MANAGERS GUIDE -

GRIEVANCE POLICY

# Grievance Handling Procedure

## About

The guide is intended to be read alongside the Grievance Policy and used by employers/managers to understand their obligations and steps to take once a grievance is received.

## Grievance Defined

A grievance is a concern or complaint raised by a worker about a workplace matter. It may include any act or omission by a person in the workplace.

## Procedure

As outlined in the Grievance Policy, there are a broad range of options for addressing grievances depending on the nature of the grievance and need to maintain flexibility. However, all grievances should be managed promptly, and every possible effort should be made to settle a grievance before a formal grievance process starts (unless the circumstances require a formal process or external formal process (e.g. seriousness of the allegation or inability to conduct an unbiased internal investigation (whether actual or perceived)).

1. **RECEIVING A COMPLAINT**: When a manager receives a complaint or becomes aware of an incident that may contravene a policy or applicable law, they should follow this procedure:
	1. Listen to the complaint seriously and maintain confidence as far as possible (note it may be necessary to speak with other workers in order to determine what happened, to be fair to someone against whom a complaint has been made and/or to resolve the grievance).
	2. Allow the complainant to bring a support person to the interview if they choose to do so. If the manager does not permit the support person to be another worker, customer or supplier of the business, notify the complainant and allow them the opportunity to arrange an appropriate support person.
	3. Ask the complainant for the full story, including a step-by-step account of what happened. Take notes, using the complainant’s own words.
	4. Ask the complainant to check the notes to ensure that the record of the conversation is accurate.
	5. Explain next steps to the complainant. Ensure they are aware of the potential outcomes should the grievance be substantiated or not substantiated.
	6. If investigation is not requested or required, and the manager is satisfied that the conduct complained of is not in breach of this policy, then the manager should inform the relevant parties of the outcome, keep a record of all notes, and maintain confidentiality and only disclose on a ‘need to know basis’.
2. **INVESTIGATING A COMPLAINT**: When a manager investigates a complaint, they should procedure:
	1. Do not assume guilt.
	2. Advise on the potential outcomes of the investigation if the allegations are substantiated or not substantiated (e.g. refer to Outcomes below).
	3. Separately interview all workers who are directly involved and witnesses.
	4. Ensure there is no victimisation of workers involved or witnesses.
	5. Keep detailed records of interviews.
	6. Interview the worker who has had the complaint made about them (**respondent**) and inform them of the allegations. Give them a chance to respond to the allegations.
	7. Allow the respondent to bring a support person to the interview if they choose to do so.
	8. Listen carefully and record details of the respondent’s response.
	9. Ensure confidentiality as far as possible while also ensuring that the respondent has a fair opportunity to respond to the allegations.
	10. Decide on appropriate outcome based on the investigation and the evidence collected.
	11. Ensure that the management action taken meets the needs of the business.
	12. If resolution is not immediately possible, refer the complainant to more senior management or seek legal advice (e.g. members can contact Industry Legal for advice).
	13. In some instances (e.g. where there may be a perceived bias), it may be appropriate to refer the investigation to an external investigator (i.e. Industry Legal can conduct external investigations).
	14. Discuss any outcomes affecting the complainant with them to make sure that you meet their needs where appropriate.
3. **OUTCOMES:** If, after the investigation, management finds that the complaint is substantiated, management will discuss with the complainant and take the appropriate outcome, which may include but are not limited to:
	1. Disciplinary action including counselling, warning, demotion, transfer to alternative duties, suspension and/or termination of employment/engagement. Serious misconduct may result in instant termination.
	2. Non-disciplinary outcomes to resolve a breach, depending on the particular circumstances. Examples include training to assist in addressing the problem(s) underpinning the breach, monitoring to ensure that there are no further problems, implementing a new policy, requiring an apology or an undertaking that certain behaviour stop and/ or changing work arrangements.
	3. If required, counselling for the complainant.
	4. If the complaint was malicious or otherwise not made in good faith (i.e. it was vexatious, false or misleading), the complainant may face disciplinary action.

Note that if the complaint has not been properly dealt with, the worker may seek assistance or lodge a claim with an external agency. Management’s goal should be to resolve issues in-house wherever possible (unless the circumstances require a formal process or external formal process).

1. **FOLLOW UP**: Managers should follow up periodically to ensure the effectiveness of the management action taken.
2. **INVESTIGATION MANAGEMENT**: the following matters should be considered and, where necessary addressed, when managing the investigation process:
	1. The investigator should approach the investigation impartially and objectively.
	2. Consider, as a key concern, managing mental health, for example consider:
		1. if the respondent is not suspended, whether the employees will work together and, if so, how they will work together;
		2. how to manage/address embarrassing or sensitive information and the impact of such management on the complainant and the respondent;
		3. how will availability for interviews be managed (e.g. is an employee taking sick leave, if so, can interviews be conducted remotely).
	3. In relation to disability discrimination, consider if reasonable adjustments need to be made and, if so, clearly provide information about the investigation process and implement the adjustment speedily.
	4. If criminal conduct is involved, consider obligations to disclose the information to the police and a person’s privilege against self-incrimination (i.e. the right not to give information if it would implicate the person in a criminal offence).
	5. In some situations it may be prudent to appoint an external investigator, for example:
		1. if it is not possible to have a different impartial person conducting the investigation and disciplinary meeting, for example because the employer is small or has limited resources, it is important be as impartial and objective as possible, having an external investigator is an option to assist this;
		2. if complex issues are involved, it is a large investigation involving many employees and/or a large amount of documents to review or witness statements to be taken;
		3. if an allegation of sexual misconduct or other serious misconduct allegations are made against management;
		4. if the allegation may result in media attention or litigation that is commercially sensitive or very costly; or
		5. the investigation may find issues with the practices, procedures or culture of the business.

## Key Takeaways

* Maintain confidentiality and only disclose on a ‘need to know basis’.
* Ensure procedure is thoroughly documented (this will assist in the event of legal proceedings).
* Be consistent in the application of the policy and outcomes.
* Protect the rights of both parties and ensure procedural fairness, including ensuring:
	+ all parties have a chance to tell their side;
	+ support persons are allowed;
	+ an external investigator is appointed if the grievance is serious, or it is required to ensure fairness and impartiality; and
	+ the respondent has sufficient details of the allegation in order to be able to properly respond.
* All grievances will be dealt with as quickly as possible.
* Contact Industry Legal for assistance.

## Contact Industry Legal

Members of Optometry Australia can contact Industry Legal for advice on how to navigate grievances.

**PHONE: 1300 101 391 | EMAIL:** **oa@industrylegalgroup.com.au**