Policy Redesign Project

All policies and procedures are being reviewed as part of this project. This document is pending review, but remains in effect until the review is carried out.

Establishment: Council, 28 October 1999

Last Amended: 7 August 2014 - Enterprise Agreement 2014 to 2017

Nature of Amendment: Update to terminology

Date Last Reviewed: 

Responsible Officer: Director, Human Resources

ENTERPRISE AGREEMENT 2014–2017, CLAUSE A32 GRIEVANCES

A32.1 [Definition] For the purposes of this clause, a grievance is a complaint which arises as the result of:

A32.1.1 a behaviour or action of another member or members of staff, which has a significant negative impact on the ability of a staff member to undertake her/his duties; or

A32.1.2 a complaint of unlawful discrimination or sexual harassment; or

A32.1.3 subject to A32.2, an action or decision which constitutes a serious error in the procedure of a merit-based selection process where that selection process does not itself provide an avenue for appeal.

A32.2 [Exclusions] This clause does not apply to matters that are covered by alternative University review, appeal or grievance procedures nor to the outcome of a merit-based selection process.

A32.3 [Resolution]

A32.3.1 A staff member is expected to initially seek to resolve a grievance with the staff member against whom the grievance rests or by approach to that staff member’s supervisor.

A32.3.2 Where a staff member feels that her/his grievance has not been resolved under A32.3.1, s/he may seek to have the grievance resolved in accordance with the University’s Individual Staff Grievance policy. This includes the right to have a grievance formally considered by a grievance committee constituted in accordance with clause A33 of this Agreement.

A32.3.3 Where a staff member seeks to remedy the grievance in a forum external to the University, the staff member will no longer have access to these grievance procedures for that particular matter.
A32.4 [Treatment of staff members lodging or dealing with grievances] A person who lodges a grievance will not be treated unfairly or victimised because of the grievance nor will anyone dealing with the grievance be coerced or intimidated in any way.

Policy and Procedures

1. Scope

These provisions apply to all employees of the University.

2. Referral to an outside body

These provisions are for the internal handling of grievances. Subject to clause A32.3.3, the University recognises the complainant's right to refer a grievance to a relevant external agency at any time. External agencies may include the Fair Work Commission, Equal Opportunity Commission, Human Rights and Equal Opportunity Commission, Ombudsman, Police. Assistance may be sought from the Director, Human Resources Division or the Manager, Equal Opportunity and Diversity as appropriate.

3. Staff obligations

All staff are expected to conduct themselves in a manner which respects the rights and welfare of other members of the University and to show competence, care, good faith and compliance with instructions, policies and procedures in the performance of their duties.

4. University commitment

The University is committed to maintaining a fair and just workplace, one essential element of which includes access to processes that allow a staff member to resolve grievances in a supportive environment.

5. Resolution by informal means

Grievances will be resolved wherever possible by informal means including discussion, mediation and/or conciliation.

6. Resolution by formal means

Formal procedures for the resolution of grievances will normally only be invoked when a matter cannot be resolved by informal means.

7. Prompt resolution

Grievances will be resolved promptly and as close as possible to the source of the problem as long as equity and due process in that resolution can be assured.
8. Confidentiality
Information about a grievance will only be communicated to those persons who have a right under University policy and procedures to be given the information.

9. Principles of resolution
Grievances will be resolved in accordance with the principles outlined in clauses 12 and 13.

10. Precedent
Settlements reached through the grievance process will not constitute precedent.

11. Rights and responsibilities of supervisors
Nothing in this policy interferes with the rights and responsibilities of supervisors to discharge their responsibilities in a fair and equitable manner based on University policy and procedures.

12. Principles of natural justice and procedural fairness
Any investigation of a grievance will be carried out in accordance with principles of natural justice as follows:

12.1 All parties to a grievance will have the right to be heard;

12.2 Where a grievance is in relation to a staff member's behaviour, a respondent to a grievance must be informed of all allegations in relation to his or her behaviour;

12.3 The exact behaviour, including perceived behaviour or an omission, that constitutes the cause of the grievance, which is under consideration, must be specified;

12.4 Investigations into the grievance must be undertaken thoroughly and justly;

12.5 Only matters relevant to the grievance under consideration will be taken into account. Any recommendations made in relation to the matter will address the grievance alone.

13. Good faith
Grievances should be made in good faith and without frivolous, malicious or vexatious intent.

14. Grievance not resolved
Where a grievance is not able to be resolved under clause A32.3.1, the complainant (i.e. the person lodging the complaint) may seek to have the grievance resolved through the informal guidelines specified below.
15. Lodgement timelines

In the case of grievances with respect to merit-based selection processes, a grievance will normally be lodged within seven days of the outcome of the process being made known. In other cases, a grievance should be lodged as soon as practicable after it is clear that attempts to resolve the issue as specified above have failed.

16. Informal Procedures

16.1 Request to supervisor

A staff member may request her/his supervisor, either orally or in writing, to act to resolve the grievance.

16.2 Alternate officer

Where a grievance is with the supervisor, the staff member may request their supervisor's line manager or an officer of the Human Resources Division act in lieu of the supervisor in accordance with this policy.

16.3 Consideration of grievance

Upon receiving a notification of a grievance, the supervisor (or alternate officer) will determine whether the subject matter prima facie constitutes a grievance that should be investigated further.

16.4 Further investigation

Where it is determined that the grievance should be investigated further, the supervisor will:

16.4.1 gather such other information as required to assist with the resolution of the grievance and,

16.4.2 attempt to resolve the grievance by discussion or arranging mediation or conciliation

16.5 No further investigation

Where it is determined that the grievance should not be investigated further, the supervisor will advise the complainant accordingly and give reasons, for example, because in their view the grievance is ill-advised, misguided, frivolous, malicious or vexatious.

16.6 Where supervisor declines to act

The supervisor (or alternate officer) may determine that the matter be investigated further but decline to act for reasons such as conflict of interest. In that event, the supervisor will advise the complainant in writing and give reasons why s/he is unable to act.

16.6.1 In the event that a supervisor declines to act, the grievance will be forwarded to the Director, Human Resources.

16.6.2 In the event that the Director, Human Resources declines to act, s/he will identify another senior member of staff to act to resolve the grievance.

16.7 Disclosure of complainant’s identity

In investigating a grievance the supervisor (or alternate officer) will normally identify the complainant to the respondent (i.e. the person complained about).

16.8 Non-disclosure of complainant's identity
Where, in the supervisor's (or alternate officer's) view, the identification of the complainant could itself adversely affect the complainant, the supervisor will attempt to resolve the grievance in ways which do not involve disclosing the identity of the complainant. If the supervisor (or alternate officer) considers that it is not possible to proceed with attempting to resolve the grievance without divulging the name of the complainant then:

16.8.1 s/he will inform the complainant and provide reasons why disclosure is necessary; and

16.8.2 the complainant must agree to be identified or the grievance cannot proceed.

16.9 Advice on outcome/action

After the conclusion of the resolution process, the supervisor (or alternate officer) will write to both the complainant and respondent indicating the outcome of the process and specify any action that has been agreed by the parties as part of that process.

16.10 Action timelines

Action to resolve the grievance should normally commence within one week of a grievance being lodged. Complainants will be informed by the supervisor assisting the resolution process of the reasons for any delay beyond one week.

16.11 Access to formal grievance procedures

If resolution of the grievance has not been achieved for any reason, or where no action is taken under the above, the complainant may seek resolution of the grievance through the formal grievance procedures.

17. Formal Procedures

17.1 Lodgement

A formal grievance may not normally be lodged unless the matter has been first referred for resolution under the informal procedures. Notification of a formal grievance must be lodged, in writing, with the Vice-Chancellor.

17.2 Preliminary investigation

The Vice-Chancellor will appoint an appropriate person to conduct a preliminary investigation into the substance of the grievance and advise her/him on whether, prima facie, there has been a significant adverse impact on the complainant's ability to carry out her/his duties.

17.3 Action by Vice-Chancellor where grievance found

The Vice-Chancellor may, on finding that the complainant has, prima facie, a grievance:

17.3.1 find in favour of the complainant and advise the complainant and respondent in writing of this fact and take such action as appropriate including actions specified in 18.2;

17.3.2 find that, although there is, prima facie, a grievance, on balance the behaviour or action complained of is justified; and advise the complainant and respondent in writing of this fact and take such action as appropriate including actions specified in 18.2; or

17.3.3 refer the matter to a Grievance Committee.

17.4 Action by Vice-Chancellor where grievance not found
On finding that there is not, prima facie, a grievance, for example, because it is ill-advised, misguided, frivolous, malicious or vexatious, the Vice-Chancellor will advise the complainant, and where appropriate other parties, in writing of this finding and the reasons for the finding and where appropriate take action in accordance with relevant staff provisions against the complainant.

17.5 Request for referral to Grievance Committee

If the grievance is not resolved by the Vice-Chancellor to the complainant’s satisfaction the complainant may request, in writing, and within seven days, that the matter be referred to a Grievance Committee.

17.6 Referral to Grievance Committee

Except in relation to a grievance lodged in accordance with clause 17.7, upon receiving a request to refer a grievance to a Grievance Committee, the Vice-Chancellor will:

17.6.1 convene a Grievance Committee and refer the matter to that committee within two weeks of the receipt of the request, and

17.6.2 advise the complainant, in writing, that the grievance has been referred to a Grievance Committee.

17.7 Grievance relating to unsatisfactory performance/misconduct proceedings

In cases where a grievance is lodged in relation to proceedings with respect to unsatisfactory performance or misconduct by an academic staff member, the relevant provisions described in the relevant industrial instrument will replace the provisions of this policy.

18. Grievance Committee

18.1 Membership and Terms of Reference

The composition and terms of reference of the Grievance Committee are established under clause A33 of the prevailing Flinders University’s Enterprise Agreement.

18.2 Limits on membership

No person who has been directly involved in the decision or matter that is the subject of the grievance will serve on the Grievance Committee.

18.3 Recommendation

The Grievance Committee will recommend action to the Vice-Chancellor in respect of the grievance. Such action may include counselling either or both parties, arranging for conciliation of the grievance, disciplinary action as described in relevant University policy or determining that no further action to be taken. The recommended action may also cover matters such as a proper division of work, the appropriate level of tasks and/or appropriate workplace behaviour and where appropriate, on-going monitoring arrangements.

19. Action by the Vice-Chancellor

19.1 On receipt of a Grievance Committee report, the Vice-Chancellor will

19.1.1 take appropriate action; and

19.1.2 notify in writing both the complainant and respondent of the outcome of the process and specify the action to be taken.
19.2 The decision of the Vice-Chancellor under Clause 19.1 is the final step in the grievance procedures process.

20. Withdrawal of a grievance
A person may withdraw a grievance at any stage of the process. If a grievance is withdrawn, the matter will be deemed to be closed.

21. Assistance for supervisor
As part of the implementation of this policy, training will be provided to supervisors to assist them to resolve grievances. It is expected that a supervisor will seek advice from the Director, Human Resources at an early stage of an informal or formal grievance process.

22. Record Keeping
Accurate and appropriate records will be kept by the person’s responsible officer/alternate officer at the particular stage of the grievance process being undertaken.

22.1 Informal grievances
In the case of informal grievances, notes may be kept whilst action to resolve the grievance is being taken. If the matter is resolved, no records of the matter will be retained by the University.

22.2 Formal grievances
In the case of formal grievances, records will be forwarded to the Director, Human Resources within 5 working days of resolving or attempting to resolve the grievance. When the process is complete all records will be kept on a confidential staff grievance file in the University’s Central Records Office.

23. Grievance against decisions or actions of the Vice-Chancellor
For grievances lodged against decisions or actions by the Vice-Chancellor but not including decisions or actions taken in relation to matters under this policy, the Chancellor will replace the Vice-Chancellor in the operation of the Grievance provisions.

24. Representation
A staff member may be assisted by a person in accordance with Clause A6 of the prevailing *Flinders University Enterprise Agreement*.

Related Links
- [Review, Appeals and Grievance Committees](Enterprise Agreement clause A33) (Enterprise Agreement clause A33)
- [Representation](Enterprise Agreement clause A6) (Enterprise Agreement clause A6)