



NSW Ombudsman

Discussion Paper:

Complaint Handling in NSW Universities

Respond by: 22 November 2004

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# CHAPTER 1 INTRODUCTION

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The purpose of this document is to set out for discussion a minimum standards scheme for university complaint handling that, if adopted, would provide a university with the capacity to adequately handle any complaint likely to arise. After considering submissions from stakeholders containing their comments and suggestions, we intend to publish a revised scheme with a recommendation that it be implemented in all NSW public universities.

We emphasise our purpose is not to infringe universities' independence, but rather to formulate minimum standards to protect the rights of staff, students and other stakeholders. Minimum standards will assist universities to make their complaint handling systems more robust for their own protection. Recent experience shows that deficiencies in university complaint handling systems and their operation can have massive costs in terms of money and damage to individuals' careers and institutional reputations. Minimum standards in complaint handling are akin to such administrative requirements as accounting and annual reporting standards, corruption reporting obligations and Freedom of Information requirements.

Another impetus to produce this proposed scheme was our concern about the fact that complaints to the Ombudsman about universities have risen significantly in recent years, both in numbers and the seriousness of matters alleged. The nature of complaints and disclosures that can be made concerning a university and its staff is very broad. Such complaints/disclosures can be divided into three categories:

- **disputes** (matters in which the complainant has some "ownership", but which do not raise serious issues about university management or administration: e.g. complaints about assessments, exclusions, discontinuation of courses, lack of procedural fairness or grievances lodged by staff);
- **mismanagement** (covers such things as unreasonable decisions, inconsistent application of policy, denial of procedural fairness, failure to provide rights, failing to consider relevant matters, wrong advice leading to detriment, and negligence; and
- **misconduct** (includes ethical and integrity issues such as plagiarism, soft marking, conflict of interests, fraud, bribery, dishonesty, favouritism, improper discrimination and harassment).

Those receiving complaints should resist any initial temptation to view them as negative attacks by misguided or disaffected people, or people seeking some unwarranted advantage. Complaints can benefit universities in several ways by:

- creating a second chance to provide quality service and satisfaction to staff and students;
- identifying areas of risk
- identifying areas that need improvement;
- providing opportunities to strengthen student, staff and public support for the university; and
- assisting in planning and allocation of resources.

Quality customer service in any agency consists of doing the job right or providing the appropriate service at the outset, most of the time. If and when things go wrong they can only be put right, and the quality of service delivered, if the agency hears about it in the first place. Complaints can be seen as opportunities for service recovery.

Dissatisfied customers speak badly of an agency and usually will tell many other people. Customers whose problems are quickly resolved, tend to be at least as loyal and supportive as those who never experienced a problem, often more so. The way a university deals with complaints will therefore be of great significance to its reputation and performance. Given universities now often operate in a competitive market, particularly for overseas students, effective complaint handling will have a direct effect on long term financial health.

A complaint handling system is an organised way of responding to, recording, reporting and using complaints to improve service. It includes procedures for customers to make complaints and guidelines for staff to resolve them, and provides information to managers and staff who can assist them to prevent customer dissatisfaction in the future.

An effective complaints handling system is an essential part of providing quality service. It is a measure of customer and client satisfaction. It provides positive feedback about aspects of service that work well, and is a useful source of information for improvement.

Different types of complaints and disclosures require different types of complaint handling mechanisms and investigation techniques. What is required depends on such factors as:

- the nature of the complaint or disclosure (for example, is it about policies, procedures and practices, or about the conduct of individuals?);
- the seriousness of the allegation(s) and possible outcomes; and
- the potential risk to the complainant/informant.

A sparse history of complaints or disclosures being made within a university should not be taken as indicating comprehensive complaint handling mechanisms are not needed. Experience shows such a history may simply reflect the lack of appropriate mechanisms to address complaints or disclosures.

In this regard it is important to look at the prerequisites for making a complaint or disclosure. There are generally three prerequisites for most persons to complain about misconduct or mismanagement by colleagues or people with whom they have an ongoing contact:

- first and foremost they must be confident they will not suffer detriment/disadvantage for doing so;
- secondly they must believe that making a complaint will serve some good purpose - that appropriate action will be taken; and
- thirdly, they must believe it is acceptable to make a complaint, and know how to make it, for example who to, what information should be provided, etc.

Unfortunately, the protections available to staff under a university's internal reporting policy for protected disclosures are not available to students who make a complaint. When considering the need to protect students who make disclosures about mismanagement or misconduct by staff or by fellow students, it is important to realise that in practice they are in largely the same position as members of staff of an organisation who 'blow the whistle':

- for all intents and purposes students are 'internal' to the organisation in the sense that they 'work' there (though they are not normally on the university payroll);
- if students make disclosures/complaints they are about people with whom they often must have regular, continuing contact; and
- the subjects of their disclosures and their colleagues can take detrimental action against students that can seriously affect their futures.

Without a legislative scheme that provides protection for students who make disclosures about mismanagement or misconduct, it is incumbent on universities to address this administratively. This is best done by having an effective internal complaints system that provides the climate in which students feel confident they can complain without fear of disadvantage. We recognise this is a particularly difficult issue to address given the ongoing relationship between students and staff.

In our experience of university complaints we have encountered a number of examples where there was evidence of confusion as to whether the complaint was a grievance relating to a poor staff performance issue or the complaint arose from alleged misconduct. Characterisation of a complaint as one or the other

can lead to treatment according to different policies with quite different outcomes. This suggests that a uniform minimum standards complaint handling approach should be taken irrespective of whether the complaint is performance or misconduct related.

In December 2003 the above considerations led us to conduct a survey to obtain information from universities within our jurisdiction\* as to their current systems for dealing with complaints internally. The survey involved asking all ten NSW public universities for copies of all university policies and procedures that govern handling of complaints by staff and students including any relevant Bylaw, Regulation or Industrial Award. We also sought a copy of each university's current internal reporting policy for complaints, including protected disclosures, and information on the university's complaint recording system and complaint statistics. A copy of the survey questions is at Appendix A.

All universities responded to the survey by the end of February 2004. An evaluation of this survey information is detailed in Chapter 2 of this discussion paper.

In response to the findings of the university complaints systems survey we have set out in Chapter 3 a statement of minimum standards for complaint handling within universities for consideration. These commonly accepted minimum standards are based on best practice and Australian Standard AS 4269-1995 and our own complaint handling guidelines. The minimum standards statement includes current examples of relevant features identified from the ten NSW public universities surveyed.

Also in Chapter 3 under the heading *Management of Conduct and Performance* we consider the revision and streamlining of performance management and disciplinary processes applying to staff within NSW universities. The Ombudsman wishes to consult with all universities and relevant unions on the development of a streamlined, less prescriptive performance management and disciplinary process as that relates to complaint handling, which emphasises natural justice and alternatives to a formal disciplinary scheme.

Currently all ten NSW universities have their own unique disciplinary processes contained within their staff enterprise agreements. We suggest that the development of better integrated conduct and performance management policies to apply to all NSW universities could assist in promoting a more streamlined, flexible, transparent and fair approach to managing an area that is inextricably bound to complaint handling issues.

This paper invites key stakeholders and interested persons to comment on the issues raised in it by making a submission to this office. We seek answers to some specific questions but additional comments on any aspect of this paper and complaint handling in universities will be most welcome.

\* **Jurisdiction** - An issue was recently raised as to whether NSW public university staff were covered by the definition of "public authority" in Section 5 of the *Ombudsman Act*. As a result we sought senior counsel's advice which confirmed that NSW public university staff are covered by the definition of "public authority" in the Act.

# Chapter 2 Survey evaluation

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Below is a summary evaluation of the survey information. Individual responses were assessed having regard to various standards on complaint handling as well as the Ombudsman's corporate experience of best practice complaint handling methodologies.

## Complaint handling systems

- All universities had formal complaint handling systems with details of those systems readily available on the internet.
- Only three universities appeared to have a staff position allocated to co-ordinate such systems.
- Information made available on staff training for people responsible for complaint handling was in most cases very limited, suggesting a lack of adequate training in this area.
- Only five universities appeared to provide complaint handlers with adequate written guidelines.

## Making and receiving complaints

- No university required a complaint or grievance to be written in the first instance. However, once a complaint reached the formal stage, eight universities required the complaint or grievance to be written either by the complainant or the recipient.
- Most universities provided an adequate description of how, when, where and to whom complaints must be made and had appropriate complaint assessment methods.
- Only three universities specifically provided for complaints against groups (eg. committees, panels) as well as individuals.
- Three universities did not clearly define responsibilities for staff receiving complaints and lacked clear directions for recording complaint receipt. Four did not adequately specify time frames for complaint handling.

## Informal resolution and referral

- All universities had procedures to informally resolve complaints but only two explicitly provided for either the complainant or respondent to refuse informal resolution.
- Three universities did not appear to have adequate procedures for complaint referral.

## Mediation

- Eight universities provided a mediation option for complaints but only four of those appeared to have trained mediators available.
- Six of the universities with a mediation option had provision for either the complainant or respondent to refuse mediation and explicitly provided for involvement of the relevant union representative in mediation.

## Recording and maintaining complaints related data

- Only four universities had adequate systems for recording handling steps and outcomes of complaints and appropriate persons nominated to collect, analyse and report on complaints data.
- Very few universities had adequate protocols governing access to complaints-related documents. For instance, only one had a central location for storing complaint data and only four had specific archive and retention policies for complaint documents and adequate protocols for marrying complaint related material to personal files.
- Five universities did not have appropriate restrictions on access to complaint documents and four did not adequately cover privacy and confidentiality requirements.

## Internal investigations

- Only one university made provision to start an investigation prior to informal resolution.
- All universities nominated a person to authorise investigations and their terms of reference and formally delegated authority to investigators to make decisions.
- All universities appeared to have adequate protocols to ensure procedural fairness for all parties in an investigation, while six appeared to provide for the confidentiality of identity for the respondent where appropriate. Only two universities provided adequate guarantees against disadvantage where the complaint was dismissed.
- Only three universities appeared to provide for independent investigators in all their complaint mechanisms or offer adequate training for persons acting as investigators.
- Four universities did not give adequate guarantees of confidentiality of identity for the complainant or guarantees of protection against reprisals or disadvantage. No university made provision for a change of supervisor or course, where appropriate, to ensure a complainant did not suffer harassment, victimisation or other detriment in reprisal for their complaint.
- No university provided witnesses with adequate guarantees against reprisals or disadvantage within all their complaint mechanisms or appeared to provide for a change of supervisor or course, where appropriate, to ensure witnesses did not suffer harassment, victimisation or other detriment in reprisal for their evidence.

## Referral to outside agencies

- Three universities failed to identify a position responsible for referring complaints to external agencies and four failed to adequately specify criteria for referring complaints to outside agencies.
- Seven universities had inadequate protocols in place for informing relevant parties about an external referral of a complaint.

## Discipline and redress

- All universities had policies on redress in the event a complaint is sustained, which comprehended industrial protections for staff affected by any finding.
- Four universities did not have procedures for dealing with knowingly false complaints and an appropriate range of sanctions against those making them.

## University policies relevant to complaint handling

- All universities had an adequate code of conduct and policies on conflict of interests and harassment .
- Nine universities had adequate internal reporting systems and procedures for handling protected disclosures.
- Eight universities had adequate policies on discrimination and bullying and workplace violence.
- However, only four appeared to have adequate policies or codes of practice on teaching and learning.
- All universities had policies on plagiarism that applied to students. Only two appeared to have such policies that applied to staff.
- Three universities appeared to have a central register for listing plagiarism incidents.
- All universities appeared to have adequate policies for administering student discipline and adequate policies for handling complaints about student academic matters including fail grades, final result review, unsatisfactory progress, extensions of time and special consideration.

## Data and statistics collected

- Of the eight universities that provided information on their staff complaint recording system, very few appeared to use more than four data fields to capture information.
- Five universities provided statistics on the number of complaints they had dealt with in the last annual reporting period. Of those, three provided statistics by issue, four by method of handling, one by source of complaint and one by academic unit the subject of complaint. No university provided statistics on the time taken to finalise a complaint.

# Chapter 3 Complaint Handling - Minimum Standards

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In response to the results of the university complaints systems survey we have developed a draft statement of minimum standards for complaint handling within universities for consideration. The minimum standards statement set out below includes current examples of relevant features from the universities surveyed. Examples chosen were those identified as being closest to desirable practice, although some may still be less than ideal. Just over a third came from one source – The University of Technology, Sydney. This appears to reflect recent extensive revision of UTS policies following publication of the ICAC’s 2002 investigation report into certain conduct at UTS.

We invite you to comment about any aspect of the minimum standards scheme proposed and the examples provided by making a submission to this Office. Details on where to address your responses are at page 37 of this paper

In developing our approach to this scheme, various resources were referred to including those listed in Appendix C.

For simplicity, the word “complaints” is used to cover complaints, grievances, disclosures, reports, allegations and the like unless further specification is given. Also, in order to allow the sub-items to stand largely alone, thereby avoiding substantial cross-referencing, the retention of some repetition has been necessary.

## 3.1 Complaint Handling System

### 3.1.1 A formal complaint handling system is required

*[All universities surveyed had a formal complaint handling system.]*

Complaints occur in all institutions and handling them properly is important for maintaining a harmonious and productive work and learning environment. A university’s commitment to the appropriate resolution of complaints is demonstrated in part by adopting an effective complaints system with clearly stated objectives, definitions of what constitutes a complaint and the imperative of continuous service improvement that underpins encouragement of a culture in which people should not feel inhibited about lodging complaints.

The commitment to efficient and effective complaints management should involve all levels of the university, particularly senior management. As far as possible, more serious complaints should be dealt with at a senior level and provision made for complaints to be forwarded direct to senior management. The Vice-Chancellor should have primary responsibility for the management of serious and sensitive complaints.

An organisational culture that responds to complaints positively and professionally should be encouraged through the adoption and dissemination of documented policies. Universities should build complaints management into their organisation’s strategic and operational planning processes, and refer to it in annual reports.

Most universities have a comprehensive framework for dealing with staff and student concerns. Mechanisms for dealing with staff and student concerns include:

- grievance policies to deal with workplace conflicts or grievances
- discipline policies within staff enterprise agreements to deal with performance and misconduct issues



- discrimination and harassment grievance policies to deal with specific EEO concerns
- code of conduct and staff enterprise agreements to specify ethical and other conduct yardsticks against which misconduct can be determined
- protected disclosure policies to deal with corrupt conduct, maladministration or serious and substantial waste.
- policies for administering student discipline
- policies for handling complaints about student academic matters including fail grades, final result review, unsatisfactory progress, extensions of time and special consideration, and other concerns.

The policies, guidelines and practices associated with these complaint mechanisms should be standardised within a university. Complaint systems need to be rationalised so that they contain parallel and complementary practices, policies and procedures where appropriate (such as consistent confidentiality assurances, time frames, record keeping procedures etc.)

### **3.1.2 Complaint systems must be visible and accessible**

*[All universities had details of their complaint systems readily available on the internet.]*

A complaint system must be both visible and easily accessible. Universities should demonstrate a commitment to making their complaints management process highly visible by promoting it internally and externally. Full details of relevant policies and procedures should be placed on the university's website and intranet and further promoted through brochures, directories and handbooks. A link should be established on the website's homepage to the complaints process for staff and students which provides detailed information on the complaints framework and related policies and clear 'how to' steps.

#### **Example:**

The **University of Newcastle** website is an example of practical systems availability. It has a "Policy Library" online with an index and links to the university's policy documents. It facilitates access to policies, procedures, legislation, strategic plans, rules, regulations, guidelines and other documents.

### **3.1.3 Complaint handling systems should be effectively co-ordinated**

*[Only three universities appeared to have a staff position within the university responsible for the operation of the complaint handling system.]*

Positive steps should be taken to effect full and proper co-ordination of complaint mechanisms between academic and other units. This is important to ensure the best possible service and to avoid confusion, unnecessary duplication or conflict within the university. Allocation of responsibility for the operations of complaint systems to a senior staff member would greatly assist this process. A complaint systems operations officer could be responsible for :

- assisting the development and evaluation of complaint policies procedures.
- pursuing a commitment to efficient and fair resolution of complaints at all levels.
- establishing and monitoring performance standards including time frames for response and quality of response.
- the compilation and systematic review of complaint data to identify both good practice and problem areas and to analyse trends.
- improving service delivery, staff satisfaction and responsive administration in identified areas.

## Examples:

**Charles Sturt University** recently established a Complaint Resolution Co-ordinator position responsible for the development and management of the complaints system. The officer is responsible for establishing a centralised system for complaint lodgement and the development of a database to track complaints and identify systemic issues within them. The creation of the position along with other reforms are designed to achieve more rigorous complaints management and to provide a framework for identification and rectification of systemic problems.

The **University of Western Sydney** recently established a position of Complaints Resolution Manager, responsible for overseeing the system, providing advice, training and support with respect to complaint handling, as well as ensuring probity, proper access, a client service focus, quality assurance and reporting. The position has authority to ensure complaints are handled properly in accordance with applicable policy and guidelines.

### 3.1.4 Staff need to be trained in complaint handling

*[Information provided on training for staff responsible for handling complaints within universities was in most instances very limited, suggesting a lack of adequate training in this area.]*

An effective complaint handling system requires skilled staff who are motivated and empowered to deal professionally with complaints. To achieve this, university staff with complaint handling roles and responsibilities need adequate training in relevant procedures, their authority to resolve problems, and the criteria for exercising that authority.

Management should assign specific accountabilities to staff, using job statements and unit/faculty mission statements. Complaint handling staff also need training in the skills of listening, problem solving and alternative dispute resolution (ADR) methods. Regular refresher training is also recommended.

## Example:

The **University of Technology, Sydney** has produced six training modules: 1) Grievance Handling – The Basic Framework; 2) Practical Grievance Handling Skills; 3) The Big Picture – Legal Responsibilities; 4) Investigation Skills for Specialist Grievance Handling Staff; 5) Grievance Handling for University Library Staff, and 6) Grievance Handling for Student Liaison Staff.

Between July 2002 and November 2003, 367 UTS academic and support staff participated in such training.

### 3.1.5 Written guidelines should be available for complaint handlers

*[Five universities did not provide complaint handlers with adequate written guidelines.]*

Agreed policies and procedures that are easy to understand and explain will assist staff in resolving, conciliating and investigating complaints.

It is imperative that a complaint handling system clearly defines who is responsible for dealing with complaints at each stage. Those stages generally include first tier complaint handling where delegated staff endeavour to resolve at first contact the less serious complaints about conduct and complaints about implementation of policies and procedures; second tier complaint handling where unresolved first tier complaints or more serious complaints about the conduct of staff or students are reviewed or investigated by more senior or specialist staff, and third tier complaint handling where an unresolved complaint may be referred for consideration of disciplinary or other formal action or external referral.

It may be the responsibility of all staff, or perhaps a designated officer in each university unit, to deal with first stage complaints. Wherever the responsibility lies, each person must be clear about their role and duty in dealing with a complaint. All staff must know to whom to refer any complaint if they themselves cannot handle it.

To this end, clear and comprehensive written guidelines should be developed setting out the procedures to be followed by complaint handling staff. Procedures and guidelines are an important means of assisting decision-makers to exercise their responsibilities appropriately, consistently and fairly. Clear delegations to staff should define their responsibility for dealing with complaints and their powers to remedy problems. Delegations should detail the scope of staff decision making ability and limits on remedies they can authorise.

### **Example:**

The **University of Technology, Sydney** document *Guidelines for Supervisors Handling Staff Grievances* is an example of clear comprehensive written guidelines. The guidelines aim to assist complaint handlers deal efficiently with complaints and ensure that UTS's principles for handling staff grievances (such as procedural fairness, confidentiality, timeliness etc.) are followed. The guidelines include advice as to:

- what constitutes a grievance
- who is accountable for handling them
- what to do when a staff member raises a grievance
- when should a grievance be reduced to writing
- what is the appropriate timeframe to respond to a staff grievance
- how do you ensure that the grievance is handled fairly
- when should a grievance be referred or further advice sought
- when and how a grievance should be investigated
- what are the possible outcomes of the grievance resolution process
- who is responsible for advising the complainant of the outcome of their grievance
- what documents should be kept in relation to a grievance.

The guidelines include a helpful flowchart and have been included in the staff enterprise agreements and the university's grievance policy. The guidelines are available on the UTS website.

## **3.2 Making and receiving complaints**

### **3.2.1 Who can make and be the subject of a complaint?**

Policies and guidelines should advise what complaints are accepted: oral, written and anonymous and detail who can complain and be the subject of complaints.

We found university policies varied in defining who may make a complaint, for example:

- University of Western Sydney, *Draft Grievance Policy and Procedures*, states that ex-students and ex-staff members can use procedures
- University of Sydney, *Harassment and Discrimination Resolution Procedures*, states that honorary employees and ex-employees may use the procedures
- Charles Sturt University, *Grievance Resolution Policy and Procedure*, states that visitors to the university or someone who is applying or trying to apply to become a student/employee may use the procedures.

We suggest that universities consider ensuring that persons eligible to use the complaint systems include any member of staff or student and any other person with a significant interest or able to demonstrate a

significant public interest in the subject matter of the complaint. Where the complainant is neither student nor staff there should be an obligation to assess the complaint but an express discretion to decline it.

We also found variation in defining who may be the subject of a complaint, for example:

- University of Western Sydney, *Draft Grievance Policy and Procedures*, states that anyone connected with a persons study or work can be complained about including a contractor, any other type of visitor to a University campus, someone at a University organised external work or study placement, even if this is overseas.
- University of Sydney, *Harassment and Discrimination Resolution Procedure*, states that all university students, employees and honorary employees can complain about harassment or discrimination by, amongst others, a contractor, any other visitor to university campuses and/or someone at a university-organised work/study placement off-campus.

We suggest that universities consider allowing any staff member or student or any other person or organisation that has a significant association with the university to be the subject of a complaint. In the case where the subject is neither student nor staff there should be an obligation to assess the complaint but an express discretion to decline it.

Few universities appeared to have policies about how anonymous complaints should be dealt with. Complaints should never be ignored because they are made anonymously or because the complainant later withdraws the complaint – the allegations should still be tested by way of other avenues when it is reasonable to do so.

### **3.2.2 Complaints should be written or reduced to writing at the first stage**

*[No university required a complaint be written in the first instance. However once the complaint reached the formal stage, eight universities required the complaint to be written either by the complainant or the recipient.]*

Sophisticated complaint systems allow people to lodge complaints in many ways. There must, however, be robust procedures to unambiguously capture each complaint's substance, then assess and co-coordinate any responses required.

#### **Example:**

The **University of Western Sydney Complaints Handling/Resolution Framework** specifies that complaints are to be in writing and registered via a common web based database. A pro forma is to be made available. However, the University requires that opportunities should exist and be promoted, for students and staff, as a first step, to deal with complaints informally by speaking with the person concerned direct. If it cannot be resolved quickly and easily it needs to be formalised (ie. in writing).

### **3.2.3 The complaint system must be readily understood by its users**

*[Nine universities provided an adequate description of how, when, where and to whom complaints must be made and had appropriate complaint assessment methods.]*

Advertising the existence of a complaint system and its access points to potential users is a standard requirement for an effective system. All staff and students should be able to readily establish that they have a right to complain and how to do it.

Information about the various university complaint mechanisms needs to be freely available, easy to find and readily understood. It is important to make clear to staff and students who they should approach if they wish to complain in person or in writing. The information should ideally be available in a variety of communication forms. Plain English should always be used and legalese and technical language avoided.

## Examples:

The **University of Sydney** document, *Harassment and Discrimination Procedures: How Harassment and Discrimination Problems, Concerns and Complaints Can Be Resolved*, is a comprehensive plain English explanation of procedures for staff and students who may have a concern or complaint relating to harassment or discrimination. The procedures include a 5 step resolution process set out in an easy to read table incorporating time limits for complaint handling and a flowchart.

The **University of New England** operates an Equal Opportunity Adviser Scheme to assist in complaint handling and conflict resolution. A team of equal opportunity advisers assists students and staff on all aspects of equal opportunity and in resolving grievances. The team is trained to provide advice and act as mediators in disputes and provide referral information and support to complainants. The existence of the team does not remove a manager's responsibility for problem resolution but provides an additional or alternative avenue of support.

### 3.2.4 Provision should be made for complaints against groups and individuals

*[Three universities provided for complaints against groups as well as individuals.]*

Complaints may arise about a range of issues in universities including the activities of groups and academic units as well as individuals. Accordingly, university complaint policies should explicitly provide for complaints against groups and organisational units.

## Examples:

**Southern Cross University** in its document *Human Resources Policy and Procedures Manual* (11.5.11) provides "A grievance is a complaint about any type of work-related problem that is causing the staff member distress. The grievance may arise from a decision, act or omission **by any person or persons** within the university, which is considered by the staff member to be wrong, mistaken, unjust or discriminatory".

The **University of Sydney** document *Harassment and Discrimination Resolution Procedure* states that the procedures can be used to sort out discrimination or harassment by "an employee or group of employees, a student or group of students"

### 3.2.5 Responsibilities for staff receiving complaints need to be clearly defined

*[Three universities failed to clearly define responsibilities for staff receiving complaints.]*

It is essential that a complaint handling system clearly defines responsibilities for staff receiving complaints. Clear procedures should comprehend the sorts of complaints and problems that may flow to complaint handling staff. Written guidelines need to outline clear delegations to staff that define their responsibility for dealing with complaints and their ability to remedy problems. Guidelines should advise what complaints are accepted: oral, written and anonymous. Adequate supervision and feedback should be provided to complaint handling staff about their cases.

Each involved person must be clear as to their role and duty in dealing with a complaint. All staff must know alternative reference points for complaints they cannot handle.

## Example:

The **University of Technology, Sydney** document *Handling Staff Grievances Policy* clearly defines the responsibilities of supervisors, managers and other designated staff in complaint handling. The policy also has complementary *Guidelines for Supervisors Handling Staff Grievances* that set out who is accountable for handling staff grievances, what to do when a staff member raises a grievance and possible outcomes of the grievance resolution process.

### **3.2.6 Clear directions required for recording complaint receipt**

*[Three universities have no clear directions for recording the receipt of a complaint]*

Every university complaint handling system should include a recording procedure that captures all complaints received. Guidelines for complaint handling staff should contain directions on how complaints must be recorded.

#### **Example:**

The **University of Technology, Sydney** document *Grievance Record Keeping - Procedures* says records must be kept for all grievances that require resolution according to UTS policies and that an official file must be created for all grievances investigated. A generic grievance record form is available for UTS staff who handle grievances.

### **3.2.7 Time frames for complaint handling need to be adequately specified**

*[Four universities did not adequately specify time frames for complaint handling.]*

Complaints should be assessed and dealt with in a timely manner. The more promptly a complaint is dealt with, the less likely the complainant will be dissatisfied and the less distress is caused to any person the subject of a complaint.

Accordingly, each university complaint handling system should include time frames for resolution and other performance standards. Time limits should be set for each step in the complaint handling procedure. Those steps may include:

- 1) First tier - registration and attempted resolution by delegated staff;
- 2) Second tier - if unresolved, the matter is to be discussed with senior manager or specialist officer or investigated if considered appropriate;
- 3) Third tier - if required the matter may be referred for disciplinary action or referred externally and relevant parties advised of the outcome.

All such steps should be completed in a timely manner and in most instances within set time frames. All complaints should be tracked until finalised.

If the complaint requires some form of investigation, or experiences some form of delay, then performance standards should indicate that the complainant will be kept informed at regular intervals. Complainants need to be assured that even if a complaint cannot be immediately resolved, the university is taking appropriate action.

#### **Example:**

The University of Technology, Sydney document *Guidelines for Supervisors Handling Staff Grievances* outlines the appropriate timeframe to respond to staff grievances and refers to relevant provisions in enterprise agreements and legislation.

### **3.2.8 Appropriate complaint assessment methods must be utilised**

*[Most universities had adequate complaint assessment methods.]*

Complaints can range from the very minor and easily resolvable to the extremely serious, that may involve formal disciplinary action. The first task on receiving a complaint is to determine its nature. Identifying the nature of the complaint and its key issues, assists in determining how to deal with the matter. Appropriate complaint assessment methods must be developed to provide guidance in these tasks.

Some relevant factors in determining whether a complaint requires action beyond informal resolution include:

- are the issues raised by the complaint trivial, frivolous or vexatious?
- is there a more appropriate mechanism for dealing with the complaint?
- what significance does the complaint have for the university?
- how much time has elapsed since the events the subject of complaint?
- does the complaint indicate the existence of a systemic problem or a serious abuse of power?
- how many persons are alleged to have been involved?
- is there a pattern of conduct or a widespread problem?

### **Example:**

The **University of Wollongong** *Grievance Resolution Procedures* outlines which grievances can be dealt with under the procedures. The policy also provides guidance as to those grievances excluded from the procedures because they are dealt with under other mechanisms and when a grievance may be declined because of excessive delay, lacking in substance, been previously dealt with or resolved through other processes.

## **3.3 Informal resolution and referral**

### **3.3.1 Resolve complaints informally if possible and appropriate**

*[All universities had procedures to informally resolve complaints but only two explicitly provided for either the complainant or respondent to refuse informal resolution.]*

Complaints should be dealt with informally at the first stage whenever possible and appropriate. Staff should be trained both to identify complaints suitable for informal resolution and to understand the relevant protocols.

Informal resolution should be voluntary. The complaint system should explicitly provide for either the complainant or respondent to refuse informal resolution. Such provision should be made clear in any complaint guidelines, policies and procedures issued.

### **Examples:**

The **Macquarie University** *Enterprise Agreement 2000-03* in the section titled “Grievances, Appeals and Disputes” states that the responsible officer will try to informally resolve a grievance only if both parties agree.

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* states that wherever possible the responsible officer should seek and consider the staff member’s wishes about preferred resolution processes.

### **3.3.2 Adequate procedures for complaint referral are required**

*[Three universities did not have adequate procedures for complaint referral.]*

An effective complaint system needs to have adequate procedures for appropriate complaint referral. Clear internal and external referral procedures should be developed for issues that are outside a staff member’s delegation or area of expertise. Complaint handlers need to be aware of the range of alternative avenues and remedies available and able to advise complainants of their existence. This may involve advising on any rights of appeal or a right to complain to an outside agency.

Whenever a complaint about matters unrelated to criminality or corruption is to be referred, the complainant should be told exactly what they need to do, or what staff will do to refer the matter and what action the complainant can expect.

### **Examples:**

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* clearly outlines when the responsible officer should seek advice or refer a matter on. Referral guidance is provided for equity-related matters, matters that may lead to disciplinary action, matters where corruption, maladministration or serious waste is alleged, and allegations of abuse of children/young persons.

The **University of NSW** *Staff Discrimination and Harassment Grievance Policy and Procedures* deals with referral of complaints and provides a user friendly flow chart for complainants as an Appendix. This lists a broad range of possible complaints and links them to the relevant policy, personnel covered and appropriate contact persons. The UNSW document *Guidelines for Staff Handling Discrimination and Harassment* provides guidance for line managers and senior managers on appropriate referrals and directions on where complaint handlers can go for further information and advice.

## **3.4. MEDIATION**

### **3.4.1 Complaint mechanisms should contain an option to mediate**

*[Two universities did not provide an option for mediation of complaints and another four did not appear to have trained mediators available.]*

ADR techniques should be employed wherever possible in complaint mechanisms. Mediation is one widely recognised technique of resolving disputes internal to an institution or arising from complaints or claims made against an institution. Mediation is a voluntary and confidential process where a neutral third party, the mediator, assists the parties in dispute to reach some common ground and arrive at a settlement.

Complaint handling staff should be trained both to identify disputes suitable for mediation and other forms of ADR and to understand the relevant protocols.

### **Example:**

The University of Newcastle provides for mediation to be used in the resolution of complaints and outlines the procedures to be followed in its document *Grievance Procedures for Staff*.

### **3.4.2 Trained mediators should be available**

Successful mediation depends largely on the skill of the mediator and the parties' confidence in his or her independence. Only trained mediators should be used for complaint resolution. Mediators can be selected from a panel maintained by a reputable body. The mediation process also needs to meet normal standards of public accountability.

### **Examples:**

The **University of Wollongong** *EEO - Grievance Resolution Procedures* states: "Potential University Mediators will be jointly selected through agreement with the Executive and the Unions. The Mediators will be suitably qualified and/or have attended an accredited course recognised by the University for this purpose." Recognised courses can include those of LEADR, the Australian Commercial Disputes Centre and Community Justice Centres. These procedures also contain an Appendix (*Guidelines for Grievance Mediation*) that outlines the relevant protocols and covers accountability issues.



The **University of New England** provides trained mediators as part of its Equal Opportunity Adviser Scheme. A team of trained EO advisers provides advice to students and staff on all aspects of equal opportunity and assists in the resolution of grievances. UNE comments that the process of training, appointing, developing and advertising EO advisers is not only an important individual staff development activity but also a vital educative process for the whole university community as it highlights the responsibility of the university to address and take positive steps to resolve conflicts.

### 3.4.3 There should be an option to refuse mediation

*[Two of the eight universities with a mediation option had no provision for either the complainant or respondent to refuse mediation.]*

Mediation should be voluntary. There should be explicit provision for either the complainant or respondent to refuse mediation. This should be made clear in any complaint guidelines, policies and procedures.

#### Examples:

The **University of Newcastle** document *Grievance Procedures for Staff* provides: “Either the complainant or respondent is free to refuse to attend a mediation meeting, or to withdraw from the mediation process.”

The **University of Wollongong** *EEO - Grievance Resolution Procedures* states: “Mediation requires the agreement of both parties.” The document also provides for mediation to occur within 14 days of both parties agreeing, with information about mediation being provided to both parties. With the consent of both parties, mediation is organised and parties are to agree on who is to be the mediator.

## 3.5. Recording and maintaining complaint related data

### 3.5.1 Complaint handling steps need to be recorded

*[Six universities had inadequate systems for recording steps in the handling and the outcomes of complaints.]*

Appropriate records should be made and retained about key steps in handling complaints including recording reasons for all significant decisions.

Good record keeping assists in improving accountability and provides for transparent decision-making. Records evidencing complaint handling steps:

- enable the university and its staff to meet policy requirements
- protect the interests of the university and the rights of staff and students.
- support better performance by documenting organisational activities
- provide protection and support in any subsequent litigation,
- assist in the better management of risk
- support the collection of complaint data and enables analysis

Written guidelines should be developed for appropriate records to be made and retained in the handling of complaints. These guidelines should be consistent with the university’s general record keeping policy and comply with any legislative requirements and other relevant standards such as the *Privacy Protection and Personal Information Act* and the *State Records Act*. Record keeping procedures should be uniform throughout the university’s complaint mechanisms.

#### Example:

The University of Technology, Sydney Grievance Record Keeping - Procedures states that records must be kept for all grievances that require resolution according to UTS policies and that an official file must

be created for all grievances investigated. A generic grievance record form is available for UTS staff who handle grievances.

### **3.5.2 Appropriate persons should collect, analyse and report on complaint data**

*[Six universities did not have appropriate persons nominated to collect, analyse and report on complaints data.]*

To ensure adequate co-ordination and feedback on the operation of complaint mechanisms, and the nature and outcomes of complaints, appropriate persons should be responsible for collecting, analysing and reporting on complaint data.

#### **Examples:**

The **University of Western Sydney** has established a position of University Complaints Resolution Manager with responsibility to oversee the system and undertake diagnostic and performance analysis of complaint data. The university's Complaints Framework directs each college and division to identify a person responsible to ensure that complaints are managed in accordance with the guidelines developed by the complaints resolution manager. A registration system is to be developed that enables central review and analysis of trends, response times etc.

**Southern Cross University** in its *Complaints Management Framework* requires each executive area to keep statistical analyses of complaints for indicators of systemic issues, to identify opportunities and action taken to make improvements, and for annual reports.

### **3.5.3 Protocols should govern access to complaint related documents**

*[Very few universities had adequate protocols governing access to complaint-related documents.]*

Appropriate protocols are needed to ensure that complaint-related documents are secure against loss, unauthorised access and modification, or other misuse. Universities should have clearly documented procedures regarding the filing, storage, use and disclosure of confidential complaint information. Employees handling such information should take special precautions to ensure it is not disclosed without clear authority.

#### **Example:**

The **University of Technology, Sydney** *Handling Staff Grievances Policy* states that documentation relating to the grievance will be placed on the staff member's personal file, or separate confidential file if appropriate, in the Human Resources Unit and will be subject to the guidelines on staff records. The university's *Staff Records Guidelines* states that staff records are private and confidential and access to such information is limited to that required to fulfil an authorised purpose of the university. The university will otherwise only disclose information with the permission of the staff member or if required by law. Supervisors may only access information relevant to the work or circumstances for which the information is being sought.

### **3.5.4 Data should be stored centrally**

*[Only one university had a central location for storing complaint data.]*

Complaint related data should be stored centrally in a secure and confidential manner.

#### **Examples:**

The **University of Technology, Sydney** *Grievance Record Keeping - Procedures* states that Official Grievance Files must be registered in the Records Database and kept in the Faculty/Unit in a secure and confidential location at all times. All information relating to an investigation must be finally stored on the

official file. When the case is closed, a staff grievance file must be transferred to a secure location within the Human Resources Unit staff records section.

The **University of Western Sydney** *Complaints Framework* includes a university wide web based 'registration' system that will allow local input of data across the university as well as consolidation of data and tracking of complaints. This is to be done without disseminating confidential information about individuals.

The **University of Technology, Sydney** advised that a New Oracle Human Resources system is to be installed in 2004 with the capacity for central storage of data. Currently information that pertains to corruption, maladministration and serious waste, to which the *Protected Disclosures Act* applies, is captured centrally on a system that has been set up and maintained by the Internal Audit Unit.

### **3.5.5 Complaint documents require specific archive and retention policies**

*[Six universities did not have specific archive and retention policies for complaint documents.]*

University-wide guidelines on the archiving and retention of complaint related documents should be developed that comply with the *States Records Act*, the university's records management policy, and staff and student records policies.

#### **Example:**

The **University of Technology, Sydney** *Grievance Record Keeping - Procedures* states that in accordance with UTS Records Management Policy, records must be kept for all grievances that require resolution according to UTS policies and that an official file must be created for all grievances investigated. Also, UTS must comply with the *State Records Act* in relation to all official university business including grievance handling. Grievance records must be kept for seven years from completion of the action.

### **3.5.6 Protocols are needed for marrying complaint related material to personal files**

*[Six universities had inadequate protocols for marrying complaint related material to personal files.]*

Universities should develop protocols for marrying complaint related material to personal files. These protocols are particularly necessary if a complaint against a staff member is not sustained or the material is particularly sensitive. Protocols should be linked to the university's records management policy and policies on staff and student records.

#### **Example:**

The **University of Technology, Sydney** *Handling Staff Grievances Policy* states that documentation relating to the grievance will be placed on the staff member's personal file, or separate confidential file if the material is of a particularly sensitive nature, in the Human Resources Unit and will be subject to the guidelines on staff records. The UTS *Handling Staff Grievances Guidelines for Supervisors* outlines protocols such as when it is inappropriate to keep potentially damaging records containing unsubstantiated allegations against an individual. In such cases the guidelines advise that the name of the persons against whom the grievance is made should not be recorded, but the particular department or area where the incident occurred should be noted for monitoring purposes.

### **3.5.7 Apply appropriate restrictions on access to complaint documents**

*[Five universities lacked appropriate restrictions on access to complaint documents.]*

Universities should ensure that confidential complaint information, in any form (including computer files) cannot be accessed by unauthorised people.

### **Example:**

The **University of Technology, Sydney** *Grievance Record Keeping - Procedures* complies with the UTS *Staff Records Guidelines*, which stipulate that staff records are private and confidential and access to those records will only be authorised in limited circumstances.

### **3.5.8 Privacy and confidentiality requirements should attach to complaint related information**

*[Four universities had inadequate privacy and confidentiality requirements.]*

Handling of complaints against staff and students should incorporate appropriate confidentiality for all parties. Persons dealing with complaints should not improperly disclose any information obtained in the complaint handling process. Confidentiality should be ensured through clearly documented procedures regarding the treatment of this information.

### **Example:**

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* details the documentation to be kept in relation to a grievance and how that documentation should be maintained. These guidelines were developed in accordance with UTS *Grievance Record Keeping - Procedures* and UTS *Staff Records Guidelines*.

## **3.6. Internal Investigation**

### **3.6.1 Investigation should be initiated at the first stage if appropriate**

*[Only one university made provision to start an investigation prior to attempting informal resolution.]*

Some circumstances make it appropriate to commence investigating a complaint before or instead of attempting any other remedial action. Policies should therefore provide for investigation at the outset where such is warranted by the nature of the matters alleged.

### **Example:**

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* provides that alternative dispute resolution procedures (ADR) should only be considered if all parties are willing to proceed with them and there is sufficient common ground between the parties to ensure that there is some prospect of a positive outcome. It further states ADR processes are not usually appropriate for grievances related to unlawful behaviour, where disciplinary action may result, or for equity related grievances.

### **3.6.2 Persons should be nominated to authorise investigations and their terms of reference**

*[All universities nominated a person to authorise investigations and their terms of reference.]*

The level of authorisation required to commence an investigation will depend on its nature. For instance, where allegations of misconduct and serious misconduct are made and not resolved, then they should be referred to appropriate senior staff to authorise investigations and their terms of reference.

An investigation's terms of reference effectively set the boundaries of inquiry and assist in establishing a focus and limits for the investigation. Drafting terms of reference should take into account practical matters such as resources available to the investigator.

### **Example:**

The University of Western Sydney *Staff Enterprise Agreement 2001-2003* nominates the Deputy Vice-Chancellor (DVC) as the senior person given responsibility for authorising investigations and their terms of reference. The agreement sets out the responsibilities of the investigating officer in detail and includes a provision that the investigating officer must comply with any other terms of reference agreed between the staff member and the DVC.

### **3.6.3 Investigators should have formal delegation to make decisions**

*[All universities formally delegated authority to investigators to make decisions.]*

In each case a person must be authorised to take charge and assume ultimate responsibility for conduct of an investigation. The level of authorisation required to commence an investigation will depend on the nature of the matter and any persons to be investigated.

### **Example:**

The University of Western Sydney *Academic Staff Enterprise Agreement 2001-2003* states the investigator is formally delegated authority to report on the facts relating to the alleged misconduct or serious misconduct, including whether any mitigating circumstances are evident.

### **3.6.4 Protocols should ensure procedural fairness for all parties in an investigation**

*[All universities appeared to have adequate protocols to ensure procedural fairness for all parties in an investigation.]*

Procedural fairness must be observed in all aspects of an investigation. The rules of procedural fairness have developed to ensure that decision making is fair and reasonable. Depending on the circumstances, procedural fairness requires an investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them
- provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise
- consider all submissions from parties to the investigation
- make reasonable inquiries before making a decision
- ensure that no person decides a case in which they have a direct interest
- act fairly and without bias, and
- conduct the investigation without undue delay.

### **Examples:**

The University of Western Sydney *Staff Enterprise Agreement 2001-2003* sets out detailed protocols to be observed by investigators during an investigation to ensure due process for all parties.

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* includes a section on how a supervisor should ensure a grievance is handled fairly for everyone involved and details steps in the investigation process which observe procedural fairness protocols.

### **3.6.5 Independent investigators should be provided in investigations**

*[Seven universities did not provide for the use of independent investigators in their complaint mechanisms.]*

Investigations must be conducted in an impartial, independent and objective manner. It is vital that the investigator has no conflict of interests in relation to the complaint or the persons involved, or the conduct, policies and procedures the subject of the investigation. Of course, the more serious the allegations and the

greater the possible detriment to individuals, the more important it is that the investigation is, and is seen to be conducted impartially and without bias.

Before starting an inquiry, investigators need to specifically address the issue of whether a conflict of interests exists, is likely to arise or could be reasonably perceived to exist and give consideration to whether any such conflict may require the matter to be referred to another investigator or appropriate external agency.

### **Example:**

The University of Western Sydney *Staff Enterprise Agreement 2001-2003* provides that an investigating officer shall be a member of the senior staff of the university who has had no prior involvement in the matter, does not have a line relationship with the academic staff member concerned and is mutually agreed upon between the parties to the Agreement. In 2002 the university appointed a specialist investigations officer to undertake detailed and professional investigation of serious matters that may include complaints by students. Referrals to the investigator are authorised by the University Secretary and usually involve allegations of serious misconduct. In 2003 some 42 briefs of evidence were prepared by the investigations officer.

### **3.6.6 Investigators should be adequately trained**

*[Seven universities did not appear to offer adequate training for persons acting as investigators.]*

Investigative technique has a significant impact on an investigation's outcome. A deficient investigation has the potential to deliver an outcome that is wrong, has no credibility or creates unnecessary hardship to one or more of the parties. There is also a risk the outcome could be overturned on appeal, despite its merit. Responsibility for investigating complaints should be delegated to trained and experienced persons. Adequate resources should be allocated to support an investigation.

### **Example:**

The **University of Technology, Sydney** has produced and uses an "Investigation Skills for Specialist Grievance Handling Staff" training module.

### **3.6.7 Guidelines should be developed for investigators**

Guidelines should be developed for investigators' use in the preparation and conduct of an investigation. Such guidelines should cover:

- establishing the terms of reference and framework for an investigation
- obtaining appropriate authorisations and delegations
- advice on the powers available to investigators
- advice on planning an investigation
- advice on obtaining information during an investigation
- a checklist of matters to be considered in conducting an investigation, highlighting those easily overlooked by non-professional investigators
- a reporting framework.

### **Example:**

The **University of Sydney** *Investigation Process for the Handling of Disclosures of Corruption, Maladministration and Serious and Substantial Waste of Public Money* provides guidance for the investigation of protected disclosures.

### **3.6.8 Assurances of confidentiality should be provided to complainants**

*[Four universities lacked adequate assurances of confidentiality for complainants.]*

Internal investigation of complaints should address confidentiality of identity for complainants and those the subject of a complaint. Preserving such confidentiality, where this is practical and appropriate, minimises the risk of harm to these parties and supports the integrity of the investigation. Where appropriate, adequate guarantees of confidentiality need to be built into an investigation plan. Investigators must abide by any confidentiality requirements applying to the investigation. Investigators must also impress upon all witnesses the need to keep details of the investigation confidential.

In cases where confidentiality is an issue, confidentiality provisions should be explained to the complainant at the outset, together with an undertaking that if identifying information is to be disclosed, the complainant will be given prior warning.

Complainants should also be advised of any legal protections that may be available and any support and/or other administrative protection available.

A central investigation file should be maintained by an investigator. All information, including copies of original documents and other evidence obtained during the investigation, should be promptly placed on this case file and maintained in a secure environment. It is essential to prevent unauthorised access to the case file.

#### **Example:**

The **University of Technology, Sydney Handling Staff Grievances Policy** states that confidentiality will be respected at all times within the constraints of the need to fully investigate the grievance. The *UTS Guidelines for Supervisors Handling Staff Grievances* considers the confidentiality issues that arise in investigations and general complaint handling and provides direction to complaint handlers on how to deal with such matters.

### **3.6.9 Guarantees of protection against reprisals or disadvantage should be provided to complainants**

*[Four universities lacked adequate guarantees for complainants of protection against reprisals or disadvantage.]*

Institutions need to ensure that people who complain are not subjected to victimisation, harassment, discrimination or other prejudice and complaint handling policies should explicitly reflect this. Such guarantees should be provided to complainants who make disclosures in good faith even if the disclosure does not meet all requirements of the Protected Disclosures Act.

Complainants who allege victimisation as a result of making a complaint need to be assured that their allegation will be taken seriously, appropriately investigated and that action will be taken against any student or staff found to have breached the policy.

#### **Example:**

The **University of Technology, Sydney Handling Staff Grievances Policy** states that staff who raise a genuine grievance or a grievance in good faith will be protected from victimisation or unfair treatment. The *UTS Guidelines for Supervisors Handling Staff Grievances* directs that supervisors should be aware of the possibility of subsequent victimisation of any of the parties and should ensure steps are taken to prevent it. This includes advising all parties that victimisation of any individual arising from the grievance will not be tolerated and that disciplinary action will result if victimisation is identified.

### **3.6.10 Provision should be made for complainants to change supervisor or course where appropriate**

*[No university made adequate provision for a complainant to change supervisor or course where appropriate.]*

A complainant should be given the opportunity to change their supervisor, course (where a reasonable alternative exists), or work arrangements if such steps appear to be necessary to protect them from harassment, victimisation or other detriment in reprisal for their complaint. This will assist to maintain the integrity of the investigation and protect the interests and reputation of the university.

### **3.6.11 Guarantees of procedural fairness and confidentiality of identity should be provided to respondents**

*[Two universities did not adequately guarantee procedural fairness for subjects of an investigation, and four did not appear to provide adequate assurance of confidentiality for the subjects of an investigation where appropriate.]*

While the needs and concerns of the complainant must be appropriately addressed, it is equally important to be sensitive to the impact a complaint may have on persons the subject of that complaint. Unnecessary disclosure of the subjects' identity may considerably damage them even if subsequent investigation totally exonerates them.

#### **Examples:**

The **University of Western Sydney** *Grievance Resolution Policy* states that confidentiality is an important aspect in assisting resolution of a grievance. A grievant and the respondent of a grievance have the right to expect that staff involved in grievance management will maintain a high level of confidentiality about all aspects of the grievance. This expectation of confidentiality also extends to both the grievant and the respondent. Breaches of confidentiality, careless or otherwise, by people involved in grievance management, including the grievant and respondent, may be the subject of disciplinary action.

The **University of Wollongong** *Grievance Resolution Procedures* provide that any breach of confidentiality, careless or otherwise, on the part of a grievance conciliator, mediator, panel member, third parties or supervisors when dealing with a grievance may be subject to disciplinary action by the Vice-Chancellor, or their nominee.

### **3.6.12 Guarantees against disadvantage should be provided to respondents where the complaint is dismissed**

*[Only two universities provided adequate guarantees to the subject of investigations against disadvantage where the complaint was dismissed.]*

It is important to take reasonable steps to redress any significant detriment if suffered by a person the subject of a complaint where the complaint is dismissed. Options for redress may include actions of a symbolic nature such as an apology on behalf of the university, public acknowledgment of the detriment, or undertaking to endeavour to ensure the detriment will not recur.

#### **Example:**

The **University of Wollongong** Enterprise Agreement for Academic Staff provides that if allegations are denied by the staff member and the Vice-Chancellor is of the view that there has been no misconduct he/she shall immediately advise the staff member in writing and may, by agreement with the academic, publish the advice in an appropriate manner.



### **3.6.13 Guarantees against disadvantage or reprisals should be provided to witnesses**

*[No universities provided adequate guarantees for witnesses against reprisals or disadvantage in reprisal for their evidence.]*

When considering the rights and needs of parties to an investigation, it is easy to overlook the needs of a witness. Even though witnesses may not have a direct stake in the outcome of the investigation, they will often play an essential role in it. Adequate guarantees need to be provided to witnesses against disadvantage or reprisal for the evidence they may provide.

### **3.6.14 Provision should be made for a change of supervisor or course for witnesses where appropriate**

*[No universities appeared to provide specifically for witnesses to change supervisor or course where appropriate.]*

A witness should be given the opportunity to change their supervisor, course or work arrangements if such steps appear necessary to protect them from harassment, victimisation or other detriment in reprisal for their evidence, to ensure the integrity of the investigation or the interests or reputation of the university.

## **3.7 Referral to outside agencies**

### **3.7.1 A position responsible for making referrals to external agencies should be identified**

*[Three universities failed to identify a position responsible for making referrals to external agencies.]*

Where avenues of redress or appeal to outside tribunals or other external agencies exist, complainants should be advised of such if the university is unable to resolve the complaint. Procedures should detail who is responsible for making external referrals and at what point the complaint should be referred.

#### **Example:**

The **University of Technology, Sydney Handling Staff Grievances Policy** states that supervisors, managers and other designated staff are responsible for referring certain grievances to specialist units for advice including those identified as warranting external referral. The *UTS Guidelines for Supervisors Handling Staff Grievances* directs that specialist units including the Equity and Diversity Unit, the Human Resources Unit and the Audit and Review Unit have responsibility for external referral.

### **3.7.2 Criteria for referring complaints to outside agencies should be adequately specified.**

*[Six universities adequately specified criteria for referring complaints to outside agencies.]*

There are a number of complaint bodies and other mechanisms external to the university that may be appropriate referral points for the complaint and/or the complainant. Criteria should be developed for such referrals.

External referral may be appropriate or mandatory reporting apply if the complaint concerns criminal conduct or serious corruption; if the case concerns child abuse, sexual misconduct or violence which involves children; if the case is particularly complex or sensitive; if the subject of the complaint is a senior member of staff or there are inadequate powers or expertise to deal with the matter internally.

### **Example:**

The **University of Technology, Sydney** *Guidelines for Supervisors Handling Staff Grievances* outlines when the responsible officer should seek advice or refer a grievance on. Referral guidance is provided for equity-related grievances, those alleging corruption, maladministration or serious waste, and those alleging abuse of children/young persons.

### **3.7.3 Adequate protocols are needed about informing relevant parties of an external referral.**

*[Seven universities did not have adequate protocols for informing relevant parties about an external referral of a complaint.]*

Recourse to external sources of review or assistance may be required in complaint handling. Protocols and systems should be developed for informing the relevant parties about external referrals (other than in matters concerning criminality or corrupt conduct).

It is important to explain to a complainant what action is proposed in relation to the complaint, including in appropriate circumstances details of any referral of the complaint to an outside agency. Confidentiality issues should be considered in external referral.

When appropriate, complainants should be given information and advised of the right to get advice and assistance from a relevant external agency.

### **Example:**

The University of New South Wales *Guidelines for Staff Handling Discrimination and Harassment Grievances* details what should occur if a grievance is taken to an outside agency and provides detailed information on those outside agencies. The guidelines also provides details of where complainants may be provided with support and assistance within the university whilst their complaint is being externally considered.

## **3.8. Discipline and Redress**

### **3.8.1 Adequate policies are needed on redress which comprehend industrial protections in the event a complaint is sustained.**

*[All universities appeared to have adequate policies on redress in the event a complaint was sustained which comprehended industrial protections for staff under investigation.]*

Policies are needed on the provision of discipline and redress in university complaint management processes that ensure industrial protections (for both the respondent and the university) in the event a complaint is sustained.

### **3.8.2 Procedures should be in place for dealing with knowingly false complaints and provide a range of sanctions against false complainants**

*[Four universities did not have procedures for dealing with knowingly false complaints or an appropriate range of sanctions against those making them.]*

While most complaints are motivated by genuine concern about unfair or inappropriate actions, occasionally a complaint may be knowingly false. Procedures are needed to deal with complaints where it appears they were made by persons knowing them to be false, with an appropriate range of sanctions against deliberately false complainants.

## Example:

The **University of Wollongong** *Grievance Resolution Procedures* provides that where a grievance is assessed by a conciliator to be lacking in substance the conciliator may submit the complaint to another conciliator for review. Where a grievance is held by the Disputes Settlement Panel to be lacking in substance it must dismiss the complaint. Where a grievance is found by the majority of the panel to be false and malicious the panel must refer the matter to the Vice-Chancellor for investigation and possible disciplinary action.

### 3.8.3 Redress or remedies should be fair and reasonable

In order to assist in framing redress or remedies that are fair and reasonable, complaint handlers should ensure that all aspects of a complaint have been addressed and where appropriate issues have been followed up and that remedies are offered to similarly affected people who did not complain.

## 3.9 Complaint data and Statistics

### 3.9.1 Comprehensive data on complaints and complaint handling should be collected and regularly analysed.

*[Eight of the universities surveyed provided information on their staff complaint recording system. Very few of these appeared to use more than four data fields to capture information. No university provided statistics on the time taken to finalise a complaint.]*

Complaints from staff should be viewed as an important part of management accountability, as well as an avenue for reviewing the performance of the organisation and the conduct of staff. A good complaint recording system can assist in the identification, assessment, prevention or management of risk. A risk management approach should be an integral part of a university's management practices and procedures.

To effectively use complaint data for system analysis and risk management, it is vital that complaints are comprehensively and systematically recorded, so that a range of information can be consolidated and retrieved for later reporting and analysis. Universities should ensure that enough detail is captured to allow an appropriate level of analysis. This should facilitate monitoring of performance standards, including timeframes for response to complaints and the success of different complaint handling methods.

Data should be collected on:

- Numbers of complaints
- Compliance with performance/timeliness standards
- Issues raised in complaints
- Trends in complaints over time
- Academic or other university unit the subject of complaint
- Source of complaint
- Method of handling
- What remedy was actually employed
- Recommendations/strategies to prevent or limit recurrences
- Service improvements initiated due to complaints data.

## Examples:

The **University of Western Sydney** *Complaints Framework* includes a university wide web based 'registration' system that will allow local input of data across the university as well as consolidation of data and tracking of complaints. This is intended to be done without disseminating confidential information about individuals.

The **University of Technology, Sydney** told us a New Oracle Human Resources system is to be installed in 2004 which will have the capacity for central storage of data. Currently, information relating to corruption, maladministration and serious waste, to which the *Protected Disclosures Act* applies, is captured centrally on a system set up and maintained by the internal Audit Unit. A generic grievance record form is now available for UTS staff that handle grievances. The form has been designed to capture essential details of a grievance. Data fields listed on the form include the following:

- Complainant's name
- Complainant's title (university or other)
- Name of the subject of the complaint
- Full university position title
- Date complaint received
- Date complaint acknowledged
- Name of assessing officer
- Title of assessing officer
- Name of case officer
- Title of case officer
- Complaint issue(s)
- Proposed method of investigation and/or
- Proposed activities for resolution
- Dates of any further contact with complainant
- Dates of any further contact with respondent
- Date complaint referred externally (if relevant)
- External agency referred to (if relevant)
- Date investigation/resolution finalised
- Outcomes
- Date parties notified of outcomes

### **3.9.2 Reviews of processes**

Utilising the data and statistics collected, complaint management processes should be reviewed regularly to ensure efficient delivery of effective outcomes. It is expected that universities should review their complaints processes at least once every 2-3 years.

# CHAPTER 4 MANAGEMENT OF CONDUCT AND PERFORMANCE

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## 4.1 INTRODUCTION

The Ombudsman wishes to consult with all NSW public universities and relevant unions on the development of streamlined, better integrated performance management and disciplinary processes, as they relate to complaint handling, to emphasise natural justice and alternatives to a formal disciplinary scheme.

We recognise there is a spectrum of performance management issues ranging from dissatisfaction of one or more supervisors with the performance (both quality and productivity) of a staff member through grievances by colleagues and subordinates impacted by alleged unsatisfactory performance, to complaints by students and others who may have suffered through the staff member's allegedly unacceptable performance. Only the last two areas are of concern to us and this discussion paper does not seek to address the exercise of standard supervisory responsibility.

In response to the Ombudsman survey each university provided a copy of the enterprise agreements containing the conduct and performance provisions applying to staff. These provisions have been evaluated for the purposes of this discussion paper. Currently all ten universities have their own unique disciplinary processes contained within their staff enterprise agreements. Some of the variations between these disciplinary processes include:

- Some universities have disciplinary processes that apply equally to both general and academic staff. Others have different disciplinary processes for general and academic staff in separate enterprise agreements.
- There are differences in the action each university can take to discipline a member of staff, for example, only some provide for further training and development and only some provide for the issuing of a written warning.
- There are differences between universities on what constitutes serious misconduct (for example one provides that serious misconduct includes repeated instances of misconduct after formal censure or counselling, depending on their nature.)
- Some universities provide that a head of department determines whether an allegation constitutes misconduct or serious misconduct, while others require the Vice Chancellor to make this determination.
- Some universities provide for investigations to be conducted by a trained investigator, while others routinely refer them to a Misconduct Investigation Committee.
- Of those universities that provide for trained investigators, only some provide for a review of the investigator's determination.
- Only some universities, after determining there has been misconduct or serious misconduct, invite the employee to raise any matters they wish to be taken into account before a decision is made as to disciplinary action.
- Only some universities provide time frames for progressing disciplinary matters.
- Only some universities provide that an employee may request a review of a decision to suspend without pay.
- Only some universities provide for the interests of and fairness towards complainants and witnesses connected with an allegation.

Our survey indicates that in general, the conduct and performance management processes available in universities:

- have an undue emphasis on bureaucratic process
- are overly detailed and complex
- have an insufficient focus on natural justice/procedural fairness
- have an inadequate focus on alternatives to disciplinary action
- do not ensure all possible remedial action can be taken before imposition of penalties.

## **4.2 ISSUES FOR CONSIDERATION IN A MINIMUM STANDARDS SCHEME**

The development of conduct and performance management provisions to apply to all NSW universities could assist in promoting a streamlined, uniform, flexible, transparent and fair approach to managing employee conduct and performance issues.

The adoption of a uniform minimum standards scheme does not inhibit the negotiation of local enhancements where desired, but it does guarantee that all involved in university complaint handling processes will have the comprehensive safeguards provided by the scheme, whether as the subject of complaint, a witness or a complainant. This should assist in promoting industrial harmony and reducing the opportunity for disputes to arise. Also, with increasing job mobility between universities, adoption of the scheme will reduce the need for staff to learn details of different complaint handling processes within NSW. It will also facilitate the cooperation of universities in developing common best practice guidelines for implementation of the scheme. In the longer term, adoption of the scheme should help minimise the occurrence of mishandled complaints that have in the past resulted in the painful and expensive distraction of universities from their core activities.

We believe that the primary emphasis in the management of conduct and performance in universities should be that formal disciplinary action ought to be a last resort, except in the most serious of cases.

It is appreciated that universities are dedicated to maintaining proper standards and protecting their reputations, but discipline is not the only management tool for achieving these objectives. Depending on the seriousness of the issues in question, other processes such as the following may be more appropriate than disciplinary action:

- supervision
- counselling (formal and informal)
- training
- staff development
- staff rotation, and
- mentoring

While we appreciate that universities do currently incorporate some of these remedial options in their performance management and disciplinary processes, the scheme put forward for consideration outlines a more rounded approach.

In a scheme which supports a management approach, disciplinary procedures are seen as one aspect of an integrated system of personnel management which includes a proper induction and probation process, adequate supervision, equal employment opportunity, on the job-training, the provision of other training and staff development opportunities and other management tools.

Such a scheme calls for the application of a risk-based approach to managing issues of conduct and performance. Flexible options which incorporate support and assistance, and have the potential to provide officers with the opportunity to improve to an agreed performance standard, are included. Where

appropriate, remedial action has the potential to provide a better outcome for both the officer and the university. Performance issues, in particular, can be dealt with in a remedial framework, with disciplinary action being taken where there has not been satisfactory improvement.

In our view, an appropriate scheme should include the following:

- separate provisions for dealing with misconduct, unsatisfactory performance and serious criminal offences, with emphasis on procedural fairness in all three areas;
- detailed procedures to be set out in a guideline authorised under the relevant Act or Regulation, which are updated from time to time;
- “serious misconduct”, “misconduct” and “unsatisfactory performance” to be replaced with simply “misconduct” and “unsatisfactory performance”;
- at the discretion of the Vice Chancellor (VC), an option to take remedial, instead of disciplinary action, in cases of misconduct and conviction of a serious offence;
- a considered approach – how each case is dealt with would depend on the nature and seriousness of the issue. Each allegation of misconduct would be assessed and a considered decision made to take disciplinary or remedial action. Just as some cases will always warrant a disciplinary approach, this is not warranted in others where a remedial approach would be the better option;
- a flexible approach – if the initial decision is to take the disciplinary approach and the facts of the matter later support a remedial approach, then remedial action may be taken. Similarly, if the initial decision is for remedial action and further allegations or evidence of misconduct arise, then a disciplinary course can be taken;
- emphasis on consistency – the discipline or remedial processes must be applied consistently, without bias and with each case considered on its merits;
- penalties applicable in disciplinary action should range from caution or reprimand to dismissal;
- an indicative range of options for remedial action including clear powers to effect such things as transfers as an alternative to formal disciplinary action;
- emphasis on timeliness – managers would be responsible for managing conduct and performance issues of employees under their control in a fair, expeditious and transparent manner. This obligation arises when a manager first becomes aware of the incident or conduct. This obligation also applies to any known or suspected misconduct, serious criminal offence or performance issues.

In developing this draft scheme, the Public Sector Employment and Management Act 2002 was referred to as well as other legislation governing staff management.

## 4.3 OUTLINE OF MINIMUM STANDARDS SCHEME

### Section 1 – Preliminary

1. Which staff members the scheme applies to.
2. Objects of the scheme including;

- to maintain appropriate standards of conduct and work related performance in universities
- to protect and enhance the integrity and reputation of universities
- to ensure the public interest is protected and promoted

3. Definitions including:

“**Disciplinary action**” against a staff member, means any one or more of the following:

- dismissal
- directing the staff member to resign, or to be allowed to resign in a specified time

- if the staff member is on probation – annulment of their appointment
- reduction of the staff member’s salary or demotion
- the imposition of a fine
- a caution or reprimand.

“**misconduct**” includes, but is not limited to, any of the following:

- performance of duties in such a manner as to justify the taking of disciplinary action
- taking any detrimental action (within the meaning of the *Protected Disclosures Act* ) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of that Act
- taking any action against another staff member that is substantially in reprisal for an internal disclosure made by that officer
- An allegation of misconduct may relate to an incident or conduct that happened while the officer concerned was not on duty or before the officer was appointed to his or her position. Such alleged misconduct must detrimentally affect the capacity of the officer to perform their duty or otherwise brings the university into disrepute and would have constituted misconduct had it occurred while on duty.

“Procedural guidelines” means the guidelines in force from time to time.

“**remedial action**”, in relation to a staff member, means one or more of the following:

- counselling
- training and development
- monitoring the staff member’s conduct or performance
- implementing a performance improvement plan
- issuing a warning that certain conduct is unacceptable or that the staff member’s performance is not satisfactory
- transferring the staff member to another position in the university that does not involve a reduction in salary or demotion
- any other action of a similar nature.

## Section 2 - Dealing with Misconduct

1. Procedural guidelines for the minimum standards scheme (see Appendix B) should be developed and updated from time to time in consultation with universities and unions for the purposes of:

- (a) Dealing with allegations of misconduct as a disciplinary matter and
- (b) The taking of disciplinary action with respect to staff under this section.

2. The procedural guidelines should be publicly available and consistent with the rules of procedural fairness.
3. Investigations (including the conduct of interviews and taking signed statements) in relation to an allegation of misconduct are to be conducted by a committee or individual investigator when considered necessary by the VC.
4. Investigations are to be conducted by suitably experienced and qualified persons who have, or have had no direct involvement with the matter.
5. The VC may determine whether a misconduct allegation is to be dealt with as a disciplinary matter in accordance with procedural guidelines, or it is more appropriate to require remedial action.
6. If the VC after dealing with the allegation in accordance with the procedural guidelines determines that the staff member has engaged in any misconduct, the VC may determine to take disciplinary action.
7. Before any disciplinary action is taken the staff member must be given an opportunity to make a submission in relation to the disciplinary action considered.



8. At any stage of the process the VC may require remedial action with respect to the staff member or dismiss the allegation and take no further action.
9. A decision by the VC to require remedial action in a matter of misconduct does not prevent the VC from dealing as a disciplinary matter with any subsequent misconduct engaged in whilst the remedial action is being taken.

### **Section 3 - Dealing with unsatisfactory performance and other matters**

1. If the VC is of the opinion that a staff member is not performing their duties in a satisfactory manner, the VC may decide to require remedial action.
2. If remedial action is taken and the VC is of the opinion that the staff member's performance is still unsatisfactory after being given reasonable opportunity to improve, the VC may notify the staff member in writing of the opinion and that the unsatisfactory performance may lead to disciplinary action. The officer must be given an opportunity to respond.
3. The VC may, after considering any response by the staff member, decide to take disciplinary action.
4. Before taking any disciplinary action, the staff member must be given an opportunity to make a submission in relation to the disciplinary action considered.

### **Section 4 – Disciplinary action if a staff member is convicted of a serious offence**

1. If a staff member is convicted in NSW or elsewhere of an offence punishable by imprisonment of 12 months or more, the VC may decide to take disciplinary action or remedial action with respect to the staff member.
2. Before any disciplinary action is taken the staff member must be given an opportunity to make a submission in relation to the action considered.
3. A reference to a conviction includes an offence of which the staff member has been found guilty but where no conviction has been recorded.

### **Section 5 - Miscellaneous provisions**

1. If a misconduct allegation is being dealt with as a disciplinary matter or a staff member is charged with having committed an offence punishable by imprisonment of 12 months or more, the VC may suspend the staff member from duty until the allegation of misconduct or criminal charge has been dealt with.
2. If the VC has suspended a staff member, the VC may at any time remove that suspension.
3. A decision of the VC to take disciplinary action or remedial action with respect to a staff member may be given effect at any time.
4. Any appointment required as the result of the taking of disciplinary action comprising demotion is to be made by the VC.
5. A member of staff who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the VC.

***See Appendix B for Minimum Standards Scheme Procedural Guidelines***

## 4.4 University Policies relevant to Complaint Handling

### 4.4.1 University complaint systems should be reinforced/complemented by adequate codes of conduct and policies on conflict of interests, harassment, discrimination, bullying and workplace violence, learning and teaching, and plagiarism.

*[All universities had an adequate code of conduct and policies on conflict of interests and harassment. The majority had adequate internal reporting systems and procedures for handling protected disclosures. Over two thirds of universities had adequate policies on discrimination and bullying and workplace violence. Less than half however appeared to have adequate policies or codes of practice on teaching and learning. Eight universities had policies on plagiarism that applied to students. Only two appeared to have plagiarism policies that applied to staff. Three appeared to have a central register for listing incidents of plagiarism.]*

Complaint handling systems in universities are strengthened and complemented by rigorous codes of conduct and robust university policies on conflicts of interest, harassment, discrimination, bullying, workplace violence, learning and teaching, plagiarism and other relevant issues. Several of these policies are discussed in detail below.

### 4.4.2 Conflict of interests policies

A substantial percentage of the complaints made about staff within universities involve issues related to conflict of interests. Conflict of interests arise where an employee is placed in a position where he or she has the ability to influence the carrying out of university business or decision making according to their own private interests and/or personal circumstances. Such conflict generally involves opposing principles or incompatible wishes or needs. In many cases only the individual employee will be aware of the potential for a conflict of interest to arise.

The prerequisites for all public institutions, including universities, to be able to properly manage conflict of interests by their staff include:

- **understanding and acceptance** – senior staff must clearly understand the concept and the circumstances where such problems are likely to arise for them and other university staff and accept the importance of avoiding or properly managing conflict of interests;
- **appropriate policies and guidelines** – the university needs to develop, adopt and implement appropriate policies and guidelines to guide its staff in identifying, disclosing and adequately addressing actual, potential or reasonably perceived conflict of interests that are likely to arise in the course of their duties;
- **advice and training** – the university needs to take adequate steps to alert all its staff to the relevant policies and provide training in what is expected of staff under the policies, including how and when to make disclosures of actual, potential or reasonably perceived conflict of interests; and
- **internal disclosures and complaint handling procedures** – the university needs to adopt adequate policies and procedures to encourage disclosures from staff, as well as complaints from members of the public, about conflict of interests that have not been identified or disclosed by staff.

Essential prerequisites for staff members of a public institution to avoid or properly address conflict of interest issues that may arise include:

- **understanding** – staff members must understand the concept and practical implications of conflict of interests;
- **acceptance** – staff members must accept that an actual or reasonably perceived conflict of interests compromises the university's reputation and integrity;

- **trust** – staff members must have strong confidence that personal information they may disclose will be treated prudently and will not be made widely or publicly known unless that is unavoidable for the purposes of properly managing an actual, potential or reasonably perceived conflict of interests;
- **recognition** – staff members must recognise that they have an actual, potential or reasonably perceived conflict of interests when such circumstances arise; and
- **action** – staff members must take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interests.

Securing recognition and action is crucial as often those are not in a staff member's personal interests, if not potentially damaging for a staff member, particularly where disclosure and consequent management could result in lost opportunities or otherwise avoidable losses or problems, in personal embarrassment, or in a fear that private information could be used against the staff member. This problem should, therefore, be specifically addressed in policies and guidelines adopted by universities to deal with conflict of interests.

Conflict of interests policies should operate in conjunction with university policies, rules and codes, including but not limited to policies and codes on discrimination and harassment, prejudicial relationships, plagiarism, enterprise agreements, student discipline rules and codes of teaching and learning.

A number of universities gave us Staff Declaration of Interests forms and Disclosure of Reportable Gifts forms for staff use and kept Registers of Reportable Gifts.

Particular areas in which conflict of interests may arise are outlined below. The areas and issues outlined should be addressed in university Conflict of Interests policies.

- **Personal and family relationships** – a conflict of interests may arise where an employee makes, participates in, or has the ability to influence, decisions affecting another person with whom the employee has a family or personal relationship. Such relationships include those that exist between near relatives (such as spouse, de-facto, or partner, child/parent), close friends or personal associates, as well as relationships of a romantic and sexual nature.
- **Employees and students** – conflicts may arise where an employee is involved in a close, personal, romantic or sexual relationship with a student in relation to whom the employee has academic or administrative responsibilities. This extends to the admission, progress, assessment, awarding of scholarships and prizes, examination and grading of students by members of staff who have a close personal relationship with any students.
- **Enmity between persons** – it should be recognised that hostility as well as friendship can be perceived as a conflict of interests and similarly that detriment to a third party can improperly arise from a conflict of interests just as much as benefit to a third party.
- **Conflict of roles** – conflicts may arise where an employee performs or assumes a role in addition to their substantive appointment (e.g. grievance adviser, mediator, union representative). The additional role performed by an employee may conflict with the fulfilment of the responsibilities of other roles.
- **Financial interest and affiliations** – conflict may arise where an employee makes, participates in, or has the ability to influence decisions that could advantage their own personal and/or financial interests or affiliations. Financial interests include, but are not limited to: investments, directorships, executive positions, shareholdings or ownership of other companies, organisations or businesses (direct or indirect), consultancies, provisions of goods and services and other considerations.
- **Receipt of Gifts** – conflicts may arise where an employee has the opportunity or ability through their position in the university to obtain or encourage the receiving of any form of benefit in connection with their university duties including travel, accommodation and entertainment.
- **Secondary employment** – conflict may arise where an employee participates in a private outside professional activity, consultancy or secondary employment that conflicts or may conflict with their university duties.
- **Access to university documents and information** – conflict may arise where an employee with access to information in the course of their university work, uses such information to obtain an improper advantage or financial benefit. Staff need to be aware of the importance of maintaining confidentiality and privacy of university information.

- **External activities and public comment** – conflicts may arise where employees provide media comment, opinions expressed in letters to newspapers, speeches or in books, journals or notices. Consistent with maintaining academic freedom, codes of conduct can require making clear and explicit the distinction between personal and institutional views.
- **Research** – conflict may arise where an employee has the ability, opportunity or potential to gain financial benefit or other advantage through the management of, or the outcomes achieved from the conduct of research.
- **Council, committees and other decision-making forums** – conflicts may arise where an employee’s membership of a university council, committee or other decision making forum provides the capacity to influence the carrying out of university business or decision making according to their own private interests or personal circumstances.
- **Membership of an organisation** – conflicts may arise where an employee’s involvement in an organisation comes into serious competition or conflict with the university.

## Examples:

Charles Sturt University Administration Manual 2002; Code of Conduct for Staff; Conflict Of Interest comprehensively outlines the university’s policies and procedures in respect to situations giving rise to actual, potential or perceived conflict of interests between an employee’s private interests and their university responsibilities. The policy includes a detailed list of activities to be avoided because an actual, potential or perceived conflict of interest may exist.

The University of Newcastle has developed a specific conflict of interests policy for members of the University Council and senior officers of the university. The Policy on Conflict Of Interest; Conduct of Members of the Council and Senior Officers of the University deals with conflict of interests related to matters before Council or a council committee and disclosure of interests for senior officers.

The University Of Wollongong provides Staff Declaration of Interests forms and Disclosure of Reportable Gifts forms for staff use and keeps a Register of Reportable Gifts.

### 4.4.3 Plagiarism

*[All universities had policies on plagiarism that applied to students. Only two appeared to have plagiarism policies that applied to staff. Three appeared to have a central register for listing incidents of plagiarism]*

Plagiarism is defined as: “The appropriation or imitation of another’s ideas and manner of expressing them ...to be passed off as one’s own”. (Macquarie Dictionary, 2001). Plagiarism occurs when the origin of the material used is not appropriately cited.

Each university should develop a systematic approach to plagiarism that includes:

- developing policies that cover both students and staff which clearly state plagiarism is considered improper conduct;
- strategies to ensure staff and students are provided with information on the university’s position on plagiarism at induction;
- information readily available about plagiarism, the university’s position on it and how to avoid it. Such information should be relevant to different disciplines and the requirements of assessment in those disciplines;
- policies that detail how incidents of plagiarism will be dealt with if detected, including the penalties available for offenders;
- policies that are consistent with the principles of procedural fairness;
- a central register to capture all incidents of plagiarism in the university;
- provision for independent expert assessment of alleged plagiarism if alleged;
- guidelines for the management of plagiarism incidents;
- information to assist staff detect plagiarism.

### **Example:**

The **University of New South Wales** document *Current Students; Postgraduate Research; Policy and Procedure* details the university's position on plagiarism and includes relevant links to the Academic Misconduct Policy, information on referencing methods and education links.

### **4.4.4 Universities should have adequate policies for administering student discipline and adequate policies for handling complaints about student academic matters including fail grades, final result review, unsatisfactory progress, extensions of time and special consideration.**

*[All universities appeared to have adequate policies for administering student discipline and adequate policies for handling complaints about student academic matters including fail grades, final result review, unsatisfactory progress, extensions of time and special consideration.]*

### **Examples:**

Two examples of innovative ways to deal with student complaints were identified:

**Southern Cross University** provides that if a student believes a formal complaint has not been resolved within a reasonable time-frame, or if the complaint is not resolved to the satisfaction of the student, a request for internal review and investigation can be lodged with the Student Ombud.

The **University of Western Sydney** publishes its 2004 *The Essential Guide: All you need to know about UWS services* for students. It includes a section on Grievance Resolution, a flowchart detailing complaint handling steps, contact details for grievance advisors, web addresses for relevant policies and procedures and a telephone contact number for the "UWS Student Complaints Hotline" which is open during office hours Monday to Friday.

# CHAPTER 5 CONCLUSION - QUESTIONS FOR CONSIDERATION

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This paper provides a minimum standards complaints scheme. We hope to improve this scheme and welcome submissions and comments from all stakeholders, including staff and students of NSW universities and members of the community on any of the issues raised in the paper, or on any other issues related to university complaint handling. There are a number of specific questions to which we are particularly anxious to receive answers from at least the key stakeholders. These are:

1. Do you consider a minimum standards scheme for complaint handling in NSW universities is desirable? Please outline the reasons for your view.
2. In terms of the complaint handling scheme set out above in this paper, please indicate any additions, deletions or other amendments you believe would improve the scheme. Please add any other comments you wish to make about the scheme.
3. Should the scheme be confined to complaint handling, or should it include cognate provisions on some or all codes relating to or addressing:
  - good conduct
  - conflict of interests, and
  - teaching and learning;  
and areas in which inappropriate conduct can give rise to complaints, eg.
  - harassment
  - discrimination
  - bullying and workplace violence, and
  - plagiarism?

[Comment: The codes of conduct and codes of teaching and learning seem to be more problematic. The other areas appear to be amenable to standard provisions in all universities.]
4. What barriers do you see within your university - or more generally - to greater integration of the systems for handling various classes of complaints, grievances and disclosures?
5. What are reasonable target time frames for completion of the following basic steps in handling a complaint:
  - (a) from receipt of complaint to completion of initial assessment (that includes allocation to action officer);
  - (b) from initial assessment to completion of report on inquiries/investigation;
  - (c) from completion of report to final official determination of any action required; and
  - (d) at what stage(s) during this process should progress be reported to the complainant?
6. (a) What steps do you see as necessary to integrate, or better integrate your university's complaint handling systems with its overall risk management procedures?  
(b) Has your university made any risk assessments of its complaint handling systems in the last three years?
7. What would be the best means of implementing a minimum standards complaint handling scheme for NSW universities?

Options include:

- a separate Act of Parliament covering complaint handling in all universities
- inserting the scheme into each of the ten university Acts as an amendment
- a standard regulation made under each of the ten university Acts, or
- provisions to be negotiated separately into the one or more enterprise agreements to which each university is party (this is our least preferred option since it is essentially the current position that has produced the discrepancies and deficiencies identified by our survey).

[Note: Traditionally a legislative approach to conduct/discipline and dealing with related complaints has been adopted in most areas of public sector employment.]

Answers to the above questions, submissions and comments, via either letter or e-mail, should be forwarded to the following address by **22 November 2004**. Other contact details also follow:

Mr Chris Wheeler

**Deputy Ombudsman  
NSW Ombudsman's Office  
Level 24, 580 George Street  
Sydney NSW 2000**

Phone: (02) 9286 1000

Toll free: 1800 451 524

Fax: 02 9283 2911

Email: [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)

Web: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

# Appendix A

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Questionnaire sent by the Ombudsman to all ten NSW public universities on 22 December 2003:

**To enable us to assist you in identifying whether there are significant potential areas of complaint for which your university lacks an appropriate internal mechanism, I seek the following:**

1. For the complaint categories of (a) 'disputes'; (b) 'mismanagement' and (c) 'misconduct' (as defined above) please provide copies of all university policies and procedures that govern the handling of complaints by **staff** that fall into each of these three categories.
2. For the complaint categories of (a) 'disputes'; (b) 'mismanagement' and (c) 'misconduct' (as defined above) please identify all university policies and procedures that govern the handling of complaints by **students** that fall into each of these three categories. Where any such policies or procedures differ from those governing the handling of corresponding complaints by staff, please provide a copy of those different policies.
3. Where any of the policies and procedures provided in response to 1 and 2 above are governed by one or more sections of a Bylaw, Regulation or Industrial Award, please supply a copy of the relevant section(s).
4. Please provide a copy of the university's current internal reporting policy for complaints (including protected disclosures made pursuant to the *Protected Disclosures Act 1994*).
5. In relation to the university's complaint recording system, please indicate the data fields available for each complaint e.g. complainant's name; complaint issues; assessing officer; case officer; outcomes etc. (If there is a standard complaint data entry form, please provide a copy).
6. For the complaint categories of (a) 'disputes'; (b) 'mismanagement' and (c) 'misconduct' (as defined above) please provide the number of complaints in each category for each of your last three annual reporting periods.

I would be grateful if you could provide me with your response to the above not later than Friday 6 February 2004.



# Appendix B

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## Outline of Procedural Guidelines for Minimum Standards Scheme

### Management of Conduct and Performance

1. Sources of authority
2. Application of provisions
3. Purpose and operation
4. Application and effect of guidelines
5. Terminology
  - a. disciplinary action
  - b. disciplinary process
  - c. remedial action
  - d. remedial process
6. Using remedial and disciplinary actions
  - a. general principles
  - b. timeliness
  - c. procedural fairness
  - d. alternative duties or suspension of staff member from duty
7. Use of Disciplinary Options
  - a. dismissal
  - b. directing the officer to resign, or to be allowed to resign, within a specified time
  - c. probation – annulment of appointment
  - d. reduction of the officers salary or demotion to a lower position
  - e. the imposition of a fine
  - f. A caution or reprimand
8. Implementing of remedial action
  - a. counselling – informal and formal
  - b. training and development
  - c. monitoring the officers conduct and performance
  - d. implementing a performance improvement plan
  - e. issues a warning
  - f. transferring at current pay rate
  - g. induction
  - h. mentoring
  - i. staff rotation
  - j. referral to relevant policies
9. External notification requirements
  - e. Commission for Children and Young People
  - f. Police
  - g. NSW Ombudsman
  - h. Department of Community Services (DoCS)
  - i. Independent Commission Against Corruption

## Misconduct

### Procedural Guidelines for Dealing with Misconduct as a Disciplinary Matter and the Taking of Disciplinary Action

1. Purpose of Guidelines
2. Application and effect
3. Delegation – Vice Chancellor
4. Time Frames
5. Terminology
6. Misconduct
7. Misconduct – staff member not on duty or prior to appointment to staff
8. Misconduct – staff member resigns/retires prior to disciplinary action being taken
9. Protected Disclosure
10. An internal disclosure
11. Procedural fairness
12. External; notification requirements
13. Stages in process
14. Initial determination of appropriate course of action regarding a misconduct allegation
15. Investigation Stage:
  - a. alternative duties or suspension of staff member from duty
  - b. persons or committee conducting the investigation
  - c. absence of staff member does not preclude investigation
  - d. non-disclosure
  - e. advising staff member allegation being dealt with as a disciplinary matter
  - f. conduct of interviews for the purpose of preparing an Investigation Report
  - g. notification and advice
  - h. procedure for interviews
  - i. obligations post interview
  - j. victimisation or harassment
  - k. the investigation report
  - l. further inquiries following receipt of the investigation report
16. Initial Decision Stage:
  - a. opinion of whether misconduct
  - b. misconduct allegation/s not made out or no misconduct
  - c. exercise of discretion in determining disciplinary action or otherwise when of the opinion staff member engaged in misconduct
  - d. engaged in misconduct – remedial action
  - e. misconduct proven – no further action
  - f. engaged in misconduct – disciplinary action being considered
  - g. engaged in misconduct – disciplinary action
  - h. further inquiries
  - i. implementation of final decision stage

## Unsatisfactory Performance

### Guidelines for Dealing with Unsatisfactory Performance

1. Application and effect
  - transitional arrangements
2. Delegation
  - terminology
3. Responding to unsatisfactory performance
  - a. performance management
  - b. equal employment opportunity

- c. consideration of organisational and non work related factors
  - d. remedial vs disciplinary action
- 4. Procedural fairness
- 5. Assistance in applying the guidelines
- 6. Dealing with unsatisfactory performance
  - steps for dealing with unsatisfactory performance
- 7. Early intervention and informal counselling
- 8. Formal counselling
  - a. formal notification by VC
  - b. advice from manager/supervisor
  - c. performance improvement plan
- 9. Taking of remedial action and review
- 10. Outcome of review
  - a. performance is satisfactory and the remedial program is finalised
  - b. performance still unsatisfactory and that further remedial action proposed
  - c. performance still unsatisfactory and may lead to disciplinary action
- 11. Preliminary decision on action being considered
- 12. Implementation of final decision

## **Criminal Offences**

### **Guidelines for Dealing with a serious offence**

- 1. Purpose
- 2. Application and effect
- 3. Delegation
- 4. Procedural fairness
- 5. Internal notification obligations
- 6. Alternative duties or suspension of officers from duty
- 7. Criminal proceedings – matter has a direct connection with work
- 8. Officer convicted of a serious offence
- 9. Issues to be considered in deciding the appropriate action
- 10. Relevant information required to inform decisions
- 11. Decision process
  - a. remedial action
  - b. disciplinary action
- 12. Implementation of final decision
- 13. Officer found not guilty of serious charge

In addition to the above, sample documents and letters applicable to dealing with the listed issues could be developed to assist staff responsible for implementing the scheme.

# APPENDIX C

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## Useful resources

*Australian Standard® AS 4269-1995*, Standards Association of Australia, February 1995

*Draft ISO 10018*, International Organisation for Standardisation, Geneva, February 2003

*The Complaint Handler's Toolkit (2<sup>nd</sup> Edition)*, NSW Ombudsman, 2004

*Dealing with Difficult Complainants*, NSW Ombudsman, Sept 1999 [incorporated in *The Complaint Handler's Toolkit* but obtainable separately]

*Investigating Complaints: A Manual for Investigators (2<sup>nd</sup> Edition)*, NSW Ombudsman, June 2004

*Effective Complaint Handling (3<sup>rd</sup> Edition)*, NSW Ombudsman, June 2004

*Protected Disclosures Guidelines (5<sup>th</sup> Edition)*, NSW Ombudsman, May 2004 [includes as an Annexure a copy of the *Protected Disclosures Act 1994*]

*Good Conduct and Administrative Practice: Guidelines for State and Local Government*, NSW Ombudsman, August 2003