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HML*



**DEPARTMENT OF EDUCATION AND TRAINING**

# Code of Conduct Procedures

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# CODE OF CONDUCT

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# CODE OF CONDUCT

## INTRODUCTION

### 1. Abstract

- 1.1 This Code of Conduct clarifies the standards of behaviour that are expected of staff of the Department of Education and Training (DET) in the performance of their duties. It gives guidance in areas where staff need to make personal and ethical decisions.
- 1.2 The Code does this by providing an ethical framework to guide actions, but also by highlighting the existing requirements for staff behaviour so that staff are aware of the standards expected of them.

### 2. Applicability of the Code

- 2.1 The use of "DET" or "Department" in this Code indicates that the material applies to all parts of the Department of Education and Training, including schools, TAFE, AMES, State Training Centres and state office directorates. Where "staff" is used without a qualifier, "DET staff" is implied.
- 2.2 The use of the terms "school" or "TAFE" in this Code indicates that the material applies to only those sectors.
- 2.3 This Code applies to all DET staff. In this context "staff" includes all persons employed by the Department and by TAFE NSW, as well as their fully owned subsidiaries. "Employed" includes staff employed on a permanent, temporary or casual, full time or part time basis, as trainees, or as secondees from other State or Federal agencies.
- 2.4 This Code should also guide the behaviour of contract staff, volunteers, and employees of other organisations with which the Department or TAFE NSW has contracts or agreements. Where the contract or agreement refers to this Code then the arrangement in the contract or agreement applies. Sections 27, 55 and 63 of the Code provide additional guidance for casual or contract staff in recognition of their other interests or employment.
- 2.5 This Code does not apply to staff employed by bodies that are only partially funded by DET (eg Adult and Community Education (ACE) colleges and registered training organisations).
- 2.6 This Code applies to members of the Senior Executive Service (SES). SES staff are also to comply with the current "Code of Conduct and Ethics for Public Sector Executives" (issued by Premier's Department).

### **3. Superseded documents**

- 3.1 This Code replaces:  
Department of School Education Revised Code of Conduct issued  
21 August 1997 97/230 (S.211)  
TAFE NSW Code of Conduct – TAFE Gazette No.07 of 26  
February 1997 (97.07.G1)  
NSW AMES Code of Conduct, December 1998.
- 3.2 The DTEC Code of Conduct, 1995 was replaced by the DSE Code of Conduct in December, 1997.

### **4. Context**

- 4.1 The Department is committed to the highest standards of conduct in public education, training and administration. To meet this commitment, the Department has issued this single Code of Conduct to cover all departmental sectors and to more closely align staff conduct with the organisational values and ethics which underpin the Department's policies and procedures.

### **5. Policy statement**

- 5.1 Much of this Code is derived from legislation and other departmental policies and procedures. The Code of Conduct is a policy of the Department of Education and Training.

### **6. Rights of staff**

- 6.1 Public employment carries with it an obligation to serve the public interest, however staff should not be subject to unnecessary restrictions unrelated to the public interest. Staff have all of the normal rights and obligations of employees under common and statute law.
- 6.2 Staff should comply with a lawful direction given by an authorised officer. Staff however have a right to question any instruction which they think may be unlawful or unethical.

### **7. Responsibility of staff**

- 7.1 All staff have a responsibility to comply with legislation, departmental policy, procedures and this Code, perform their duties effectively and provide impartial and accurate advice.

### **8. Awareness of requirements**

- 8.1 Staff should be aware of the policies, procedures and delegations that are applicable to their actions. Principals and managers should make relevant information available to staff. Staff are required to read and understand policy documents issued to them or circulated to them. Staff

who are uncertain about the scope or content of policies with which they must comply should seek advice from supervisors or specialists in the matter in question and examine the relevant departmental documents.

- 8.2 Staff are advised to be familiar with the legislation under which they are employed as this may specify requirements with which they need to comply.

Teaching Services Act 1980

Education (Ancillary Staff) Act 1987

Technical and Further Education Commission Act 1990

Public Sector Employment Management Act 2002

For example, staff are required to notify the Director General of Education & Training/Managing Director of TAFE NSW if they are charged with or convicted of a serious criminal offence. A serious criminal offence is an indictable offence that is punishable by imprisonment for life or for a term of five years or more.

## **9. Clarification of the Code**

- 9.1 If there is any conflict between this Code and legislation, the provision of the legislation will prevail. If staff are in doubt about the interpretation of the Code then the matter should be discussed with a more senior officer, a staff member who is a specialist in the issue, or the Senior Manager, Serious Misconduct Investigation Team, Employee Performance and Conduct Directorate.

## **10. Breaches of the Code**

- 10.1 Serious breaches of this code by staff will be deemed misconduct and may lead to disciplinary action. Breaches by contractors, volunteers and others may lead to a review of their engagement.

## **11. Review of the Code**

- 11.1 To maintain the currency and value of this Code it will be reviewed and updated as necessary. Staff are invited to submit suggestions to the Senior Manager, Serious Misconduct Investigation Team, Employee Performance and Conduct Directorate.

# **GENERAL PRINCIPLES**

## **12. Responsibility to the government of the day**

- 12.1 Staff are to implement in an impartial manner the policies and decisions of the Government of the day that are relevant to their work. Staff are also to participate in the development and implementation of the departmental objectives and initiatives that flow from those policies. Staff behaviour should align with the values underlying government or departmental policy.



### **13. Serving the public interest**

- 13.1 Staff should serve the public interest and act in a manner which promotes confidence in the integrity of public administration.
- 13.2 The public must be assured that where there is a potential conflict of interest, staff in public employment put the public interest above their own private interests. (See sections 22-27 on conflicts of interest.) Staff should not take advantage of their position to influence other staff in the performance of their duties in order to gain undue or improper advantage for themselves or any person or organisation.
- 13.3 Serving the public interest also means performing duties objectively, making decisions according to established criteria and considering all relevant criteria and only relevant criteria. It involves serving all sections of society according to their need or rights with respect to government policy, and not favouring those sections with which the staff member feels a personal affinity or could gain favour.

### **14. Duty of care to students**

- 14.1 Staff have a duty of care to protect the well being of DET school, TAFE and AMES students and foster their interests. The standard of care that is required (for example, the extent of supervision that should be provided) needs to be commensurate with the maturity and self reliance of the students in question. Risks associated with the activity being undertaken need to be assessed and addressed before the activity is undertaken.
- 14.2 The effective management of identified risks will require closer supervision and increased care for younger and less mature students. Adequate training and instruction of staff are key factors in controlling and managing risks.
- 14.3 Staff should effectively implement departmental policies and programs for child protection and student welfare.

### **15. Involvement of the community and industry**

- 15.1 The Department acknowledges that many individuals, business, community and industry groups have a legitimate interest in education and training services. Staff should provide opportunities for their participation in the development of policies, where appropriate.

### **16. Professional and appropriate behaviour**

- 16.1 The Department acknowledges and welcomes the fact that many staff, as well as being public officials subject to this Code, are professionals who exercise best technical and professional judgement and adhere to

the ethical codes of their profession. Should any conflict arise between this Code and such a professional standard, then the matter should be referred to a supervisor or senior manager for resolution.

- 16.2 The striving for effectiveness, sound judgement and quality of service are the standards sought by and required of staff. Similarly, staff should seek to, and are required to, develop their competence and that of the staff they supervise.
- 16.3 Staff should be aware of and implement the goals and priorities of the Department as communicated to staff, and collaborate in the development of plans, policies and programs for their implementation.
- 16.4 Staff have an obligation in the context of their employment to support and promote public education.
- 16.5 Teaching staff in particular have a responsibility to ensure that students gain the knowledge and skills they require to become effective learners and ultimately effective and responsible citizens by an awareness of and compliance with current DET policies relating to the professional responsibilities of teachers and in particular:
  - devising and supporting effective learning programs and evaluation mechanisms;
  - meeting the individual learning needs of students and assisting each student to maximise his or her learning outcomes;
  - undertaking appropriate ongoing professional development to promote competence in curriculum development, delivery and evaluation, classroom management and teaching skills.
- 16.6 Senior staff should assist their staff in implementing this Code by helping to foster the professionalism of all staff within an atmosphere conducive to the promotion of integrity, appropriate behaviour and mutual respect in the workplace.
- 16.7 It is also acknowledged that staff wish to ensure that the systems and procedures which they use in their work are effective. Staff are encouraged to take responsibility for systems improvement and for acting on the suggestions for improvements which they develop or receive.
- 16.8 Staff are to dress and behave in a manner which demonstrates professionalism, shows respect for others and models appropriate standards for students.
- 16.9 Staff should be aware that unlawful or unprofessional conduct, even in a private capacity, which damages the reputation of the Department, may require disciplinary action by the Department.

## **17. Respect for people and property**

- 17.1 Staff are to treat members of the public, their colleagues and students with respect, fairness and consistency. Staff are to be courteous and sensitive to the needs of others and provide all necessary and appropriate assistance practicable.
- 17.2 Consultative decision making practices should be used. Decisions are to be made and conveyed promptly to those with a right to know. Information provided should be clear to the intended audience, accurate, current and complete.
- 17.3 Staff, irrespective of status or position, are to conduct themselves in a manner which will promote cooperation and harmonious relations among colleagues. A co-operative, collaborative atmosphere conducive to the promotion of integrity in the workplace will assist staff in the implementation of this Code.
- 17.4 Staff are to respect and care for departmental property.

## **18. Fairness and equity**

- 18.1 Decisions involving individuals should be made on the basis of factual information. Decisions should be made in accordance with established procedures, fairly (that is without bias based on personal or other grounds), with honesty and integrity, objectively and in conformity with the principles of procedural fairness (including the right to be heard and the right to an impartial decision). The principle of procedural fairness is also known as natural justice.
- 18.2 All students are to be treated equitably and in accordance with current special needs students and equity programs, guidelines and relevant legislation and policies.
- 18.3 When dealing with other staff or members of the public, staff are to identify themselves and provide information sufficient to enable follow up action.

## **19. Effectiveness, economy and fraudulent misappropriation**

- 19.1 Staff are to ensure that their work is carried out effectively. Staff should keep up to date with advances and changes in their area of responsibility, and seek ways of improving their performance. Managers should ensure that their staff have access to appropriate training in relation to technological and workplace changes.
- 19.2 In using resources of the Department, staff should strive for economy and efficiency. (See sections 56-59 on the use of official facilities and equipment.)

- 19.3 The theft, misuse or fraudulent misappropriation of resources is not tolerated and will be acted upon. Staff are required to apply the systems and controls designed to prevent and detect such behaviour. (See also sections 64-65 on reporting suspected wrongdoing.)

## **20. Signatures and personal references**

- 20.1 Staff should review carefully any document they are asked to sign. Staff should not sign any document which they know is not true and correct.
- 20.2 Staff must only sign their own name and must never permit or encourage anyone to sign a name other than their own.
- 20.3 Staff should only use their own name (eg when sending emails) and should not give the impression that they have the authority of another person without their permission.
- 20.4 Managers/Supervisors must not coerce staff to sign any document.
- 20.5 Staff are not to provide written personal references for any current or former staff member on Departmental letterhead nor use their title and position for this purpose. Staff should refer to current departmental policies relating to the provision of personal references before providing them.

## **ETHICAL DECISION MAKING**

### **21. Guide to ethical decision making**

- 21.1 Staff need to recognise the professional and ethical dimensions of their work and give proper attention to the values which should guide their decisions and actions.
- 21.2 When faced with a difficult question ask yourself:
- Who needs to be consulted in making this decision?
  - Is the decision or conduct lawful?
  - Is the decision or conduct in line with the Department's principles as set out in policy, including this Code of Conduct?
  - What will be the outcome for the staff involved, work colleagues, the Department and its stakeholders?
  - Do these outcomes raise a conflict of interest or lead to private gain at public expense?
  - Can the decision or conduct be justified in terms of the interests of the Department or its clients?
  - Would the action or decision withstand public scrutiny?

21.3 The following sections give guidance with respect to particular issues.

## CONFLICT OF INTEREST

### 22. Note to TAFE staff

22.1 TAFE staff should also refer to the TAFE NSW policy on Ethical Practice and Conflict of Interest in Assessment.

### 23. Definition of conflict of interest

- 23.1 Real or perceived conflicts of interest exist when it is likely that a staff member could be influenced or could be perceived to be influenced by a personal interest when performing their official function. Conflicts of interest may lead to biased decision making, which may constitute corrupt conduct.
- 23.2 Some situations which may give rise to a conflict of interest affecting performance of official duties include:
- financial interests (of the staff member, a friend or relative) that could influence the impartiality of the performance of duties
  - personal beliefs or attitudes not relevant to the situation that influence the impartiality of the advice given
  - party political activities or membership of politically active groups if it impedes the staff member serving the government of the day
  - personal relationships with other staff, applicants for positions, students or business customers
  - dealings with a friend, a relative or colleague who is also a student or parent (eg seeking enrolment in a high demand course or school)
  - representational duties where a staff member who is representing the interests of the Department is also asked to represent the interests of a community group
  - private employment which may conflict with departmental duties
  - approval of expenditure which will benefit yourself, a friend, a relative or an organisation with which you identify.
- 23.3 A person may create a conflict of interest for another person. For example, if a person with a conflict of interest passes the decision making responsibility to a subordinate, then a conflict of interest may be created for the subordinate (i.e. should they try to please the supervisor or make a fair decision).
- 23.4 If one were able to approve a privilege or benefit to oneself (such as leave, allowances, travel, training, private use of resources and private employment) it would create a conflict of interest and so is not allowed.

- 23.5 If a teacher were to coach their own students it could be perceived to be in the financial interests of the teacher to create a situation where the students require, or believe they require, coaching. It also creates an impression that if teachers coach their own students, what teachers do in class is not good enough. Therefore coaching of students over whom the teacher has influence at work should only be approved where there is no alternative sources of coaching and the conflict of interest can be managed.

## **24. Duties of staff with respect to conflict of interest**

- 24.1 Staff are required to:
- avoid conflicts of interest if possible, and avoid creating conflicts for others
  - disclose in writing to their supervisor any perceived or actual conflict of interest as soon as they become aware that there is or may be a potential conflict, and where there is a change of supervisor, to notify that person of the conflict and the means being used to manage it
  - (with their supervisor) resolve or otherwise manage the conflict and document how this was achieved (see section 25)
  - disclose to the convenor of a selection panel and/or other person appointing them to the panel if as a member of that panel, they have a conflict of interest arising from the work of the panel.

## **25. Resolution of conflicts of interest**

- 25.1 To resolve or manage a conflict of interest which occurs or could occur, a range of options are available depending on the significance of the conflict. These include:
- the supervisor recording the details of the conflict and taking no further action in relation to the conflict because the potential for conflict is minimal or can be eliminated by disclosure or effective supervision
  - the supervisor removing the staff member from the particular activity or decision where the conflict arises and documenting this
  - the staff member transferring from the area of work or particular task where the conflict arises without disadvantage
  - the supervisor of the staff member with the conflict checking and endorsing (if appropriate) all departmental action with respect to the matter creating the conflict
  - the supervisor referring the decision to a senior staff member who is expert in the issue and independent of the situation
  - the staff member relinquishing the personal interest
  - the staff member restricting their personal interest so that it does not impinge on the workplace.

## **26. Gifts, benefits and the risk of compromise**

- 26.1 The receipt of gifts and benefits can compromise staff in that they may be perceived to be unable to make unbiased decisions in the future with respect to the person or organisation that was the source of the gift or benefit.
- 26.2 Staff must not solicit or accept for themselves or for another individual, a gift or benefit that is intended to, or is likely to, or could be perceived to cause them to be biased in the course of their duties.
- 26.3 Staff may accept a personal gift of little value (\$50 or less) of a type generally used by the donor for promotional purposes, or moderate acts of hospitality, only if there is no additional cost to the Department.
- 26.4 Gifts of a value greater than \$50 must not become personal property. They should either be politely refused or become the property of the Department and the donor advised accordingly. Where the gift has been accepted, the staff member should refer the gift to their principal or manager for appropriate recording and determination how the gift will be treated. Depending on the nature and value of the gift, it may be appropriate to record the gift in the asset register as a donation or other such record established for that purpose.
- 26.5 Staff sometimes win prizes of monetary value from other organisations in the course of their work. Such prizes are usually the property of the Department. Staff winning prizes should notify their principal or manager who will determine how the prize will be treated. Again, inclusion in the asset register should be considered, depending on the nature of the prize.
- 26.6 Staff who are offered hospitality that is immoderate (\$50 or more) have several options. These include refusing the offer, paying their own way (eg at a restaurant), seeking less lavish hospitality, or if that is not feasible and attendance is in the interests of the Department, attending but notifying their supervisor of the occasion and the risk of being perceived to be compromised.
- 26.7 If a staff member is offered a bribe (i.e. anything given in order to persuade a person to act improperly) they must refuse it, explain why it is not appropriate, and immediately report the matter to a senior line manager. Any attempt to bribe a staff member, or the acceptance of a bribe, is an act of corrupt conduct and must be reported to the Director, Employee Performance and Conduct. In certain circumstances it might also be a crime. (See section 64.4)
- 26.8 All senior executives as well as staff who are making or may make decisions affecting individuals or companies (including staff selection, tender selection or disciplinary processes) or who have access to

sensitive information, should be particularly aware of improper attempts to influence them. Offers of gifts, benefits or unnecessary hospitality from individuals or companies who are bidding for work, who have existing contracts or who are likely to seek new contracts, should be refused with an explanation that acceptance is contrary to this Code and could jeopardise their future dealings with the Department.

- 26.9 Staff should take care not to offer gifts or benefits of more than little nominal value to public officials as this could be perceived as an attempt to improperly influence them.
- 26.10 From time to time commercial organisations offer to departmental staff, gratis or subsidised invitations to attend intrastate, interstate and overseas conferences, seminars and other promotional activities. Such offers would need to be discussed with the recipient's supervisor and the following probity issues addressed:
- What does the commercial organisation hope to achieve by the offer?
  - Would acceptance of the offer imply some actual or perceived obligation on the part of DET towards that organisation?
  - Would attendance be justified if DET had to meet the cost? and
  - Could the invitation be perceived by commercial competitors as providing the inviter with an unfair commercial advantage?
- 26.11 The DET approval delegate will need to decide whether acceptance of the invitation is justified in terms of the public interest to obtain first-hand information about a current or potential supplier's goods and services. If the delegate decides that attendance is justified, it is preferable that the costs be met by the Department. If the expenditure is not justified by the potential benefits of attendance, the fact that someone else is offering to pay will not create the justification.

## **27. Additional advice for casual and part time staff and contractors**

- 27.1 Casual or part time staff and contractors are likely to have other employment. In some situations this could create a conflict of interest. This real or potential conflict should be discussed with the supervisor or person entering into the contract on behalf of DET and steps taken to resolve or manage it. (See also sections 51-55 on private and secondary employment.)
- 27.2 Contractors owe their first allegiance to their own company and its profitability. Therefore they are not to be placed in positions where they would be expected to safeguard DET's interest at the expense of the interests of their company. For example, it would be unreasonable to expect a contractor to undertake an activity which could have a negative impact on another client of their own company.
- 27.3 Contractors cannot be given delegated authority to incur expenses. They can recommend that expenditure be incurred, but only permanent



staff can be delegated authority to approve and authorise the expenditure. This includes all expenditure decisions relating to purchasing, leasing, recruiting and contracting.

## RELATIONSHIPS BETWEEN STAFF AND STUDENTS

### 28. General principle

- 28.1 Staff are expected to always behave in ways that promote the safety, welfare and well-being of students.
- 28.2 Staff need to be aware of and comply with relevant child protection legislation and related DET policies.
- 28.3 DET staff must not have sexual relationships with any school student at any school. It is irrelevant whether the relationship is homosexual or heterosexual, consensual or non consensual or condoned by parents or caregivers. The age of the school student or staff member involved is also irrelevant.
- 28.4 DET staff are reminded of:  
the law prohibiting sexual relations with a person under the age of consent (16 years)  
the law prohibiting sexual relations between a teacher and their student under the age of 18 years  
the law prohibiting child pornography.
- 28.5 DET staff members must not engage in sexual misconduct in relation to any student. Sexual misconduct describes a range of behaviours or a pattern of behaviour aimed at the involvement of children in sexual acts. Some of these behaviours may include:  
Inappropriate conversations of a sexual nature,  
Comments that express a desire to act in a sexual manner,  
Unwarranted and inappropriate touching,  
Sexual exhibitionism,  
Personal correspondence (including electronic communication) with a child or young person in respect of the adult's sexual feelings for a child or young person,  
Deliberate exposure of children and young people to sexual behaviour of others including display of pornography,  
Possession of child pornography in the workplace.

Sexual misconduct can include 'grooming behaviour'.

Grooming behaviour is a process whereby sexual offenders 'condition' and build rapport with children or young persons in order to reduce their resistance to, and increase compliance with, sexual abuse. The grooming process can include such aspects as:

Misleading children or young persons by pretending to them they are trustworthy – spending inappropriate special time with the child, inappropriately giving gifts, showing special favours to them but not with other children or young people, allowing the children or young persons to overstep the rules etc

Testing of boundaries – undressing in front of children or young persons, allowing the children or young persons to sit on the lap, talking about sex, 'accidental' touching of genitals etc.

Such behaviours may not be indicative of grooming if occurring in isolation.

- 28.6 Where a personal relationship (such as family relationship or close friendship) exists between a staff member and a student attending the staff member's place of work, the staff member must report the potential conflict of interest to their supervisor and it must be fully managed (see section 25).
- 28.7 Wherever practical, staff should avoid teaching or being involved in educational decisions relating to family members or close personal friends. Where it is not practical to avoid such situations completely, significant decisions relating to the results awarded to the student are to be made by another staff member and/or endorsed by a supervisor.
- 28.8 Staff should develop professional relationships with students that cannot be misinterpreted as a personal, as opposed to a professional, interest in a student.
- 28.9 Staff are required to conduct any already established personal relationships with students in a manner that does not compromise the student, themselves or the Department.

## **29. Physical contact with students**

- 29.1 Staff must not engage in conduct that could assault a child, young person or student. Assault generally involves either hostile or reckless application of force or the threat of some force, regardless of whether harm to the child, young person or student has been established.
- 29.2 Physical contact which is an inevitable part of everyday life does not amount to assault. For example, there may be occasions where it is appropriate to intervene in order to protect students. Reasonable action, in these circumstances would not be deemed to be assault.

## **30. Neglect**

- 30.1 Staff must not neglect child (ren) or young person(s), in their care. Neglect occurs when a child or young person is harmed by the failure of a person who has care responsibilities towards a child, to provide basic physical and emotional necessities of life, including failure of such a

person to provide or arrange for the provision of adequate and proper food, nursing, clothing, medical attention or lodging for a child or young person in that person's care.

### **31. Psychological harm of students**

- 31.1 Staff must not engage in unreasonable conduct that could cause psychological harm to a child, young person or student. Examples include:
- Targeted and sustained criticism, belittling or teasing
  - Excessive or unreasonable demands
  - Persistent hostility and severe verbal abuse, rejection and scapegoating
  - Using inappropriate locations or social isolation as punishment.

## **DRUGS, ALCOHOL AND TOBACCO**

### **32. General**

- 32.1 Permanent or temporary staff experiencing difficulties in relation to alcohol, tobacco or other drugs are encouraged to access the Employee Assistance Program, staff welfare officers or other personnel staff for assistance.

### **33. Drugs**

- 33.1 Staff must not give or provide students or other staff with drugs that are illegal to possess or distribute nor encourage or condone the use of such drugs.
- 33.2 Staff must not be under the influence of or in possession of drugs that are illegal to possess or distribute while at work. In the context of this Code, "under the influence" is defined as an obvious state of disturbance to one's physical and/or mental faculties that impairs their performance.
- 33.3 Staff may administer or supervise the administration of prescribed medications to students in compliance with current departmental guidelines, *Administration of Prescribed Medications and Health Care Procedures in Schools*.
- 33.4 Staff must not supply or administer prescription drugs to students except in accordance with an appropriate prescription and in compliance with departmental guidelines.

### **34. Alcohol**

- 34.1 Staff must not give or provide school students or any student under the age of 18 years with alcohol. Staff must not encourage or condone the

use of alcohol by students during educational activities unless prescribed by the curriculum (such as TAFE hospitality courses).

- 34.2 Staff must not consume alcohol in any circumstances where they are responsible for students. In the context of this Code, a member of staff is 'on duty' whenever the member of staff has a responsibility to supervise students. This could include outside school hours supervision of students on a field trip or excursion.
- 34.3 Being on duty while under the influence of alcohol or drugs that are illegal to possess or distribute could create safety and other risks and would be grounds for disciplinary action. See section 33.2 for the definition of 'under the influence'.
- 34.4 Alcohol must not be consumed on or brought to school premises during school hours. In the case of cross-sectoral sites (eg joint school/TAFE sites), a decision regarding the extent of "school premises" will need to be made in the local context.
- 34.5 Consumption of alcohol is not permitted at any school function (including those conducted outside of school premises) at any time when school students, from any school, are present.
- 34.6 Guidelines on *Community Use of School Facilities* contain information on the consumption of alcohol on school premises by community groups.

### **35. Tobacco**

- 35.1 Staff must not give or provide school students or students under the age of 18 years with tobacco or tobacco products, or encourage the use of tobacco by such students.
- 35.2 Staff must not smoke or permit smoking in any DET building, enclosed area or on any school grounds. In the case of cross-sectoral sites, a decision regarding the extent of "school grounds" will need to be made in the local context (Refer *Smoke Free Environment Act 2000*). Care should also be taken to ensure that tobacco smoke does not enter DET buildings.

## **DISCRIMINATION, HARASSMENT AND WORKPLACE SAFETY**

### **36. Prevention of unlawful discrimination and harassment**

- 36.1 Supervisors must take appropriate steps to ensure that the workplace is free from all forms of harassment and unlawful discrimination. They

should ensure that staff are informed of the principles of equal opportunity.

- 36.2 Staff should also take steps to prevent harassment or unlawful discrimination of students or visitors on departmental premises or during educational activities. This includes harassment or unlawful discrimination by students.
- 36.3 Complaints about workplace harassment and discrimination are to be dealt with in accordance with DET policy *Responding to Suggestions, Complaints and Allegations* (Refer section 66).

### **37. Discrimination and harassment**

- 37.1 Staff must not harass or discriminate against any person on the grounds of race, sex, marital status, disability, homosexuality, age, transgender or carer's responsibilities. Such harassment or discrimination may constitute an offence under the *Anti-Discrimination Act 1977*. In addition, staff must not harass or discriminate on the grounds of political or religious conviction.

### **38. Workplace safety**

- 38.1 The Department, as an employer, has an obligation under the *Occupational Health and Safety Act 2000* to provide a safe and healthy working environment. Staff have an obligation to take steps to protect their own health and safety and that of their colleagues, students and visitors.
- 38.2 Staff must observe, and supervisors must ensure that staff observe risk management, health, safety, security and personal protective equipment procedures and requirements. Staff must identify and report hazards promptly and supervisors must ensure risks are eliminated or controlled.

## INFORMATION PROTECTION AND PUBLIC COMMENT

### 39. Information normally provided to the public

- 39.1 Staff, especially principals, directors and managers, need to maintain open communications with their relevant communities. Successful management requires that communities are kept fully informed of matters relating to the role, function and operations of the Department.
- 39.2 Within their area of responsibility, staff should be aware of the information published by the Department or normally made available to members of the public on request. Staff may provide such information on request, but if unsure, must refer the request to a more senior or specialist officer.
- 39.3 The Department has procedures for dealing with the media and for the release of information under Freedom of Information legislation. If staff are unsure of the procedures they should refer to those policies or obtain specialist advice.

### 40. Personal information

- 40.1 Staff need to be aware of and comply with the *Privacy and Personal Information Protection Act 1998* and the *DET Privacy Code of Practice*. Particular care must be taken with the collection, storage, use and disclosure of personal information in order to protect individuals' privacy. In general, staff must not use or disclose personal information for a purpose other than that for which it was collected, unless consent for other uses or disclosure is obtained from the person to whom the information relates.
- 40.2 Personal information collected or held by staff of the Department must be held securely to avoid loss; unauthorised access, use, modification or disclosure; and all other misuse.
- 40.3 The Privacy Act contains criminal sanctions for the unauthorised use and disclosure of personal information by staff.

### 41. Other information

- 41.1 Staff must maintain the security of all other official information and documents which are not published or normally made available to the public.
- 41.2 Staff may only disclose information not normally provided to the public:
  - if it is required as part of their duties
  - proper authority has been given to them to do so
  - when required, or authorised, to do so by law, or
  - when called to give evidence in court.

- 41.3 In these cases staff should confine their comments to factual information unless required (eg by a court or parliamentary committee) to provide an opinion.
- 41.4 Staff must not make private use of official information. Misuse of official information, whether or not for monetary gain, may be corrupt conduct and subject to disciplinary action. Approval may be given however for staff to make use of official documents in defence of defamation and associated legal actions.

## **42. Records management**

- 42.1 Staff need to be aware of and comply with the *State Records Act 1998* and the DET records management policy.
- 42.2 All staff have a responsibility to create and maintain full and accurate records of their activities, decisions and other business transactions, to capture records into official records systems, and not to destroy records without appropriate authority. Supervisors have a responsibility to ensure that the staff reporting to them comply with their records management obligations.

## **43. Information security**

- 43.1 Staff are to ensure that information in any form (eg printed or electronic) cannot be accessed by unauthorised persons and that sensitive information is only discussed with persons (inside or outside of the Department) who are authorised to have access to it.
- 43.2 Managers and principals are responsible for seeing that premises are secure, and that suitable arrangements are in place to maintain security of confidential and sensitive documents, including transferring these by hand.

## **44. Public comment**

- 44.1 "Public comment" includes public speaking engagements, comments on radio or television, to journalists or reporters, in letters to newspapers, in books, journals or notices, on Internet sites or broadcast by electronic means, or in any other circumstance where it could be expected that the comments will be spread to the community at large.
- 44.2 In the course of their official duties some senior staff will be called on to make public comment. When speaking in their official capacity, these staff should be aware of the current DET Media Policy – *Working with the Media*. They should wherever possible, make comment which is positive and supportive of their colleagues and staff, and enhances the image of public education.

- 44.3 Staff, as parents of students and members of the community, have the right to make public comment and enter into public debate on political and social issues. They must, however, observe the restrictions on the release of official information (see section 40 and 41) and must make it clear that their comments are made in a private capacity and do not represent the official view of the Department.

#### **45. Union delegates and office holders**

- 45.1 A staff member who is an elected or nominated spokesperson for a professional association or a union is entitled to make public comments in relation to education and training matters in so far as it is clear that those comments represent the association or union views, and not necessarily those of the Department. Staff making such statements should clearly acknowledge the capacity in which they are expressing their views.

## **PARTICIPATION IN EXTERNAL ORGANISATIONS**

#### **46. General principle**

- 46.1 Staff have a right to participate in political, religious or community organisations provided any conflict of interest that arises is adequately recognised and managed. (See sections 22-27 on conflicts of interest.)

#### **47. Political participation**

- 47.1 Staff participating in party political activities must ensure that in the context of their employment they fulfil their primary duty as a public employee of serving the government of the day in an impartial and objective manner.

#### **48. Parliamentary candidates**

- 48.1 Special arrangements apply to public employees who are contesting State or Federal elections. Staff nominating as parliamentary candidates at Federal elections must comply with the provisions of the *Public Service Commonwealth Elections Act 1943* and resign from their position at the time of their nomination. Staff contesting State elections must comply with section 102 of the *Public Sector Employment and Management Act 2002*, section 13B of the *Constitution Act 1902* and section 98 of the *Teaching Services Act 1980*, as applicable.
- 48.2 When a DET staff member is standing for election to State Parliament, he or she is not required to resign until declared elected. Such staff should however, consider appropriate leave arrangements to cover the election period.



- 48.3 The previous requirements do not apply to staff who stand for local government election.

#### **49. Organisations funded by DET**

- 49.1 Where a DET staff member is also a member of an external organisation which is funded by or might seek funding from DET the following conditions apply:
- the staff member must not disclose any official DET information to the members of the external organisation which might provide or be seen to provide an unfair advantage to that organisation, and if they have such information the staff member is advised to remove themselves from the application process
  - the staff member must not be a signatory to an application for funds or agreement between DET and the other organisation (on behalf of either party)
  - the staff member must not have a role in the allocation or processing of funds for which the external organisation has applied
- the conflict of interest must be disclosed and managed.

#### **50. Voluntary and professional associations**

- 50.1 Staff are free to fully participate as volunteers in community organisations, charities and in professional associations providing they observe the requirements of the Code (see sections 22-27 on conflicts of interest, and 56-59 on use of official resources).

## **PRIVATE AND SECONDARY EMPLOYMENT**

#### **51. Note re new policy**

- 51.1 The new DET policy *Private and Secondary Employment Policy* has been issued. It replaces the previous TAFE NSW policy on Private Employment and should be consulted in conjunction with this Code.

#### **52. Definition of private and secondary employment**

- 52.1 Private paid employment (also known as "outside employment") includes:
- any employment for an employer other than DET, even when on leave
  - self-employment
  - the private practice of any profession, occupation or trade
  - engaging in or undertaking any commercial business, whether as principal, agent, partner or employee
  - provision of consultancy services
  - accepting or holding office, other than in DET, with any government of a state, the Commonwealth or any local government

- participating as a member of an examining authority or undertaking private contract marking where fees are paid to such examiners except for HSC marking and School Certificate marking
- writing or editing of books, articles and other published documents where the work relates to the staff member's duties or contains specialist knowledge or information obtained in the course of such duties
- lecturing, teaching and tutoring in universities, recognised professional associations and other recognised educational bodies, apart from DET
- commercial activity associated with owning or participating in the ownership of a primary producing property where the commercial activity is related to the staff member's duties
- any position with a corporation, company or firm, and
- furthering the aims, objectives or interests of any of the above for actual or prospective gain.

52.2 Secondary employment means any paid work or position within DET which is in addition to a staff member's principal full time employment in DET, such as:

- undertaking commercial or contract work with TAFE Global or in the case of TAFE Institute staff, work with another TAFE Institute
- entering into a contract with DET for work such as curriculum or educational resource development, contract marking (except HSC marking, Basic Skills Test marking or marking of other DET assessment activities) or educational research, and
- part time (casual) teaching in a TAFE NSW Institute, including OTEN, or casual teaching with AMES, National Art School, Saturday School of Community Languages, or schools.

52.3 All staff (except those categories of staff excluded by the policy) seeking to engage in private or secondary employment must obtain written approval for such employment in accordance with the policy.

52.4 Approvals can only be given for periods of up to 12 months. Staff who seek to renew an existing approval for private or secondary employment must do so in writing at least four weeks prior to the anniversary date or expiration date ( whichever is the sooner) of the approval.

52.5 Whilst unpaid work does not require approval, if it creates a perceived conflict of interest then the procedures set out in sections 22-27 on conflict of interest apply. Restrictions on use of official resources also apply (see sections 56-59).

### **53. Conditions of private and secondary employment**

53.1 Staff engagement in private and secondary employment can create both advantages and problems. The advantages include the experience and expertise gained or maintained by the staff member and the benefit

to the community. The problems include the potential for conflict of interest, the risk of release of confidential information, the misuse of the employer's resources (including time, staff, students, intellectual property, equipment and communication devices), neglect of official duties, and bias in the performance of duties.

53.2 Consequently the Department is willing to approve private and secondary employment so long as the following conditions are met. These are:

- activity is not in competition with DET
- work will not damage the reputation of DET
- the staff member's services to DET take precedence during contracted working hours
- work will not create a conflict of interest
- where a conflict of interest arises during the private employment it must be referred to the delegate immediately, and if it cannot be managed then approval for private employment should be withdrawn
- no departmental time, staff, students, intellectual property (see sections 56-59), facilities, or equipment are to be used in connection with private employment
- the private or secondary employment must not interfere with the proper and efficient performance of usual duties
- the staff member will fully comply with DET's copyright guidelines
- staff members must not use their official positions for personal advantage in pursuit of private income

#### **54. Private and secondary employment records**

54.1 The delegate must maintain a record of all applications for private and secondary employment and their outcome and meet the monitoring, evaluation and reporting requirements of the policy.

54.2 The completed original application form will be kept on the staff member's personal file for secure record keeping. The applicant should also retain a copy of the written approval for inspection when required.

#### **55. Additional advice for casual, part time staff and contractors**

55.1 Casual staff, contractors and part time staff are not required to gain approval for other employment provided that:

- the work is undertaken during the period that the person is not required to discharge duties for DET, and
- that the discharge of their duties for DET is not adversely affected.

55.2 The supervisor or signatory is then required to review the continued engagement of the casual, part time staff member or contractor or review the continuation of the private or secondary employment.

- 55.3 Casual or part time staff and contractors must comply with the other requirements of this Code with respect to private and secondary employment.

## **USE OF OFFICIAL RESOURCES**

### **56. Note to TAFE staff**

- 56.1 TAFE staff should also refer to TAFE NSW policy on Use of Equipment for additional information.

### **57. General principles**

- 57.1 Staff are to be efficient and economical in the use and management of public resources. Staff must not create a risk or liability for the Department by their use of facilities or equipment (eg by breaching software copyright).

### **58. Private use**

- 58.1 Official facilities and equipment may only be used for private purposes when approval has been given by a principal or line manager, or in the case of TAFE equipment which has a purchase price of less than \$500, a TAFE section head. Self approval is not permitted. Where the private use involves the removal of equipment from the workplace, a written record must be kept of the terms of the approval in a register at the workplace.
- 58.2 Approval should be granted only where private use would not disrupt official business, the equipment is not at risk of damage, loss or deterioration and the user meets the cost of consumables.
- 58.3 Stationery, letterhead and official logos must not be used for anything other than official business. Staff should not seek to make private use of the services of other staff whilst those staff are on duty. Staff who are asked to do jobs that are not work related in work time should refuse.
- 58.4 DET facilities and equipment must not be used for private employment or for private financial gain by staff (except where staff have been contracted to supply services to the Department in which case the use of departmental facilities should be clarified in the contract).
- 58.5 Where a DET software licence agreement permits staff to use software on a home computer, it must not be used in connection with private employment or commercial use.

- 58.6 Staff who are volunteers with community organisations may apply on behalf of the organisation to use the Department's facilities and equipment. This may be approved so long as there is no significant cost to the Department and no disruption to departmental services.
- 58.7 While the Department carries its own insurance, staff who borrow departmental property must minimise the risk of loss or damage. Items borrowed without approval may not be covered by insurance.

## **59. Use of communication devices**

- 59.1 Staff need to be aware of and comply with the current DET Policy Statement – *Use by Staff of Employer Communication Devices*.
- 59.2 Limited private use of employer communication devices (eg computers, telephones, fax machines, e-mail, Internet, pagers but not mobile phones – see below) by the staff member is approved, provided the use is infrequent, brief and involves minimal cost, and does not interfere with the performance of work. Such use must not involve activities that might be questionable, controversial or offensive. This includes:
- gambling
  - accessing chat lines not associated with work
  - transmitting inappropriate jokes
  - accessing Web sites containing pornographic material or images of nudity or sending such material by e-mail
  - the sending of frivolous programs or mail
  - excessive use of the Internet
  - unauthorised use of the Department's e-mail distribution lists
  - down loading or transmitting large files (greater than 2 Mb) not associated with work
  - collecting personal information not relevant to the functions of the Department.
- 59.3 Staff receiving inappropriate material should notify the sender that the material is unacceptable to the Department and that they do not wish to receive it. In serious cases they should also report the incident to their supervisor or line manager.
- 59.4 These standards apply whenever employer owned or leased facilities or communication lines are used, even if accessed from home or other non-departmental locations, and even if using a private account.
- 59.5 Where a member of staff makes regular, costly, or extended use of an employer communication device they should reimburse the Department for the cost. Such use must be kept to a minimum during working hours.
- 59.6 In the case of mobile phones, it is the responsibility of the staff member to account for such personal usage in certifying the accounts, and paying for all personal usage.

- 59.7 Employer communication devices should not be used for the sending of non-business related written material to any political organisation. Staff must not use employer communication devices for any private income generating purposes.

## **60. Intellectual property**

- 60.1 DET controls and manages all copyright created by its staff while under the direction and control of DET.
- 60.2 Where DET has requested certain material to be prepared then copyright in that material will belong to DET.
- 60.3 Where staff develop material in their own time or during working hours, for their employment with DET, then copyright in that material will belong to DET.
- 60.4 Staff should not use DET copyright material for private purposes unless permission is granted for the use of DET copyright for such purposes. The permission should be sought from the Directorate/Unit which created the copyright material.

## **POST SEPARATION EMPLOYMENT**

### **61. Prior to separation**

- 61.1 Staff must not use their position to unfairly improve their prospects of future employment. They should not allow their work to be improperly influenced by plans for, or offers of, employment outside the Department. If they do, there is a conflict of interest and the integrity of the employee and the Department is at risk.

### **62. After separation**

- 62.1 All staff must be careful in their dealings with former employees of the Department and make sure that they do not give them, or appear to give them, favourable treatment or access to privileged information.
- 62.2 All staff are encouraged to report to their supervisor or line manager all non-routine contact by their former colleagues or staff where attempted influence or lobbying is involved.

### **63. Additional advice for casual staff and contractors**

- 63.1 This is clearly an area of high risk for casuals and contractors. Therefore these staff are advised to take particular care in this area as proven breaches could result in reduced likelihood of future engagement. Supervisors of casual staff and contractors should take care to explain requirements, seek confidentiality and ensure that a contractor's pecuniary interests are declared.

## **REPORTING SUSPECTED WRONGDOING**

### **64. Reporting suspected wrongdoing**

- 64.1 Staff should report any suspected risk of harm to children or young persons to the relevant principal or Executive Officer (i.e. officer in charge of the establishment) who must report the matter to the Department of Community Services (DoCS).
- 64.2 When a member of staff has concerns about suspected risk of harm to children or young persons relating to the actions of another member of staff, they should report the matter to the Employee Performance and Conduct Directorate, and if appropriate in terms of policy *Handling Allegations against Department of Education and Training Employees in the Area of Child Protection*, also report the matter in accordance with section 64.1
- 64.3 All persons are required by law to report serious crimes (punishable by five or more years gaol) to the police.
- 64.4 Attempts by students or other members of the public to bribe or otherwise corrupt a staff member must be refused and reported immediately to a senior line manager and the Director, Employee Performance and Conduct. (See section 26.7).
- 64.5 Staff are encouraged to report other forms of corrupt conduct, maladministration or serious and substantial waste. A separate policy exists on the *Protected Disclosures - Internal Reporting* which explains how staff can report these concerns in such a way as to obtain the protection of the *Protected Disclosures Act*.
- 64.6 Staff who receive a report of suspected wrongdoing must follow the procedures contained in *Responding to Suggestions, Complaints and Allegations*.

## **65. Reprisals against staff who lodge complaints**

- 65.1 If staff are aware that a disclosure of suspected misconduct has been made it is important that they do not take or appear to take detrimental action against the complainant in reprisal for making the disclosure. Such reprisals can attract severe penalties including imprisonment. Refer to the policy on the *Internal Reporting of Protected Disclosures* for more information.

## **SUGGESTION, COMPLAINTS AND ALLEGATIONS**

### **66. Workplace grievances**

- 66.1 DET policy *Responding to Suggestions, Complaints and Allegations* provides a framework for addressing concerns, improving service and preventing further problems.
- 66.2 Staff who wish to suggest procedural changes, lodge a workplace grievance and make allegations of misconduct or criminal conduct may do so in accordance with the policy.

## **FURTHER ENQUIRIES**

### **67. Further enquiries**

- 67.1 For further enquiries, contact your line manager, a specialist in your school, school education area, region, institute or the relevant state office directorate, or the Senior Manager, Serious Misconduct Investigation Team, Employee Performance and Conduct Directorate on 02 9244 5203.



1/12 Public hearing additional doc  
tabled J. Thorpe  
HUT

NSW Department of Education and Training  
**Complaints Handling Policy Guidelines**

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## Introduction

These guidelines provide information for handling complaints including how to make a complaint, how to deal with a complaint and how to support persons involved.

**In the case of all complaints assessed as less serious, unless the complaint falls into the area of Identifying Special Cases, informal resolution should be attempted in the first instance.**

Key considerations are:

- What can a complaint be about?
- Who can make a complaint?
- How can a complaint be made?
- Who can receive a complaint?
- What should be done when a complaint is received?
- When is it necessary to apply these guidelines?
- As an employee, what if a complaint is made against me?

## What can a complaint be about?

A complaint can be about:

- any aspect of the service provided, or not provided, in any Department of Education and Training site
- the behaviour or decisions of staff, or
- practices, policies or procedures.

## Who can make a complaint?

Any person can make a complaint, including a student, parent or caregiver, a community member who uses the services of the Department, any employee, contractor or volunteer in a location where Department services are provided, including TAFE NSW.

The Guidelines do not impinge on the right of a union to lodge a dispute notification or raise an issue directly with the Department.

## How can a complaint be made?

Ideally, most complaints should be resolved informally with the relevant employee. However, should you feel that you must raise a concern formally, see Making a Complaint which includes an optional Complaint Form. There is a complaints brochure, which will be available to you.

Managers need to advise the parties involved about these guidelines and provide information on how to access the guidelines.

School principals should include information about making a complaint in at least one school newsletter each year. See the sample advice for newsletter.

## Who can receive a complaint?

Any Department employee, including those assigned to work in TAFE NSW, can receive a complaint. In general, the complaint should be made where the problem occurred (e.g. the school or college) unless there are concerns about the local principal, manager or supervisor, in which case the complaint should be made to the next supervisory level.

It is appropriate, when receiving a complaint, to give consideration to Managing Complainants.

## **What should be done when a complaint is received?**

An employee who receives a complaint will need to determine, applying these guidelines, whether it is a matter that can be resolved informally or whether it should be referred to a supervisor, principal or manager.

Minor complaints should be resolved informally if possible and without delay.

Any matter which cannot be resolved informally must be referred to a supervisor, principal or manager. Assistance in making this decision is available at the [Quick Assessment Guide](#) or in [Assessing complaints](#).

## **When is it necessary to apply these Guidelines?**

It will often be necessary to use these Guidelines only for guidance in making or receiving a complaint or establishing how to deal with a complaint.

There are certain matters which are covered by particular policies or by referral within or outside the Department. The Guidelines provide guidance with this at [Identifying Special Cases](#).

Minor grievances and disputes should be resolved promptly and without using the formal procedures. If possible, [informal resolution](#) should be attempted in the first instance in all matters assessed as less serious.

The sections of the Guidelines which detail the formal procedures available will be needed only in those situations where it is not appropriate or not possible to resolve a matter informally. Guidance is provided in determining whether or not the matter reaches the threshold of [seriousness](#) that requires a formal approach. The "delegate", the officer who can deal with matters needing a formal approach, is identified at [Officers delegated to approve or conduct formal action](#).

If in doubt, an employee should seek advice from a supervisor.

The Guidelines also give consideration to [Providing Support](#) when dealing with a complaint.

## **As an employee, what if a complaint is made against me?**

These Guidelines are used to decide how a complaint will be handled.

The complaint must be assessed to determine whether it is a special case, which must be referred to someone else or dealt with under another policy. These matters must be referred as indicated at [Identifying Special Cases](#). The links provided in Identifying Special Cases will allow you to access the relevant documentation. If such a complaint is made against you, the unit or agency to which the complaint is referred will apply their policies and procedures. You will be given the opportunity to respond to the complaint.

If the matter is not covered by Identifying Special Cases, the complaint will be considered by your supervisor, principal or manager.

An assessment will be made as to whether or not the matter reaches the threshold of seriousness that requires a formal approach. See [Assessing seriousness](#). All cases considered to be less serious should be dealt with by [informal resolution](#), if possible, and you will be given the chance for input regarding the suitability of this approach.

If a matter is considered less serious but cannot be dealt with informally, the formal [Negotiation Procedure](#) will apply. You will be given the opportunity to state your case.

If a matter is considered serious, the formal [Investigation Procedure](#) will apply. Again, you will be given the opportunity to respond to the complaint.

Whichever procedure is used, you are able to seek advice, including from a union, and you are able to have a support person present in any meeting that might take place.

If you feel that you need support while the matter is being dealt with there is a range of support available. You could raise the issue with the person handling the complaint to discuss sources of support available to you. Also see [Providing Support](#).

## **Making a Complaint**

Any person can make a complaint.

**Ideally, most complaints should be resolved informally with the relevant employee.**

**If this is not possible, a formal complaint can be made.**

Key considerations are:

- What can a complaint be about?
- How can I make a complaint?
- Who can receive my complaint?
- Can I get assistance in making my complaint?
- How will my complaint be handled?
- What about confidentiality?
- Could my complaint be a Protected Disclosure?
- What if I need support during the process?
- What if I am not satisfied with the outcome?

### **What can a complaint be about?**

A complaint can be about:

- any aspect of the service provided, or not provided, in any Department of Education and Training site
- the behaviour or decisions of staff, or
- practices, policies or procedures.

### **How can I make a complaint?**

A complaint can be made orally or in writing. Oral complaints that cannot be resolved informally may need to be put in writing and help will be provided if needed by the person receiving the complaint. You can have a support person present when making the complaint and at any related meeting.

It is preferable but not essential that the complainant's name and signature are included in the complaint. You should be aware that, in some instances, a complaint can not proceed if it is anonymous or if you request that your identity be withheld.

A complaint can be made in any form. However there is a [Complaint Form](#) available for your convenience. There are no associated fees.

### **Who can receive my complaint?**

If possible, a concern should be resolved informally with the relevant employee. Should you feel that this approach has not resolved the issue or would be inappropriate, in general, the complaint should be made where the problem occurred (e.g. the office, school or college). If you have concerns about the local supervisor, the complaint should be made to the next supervisory level.

A complaint about a person can be made to the person's supervisor. This applies also in the case of staff complaints about other staff. Note [Could My Complaint Be a Protected Disclosure?](#) below.

Where the complaint is about a principal or manager, the complaint should be made to their supervisor.

Complaints about a policy, procedure or guidelines can be made to the employee responsible for that policy, procedure or set of guidelines, where possible, or with a principal or manager.

If you have a complaint about a Departmental policy, the contact person is identified in the internet web page relating to that policy. Click [here](#) to go to the Department's policies page.

In certain cases, you may feel a need to make contact with the section of the Department or outside agency that deals with particular kinds of complaints. Such instances could be:

- **Complaints of a child protection nature** can be referred to the Department of Community Services (DoCS). Refer to the document Policy for Protecting Children and Young People 2001.

If your concern relates to the behaviour or actions of an employee, contractor or volunteer, you can contact the Director, Employee Performance and Conduct Directorate (EPAC), or a Duty Investigator, on telephone (02) 9266 8070. Refer to the document Responding to Allegations against Employees in the Area of Child Protection 2004.

- **Alleged Corrupt Conduct**  
Allegations of corrupt conduct, maladministration or serious and substantial waste must be reported to the Senior Manager, Serious Misconduct Investigation Team, on telephone (02) 9244 5203, in accordance with Corruption Prevention Policy 2004, whether or not they are treated as a Protected Disclosure. It is also possible to lodge such a concern directly to the ICAC.
- **Discrimination**  
Complaints about discrimination should be made to the responsible supervisor. They can also be made to the Anti-Racism Contact Officer in schools or the Anti-Harassment Contact Officers in TAFE who can take them to the principal or manager. Where the person being complained of is a principal or manager then the complaint would be made to their supervisor. Such concerns can also be referred to the Anti-Discrimination Board of NSW.

### **Can I get assistance in making my complaint?**

Help will be provided, if needed, by the person receiving the complaint.

In addition, the following arrangements are in place to ensure that all persons who wish to make a complaint are able to do so:

- All Technical and Further Education (TAFE) Institutes have a customer service mechanism that allows complaints to be recorded and forwarded to the appropriate officer for action. TAFE teacher consultants for students with deafness or a hearing impairment have access to telephone-typewriters to communicate with students.
- Adult Migrant Education Service (AMES) centres have staff who can assist in the preparation of a complaint.
- In schools, it is the responsibility of the principal to assist school community members with special needs to make complaints about school or schooling. This may involve consultation with regional office personnel.
- **Support for Aboriginal and Torres Strait Islanders**  
Aboriginal and Torres Strait Islanders will be offered the opportunity to have a support person and, if needed, an interpreter when making a complaint.
- **Support for People who do not speak English well**  
Interpreting assistance for non-English speakers is available through on-site interpreters or the telephone interpreter service (interpreting services). Alternatively, if the site has an employee who receives the Community Language Allowance, this employee may be able to provide language assistance and act as a point of referral. People from diverse cultural and linguistic backgrounds should also be provided with the opportunity of having a support person.
- **Support for the Hearing Impaired**  
Interpreting services are provided for hearing impaired parents and carers who use sign language.

- **Support for Children and Young People**

Appropriate adult support will be offered to children and young people who have submitted complaints under this policy. The support person may be a parent or carer, or another adult with whom the child or young person feels comfortable.

### **How will my complaint be handled?**

When the complaint is made, consideration will be given to its nature and seriousness.

Some complaints must be referred to certain parts of the Department or to outside agencies. If this is the case, the matter will be referred and you will be advised. A full list of these referrals can be found at "Identifying Special Cases" in the Complaints Handling Policy Guidelines.

If the matter is not one of these, its seriousness will be considered.

**For all complaints assessed as less serious, informal resolution should be attempted in the first instance.**

If a complaint is considered to be serious or if informal resolution is not considered appropriate, there are three formal procedures available, depending on the nature of the complaint. These are explained in the Complaints Handling Policy Guidelines.

### **What about confidentiality?**

All parties to a complaint are expected to treat the matter confidentially.

This requires that all parties must ensure that information is restricted to those who genuinely need to know. Furthermore, those people should only be told as much as they need to know and no more. For example, some people may need to know of the issue so that they can provide advice, but not of the identities of the persons involved.

An employee making a protected disclosure has strong confidentiality rights under the Protected Disclosures Act 1994 No 92. However, even these have limitations and confidentiality can never be guaranteed, as there are situations (e.g. during disciplinary or court procedures) where procedural fairness requires that the respondent must be supplied with information that identifies the person who has given evidence against them.

### **Could my complaint be a Protected Disclosure?**

The Protected Disclosures Act 1994 No 92 encourages and assists public officials to disclose, in the public interest, corrupt conduct, maladministration and serious and substantial waste in the public sector.

To be a protected disclosure, a complaint or allegation needs to meet a number of criteria. The main criteria are that it must be:

- made by a public official, that is, employee of a state government department or agency, employee of a local government authority or a person having a public official function or acting in a public official capacity for the state; and
- made about a public official; and
- about corrupt conduct, maladministration or serious and substantial waste; and
- made to a person in a position identified in the Act, including an ICAC officer, a member of Parliament or to a Nominated Disclosure Officer of the department.

If this could apply to you, refer to the Department of Education and Training (DET) policy Protected Disclosures – Internal Reporting.

It must then be referred to the Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203, unless it is about the protection of children and young people, in which case it should be referred to the Director, Employee Performance and Conduct Directorate (EPAC) or a Duty Investigator, on (02) 9266 8070. These officers will advise on investigation and arrange for the proper notifications.

The Department may also receive protected disclosures from public officials who are not employed by the Department. In these cases, the provisions of Section 14 (2)(b) of the Protected Disclosures Act 1994 No 92 will apply. These complaints should also be referred as indicated above.

### **What if I need support during the process?**

It is understood that people may be affected by a complaint and the process related to it.

If you need support, you could approach the person dealing with the matter for a recommendation as to who might be available to support you or you might consider seeking support from the following bodies, as appropriate:

- Employee Assistance Program (EAP). Click here for a [fact sheet](#).
- Complainant and Witness Support Program (on (02) 9561 8761)
- Regional Staff Support Officers
- Regional OHS Liaison Managers
- TAFE and school counselors
- Human Resources Directorate (on (02) 9561 8523)
- Employee Performance and Conduct Directorate (on (02) 9266 8070)
- Student Welfare (on (02) 266 8936)
- Union officers (e.g. Teachers Federation on (02) 9217 2100 or 1300 654 369, PSA on (02) 9290 1555)

### **What if I am not satisfied with the outcome?**

It is possible that, at the end of the process, you will not receive the outcome that you wanted.

If you feel that you have not been treated fairly or that the result is unreasonable, there are provisions for seeking a review, both internal and external. These are explained in the [Complaints Handling Policy Guidelines](#).

External bodies that may be able to assist include:

- NSW Ombudsman
- Anti-Discrimination Board of NSW (ADB)
- Human Rights and Equal Opportunity Commission (HREOC)

## Receiving a Complaint

The considerations for an employee approached by a person wishing to make a complaint are:

- What are the complainant's expectations?
- Does the complainant need assistance in making the complaint?

For assistance see Managing Complainants.

When the complaint is received, an assessment must be made about action to be taken.

See Assessing a Complaint.

## Managing Complainants

### Complainants' Expectations

A person making a complaint will have expectations as to how the complaint will be handled and may require assistance in making the complaint.

To manage complainant expectations, the recipient of the complaint should:

- explain the complaint handling process to the complainant
- if the matter is to be referred, explain why and to whom
- confirm with them that their complaint has been fully understood and ask them what outcome they are seeking
- outline the possible outcomes, including whether or not the outcome being sought is reasonable
- provide realistic timeframes for dealing with the matter
- ensure that any promises made are followed through.

At times, managers will be confronted with complainants who are very challenging. See the related issue Dealing with Difficult Complainants.

### Assistance Available

The following arrangements are in place to ensure that all persons who feel that they have experienced poor service or behaviour are able to make a complaint should they feel that it is necessary to do so:

- All Technical and Further Education (TAFE) Institutes have a customer service mechanism that allows complaints to be recorded and forwarded to the appropriate officer for action. TAFE teacher consultants for students with deafness or a hearing impairment have access to telephone-typewriters to communicate with students. See also the TAFE NSW Quality Policy.
- Adult Migrant English Service (AMES) centres have staff who can assist in the preparation of a complaint.
- In schools, it is the responsibility of the principal to assist school community members with special needs to make complaints about school or schooling. This may involve consultation with regional office personnel. In the case of a complaint against the principal, the complainant should be referred to the principal's supervisor.
- **Support for Aboriginal and Torres Strait Islanders**  
It is essential that delegates be mindful that Aboriginal and Torres Strait Islanders be offered the opportunity to have a support person and, if needed, an interpreter when making complaints.



- **Support for People who do not speak English well**  
Interpreting assistance for non-English speakers is available through on-site interpreters or the telephone interpreter service (interpreting services). Alternatively, if the site has a staff member who receives the Community Language Allowance, this staff member may be able to provide language assistance and act as a point of referral. People from diverse cultural and linguistic backgrounds should also be provided with the opportunity of having a support person.
- **Support for the Hearing Impaired**  
Interpreting services are provided for deaf parents and carers who use sign language.
- **Support for Children and Young People**  
Appropriate adult support is to be offered to children and young people who have submitted complaints under this policy. The support person may be a parent or caregiver, or another adult with whom the child or young person feels comfortable.

## Assessing a Complaint

When a complaint is received, an assessment must be made about action to be taken.

See also the Quick Assessment Guide. There is a Checklist for Assessing a Complaint to assist in this process, if needed.

Steps taken in assessing a complaint are:

- Identifying whether or not the complaint is a special case
- Assessing the level of seriousness of the complaint
- Selecting the appropriate course of action

Certain kinds of complaints are treated as special cases because they are covered by specific legislation or by Department policies and must be dealt with under those policies.

All complaints must be checked to ensure that the correct policy and procedure is followed and this must occur before any further action is taken. Assistance should be sought from the contact person nominated below if in doubt.

Any complaint covered by the following special cases must be referred even when there is a suspicion that the complaint may be false, vexatious or misconceived.

## Quick Assessment Guide

### Receiving a complaint:

An employee who receives a complaint will need to assess whether it is appropriate to deal with the complaint informally and without delay, as provided for in these Guidelines or whether it should be referred to a supervisor, principal or manager.

**Minor complaints and disputes should be resolved promptly and without recourse to formality.**

Any matter which can not be resolved by informal resolution must be referred to a supervisor, principal or manager. The following questions will assist but if in any doubt the matter should be referred and advice taken.

### Deciding how to deal with a Complaint:

There are **four** questions to ask when assessing a complaint and determining how to deal with it:

1. **Is the complaint a special case, i.e. a matter which is excluded from these procedures and must be either referred to someone else or dealt with under another policy?**

See the list at Identifying Special Cases.

If the complaint is covered by another policy, use that policy to deal with the matter.

If the complaint must be referred to a particular section of the Department or to an external agency, make the appropriate referral or referrals.

If the complaint is not a special case:

2. **Is the complaint serious?**

This is discussed at Assessing seriousness.

If the complaint is considered less serious, **informal resolution** is appropriate.

If the complaint is serious or cannot be resolved informally:

3. **Is the complaint about a service, procedure or system or is it about the conduct of a person?**

If the complaint is about a service, procedure or system, the Remedy and Systems Improvement procedure will apply.

If the complaint is about a person but is less serious (but could not be dealt with by informal resolution) the Negotiation procedure will apply.

If the complaint is about a person and is serious, the Investigation procedure will apply.

and

4. **Who can approve the procedure?**

Of matters not excluded as special cases, only those that proceed to Investigation cannot be approved by a principal or manager. Regarding these, see Who can approve a procedure? and refer the matter to the appropriate delegate.

A Checklist for Assessing a Complaint to assist in this process, if needed, is available at Printable Documents.

## Assessing a Complaint: Identifying special cases

### Identifying special cases involving complaints about Systems or Processes:

| AREA   | REFERENCE / REFERRAL   |
|--|--|
| School program or management reviews   | <u>School Development Policy 2004</u>  |
| Internal review under the Privacy and Personal Information Protection Act 1998 | Contact the DET Privacy Contact Officer on (02) 9561 8151.   |
| Internal reviews under the Freedom of Information Act, 1989                    | Contact the DET Freedom of Information (FOI) Unit on (02) 9561 8151.   |
| Staff promotion appeals  | <p>School Teachers: refer to the <u>Merit Selection Procedures Manual</u> Part D.</p> <p>Other school staff: contact Industrial Relations and Employment Services, on (02) 9561 8007.</p> <p>Non-school based staff employed under the Teaching Service Act: appeal on the merit selection process is by application to the Director, Human Resources Services and Systems.</p> <p>TAFE staff: contact the institute Human Resources manager.</p> <p>Staff employed under the <u>Public Sector Employment and Management Act 2002</u>: refer to the <u>Personnel Handbook</u>.</p> <p>Note: Alleged maladministration of the selection process is not excluded and would need to be dealt with under the Investigation Procedures.</p> |
| Staff disciplinary appeals   | <p>School staff: contact Legal Services on (02) 9561 8538.</p> <p>Non-school based staff employed under the Teaching Service Act: contact Legal Services on (02) 9561 8538.</p> <p>TAFE staff: See <u>Managing Unsatisfactory Performance 2006</u>, contact the institute Human Resources manager.</p> <p>Staff employed under the <u>Public Sector Employment and Management Act 2002</u>: refer to the <u>Personnel Handbook</u>.</p>  |
| Occupational Health and Safety Issues  | The <u>Process for Resolving OHS Issues</u> is more suitable for OHS matters, which is available on the internet or from workplace managers.   |

**Special cases involving complaints about Performance of Staff:**

| AREA  | REFERENCE / REFERRAL   |
|---|--|
| Counselling of staff on inappropriate behaviour known to the supervisor (eg, behaviour affecting the proper running of the workplace or is a minor breach of the Code of Conduct which has not previously been addressed) | Advice on the counselling of staff is available in the <u>Teachers' Handbook</u> (see sections on good teaching practice and staff welfare), the <u>Personnel Handbook</u> (see sections on counselling and performance management), or from a specialist in the relevant Personnel or Human Resources section.  |
| The management of poor school teacher performance and teacher efficiency reviews, including principals, school based non teaching staff and non-school based teaching staff.  | Permanent teaching and SASS staff in schools: <u>Management of Conduct and Performance</u> , August 2006<br>School teachers: <u>Teacher Improvement Program</u> , February 2006<br>Probationary School Teachers: <u>Procedures for Managing Probationary Teachers</u> , April 2005.<br>Casual School Teachers: <u>Procedures for Managing Casual Teachers who are Experiencing Difficulties with their Teaching Performance</u> – Amended June 2005.<br>School Principals: <u>Performance Improvement Program for Principals</u> November 2004.<br>School Based Non Teaching Staff: <u>Procedures for Managing School Based Non Teaching Staff identified as having performance difficulties</u> Amended June 2005.<br>Chief Education Officers: <u>Crown Employees (Chief Education Officers – Department of Education and Training) Salaries and Conditions Award 2006</u> .<br>Non-School Based Teaching Staff: <u>Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2006</u> |
| The management of poor performance by TAFE staff  | Permanent teaching staff: <u>Management of Conduct and Performance</u> , August 2006   |
| The management of poor performance by other DET staff   | Division 3, Dealing with Unsatisfactory Performance...., <u>Public Sector Employment and Management Act 2002</u> .   |
| Performance Management of Senior Executive Service and Senior Officers  | Review Mechanisms – <u>Senior Executive Service and Senior Officers Performance Management Scheme 2005</u> .   |

**Complaints about the above process should be dealt with in accordance with grievance procedures outlined in the processes.**

**Special cases involving complaints about Conduct, Welfare or Performance of Students:**

| AREA   | REFERENCE / REFERRAL   |
|--|--|
| Student Behaviour  | If the complaint is about student behaviour, follow the appropriate student discipline procedure. This may be the TAFE NSW Student Discipline Policy, the school's student discipline policy, or the <u>Procedures for the Suspension and Expulsion of School Students</u> . |
| Suspension and expulsion of school students and subsequent appeals<br>Discipline of TAFE students                                  | Schools: <u>Procedures for the Suspension and Expulsion of School Students</u> , 2005.<br>TAFE: <u>TAFE NSW Student Discipline Policy</u> , 2000.  |
| Complaints to Vocational Education and Training Accreditation Board (VETAB) against Registered Training Organisations              | Contact VETAB on (02) 92445335 or <a href="http://www.vetab.nsw.gov.au">www.vetab.nsw.gov.au</a>   |
| Requests for result reviews by TAFE students;<br>assessment appeals by AMES students or test-takers;<br>and HSC assessment appeals | TAFE students should contact the teacher or student records section in the first instance.<br>AMES students should contact the Head of Studies.<br>HSC candidates should contact the Board of Studies on (02) 9367 8111.   |
| Other disputed student marks and assessments.  | Refer to head teacher in first instance.   |

## **Other special cases:**

- **SAS Staff Dispute and Grievance Resolution**

The Crown Employees (SAS Staff) Award 2005 specifies procedures that are to be used to resolve any dispute that arises which involves such a staff member. Refer to Section 15 of that award.

- **Protected Disclosures**

The Protected Disclosures Act 1994 encourages and assists public officials to disclose, in the public interest, corrupt conduct, maladministration and serious and substantial waste in the public sector. Refer to the DET Policy document Protected Disclosures – Internal Reporting.

For protection to be provided under the Protected Disclosures Act 1994, the disclosure must be made to a person in a position identified in the Act, including an ICAC officer, a member of Parliament or a Nominated Disclosure Officer of the department, as listed in the Department document Protected Disclosures – Internal Reporting. If the complaint could be a protected disclosure if made to a Nominated Disclosure Officer, the officer making the complaint should be so advised.

The complaint must then be referred to the Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203) unless it is about the protection of children and young people, in which case it is to be referred to the Director, Employee Performance and Conduct Directorate (EPAC) by reporting to a Duty Investigator, on (02) 9266 8070. These officers provide advice and arrange for the proper notifications.

The Department may also receive protected disclosures from public officials who are not employed by the Department. In these cases, the provisions of Section 14 (2)(b) of the Protected Disclosures Act 1994 No 92 will apply. These complaints should also be referred as indicated above.

- **Suspected Risk of Harm to Child or Young Person**

If the complaint involves suspected risk of harm to a child or young person, the Policy for Protecting Children and Young People 2001 is to be followed and the matter referred to the relevant principal or workplace manager who will notify the Department of Community Services (DoCS).

- **Complaints which are allegations of a child protection nature against a staff member**

If the complaint involves suspected misconduct of a child protection nature by a staff member (including contractors and volunteers) against a child or young person, the matter is to be referred to the Employee Performance and Conduct Directorate (EPAC) on (02) 92668070. These matters are covered by Responding to Allegations against Employees in the Area of Child Protection 2004. If the complaint involves suspected risk of harm to a child or young person, then the Policy for Protecting Children and Young People 2001 is to be followed and the matter referred to the relevant principal or workplace manager who will notify DoCS.

- **Possible Criminal Matters**

If the complaint involves possible criminal conduct of any kind, then the principal or manager shall contact the police. If a staff member is implicated, EPAC is also to be contacted with advice to the School Education Director, Regional Director, Institute Director or other relevant State Office Director.

Advice is available from Legal Services, on (02) 9561 8538, if in doubt about whether the alleged behaviour may be a crime. Legal Issues Bulletin No 27 includes comment on reporting to police.

- **Possible Corrupt Conduct**

If the complaint is not covered by any of the above but could involve corrupt conduct, maladministration or serious and substantial waste (See Glossary), it is to be referred to the Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203, who will provide advice and arrange for corrupt conduct to be reported to the Independent Commission against Corruption (ICAC).

- **Possible Discrimination**

If the complaint is about behaviour that is unlawfully discriminatory or involves unlawful vilification on the basis of race, sex, marital status, disability, HIV/AIDS, homosexuality, age, transgender or carer's responsibilities, refer to the Legal Services on (02) 9561 8538. The Department's Anti-Racism Policy may apply and, in the case of a school, the involvement of the Anti-Racism Contact Officer may be appropriate.

The relevant legislation is the Anti-Discrimination Act 1977 and Commonwealth Racial Discrimination Act (1975).

## **Assessing a Complaint: Assessing Seriousness**

If the matter has not been identified as a special case requiring referral, a decision needs to be made as to whether or not the matter is serious.

In assessing the seriousness of a complaint:

A matter is considered less serious if it involved a minor breach or complaint and was not seen to be part of a pattern of conduct that would lead to disciplinary/remedial action.

A serious breach is one which, if proven, could amount to serious misconduct under the Code of Conduct and could include:

- a breach of legislation, policy, procedure or contract likely to lead to disciplinary/remedial action, or
- conduct of a criminal nature.

If assistance is needed to decide whether or not a complaint is "serious", advice should be sought from a supervisor. Support is also available from the Staff Efficiency and Conduct Team or from an Employee Performance and Conduct Duty Investigator, on telephone (02) 9266 8070.

Assessment of complaints is to be documented and decisions not to act on a complaint must be recorded.

## **Assessing a Complaint: Selecting the Appropriate Course of Action**

In matters assessed as less serious, informal resolution should be attempted in the first instance. See Informal Resolution for guidance.

In circumstances in which it is not appropriate or not possible to resolve a matter with informal resolution, there are three formal procedures available. In general, the procedure that will apply will depend on whether or not the complaint is about the conduct of a person and, if it is, whether or not the matter is considered to be serious.

In some instances, it may be necessary to apply more than one procedure.

### **Procedures Available and their Application:**

- **Remedy and Systems Improvement** procedure is used for a complaint that is about policies, procedures or systems rather than a person.
- **Negotiation** procedure is used for a complaint about a person that is not about an alleged serious breach of legislation, policy, procedure or contract. It will apply to complaints which, while assessed to be less serious, for some reason, have not been able to be resolved informally. This procedure is never applicable in a complaint of a child protection nature.

- **Investigation** procedure is used for a complaint about a person that is about an alleged serious breach of legislation, policy, procedure or contract. This procedure is applicable only in matters involving allegations of potential misconduct, can only be initiated by certain delegated officers and is often conducted by dedicated units within the Department.

The first table that follows, *Selecting the appropriate Formal Procedure or Referral*, provides further guidance regarding special case referrals and identifies the applicable formal procedure, where there is such a need.

The second table, *Officers delegated to approve or conduct formal action*, allows identification of the officer who is delegated to initiate or conduct a formal procedure.

#### Selecting the appropriate Formal Procedure or Referral

|   | REMEDY & SYSTEMS<br>IMPROVEMENT<br>procedure applies to:      | NEGOTIATION<br>procedure applies<br>to:  | INVESTIGATION procedure<br>applies to:   |
|---|---|--|--|
| PROTECTED<br>DISCLOSURES                          | Not applicable  | Not applicable   | Special case requiring referral.<br>Refer to Employee Performance and Conduct (EPAC) if of a child protection nature or else to Senior Manager, Serious Misconduct Investigation Team. |
| CRIMINAL<br>CONDUCT                               | Not applicable  | Not applicable   | Special case requiring referral.<br>Contact Police and if a staff member is implicated, notify EPAC and advise the appropriate Director.   |
| CORRUPT<br>CONDUCT<br>INCLUDING<br>FRAUD          | Not applicable  | Not applicable   | Special case requiring referral.<br>Refer to Senior Manager, Serious Misconduct Investigation Team.  |
| ALLEGATIONS<br>OF A CHILD<br>PROTECTION<br>NATURE | Not applicable  | Not applicable   | Special case requiring referral.<br>If child may be at risk of harm, notify DoCS.<br>Allegations about the behaviour of staff, contractors or volunteers, notify EPAC.                 |
| ALL OTHER<br>COMPLAINTS                           | Complaints about policies, procedures or work place practices | Complaints about the behaviour or decisions of staff other than an alleged serious breach of legislation, policy, procedure or contract. | Complaints that individuals have committed a serious breach of legislation, policy, procedure or contract.   |

## Who can approve a procedure?

Officers delegated ("the delegate") to approve or conduct formal action:

Note: Delegates can sub-delegate management of an issue but not the decision making.

|  | REMEDY &<br>SYSTEMS<br>IMPROVEMENT   | NEGOTIATION  | INVESTIGATION  |
|--|--|--|--|
| PROTECTED<br>DISCLOSURES   | Not applicable   | Not applicable   | For child protection matters, the delegate is the Director, EPAC. For all other protected disclosures, Nominated Disclosure Officers (see Protected Disclosures - Internal Reporting Policy) are delegated to undertake Steps 2, 3, 4 and 7 of the Investigation procedure. The Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team) is delegated to undertake all steps.   |
| ALLEGATIONS<br>OF A CHILD<br>PROTECTION<br>NATURE  | Not applicable.  | Not applicable   | Principal or workplace manager refers the matter to DoCS if child may be at risk of harm and to EPAC if the matter relates to the conduct of an employee.  |
| OTHER ALLEGED<br>SERIOUS<br>BREACH OF<br>LEGISLATION,<br>POLICY,<br>PROCEDURE OR<br>CONTRACT | Principal or workplace manager initiates the remedy and systems improvement procedure. | Not applicable   | Delegates who can initiate an investigation in these areas are:<br><br>All TAFE Institute Directors and Associate Directors<br>All School Education Directors, All Regional Directors and Deputy Regional Directors<br>All Directors<br>Director, EPAC<br>Senior Manager, Serious Misconduct Investigation Team<br>Manager, Staff Efficiency and Conduct Team<br>Chief Information Officer<br>All General Managers<br>All Deputy Directors-General<br>Director-General/Managing Director |
| ALL OTHER<br>COMPLAINTS  | Principal or workplace manager initiates the remedy and systems improvement procedure. | Principal or manager responsible for the person complained of. In locations other than schools, the delegate could be the line supervisor of the person complained of. |  |



## Managing a Complaint

When required to manage a complaint, a decision will be required regarding the appropriate procedure in the circumstances.

Any matter which is assessed to be less serious should be resolved using informal resolution unless there is some reason why this approach is considered inappropriate.

A formal procedure will be needed only in those situations where it is not appropriate or not possible to resolve a matter informally.

For a complaint about a policy or procedure, organisational culture, or similar issues, use the **Remedy and Systems Improvement Procedure**.

For a less serious complaint about a person, unsuitable for, or not resolved by informal resolution, use the **Negotiation Procedure**.

For a complaint about an employee in which, if proven, could amount to serious misconduct under the Code of Conduct, **Investigation Procedure** will apply. See also Identifying Special Cases and Who can approve a procedure?

## Support Considerations

The person managing the complaint is responsible for monitoring the well-being of all parties involved in or affected by the complaint.

## Providing Support

It is in the interests of all concerned that an attempt be made to resolve a complaint, if appropriate and if possible, by informal resolution and without recourse to the formal procedures available. It may be that a mediation process is the more appropriate approach.

When there is a complaint, whether assessed to be serious or not, a variety of people may be affected by the complaint and the process related to it.

The person dealing with the complaint is responsible for monitoring the well-being of all parties involved in or affected by the complaint. Complaints that are not handled sensitively and with sufficient support provided may result in illness or other disruption to the workplace.

Consideration should be given to:

- Support for the complainant, whose needs may vary according to whether the complainant is a student, parent or care-giver, employee or other person. The complainant can have a support person present at all meetings dealing with the complaint.
- The respondent may need careful support and may be anxious of what might happen. Information about this is available in the related issue, Disciplinary or Remedial Action, or in the appropriate employment document relevant to the respondent's employment. The respondent can have a support person present at all meetings dealing with the complaint.
- It could be that others, indirectly involved, also need support.
- Support for the person managing the process. This may include assistance with the process and support from specialist areas, such as Occupation Health and Safety Unit, Human Resources, Industrial Relations or Employee Performance and Conduct.

The following resources are available for these purposes:

- Employee Assistance Program (EAP) (See EAP brochure and on-line fact sheets)
- Complainant and Witness Support Program (on (02) 9561 8761)
- Regional Staff Support Officers
- Regional OHS Liaison Managers
- TAFE and school counselors

- Human Resources Directorate (on (02) 9561 8523)
- Employee Performance and Conduct Directorate (on (02) 9266 8070)
- Student Welfare (on (02) 266 8936)
- Union officers (e.g. Teachers Federation on (02) 9217 2100 or 1300 654 369, PSA on (02) 9290 1555)

### **Employees in need of further assistance**

Involved employees may experience difficulty in dealing with the complaints resolution process.

In some cases, it may seem that an involved employee is suffering from a medical condition. If there is evidence of this at any time prior to or during the complaints process, it may indicate the need for an independent health assessment with Healthquest.

Employees may also need to be medically assessed to confirm that they are well enough to be involved in the complaints resolution process. This may apply, for example, where a staff member presents a medical certificate indicating unfitness due to stress, anxiety or depression.

Options for managing such a situation should include contacting the Staff Support Officer/ Return to Work Coordinator to discuss referral to the Employee Assistance Program or for a Healthquest assessment.

## Informal Resolution

Informal resolution should be used to resolve any matter which is not identified as a special case and which is assessed as "less serious", such as minor complaints and disputes. There could be exceptions such as when one party is fearful or intimidated by the other party.

While line managers have specific responsibilities for handling and attempting to resolve such matters, the complainant and the respondent also have a responsibility to resolve the problem and to seek and accept realistic outcomes.

In accordance with the Department's Code of Conduct, which clarifies the standards of behaviour that are expected of employees in the performance of their duties, employees have a responsibility to foster harmonious and productive workplace relations, and to take reasonable care for the health and welfare of others at their place of work. Therefore, there is an expectation that employees will resolve their differences amicably.

For informal resolution to succeed, both parties need to be prepared to recognise that there is a problem. Both parties need to be prepared to be conciliatory and recognize that resolution may require compromise on both sides.

A mediation service might be considered. This can be discussed with the relevant Human Resource Manager.

The procedure that is suggested is that the parties be provided the opportunity to:

- state the cause of their concern
- exchange facts and beliefs
- clarify events
- listen
- apologise for any behaviour that may have distressed the other party
- explain their point of view
- consider the other person's point of view
- recognise that this is an opportunity to change behaviour that is perceived as unsuitable, or is hurtful to another.

In such instances, a written record should be made of the issue and action.

If this does not succeed, then the formal process Negotiation may be used.

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint.

There is also an optional Complaint Action Form to assist in recording action taken.

## Formal Procedures

Any matter which is assessed to be less serious should be resolved using informal resolution unless there is some reason why this approach is considered inappropriate.

A formal procedure will be needed only in those situations where it is not appropriate or not possible to resolve a matter informally.

Formal Procedures available are:

**Remedy and Systems Improvement Procedure.**

**Negotiation Procedure.**

**Investigation Procedure.**

## Remedy and Systems Improvement Procedure

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint

### Overview of the Procedure

If the complaint is about a policy or procedure, organisational culture, or similar issues then it could be an opportunity for systems improvement. The procedure can be initiated by a principal or workplace manager.

TAFE staff should use their institute Quality Management System which will apply in this instance.

### Remedy

Remedy is the action taken to correct or rectify a situation for an individual. This means addressing any claim that the complainant has been treated poorly or unfairly by the system.

### Systems Improvement

Systems improvement is the process of improving a system to prevent future problems.

At times, remedy and systems improvement may arise out of complaints dealt with under either Negotiation or Investigation procedures.

### Steps in the Remedy and Systems Improvement Procedure

This procedure applies whether or not the complaint is anonymous. The extent of record keeping can vary according to circumstance. The optional Complaint Form can be used to record details and the Complaint Action Form to record action taken.

**Step 1 – Assess if remedy and/or systems improvement is warranted**

**Step 2 – Immediate remedy**

**Step 3\* – Refer matter to the principal or local manager**

**Step 4\* – Refer matter to regional or statewide manager**

**Step 1 – Assess if remedy and/or systems improvement is warranted**

In some cases neither remedy nor systems improvement will be possible as the matter is covered by legislation or other government policy or procedures or due to resource limitations. In other cases, short term change is not possible but the suggestion or complaint could inform long term development. If so, explain this to the complainant.

### **Step 2 – Immediate remedy**

If remedy and/or systems improvement is warranted, and the person receiving the complaint has authority to do so, then remedy the problem if possible within 5 working days of receipt<sup>#</sup> and notify the complainant. Keep the principal or local manager informed of the problem and the action taken. Principal or local manager implements systems improvement if needed.

### **Step 3\* – Refer matter to the principal or local manager**

If improvement action is warranted but not possible at the previous step due to lack of delegated authority, refer the complaint to the principal or local manager responsible for the system, program or policy, advising the complainant. This may lead to the involvement of the School Education Director, Regional Director or Institute Director. If possible that person will:

- remedy and notify complainant within 15 working days of receipt<sup>#</sup>, and
- implement systems improvement if needed.

### **Step 4\* – Refer matter to regional or statewide manager**

If there appears to be good grounds for a change to the system, program or policy but this is not possible at the previous step due to lack of delegated authority or because the matter is a statewide issue, refer the matter to the person with regional or statewide responsibility for the system, program or policy. If possible, that person will:

- remedy and notify complainant within 20 working days<sup>#</sup> or advise complainant of proposed action.
- implement systems improvement if needed.

\*Optional – use only if previous step has failed to resolve.

<sup>#</sup> Timeframes are indicative to assist prompt action. Where possible they should be adhered to or bettered, but can be extended when there is good reason. Advise the complainant if longer timeframes are required.

## **Possible Outcomes**

**Remedy** may involve one or more of the following:

- providing explanation and reasons if not previously provided
- dismissing the complaint, e.g. if the decision accords with legislation or government policy or related workplace policy or procedure
- concluding that the complaint has been substantially resolved
- reaching a compromise solution
- upholding the complaint and implementing specific action such as overturning a decision, giving an apology or providing a service not previously provided
- addressing or referring the issue for system improvement.

**Systems improvement** may involve one or more of:

- referral for consideration of legislative or policy change
- policy development or revision
- process improvement (i.e. changes to procedures and workplace practices)
- program review
- expert assistance, staff development or performance improvement
- improved implementation (e.g. issuing updated documentation or reminders)
- monitoring compliance
- other action to ensure that the matter is handled appropriately in future.

## Timeframe

Timeframes are indicative to assist prompt action. Advise the complainant if a longer timeframe is required.

|                                      |   |
|--------------------------------------|---|
| Immediate Remedy                     | Within 5 working days of receipt  |
| Principal or Local Manager Remedy    | Within 15 working days of receipt by principal or manager   |
| Regional or Statewide Manager Remedy | within 20 working days of receipt by manager or advise complainant of the action proposed within that timeframe |

Delegate should aim for resolution of the suggestion or complaint within a month of receipt if the above timeframes cannot be met.

## Reviews

The complainant should be advised of the ability to seek a review of the decision and the timeframe for doing so when notified of the outcome of the complaint.

There are two grounds for the complainant seeking a review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant and/or
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

A complainant can request one internal review, generally to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of conflict of interest or perception of partiality, a more senior officer will nominate an appropriate person to deal with the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the review. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- Review all relevant material
- Make further inquiries, if necessary
- Make a determination, if possible, within 15 working days of receipt. If the decision is delayed, advise the complainant, with reasons
- Advise parties in writing of the decision and the reasons for the decision
- Meet with the parties, if required
- Determine whether further action is necessary

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will determine whether or not the decision that is being reviewed will be put on hold until the review is complete.

See also External Review.

There is available an optional Complaint Action Form to assist in recording action taken.

## Negotiation Procedure

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint.

### Overview of the Procedure

Negotiation is the process of developing a solution or agreement through discussion or correspondence with another person or persons.

This procedure requires the delegate or their nominee to assist in the negotiation by communicating with the parties, and if needed, meeting with them separately or jointly.

If this does not resolve the issue then the delegate is to make a decision and notify the parties of that decision.

This procedure will generally be used to resolve employee grievances and parent/care-giver complaints and may have implications for Remedy or Systems Improvement.

### Steps in the Negotiation Procedure

**Step 1 – Complaint recipient: refer matter to appropriate delegate**, usually the Principal or manager responsible for the person complained of.

**Step 2 – Delegate reviews the matter**

**Step 3 – If appropriate, delegate initiates negotiation**

**Step 4\* – Decision made by delegate**

#### Step 1 – Refer matter to delegate

Person receiving the complaint refers the matter to the appropriate delegate as soon as possible.

#### Tasks for Delegate:

#### Step 2 – Review the matter

Negotiation is not possible if the complaint is anonymous or requires that their identity not be revealed to the respondent. The complainant should be so advised and, if this stance is maintained, the process should be discontinued and papers should be filed securely (see Records) in case of further developments.

Delegate checks:

- if Exclusions apply. If so refer as necessary.
- if NEGOTIATION is the right procedure and is warranted. If so, process can proceed.
- if a mediation service might be an appropriate alternative. If so, advise parties and initiate this process.

#### Step 3 – Negotiation Procedure

There is no compulsion on any party to participate in this process. If a party indicates that they do not wish to participate or continue to participate, then the delegate proceeds to the next step, namely the making of a decision.

The complainant cannot stipulate the procedure to be used to address the complaint. That is the delegate's decision.

Negotiation should also be discontinued if at any time the delegate decides that:

- the matter involves child protection or other alleged behaviour that is excluded and requires referral or is sufficiently serious that it could lead to disciplinary/remedial action if substantiated
- the complaint is about a matter that is not negotiable (e.g. a government policy or legislation or related workplace policies or procedures)

- the complaint is without substance or it becomes apparent that a party is not committed to seeking a negotiated resolution (then go to the next step, namely decision making).

Otherwise the delegate or their nominee will assist the negotiation process. He or she will:

- **Obtain or, if provided orally, put the complaint in writing** or arrange assistance (e.g. an interpreter can assist the delegate or their nominee to receive the complaint) to enable the complaint to be set out in writing. The complainant can have a support person present at any discussion. Have the complainant include a statement of the outcome they are seeking, and have the complainant sign and date the complaint.

The complaint should be treated confidentially (see further information on Confidentiality). Ensure that the complainant is aware of the confidentiality of the process and seek their cooperation.

- **Acknowledge complaint in writing** within 10 working days<sup>#</sup> of the complaint being lodged outlining the complaint procedures. (See Sample letter.) If the complaint requires clarification then the delegate or their nominee will obtain that clarification.

For a non-English speaking complainant, steps should be taken to ensure understanding of the process and any documents provided. The complainant should be made aware of the availability of the telephone interpreter service to assist them.

**Notify the respondent(s)** within 10 working days<sup>#</sup> of the complaint being lodged that a complaint has been made against them. See further information on Procedural Fairness. This should be done sensitively and at an appropriate time (e.g. not on Friday or the last day of term, not when a person is on sick leave or on worker's compensation). Arrange a mutually convenient time to meet with the employee to provide them with a copy or details of the complaint along with a copy of any relevant policy and this procedure. The respondent has the right to be accompanied by an interpreter, if required, and by a support person.

The delegate may decide not to provide the original complaint to the respondent if it is emotive and/or possibly defamatory as it may inflame the situation. It is often preferable to provide a summary of the issues.

Advise the respondent that a response is required within 10 working days<sup>#</sup> and that a support person can be present during meetings. If the respondent is a member of a union then the presence of a union representative is acceptable.

**Obtain written response from respondent(s)** within 10 working days<sup>#</sup> of notifying the respondent. Provide a copy of the response to the complainant unless it contains material which could result in a breach of privacy or is offensive or inflammatory. In such cases the delegate or their nominee should hold the response and provide a summary.

- **Gather information** relevant to the complaint to support the resolution process. This may include:
  - copies of relevant policies and procedures
  - copies of other Departmental documents such as forms, reports, student records etc
  - copies of previous correspondence
  - expert advice from those experienced in judgements of the kind in question.

Analyse this information to detect patterns, similarities, inconsistencies or breaches.

- **Arrange negotiation meeting(s) or other communications** where the delegate or their nominee meets with the parties separately or jointly. If communicating with the parties separately then this need not be face to face. Parties have the right to be accompanied by an interpreter, if required, and by a support person. The role of a support person is to provide support and advice during the meeting. The support person may be a union official or a legal representative, however they cannot act as an advocate and answer questions on behalf of the party or interfere with the conduct of the interview.

Other persons who can assist can be consulted. If the matter is an employee complaint about another employee, a Staff Support Officer or Human Resources representative



could attend the meeting. Institute delegates should seek guidance and advice from their Institute Human Resources Manager.

- **Achieve resolution** – The negotiation process should be completed within 10 working days<sup>#</sup> of the date of the respondent's response where possible. Negotiation is complete when the parties resolve their differences or agree on a future course of action, a compromise is agreed on or the complaint is withdrawn.
- **Document the outcome and notify all parties in writing.**  
Where the matter is resolved, all parties should be notified of the outcome.  
If resolution cannot be achieved, then the delegate proceeds to the making of a decision.  
The delegate should seek to have all aspects of the complaint finalised within 7 weeks<sup>#</sup>.
- **Implement remedy and systems improvement if needed.**
- **Ensure all documents are stored according to requirements, as specified in Records.**

#### Step 4\* – Decision by delegate

In situations where the parties cannot resolve the complaint the delegate must make a decision. The delegate should notify the parties that this will occur. The delegate should consider:

- the complaint and the response
- any outcome from negotiation discussions and meeting
- all relevant information
- any relevant policy.

The parties should be notified of the decision in writing, with reasons, within 5 working days<sup>#</sup> of the notification that the delegate will make a decision.

\*Optional – use only if previous step has failed to satisfy

<sup>#</sup> Timeframes are indicative to assist prompt action. Where possible they should be adhered to or bettered, but can be extended when there is good reason. Advise the complainant (and if appropriate, the respondent) if longer timeframes are required and the reasons.

#### Possible Outcomes

Typical outcomes include:

- withdrawal of the complaint
- resolution of differences or agreement on a compromise
- apology given. (The use of apologies should be encouraged. See the related issue Apologies.)
- use of the services of a professional mediator in achieving resolution.
- inability to resolve differences and subsequent decision by the delegate who may:
  - if serious breaches are disclosed, refer for investigation or disciplinary/remedial action
  - dismiss the complaint
  - declare that resolution is not possible as the parties are unable to reach resolution
  - uphold the complaint and implement the specific action to address the concerns
  - determine that both parties are at fault and implement action to address the behaviour of both parties

#### Timeframe

|   |   |
|---|---|
| Acknowledge complaint                   | Within 10 working days of receipt                 |
| Notify respondent of complaint          | Within 10 working days of receipt                 |
| Obtain written response from respondent | Within 10 working days of notification            |
| Achieve resolution, if possible         | Within 10 working days of response                |
| Delegate's decision if not resolved     | Within 5 working days of breakdown in negotiation |

The delegate should attempt to resolve the matter within 7 weeks of receipt of the complaint.

### **Resubmission of Complaints**

A delegate can decline to act upon the resubmission of a complaint that has been previously finalised in accordance with these procedures, unless relevant new information has been submitted that could affect the outcome.

### **Reviews**

Either party will have a right to seek a review of the decision made by the delegate where negotiations have been unsuccessful. There is no avenue for review if the matter has been resolved by agreement of the parties.

Either the complainant or respondent can request an internal review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant or respondent, and/or
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

This request is generally to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of procedural fairness, a more senior officer will nominate an appropriate person to conduct the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the request. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- Review all relevant material
- Make further inquiries, if necessary
- Decide whether further action is necessary
- Make a decision within 15 working days of receipt of the request
- Advise parties in writing of the decision and the reasons for the decision.

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will decide whether or not the decision that is being reviewed will be put on hold until the review is complete.

See also External Review.

There is available an optional Complaint Action Form to assist in recording action taken.

## Investigation Procedure

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint.

### Overview of the Procedure

The decision that an investigation will take place can only be made by persons with the delegated authority to do so. It may require the assignment of an investigator who reports back to the delegate.

This procedure outlines the steps for a competent and fair investigation for complaints about employees other than those employed under the Public Sector Employment and Management Act 2002 or the Crown Employees (SAS Staff) Award 2005.

In the case of employees who are employed under the Public Sector Employment and Management Act 2002 or the Crown Employees (SAS Staff) Award 2005, a process, as detailed in the NSW Personnel Handbook is prescribed.

The purpose of an investigation of a complaint is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response. The nature and scope of the investigation required in response to a complaint will depend on the circumstances of each case and any relevant statutory requirements.

An investigation should incorporate the following four principles:

- procedural fairness for both complainant and respondent
- timeliness to ensure that opportunity for further misconduct and the potential for bitterness is minimised, as are opportunities to breach the confidentiality to which complainants and employees are entitled
- confidentiality for all parties, where practicable and appropriate
- meticulous recordkeeping, including recording of reasons for all significant investigation related decisions.

This procedure may result in a recommendation that remedial or disciplinary action be considered. The investigation report may be used as evidence in any such action.

### Delegates Who May Approve an Investigation

|  |  |
|--|--|
| Protected Disclosures (Child Protection matters)   | Director, EPAC<br>Deputy Director-General, Workforce Management and Systems Improvement  |
| Protected Disclosures (Other Matters)  | Nominated Disclosure Officers (Section 3.2) are delegated to undertake steps 2, 3, 4 and 7 of the Investigation Procedures.  |
| Alleged corrupt conduct, including fraud not accepted as a protected disclosure  | Director, EPAC<br>Deputy Director-General, Workforce Management and Systems Improvement<br>Senior Manager, Serious Misconduct Investigation Team   |
| Child Protection Matters   | All such matters must be referred to DoCS if child may be at risk of harm and to EPAC if the matter relates to the conduct of an employee.<br>Director, EPAC; Chief Investigators, EPAC  |
| Other alleged serious breaches of legislation policy, procedure or contract.<br>Other serious allegations of misconduct. | All TAFE Institute Directors; All TAFE Associate Directors<br>All School Education Directors; All State Office Directors<br>All Regional Directors and Deputy Regional Directors<br>Senior Manager, Staff Misconduct Investigation Team (EPAC)<br>Manager, Staff Efficiency and Conduct Team (EPAC)<br>Chief Information Officer; All General Managers<br>All Deputy Directors-General; Managing Director/Director-General |

### **Steps in the Investigation Procedure**

- Step 1 – Complaint recipient refers the matter to the Principal or workplace manager, who refers it to the appropriate delegate.**
- Step 2 – Delegate considers the matter and determines whether or not a coordinated approach is needed.**
- Step 3 – Delegate checks for previous action re the complaint.**
- Step 4 – If appropriate, delegate commences investigation or appoints an investigator to do so.**
- Step 5 – Investigation is conducted.**
- Step 6 – On receiving the Investigation Report, Delegate takes action and provides advice as needed.**

### **Step 1 – Refer matter to appropriate delegate**

Obtain or put the complaint or allegation in writing or provide or arrange assistance (e.g. an interpreter) to enable the complaint to be set out in writing. Have the complainant sign and date the complaint (if possible). As oral complaints are accepted, the person receiving an oral complaint or allegation (e.g. by telephone) should set it out in writing.

The person receiving the complaint or allegation refers the matter to the Principal or workplace manager who refers it to the appropriate delegate as soon as possible.

### **Tasks for Delegate:**

#### **Step 2 – Co-ordination**

If the complaint or allegation is sent to multiple addressees, or if it falls within the jurisdiction of different sections of the Department or external agencies, then co-ordination will be necessary. Any person dealing with such a complaint within the Department should contact other persons, Departmental or external, to ensure that such co-ordination does take place.

Where a set of allegations appears to require the attention of more than one specialist group, then a decision is made whether:

- the allegations should be split and assigned to separate parties who will investigate and report separately
- a multi-disciplinary team should be formed to investigate and report in a coordinated manner, or
- one party should conduct the investigation on behalf of the other parties.

Similarly, if multiple complaints are received concerning similar incidents involving the same person or workplace, then co-ordination will be required. Immediate action should be taken to identify one delegate best able to manage the matter and other parties should be notified of that decision.

Procedures must be put in place to ensure that all parties are aware of their roles and that they liaise with the coordinator.

It will be the responsibility of the coordinator to ensure that there is consistency, that all elements are considered and that the final report to the delegate provides a holistic view.

#### **Step 3 – Consider previous action**

Action should include checking for previous investigations or management action regarding the complaint.

Procedures to prevent the unknowing re-opening of a previously closed matter should include:

- being alert to the time elapsed since the events in question
- being alert to the range of bodies which might have already investigated or taken action on the matter (e.g. current manager, another region or institute from which the person may have transferred, Employee Performance and Conduct, Human Resources, Staffing Services, etc)

- checking with these bodies
- checking personnel files for previous disciplinary or remedial action
- checking TRIM.

Where the complaint or allegation relates to the competency of a previous investigation or action, the investigation should establish if the previous process was sound and only in cases where the procedure is judged to be unsound should the matter be re-opened and the merits reconsidered.

If previous action was sufficient and sound then the complainant should be notified and the matter closed.

#### **Step 4 – Initiate investigation**

- Confirm that investigation is the appropriate procedure and that special cases do not apply.
- Acknowledge the complaint or allegation (within 10 working days) in writing. (See Sample letter.)

#### **Step 5 – Investigation is conducted**

Investigation should be conducted in accordance with the Guidelines for the Management of Conduct and Performance.

**When Investigation has been completed:**

#### **Step 6 – Action to be taken by the Delegate**

Upon receipt of the completed investigation report the delegate will:

- **Consider the report and recommendations.** If recommendations are accepted, the delegate will implement those within their delegation and refer other recommendations, as appropriate. Other recommendations should be discussed with relevant parties and outcomes documented.
- **Notify complainant/person making allegation** of the outcome, within 10 working days, providing reasons for the decision reached.
- Ensure that there is a process in train to **notify the respondent** of the outcome.
- **Store file** securely, in accord with requirements in Records.

### **Possible Outcomes following Investigation**

**Internal (DET) investigations may recommend:**

- no further action
- staff disciplinary action
- staff remedial action
- staff being placed on a performance improvement program
- sanctions such as the removal of privileges or counseling of students
- remedy and/or systems improvement
- referral for police action
- referral to the Independent Commission against Corruption (ICAC)
- notification to the Commission for Children and Young People (CCYP)

**Referral to the police may result in:**

- police investigation, criminal charges and conviction
- police request for a DET investigation which is referred to police when complete
- police decision not to action the matter (which opens the way for a DET investigation and possible disciplinary/remedial action)

**Referral to the ICAC** could result in the ICAC investigating, making findings of corrupt conduct and recommending that the Director of Public Prosecutions considers criminal prosecution.

**Staff disciplinary action** may include:

- dismissal from the Department
- directing the officer or permanent employee to resign or to be allowed to resign from the Department within a specified time
- reduction in the officer or permanent employee's salary or demotion to a lower position in the Department
- the imposition of a fine
- a caution or reprimand.

**Staff remedial action** may include:

- counselling
- training and development
- monitoring conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning that certain conduct is unacceptable or that performance is not satisfactory
- any other action of a similar nature.

#### **Notification of name to the CCYP**

An allegation of reportable conduct against an employee, could result in notification of the employee's name to the CCYP. See Responding to Allegations against Employees in the Area of Child Protection 2004 Section 8.

**Investigations of students** may lead to the application of the relevant student disciplinary procedures, which can lead to suspension or expulsion, or, in extreme cases, referral to the police.

**Investigations of contractors, volunteers or other persons** associated with DET activities or sites can lead to termination of contracts, termination of services, or restriction of access to DET sites.

#### **Timeframe**

The delegate should acknowledge the complaint within 10 working days and initiate the investigation as soon as possible thereafter.

The time taken will vary due to a range of factors including the:

- number and complexity of the issues
- emergence of additional issues as the investigation proceeds
- number of witnesses to be interviewed
- need to refer matters to external agencies such as the police and the consequent suspension of DET action until that agency indicates that DET action can continue
- impact of delay on the fairness of the process, or matters arising from the process such as the suspension of the officer
- health or well being of the officer or permanent employee.

Wherever possible delegates are to complete investigations within 3 months of receipt of the complaint. Advise the complainant (and if appropriate, the respondent) if a longer timeframe is required and the reasons.

Notify the complainant and the respondent within 10 working days of receipt of the investigation report.

If the matter is a protected disclosure, notify the complainant of progress or outcome within 6 months of the date of the disclosure.

#### **Resubmission of Complaints**

A delegate can decline to act upon the resubmission of a complaint or allegation that has been previously investigated and finalised in accordance with these procedures, unless

relevant new information has been submitted that could materially affect the conclusions of the investigation.

In such circumstances, the delegate may decide to re-open the investigation or to initiate a fresh investigation.

## **Reviews**

Investigations arising from complaints are for the purpose of establishing the facts on the basis of available evidence and drawing conclusions on the balance of probability.

**There are no internal review rights in relation to investigations covered by these procedures.**

In the event that disciplinary action occurs as a later consequence of the investigation findings, the respondent may be able to seek a review of the decision under the relevant disciplinary provisions.

## **External Review**

If a complainant or respondent is dissatisfied with the outcome of an investigation conducted under these complaint procedures, they may be able to seek an external review of the decision.

Complainants and respondents may have grounds to seek review of the outcomes of Departmental investigations by various external bodies. The procedures governing reviews are set out in the relevant legislation.

In the event that disciplinary action occurs and a penalty is imposed as an outcome of an investigation, the respondent may be able to seek a review of the decision under the relevant disciplinary provisions.

See also the related issue, **External Review**.

There is available an optional Complaint Action Form to assist in recording action taken.

## Glossary

**Allegation** – a complaint regarding serious misconduct which possibly involves a crime, corrupt conduct, improper conduct or other behaviour which may be the subject of court or disciplinary/remedial action.

**AMES** – Adult Migrant English Service.

**CCYP** – Commission for Children and Young People, which is an independent organisation that works with others to make NSW a better place for children and young people.

**Child** – person under 18 years of age. However, with respect to matters notifiable to DOCS, a child is defined as a person under the age of 16 years.

**Complainant** – any person lodging a complaint or allegation.

**Complaint Manager** – the employee responsible for handling a complaint.

**Confidentiality** – refers to information provided by a person on a confidential basis which is not to be disclosed e.g. the identity of the provider and/or the details of the information are not to be disclosed except as agreed to by the provider.

**Corrupt conduct (corruption)** – includes:

- a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official, any group or body of public officials, or any public authority, or
- b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions,
- c) any conduct of a public official or former public official that constitutes or involves a breach of public trust (which includes sexual impropriety by a staff member against a student or students)
- d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- e) serious maladministration

To be corrupt conduct the behaviour must be sufficiently serious to constitute a disciplinary matter or a criminal offence or grounds for dismissal.

**Delegate (noun)** – position with the authority to initiate the procedure to deal with the suggestion, complaint or allegation. The delegate can nominate another person to carry out the procedure (e.g. manage the negotiation or conduct the investigation).

**Department staff** – All Department employees including those assigned to work in TAFE NSW.

**Disciplinary action (re staff)** – action taken under the relevant legislation to determine if an employee has behaved improperly, and if so, to impose a penalty.

**Disciplinary action (re students)** – action taken under the relevant policies.

**Disability** – means:

- a) total or partial loss of a person's bodily or mental functions or of part of a person's body
- b) the presence in a person's body of organisms causing or capable of causing disease or illness
- c) the malfunction, malformation or disfigurements of a part of a person's body
- e) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- f) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotion or judgement or that results in disturbed behaviour.

**Disclosures Coordinator** – Senior Manager, Serious Misconduct Investigation Team.

**DoCS** – Department of Community Services



**Employee Assistance Program (EAP)** – is a voluntary, professional, confidential counselling service for work-related or personal problems provided free of charge by external, registered psychologists with clinical experience which is operated through self-referral or supervisor referral.

**Grievance** – an actual or perceived wrong considered as grounds for a complaint. In terms of these procedures it may relate to a workplace issue between employees or issues of concern to parents, care-givers, students and community members.

**Harassment** – any form of ongoing behaviour that is not welcome, not asked for or not returned, and that offends, intimidates or humiliates a person.

**HealthQuest** – is a statutory health Corporation providing occupational health services to both government and private sector employees.

**HREOC** – Human Rights and Equal Opportunities Commission, which investigates complaints of discrimination under the federal anti-discrimination legislation.

**ICAC** – Independent Commission against Corruption, which deals with corruption as it is defined in the ICAC Act. See Corrupt Conduct, above.

**Investigation** – process by which a situation is examined in detail, facts are established and the truth or falsity of any allegations is established. Investigations obtain direct evidence such as witness statements and documentary evidence.

**Maladministration** – action or inaction of a serious nature that is contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.

**Mediation** – a confidential and voluntary process where a neutral party, the mediator, assists the parties involved in the dispute to reach some common ground and arrive at an agreed settlement.

**Neglect** – failure to provide the basic physical and emotional necessities of life. Neglect may be an ongoing situation and can be caused by a repeated failure to meet the child's or young person's basic physical and psychological needs.

**Negotiation** – process by which a solution or agreement is developed through discussions or correspondence with another person. The process requires participants to consider the point of view of the other persons and consider compromise solutions.

**Nominated Disclosure Officer** – position nominated by DET whose incumbent can receive disclosures from employees which may be protected disclosures and forward them to the Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team) or, in the case of Child Protection matters to the Director, Employee Performance and Conduct Directorate or a Duty Investigator. Disclosures can also be made to ICAC and Members of Parliament.

**OHS** – Occupational Health and Safety. Refer to Occupational Health and Safety Policy.

**Ombudsman** – The NSW Ombudsman is an independent and impartial watchdog. The role of the Ombudsman is to ensure that agencies, including DET, fulfil their functions properly and improve their delivery of services to the public. The Ombudsman assists agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

**Partial** – biased or prejudiced.

**Procedural fairness** – a way of proceeding where the decision maker should act in good faith, without bias and grant a hearing, or opportunity to present their case and know the case against them, to any person whose interests will be affected by the exercise of that decision before the decision is made.

**Protected disclosure** – an allegation of corruption, maladministration or serious and substantial waste, by a public official, about a public official, made to a person in a position identified in the Protected Disclosures Act 1994, including an ICAC officer, a member of Parliament or to a Nominated Disclosure Officer of the department.

**Public official** – employee of a state government department or agency (including part time or casual staff), employee of a local government authority, a person having a public official function or acting in a public official capacity for the state.

**Recipient** – employee who first receives a complaint from the complainant.

**Remedial action** – can be taken if an allegation is made that an officer or permanent employee may have engaged in misconduct. Such action may consist of any one or more of counseling, training and development, monitoring the individual's conduct or performance, implementing a plan addressing unsatisfactory performance, issuing of a warning, transfer to another position that does not involve a reduction in salary or demotion or any other action of a similar nature.

**Remedy** – action taken to correct or rectify a situation e.g. to provide a service that should have been but was not previously provided, or to correct a wrong decision or action.

**Reportable conduct** – is defined as any sexual offence or sexual misconduct committed against, with or in the presence of a child - including a child pornography offence, any assault, ill-treatment or neglect of a child, any behaviour that causes psychological harm to a child – even if the child consented to the behaviour.

**Resolution** – where parties agree on a future course of action, or the complaint is withdrawn, or a compromise is agreed on.

**Respondent** – a person requested to respond to complaints made about them.

**Risk of Harm** – A child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person. Refer to Protecting and Supporting Children and Young People: Revised Procedures, 2000.

**Serious breach** – a breach of a nature which, if proven, would have a reasonable prospect of leading to criminal or disciplinary/remedial action.

**Serious and substantial waste** – uneconomical, inefficient or ineffective use of resources (authorised or unauthorised) which results in significant loss or wastage of public funds or resources. In this context the loss or waste is "significant" if it is material in terms of the total budget, or exceeds \$500 000, or indicates systemic weakness.

**Serious offence** – is a criminal offence punishable by a penalty of imprisonment for 12 months or more.

**Student** – a student of a government school or centre, a Saturday School of Community Languages, TAFE Institute, Adult Migrant English Service (AMES), National Art School or Open Training Education Network (OTEN)-Distance Education facility.

**Support person** – a person who accompanies a complainant or respondent to a meeting or interview to provide personal support. While s/he is not a legal advocate or representative and is not to speak on behalf of the complainant or respondent or influence the process, the form of support may vary according to the circumstances. It could include provision of advice on rights and entitlements, seeking clarification of the process and referring concerns to a more senior officer. S/he needs to be aware of any confidentiality requirements. S/he may be a union representative.

**Systems improvement** – the process of identifying and acting on the causes of complaints, inefficiencies or other quality problems, usually by adjusting procedures and issuing updated documentation.

**TRIM** – the records management program used by the department (Tower Records Information Management).

**VETAB** – Vocational Education and Training Accreditation Board.

**Victimisation** – subjecting any complainant to any form of detriment as a result of making a complaint.

**Vilification** – a public act that encourages or incites others to hate, have serious contempt for, or severely ridicule a person or group of people because of their race, homosexuality, transgender, HIV or AIDS.

**Workplace Bullying** – An employee is subject to workplace bullying if the person is subjected to repeated behaviour by a person, including the employee's supervisor, or a co-worker or group of co-workers of the person, or other person including a student, a member of the school community or member of the public external to the workplace that:

- is unwelcome and unsolicited; and
- the person considers to be offensive, intimidating, humiliating or threatening; and
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening

Workplace bullying and harassment does not include reasonable management action taken in a reasonable way in accordance with DET policies and procedures in connection with the person's employment.

**Young Person** – a person who is aged 16 years or above but who is under the age of 18 years”.

## Links and Contacts

### Links

#### NSW Department of Education and Training Policies and associated documents

[Our Policies](#)

[Legal Issues Bulletins](#)

#### Procedures

[Code of Conduct](#)

[Corruption Prevention Procedures](#)

[Girls and Boys at School: Gender Equity Strategy](#)

[Guidelines for the Management of Conduct and Performance](#)

[Responding to Allegations against Employees in the Area of Child Protection](#)

#### Related Links

[Australian Quality Training Framework](#)

[Dignity and Respect- Policy and Guidelines on Preventing and Managing Workplace Bullying \(Premier's Department\)](#)

[Development of Guarantee of Service by Agencies 1994](#)

[Employee Assistance Program \(on-line fact sheets and brochure\)](#)

[Healthquest](#)

[National Code of Good Practice for Responding to Complaints about Vocational Education and Training Policy](#)

[NSW Commission for Children and Young People](#)

[NSW Institute of Teachers](#)

[NSW Legislation](#)

[NSW Ombudsman](#)

[NSW Personnel Handbook and revised PSEM Disciplinary Guidelines \(See Section 9\)](#)

[Service Principles and Obligations \(Premier's Department\)](#)

### Contacts

Department of Education and Training:

Employee Performance and Conduct (02) 9266 8070

Freedom of Information Unit (02) 9561 8151

Industrial Relations and Employment Services (02) 9561 8007

Legal Services (02) 9561 8538

Occupational Health and Safety Unit (02) 9266 8955

Privacy Contact Officer (02) 9561 8151

Serious Misconduct Investigation Team (02) 9244 5203

Student Welfare (02) 9266 8936

TAFE Human Resources Managers:

Hunter (02) 4923 7222

Illawarra (02) 4222 2908

New England (02) 6768 2445

North Coast (02) 6586 2222

Northern Sydney 131 674

Riverina (02) 6938 1444

South Western Sydney (02) 9796 5400

Sydney (02) 9217 3367

Western (02) 6393 5900

Western Sydney and OTEN (02) 9208 9201

Unions:

PSA (02) 9290 1555

Teachers Federation (02) 9217 2100 or 1300 654 369

Other:

Board of Studies (02) 9367 8111

DoCS Helpline 133 627

EAP: IPS Worldwide on 1300 366 789 or Davidson Trahaire Corpsych on 1300 360 364

HREOC (02) 9284 9600 or 1300 369 711

ICAC (02) 8281 5999

VETAB (02) 9244 5335

