workplace concern arising from the commencement of procedures under the “Guidelines on the Management of Unsatisfactory Performance”;
 - 5.1.6 a workplace concern arising from a final decision that is subject of review or appeal under a Rule, policy or procedure of the University;
 - 5.1.7 a workplace concern that amounts to serious misconduct under an enterprise agreement or other agreement;
 - 5.1.8 any other workplace concern falling under a Rule, policy or procedure for which a complaints procedure is prescribed.
 - 5.1.9 Decisions of the University Council or Academic Senate
- 5.2 Feedback from staff about the administrative and academic programs and services offered by the University, given in the spirit of Continuous Quality Improvement, will not normally be viewed as a complaint.

6. ANONYMOUS COMPLAINTS

- 6.1 The University will generally not act on anonymous complaints unless the issues raised are serious and sufficient information is provided to warrant further inquiry into the allegations.
- 6.2 Where an anonymous complaint involves allegations of corruption, maladministration or serious waste of public money, the manager or supervisor receiving the complaint should immediately refer the matter to the University Auditor under the University’s internal reporting policy.
- 6.3 Anonymous complaints alleging child abuse or other serious criminal conduct must be referred immediately to the University Ombudsman and be dealt with in accordance with the general legal obligations of the University.

7. INFORMAL PROCEDURE

- 7.1 Staff are encouraged to try to resolve a workplace concern or concerns informally unless they believe serious misconduct or a breach of the law has occurred.

- 7.2 Informal resolution of concerns at the local level can be the most effective way of dealing with many issues.
- 7.3 While the approach outlined below is informal, concerns raised in this manner will be taken seriously and appropriate action taken.
- 7.4 The informal procedures involve the following steps:
- 7.4.1 **Step 1. If you can, try to sort it out directly with the person involved.**
If possible tell the person(s) the substance of the problem. For example, where the matter relates to interpersonal issues tell the person you find their behaviour unacceptable or offensive. Often, people don't mean to do things that hurt or offend others, this does not mean their behaviour is acceptable. Telling them can give them a chance to stop or to change what they are doing.
- 7.4.2 **Step 2. Seek assistance**
Ask for help if you feel that you cannot approach the person yourself, or if this approach doesn't work. You can seek assistance from your supervisor, or if this isn't appropriate talk to the Human Resource Manager, Manager Equal Opportunities or Manager EHS on your campus, who can offer information on the process, or approach any other supervisor or manager to attempt to identify and explore available options.
- 7.4.3 **Step 3. Facilitating a mutual understanding**
If the workplace concern is not resolved at this stage, those involved may agree to either proceed to the formal procedure or to participate in mediation in order to facilitate a mutual understanding.
- If mediation is unsuccessful, the person who raised the concern can request the use of formal procedures.
- As a guide, every effort should be made to resolve the workplace concern raised through the informal procedures within 2 weeks.

8. FORMAL PROCEDURE

- 8.1 Commencement of the formal procedure should only take place if the workplace concern could not be resolved using the informal procedure.
- 8.2 The formal procedures involve the following steps:
- 8.2.1 **Step 1: Lodge formal complaint**
The staff member should notify their immediate supervisor, or other appropriate person (being Manager, Head of School, Dean, Director or Ombudsman), in writing using the Complaint Form approved by the University Secretary from time to time of the substance of the workplace concern and the outcome they are seeking. If the concern is about the staff member's immediate supervisor, then the staff member should notify that officer's immediate supervisor. Where the concern relates to a named person or persons, for reasons of procedural fairness, it will be necessary to identify the person by name.
- The immediate supervisor or person to whom the matter has been referred is to hold a meeting with the staff member and, at their request, a support person. This meeting is to be held where practicable within 5 working days of receipt of the formal complaint about the concern.

If an informal attempt to resolve the matter has not been made, such an approach may be suggested at this stage.

8.2.2 **Step 2: Investigation**

Following the clarification of the complaint, the person receiving the complaint may contact the University Ombudsman to receive advice on how to proceed. Note: it is important in the management process to ensure the matter is not currently under address by another sector of the University.

The manager or supervisor will generally, with the agreement of the person who raised the concern and within 2 weeks, investigate the matter and make recommendations to those involved in the matter for its resolution.

The Investigation will ordinarily involve:

- (a) providing a copy of the Complaint Form, or précis, to the person(s) who is(are) the subject of the workplace concern (if the concern is about a named person or persons);
- (b) requesting the person(s) to provide a formal written response;
- (c) formally interviewing or obtaining statements from people who can help to ascertain the facts;
- (d) obtaining documentation that is necessary; and
- (e) identifying options for the resolution of the matter and discussing these with those involved.

If the complaint concerns a policy or procedure, for example, the investigation may consist of the manager or supervisor writing to the officer responsible for the policy or procedure, setting out the concerns and seeking a response.

8.2.3 **Step 3: Making recommendations**

The person investigating the concern will write to the parties involved to identify the findings of the investigation and make recommendations for resolution to all those involved in the workplace concern. The preferred options for resolution may be discussed with all those involved, including a support person.

The recommendations will be in keeping with the seriousness of the matter which was the basis of the complaint. Some of the possible outcomes of a workplace complaint include:

- through the resolution process the staff member gains a better understanding of the situation so that his/her concerns are addressed;
- one or more of the parties are directed to take certain action that the manager views as appropriate for resolution of the concerns;
- the respondent is directed to apologise to the complainant and to avoid similar conduct in the future;
- if the matter is serious, and the manager is satisfied that the conduct complained about amounts to serious misconduct, the matter may be referred for disciplinary action and such other actions by the University to address the complainant's concerns.

Unless the matter is referred for disciplinary action, the recommendations for resolution should be discussed with all those involved, and the people

involved provided an opportunity to submit comments or objections to the findings and recommendations, normally within 5 working days. In general, this should be in writing. Any comments and objections received by the due date will be noted and taken into account by the person examining the complaint in making a final decision on the matter.

8.2.4 **Step 4: Final Decision**

After considering any comments or objections by those involved, the manager or supervisor will make a decision on the workplace concern, including any actions that may be taken by those involved in response to the workplace concern. The decision will be communicated in writing to those involved (including a statement about the right of each party to seek an internal review), and a copy will be sent to the University Ombudsman.

A decision by a manager or supervisor constitutes a management direction. A failure to follow a management direction may constitute misconduct.

8.2.5 **Step 5: Monitoring and Evaluation**

If the recommendations are accepted by the parties involved as resolving the concerns, the parties will continue to monitor the environment under which the concern or dispute occurred until recommendations have been implemented and evaluated. Feedback on the process will be sought from the parties to identify where any improvements can be made through the Governance processes.

9. **GENERAL PROCEDURES**

9.1 **Serious Misconduct**

Where at any time during the handling of a workplace concern it appears to an officer involved in the handling of the workplace concern that the matter may involve serious misconduct, the matter must be referred to the Executive Director, Division of Human Resources who will determine if the definition of Serious Misconduct is applicable and the management of the issue is transferred to the Division of Human Resources.

9.2 **Corruption, maladministration or waste**

If the matter involves any form of corrupt conduct, maladministration or waste the officer handling the matter must seek advice from the University Auditor. If the concerns appear to raise substantive issues, the complaint must be dealt with under the University's policies on internal reporting.

9.3 **Criminal conduct**

If a matter involves evidence of criminal conduct, the University may refer the matter to the Police or an appropriate agency. Where the University receives evidence of matters that must be reported under child protection laws, the manager or supervisor receiving the complaint will immediately report such matters in accordance with the University's legislative obligations. Staff should consult with the University Ombudsman on allegations of this type.

9.4 **Victimisation**

Any person handling a complaint should be aware of the possibility of subsequent victimisation of any of the parties. Fear of victimisation prevents many people from lodging a complaint in the first instance. All efforts should be taken to ensure that victimisation does not occur. Victimisation may be dealt with under the EA or Student General Misconduct processes.

9.5 Counter-claims

A complaint may lead to counter allegations from the responding party. It is important that the initial complaint should be considered and resolution sought on the matter in its own right. This does not preclude both the original complaint and the subsequent complaint from the respondent(s) being considered together.

9.6 Workplace Concerns Involving Staff from 2 Different Areas

Where a workplace concern involves staff from two different areas, the managers or supervisors of the staff will consult together on the handling of the complaint.

9.7 Equity-related complaints

An equity-related complaint is when a staff member believes they are being discriminated against or harassed in university life because of a trait that is subject to applicable antidiscrimination legislation. Applicable legislation varies across different jurisdictions, this may include their gender (including pregnancy), sexual orientation, transgender status, race, colour, ethnic or ethno-religious background, descent or national identity, marital status, family responsibilities, disability, age, political conviction or religious belief. Because of the complex issues sometimes involved in identifying some forms of indirect discrimination and harassment, managers handling equity-related complaints or complaints with a significant equity dimension are strongly advised to consult the Manager Equal Opportunity in the Division of Human Resources and to request advice and assistance on legislation and policy requirements. In general, managers will continue to handle the complaint with advice and assistance from the Manager Equal Opportunity. Because of the sensitive nature of some equity-related complaints, managers should be aware that some complaint resolution options may not be appropriate, e.g. mediation of discrimination / harassment complaints.

9.8 Health and safety complaints

Health and safety concerns should be raised directly with the manager of the area concerned in the first instance. All hazards, accidents and incidents must be formally reported to the University using the forms provided under the University's occupational health and safety policies. A complaint may be lodged under this Policy with the Executive Director, Human Resources, where the person believes that the University has not adequately or appropriately addressed an occupational health and safety issue in accordance with the University's legislative obligations or policies. A matter that is required to be reported as a hazard, accident or incident will not be treated as a complaint under the University's "Complaints Policy" and this Procedure, and will be referred to the Division of Human Resources immediately.

9.9 Workers Compensation Issues

Issues about Workers Compensation and/or injury management that concern the University's participation and management of an injury or illness (either compensable or non-compensable) should, in the first instance, be raised directly with the Manager, Environmental Health and Safety in the Division of Human Resources. Where the person believes that the University has not adequately or appropriately addressed a concern about the University's participation in and management of an illness or injury then a complaint may be raised under the Complaints Policy and this procedure. An issue that is required to be addressed by the University's workers compensation insurer or the Workers Compensation Commission will not be treated as a complaint under the Complaints Policy.

Table of amendments

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