Resolving Workplace Concerns and Grievances Procedure

Section 1 - Executive Summary

(1) The University of Newcastle (University) is committed to fostering a workplace that values the wellbeing and dignity of every worker. From time to time concerns and grievances about matters in the workplace may arise, and our objective is to address these issues promptly, fairly, and effectively.

(2) A constructive and transparent process for resolving concerns and grievances is important to maintaining a positive and harmonious workplace where every worker can thrive.

Section 2 - Purpose

(3) The aim of this Procedure is to:

a. provide a clear framework for addressing and resolving workplace concerns and grievances raised by workers;
b. support the equitable resolution of workplace concerns and grievances;
c. set out an informal pathway for resolving workplace concerns;
d. set out a formal pathway for resolving workplace grievances.

(4) Where possible and appropriate the University encourages workers to use the informal pathway to resolve concerns directly with those involved.

Section 3 - Scope

(5) This Procedure applies to workplace concerns and grievances made by workers, including:

a. staff members, volunteers, Council members, external committee members, and those employed under an enterprise agreement or any other employment arrangement; and
b. independent contractors and former staff, provided the University considers it appropriate in the circumstances.

(6) Workplace concerns and grievances may be about:

a. the conduct of other workers (including peers, subordinates, and managers);
b. the conduct of a person they have dealt with in the course of their employment or engagement; and
c. any other matter relating to the workers' employment or engagement, including work health and safety risks (that have not been reported via the University's Online Incident Reporting System (AIMS)) or the application of University policies and procedures, unless otherwise excluded from the scope of this Procedure.

(7) This Procedure applies to all workplace concerns and grievances made by workers as defined by clause 5 concerning matters detailed in clause 6 unless another process applies.

(8) For clarity, and without limiting clause 7, this Procedure does not apply to the following matters:

a. complaints concerning research misconduct - these are managed under the Responsible Conduct of Research Policy;
b. reports about sexual assault and sexual harassment - these are managed under the Prevention and Response to Sexual Assault and Sexual Harassment Policy;
c. complaints made by staff about serious wrongdoing including fraud, corruption, maladministration, serious waste of funds and certain other criminal conduct - these are managed under the Fraud and Corruption Framework and the Public Interest Disclosures Policy; and
d. complaints for which an enterprise agreement provides a resolution process, including:
    i. complaints made about staff misconduct and serious misconduct, as defined by the relevant enterprise agreement;
    ii. concerns about underperformance;
    iii. disputes regarding the interpretation, application, or operation of any provisions of an enterprise agreement or the National Employment Standards; and
    iv. requests to review decisions made in relation to the management of underperformance, staff workload, classification structure and review, probation, redeployment, intellectual property rights, and leave.

Section 4 - Audience

(9) This Procedure should be read and understood by all workers. The University encourages all workers to use this Procedure when needed, and to actively contribute to a collaborative and supportive workplace culture. All workers must engage with this Procedure in accordance with the obligations established by the Staff Code of Conduct.

Section 5 - Definitions

(10) In the context of this document, the following definitions apply:

a. "workplace concern or grievance" as defined by Clause 6 of this procedure. A grievance is more serious or complex than a concern, or could be a concern that has been unable to be resolved informally;
b. "Worker" – as defined by Clause 5 of this Procedure.
c. "Assessment Officer" - An Assessment Officer is usually someone at the University with responsibility for the subject matter of the grievance, and may be appointed or changed at any stage of the formal process.

Section 6 - Resolution Pathways

(11) Where a worker has a concern about a matter listed in Clause 6 of this Procedure they should take steps to address this as soon as reasonably practicable.

(12) Workers should consider the pathways available (See Table 1) and select the option that they feel is appropriate. The appropriate resolution pathway will depend on a range of factors including the seriousness and complexity of the workplace concern or grievance.

(13) Workers may commence a pathway set out in Table 1 at any point. If a worker chooses to use the informal pathway for resolving their workplace concern, this does not mean they cannot later pursue a formal pathway.

(14) The formal pathway can also be suspended at any time to then return to the informal pathway.

(15) The resolution pathways are set out in Table 1- Resolution Pathways.

Table 1 – Resolution Pathways

Section of this Procedure	Pathway	Detail	Indicative Framework
7	Informal Pathway	A worker raising a concern should first attempt to resolve the concern with the people involved and their supervisor. If the worker raising the concern requires further assistance they can refer their concern to a HR Business Partner who will assess the concern and provide advice and assistance on options to address the concern. This is known as 'assisted resolution'.	Timeframes that the University believes are reasonable in the circumstances. A HR Business Partner will meet with the worker to better understand the concern. They will aim to provide advice about available resolution options within 5 working days of the initial discussion, with the aim of implementing a resolution within 7 working days of that advice.
8	Formal pathway	A worker may formally raise a grievance where the informal pathway has been unsuccessful or where it is inappropriate given the nature of the issue or the people involved. An Assessment Officer will seek to address and resolve the grievance through formal steps (such as a mediation between those involved or an investigation).	Acknowledgement of receipt of the grievance should be provided within 5 working days. Initial assessment of the grievance should occur within 10 working days from the acknowledgement. Commencement of steps to resolve the grievance should occur, within 20 days following completion of initial assessment (or such other time as is reasonable in the circumstances).
9	Appeal	The worker who raised the grievance and the responding worker(s) may appeal the outcome of the formal pathway if they believe there has been a lack of procedural fairness in how the matter was considered.	Appeals should be lodged within 15 working days following the outcome of the formal pathway being advised (unless a longer period is granted by the University). Receipt of an appeal will be acknowledged within 5 working days. The appeals process should be completed within 20 working days from the date of acknowledgement.
10	External Pathway	At any time during either the informal or formal pathway process, the worker raising the concern can raise it with an external agency. See Section 10 below for further information.	Workers who want to pursue an external pathway may seek advice from the relevant external agency regarding timeframes.

(16) Workers have the right to be accompanied by a support person (as defined in the enterprise agreements under "Representation") at any stage in the resolution pathways. The role of the support person is to provide moral or emotional support.

(17) Work should continue as normal while the resolution pathways steps are being undertaken, as far as it is reasonably practicable to do so. Separation of workers who are involved in a workplace concern should only be undertaken where there is a serious and real safety risk, or when the effective resolution of the matter could be adversely affected by individuals continuing to work together.

(18) The timeframes set out in the resolution pathways are estimates only. The University will endeavour to achieve the estimated timeframes, but this may not always be possible.

Section 7 - Informal Pathway

Direct engagement

(19) Where a worker has a workplace concern, in the first instance (and where they feel comfortable to do so), they should raise it as soon as practical directly with the worker(s) involved. Ideally, University colleagues should be able to resolve work related concerns by raising them in a constructive, respectful, and professional manner.

(20) When raising the concern directly, a worker should attempt an open conversation with the worker(s) involved, which includes:

a. observational feedback that describes the specific behaviour or circumstance that is causing concern;
b. describing the effect the behaviour or circumstance is having on them or their work;
c. giving the other person the opportunity to ask questions and respond; and
d. stating the desired outcome/s.

(21) Workers involved in the conversation are required to act respectfully, listen carefully, ask questions to clarify their understanding, and respond constructively and appropriately.

(22) Workers should keep a file note of this action if they choose to undertake this step. This involves maintaining a personal record in a secure and confidential location for future reference, if required, or otherwise request it is stored by Human Resource Services.

Assistance with direct engagement

(23) Where a worker may require assistance or advice to undertake direct engagement, the University encourages workers to seek assistance from their supervisor where it may be required. Alternatively, workers may seek advice on possible strategies and approaches with direct engagement from their HR Business Partner.

(24) If it is not possible to resolve the concern following assistance with direct engagement, or if this step is not appropriate, the worker should proceed with assisted resolution, as outlined below.

Assisted resolution options

(25) An HR Business Partner may advise a worker that more than one assisted resolution option may be necessary to resolve their concern.

(26) Individuals who identify as Aboriginal or Torres Strait Islander may seek support in engaging with the Assisted Resolution Options from the Office of Indigenous Strategy and Leadership.

(27) Examples of the assisted resolution options available are outlined in (but not limited to) Table 2:

Table 2 – Assisted Resolution Options

Assisted Resolution Option	Summary
Supported Assistance	The supervisor or HR Business Partner may assist worker(s) by acting as a sounding board to discuss direct engagement with the other worker(s) involved in the workplace concern.
Facilitated Discussion	The supervisor, HR Business Partner, or an independent external party (appointed by the HR Business Partner) facilitates a discussion between the workers involved to assist in the development of a mutually acceptable agreement to improve their future working relationship.
Mediation	A voluntary and confidential process involving an appropriately skilled, neutral person acting as a mediator to bring the workers together, identify the topics for discussion, and assist them to work towards an acceptable resolution of the concern.

Assisted Resolution Option	Summary
Conflict or Communication Coaching	Involves a trained coach who supports workers to deal with the specific conflict situations, and who competency manage the conflict. This may be used to prepare the workers for another assisted resolution option.
Team Initiatives	A team building exercise which can include a team profiling exercise, work group training, or individual communication profiling, and the development of a team charter.
Development Initiatives	This may include individual, work group, or organisational wide training, mentoring or coaching on such matters as communication skills, diversity awareness, and interpersonal skills.
Increased awareness of standards and expectations	The dissemination of information may support the resolution of the workplace concern.
Change work practices	A supervisor may determine that minor variations to administrative or work practices could provide a solution to the workplace concern.

(28) Each assisted resolution option can be ceased if it is considered appropriate or necessary by the HR Business Partner or the worker to move to another assisted resolution option or to the formal pathway.

(29) The outcome of an assisted resolution option must be recorded in writing and maintained in a confidential file in line with the University's Privacy Management Plan and Privacy Policy, and the Records Governance Policy.

(30) The supervisor must ensure the relevant workers are accountable for any commitments agreed to in an assisted resolution option.

(31) If the workplace concern remains unresolved after implementation of one or more assisted resolution options (as appropriate), further discussions should be held with the HR Business Partner to determine next steps, including whether the formal pathway should be initiated.

Section 8 - Formal Pathway

(32) To lodge a grievance through the formal pathway, the worker raising the grievance must submit a Grievance Submission Form. The completed form should include all relevant information and supporting documentation so that the Workplace Behaviour and Conduct Advisor can review the grievance.

(33) If the worker raising the grievance is unable or would prefer not to complete the Grievance Submission Form they may contact an HR Business Partner to arrange an alternative means of lodging the grievance.

(34) Workers can raise grievances anonymously. However, to assist with resolving grievances the University encourages the worker(s) to identify themselves. Where a grievance is raised anonymously the University may not be able to act if insufficient information is provided. A worker raising an anonymous grievance will not receive any correspondence or communication from the University in relation to the outcome of the concerns raised.

(35) Grievances must be raised within 12 months from the date the event giving rise to the concerns has occurred. The University may choose to consider grievances outside this timeframe at its sole discretion.

(36) A grievance can be withdrawn a any stage of the process. In such cases, the University may either determine the matter as resolved, or continue to take action where the matter is of a serious nature.

(37) The Workplace Behaviour and Conduct Advisor will undertake a preliminary assessment of the grievance. The aim of this assessment is to determine the next steps, which may include an investigation or other resolution action, or an assisted resolution option (see Table 2).

(38) The Workplace Behaviour and Conduct Advisor may ask the worker who has raised the grievance to provide

further information if the grievance lacks relevant detail or clarity.

Appointment of an Assessment Officer

(39) The Workplace Behaviour and Conduct Advisor may also appoint an Assessment Officer to undertake the determined next steps. If an Assessment Officer is not appointed, the steps in clauses 40-49 will be undertaken by the Workplace Behaviour and Conduct Advisor.

(40) The Assessment Officer may seek assistance from subject matter experts and may allocate tasks in the formal pathway to other staff members where they consider it appropriate to do so. All parties are bound by confidentiality.

(41) Assessment Officers, those assisting, and those who have been allocated tasks must:

a. act fairly and impartially;
b. exercise independent judgement;
c. conduct themselves in a professional manner;
d. maintain confidentiality in accordance with this Procedure (see Section 11); and
e. disclose any actual, perceived, or potential conflicts of interest as soon as they become apparent in accordance with the Disclosure of Interest Policy and its associated procedure.

Initial assessment

(42) The Assessment Officer will undertake a risk assessment to identify any psychosocial risks and determine and implement the most effective controls, including provision of support to the workers involved in the matter.

(43) The Assessment Officer will implement the next steps as determined in the preliminary assessment. Next steps may be any of the following:

a. commencement of an investigation – the investigation may be undertaken by the Assessment Officer or another person (either internal or external to the University);
b. taking action to address or assist the worker who raised the grievance and address the concerns without commencing an investigation;
c. declining to investigate or take further action for any one or more of the following reasons:
    i. the grievance is vexatious, frivolous, lacking in substance, has not been made in good faith, or is based on misconceived facts;
    ii. the grievance (or a grievance that is very similar) is being, or has been, assessed under a different process;
    iii. the grievance is subject to legal proceedings;
    iv. the grievance is not within the scope of this Procedure; or
    v. the grievance relates to an event occurring more than 12 months prior to the lodgement of the grievance;
d. require the worker who raised the grievance to undertake the informal pathway, where the concern has not been through the informal pathway and the Assessment Officer considers this is appropriate, or where attempts at informal resolution have not been genuine or sufficient. This may include undertaking part of the informal pathway, such as participating in assisted resolution options (see Table 2);
e. review of any actions or decisions arising from an informal pathway and giving consideration as to whether they were justified;
f. directing the grievance to an alternate process if the Assessment Officer considers it would be more appropriately managed under an alternate process; or
g. directing the worker who raised the grievance (or refer the grievance) to an external agency (See Section 13)

(the Assessment Officer may only make such a referral with the consent of the University's Chief People and Culture Officer).

(44) If the Assessment Officer or Workplace Behaviour and Conduct Advisor believes that a grievance or concern would be more appropriately managed under a different process at any point during the processes set out in this Procedure, they will refer the concern or grievance to the appropriate process. In some cases, it may be appropriate for a concern or grievance, or parts of a concern or grievance, to be managed under several processes at the same time, in which case outcomes may vary.

Investigation

(45) When investigating the grievance, the Assessment Officer (or the person appointed to undertake the investigation) will take any steps they consider appropriate to assess the facts, which may include:

a. providing the worker who raised the grievance, the worker/s about whom the grievance is made, and other relevant stakeholders with an opportunity to provide information relevant to the matter;
b. examining relevant documentation, policies, and procedures; and
c. seeking clarification from any relevant parties on information relating to the grievance.

(46) All people involved in the investigation are required to cooperate, attend any meetings, and behave a manner that is in accordance with the Staff Code of Conduct.

Resolution

(47) After completion of the investigation the Assessment Officer will make a determination and communicate the outcome of the investigation in an appropriate manner to the worker who raised the grievance and any other persons as applicable. The outcome of an investigation may be:

a. the grievance has been upheld or partially upheld, in which case there may be recommendations for action; or
b. the grievance is unsubstantiated and most likely there will be no recommendations for action.

(48) The recommendations for action may include that:

a. the workers involved in the grievance participate in one or more assisted resolution options; or
b. the matter should be referred for management under the procedure for managing misconduct / serious misconduct under the relevant enterprise agreement or the employee’s employment contract.

(49) The University will provide the worker who made the grievance and the responding worker(s) with details concerning the outcome of the grievance. There may be some details about any findings made as a result of the grievance and the corrective action taken that it is not appropriate to disclose (for example, disciplinary outcomes) or which cannot be disclosed (for example, due to privacy considerations).

Section 9 - Appeal

(50) The worker who raised the grievance, or a person about whom the grievance is made, may appeal the outcome of a grievance. An appeal can be requested if either person believes there was a lack of procedural fairness in the formal pathway or that the steps set out in this Procedure were not followed.

(51) The rules of procedural fairness are that:

a. there should be a lack of bias during the decision making process;

b. a person whose interests are affected by a proposed decision is given an opportunity to respond to the allegations against them, including being provided with relevant material that could affect the decision; and
c. findings are based on sufficient evidence to support the decision.

(52) Any delays or failure by the University to comply with timeframes is unlikely to give rise to a lack of procedural fairness and therefore will not usually be a valid reason for appeal.

(53) An appeal must be made in writing (by submitting an Appeal Form) and clearly state the reason for the appeal and include any relevant supporting documentation. An appeal must be lodged within 15 working days of the notification of the outcome of the grievance. The worker who made the grievance or the person about whom the grievance is about may request to extend this period, however this will only be accepted in exceptional circumstances.

(54) The Chief People and Culture Officer will appoint an Appeal Officer to review the appeal. Appeal Officers are held to the same standard as Assessment Officers when reviewing an appeal (see clause 41).

(55) The Appeal Officer will review the appeal and make one of the following determinations:

a. allow the appeal and make a fresh determination and/or recommendation(s) for action (which may be the same or different to the original determination and/or recommendations for action);
b. allow the appeal and refer the grievance back to the same Assessment Officer, or a different Assessment Officer, to re-determine the grievance having regard to the Appeal Officer's decision;
c. dismiss the appeal due to insufficient grounds for appeal; or
d. dismiss the appeal because the grounds for appeal are unsubstantiated.

Section 10 - External Pathway

(56) If the appeal is dismissed or the worker who raised the grievance is unsatisfied with the outcome, there are no further avenues of appeal within the University. However, assistance from an external agency may be sought at any time, including from (depending on the nature of the grievance):

a. Anti-Discrimination NSW;
b. Australian Human Rights Commission;
c. The Fair Work Commission;
d. The Fair Work Ombudsman;
e. SafeWork NSW;
f. NSW Police; and
g. Independent Commission Against Corruption.

Section 11 - Confidentiality

(57) All members of the University community have rights and responsibilities in relation to confidentiality. It is essential that confidentiality is appropriately maintained at all stages of any resolution pathway.

(58) To ensure the integrity of the process, all workers involved should not discuss the concern or grievance with any person (other than their support person - provided they also keep the matter confidential), including other workers not connected to the concern. This includes discussions through any means, including social media. Workers may discuss the matter with their union delegate, legal advisor, or their health professional.

(59) Confidential information may need to be disclosed by the Assessment Officer or Appeal Officer to allow the concern or grievance to be efficiently resolved, and if there are safety concerns for any worker participating in any pathway, to provide them with support.

(60) Failure to maintain confidentiality may result in disciplinary action being taken against the person who breaches the confidentiality.

Section 12 - Maintaining Health and Wellbeing

(61) In any of the pathways, actions or resolutions in this Procedure there may be concerns about a worker's wellbeing or mental health. All such concerns must be reported to the worker's supervisor, representative from the Work Health and Safety team, the relevant HR Business Partner or via the University's Online Incident Reporting System (AIMS).

(62) Workers should use the Employee Assistance Program, or otherwise consider the information and resources available on the Wellbeing Webpage, if they feel they need additional support. and should consider the benefits in making other staff members involved in the matter aware of this service.

Section 13 - External Organisations

(63) In certain circumstances there may be a need to consider using an external expert to investigate a workplace concern or grievance, or facilitate or mediate an outcome. This may occur where:

a. an internal person who is impartial cannot be identified;
b. senior staff members are involved;
c. there is a lack of an appropriately skilled resource internally to assist in the resolution; or
d. the situation may come under external scrutiny.

Section 14 - Relaxing Provision

(64) Where reasonable and appropriate, the University may choose to follow a different grievance management process to the one set out in this Procedure. In such cases, the new process will follow the rules of procedural fairness and the Assessment Officer will notify the worker of the different process in advance.

Status and Details

Status	Current
Effective Date	8th April 2024
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Responsible Executive	Martin Sainsbury Chief People and Culture Officer martin.sainsbury@newcastle.edu.au
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Glossary Terms and Definitions

"University" - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

"Council member" - A person who is a member of the University Council as described in Section 8B of the University of Newcastle Act, 1989.

"Risk" - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

"Risk assessment" - The overall process of risk identification, risk analysis, and risk evaluation.

"Working day" - Any day other than Saturday, Sunday, or a public holiday in Newcastle, on which business may be conducted.

"Disciplinary action" - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

"HR Business Partner" - The member of Human Resource Services (HRS) appointed as the business partner for the relevant Unit or College.

"Research misconduct" - A serious breach of the Australian Coe for the Responsible Conduct of Research that is intentional, reckless or negligent.

"Staff" - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

"Intellectual property rights" - All present and future rights to intellectual property including any inventions and improvements, trademarks (whether registered or common law trade marks), designs, copyright, any corresponding property rights under the Laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret,

secret process, know-how, concept, idea, information, process, data, or formula.