

# Workplace Issue Resolution (Staff) Procedure

## Section 1 - Key Information

<b>Policy Type and Approval Body</b>	Administrative - Vice-Chancellor
<b>Accountable Executive - Policy</b>	Executive Director, Human Resources
<b>Responsible Manager - Policy</b>	Deputy Executive Director, Human Resources
<b>Review Date</b>	8 May 2027

## Section 2 - Purpose

(1) Workplace Issue is defined as an employment related problem which adversely affects the work and/or work environment which a staff member or group of staff members believes to be unfair, inequitable, discriminatory and/or create an unsafe work environment.

(2) This Procedure sets out the University's position on providing a means by which staff can have a Workplace Issue resolved which is fair, transparent, timely and in a manner which maintains positive relationships.

## Section 3 - Scope

### Workplace Issue Coverage

(3) Workplace Issues raised under this Procedure are limited to those as detailed in the [La Trobe University Enterprise Agreement 2023](#) (Enterprise Agreement).

(4) The Workplace Issue Resolution Procedure does not apply where the [Enterprise Agreement](#), University policy, procedure or guidelines already provide a process to deal with the matter, complaint or dispute, including but not limited to:

- a. Probation and confirmation of continuing employment;
- b. Termination of contracts;
- c. Position classification or review; or
- d. Performance management or disciplinary processes.

(5) The Workplace Issue Resolution Procedure does not apply to the following matters:

- a. Interpretation of the Enterprise Agreement;
- b. Matters that are, or have been, subject to a workers compensation application;
- c. Matters that are, or have been, the subject of complaint and investigation by an external authority;
- d. Complaints or disputes that are, or have been, the subject of a review process;

- e. Matters for which a separate University review, appeal or complaint procedure exists; or
- f. Matters related to appointments and/or decisions of the University Council.

(6) There are a range of University policies and procedures that provide specific processes for dealing with matters, complaints or disputes, including but not limited to:

Relevant Policy and Procedure	Scope
<a href="#">Academic Promotions Policy</a>	This Policy provides a process for academic promotions, including the process for staff to seek reconsideration of decisions made by the Academic Promotions Committee.
<a href="#">Sexual Harm Prevention and Response Policy</a>	This Policy provides a process for staff to make disclosures of sexual harm, including formal reports about matters involving a staff member. This Policy provides that reports should be made in the first instance to Safer Community. Where the respondent is a staff member, Safer Community will refer the matter to the Executive Director, Human Resources to consider if an investigation will be conducted.
<a href="#">Research Misconduct Procedure</a>	This Procedure outlines the University's process for investigating alleged breaches of the <a href="#">Australian Code for the Responsible Conduct of Research</a> . Examples of potential breaches include, but are not limited to the following: <ul style="list-style-type: none"> <li>• Not meeting required research standards (e.g., misuse of research funds)</li> <li>• Fabrication, falsification, misrepresentation (e.g., fabrication of research date)</li> <li>• Plagiarism (e.g., plagiarism of another's work)</li> <li>• Supervision (e.g., failing to provide adequate guidance to people under supervision)</li> <li>• Authorship (e.g., failing to acknowledge contributions of others fairly)</li> <li>• Conflicts of interest</li> <li>• Peer review</li> </ul>
<a href="#">Workplace Behaviours Policy</a>	This Policy provides for a process to make complaints and conduct investigations in relation to the behaviours of University staff, contractors, agents, official visitors and other individuals who may be performing services/work on behalf of the University. Examples of behaviours that complaints may be lodged about include: <ul style="list-style-type: none"> <li>• Discrimination</li> <li>• Bullying</li> <li>• Violence</li> <li>• Harassment</li> <li>• Vilification</li> <li>• Use of alcohol and drugs</li> </ul>

(7) This Procedure is written in support of the Enterprise Agreement and does not intend to replace the relevant clauses in the [Enterprise Agreement](#).

(8) Disputes relating to the [Enterprise Agreement](#), [National Employment Standards\(NES\)](#), and whether the University had reasonable business grounds to refuse a request for a flexible working arrangement or extension of unpaid parental leave are dealt with separately in accordance with 'Dispute Resolution Procedures' detailed in the Enterprise Agreement.

## Senior Staff Contracts

(9) A staff member employed on a Senior Staff Contract (SSC) cannot raise a Workplace Issue under clause 63 of the [Enterprise Agreement](#) or in accordance with this Procedure.

(10) A staff member employed on an SSC may be required to participate in a Workplace Issue resolution process in their capacity as a supervisor or as a respondent to Workplace Issue/s raised by a staff member or group of staff.

(11) A staff member employed on an SSC should raise any matters that they have concerns about in accordance with:

- a. the relevant University policy or procedure that applies to the matter;
- b. as specified in their contract of employment; or

- c. directly with their Supervisor or two up Manager

## Students

(12) Workplace Issues relating to student conduct should be raised with Safer Community. Safer Community are responsible for handling most student conduct matters, in accordance with the relevant policies. If the student related matter does not fall within Safer Community's remit, staff can raise a Workplace Issue via this procedure.

(13) Students wishing to raise a Workplace Issue against a staff member must do so through the relevant [student complaints procedure](#).

## Staff Who Are Also Students

(14) Staff who are also students may lodge a Workplace Issue either according to this Procedure or according to the [Student Complaints Management Policy](#) and must declare on lodging their Workplace Issue that they are also a student at the University. Staff should only utilise this procedure if the Workplace Issue relates to their employment.

(15) The assigned investigator of a Workplace Issue lodged by a staff member who is also a student will determine whether the Procedure or the [Student Complaints Management Policy](#) is the most appropriate channel for handling the Workplace Issue. The investigator will take into account the complainant's primary relationship with the University and their relationship to the subject of the complaint.

(16) The investigating officer will also determine whether the complaint is about a staff member who is also a student. If the complaint is about a staff member who is also a student, the investigating officer will determine whether relevant student policies and procedures or relevant staff policies and procedures are the most appropriate standard for assessing the complaint.

## General

(17) The University and all parties to the Workplace Issue (whether formalised or at the informal stage) will:

- a. treat all matters seriously;
- b. act promptly;
- c. prevent victimisation of any party to the Workplace Issue;
- d. maintain confidentiality;
- e. participate in good faith in the process of Workplace Issue Resolution including but not limited to:
  - i. information gathering (including provision of further information);
  - ii. facilitated discussions or mediation between parties;
  - iii. formal investigations.

(18) In addition, the University will:

- a. support all parties to the matter/s;
- b. maintain neutrality;
- c. provide appropriate communication of process;
- d. maintain appropriate documentation; and
- e. accord natural justice.

## Section 4 - Key Decisions

Key Decisions	Role
May dismiss a complaint under certain circumstances	Executive Director, Human Resources
Receive formal complaints about a workplace issue	Executive Director, Human Resources
Refer a formal complaint to an investigator	Executive Director, Human Resources
Review report findings and recommendations and determine whether to accept the report, either wholly or partly	Executive Director, Human Resources

## Section 5 - Policy Statement

(19) Refer to the [Workplace Behaviours Policy](#).

## Section 6 - Procedures

### Part A - Lodging a Workplace Issue

(20) Workplace Issues lodged by a group will include the names of all parties to the Workplace Issue, to enable the University to manage the Workplace Issues and respond effectively to individuals involved. Individuals may be asked to provide the University with further information in relation to their concerns and the outcome they are seeking so that the nature of their claims are understood and can be assessed and addressed appropriately.

(21) A Workplace Issue must be formalised in writing for the purpose of the Enterprise Agreement procedure.

(22) Staff may be assisted by a Representative at any stage in the Workplace Issue Resolution process, including the lodgement of a formal complaint. The Representative must not present a Conflict of Interest.

(23) Supervisors and staff may seek advice and assistance from a staff member from Human Resources at any stage of the Workplace Issue Resolution process.

(24) The Executive Director, Human Resources, or nominee may dismiss a complaint if:

- a. it is vexatious, frivolous, malicious, misguided or for an improper purpose;
- b. the matter has already been resolved;
- c. the matter occurred more than 12 months ago;
- d. the Workplace Issue is not directly relevant to rights and obligations in the employment relationship;
- e. the matter (or a similar circumstance matter) has been raised under clause 62 (Dispute Resolution Procedures);
- f. a party to the complaint is not employed or is no longer employed by the University; or
- g. a decision is pending under other Tribunals, Courts or administrative procedures external to the University.

### Interim Measures

(25) Upon receiving a complaint/Workplace Issue, Human Resources will determine the need for any measures to protect the safety and wellbeing of all parties, and were relevant, protect the integrity of any investigation. Such interim measures may include a change in reporting lines, an alternative work location or work arrangement.

(26) Principles of procedural fairness will apply wherever practicable, and the complainant and respondent will be advised of any interim measures that will or have been put in place by the Executive Director, Human Resources or

their nominee.

(27) The Complainant or Respondent may request interim measures be put in place by writing to the Executive Director, Human Resources, or their nominee. Such requests will be considered by the Executive Director, Human Resources and where reasonable and practicable will be accommodated.

(28) Interim measures are available regardless of whether an individual chooses to make a formal complaint to the University. The Executive Director, Human Resources, or their nominee will determine whether interim measures are reasonable and should be implemented.

(29) Interim measures are not a penalty or sanction and do not indicate the University has concluded that a breach has occurred. An investigation does not need to be completed before interim measures are put in place.

## **Workplace Issue Handling Process**

(30) Workplace Issues will be managed in accordance with the [Enterprise Agreement](#) however are detailed below for ease of reference.

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

(32) In the first instance, staff are encouraged to resolve Workplace Issues through informal means at the local work area and/or self resolution processes prior to following this formal complaint procedure. During this process:

- a. the staff member's supervisor or a staff member from Human Resources may support the staff member in informal means to resolve a matter prior to lodgement of a formal complaint under the Enterprise Agreement clause;
- b. informal measures to resolve a Workplace Issue may include assisted/ facilitated discussions or mediation to occur between a staff member who has the concerns and the other party or parties.

(33) If the Workplace Issue cannot be resolved informally, or is not appropriate to be managed at this level due to its complexity or serious nature, the staff member or the supervisor may submit a formal complaint in writing to the Executive Director, Human Resources. The formal complaint will outline the nature of the staff member's concerns and the outcomes sought.

(34) The complaint handling processes, the need for confidentiality, the protection from victimisation and the responsibility to respond in a timely manner will be explained to all parties who lodge a formal complaint. They will be advised that in order to assist with a resolution the relevant details of the formal complaint will be provided to the responding party/s to ensure that there is natural justice.

(35) Human Resources will undertake to facilitate a process to enable the parties to reach an appropriate outcome. This may include, but is not limited to:

- a. relevant information gathering;
- b. arranging for facilitated discussions, conciliation or mediation;
- c. implementation of workplace practices (including practices required during the formal complaint process and beyond)

(36) If, following the process above, Human Resources advises the staff member that it considers the formal complaint is not resolved, the staff member may within five (5) working days of that advice, request that the Executive Director, Human Resources refer the formal complaint to an impartial investigator appropriate to the particular matter. For clarity, the reference to an impartial investigator could be an internal or external investigator.

(37) The Executive Director, Human Resources will consider that request and reasonably determine whether it is appropriate to refer the formal complaint to an investigator. Such a referral will only occur where:

- a. The staff member who has lodged the formal complaint has acted throughout the process in accordance with the requirements under subclause 63.8;
- b. The Executive Director, Human Resources is of the view that an investigation will allow for a resolution that is not available through an alternative process in this clause; or
- c. The Executive Director, Human Resources is of the view that the particulars of the formal complaint, if proven, would constitute a breach of University policy or procedure or legislative requirements.

(38) Where referred to an investigator, the investigator will:

- a. investigate the formal complaint as expeditiously as possible;
- b. conduct the investigation fairly and impartially; and
- c. have access to all relevant documents and material.

(39) The investigator will provide a confidential report on their findings and any recommendations to resolve the formal complaint to the Executive Director, Human Resources. The report will be provided within three (3) weeks of receipt of the formal complaint by the investigator unless delayed on reasonable grounds, in which case the report will be provided as soon as is practicable.

(40) The staff member will be kept informed of progress of the matter.

(41) The Executive Director, Human Resources, will consider the report's findings and any recommendations before determining whether to accept the report, either wholly or partly.

(42) A confidential summary of the investigation findings and the Executive Director, Human Resources' decision regarding any action(s) will be communicated to the staff member(s) and other relevant parties to the formal complaint in writing.

(43) A formal complaint will be considered resolved if:

- a. it is withdrawn in writing by the staff member at any stage in this process; or
- b. a resolution is reached, including in accordance with subclauses 63.12 or 63.15; or
- c. it is dismissed by the Executive Director, Human Resources, in accordance with subclause 63.11; or
- d. it is not progressed within a reasonable timeframe determined by the Executive Director, Human Resources and there is no reasonable explanation for the delay; or
- e. the Executive Director, Human Resources, has made a determination under subclause 63.17 or 63.21.

(44) If the formal complaint is resolved, an appropriate written record of the resolution may be made and provided to the staff member and other relevant parties and retained by Human Resources.

## **Withdrawing a Workplace Issue**

(45) Withdrawals must be made in writing to the person handling the Workplace Issue.

(46) The University may still have an obligation to investigate the Workplace Issue pending the nature of the Workplace Issue lodged – Refer 'Legal Issues' below.

## **Part B - Additional Requirements and Information**

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

(47) 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**

(48) Confidentiality must be adhered to during and after the process of making and resolving Workplace Issues.

(49) Staff may only discuss the Workplace Issue with those legitimately and directly involved in the Workplace Issue or in its resolution.

(50) This confidentiality 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 Workplace Issue become more widely known, there is the potential for undue embarrassment and workplace tension. In addition, it is less likely the Workplace Issue will be successfully resolved.

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

### **Recording Conversations**

(52) Making secret recordings of conversations (on devices such as phones, recorders etc.) undermines the confidentiality and integrity of the process of Workplace Issue 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 should be in writing and also on the recording device at the commencement of the recording. Following the conversation, all parties to the conversation must be provided with a copy of the recording.

### **Obligation to Act**

(53) 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**

(54) 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 Workplace Issue or helped someone else to make a Workplace Issue;
- c. refused to do something because it would discriminate against, harass, victimise another person; and
- d. intends to provide information as a witness to a Workplace Issue.

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

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

## Part C - Other Options for Assistance

(57) Staff may access the La Trobe University Ombudsman at any stage however the steps laid down in the Enterprise Agreement should be attempted in the first instance.

## Part D - Complaints

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

### Assistance and/or Unresolved Workplace Issues

(59) 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 Commission
- d. Fair Work Ombudsman
- e. WorkSafe Victoria

## Part E - Representative/Support Person

(60) A staff member who is a party to a Workplace Issue has the right to have a Representative present at meetings. If the staff member chooses not to have a Representative the process will still continue.

### Who may be a Support Person/Representative

(61) A Representative can be a friend or colleague (but this person will not be a practicing solicitor or barrister), or Union which may be the NTEU. They are nominated by a staff member to provide support on their behalf but are not entitled to make representations or act as an advocate.

### The Role of the Representative

(62) The role of the Representative is to provide professional and moral support to the staff concerned. They may also act as a witness or observer to the process.

(63) The Representative should not disrupt the process, direct the process or otherwise interfere with the meeting. The Representative is not able to advocate on behalf of the staff member.

(64) Should a Representative attempt to intervene, direct the process or advocate on behalf of the staff, they will be warned that this contravenes the role of a Representative. If the Representative persists, the Representative may be asked to leave the meeting and the meeting may be terminated and rescheduled, with potentially another Representative.

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

(66) A Representative should not have had any involvement in the incident being discussed.



## Part F - Performance Management

(67) 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; and
- g. reasonable disciplinary action.

## Part G - Responsibilities

(68) Staff Members are responsible:

- a. For clearly identifying the issue, giving all available information in support of their Workplace Issue and cooperation with the relevant Workplace Issue process;
- b. Ensuring they are familiar with and understand the process detailed in the Enterprise Agreement; and
- c. To act responsibly and professionally at all times throughout a Workplace Issue process.

(69) Managers are responsible for:

- a. Intervening quickly and acting fairly to resolve Workplace Issues and reinforcing standards, making sure relevant parties are heard;
- b. Treating all Workplace Issues seriously acting responsibly and professionally at all times throughout a Workplace Issue process;
- c. Ensuring they are familiar with and understand the process detailed in the Enterprise Agreement and are able to direct staff to the process in the Enterprise Agreement;
- d. Monitoring and addressing victimisation issues resulting from Workplace Issues;
- e. Promoting the [Code of Conduct](#), University values and cultural qualities, and [Workplace Behaviours Policy](#) within their work area;
- f. Referring a Workplace Issue 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 Workplace Issue 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; and
- h. Seeking advice from Workplace Relations to assist in managing a Workplace Issue effectively.

## Part H - Further Assistance

(70) 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. Representative/Support Person
- d. Union
- e. [Employee Assistance Program \(EAP\)](#). Call 1300 OUR EAP (1300 687 327) to access EAP 24 hours, 7 days per week pager service

## Part I - Legislation

(71) 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 7 - Definitions

(72) For the purpose of this Procedure:

- a. Malicious: is deliberately harmful, spiteful and intending or intended to do harm.
- b. Principles of Natural Justice: refers to the general procedural fairness in the handling of an investigation or process 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 Workplace Issue;
  - v. the complainant not determining the outcome, but may be a party to it;
  - vi. the right to an independent, unbiased decision-maker; and
  - vii. a final decision that is based solely on the relevant evidence.
- c. Representative: is a friend or colleague (but this person will not be a practicing solicitor or barrister) or Union representative which may be from the NTEU.
- d. Staff: of the University are defined according to the terms of the [Enterprise Agreement](#).
- e. Students: refer to all enrolled students (including people applying to the University for admission or scholarship, students on leave of absence, exchange students, past students who were enrolled less than twelve months ago and students awaiting examination of a submitted thesis).
- f. Vexatious: is causing or tending to cause annoyance, frustration or worry to harass.
- g. Workplace Issue: is defined as employment-related which adversely affects the work and/or work environment which a staff member or a group of staff members believes to be unfair, inequitable, discriminatory and/or creates an unsafe work environment.

## Section 8 - Authority and Associated Information

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	8th May 2024
<b>Review Date</b>	8th May 2027
<b>Approval Authority</b>	Vice-Chancellor
<b>Approval Date</b>	8th May 2024
<b>Expiry Date</b>	Not Applicable
<b>Responsible Manager - Policy</b>	Regan Sterry Executive Director, Human Resources
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