

# Grievance Resolution (Staff) Procedure

## Section 1 - Background and Purpose

### Preamble

(1) Grievances can result from work-related problems which a staff member believes to be unfair, inequitable, discriminatory and/or creates an unsafe work environment. They are often the result of unresolved work related issues, problems, or conflicts that have been avoided or not addressed to the satisfaction of those involved. Examples include a staff:

- a. feeling they have been unfairly treated by others
- b. feeling afraid to complain about something because they fear the consequences from another staff
- c. feeling that a decision about them doesn't take into consideration all of the facts, and that their issues or concerns haven't been heard.

(2) This procedure sets out the University's position on providing a means to which our staff can have a grievance resolved which is fair, transparent, timely and one which maintains positive relationships.

## Section 2 - Scope

### Grievance Coverage

(3) Grievances raised under this procedure are limited to those as detailed in the [Collective Agreement](#). All other matters must be raised in accordance with the relevant policy/procedure or particular [Collective Agreement](#) provision unless stated otherwise in the relevant policy/procedure.

(4) This Procedure is written in support of the [Collective Agreement](#) and does not intend to replace the relevant clause in the [Collective Agreement](#).

(5) Disputes relating to the [Collective Agreement](#)/NES are dealt with separately in accordance with 'Dispute Settling Procedures' detailed in the [Collective Agreement](#).

### Students

(6) Grievances relating to students can be raised through this procedure by a staff member. The assigned investigator will work collaboratively with the student complaints department in resolving the grievance.

(7) Students wishing to raise a grievance against a staff member must do so through the relevant student complaints procedure.

### General

(8) The University is committed to:

- a. ensuring a safe working environment with positive working relationships between staff
- b. complying with all applicable laws
- c. all staff having access to a grievance resolution process
- d. the principles of the grievance resolution:
  - i. providing timely responses
  - ii. staff being dealt with sensitively
  - iii. all parties are afforded fairness and impartiality
  - iv. support provided for both parties
  - v. the resolution process is victimisation free
  - vi. the principles of natural justice and procedural fairness apply

## Section 3 - Policy

(9) Refer to the [Workforce Management Policy](#).

## Section 4 - Procedure

### Lodging a Grievance

(10) Grievances will be managed in accordance with the [Collective Agreement](#) however are detailed below for ease of reference.

(11) Should the [Collective Agreement](#) clause be amended or changed, the new [Collective Agreement](#) clause will replace the below.

### Grievance Handling Procedures

(12) Staff may be assisted by a Representative at any stage in the grievance process, including the lodgement of a formal grievance.

(13) Where a concern or issue is not resolved at the local work area through informal discussions or is not appropriate to be managed at this level due to its complex or serious nature, the grievance will be formally lodged in writing to the relevant supervisor for action. The grievance will outline the nature of the employee's concerns and the outcome sought by the employee. Where the grievance involves the supervisor, or there is a perceived conflict of interest, the grievance should be lodged with the supervisor's supervisor or with Human Resources.

(14) Supervisors and staff may seek advice and assistance from a staff member from Human Resources at any stage of the grievance process.

(15) The grievance will be acknowledged in writing as soon as practical and no later than 5 working days from receipt of the formal notification. The supervisor may provide Human Resources with a copy of all relevant information and may consult with them about managing the grievance.

(16) The supervisor or a staff member from Human Resources will initially meet with the employee/s to obtain detailed information about the grievance, explain how the grievance policy works and identify through discussion the main issues to be resolved or investigated. Wherever possible the complainant will guide the course of action.

(17) The supervisor or a staff member from Human Resources will then determine the best course of action, which may include the following: relevant information gathering, arranging for conciliation or mutually agreed mediation, or arranging for a formal investigation of the matter in consultation with Human Resources.

(18) The grievance handling processes and expected timelines for grievance resolution, the need for confidentiality and their protection from victimisation will be explained to the employee. They will be told that should the grievance progress to a formal investigation of other employee/s the relevant details of the grievance will be provided to these party/s to ensure that there is natural justice.

(19) If the grievance is resolved the resolution of the grievance will be confirmed in writing to the employee and others party to the grievance. If there are any actions arising from this resolution which have an impact on another employee or employees, these will be explained to them whilst being mindful to ensure the confidentiality of the direct parties.

(20) If the grievance cannot be resolved by the Supervisor or staff member from Human Resources, or there has been a delay in resolving the grievance beyond 30 days, or the supervisor or staff member from Human Resources believes that misconduct or serious misconduct has taken place, the matter will be referred to the Executive Director, Human Resources, with information about the resolution steps that have been taken to date.

(21) The Executive Director, Human Resources will consider all relevant information, and may request that additional information is obtained and documented, initiate further investigation or where necessary refer the matter through Clause 77 (Disciplinary Procedures) of the [Collective Agreement](#). The Executive Director, Human Resources will issue a written report of the final outcome to the person who raised the grievance and others party to the grievance, including any further steps that may be required to resolve the grievance and any steps that are required to prevent a recurrence of the circumstances that gave rise to the grievance.

## **Withdrawing a Grievance**

(22) Withdrawals must be made in writing to the person handling the grievance.

(23) The University may still have an obligation to investigate the grievance pending the nature of the grievance lodged - Refer 'Legal Issues' below.

## **Legal Issues**

### **False, Malicious and Vexatious Claims**

(24) If someone is found to have raised a false or deliberately misleading claim against another person they may face disciplinary action which may result in (but not limited to) counselling, a written apology to the person complained about, an official warning or termination of employment/relationship.

### **Staff Confidentiality**

(25) Confidentiality must be adhered to during and after the process of making and resolving grievances.

(26) Staff may only discuss the grievance with those legitimately and directly involved in the grievance or in its resolution.

(27) This requirement seeks to protect the rights and privacy of all involved and to ensure a comfortable and productive working environment. Should a staff member's grievance become more widely known, there is the potential for undue embarrassment and workplace tension. In addition, it is less likely the grievance will be successfully resolved.

(28) Breaches of confidentiality could result in disciplinary action being taken.

## **Recording Conversations**

(29) Making secret recordings of conversations (on devices such as phones, recorders etc) undermines the confidentiality and integrity of the process of grievance resolution therefore the University strictly prohibits recordings

without explicit consent from all parties involved in a conversation. Should consent be obtained, such consent to be recorded in writing and on the recording device at the commencement of the recording.

### **Obligation to Act**

(30) Should a serious allegation be raised, the University may have a legal obligation to investigate even if the staff does not wish to pursue the matter.

### **Victimisation**

(31) Victimisation in the workplace occurs if a person subjects or threatens to subject another person to a 'detriment', because that other person has:

- a. asserted their rights under legislation
- b. made a grievance or helped someone else to make a grievance
- c. refused to do something because it would discriminate against, harass, victimise another person
- d. intends to provide information as a witness to a grievance.

(32) The University prohibits retaliation against staff members or an external work related person just because that person is a party to a grievance. Should a University staff member victimise someone who has raised a grievance or is party to a grievance, the University will take action in accordance with a breach of policy.

(33) If someone raises a genuine grievance directly with a person, it should be appreciated that an opportunity is being offered to address an issue and potentially averting a more formal grievance.

### **Other Options for Assistance**

(34) Staff may access the La Trobe University Ombudsman at any stage however the steps laid down in the [Collective Agreement](#) should be attempted in the first instance.

### **Complaints**

(35) Complaints about administrative actions and decisions of the University can be made to the Victorian Ombudsman ([www.ombudsman.vic.gov.au/](http://www.ombudsman.vic.gov.au/)). The Ombudsman is, generally, the office of last resort. If you have not followed the steps laid down in the [Collective Agreement](#), the Ombudsman may ask the staff member to do so before accepting a complaint.

### **Assistance and/or Unresolved Grievances**

(36) University staff have the right to seek assistance from an external body/authority (including their Union) at any stage. For example:

- a. Victorian Equal Opportunity and Human Rights Commission
- b. Victorian Ombudsman
- c. Fair Work Australia
- d. Fair Work Ombudsman
- e. Worksafe Victoria

### **Support Person**

(37) A staff member who is a party to a grievance has the right to have a support person present at meetings. If the staff member chooses not to have a support person the process will still continue.

## **Who may be a Support Person**

(38) A support person can be (other than a practicing solicitor or barrister) a union representative, friend, family member or a work colleague. They are nominated by a staff member to provide support on their behalf, but who is not entitled to make representations or act as an advocate.

## **The role of the Support Person**

(39) The role of the support person is to provide professional and moral support to the staff concerned. He or she may also act as a witness or observer to the process.

(40) The support person should not disrupt the process, direct the process or otherwise interfere with the meeting. The support person is not there to advocate on behalf of the staff member.

(41) Should a support person attempt to intervene, direct the process or advocate on behalf of the staff, he or she should be warned that this contravenes the role of support person. If the support person persists, the support person may be asked to leave the meeting and the meeting may be terminated and rescheduled, with potentially another support person.

(42) It is not appropriate for meetings to be unreasonably delayed due to the unavailability of a staff member's support person. If this occurs, the staff will be advised to nominate another support person. However, reasonable attempts should be made to achieve agreed meeting times.

(43) A support person should not have had any involvement in the incident being discussed.

## **Performance Management**

(44) Reasonable management action, carried out in a fair way, is not bullying (albeit some experiences can be uncomfortable for those involved). Managers have a right to direct the way work is carried out, to monitor the work and give feedback on performance.

Examples of reasonable management action may include:

- a. setting reasonable performance goals, standards and deadlines in consultation with University staff
- b. deciding not to select someone for promotion, following a merit based process
- c. informing someone about unsatisfactory work performance
- d. informing someone about unacceptable behaviour
- e. implementing organisational changes or restructuring
- f. performance improvement processes
- g. reasonable disciplinary action.

## **Responsibilities**

(45) Staff Members are responsible:

- a. for clearly identifying the issue, giving all available information in support of their grievance and cooperation with the relevant grievance process
- b. ensuring they are familiar with and understand the process detailed in the Collective Agreement
- c. to act responsibly and professionally at all times throughout a grievance resolution process.

(46) Managers are responsible for:

- a. intervening quickly and acting fairly to resolve grievances and reinforcing standards, making sure relevant

- parties are heard
- b. treating all grievances seriously acting responsibly and professionally at all times throughout a grievance resolution process
  - c. ensuring they are familiar with and understand the process detailed in the [Collective Agreement](#) and are able to direct staff to the process in the Collective Agreement
  - d. monitoring and addressing victimisation issues resulting from grievances
  - e. promoting the [Code of Conduct](#), University values and [Workplace Behaviours Policy](#) within their work area
  - f. referring a grievance to another officer if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the grievance is particularly complex or serious).
  - g. ensuring decisions are based on a thorough and unbiased consideration of all the facts and views expressed by all parties
  - h. seeking advice from the Employee Relations to assist in managing a grievance effectively.

## Further Assistance

(47) There are people and resources available to assist or support staff and provide information, advice or appropriate referrals. Support options may include:

- a. Manager
- b. Human Resources
- c. Support Person
- d. Union
- e. EAP - Call 1300 OUR EAP (1300 687 327) to access EAP 24 hours 7 days per week pager service.

## Legislation

(48) The University has listed the most relevant law in Australia relating to this topic however it is not limited to the legislation listed (see Associated Information).

# Section 5 - Definitions

(49) For the purpose of this procedure:

- a. Grievance is defined as a work-related problem or condition which a staff member believes to be unfair, inequitable, discriminatory and/or creates an unsafe work environment and which is formalised in writing for the purpose of these procedures.
- b. Malicious is deliberately harmful, spiteful and intending or intended to do harm.
- c. NES is the National Employment Standards.
- d. Principles of natural justice refers to the general procedural fairness in the handling of a grievance that involves all of the following elements:
  - i. the right to a fair hearing
  - ii. the right to attend hearings with a friend or support person, if required
  - iii. the opportunity for all parties involved to be heard
  - iv. the respondent having full knowledge of the nature and substance of the grievance
  - v. the complainant not determining the outcome, but may be a party to it
  - vi. the right to an independent, unbiased decision-maker
  - vii. a final decision that is based solely on the relevant evidence.

e. Vexatious is causing or tending to cause annoyance, frustration or worry to harass.

## Status and Details

<b>Status</b>	Historic
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