GRIEVANCE MANAGEMENT AND RESOLUTION

PREFACE

We aim to be an effective organisation that fosters positive and professional working relationships amongst all staff and management. Our goal is to promote the emotional well-being and high levels of performance of staff, and to encourage a harmonious, supportive and conflict-free workplace.

PURPOSE

This policy recognises that all staff have a right to express concern about work related issues. We aim to ensure that all grievances are managed promptly, sensitively, impartially, justly and confidentially. We recognise that the effective management of grievances will assist in the reduction of absenteeism, prevention of industrial disputes and encourage standards of behaviour consistent with the Code of Conduct.

RESPONSIBILITY

The Director Corporate has overall responsibility for this policy. Supervisors and managers also have responsibilities under this policy.

LEGISLATIVE/POLICY FRAMEWORK

The primary legislative basis of grievance and dispute handling procedures is the Industrial Relations Act 1996 as well as the Crown Employees (Public Service Conditions of Employment) Award 2009.

The Act requires all industrial awards to contain procedures for the resolution of industrial disputes under the award. These procedures must include procedures for consultation at the workplace and the involvement of relevant industrial organisations. The Industrial Relations Commission may refuse to deal with an industrial dispute until it is satisfied that any relevant dispute resolution procedures in an industrial instrument have been followed as far as is reasonably practicable in the circumstances.

Section 1 clause 9 of the Crown Employees (Public Service Conditions of Employment) Award 2009 sets out the relevant dispute resolution procedures to be used by public sector agencies including this office which are expanded in this policy.

Other legislation that impacts on the grievance resolution process is:

- Anti-Discrimination Act 1977
- Government Information (Public Access) Act 2009, Parts 2 and 4
- Privacy and Personal Information Protection Act 1998
- Public Sector Employment and Management Act 2002
- Government and Related Employees Tribunal Act 1980

The Department of Premier and Cabinet’s ‘Dealing with Employee Work-related Concerns and Grievances’ policy and guidelines as well as the Anti-Discrimination Board ‘Guidelines for Managers and Supervisors’ have been referenced in this policy.
DEFINITIONS

1. **What is a grievance?**

A grievance is:

- a clear, formal, written statement by an individual staff member on a work related problem, concern or complaint
- a question, dispute or difficulty concerning the interpretation, application or operation of an award agreement or other agreement in relation to an individual staff member
- alleged discrimination under the *Anti-Discrimination Act 1977.*

Examples include:

- unfair allocation of developmental opportunities such as special projects or acting in higher positions
- interpersonal conflicts including supervisor/staff conflicts
- co-worker conflicts or group victimisation of an individual
- a deliberate lack of communication or concealment of work related information
- any form of harassment or discrimination
- inappropriate pressure (either explicit or implicit) from a supervisor regarding appeals or performance review processes.

2. **When is a grievance not a grievance?**

There may be times when you informally discuss an issue with your supervisor, manager or colleague about a situation or another colleague regarding a work related problem or complaint, often referred to as ‘venting’ or ‘blowing off steam’. While the content of the issue could be considered a grievance, because it is not being raised in a formal, written statement and because it is likely you neither require nor desire action to be taken, this is not a grievance.

Care should be taken, however, whenever engaging in this behaviour. It could be perceived as harassment or discrimination, especially if overheard and misinterpreted by another staff member. Refer to the office policy 09. Good Working Relationships for more details.

If you are a supervisor or manager, and a staff member raises an issue with you in this manner, and you are not clear whether or not they want action taken, clarify with them whether or not they wish to lodge a formal grievance, and refer them to this policy if they are not clear.

3. **Public Service Association (PSA)**

Any reference in this policy to the Public Service Association (PSA) can also be read as referring to any other relevant union that staff may belong to.

POLICY STATEMENT

1. **Consider whether or not you need to raise a formal grievance**

If your concern or complaint is of a minor nature, you may be able to resolve it yourself without the need to lodge a formal grievance. For example, if someone is repeating a joke you find offensive, or is mimicking someone’s accent or disability, or makes repeated and unwelcome inquiries into your personal life, approach that person and ask them to stop. Often, people do not mean to do things that hurt or offend others. By telling the person that their behaviour is inappropriate and offensive, you give them a chance to stop or to change what they are doing.
You may also wish to approach your supervisor or manager if you do not feel comfortable approaching the person directly. You may request that the supervisor or manager speak to the person informally, or remind the division more generally about appropriate behaviour in the office.

If you find that this approach has not been successful, arrange a meeting to discuss the situation with your supervisor or manager and familiarise yourself with this policy prior to lodging a formal grievance.

2. **How do I lodge a grievance?**

Notify your immediate supervisor or division manager that you have a grievance. You should do this in writing (such as a letter, memo or e-mail), unless there are exceptional circumstances. Explain what your problem, concern or complaint is about, request a meeting to discuss the matter and, if possible, how you would like it to be resolved.

We aim to resolve grievances as close to the original source of concern or complaint. Where this isn’t possible there are further steps that can be followed, as set out below.

In circumstances where notification to your immediate supervisor is inappropriate (e.g. the grievance involves the supervisor), refer your grievance to the next management level (e.g. the division manager or statutory officer). The Director Corporate can provide staff, managers and supervisors with advice regarding the handling of grievances. In some circumstances, the Director Corporate may need to undertake the role of grievance handler.

The supervisor or manager to whom you notify your grievance will also advise the Ombudsman that they have received your grievance. The Ombudsman is committed to ensuring a harmonious and conflict-free workplace and the effective implementation of the impartial, open and transparent grievance resolution system as outlined in this policy. Depending upon the nature of your grievance, the Ombudsman may or may not be directly involved in the resolution process.

You can also contact external agencies such as the PSA or the Anti-Discrimination Board for advice and assistance about grievance resolution.

3. **Who do I lodge a grievance with?**

As noted above, you should lodge your grievance with your immediate supervisor or division manager, except where this is inappropriate. It may be inappropriate in circumstances where you do not feel comfortable approaching your immediate supervisor or the grievance somehow involves your immediate supervisor. In this instance, lodge your grievance with your division manager or statutory officer. If your grievance involves your division manager, then lodge it with your statutory officer. If your grievance involves your statutory officer, you should lodge your grievance with the Ombudsman.

4. **What happens once I have lodged a grievance?**

Once you have notified your immediate supervisor, division manager or statutory officer that you have a grievance, within two working days (or as soon as is practicable), he or she is to organise a meeting to try to resolve the grievance. You may request to be represented by the PSA at this stage, or at any stage, during the resolution process. You may also request a support person to attend the meeting with you however this person cannot act as your advocate and may only act as an observer.

If your grievance can’t be resolved in that meeting, you may request a meeting with someone of the next management level to try to resolve the matter. That manager should also meet with you within two working days, or as soon as is practicable.

If your matter still remains unresolved, you may request your grievance be referred up each level of management, up to and including the Ombudsman. Once your grievance has reached this level, and if a resolution still has not been reached, the Ombudsman shall provide you, and any other staff member involved in the grievance, with a written response as to the reasons why action will, or will not, be taken in regards to your matter.
After following these steps you, the PSA on your behalf, or the Ombudsman may refer the matter to NSW Industrial Relations Commission. All parties shall agree to be bound by any order or determination made by the Commission in relation to the grievance.

If at any stage during the resolution process your grievance is resolved, then within one month of the resolution, you and anyone else involved in the process will be consulted by the Director Corporate (or delegate) to ensure that all parties are satisfied with the procedures followed and the outcome.

5. If I lodge a grievance, what am I responsible for?

If you lodge a grievance you must:

- follow the procedures outlined in this policy for the lodgement of grievances,
- understand the procedures and, if you do not, seek information and advice,
- seek to reach a fair and mutual resolution (including compromising where necessary),
- attempt to solve the problem as close to the organisational level or source as possible,
- not allow any disruption to normal work as a result of the grievance, unless otherwise agreed between the parties involved in the grievance or, in a case involving occupational health and safety, a risk to the health and safety of any staff member or member of the public cannot be avoided.

6. If I receive a grievance, how should I resolve it?

As a manager or supervisor, you may be responsible for resolving a grievance. The following steps for the resolution process are recommended. Note that not all of these steps may be essential or relevant, depending on the nature of the grievance.

Step 1 – Gathering information

Get as much information as possible from the person who lodged the grievance about the grounds for the problem, concern or complaint and how they would like it resolved. This can be done either as a verbal statement or in writing. Advise them of the investigation process and given them information about other internal and external avenues of complaint if they are not happy with the decision.

Step 2 – Informing the other side

If the grievance involves another staff member, put the grievance to that person and get their side of the story. Advise them of the investigation process and give them information about other internal and external avenues of complaint if they are not happy with a decision.

In the interests of resolving the grievance fairly, openly and transparently, the person who lodged the grievance should be aware that their identity is likely to be disclosed to the person they are complaining about. However, there may be certain circumstances where this is not appropriate, or the person lodging the grievance requests that their identity not be revealed (eg if there is a genuine fear of repercussive verbal or physical abuse). As the grievance handler, you should consider each grievance on a case by case basis. Advice may be sought from the Director Corporate at any stage.

Step 3 – Interviewing witnesses

Interview any witnesses. Do not tell a witness any more than they need to know about the grievance, and inform them that they must not talk with anyone else about it, so that not too many people are involved and that the complainant’s privacy is protected.

Step 4 – Reaching a conclusion

Based on the information you have gathered, reach a conclusion regarding the probability of the grievance allegation(s).

If the grievance is related to discrimination or harassment, make a decision about whether or not the alleged incident happened based on the balance of probabilities. That is, is the discrimination likely to
have happened after considering both sides of the story, the witness statements and the reliability of the people involved?

If the grievance is related to another work concern, make a decision as to whether or not the situation, event or thing occurred, exists or is possible. For example, was the information not provided to a staff member a deliberate action to disadvantage them, or was it a genuine oversight and mistake?

Remember that if it appears there will be an adverse finding against the staff member complained about, procedural fairness dictates that they are afforded the opportunity to respond to any allegations. This includes giving the staff member access to any information or documentation you relied on in reaching your conclusion.

Step 5 – Deciding on an outcome

Decide on an outcome and implement it.

If the grievance involves an allegation of a relatively minor nature, it may be possible to mediate by getting both sides together and coming to a joint agreement as to how it should be resolved, such as an apology or undertaking that it won’t happen again. This informal approach is voluntary and if either party refuses to participate, you may need to look at a more formal approach to resolve the grievance. If the complaint is more serious, you may need to discipline one side or the other. Senior management will need to become involved. The Public Sector and Management Act and the Personnel Handbook outlines the procedures to be followed if disciplinary action is to be taken. Advice should be sought from the Director Corporate.

Possible outcomes may include:

- an apology
- an undertaking that the behaviour will not happen again
- the original decision is altered so that the person who complained receives some or all of the things they asked for (eg: developmental opportunities, training)
- changes to policies and procedures to ensure a similar occurrence does not happen again.

Step 6 – Monitoring the outcome

The outcome of the resolution process will be monitored to ensure that everyone is satisfied with the procedures followed and the outcome. The Director Corporate (or delegate) will consult with all staff members involved within one month of the resolution process being finalised.

7. If I receive a grievance, what are my responsibilities?

If a member of staff lodges a grievance with you, you must:

- ensure that any staff member raising a grievance understands the process,
- provide fair and open access, in terms of time and effort, to the resolution process,
- maintain confidentiality and privacy,
- seek to facilitate a fair and mutual resolution between the parties concerned,
- ensure the entire process is adequately and appropriately documented.

8. Advice during the resolution process

Seek advice from the Director Corporate if at any stage during the grievance resolution process you have any questions or concerns. The Director Corporate can provide you with information and advice whether you are the person who lodged the grievance, the respondent to the grievance, or the grievance resolution handler.

You can also contact external agencies such as the PSA or the Anti-Discrimination Board for advice and assistance about grievance resolution.
9. Notification of the grievance to the division manager

Consideration should be given to advising the division manager whenever a grievance is lodged within their division. This allows the division manager to provide support to the supervisor handling the grievance, the staff member(s) directly involved, and to monitor the effect on the division as a whole.

If it is considered inappropriate to advise the division manager (eg they are the subject of the grievance), then such notification should not occur.

The grievance handler should discuss this with the staff member who made the grievance, and if necessary, seek advice from the Director Corporate.

10. Grievances relating to alleged discrimination

Allegations of discrimination, harassment or bullying as defined by the Anti-Discrimination Act may be dealt with under the provisions of either the Industrial Relations Act (ie the procedures set out in this policy) or the Anti-Discrimination Act.

Expert advice on discrimination matters is available to staff and managers from the Anti-Discrimination Board regardless of which avenue of complaint is to be pursued. Early advice from the Board is favoured as this is more likely to allow effective resolution of a complaint under this policy rather than necessitating a formal complaint under the Anti-Discrimination Act.

11. Disciplinary action and appeals

If the outcome of a grievance or dispute demonstrates the need for disciplinary action, the formal disciplinary procedures set out in the Public Sector and Employment Management Act 2002 will be used. The Personnel Handbook provides guidance about these formal disciplinary procedures and may be accessed from the office Intranet via the link located under the Personnel page. No formal disciplinary action is to be commenced without reference to the Director Corporate.

12. Documentation

All grievance documentation will be maintained by the Director Corporate on a strictly confidential file. ‘Grievance documentation’ refers to any documentation received or created during the handling of a grievance (eg the initial grievance letter, email or memo; file notes created by the grievance handler; responses received from witnesses). Where possible, hardcopies should be signed and dated by the person who created the document.

All documentation should be treated as highly confidential and kept in a secure, locked location. It is the responsibility of the grievance handler to refer to the Director Corporate any documentation created or received in relation to the grievance for both electronic and physical filing without delay.

No documentation will be placed on staff files unless a disciplinary charge is proven.

13. Minimal disruption to work

The Crown Employee (Public Service Conditions of Employment) Award 2009 provides that while the grievance procedures above are being followed, normal work shall continue unless otherwise agreed between the parties, or, in the case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

14. Review and monitoring

In addition to follow up consultation after the successful resolution of a grievance, the Director Corporate (or delegate) will seek advice from the parties concerned on whether they consider these
procedures effective, or if there are aspects which could be altered to permit more satisfactory or expedient resolution.

In any event, a review of these procedures will be conducted in accordance with our policy on policy development and review.

OMBUDSMAN APPROVAL

[Signature]

Bruce Barbour
OMBUDSMAN