



Complaints Handling Policy guidelines

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Introduction

These revised guidelines replace those published in 2007 and incorporate changes to the names of various legislation and other policy and procedure documents. The content of the guidelines has not changed.

Resources such as a training module and example letters can be found on the department's intranet at <https://detwww.det.nsw.edu.au/epac>.

These guidelines provide information for handling complaints including how to make a complaint, how to deal with a complaint and how to support the people involved.

Often it may be necessary to use this document for guidance when making or receiving a complaint, or establishing how to manage a complaint.

There are certain types of complaints, we term 'special cases'. These matters are covered by particular legislation, policies and procedures, and may require referral to another unit within or outside the department.

All minor complaint and disputes should be resolved promptly and without using formal procedures. Whenever possible, informal resolution should be attempted first in all matters assessed as less serious.

The sections of these guidelines which detail the formal procedures should be used in those situations where it is not appropriate or not possible to resolve a matter informally. This document provides direction in determining whether or not the matter reaches the threshold of seriousness that requires a formal approach.

The 'delegate' or officer who can deal with matters needing a formal approach is identified on page 19. If in doubt, an employee should seek advice from a supervisor.

These guidelines also encourage the person managing the complaint to arrange for support to be provided to the people involved.

Making a Complaint

Anyone can make a complaint. Ideally, most complaints should be resolved informally with the relevant employee.

Key considerations

- What can a complaint be about?
- How can I make a complaint?
- Can I get assistance in making my complaint?
- How will my complaint be handled?
- What about confidentiality?
- Could my complaint be a protected disclosure?
- What if I need support during the process?
- What if I am not satisfied with the outcome?

What can a complaint be about?

A complaint can be about:

- any aspect of the service provided, or not provided, in any Department of Education and Communities site,
- the behaviour or decisions of staff, or
- practices, policies or procedures.

How can I make a complaint?

Schools – a guide for parents and carers

It is best to discuss your concerns with your child's teacher first. Make an appropriate time to meet with them or phone the school and ask for an appointment with the teacher.

If you are not happy with the result, or if you do not feel it is appropriate to talk to them, phone and make an appointment to discuss your concerns with the principal.

You may bring a friend or relative to be your support. If you need an interpreter, we can arrange that - just ask beforehand.

If your complaint is about the principal you will need to contact the school education director in your area. Ask the school office staff at your school for their name and number.

If your complaint cannot be resolved in an informal way, we **may** ask you to put it in writing. It is important that you include specific details of the situation and tell us what you would like to happen as a result of your complaint. We can help you to put your complaint in writing, if you require it.

Alternatively a complaint form may also be used. Complete the form and send it to the principal, or the school education director in your area.

TAFE – a guide for students

It is best to discuss your concerns with your teacher first. Make an appropriate time to meet with them, send them an email requesting a time to meet or phone the college office and ask for an appointment with the teacher.

If you are not happy with the result, or if you do not feel it is appropriate to talk to them, phone and make an appointment to discuss your concerns with the relevant head teacher.

You can find out the contact details for these people by asking a staff member at the campus administration office, by calling the TAFE NSW customer information referral service on 131 601 or completing an online enquiry form on the TAFE NSW website.

You may bring a friend or relative to be your support. If you need an interpreter, we can arrange that - just ask beforehand.

If your complaint cannot be resolved in an informal way, we **may** ask you to put it in writing. It is important that you include specific details of the situation and tell us what you would like to happen as a result of your complaint. We can help you to put your complaint in writing, if you require it.

Employee complaints

Where possible, your complaint should be resolved informally with the relevant employee. If you feel that the issue has not been resolved or it would be inappropriate to raise it with the employee concerned, then you can make the complaint to their supervisor, manager or the principal at the site where the problem occurred (e.g. the office, school or college). If you have concerns about the local supervisor, the complaint should be made to the next supervisory level.

If your complaint cannot be resolved in an informal way, we **may** ask you to put it in writing. It is important that you include specific details of the situation and tell us what you would like to happen as a result of your complaint.

Where the complaint is about a principal or manager, the complaint must be made to their Director.

Note: [Could My Complaint Be a Protected Disclosure?](#) on page 7.

Complaints about a policy, procedure or guidelines can be made to the directorate or unit responsible for that policy, procedure or set of guidelines, where possible, or with a principal or manager. If you have a complaint about a departmental policy, contact the directorate identified in the internet web page relating to that policy.

In certain cases, you may want to contact the section of the department or outside agency that deals with particular kinds of complaints. For example:

Complaints of a child protection nature

Complaints of a child protection nature can be referred to the Department of Family and Community Services. Refer to the document *Policy for Protecting Children and Young People 2010*.

If your concern relates to the behaviour or actions of an employee, contractor or volunteer, you can contact the Director, Employee Performance and Conduct Directorate (EPAC), or an EPAC Investigator, on telephone (02) 9266 8070. Refer to the document *Responding to Allegations against Employees in the Area of Child Protection 2009*.

Alleged Corrupt Conduct

Allegations of corrupt conduct, maladministration or serious and substantial waste must be reported to the Senior Manager, Serious Misconduct Investigation Team, on telephone (02) 9244 5203, according to the *Corruption Prevention* policy 2004, whether or not they are treated as a protected disclosure. It is also possible to lodge such a concern directly to the Independent Commission against Corruption (ICAC).

Discrimination

Complaints about discrimination should be made to the employee's supervisor. You can also complain to the anti-racism contact officer in schools or the anti-harassment contact officers in TAFE who can take them to the principal or manager. Where the person being complained about is a principal or manager then the complaint would be made to their Director. This type concern can also be referred to the Anti-Discrimination Board of NSW.

Can I get help to make a complaint?

The person receiving or managing the complaint should provide you with any help you need to make your complaint. Please ask for it, if it is not offered initially.

In addition, the following arrangements are in place to ensure that all persons who wish to make a complaint are able to do so:

- All Technical and Further Education (TAFE) Institutes have a customer service mechanism that allows complaints to be recorded and forwarded to the appropriate officer for action. TAFE teacher consultants for students with deafness or a hearing impairment have access to telephone-typewriters to communicate with students.
- Adult Migrant Education Service (AMES) centres have staff who can assist in the preparation of a complaint.

In schools, it is the responsibility of the principal to assist school community members with special needs to make complaints about school or schooling. This may involve consultation with regional office personnel.

- Support for Aboriginal and Torres Strait Islanders
Aboriginal and Torres Strait Islanders will be offered the opportunity to have a support person and, if needed, an interpreter when making a complaint.
- Support for People who do not speak English well
Interpreting assistance for non-English speakers is available through on-site interpreters or the telephone interpreter service (interpreting services). Alternatively, if the site has an employee who receives the Community Language Allowance, this employee may be able to provide language assistance and act as a point of referral. People from diverse cultural and linguistic backgrounds should also be provided with the opportunity of having a support person.
- Support for the Hearing Impaired
Interpreting services are provided for hearing impaired parents and carers who use sign language.

- Support for Children and Young People
Appropriate adult support will be offered to children and young people who have submitted complaints under this policy. The support person may be a parent or carer, or another adult with whom the child or young person feels comfortable.

How will my complaint be handled?

The person who receives your complaint must consider the nature and seriousness of the issues you raise.

The person managing the complaint should always try to resolve those complaints assessed as 'less serious' by informal means first.

Sometimes complaints termed 'special cases' will be referred to certain parts of the department or to outside agencies. If this is the case, you will be advised where the matter was referred and the name and contact number of the person managing it.

If your complaint is considered to be serious or not appropriate to be managed informally, there are three types of formal procedures used, depending on the nature of the complaint – remedy and systems improvement, negotiation, and investigation.

What about confidentiality?

All parties to a complaint are expected to treat the matter confidentially.

This requires everyone, including the complainant, to ensure that information is restricted to those who genuinely need to know. Furthermore, those people should only be told as much as they need to know and no more. For example, some people may need to know of the issue so that they can provide advice, but not of the identities of the persons involved.

An employee making a protected disclosure has strong confidentiality rights under the *Protected Disclosures Act 1994*. However, even these have limitations and confidentiality can never be guaranteed, as there are situations (e.g. during disciplinary or court procedures) where procedural fairness requires that the respondent must be supplied with information that identifies the person who has given evidence against them.

Could my complaint be a protected disclosure?

The *Protected Disclosures Act 1994* encourages and assists public officials to disclose, in the public interest, corrupt conduct, maladministration and serious and substantial waste in the public sector.

To be a protected disclosure, a complaint or allegation needs to meet a number of criteria. The main criteria are that it must be:

- made by a public official, that is, employee of a state government department or agency, employee of a local government authority or a person having a public official function or acting in a public official capacity for the state; and
- made about a public official; and
- about corrupt conduct, maladministration or serious and substantial waste; and
- made to a person in a position identified in the Act, including an ICAC officer, a member of Parliament or to a nominated disclosure officer of the department.

If this could apply to you, refer to the Department of Education and Communities policy *Protected Disclosures – Internal Reporting*.

It must then be referred to the Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203, unless it is about the protection of children and young people, in which case it should be referred to the Director, Employee Performance and Conduct (EPAC) or an EPAC Investigator - (02) 9266 8070. These officers advise on investigation and arrange for the proper notifications.

The department may also receive protected disclosures from public officials who are not employed by the department. In these cases, the provisions of Section 14 (2) (b) of the *Protected Disclosures Act 1994* will apply. These complaints should also be referred as indicated above.

What if I need support during the process?

We understand that people may be affected by a complaint and the process related to it.

If you need support, you could approach the person dealing with the matter for a recommendation as to who might be available to support you or you might consider seeking support from the following bodies, as appropriate:

- Employee Assistance Program (EAP) on 1300 361 008 or 1300360364
- Complainant and Witness Support Program - (02) 9561 8761
- TAFE and school counselors
- Human Resources Directorate - (02) 9561 8523
- Employee Performance and Conduct Directorate - (02) 9266 8070
- Student Welfare on (02) 266 8936
- Union officers e.g. Teachers Federation - (02) 9217 2100 or 1300 654 369, PSA - (02) 9290 1555.

What if I am not satisfied with the outcome?

It is possible that, at the end of the process, you will not receive the outcome that you wanted. If you feel that you have not been treated fairly or that the result is unreasonable, you can request that the matter be reviewed either internally or externally. This is explained on pages 37 and 39.

External bodies that may be able to assist include:

- NSW Ombudsman
- Anti-Discrimination Board of NSW (ADB)
- Human Rights and Equal Opportunity Commission (HREOC)

Receiving a Complaint

When an employee is approached by a person wishing to make a complaint they should consider the following:

- What are the complainant's expectations?
- Does the complainant need assistance in making the complaint?

The complainant's expectations

A person making a complaint will have expectations as to how their complaint should be handled and may require assistance in making the complaint.

To manage complainant expectations, you should:

- explain the complaint handling process to the complainant or tell them where to get information about it
- if the matter is to be referred, explain why and to whom
- confirm with them that you have fully understood their complaint and ask them what outcome they are seeking
- outline the possible outcomes, including whether or not the outcome they are seeking is reasonable
- provide realistic timeframes for dealing with the matter
- ensure that any promises made are followed through.

Does the complainant need assistance in making the complaint?

See [Can I get help to make a complaint?](#) on page 6.

Assessing a complaint

When a complaint is made, the person receiving it must assess what action needs to be taken.

Steps taken in assessing a complaint are:

- Identifying whether or not the complaint is a special case
- Assessing the level of seriousness of the complaint
- Selecting the appropriate course of action

Certain kinds of complaints are treated as special cases because they are covered by specific legislation, policies and procedures, and must be dealt with accordingly.

All complaints must be checked to ensure that the correct policy and procedure is followed and this must occur before any further action is taken. Seek assistance from the contact person nominated below if in doubt.

Any complaint covered by the following special cases must be referred even when there is a suspicion that the complaint may be false, vexatious or misconceived.

Deciding how to deal with a complaint

There are four questions to ask when assessing a complaint and determining how to deal with it:

1. Is the complaint a special case, i.e. a matter which is excluded from these procedures and must be either referred to someone else or dealt with under another policy?
 - If the complaint is covered by another policy, use that policy to deal with the matter.
 - If the complaint must be referred to a particular section of the department or to an external agency, make the appropriate referral or referrals.

See the list at [Identifying special cases](#) on page 11-15.

2. Is the complaint serious?
 - If the complaint is considered less serious, informal resolution is appropriate.

This is discussed at [Assessing seriousness](#) on page 16.

If the complaint is serious or cannot be resolved informally then decide:

3. Is the complaint about a service, procedure or system or is it about the conduct of a person?
 - If the complaint is about a service, procedure or system, the Remedy and Systems Improvement procedure will apply.
 - If the complaint is about a person but is less serious (but could not be dealt with by informal resolution) the Negotiation procedure will apply.
 - If the complaint is about a person and is serious, the Investigation procedure will apply.

and

4. Who can approve the procedure?

Of matters not excluded as special cases, only those that proceed to Investigation cannot be approved by a principal or manager. Regarding these, see [Who can approve a procedure?](#) on page 19 and refer the matter to the appropriate delegate.

Assessing a complaint: Identifying special cases

Identifying special cases involving complaints about Systems or Processes:

AREA	REFERENCE / REFERRAL
School program or management reviews	School Development policy 2004
Internal review under the <i>Privacy and Personal Information Protection Act 1998</i>	Contact the DET Privacy Contact Officer - (02) 9561 8151.
Internal reviews under <i>Government Information (Public Access) Act 2009</i>	Contact the DET Information Access Unit - (02) 9561 8100
Staff promotion appeals	<p>School Teachers: refer to the Merit Selection Procedures Manual Part D.</p> <p>Other school staff: contact Industrial Relations and Employment Services, on (02) 9561 8007.</p> <p>Non-school based staff employed under the <i>Teaching Service Act 1980</i> appeal on the merit selection process is by application to the Director, Human Resources Services and Systems.</p> <p>TAFE staff: contact the institute human resources manager.</p> <p>Staff employed under the <i>Public Sector Employment and Management Act 2002</i>: refer to the Personnel Handbook.</p> <p>Note: Alleged maladministration of the selection process is not excluded and would need to be dealt with under the Investigation Procedures.</p>
Staff disciplinary appeals	<p>School staff: contact Legal Services on (02) 9561 8538.</p> <p>Non-school based staff employed under the <i>Teaching Service Act</i>: contact Legal Services on (02) 9561 8538.</p> <p>TAFE staff: See Managing Unsatisfactory Performance 2006 or contact the institute human resources manager.</p> <p>Staff employed under the <i>Public Sector Employment and Management Act 2002</i>: refer to the Personnel Handbook.</p>
Occupational Health and Safety Issues	The Process for resolving OHS Issues is more suitable for OHS matters, which is available on the internet or from workplace managers.

Special cases involving complaints about performance of staff

AREA	REFERENCE / REFERRAL
Counselling of staff on inappropriate behaviour known to the supervisor (eg, behaviour affecting the proper running of the workplace or is a minor breach of the Code of Conduct which has not previously been addressed)	Advice on the counselling of staff is available in the Teachers' Handbook (see sections on good teaching practice and staff welfare), the Personnel Handbook (see sections on counselling and performance management), or from a specialist in the relevant Personnel or Human Resources section.
The management of poor school teacher performance and teacher efficiency reviews, including principals, school based non teaching staff and non-school based teaching staff.	<p>Permanent teaching and SASS staff in schools: Management of Conduct and Performance , August 2006</p> <p>School teachers: Teacher Improvement Program, February 2006</p> <p>Probationary School Teachers: Procedures for Managing Probationary Teachers, April 2005.</p> <p>Casual School Teachers: Procedures for Managing Casual Teachers who are Experiencing Difficulties with their Teaching Performance – Amended June 2005.</p> <p>School Principals: Performance Improvement Program for Principals November 2004.</p> <p>School Based Non-Teaching Staff: Procedures for Managing School Based Non-Teaching Staff identified as having performance difficulties Amended June 2005.</p> <p>Chief Education Officers: Crown Employees (Chief Education Officers – Department of Education and Communities) Salaries and Conditions Award 2006.</p> <p>Non-School Based Teaching Staff: Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2006</p>
The management of poor performance by TAFE staff	Permanent teaching staff: Management of Conduct and Performance , August 2006
The management of poor performance by other DET staff	Division 3, Dealing with Unsatisfactory Performance, <i>Public Sector Employment and Management Act 2002</i> .
Performance Management of Senior Executive Service and Senior Officers	Review Mechanisms – Senior Executive Service and Senior Officers Performance Management Scheme 2005.

Complaints about the above process should be dealt with according to the grievance procedures outlined in the processes.

Special cases involving complaints about conduct, welfare or performance of students

AREA	REFERENCE / REFERRAL
Student Behaviour	If the complaint is about student behaviour, follow the appropriate student discipline procedure. This may be the TAFE NSW Student Discipline Policy, the school's student discipline policy, or the Procedures for the Suspension and Expulsion of School Students.
Suspension and expulsion of school students and subsequent appeals Discipline of TAFE students	Schools: Procedures for the Suspension and Expulsion of School Students, 2005. TAFE: TAFE NSW Student Discipline Policy, 2000.
Complaints to Vocational Education and Training Accreditation Board (VETAB) against Registered Training Organisations	Contact VETAB on (02) 92445335 or www.vetab.nsw.gov.au
Requests for result reviews by TAFE students; assessment appeals by AMES students or test-takers; and HSC assessment appeals	TAFE students should contact the teacher or student records section in the first instance. AMES students should contact the Head of Studies. HSC candidates should contact the Board of Studies on (02) 9367 8111.
Other disputed student marks and assessments.	Refer to head teacher in first instance.

Other special cases

SAS staff dispute and grievance resolution

The Crown Employees (SAS Staff) Award 2005 specifies procedures that are to be used to resolve any dispute that arises which involves such a staff member. Refer to Section 15 of that award.

Protected disclosures

The *Protected Disclosures Act 1994* encourages and assists public officials to disclose, in the public interest, corrupt conduct, maladministration and serious and substantial waste in the public sector. Refer to the policy document *Protected Disclosures – Internal Reporting*.

For protection to be provided under the *Protected Disclosures Act 1994*, the disclosure must be made to a person in a position identified in the Act, including an ICAC officer, a member of Parliament or a nominated disclosure officer of the department, as listed in the department document *Protected Disclosures – Internal Reporting*. If the complaint could be a protected disclosure, the officer making the complaint should be so advised.

The complaint must then be referred to the protected disclosures coordinator (Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203) unless it is about the protection of children and young people, in which case it must be referred to the Director, Employee Performance and Conduct Directorate (EPAC) by reporting to an EPAC Investigator, on (02) 9266 8070. These officers provide advice and arrange for the proper notifications.

The department may also receive protected disclosures from public officials who are not employed by the department. In these cases, the provisions of Section 14 (2) (b) of the *Protected Disclosures Act 1994 No 92* applies. These complaints should also be referred as indicated above.

Suspected risk of harm to child or young person

If the complaint involves suspected risk of harm to a child or young person, the policy *Protecting and Supporting Children and Young People 2001* is to be followed and the matter referred to the relevant principal or workplace manager who will notify Department of Family and Community Services.

Complaints which are allegations of a child protection nature against a staff member

If the complaint involves suspected misconduct of a child protection nature by a staff member (including contractors and volunteers) against a child or young person, the matter must be referred to the Employee Performance and Conduct Directorate (EPAC) on (02) 92668070. These matters are covered by *Responding to Allegations against Employees in the Area of Child Protection 2004*. If the complaint involves suspected risk of harm to a child or young person, the policy *Protecting and Supporting Children and Young People 2001* is to be followed and the matter referred to the relevant principal or workplace manager who will notify DoCS.

Possible criminal matters

If the complaint involves possible criminal conduct of any kind, the principal or manager shall contact the police. If a staff member is implicated, EPAC is also to be contacted with advice to the school education director, regional director, institute director or other relevant state office director.

Advice is available from Legal Services directorate, on (02) 9561 8538, if in doubt about whether the alleged behaviour may be a crime. Legal Issues bulletin No 27 includes comment on reporting to police.

Possible corrupt conduct

If the complaint is not covered by any of the above but could involve corrupt conduct, maladministration or serious and substantial waste (See Glossary), it is to be referred to the Senior Manager, Serious Misconduct Investigation Team, on (02) 9244 5203, who will provide advice and arrange for corrupt conduct to be reported to the Independent Commission against Corruption (ICAC).

Possible discrimination

If the complaint is about behaviour that is unlawfully discriminatory or involves unlawful vilification on the basis of race, sex, marital status, disability, HIV/AIDS, homosexuality, age, transgender or carer's responsibilities, refer to the Legal Services on (02) 9561 8538. The department's Anti-Racism Policy may apply and, in the case of a school, the involvement of the Anti-Racism Contact Officer may be appropriate.

The relevant legislation is the *Anti-Discrimination Act 1977* and *Commonwealth Racial Discrimination Act (1975)*.

Assessing a complaint: assessing seriousness

When assessing a complaint, if you consider it is not a special case, you then need to decide whether or not the matter is serious.

In assessing the seriousness of a complaint consider the following:

- A matter is considered less serious if it involved a minor breach or complaint and is not seen to be part of a pattern of conduct that would lead to disciplinary/remedial action.
- A serious breach is one which, if proven, could amount to serious misconduct under the *Code of Conduct* and could include:
 - a breach of legislation, policy, procedure or contract likely to lead to disciplinary/remedial action, or
 - conduct of a criminal nature.

If you need assistance in deciding whether or not a complaint is 'serious', seek advice from a supervisor, manager or principal. You can also obtain advice from the Staff Efficiency and Conduct Team or from an EPAC Investigator, on telephone (02) 9266 8070.

You must document your reasons not to act on a complaint.

Assessing a complaint: selecting the appropriate course of action

In matters assessed as less serious, informal resolution should be attempted in the first instance. See [Informal Resolution](#) on page 22 for guidance.

In circumstances in which it is not appropriate or not possible to resolve a matter with informal resolution, there are three formal procedures available. In general, the procedure that will apply will depend on whether or not the complaint is about the conduct of a person and, if it is, whether or not the matter is considered to be serious.

In some instances, it may be necessary to apply more than one procedure.

Procedures available and their application

- Remedy and systems improvement procedure is used for a complaint that is about policies, procedures or systems rather than a person.
- Negotiation procedure is used for a complaint about a person that is not about an alleged serious breach of legislation, policy, procedure or contract. It will apply to complaints which, while assessed to be less serious, for some reason, have not been able to be resolved informally. This procedure is never applicable in a complaint of a child protection nature.
- Investigation procedure is used for a complaint about a person that is about an alleged serious breach of legislation, policy, procedure or contract. This procedure is applicable only in matters involving allegations of potential misconduct, can only be initiated by certain delegated officers and is often conducted by dedicated units within the department.

The first table that follows on page 18, [Selecting the Appropriate Formal Procedure or Referral](#), provides further help regarding special case referrals and identifies the applicable formal procedure, where there is such a need.

The second table on page 19, [Officers Delegated to approve or Conduct Formal Action](#), indicates the officer who is delegated to initiate or conduct a formal procedure.

Selecting the appropriate formal procedure or referral

	Remedy & systems improvement	Negotiation	Investigation
Protected disclosures	Not applicable	Not applicable	Special case requiring referral. Refer to Employee Performance and Conduct (EPAC) if of a child protection nature or else to Senior Manager, Serious Misconduct Investigation Team.
Criminal conduct	Not applicable	Not applicable	Special case requiring referral. Contact Police and if a staff member is implicated, notify EPAC and advise the appropriate Director.
Corrupt conduct including fraud	Not applicable	Not applicable	Special case requiring referral. Refer to Senior Manager, Serious Misconduct Investigation Team.
Allegations of a child protection nature	Not applicable	Not applicable	Special case requiring referral. If child may be at risk of harm, notify DoCS. Allegations about the behaviour of staff, contractors or volunteers, notify EPAC.
All other complaints	Complaints about policies, procedures or work place practices	Complaints about the behaviour or decisions of staff other than an alleged serious breach of legislation, policy, procedure or contract.	Complaints that individuals have committed a serious breach of legislation, policy, procedure or contract.

Who can approve a procedure?

Officers delegated (the delegate) to approve or conduct formal action:

Note: Delegates can sub-delegate management of an issue but not the decision making.

	Remedy & systems improvement	Negotiation	Investigation
Protected disclosures	Not applicable	Not applicable	For child protection matters, the delegate is the Director, EPAC. For all other protected disclosures, Nominated Disclosure Officers (see Protected Disclosures - Internal Reporting Policy) are delegated to undertake Steps 2, 3, 4 and 7 of the Investigation procedure. The Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team) is delegated to undertake all steps.
Allegations of a child protection nature	Not applicable.	Not applicable	Principal or workplace manager refers the matter to DoCS if child may be at risk of harm and to EPAC if the matter relates to the conduct of an employee.
Other alleged serious breach of legislation, policy, procedure or contract	Principal or workplace manager initiates the remedy and systems improvement procedure.	Not applicable	Delegates who can initiate an investigation in these areas are: All TAFE Institute Directors and Associate Directors All School Education Directors, All Regional Directors and Deputy Regional Directors All Directors Director, EPAC Senior Manager, Serious Misconduct Investigation Team Manager, Staff Efficiency and Conduct Team Chief Information Officer All General Managers All Deputy Directors-General Director-General/Managing Director
All other complaints	Principal or workplace manager initiates the remedy and systems improvement procedure.	Principal or manager responsible for the person complained of. In locations other than schools, the delegate could be the line supervisor of the person complained of.	

Managing a complaint

If possible, it is in the interests of all concerned that the complaint is resolved by informal resolution and without recourse to the formal procedures available.

For a complaint about a policy or procedure, organisational cultures, or similar issues, use the remedy and systems improvement procedure.

For a less serious complaint about a person, unsuitable for, or not resolved by informal resolution, use the negotiation procedure.

The investigation procedure must be applied for a complaint about an employee, which, if proven, could amount to serious misconduct under the *Code of Conduct*.

Providing Support

The person managing the complaint is responsible for monitoring the well-being of all parties involved in or affected by the complaint.

When there is a complaint, whether assessed to be serious or not, a variety of people may be affected by the complaint and the process related to it.

The person dealing with the complaint is responsible for monitoring the well-being of all parties involved in or affected by the complaint. Complaints that are not handled sensitively and with sufficient support provided may result in illness or other disruption to the workplace.

Consideration should be given to:

- Support for the complainant, whose needs may vary according to whether the complainant is a student, parent or care-giver, employee or other person. The complainant can have a support person present at all meetings dealing with the complaint.
- The respondent may need careful support and may be anxious of what might happen. Information about this is available in the related issue, Disciplinary or Remedial Action, or in the appropriate employment document relevant to the respondent's employment. The respondent can have a support person present at all meetings dealing with the complaint. It could be that others, indirectly involved, also need support.
- Support for the person managing the process. This may include assistance with the process and support from specialist areas, such as Occupation Health and Safety Unit, Human Resources, Industrial Relations or Employee Performance and Conduct.

The following resources are available for these purposes:

- Employee Assistance Program (EAP)
- Complainant and Witness Support Program - (02) 9561 8761
- TAFE and school counselors
- Human Resources Directorate - (02) 9561 8523
- Employee Performance and Conduct Directorate - (02) 9266 8070
- Student Welfare (on (02) 266 8936
- Union officers (e.g. Teachers Federation - (02) 9217 2100 or 1300 654 369, PSA - (02) 9290 1555

Employees in need of further assistance

Involved employees may experience difficulty in dealing with the complaints resolution process.

In some cases, it may seem that an involved employee is suffering from a medical condition. If there is evidence of this at any time prior to or during the complaints process, it may indicate the need for an independent health assessment.

Employees may also need to be medically assessed to confirm that they are well enough to be involved in the complaints resolution process. This may apply, for example, where a staff member presents a medical certificate indicating unfitness due to stress, anxiety or depression.

Options for managing such a situation should include referral the employee to the Employee Assistance Program or for a health assessment.

Informal resolution

Informal resolution should be used to resolve any matter which is not identified as a special case and which is assessed as 'less serious', such as minor complaints and disputes. There could be exceptions such as when one party is fearful or intimidated by the other party.

While line managers have specific responsibilities for handling and attempting to resolve such matters, the complainant and the respondent also have a responsibility to resolve the problem and to seek and accept realistic outcomes.

The department's Code of Conduct clarifies the standards of behaviour that are expected of employees in the performance of their duties. Employees have a responsibility to foster harmonious and productive workplace relations, and to take reasonable care for the health and welfare of others at their place of work. Therefore, there is an expectation that employees will resolve their differences amicably.

For informal resolution to succeed, both parties need to be prepared to recognise that there is a problem. Both parties need to be prepared to be conciliatory and recognize that resolution may require compromise on both sides.

A mediation service might be considered. This can be discussed with the relevant Human Resource Manager.

The procedure that is suggested is that the parties be provided the opportunity to:

- state the cause of their concern
- exchange facts and beliefs
- clarify events
- listen
- apologise for any behaviour that may have distressed the other party
- explain their point of view
- consider the other person's point of view
- recognise that this is an opportunity to change behaviour that is perceived as unsuitable, or is hurtful to another.

In such instances, a written record should be made of the issue and action.

If this does not succeed, then the formal process may be used.

If required, there is available an optional checklist for complaint manager which will assist in managing a complaint.

There is also an optional complaint form to assist in recording action taken.

Formal procedures

Any matter which is assessed to be 'less serious' should be resolved using informal resolution unless there is some reason why this approach is considered inappropriate.

A formal procedure should only be applied in those situations where it is not appropriate or not possible to resolve a matter informally.

Formal procedures available are:

Remedy and Systems Improvement Procedure.

Negotiation Procedure.

Investigation Procedure.

Remedy and systems improvement

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint

Overview of the Procedure

If the complaint is about a policy or procedure, organisational culture, or similar issues then it could be an opportunity for systems improvement. The procedure can be initiated by a principal or workplace manager.

TAFE staff should use their institute Quality Management System which will apply in this instance.

Remedy

Remedy is the action taken to correct or rectify a situation for an individual. This means addressing any claim that the complainant has been treated poorly or unfairly by the system.

Systems Improvement

Systems improvement is the process of improving a system to prevent future problems.

At times, remedy and systems improvement may arise out of complaints dealt with under either Negotiation or Investigation procedures.

Steps in the Remedy and Systems Improvement Procedure

This procedure applies whether or not the complaint is anonymous. The extent of record keeping can vary according to circumstance. The optional Complaint Form can be used to record details and the Complaint Action Form to record action taken.

Step 1 – Assess if remedy and/or systems improvement is warranted

Step 2 – Immediate remedy

Step 3* – Refer matter to the principal or local manager

Step 4* – Refer matter to regional or statewide manager

Step 1 – Assess if remedy and/or systems improvement is warranted

In some cases neither remedy nor systems improvement will be possible as the matter is covered by legislation or other government policy or procedures or due to resource limitations. In other cases,

short term change is not possible but the suggestion or complaint could inform long term development. If so, explain this to the complainant.

Step 2 – Immediate remedy

If remedy and/or systems improvement is warranted, and the person receiving the complaint has authority to do so, then remedy the problem if possible within 5 working days of receipt[#] and notify the complainant. Keep the principal or local manager informed of the problem and the action taken. Principal or local manager implements systems improvement if needed.

Step 3* – Refer matter to the principal or local manager

If improvement action is warranted but not possible at the previous step due to lack of delegated authority, refer the complaint to the principal or local manager responsible for the system, program or policy, advising the complainant. This may lead to the involvement of the School Education Director, Regional Director or Institute Director. If possible that person will:

- remedy and notify complainant within 15 working days of receipt[#], and
- implement systems improvement if needed.

Step 4* – Refer matter to regional or statewide manager

If there appears to be good grounds for a change to the system, program or policy but this is not possible at the previous step due to lack of delegated authority or because the matter is a statewide issue, refer the matter to the person with regional or statewide responsibility for the system, program or policy. If possible, that person will:

- remedy and notify complainant within 20 working days[#] or advise complainant of proposed action.
- implement systems improvement if needed.

*Optional – use only if previous step has failed to resolve.

[#] Timeframes are indicative to assist prompt action. Where possible they should be adhered to or bettered, but can be extended when there is good reason. Advise the complainant if longer timeframes are required.

Possible outcomes

Remedy may involve one or more of the following:

- providing explanation and reasons if not previously provided
- dismissing the complaint, e.g. if the decision accords with legislation or government policy or related workplace policy or procedure
- concluding that the complaint has been substantially resolved
- reaching a compromise solution
- upholding the complaint and implementing specific action such as overturning a decision, giving an apology or providing a service not previously provided
- addressing or referring the issue for system improvement.

Systems improvement may involve one or more of:

- referral for consideration of legislative or policy change
- policy development or revision
- process improvement (i.e. changes to procedures and workplace practices)
- program review
- expert assistance, staff development or performance improvement
- improved implementation (e.g. issuing updated documentation or reminders)
- monitoring compliance
- other action to ensure that the matter is handled appropriately in future.

Timeframe

Timeframes are indicative to assist prompt action. Advise the complainant if a longer timeframe is required.

Immediate Remedy	Within 5 working days of receipt
Principal or Local Manager Remedy	Within 15 working days of receipt by principal or manager
Regional or Statewide Manager Remedy	within 20 working days of receipt by manager or advise complainant of the action proposed within that timeframe

The delegate should aim for resolution of the suggestion or complaint within a month of receipt if the above timeframes cannot be met.

Reviews

The complainant should be advised of the ability to seek a review of the decision and the timeframe for doing so when notified of the outcome of the complaint.

There are two grounds for the complainant seeking a review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant and/or
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

A complainant can request one internal review, generally to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of conflict of interest or perception of partiality, a more senior officer will nominate an appropriate person to deal with the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the review. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- review all relevant material
- make further inquiries, if necessary
- make a determination, if possible, within 15 working days of receipt. If the decision is delayed, advise the complainant, with reasons
- advise parties in writing of the decision and the reasons for the decision
- meet with the parties, if required
- determine whether further action is necessary

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will determine whether or not the decision that is being reviewed will be put on hold until the review is complete.

There is available an optional complaint form to assist in recording action taken.

Negotiation procedure

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint.

Overview of the procedure

Negotiation is the process of developing a solution or agreement through discussion or correspondence with another person or persons.

This procedure requires the delegate or their nominee to assist in the negotiation by communicating with the parties, and if needed, meeting with them separately or jointly.

If this does not resolve the issue then the delegate is to make a decision and notify the parties of that decision.

This procedure will generally be used to resolve employee grievances and parent/care-giver complaints and may have implications for Remedy or Systems Improvement.

Steps in the negotiation procedure

Step 1 – Complaint recipient: refer matter to appropriate delegate, usually the Principal or manager responsible for the person complained of.

Step 2 – Delegate reviews the matter

Step 3 – If appropriate, delegate initiates negotiation

Step 4* – Decision made by delegate

Step 1 – Refer matter to delegate

Person receiving the complaint refers the matter to the appropriate delegate as soon as possible.

Tasks for Delegate:

Step 2 – Review the matter

Negotiation is not possible if the complaint is anonymous or requires that their identity not be revealed to the respondent. The complainant should be so advised and, if this stance is maintained, the process should be discontinued and papers should be filed securely (see Records) in case of further developments.

Delegate checks:

- if exclusions apply. If so refer as necessary.
- if negotiation is the right procedure and is warranted. If so, the process can proceed.
- if a mediation service might be an appropriate alternative. If so, advise parties and initiate this process.

Step 3 – Negotiation procedure

There is no compulsion on any party to participate in this process. If a party indicates that they do not wish to participate or continue to participate, then the delegate proceeds to the next step, namely the making of a decision.

The complainant cannot stipulate the procedure to be used to address the complaint. That is the delegate's decision.

Negotiation should also be discontinued if at any time the delegate decides that:

- the matter involves child protection or other alleged behaviour that is excluded and requires referral or is sufficiently serious that it could lead to disciplinary/remedial action if substantiated
- the complaint is about a matter that is not negotiable (e.g. a government policy or legislation or related workplace policies or procedures)
- the complaint is without substance or it becomes apparent that a party is not committed to seeking a negotiated resolution (then go to the next step, namely decision making).

Otherwise the delegate or their nominee will assist the negotiation process.

He or she will:

- Obtain or, if provided orally, put the complaint in writing or arrange assistance (e.g. an interpreter can assist the delegate or their nominee to receive the complaint) to enable the complaint to be set out in writing. The complainant can have a support person present at any discussion. Have the complainant include a statement of the outcome they are seeking, and have the complainant sign and date the complaint.
- The complaint should be treated confidentially (see further information on Confidentiality). Ensure that the complainant is aware of the confidentiality of the process and seek their cooperation.
- Acknowledge complaint in writing within 10 working days[#] of the complaint being lodged outlining the complaint procedures. (See Sample letter.) If the complaint requires clarification then the delegate or their nominee will obtain that clarification.

For a non-English speaking complainant, steps should be taken to ensure understanding of the process and any documents provided. The complainant should be made aware of the availability of the telephone interpreter service to assist them.

Notify the respondent(s) within 10 working days[#] of the complaint being lodged that a complaint has been made against them. See further information on Procedural Fairness. This should be done sensitively and at an appropriate time (e.g. not on Friday or the last day of term, not when a person is on sick leave or on worker's compensation). Arrange a mutually convenient time to meet with the employee to provide them with a copy or details of the complaint along with a copy of any relevant policy and this procedure. The respondent has the right to be accompanied by an interpreter, if required, and by a support person.

The delegate may decide not to provide the original complaint to the respondent if it is emotive and/or possibly defamatory as it may inflame the situation. It is often preferable to provide a summary of the issues.

Advise the respondent that a response is required within 10 working days[#] and that a support person can be present during meetings. If the respondent is a member of a union then the presence of a union representative is acceptable.

Obtain written response from respondent(s) within 10 working days[#] of notifying the respondent. Provide a copy of the response to the complainant unless it contains material which could result in a breach of privacy or is offensive or inflammatory. In such cases the delegate or their nominee should hold the response and provide a summary.

- Gather information relevant to the complaint to support the resolution process. This may include:

- copies of relevant policies and procedures
 - copies of other departmental documents such as forms, reports, student records etc
 - copies of previous correspondence
 - expert advice from those experienced in judgements of the kind in question.
- Analyse this information to detect patterns, similarities, inconsistencies or breaches.
 - Arrange negotiation meeting(s) or other communications where the delegate or their nominee meets with the parties separately or jointly. If communicating with the parties separately then this need not be face to face. Parties have the right to be accompanied by an interpreter, if required, and by a support person. The role of a support person is to provide support and advice during the meeting. The support person may be a union official or a legal representative, however they cannot act as an advocate and answer questions on behalf of the party or interfere with the conduct of the interview.
 - Other persons who can assist can be consulted. If the matter is an employee complaint about another employee, a Human Resources representative could attend the meeting. Institute delegates should seek guidance and advice from their Institute Human Resources Manager.
 - Achieve resolution – The negotiation process should be completed within 10 working days[#] of the date of the respondent's response where possible. Negotiation is complete when the parties resolve their differences or agree on a future course of action, a compromise is agreed on or the complaint is withdrawn.
 - Document the outcome and notify all parties in writing.
 - Where the matter is resolved, all parties should be notified of the outcome.
 - If resolution cannot be achieved, then the delegate proceeds to the making of a decision.
 - The delegate should seek to have all aspects of the complaint finalised within 7 weeks[#].
 - Implement remedy and systems improvement if needed.
 - Ensure all documents are stored according to requirements, as specified in Records.

Step 4* – Decision by delegate

In situations where the parties cannot resolve the complaint the delegate must make a decision. The delegate should notify the parties that this will occur. The delegate should consider:

- the complaint and the response
- any outcome from negotiation discussions and meeting
- all relevant information
- any relevant policy.

The parties should be notified of the decision in writing, with reasons, within 5 working days[#] of the notification that the delegate will make a decision.

*Optional – use only if previous step has failed to satisfy

Timeframes are indicative to assist prompt action. Where possible they should be adhered to or bettered, but can be extended when there is good reason. Advise the complainant (and if appropriate, the respondent) if longer timeframes are required and the reasons.

Possible outcomes

Typical outcomes include:

- withdrawal of the complaint
- resolution of differences or agreement on a compromise
- apology given. (The use of apologies should be encouraged. See the related issue Apologies.)
- use of the services of a professional mediator in achieving resolution.
- inability to resolve differences and subsequent decision by the delegate who may:
 - if serious breaches are disclosed, refer for investigation or disciplinary/remedial action
 - dismiss the complaint
 - declare that resolution is not possible as the parties are unable to reach resolution
 - uphold the complaint and implement the specific action to address the concerns
 - determine that both parties are at fault and implement action to address the behaviour of both parties

Timeframe

Acknowledge complaint	Within 10 working days of receipt
Notify respondent of complaint	Within 10 working days of receipt
Obtain written response from respondent	Within 10 working days of notification
Achieve resolution, if possible	Within 10 working days of response
Delegate’s decision if not resolved	Within 5 working days of breakdown in negotiation

The delegate should attempt to resolve the matter within 7 weeks of receipt of the complaint.

Resubmission of complaints

A delegate can decline to act upon the resubmission of a complaint that has been previously finalised in accordance with these procedures, unless relevant new information has been submitted that could affect the outcome.

Reviews

Either party will have a right to seek a review of the decision made by the delegate where negotiations have been unsuccessful. There is no avenue for review if the matter has been resolved by agreement of the parties.

Either the complainant or respondent can request an internal review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant or respondent, and/or
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

This request is generally to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of procedural fairness, a more senior officer will nominate an appropriate person to conduct the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the request. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- Review all relevant material
- Make further inquiries, if necessary
- Decide whether further action is necessary
- Make a decision within 15 working days of receipt of the request
- Advise parties in writing of the decision and the reasons for the decision.

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will decide whether or not the decision that is being reviewed will be put on hold until the review is complete.

See also [External review](#) on page 37.

There is available an optional complaint form to assist in recording action taken.

Investigation procedure

If required, there is available an optional Checklist for Complaint Manager which will assist in managing a complaint.

Overview of the procedure

The decision that an investigation will take place can only be made by persons with the delegated authority to do so. It may require the assignment of an investigator who reports back to the delegate.

This procedure outlines the steps for a competent and fair investigation for complaints about employees other than those employed under the Public Sector Employment and Management Act 2002 or the Crown Employees (SAS Staff) Award 2005.

In the case of employees who are employed under the Public Sector Employment and Management Act 2002 or the Crown Employees (SAS Staff) Award 2005, a process, as detailed in the NSW Personnel Handbook is prescribed.

The purpose of an investigation of a complaint is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response. The nature and scope of the investigation required in response to a complaint will depend on the circumstances of each case and any relevant statutory requirements.

An investigation should incorporate the following four principles:

- procedural fairness for both complainant and respondent
- timeliness to ensure that opportunity for further misconduct and the potential for bitterness is minimised, as are opportunities to breach the confidentiality to which complainants and employees are entitled
- confidentiality for all parties, where practicable and appropriate
- meticulous recordkeeping, including recording of reasons for all significant investigation related decisions.

This procedure may result in a recommendation that remedial or disciplinary action be considered. The investigation report may be used as evidence in any such action.

Delegates who may approve an investigation

Protected Disclosures (Child Protection matters)	Director, EPAC Deputy Director-General, Workforce Management and Systems Improvement
Protected Disclosures (Other Matters)	Nominated Disclosure Officers (Section 3.2) are delegated to undertake steps 2, 3, 4 and 7 of the Investigation Procedures.
Alleged corrupt conduct, including fraud not accepted as a protected disclosure	Director, EPAC Deputy Director-General, Workforce Management and Systems Improvement Senior Manager, Serious Misconduct Investigation Team
Child Protection Matters	All such matters must be referred to DoCS if child may be at risk of harm and to EPAC if the matter relates to the conduct of an employee. Director, EPAC; Chief Investigators, EPAC
Other alleged serious breaches of legislation policy, procedure or contract. Other serious allegations of misconduct.	All TAFE Institute Directors; All TAFE Associate Directors All School Education Directors; All State Office Directors All Regional Directors and Deputy Regional Directors Senior Manager, Staff Misconduct Investigation Team (EPAC) Manager, Staff Efficiency and Conduct Team (EPAC) Chief Information Officer; All General Managers All Deputy Directors-General; Managing Director/Director-General

Steps in the investigation procedure

- Step 1 – Complaint recipient refers the matter to the Principal or workplace manager, who refers it to the appropriate delegate.
- Step 2 – Delegate considers the matter and determines whether or not a coordinated approach is needed.
- Step 3 – Delegate checks for previous action re the complaint.
- Step 4 – If appropriate, delegate commences investigation or appoints an investigator to do so.
- Step 5 – Investigation is conducted.
- Step 6 – On receiving the Investigation Report, Delegate takes action and provides advice as needed.

Step 1 – Refer matter to appropriate delegate

Obtain or put the complaint or allegation in writing or provide or arrange assistance (e.g. an interpreter) to enable the complaint to be set out in writing. Have the complainant sign and date the complaint (if possible). As oral complaints are accepted, the person receiving an oral complaint or allegation (e.g. by telephone) should set it out in writing.

The person receiving the complaint or allegation refers the matter to the Principal or workplace manager who refers it to the appropriate delegate as soon as possible.

Tasks for Delegate:

Step 2 – Co-ordination

If the complaint or allegation is sent to multiple addressees, or if it falls within the jurisdiction of different sections of the department or external agencies, then co-ordination will be necessary. Any person dealing with such a complaint within the department should contact other persons, departmental or external, to ensure that such co-ordination does take place.

Where a set of allegations appears to require the attention of more than one specialist group, then a decision is made whether:

- the allegations should be split and assigned to separate parties who will investigate and report separately
- a multi-disciplinary team should be formed to investigate and report in a coordinated manner, or
- one party should conduct the investigation on behalf of the other parties.

Similarly, if multiple complaints are received concerning similar incidents involving the same person or workplace, then co-ordination will be required. Immediate action should be taken to identify one delegate best able to manage the matter and other parties should be notified of that decision.

Procedures must be put in place to ensure that all parties are aware of their roles and that they liaise with the coordinator.

It will be the responsibility of the coordinator to ensure that there is consistency, that all elements are considered and that the final report to the delegate provides a holistic view.

Step 3 – Consider previous action

Action should include checking for previous investigations or management action regarding the complaint.

Procedures to prevent the unknowing re-opening of a previously closed matter should include:

- being alert to the time elapsed since the events in question
- being alert to the range of bodies which might have already investigated or taken action on the matter (e.g. current manager, another region or institute from which the person may have transferred, Employee Performance and Conduct, Human Resources, Staffing Services, etc)
- checking with these bodies
- checking personnel files for previous disciplinary or remedial action
- checking TRIM.

Where the complaint or allegation relates to the competency of a previous investigation or action, the investigation should establish if the previous process was sound and only in cases where the procedure is judged to be unsound should the matter be re-opened and the merits reconsidered.

If previous action was sufficient and sound then the complainant should be notified and the matter closed.

Step 4 – Initiate investigation

- Confirm that investigation is the appropriate procedure and that special cases do not apply.
- Acknowledge the complaint or allegation (within 10 working days) in writing. (See Sample letter.)

Step 5 – Investigation is conducted

Investigation should be conducted in accordance with the guidelines for the Management of Conduct and Performance.

When Investigation has been completed:

Step 6 – Action to be taken by the delegate

Upon receipt of the completed investigation report the delegate will:

- Consider the report and recommendations. If recommendations are accepted, the delegate will implement those within their delegation and refer other recommendations, as appropriate. Other recommendations should be discussed with relevant parties and outcomes documented.
- Notify complainant/person making allegation of the outcome, within 10 working days, providing reasons for the decision reached.
- Ensure that there is a process in train to notify the respondent of the outcome.
- Store file securely, in accord with requirements in Records.

Possible outcomes following investigation

Internal (DET) investigations may recommend:

- no further action
- staff disciplinary action
- staff remedial action
- staff being placed on a performance improvement program
- sanctions such as the removal of privileges or counseling of students
- remedy and/or systems improvement
- referral for police action
- referral to the Independent Commission against Corruption (ICAC)
- notification to the Commission for Children and Young People (CCYP)

Referral to the police may result in:

- police investigation, criminal charges and conviction
- police request for a DET investigation which is referred to police when complete
- police decision not to action the matter (which opens the way for a DET investigation and possible disciplinary/remedial action)

Referral to the ICAC could result in the ICAC investigating, making findings of corrupt conduct and recommending that the Director of Public Prosecutions considers criminal prosecution.

Staff disciplinary action may include:

- dismissal from the department
- directing the officer or permanent employee to resign or to be allowed to resign from the department within a specified time
- reduction in the officer or permanent employee's salary or demotion to a lower position in the department
- the imposition of a fine
- a caution or reprimand.

Staff remedial action may include:

- counselling
- training and development
- monitoring conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning that certain conduct is unacceptable or that performance is not satisfactory
- any other action of a similar nature.

Notification of name to the CCYP

An allegation of reportable conduct against an employee, could result in notification of the employee's name to the CCYP. See Responding to Allegations against Employees in the Area of Child Protection 2004 Section 8.

Investigations of students may lead to the application of the relevant student disciplinary procedures, which can lead to suspension or expulsion, or, in extreme cases, referral to the police.

Investigations of contractors, volunteers or other persons associated with DET activities or sites can lead to termination of contracts, termination of services, or restriction of access to DET sites.

Timeframe

The delegate should acknowledge the complaint within 10 working days and initiate the investigation as soon as possible thereafter.

The time taken will vary due to a range of factors including the:

- number and complexity of the issues
- emergence of additional issues as the investigation proceeds
- number of witnesses to be interviewed
- need to refer matters to external agencies such as the police and the consequent suspension of DET action until that agency indicates that DET action can continue
- impact of delay on the fairness of the process, or matters arising from the process such as the suspension of the officer

- health or well being of the officer or permanent employee.

Wherever possible delegates are to complete investigations within 3 months of receipt of the complaint. Advise the complainant (and if appropriate, the respondent) if a longer timeframe is required and the reasons.

Notify the complainant and the respondent within 10 working days of receipt of the investigation report.

If the matter is a protected disclosure, notify the complainant of progress or outcome within 6 months of the date of the disclosure.

Resubmission of complaints

A delegate can decline to act upon the resubmission of a complaint or allegation that has been previously investigated and finalised in accordance with these procedures, unless relevant new information has been submitted that could materially affect the conclusions of the investigation.

In such circumstances, the delegate may decide to re-open the investigation or to initiate a fresh investigation.

Reviews

Investigations arising from complaints are for the purpose of establishing the facts on the basis of available evidence and drawing conclusions on the balance of probability.

There are no internal review rights in relation to investigations covered by these procedures.

In the event that disciplinary action occurs as a later consequence of the investigation findings, the respondent may be able to seek a review of the decision under the relevant disciplinary provisions.

Review processes

The person managing the complaint should advise the complainant of the ability to seek a review of the decision and the timeframe for doing so.

Informal procedure

If your complaint cannot be resolved in an informal way, we **may** ask you to put it in writing. It is important that you include specific details of the situation and tell us what you would like to happen as a result of your complaint. We can help you to put your complaint in writing, if you require it.

Systems and Remedy procedures

There are two grounds for seeking a review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant and/or
- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

You can request one internal review, generally to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of conflict of interest or perception of partiality, a more senior officer will nominate an appropriate person to deal with the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the review. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- review all relevant material
- make further inquiries, if necessary
- make a determination, if possible, within 15 working days of receipt. If the decision is delayed, advise the complainant, with reasons
- advise parties in writing of the decision and the reasons for the decision
- meet with the parties, if required
- determine whether further action is necessary

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will determine whether or not the decision that is being reviewed will be put on hold until the review is complete.

Negotiation procedures

Either party will have a right to seek a review of the decision made by the delegate where negotiations have been unsuccessful. There is no avenue for review if the matter has been resolved by agreement of the parties.

Either the complainant or respondent can request an internal review, namely:

- incorrect use of the complaint procedure to the detriment of the complainant or respondent, and/or

- the outcome/decision is unreasonable, inconsistent, made without obvious relationship to the facts or circumstances or is irrational.

This request is generally directed to the supervisor of the person who made the decision. Where that person should be excluded on the grounds of procedural fairness, a more senior officer will nominate an appropriate person to conduct the review.

The request for a review must be lodged in writing within 10 working days of the advice of the decision. The request must detail the grounds for the request. Where necessary, a person wishing to request a review should be assisted to put the request in writing.

The person conducting the review shall:

- review all relevant material
- make further inquiries, if necessary
- decide whether further action is necessary
- make a decision within 15 working days of receipt of the request
- advise the parties in writing of the decision and the reasons for the decision.

If meetings with the parties are held, the parties may have a support person present.

The person conducting the review will decide whether or not the decision that is being reviewed will be put on hold until the review is complete.

Investigations

Investigations arising from complaints are for the purpose of establishing the facts on the basis of available evidence and drawing conclusions on the balance of probability.

There are no internal review rights in relation to investigations covered by these procedures.

In the event that disciplinary action occurs as a later consequence of the investigation findings, the respondent may be able to seek a review of the decision under the relevant disciplinary provisions.

External review

If a complainant or respondent is dissatisfied with the outcome of an investigation conducted under these complaint procedures, they may be able to seek an external review of the decision.

Complainants and respondents may have grounds to seek review of the outcomes of departmental investigations by various external bodies. The procedures governing reviews are set out in the relevant legislation.

In the event that disciplinary action occurs and a penalty is imposed as an outcome of an investigation, the respondent may be able to seek a review of the decision under the relevant disciplinary provisions.

See also the related issue, *External Review*.

There is available an optional complaint form to assist in recording action taken.

Glossary

Allegation – a complaint regarding serious misconduct which possibly involves a crime, corrupt conduct, improper conduct or other behaviour which may be the subject of court or disciplinary/remedial action.

AMES – Adult Migrant English Service.

CCYP – Commission for Children and Young People, which is an independent organisation that works with others to make NSW a better place for children and young people.

Child – person under 18 years of age. However, with respect to matters notifiable to DOCS, a child is defined as a person under the age of 16 years.

Complainant – any person lodging a complaint or allegation.

Complaint Manager – the employee responsible for handling a complaint.

Confidentiality – refers to information provided by a person on a confidential basis which is not to be disclosed e.g. the identity of the provider and/or the details of the information are not to be disclosed except as agreed to by the provider.

Corrupt conduct (corruption) – includes:

- a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official, any group or body of public officials, or any public authority, or
- b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions,
- c) any conduct of a public official or former public official that constitutes or involves a breach of public trust (which includes sexual impropriety by a staff member against a student or students)
- d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- e) serious maladministration

To be corrupt conduct the behaviour must be sufficiently serious to constitute a disciplinary matter or a criminal offence or grounds for dismissal.

Delegate (noun) – position with the authority to initiate the procedure to deal with the suggestion, complaint or allegation. The delegate can nominate another person to carry out the procedure (e.g. manage the negotiation or conduct the investigation).

department staff – All department employees including those assigned to work in TAFE NSW.

Disciplinary action (re staff) – action taken under the relevant legislation to determine if an employee has behaved improperly, and if so, to impose a penalty.

Disciplinary action (re students) – action taken under the relevant policies.

Disability – means:

- a) total or partial loss of a person's bodily or mental functions or of part of a person's body

- b) the presence in a person's body of organisms causing or capable of causing disease or illness
- c) the malfunction, malformation or disfigurements of a part of a person's body
- e) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- f) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotion or judgement or that results in disturbed behaviour.

Disclosures Coordinator – Senior Manager, Serious Misconduct Investigation Team.

DoCS – Department of Community Services

Employee Assistance Program (EAP) – is a voluntary, professional, confidential counselling service for work-related or personal problems provided free of charge by external, registered psychologists with clinical experience which is operated through self-referral or supervisor referral.

Grievance – an actual or perceived wrong considered as grounds for a complaint. In terms of these procedures it may relate to a workplace issue between employees or issues of concern to parents, care-givers, students and community members.

Harassment – any form of ongoing behaviour that is not welcome, not asked for or not returned, and that offends, intimidates or humiliates a person.

HREOC – Human Rights and Equal Opportunities Commission, which investigates complaints of discrimination under the federal anti-discrimination legislation.

ICAC – Independent Commission against Corruption, which deals with corruption as it is defined in the ICAC Act. See Corrupt Conduct, above.

Investigation – process by which a situation is examined in detail, facts are established and the truth or falsity of any allegations is established. Investigations obtain direct evidence such as witness statements and documentary evidence.

Maladministration – action or inaction of a serious nature that is contrary to law; unreasonable, unjust, oppressive or improperly discriminatory; or based wholly or partly on improper motives.

Mediation – a confidential and voluntary process where a neutral party, the mediator, assists the parties involved in the dispute to reach some common ground and arrive at an agreed settlement.

Neglect – failure to provide the basic physical and emotional necessities of life. Neglect may be an ongoing situation and can be caused by a repeated failure to meet the child's or young person's basic physical and psychological needs.

Negotiation – process by which a solution or agreement is developed through discussions or correspondence with another person. The process requires participants to consider the point of view of the other persons and consider compromise solutions.

Nominated Disclosure Officer – position nominated by DET whose incumbent can receive disclosures from employees which may be protected disclosures and forward them to the Disclosures Coordinator (Senior Manager, Serious Misconduct Investigation Team) or, in the case of Child Protection matters to the Director, Employee Performance and Conduct Directorate or a Duty Investigator. Disclosures can also be made to ICAC and Members of Parliament.

OHS – Occupational Health and Safety. Refer to Occupational Health and Safety Policy.

Ombudsman – The NSW Ombudsman is an independent and impartial watchdog. The role of the Ombudsman is to ensure that agencies, including DET, fulfil their functions properly and improve their delivery of services to the public. The Ombudsman assists agencies to be aware of their

responsibilities to the public, to act reasonably and to comply with the law and best practice in administration.

Partial – biased or prejudiced.

Procedural fairness – a way of proceeding where the decision maker should act in good faith, without bias and grant a hearing, or opportunity to present their case and know the case against them, to any person whose interests will be affected by the exercise of that decision before the decision is made.

Protected disclosure – an allegation of corruption, maladministration or serious and substantial waste, by a public official, about a public official, made to a person in a position identified in the Protected Disclosures Act 1994, including an ICAC officer, a member of Parliament or to a nominated disclosure officer of the department.

Public official – employee of a state government department or agency (including part time or casual staff), employee of a local government authority, a person having a public official function or acting in a public official capacity for the state.

Recipient – employee who first receives a complaint from the complainant.

Remedial action – can be taken if an allegation is made that an officer or permanent employee may have engaged in misconduct. Such action may consist of any one or more of counseling, training and development, monitoring the individual's conduct or performance, implementing a plan addressing unsatisfactory performance, issuing of a warning, transfer to another position that does not involve a reduction in salary or demotion or any other action of a similar nature.

Remedy – action taken to correct or rectify a situation e.g. to provide a service that should have been but was not previously provided, or to correct a wrong decision or action.

Reportable conduct – is defined as any sexual offence or sexual misconduct committed against, with or in the presence of a child - including a child pornography offence, any assault, ill-treatment or neglect of a child, any behaviour that causes psychological harm to a child – even if the child consented to the behaviour.

Resolution – where parties agree on a future course of action, or the complaint is withdrawn, or a compromise is agreed on.

Respondent – a person requested to respond to complaints made about them.

Risk of Harm – A child or young person is at risk of harm if current concerns exist for the safety, welfare and well-being of the child or young person. Refer to Protecting and Supporting Children and Young People: Revised Procedures, 2000.

Serious breach – a breach of a nature which, if proven, would have a reasonable prospect of leading to criminal or disciplinary/remedial action.

Serious and substantial waste – uneconomical, inefficient or ineffective use of resources (authorised or unauthorised) which results in significant loss or wastage of public funds or resources. In this context the loss or waste is "significant" if it is material in terms of the total budget, or exceeds \$500 000, or indicates systemic weakness.

Serious offence – is a criminal offence punishable by a penalty of imprisonment for 12 months or more.

Student – a student of a government school or centre, a Saturday School of Community Languages, TAFE Institute, Adult Migrant English Service (AMES), National Art School or Open Training Education Network (OTEN)-Distance Education facility.

Support person – a person who accompanies a complainant or respondent to a meeting or interview to provide personal support. While s/he is not a legal advocate or representative and is not to speak on behalf of the complainant or respondent or influence the process, the form of support may vary according to the circumstances. It could include provision of advice on rights and entitlements, seeking clarification of the process and referring concerns to a more senior officer. S/he needs to be aware of any confidentiality requirements. S/he may be a union representative.

Systems improvement – the process of identifying and acting on the causes of complaints, inefficiencies or other quality problems, usually by adjusting procedures and issuing updated documentation.

TRIM – the records management program used by the department (Tower Records Information Management).

VETAB – Vocational Education and Training Accreditation Board.

Victimisation – subjecting any complainant to any form of detriment as a result of making a complaint.

Vilification – a public act that encourages or incites others to hate, have serious contempt for, or severely ridicule a person or group of people because of their race, homosexuality, transgender, HIV or AIDS.

Workplace Bullying – An employee is subject to workplace bullying if the person is subjected to repeated behaviour by a person, including the employee’s supervisor, or a co-worker or group of co-workers of the person, or other person including a student, a member of the school community or member of the public external to the workplace that:

- is unwelcome and unsolicited; and
- the person considers to be offensive, intimidating, humiliating or threatening; and
- a reasonable person would consider to be offensive, humiliating, intimidating or threatening

Workplace bullying and harassment does not include reasonable management action taken in a reasonable way in accordance with DET policies and procedures in connection with the person’s employment.

Young Person – a person who is aged 16 years or above but who is under the age of 18 years”.