

Grievance Resolution (Workplace): for the Dept of Health and Public Health Organisations

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Functional Sub group Personnel/Workforce - Conditions of employment
Personnel/Workforce - Occupational Health & Safety
Personnel/Workforce - Conduct and ethics

Summary This NSW Health policy directive requires the Department of Health, public health organisations and the Ambulance Service of NSW to have in place a local workplace grievance management system and procedures that facilitate prompt, fair and flexible management of all workplace grievances, with a focus on effective resolution. The system must incorporate an initial assessment of all matters raised; ensure that serious matters are not handled as workplace grievances and ensure that those managing grievances are competent to do so. Chief Executives must ensure that local systems and procedures are reviewed and updated to comply with this policy directive.

Replaces Doc. No. Grievance Management Systems (Policy Framework and Best Practice Guidelines - Development) [PD2005_149]
Grievance Resolution Procedures - NSW Department of Health only [PD2005_147]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, NSW Ambulance Service, NSW Dept of Health, Public Hospitals

Audience ALL

Distributed to Public Health System, Health Associations Unions, NSW Ambulance Service, NSW Department of Health, Public Hospitals

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Director-General
Previous reference N/A

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

**EFFECTIVE WORKPLACE
GRIEVANCE RESOLUTION**

***POLICY AND BETTER PRACTICE
FOR THE DEPARTMENT OF HEALTH AND
PUBLIC HEALTH ORGANISATIONS***

NSW  HEALTH

April 2005

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1.0 About This Document

1.1	Effective Workplace Grievance Resolution	Copies may be obtained at www.internal.health.nsw.gov.au
1.2	Responsibility	Employee Relations
1.3	Version	Final Version April 2005
1.4	Updates and Feedback	Feedback is welcome and should be addressed to the Manager, Employee Relations Policy, NSW Department of Health
1.5	Related Policies	<p>PD2005_135 Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services</p> <p>Guideline on the Management of a Complaint or Concern About a Clinician: A Guideline for Policy Development in Area Health Services and Other Public Health Organisations (Nov 2001)</p> <p>Model Policy on the Management of a Complaint or Concern About a Clinician: A Model Policy for Area Health Services and Other Public Health Organisations (Nov 2001)</p> <p>PD2005_109 Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations of Improper Conduct</p> <p>2005_299 Protecting Children and Young People</p> <p>PD2005_223 Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination</p> <p>PD2005_145 EEO Program Minimum Standards for Area Health Services and the NSW Ambulance Service (under review)</p> <p>PD2005_409 Workplace Health and Safety: Policy and Better Practice Guide</p> <p>PD2005_315 Zero Tolerance to Violence in the NSW Health Workplace</p> <p>PD2005_234 Effective Incident Response: A Framework for Prevention and Management in the Health Workplace</p> <p>PD2005_568 Employee Assistance Programs: Policy and Better Practice</p> <p>PD2005_130 Principles/Minimum Standards for the Development of Health Service Codes of Conduct (under review)</p> <p>PD2005_201 Management of Employment, Promotion and Transfer where Employees are Closely Related or Have a Close Personal Relationship</p> <p>PD2005_565 Recruitment and Selection: Policy and Better Practice for Public Health Organisations and the Ambulance Service</p>

**1.5 Related Policies
(contin)**

PD2005_187 NSW Health Policy on Orientation

PD2005_337 Reportable Incidents Briefs to the NSW Department of Health

PD2005_225 A Framework for Managing the Disciplinary Process in NSW Health (under review)

PD2005_180 Managing for Performance – A Better Practice Approach for NSW Health

PD2005_173 Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption

Better Practice Guidelines for Frontline Complaints Handling: February 1998

**1.6 Additional
References and
Resources**

Equal Opportunity in Public Employment, Office of the Director
Level 11, 28 Margaret Street Sydney NSW 2000

Ph: (02) 9248 3555

www.eeo.nsw.gov.au

Department of Health
73 Miller Street North Sydney NSW 2059

Ph (02) 9391 9305

www.internal.health.nsw.gov.au

Anti-Discrimination Board
PO Box A2122 South Sydney NSW 1235

Ph (02) 9268 5544

www.lawlink.nsw.gov.au/adb

WorkCover NSW
Locked Bag 2906 Lisarow NSW 2252

Ph (02) 4321 5000

www.workcover.nsw.gov.au

Office of the NSW Ombudsman
Level 3, 580 George St, Sydney NSW 2000

Ph (02) 9286 1000

www.nswombudsman.nsw.gov.au

Independent Commission Against Corruption
GPO Box 500, Sydney NSW 2001

Ph (02) 8281 5999

www.icac.nsw.gov.au

2.0 Introduction

2.1 Purpose and Scope of the Policy and Guidelines

Good workplace grievance management can prevent minor workplace issues escalating into more serious matters.

The policy applies to all public health organisations.

The guidelines include tools to assist public health organisations meet policy objectives.

The purpose of the policy and guidelines is to ensure that the Department and public health organisations have a system in place that encourages early grievance reporting and that ensures, as far as possible, their speedy and effective resolution.

Such a system allows staff to raise legitimate workplace concerns early, with the option for informal resolution where appropriate. A key objective of grievance management systems is to ensure that minor workplace issues are identified and resolved early, before they develop into more serious workplace concerns.

The policy applies to the Department and all public health organisations. The guidelines will assist chief executives and managers to meet departmental and legislative requirements in relation to grievance management, and should be used to review existing procedures to ensure they comply with, and support the key objectives of, the NSW Health policy.

The document also provides some practical tools to assist managers assess initial complaints, conduct further inquiries and maintain the appropriate records.

2.2 Definitions

Complainant

The person making the grievance.

Disciplinary Process

A process for managing allegations of misconduct, serious performance issues or inappropriate behaviour by NSW health staff, usually involving breaches of NSW Health policy, which, if proven, would lead to the staff member being formally disciplined.

Facilitation

The process whereby a manager facilitates a resolution between staff members without the use of formal procedures.

Frivolous Complaint

A frivolous complaint can be defined as one that is trivial, characterised by a lack of seriousness or sense.

Grievance Contact Officer

A staff member in a public health organisation who is available to provide independent assistance and information on the grievance procedures for pursuing workplace grievances. Grievance Contact Officers do not become involved in the direct resolution of a grievance or the investigation of a complaint.

Grievance Management System

A system for appropriately and consistently responding to and managing workplace grievances, with the key objective of speedy and effective resolution.

Information Gathering

A process of gathering relevant information and identifying the relevant facts associated with a grievance, for the purpose of determining the most appropriate method of resolution.

2.2 Definitions (contin)

Initial Assessment

An initial review by the person receiving the complaint, to ensure that grievance management is the most appropriate means to deal with the complaint or whether referral elsewhere is required.

Malicious Complaint

A malicious complaint can be defined as one instituted with the primary intent of causing distress to another, usually the respondent.

Mediation

The process whereby an appropriately skilled, neutral person acts as a 'mediator' to parties to bring about a resolution of a disagreement.

Public Health Organisation

For the purposes of this policy, refers to the Department of Health, Area Health Services, statutory health corporations, affiliated health organisations and the Ambulance Service of NSW.

Respondent

The person (s) against whom the grievance is made.

Staff Member

Any person working in any capacity in a public health organisation including volunteers, students, visiting medical officers and contractors.

Support Person

An individual of the person's choice who provides support to that person during any meetings attended as part of the grievance management process, but does not advocate on their behalf. Examples include co-worker, friend, family member, union rep etc.

Vexatious Complaint

A vexatious complaint can be defined as one instituted without sufficient grounds and serving only to cause annoyance.

Workplace Grievance

A written or oral statement made by an employee regarding a concern arising in the workplace. Examples may include, but are not limited to, interpersonal conflict, the way work is allocated or managed, interpretation of people management policies, or a perceived unfairness in the workplace. The grievance usually involves some concern or personal distress, and will usually, though not always, involve other people.

2.3 Related NSW Legislation

- Occupational Health and Safety Act 2000
- Anti-Discrimination Act 1977
- Freedom of Information Act 1989
- Industrial Relations Act 1996
- Government and Related Appeals Tribunal Act 1980
- Independent Commission Against Corruption Act 1988
- Protected Disclosures Act 1994
- Ombudsman Act 1974

3.0 Policy

3.1 NSW Health Policy

All staff must have access to an effective grievance management system that focuses on timely and appropriate management and resolution.

Local grievance management systems must:

- ***Be flexible enough to allow grievances to be managed promptly and in a way most appropriate to their individual circumstances***
- ***Adopt a commonsense approach, with a focus on resolution and fairness***
- ***Ensure that all matters are initially assessed to determine that grievance management is the most appropriate pathway for resolution***
- ***Ensure that serious matters are not managed as grievances, and that the appropriate referrals are made***
- ***Ensure that those managing grievances are competent to do so***
- ***Encourage early self-resolution where possible***
- ***Support the early use of facilitation and mediation, where appropriate***
- ***Identify the rights and responsibilities of all staff***
- ***Maintain appropriate confidentiality, documentation and record keeping***
- ***Provide access to a review mechanism***
- ***Be consistent with relevant industrial instruments***
- ***Identify a senior staff member with overall responsibility for the effective operation of the system***
- ***Include an evaluation and review process for the purpose of continuous improvement.***

3.2 Policy Objective

The objective of this policy and guidelines is to ensure that all workplace grievances are managed in a fair, timely, appropriate and effective manner.

Effective grievance management contributes to positive working relationships and empowers staff to develop skills to manage their relationships in the workplace. Good workplace grievance management can prevent minor workplace issues escalating into more serious matters.

3.3 Responsibility

It is the responsibility of each Chief Executive to ensure that NSW Health policy is implemented in a timely and effective manner, and that the objective of the policy is met.

Crucial to meeting the policy objective is the ability of managers to:

Managers must know how to manage workplace grievances.

- Conduct an initial assessment of the complaint
- Appropriately refer the matter if it is not to be managed as a grievance
- Where the matter is to be managed as a grievance, to gather and assess the relevant information in order to identify and implement the most appropriate grievance resolution option/s.

Therefore, public health organisations must support managers in relation to these capabilities, and provide advice and access to training as necessary to ensure the policy objective is met.

4.0 Guidelines for Policy Implementation

4.1 Introduction

Local grievance management systems must be flexible, fair, focused on resolution, and accessible to all staff.

It is not the intent of this document to prescribe a rigid procedure for how a workplace grievance will be managed, as, by their very nature, grievances can arise in an extensive range of circumstances and across a continuum of seriousness. Rather, the document focuses on the need for local grievance practices to ensure that each grievance is looked at individually at it arises, and is managed in a way most appropriate to the circumstances.

To support this approach, the guidelines identify a range of options that can be used to manage and resolve workplace grievances. This includes, where the opportunity presents itself, the need for managers to make every effort to resolve potential or actual workplace grievances as informally as possible in the first instance.

4.2 Developing Local Procedures

When developing local procedures public health organisations should ensure that they:

- Are developed in consultation with staff and their representatives
- Are tailored to the specific needs of the workplace
- Clearly articulate, and support, the primary objective of prompt, fair and effective resolution of workplace grievances
- Meet the special needs of staff members from racial, ethnic and ethno-religious minority groups, people with disabilities or people of Aboriginal or Torres Strait Islander descent
- Are communicated to, and are accessible to all staff.

When developing local procedures consideration may be given to establishing a number of additional points of contact for complainants, including grievance contact officers, who can assist those involved to understand the resolution process.

4.3 Staff Rights and Responsibilities

Managers and staff must know their rights and responsibilities, so the grievance management system can operate effectively.

All staff need to know their rights and responsibilities in relation to grievance management, as all parties have a significant role to play in resolving grievances.

Key rights of all staff include:

- Being provided with sufficiently detailed information to allow an appropriate response
- Being treated with respect
- Being given a full and fair opportunity to have their say, and the right of reply
- Being provided with information on progress of the grievance and on any decisions made that may affect them
- Appropriate confidentiality and protection from recrimination
- Impartial, prompt and professional management of the grievance to a speedy resolution.

Key responsibilities of all staff include:

- Recognising their role in harmonious workplace relations
- Raising matters of concern at an early stage and actively participating in the grievance resolution process
- Not raising malicious, vexatious or frivolous complaints.

See Appendix 6.1 for more detailed information on staff rights and responsibilities.

4.4 Confidentiality

All parties have rights and responsibilities in relation to confidentiality.

The respondent must be provided with enough information to allow for an adequate opportunity to fully respond to the issues raised.

Information relating to a grievance should only be provided on a 'need to know' basis, and should not be provided to third parties. Those involved in a grievance have both the *right* to confidentiality, and the *responsibility* for maintaining confidentiality. This includes confidentiality of the identity of those involved, as well as the subject matter.

While the respondent is entitled to, and must be provided with, enough information to allow an adequate response to the complaint, there would need to be a valid reason for others in the workplace not involved in the grievance to have access to any information on who is involved, or on the matters raised.

As most workplace grievances usually involve a complaint by one person against another, the subject of the grievance will generally need to know who raised the complaint, in order to be able to adequately respond to the matters raised.

However, the grievance management process is not to be confused with systems for managing performance, protected disclosures or other serious matters, where it may not be appropriate to divulge the identity of the person making the complaint. This reinforces the need for an adequate initial assessment to ensure that grievance management is the appropriate vehicle for resolving the situation.

4.5 Role of Local HR Departments in Grievance Management

It is usually the role of the manager to take the lead in managing grievances raised by their staff. To support this approach, human resource departments in public health organisations are available to provide advice and guidance to managers on the grievance resolution process. As indicated earlier, there is also the option to have designated Grievance Contact Officers to provide policy and process information to all employees.

4.6 Matters Not Covered Under Grievance Management

Grievance management must not be confused with other management processes.

As the definition suggests (see Section 2.2) grievance management is meant to deal with relatively minor workplace issues or concerns. Therefore it is important to distinguish between workplace grievances, and other more serious matters.

Matters that should not be dealt with under the grievance management system include (but are not limited to):

- Incidents of violence, or of a potentially criminal nature
- Serious bullying, harassment or discrimination (see Section 5.8)
- Serious OHS concerns (see Section 5.9)
- Complaints from clients or patients
- Allegations of serious misconduct, fraud, corruption, maladministration or substantial waste
- Child protection related matters
- Protected disclosures as defined in the Protected Disclosures Act 1994
- Clinical negligence, malpractice or incompetence
- Performance management or disciplinary matters.

4.7 Initial Assessment

In order to determine that grievance management is the most appropriate management approach, some assessment of the matters raised will usually need to be made by the person receiving the complaint. Considering the following questions may assist in this process.

- *Does the matter involve clinical negligence, malpractice or incompetence?*
- *Does the matter involve an allegation of fraud, corruption, substantial waste or maladministration?*
- *Is the matter potentially of a violent and/or criminal nature?*
- *Is the matter a protected disclosure as defined in the Protected Disclosures Act 1994?*
- *Does the matter relate to a child protection issue?*
- *Does the matter relate to a potentially significant breach of OHS legislation (see Section 5.9)?*

If the answer to any of the above questions is yes, then the matter should not be managed as a workplace grievance, and should be promptly referred to more appropriate management mechanisms (see Appendix 6.2).

Other factors should also be considered when conducting the initial assessment. This may on occasion require returning to the person who made the complaint to seek further information

- *Does the complaint allege or suggest bullying, intimidation, or offensive, humiliating or threatening behaviour, discrimination or sexual harassment (see section 5.8)?*
- *Does the complaint relate to a breach of workplace policy including the code of conduct?*
- *Does the complaint relate to a work performance issue?*

If the answer to any of the above is yes, then careful consideration should be given to the degree of seriousness of the matter, in determining whether it should be managed as a grievance, or whether the matter needs to be referred. Considering the following will assist with this determination.

- *How often has the undesirable behaviour taken place?*
- *How long has the undesirable behaviour been going on?*
- *How long has it been since the alleged incident/s took place?*
- *How many people are involved?*
- *What are the roles, responsibilities and relationships of those involved?*
- *How is the issue/s impacting on those involved?*
- *Has the same complaint been raised before?*
- *What action, if any, has already been taken in relation to the complaint?*
- *What are the expectations of the complainant?*
- *What are the potential consequences of the matter?*

Serious matters should not be managed via the grievance management system.

As some of the above questions suggest, information relating to the history, frequency, severity, duration and impact of the incident/s or behaviour/s on the individuals or the workplace may determine that the matter has become more serious than a workplace grievance, and needs to be handled accordingly.

In section 5, a number of examples are given to further illustrate issues that need to be considered, and possible options for resolution.

4.8 Grievance Management, Performance Management and the Disciplinary Process

Grievance management should not be confused with performance management or the disciplinary process. Where a matter is assessed as a grievance, it should not be managed by the disciplinary process. However, where investigation of what initially appears to be a workplace grievance uncovers matters of a more serious nature, then grievance management should immediately cease and the matter should be referred to a more relevant management process eg disciplinary process, performance management, child protection, clinical complaints etc.

Grievances should not be used to confuse or interfere with other management processes.

If a staff member raises a grievance, as defined by this document, about the way a discipline or performance management issue is being managed, then the issue should be looked at, but the performance management or disciplinary process should continue independently.

However, where more serious matters regarding the process are raised, that fall outside the scope of grievance management, then action most appropriate to the particular circumstances will need to be taken.

4.9 Information Gathering

Once the initial assessment has determined that it is appropriate to manage the complaint under the grievance management process, the facts of the matter need to be determined as far as possible. The purpose is to determine whether there is a reasonable basis for the complaint, and to help determine the most appropriate option/s for speedy resolution.

While the degree of formality will depend on the nature of the grievance and those involved, when gathering information there are some key principles that need to be considered.

Information gathering should:

- Be undertaken fairly and impartially, by a competent person
- Maintain appropriate confidentiality (see Section 4.4)
- Ensure that both parties are given full opportunity to have their say
- Include speaking to those identified by either party as having information relevant to the grievance
- Focus on gaining all relevant information, with the objective of affecting a prompt and durable resolution of the matter/s
- Include appropriate documentation and records (see Section 5.12 and 5.13)
- Ensure appropriate security of any related paperwork.

Information gathering should be fair, impartial and focused on resolution.

Where the grievance is lodged against the manager, or the manager feels that they may not be able to be impartial or objective, or be seen to be impartial in assessing the grievance or seeking further information, they should seek advice from their manager/director and/or relevant human resource staff on who should assess the complaint, and manage any ensuing grievance.

Other options need to be available where it is inappropriate for the line manager to manage the grievance.

Where it is inappropriate for the immediate manager or supervisor to manage the issues raised ie the issue involves the manager or supervisor, alternate points of contact need to be available such as a more senior manager.

5.0 Grievance Resolution

5.1 Options for Grievance Resolution

A range of options exist to assist managers resolve grievances promptly and effectively. Because of the diversity of issues and personalities that can be involved, it is important that each grievance is considered individually, in order to determine the best option/s to utilise, and the most appropriate way/s to resolve it. Generally speaking, it is desirable that all reasonable attempts should be made to resolve the grievance informally, before moving to more formal processes.

Based on the information obtained, what may be the best way to resolve the grievance?

Do the findings illustrate the need for training, changes to work processes or administrative procedures?

Will mediation or facilitation assist in the resolution of matters?

Options can be as varied as the issues raised, and can include:

- Encouraging the complainant to try and resolve the issue him/herself eg in minor interpersonal matters (see example A)
- Encouraging/facilitating local resolution prior to moving to more formal management of the grievance eg minor workplace matters (see example B)
- Mediation eg where the above options are not appropriate, or have not been successful (see example C)
- Making minor administrative or work process changes eg where there is perceived unfairness in work arrangements, or to address minor OHS issues etc (see examples D and E)
- Provision of information, education and training eg where a lack of knowledge of workplace policies and/or procedures, roles and responsibilities or cultural issues have lead to/contributed to the grievance (see examples F and G)
- A variety of combinations of the above (see example H).

5.2 Self Resolution

Staff should be encouraged to resolve minor workplace matters themselves.

Many minor workplace issues may benefit from encouraging those involved to attempt to resolve the matter themselves. All staff have a responsibility to contribute to a harmonious workplace, and it should not always be necessary to begin the grievance process to resolve minor matters.

Example A

An employee complains to his manager that a second employee plays his radio during the workday, and that it is affecting the complainant's ability to do his work ie is distracting. The manager asks the complainant if he has raised the matter with the second employee, to be advised that he has not. An option would be for the manager to suggest that the matter might be simply resolved by the complainant quietly and politely requesting that the other employee turn his radio down, or use earphones, and explaining why.

5.3 Facilitation

Facilitation is a process whereby a manager attempts to facilitate a resolution between staff members without the use of more formalised procedures. Consideration should be given to using this as a first option, though it may not always be appropriate.

Example B

An employee complains to his manager that he feels his recently appointed supervisor speaks rudely to him, on one occasion in front of other people, which caused him some embarrassment. The employee says he has tried to raise it with the supervisor, but is not quite sure how to go about it, and feels uncomfortable at the thought of it. An option would be for the manager, with the agreement of the staff member, to speak to the supervisor on his behalf, and if necessary, facilitate a two way dialogue between them to resolve the matter.

5.4 Mediation

Mediation is confidential, voluntary and impartial.

Mediation assists complainants to identify and resolve issues themselves.

Using mediation has a number of benefits.

Mediation is a voluntary and confidential process where an appropriately skilled mediator assists people in conflict to identify and isolate issues under dispute, and to identify and if possible agree on potential options to resolve these issues. Mediators are neutral assistants, who do not make judgements. They can be a trained internal person or an outside professional mediator.

During mediation, the mediator aims to assist parties to find their own solution and may, in some instances, offer suggestions for resolution. However, they do not direct a decision or provide advice about likely outcomes. Both parties to a grievance need to agree to mediation. Additionally, both parties need to be able to accept the mediator as being independent and having no vested interest in the outcome of the mediation.

Because mediation is conducted in a confidential, informal atmosphere that encourages participants to discuss issues in a more open manner than might otherwise be possible, there can be many benefits.

Even if agreement is not reached on all issues in dispute, parties are assisted to air their grievances in a constructive manner, and to reach an understanding of each other's position.

The benefits of using mediation to resolve grievances may include:

- Access to an objective and confidential mechanism for solving problems
- Supports the parties in solving their own problems and making their own decisions
- Can provide a useful option for fair, effective and speedy resolution of workplace grievances.

In addition to trained internal mediators, a number of external organisations provide mediation services, including networks of mediators that are able to provide services to rural areas.

Example C

Two senior members of a team working on a significant project, have on occasion over the previous couple of months argued over who agreed to do what, how, and when in relation to the work they were doing together. The situation appeared to come to a head when one employee complained to the manager about the other. The manager investigated the issue, speaking to both staff members and the project support person, and reviewing paperwork related to the project. It became apparent that the two staff members had different styles of working, different styles of communication, and often misinterpreted points of agreement. Added to this was a lack of notes from project planning sessions, including allocation of tasks and agreed timeframes. A range of other interpersonal issues became evident during the fact finding, and history of a very poor working relationship in a previous work area, with unresolved issues, also came to light.

In this circumstance, mediation may be a useful way of allowing the two employees to air their grievances and work on possible solutions and agreed processes when working together.

5.5 Administrative Changes

Sometimes making minor variations to administrative or work practices can provide a solution to certain types of workplace grievances.

Example D

There is a regular collection point near the exit of a work area for disused boxes, which are collected weekly. A staff member complains to the person collecting the boxes that they constitute an OHS issue (blocking easy egress) and should be collected more frequently, to which the collector replies that their collection procedure only allows for a weekly collection. The staff member subsequently complains about this to his manager. As this is a relatively minor matter, an option may be for the managers of both areas to review the location of the collection point and collection procedures, with the objective of putting more appropriate procedures in place.

Note: Serious OHS issues should not be managed as workplace grievances. See section 5.9.

Example E

An employee regularly starts early and takes the easiest and/or most interesting jobs, regularly leaving the more difficult or boring tasks to a colleague, who commences later. The colleague complains to the other staff member, to be told 'first in, first serve'. The colleague, who has child care responsibilities and cannot commence work any earlier, complains to their manager that he is being treated unfairly, and is being discriminated against because of his child care needs. An option may be for the manager to discuss the matter with both staff members in terms of the need for workplace equity, and the increased skills and experience that access to a full range of tasks represents for both of them, and to put protocols in place for improved communications to all his/her staff and fairer allocation of work.

5.6 Provision of Information and Training

On occasion, workplace grievances can arise from being unaware of certain workplace policies or procedures, and/or matters relating to cultural issues, or because of poor communications skills. Where the investigation of a grievance identifies such shortcomings, the focus should be on provision of appropriate instruction, information and training to address these issues.

Example F

A new staff member, previously working in the private sector, has recently commenced work, and on a number of occasions has told sexist jokes in the open plan work environment. Another staff member has requested that this person stop telling such jokes in the open area, to which the person responded that no one else minded and to not be such a whinger. The staff member subsequently complains to their manager, who looks into the matter. The findings suggest that the individual may not understand the potential seriousness of the behaviour, or the workplace policies that address such matters (EEO, code of conduct), possibly because he has not yet attended induction training. These policies should be promptly brought to the attention of the individual. Depending on the individual's response to the information, further training in the area may be necessary. However, it is important that these matters are dealt with in a balanced way, and that the individual is not made to feel belittled or disparaged for what may have been a case of genuine lack of awareness.

Example G

In example E, if the information gathered suggests that the staff member is aware of such policies and procedures but appears to have a lack of understanding, or little respect for, their significance, a different approach may be required. It may still be appropriate to draw attention to the key principles and related policy requirements, but at the same time making it clear that a manager's responsibility is to ensure that such policies are understood and implemented by staff, and outlining the expected future behaviour, and potential consequences should the policies be breached.

5.7 A Holistic Approach

As some of the above examples suggest, the investigation of grievances can raise a number of issues. Therefore it is important that a holistic approach is taken when responding to the issues.

Example H

A part time employee complains to his manager that another employee of similar level, though working full time, is controlling the amount of information that he is receiving, delegating the least interesting tasks to him and basically making assumptions about what training information should be made available to him.

Because this grievance touches on a range of issues, a number of options may need to be utilised, possibly including:

- Development of clear communication protocols
- More formalised interaction between the manager and the part time employee to ensure appropriate task allocation and employee management
- Provision of information to the full time employee on equal opportunity principles
- Ensuring that the part time employee has access to all relevant workplace training and development opportunities
- Depending on the status of the relationship between the two, providing the opportunity for facilitation with the objective of improving the relationship.

5.8 Bullying, Harassment and Discrimination

Bullying and harassment should not be managed as a workplace grievance.

Bullying, harassment and discrimination are serious workplace issues and it is important to be able to judge where a workplace grievance ends and more serious behaviour begins.

For a matter to constitute bullying and/or harassment, the undesirable behaviour will generally meet the following four criteria:

1. It is repeated
2. It is unwelcome and unsolicited
3. The recipient considers the behaviour to be offensive, intimidating, humiliating or threatening
4. A reasonable person would consider the behaviour to be offensive, intimidating, humiliating or threatening.

Where the initial assessment suggests that the behaviour being complained about may be potentially serious, then the matter should not be dealt with as a workplace grievance. Detailed guidelines are currently being developed to assist public health organisations meet the requirements of NSW Health PD2005_223 *Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination*.

Example I

An employee complains to his manager's director that his manager is rude and abrupt, has an autocratic style, was very critical of him when he failed to complete a task on time and would not listen to him when he tried to explain why the task was not completed. The work area is a busy one, with the manager under work pressures of his own. The staff member indicated he tried to raise the issue with the manager, who responded that he did not have time for this and that he should just get on with his work.

Complaints like that illustrated in Example I need to be carefully assessed.

This grievance needs to be initially assessed very carefully, to determine whether grievance management is the most appropriate pathway to manage and resolve this situation. The person receiving the complaint should carefully consider the questions identified in section 4.7 to assist with this determination.

Even when on first glance the situation seems evident, the initial assessment must not be overlooked.

Questions of particular relevance will include:

- Frequency and severity of the incidents eg how often did they happen, what happened eg specific examples
- How long has the undesirable situation been going on eg weeks, months, years
- Impact on the employee eg is it significantly impacting on the employee, is the employee coping
- Impact on others eg are other staff members being affected by this behaviour
- History of any other similar complaints
- Potential consequences of the matter if it is not resolved eg a workers compensation claim.

This may involve seeking further information from the person raising the matter, in the first instance.

Sometimes more detailed information may be required from the complainant to help with the initial assessment.

Where the resulting information suggests that the episodes have been limited to one or two recent incidents and that there is no history of similar complaints against the manager, then managing the complaint as a grievance may be appropriate.

See NSW Health PD2005_223 (Cir 2001/109) 'Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination'.

However, if it appears that there have been multiple episodes over the long term of potentially significant bullying, intimidation or unfair treatment and/or there is a history of other similar complaints, then the situation should not be managed as a grievance.

A single incident of verbal abuse, if it is serious enough, with significant consequences, should not be managed as a grievance.

If the initial assessment suggests a single incident where there was a serious episode of threatening, humiliating or abusive behaviour such as the individual being abused and/or humiliated, particularly in front of others, then there may have been a serious breach of the code of conduct, and grievance management in this instance would be inappropriate.

Example J

The supervisor of a work team made up of Aboriginal and non Aboriginal members has on occasion told jokes that could be construed as racist, in full hearing of Aboriginal team members. One of the Aboriginal team members complains about the jokes to the manager, and requests that the manager intervene, as the Aboriginal health worker does not feel comfortable raising the matter with the supervisor directly. The initial assessment suggests that there are no other inappropriate behaviours and no overtly malicious intent, so at this point it appears that it may be appropriate to manager the matter as a grievance. The manager subsequently discusses the issue with the supervisor, who expresses surprise that anyone was offended, explaining that it was all just 'in fun'. In this situation it may be appropriate to advise the supervisor of NSW Health policy in relation to these matters, give a clear instruction that the behaviour is to cease and possibly arrange provision of information to the supervisor, and probably the entire team, on cultural respect.

While there may have been some suggestion of discriminatory behaviour in the above scenario, given the full circumstances, managing the matter as a grievance is appropriate. However, serious cases of discrimination should not be handled as a workplace grievance.

Example K

A supervisor manages a number of work teams, each with a specific specialty area. One of the work teams is composed entirely of Aboriginal workers, and there are no Aboriginal workers in the other teams. The supervisor has a very demanding job, and often makes decisions with little consultation with the relevant teams. The supervisor has regularly made jokes and negative comments about Aboriginality. The supervisor also speaks openly to other teams about the poor performance of the Aboriginal team and their inability to 'catch on' to how things should be done, even though poor work performance issues have not been raised with the Aboriginal team members. A number of the Aboriginal team members complain to the manager, following the supervisor requiring that all members of their team are to be at work by 8am, and that during lunch breaks, work phones must be diverted to mobiles. There are no such requirements for the other teams.

Work performance issues should not be managed as a grievance.

The above scenario raises a number of potentially significant issues that need to be considered as part of the initial assessment. They include the type and frequency of the behaviour and its discriminatory nature (cultural disrespect and the imposition of conditions on the Aboriginal team that are different to the non-Aboriginal teams for no apparent valid reason), its effects on those raising the complaint and possible industrial implications. There is also a suggestion that there may be work performance issues with the supervisor, if he is failing to effectively manage the performance of the team, identify training and development needs etc.

The above circumstances suggest that the seriousness of the matter falls outside of the grievance framework. Therefore the matter would be more appropriately addressed as a performance management issue, unless more serious matters emerge during that process that may potentially result in disciplinary action.

5.9 Occupational Health and Safety (OHS)

The OHS legislation in NSW requires employers to ensure, as far as practical, the health and safety of all employees. Where an employer is convicted of a breach of the legislation, this is a criminal offence. However, when initially assessing a complaint, care must be taken not to confuse workplace grievances that may have a minor OHS aspect (see Example D), with significant OHS issues.

One way of assisting in this determination is looking at the risks associated with the complaint, including implications for affected employees, and the public health organisation itself if it fails to take the appropriate action.

Example L

An employee working in a laboratory is required to decant a classified hazardous substance. On donning the required personal protective equipment (PPE), the employee notes that the respirator is damaged, and he is unable to secure it properly. He is unable to locate another respirator, so notifies his supervisor that he is unable to complete the task until an appropriate respirator is available. The supervisor tells him that the substance is needed now, and instructs him to continue the task. The employee refuses, an argument ensues and the supervisor threatens the employee with disciplinary action. The employee complains to their manager.

Serious OHS issues should not be managed as grievances.

By requiring the employee to continue the task without the required PPE, the supervisor is attempting to coerce the employee into breaching safe operating procedures, when in fact the supervisor should be ensuring compliance.

See NSW Health PD2005_409 (Cir 2004/87) 'Workplace Health and Safety: Policy and Better Practice Guide'.

The supervisor is potentially placing the employee at risk of injury from inhaling the fumes, and placing the employer at risk of WorkCover regulatory activity, particularly as it is within the employee's rights to make a complaint directly to WorkCover. These are serious matters, and should be managed under performance management guidelines, or the disciplinary process if it is warranted eg if it is a repeat offence.

5.10 Using External Experts

The judicious use of external experts can assist in solving high level or complex grievances.

There may be certain circumstances where there is a need to consider using an external expert to investigate a grievance, or facilitate or mediate a solution.

While it is expected that such circumstances would not be common, it may be appropriate where:

- It is difficult to identify an internal person who is able to be impartial, or who does not have a conflict of interest, particularly in smaller facilities
- Where very senior staff are involved
- Where there is a lack of appropriately skilled personnel
- Where the situation may come under external scrutiny.

This is a high level decision for the employer to make, after considering all the relevant factors.

5.11 Review Process

An effective review mechanism assists in ensuring that the grievance management and resolution processes are fair and impartial, and can stand up to scrutiny.

The resolution of most grievances will usually be determined and managed by the appropriate manager. On occasion, some or all parties to the grievance may not be happy with the process followed and/or the outcomes of the process. Therefore, there needs to be access to a review mechanism.

The process for requesting a review should be based on the following:

- That the initial grievance management process has been completed, and findings communicated to both parties
- That review of the grievance management process is requested within a reasonable time frame eg within two weeks of its completion
- Sound reasons for requesting the review are identified. It should not be assumed that just because a party to the grievance may not accept the outcome, that there is an automatic right of review
- That, where a review is warranted, it is conducted within an identified, and reasonable, time frame
- That the review is conducted impartially by someone who was not involved in managing the initial grievance
- That the review focuses on the process followed to resolve the grievance eg was it impartial, fair, inclusive and appropriate
- That the findings of the review and their reasons are communicated in writing to the relevant parties.

5.12 Documentation

Those managing grievances need to maintain the appropriate documentation. The type of documentation and level of detail will depend on the type of grievance, whether it was managed formally, level of complexity, and those involved. This can range from a simple diary note to more detailed notes kept locally, or to dedicated files.

The level of detail will depend on the circumstances.

Documentation should include:

- Key step/s taken to manage the grievance
- Key points of information obtained when looking into the matter
- Options activated to resolve the grievance, and time frames
- Any process review.

The person doing the information gathering should keep a record of the findings and the process followed to manage and resolve the grievance.

The purpose of such documentation is to:

- Allow for a review of the management of a grievance if the review process is activated
- Provide access to relevant information if the same grievance is lodged again at a future time, or the grievance worsens despite all efforts to resolve it
- Provide information to support the organisations' actions, should the grievance end up in an external forum.

5.13 Reporting on Workplace Grievances

There needs to be a mechanism in place for employers to determine if the system is operating effectively and in a timely manner. This information should be de-identified, aggregated, high level information for its use when evaluating the effectiveness of the local system.

Reporting should be high level and de-identified.

The sort of information that should be provided includes:

- Date the grievance was first raised
- Employment groups of those involved eg cleaner, manager etc
- Number of times the grievance has been raised (is this the first time, or has the same matter come up a number of times)
- Work location (may need to go up a level if the particular work unit is small and identifying it may lead to the identity of those involved in the grievance)
- Nature of grievance (interpersonal, perceived unfair practices etc)
- Options utilised by the manager to resolve the grievance (self-resolution, mediation, facilitation, administrative changes etc)
- Timeframes
- Whether the review process was activated.

This information can be collected via a simple reporting form, and forwarded to an identified central location. A sample reporting pro forma is at Appendix 6.3.

5.14 Evaluation, Review and Continuous Improvement

As the above suggests, the grievance management system should be regularly reviewed and evaluated, usually under the auspices of the person with overall responsibility for the local grievance management system. The objective of the review is to identify any areas that need updating or improving, and to ensure that the appropriate improvements are then made to the system.

6.0 APPENDICES

6.1 Rights and Responsibilities in Grievance Management

Rights and responsibilities of all staff include:

- The right to a safe and healthy working environment
- The right to seek appropriate external support and assistance in dealing with their work related concerns, including the advice and support of their union
- Taking prompt action on work related grievances in accordance with public health organisation policy and procedures
- Not taking part in, or condoning victimisation and other inappropriate behaviour
- Taking responsibility for their own actions in the workplace, and where the actions of others are disagreeable to them, to attempt to settle matters, where appropriate, with that other person/s in the first instance
- Taking responsibility for assisting in the resolution of the grievance
- Accepting that a resolution may not always satisfy their personal wants
- Not making frivolous, malicious or vexatious complaints
- Cooperating with any grievance procedure.

Rights and responsibilities of those raising issues of concern include:

- To be provided with information regarding their rights and responsibilities
- To seek management counselling without making a formal complaint/grievance
- To withdraw from the grievance at any stage, although the complainant may be advised that management will continue to pursue the complaint if the matter is considered serious or impacts on the organisation's duty of care
- To identify desired outcomes
- To have the issues treated in a fair and impartial manner
- To be informed of all decisions and progress made which may affect them, with consideration given to the privacy of other parties
- To be given protection against any victimisation or harassment because they have raised a grievance
- To raise their grievances at an early stage and providing as much information as possible to assist in the effective resolution of the grievance
- To have a support person present at any meetings they attend relating to the grievance;
- To place comment on the file that contains the record of their involvement
- To not to make malicious, vexatious or frivolous complaints
- To have access to records of meetings which they attended to enable them to confirm that they are an accurate and true record.

Rights and responsibilities of those responding to the issues raised include:

- To be provided with information regarding their rights and responsibilities
- To be provided with protection against any vexatious or malicious complaints
- To be informed promptly of the substance of the grievance
- To be provided with sufficiently detailed information to allow them to respond to the grievance
- To have an opportunity and sufficient time to respond to the grievance
- To seek advice and management counselling
- To have the issues treated in a fair and impartial manner
- To be informed of all decisions and progress made which may affect them, including any evidence found against them, with consideration given to the privacy of other parties
- To provide as much information as possible to assist in the effective resolution of the grievance

Rights and responsibilities of those responding to the issues raised include: (continued)

- To have a support person present at any meetings they attend relating to the grievance
- To have access to records of meetings which they attended to enable them to agree that they are an accurate and true record
- To place comment on the file that contains the record of their involvement.

Supervisor/Manager rights and responsibilities include:

- To be trained in effective grievance management
- To ensure all staff are aware of their rights and know how to access the grievance resolution process
- To proactively identify and resolve, as far as practicable, causes of concern to staff members without waiting for a grievance to be raised
- To treat all workplace grievances seriously, fairly and impartially. If circumstances prevent a person from remaining impartial, the grievance should be referred to the next manager in line or another appropriate person
- To document the process undertaken to resolve a grievance
- To ensure that all documentation in their possession remains confidential and is kept in a secure place
- To ensure that each stage of the grievance is handled as expeditiously as possible
- To ensure that whilst the grievance procedures are being followed, there should be as little disruption to work as possible
- To ensure that professional interpreters are made available to people who do not speak English as their first language or who use sign language
- To make reasonable instructions in relation to work
- To protect staff members from victimisation, harassment and discrimination.

Support Person rights and responsibilities include:

- To provide support to the person they are attending the meeting with, not advocate on their behalf
- To be provided with a copy of the grievance policy and procedure
- To be a witness to the procedure undertaken
- To attend meetings with the party they are supporting, related to the grievance, unless the party no longer requires their involvement.

6.2: A Tool to Assist with Initial Assessment of Complaints Made by Staff

Staff must refer to local policies/procedures reflective of the relevant NSW Health documents. Depending on the nature and complexity of the matters raised, more than one policy may be relevant to the management of the issue, and different pathways may be followed for different aspects of the matters raised.

Nature of Complaint	Guiding NSW Health Policy Directives
<i>Does the complaint primarily consist of a workplace matter raised by an employee that is causing them concern or distress eg interpersonal conflict, the way work is allocated or managed, a perceived unfairness in the workplace?</i>	See NSW Health PD2005_584 Effective Workplace Grievance Resolution: Policy and Better Practice for the Department of Health and Public Health Organisations.
<i>Does the complaint primarily relate to bullying, harassment, threatening or discriminatory behaviour?</i>	See NSW Health PD2005_223 (Cir 2001/109) Joint Management and Employee Association Statement on Bullying, Harassment and Discrimination.
<i>Does the complaint primarily relate to behaviour or activity that, if sustained, is likely to result in disciplinary procedures?</i>	See NSW Health PD 2005_225 (Cir 2001/112) A Framework for Managing the Disciplinary Process in NSW Health.
<i>Does the complaint primarily relate to a work performance issue?</i>	See NSW Health PD2005_180 (Cir 2000/68) Managing for Performance – A Better Practice Approach.
<i>Does the complaint primarily relate to the clinical behaviour or performance of a clinician or public health organisation?</i>	See NSW Health publications: Guideline on the Management of a Complaint or Concern about a Clinician Model Policy on the Management of a Complaint or Concern About a Clinician. <i>Better Practice Guidelines for Frontline Complaints Handling February 1998</i>
<i>Does the complaint primarily relate to matters that may be criminal, or may constitute corrupt conduct, maladministration or substantial waste?</i>	See NSW Health policy directives: PD2005_ (Cir 2000/41) Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption; PD2005_109 (Cir 97/80) Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations of Improper Conduct; PD2005_315 (Cir 2003/48) Zero Tolerance Response to Violence; PD2005_135 (Cir 98/101) Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services.
<i>Has the complaint been lodged as a protected disclosure, as defined in the Protected Disclosures Act 1994?</i>	See NSW Health PD2005_135 (Cir 98/101) as above.
<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a patient or client by an employee?</i>	See NSW Health policy directives: PD2005_109 (Cir 97/80) as above. PD2005_299 (Cir2003/16) Protecting Children and Young People.
<i>Does the complaint primarily relate to allegations of sexual, physical or emotional abuse of a child by an employee, or others?</i>	See NSW Health PD2005_109 (Cir 97/80) as above.
<i>Does the complaint primarily relate to a serious breach of the Code of Conduct?</i>	See NSW Health PD2005_130 (Cir 98/79) Principals and Minimum Standards for the Development of Health Service Codes of Conduct (under review).

6.3 Sample Workplace Grievance Reporting Pro forma

1. **Date Grievance Lodged**.....
2. **Is this the first time this grievance has been lodged by either party? (please circle)**
Yes No
3. **Work Location**.....
4. **Work Category /Type**
Complainant.....
Respondent.....
5. **General Nature of the Grievance**
.....
(eg interpersonal, unfair treatment, work systems or procedures etc)
6. **Option/s Utilised to Resolve Grievance**.....
.....
(eg self resolution, administrative actions, mediation etc)
7. **Date Grievance Finalised**.....
8. **Was the complainant satisfied with the:**
 - a) *Process followed to resolve the grievance (please circle)*
Yes No
 - b) *Outcome of the grievance (please circle)*
Yes No
9. **Was the respondent satisfied with the:**
 - a) *Process followed to resolve the grievance (please circle)*
Yes No
 - b) *Outcome of the grievance (please circle)*
Yes No
10. **Was there a request for a review? (please circle)**
Yes No

Contact Person for the Grievance _____