



# Procedure

## Managing employee complaints

Implementation date: 25/03/2020

Version: 3.3

### Audience

Department-wide

### Purpose

This procedure outlines the process for making and managing an employee complaint.

### Overview

The Department of Education (the department) expects that employees will make reasonable efforts to resolve issues informally where appropriate. However, if an employee decides to make a complaint under this procedure (employee complaint), the department seeks to ensure that it will be appropriately addressed and managed efficiently and effectively.

Employee complaints which can be dealt with under this procedure are those where a current public service employee has an honest belief based upon reasonable grounds that:

- an administrative decision, by which they are aggrieved (meaning that their interests are adversely affected by the decision), is unfair and unreasonable; or
- the conduct or behaviour of an employee is unfair and unreasonable; or
- the conduct or behaviour of an employee constitutes workplace bullying, sexual harassment, or vilification/discrimination for unlawful reasons (such as race, sex or gender identity); or
- the conduct or behaviour of an employee is a breach of the [Code of Conduct](#) or the department's [Standard of Practice](#).

This procedure does not replace, modify or revoke any legislative requirements that apply to the management of particular types of complaints (e.g. [allegations of fraud and corruption](#), or [public interest disclosures](#)).

### Responsibilities

#### All employees

- engage in the employee complaint management and resolution process in good faith
- respect the confidentiality of the process and its outcomes



- continue to undertake work as directed by a manager, principal or supervisor except in the case of a genuine safety issue
- comply with this procedure and all relevant legislation, directives, departmental policies and procedures, including the Code of Conduct and the department's Standard of Practice
- make a genuine and reasonable attempt to resolve the matter informally where appropriate.

### **Additional responsibilities for complainant**

- make the employee complaint in writing as soon as reasonably possible after the administrative decision, or conduct/behaviour has occurred and after informal resolution has been unsuccessful or is not appropriate in the circumstances
- state in the employee complaint what action the employee would like to happen to resolve their complaint and what informal action the employee has taken to resolve the complaint.

### **Additional responsibilities for managers, principals and supervisors**

- identify and effectively manage workplace issues as they relate to employee behaviour
- respond expeditiously to issues raised informally with them by employees and where appropriate, attempt to resolve the issue prior to the employee making a formal employee complaint
- consider human rights when taking action or making decisions in response to an employee complaint
- manage and resolve employee complaints using the process set out in this procedure
- manage employee complaints in accordance with the principles of natural justice, including dealing with the parties in a fair, impartial and unbiased manner and making decisions in a timely way
- manage employee complaints in a manner that protects the privacy of the employee who has made the complaint (subject to any legal disclosure obligations, such as the requirement to provide natural justice to the subject of the complaint)
- ensure employees are aware of their entitlement to a support person or to be represented by a union representative
- ensure employees are aware of the professional counselling services available to all employees
- deal simultaneously with multiple employee complaints about related matters wherever possible
- ensure a record of all relevant documentation is maintained in relation to employee complaints made under this procedure
- provide regular and timely information to the relevant parties in relation to the progress of the employee complaint.

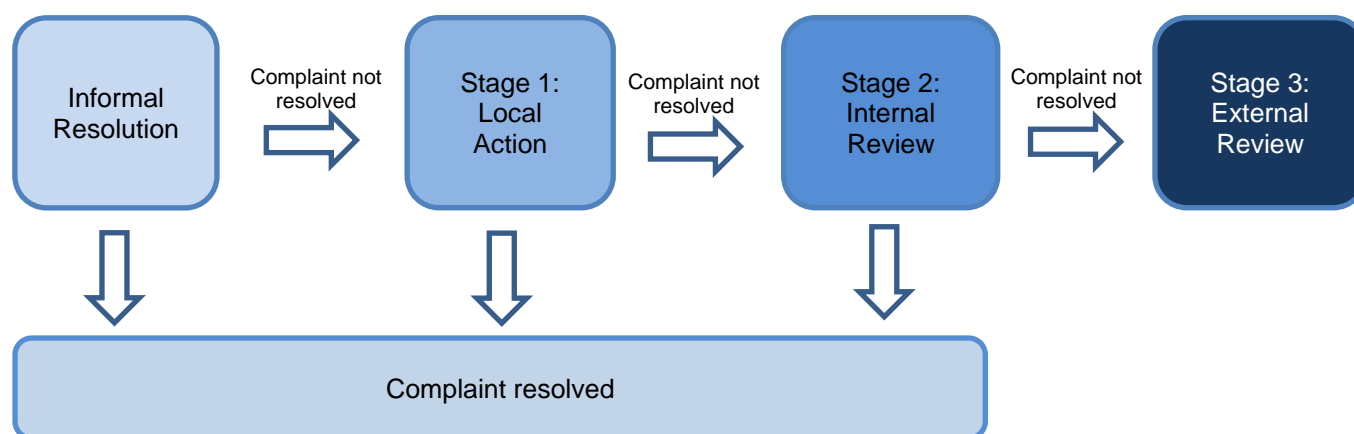
### **Internal Review Decision Maker**

- where a request for an internal review is made, the Internal Review Decision Maker is to determine whether the decision made at the Local Action stage was fair and reasonable in the circumstances.

### **Public Service Commission (PSC) Chief Executive**

- resolve employee complaints involving the Director-General.

## Process



### What employees should consider before making a complaint

Before making an employee complaint, please check that the complaint is one that is able to be made under this procedure, as outlined in the overview. Refer to the [Managing employee complaints \(Directive 02/17\)](#) (the directive), paragraph 7.2, for a list of matters which *cannot* be the basis of an employee complaint under this procedure.

**Student Protection Matters:** Any reporting in relation to student protection matters should be sent directly to the Conduct and Complaints team within the Integrity and Employee Relations Unit. Notifications can be made through [iRefer](#) (DoE employees only) or by email to [intake@qed.qld.gov.au](mailto:intake@qed.qld.gov.au).

### STAGES OF THE EMPLOYEE COMPLAINTS PROCESS:

#### **Informal resolution prior to lodging an employee complaint in writing**

Prior to making a formal employee complaint under this procedure, employees must, where appropriate, make a genuine and reasonable attempt to resolve the matter either individually or with their local manager, principal or supervisor. Where this does not result in satisfactory resolution, or where the employee complaint is one which cannot be appropriately dealt with through informal resolution, the employee may pursue the matter through the process outlined below.

#### **Employee complaints that cannot be satisfactorily resolved informally are managed and resolved through the three stages of the complaint process set out in this procedure**

1. Stage one: **Local Action** – the primary stage of the employee complaints process where the written complaint is made, addressed and responded to at the workplace level.
2. Stage two: **Internal Review** – an employee can request an internal review after a decision has been made at stage one – Local Action.
3. Stage three: **External Review** – an employee can request an external review after a decision has been made at stage two.

**Stage 1: LOCAL ACTION**

1. An employee must make the employee complaint in writing to the relevant manager, principal or supervisor.
2. The employee complaint must:
  - a. be made as soon as reasonably possible after the administrative decision or relevant conduct occurs and after informal resolution (where appropriate) has been attempted
  - b. comply with the department's [Managing employee complaints policy](#) and this procedure unless the employee's complaint is made to the PSC's Chief Executive about the Director-General of a department under paragraph 7.6 of the [directive](#)
  - c. include sufficient information to enable the manager, principal or supervisor to take appropriate action
  - d. outline the action the employee considers would resolve the employee complaint and the informal steps the employee has already taken to resolve the complaint. If the employee complaint does not include this information, the employee may be asked to provide it.
3. To assist in the resolution of employee complaints, an employee who makes an employee complaint may:
  - a. be supported by a person of their choosing
  - b. be represented by a union representative
  - c. access the [Employee Assistance Program \(EAP\)](#) (DoE employees only).
4. Local Action may include, but is not limited to, one or more of the following:
  - a. conducting preliminary enquiries to determine appropriate options for resolution of the employee complaint
  - b. gathering information, including from witnesses
  - c. facilitated discussion, mediation, conciliation or negotiation
  - d. deciding to refer the matter for investigation
  - e. other reasonable action in the circumstances.
5. If the manager, principal or supervisor (or, where the complaint is about the employee's manager, principal or supervisor, the appropriate delegate) is reasonably satisfied that:
  - a. an employee complaint has no substance; and/or
  - b. an employee complaint is frivolous or vexatious; and/or
  - c. an employee complaint does not concern a matter that can be the subject of an employee complaint under this procedure; and/or
  - d. an employee has unreasonably refused to participate in action(s) to resolve the employee complaint,
 then the manager, principal or supervisor (or appropriate delegate) may decide to take no further action in relation to the employee complaint. The manager, principal or supervisor (or appropriate delegate) must give written reasons for its decision in accordance with paragraph 7.5.6 of the [directive](#).

6. A decision about an employee complaint should be made as soon as possible, but must be made within 28 calendar days from the date that the information needed to make a decision about the employee complaint is received from the complainant, unless:
  - a. the timeframe has been extended by mutual agreement between the parties (the parties cannot unreasonably withhold agreement); or
  - b. an employee complaint has been made to the PSC Chief Executive about the Director-General of the department under paragraph 7.6 of the [directive](#).
7. Where an employee complaint is made about an administrative decision and the department fails to make a decision about the employee complaint within 28 days, the department is taken to have confirmed the administrative decision. This allows the employee to then immediately make a request for Internal Review.
8. After a decision has been made about an employee complaint (including a decision to take no action), the department must provide a written decision to the employee who made the employee complaint. The written decision must:
  - a. outline the action taken to manage the employee complaint and the outcome of this action
  - b. provide the reasons for the decision, (including reasons for a decision to take no action)
  - c. outline any action that the department proposes to take, or will take, as a result of the decision
  - d. inform the employee of their Internal Review rights under Stage 2, including any relevant time frames.
9. A copy of the decision made under paragraph 8 of this procedure must be kept by the manager, principal or supervisor (or appropriate delegate).

## Stage 2: INTERNAL REVIEW

10. If an employee is dissatisfied with a decision made at the Local Action stage, the employee may make a written request for an Internal Review.
11. A request for an Internal Review must:
  - a. be submitted by email to the Internal Review mailbox [MECInternalReview@qed.qld.gov.au](mailto:MECInternalReview@qed.qld.gov.au) and received within 14 days of the employee receiving a copy of the decision made at the Local Action stage (or a decision is taken to be made under paragraph 7 above)
  - b. clearly state the reasons for dissatisfaction with the decision, and not merely state a belief that the decision was unfair and unreasonable
  - c. say what the employee would like to happen to resolve the employee complaint.
12. Once a request for an Internal Review is received, the department must notify the employee in writing:
  - a. that the request for an Internal Review has been received by the department
  - b. of the name and contact information for the contact person for the Internal Review
  - c. of the 14 day timeframe for making a decision about the outcome of an Internal Review.

13. An Internal Review is to be completed by the Internal Review Decision Maker. The Internal Review Decision Maker is to determine whether the decision made at the Local Action stage was fair and reasonable in the circumstances.
14. If the Internal Review Decision Maker is satisfied that:
  - a. the reasons for seeking an Internal Review are insufficient; and/or
  - b. the request for Internal Review is frivolous or vexatious; and/or
  - c. the employee has unreasonably refused to participate in a Local Action process to resolve the employee complaint;the Internal Review Decision Maker may decide to take no further action in relation to the request for an Internal Review. The Internal Review Decision Maker must give written reasons for its decision in accordance with paragraph 16.
15. A decision about an Internal Review of a decision made at the Local Action stage must be made as soon as possible, and within 14 days of receipt of a written request from an employee. The 14 day period commences from the date the department receives the request for an Internal Review. This timeframe applies unless:
  - a. the timeframe has been extended by mutual agreement between the parties (a party to the employee complaint is not to unreasonably withhold their agreement); or
  - b. where the Director-General or delegate can demonstrate that reasonable attempts have been made to progress the employee complaint.
16. If the Internal Review Decision Maker fails to make a decision in relation to the request for an Internal Review (except where paragraph 13 applies), the department is taken to have confirmed the decision made at the Local Action stage. Depending on the issues raised in the employee complaint, this may result in an avenue of External Review being available to an employee once the 14 day timeframe has passed.
17. At the completion of an Internal Review (including a decision to take no further action under paragraph 13), the Internal Review Decision Maker must provide a written decision to the employee. This decision must outline:
  - a. the action taken to review the decision made at the Local Action stage
  - b. the reasons for the decision (or reasons for the decision to take no further action)
  - c. any action that the Internal Review Decision Maker proposes to take, or will take, as a result of the Internal Review
  - d. any avenues of External Review that may be available to the employee, including any relevant timeframes.
18. A copy of the decision made under paragraph 17 of this procedure must be kept by the Internal Review Decision Maker.

### Stage 3: EXTERNAL REVIEW

19. If the employee who made the original employee complaint is dissatisfied with a decision made following an Internal Review, the employee may seek an External Review. Depending on the issues raised in the employee complaint, the avenues for External Review may include<sup>1</sup>:
- a. a public service appeal against:
    - i. a decision under a directive, under section 194(1)(a) of the *Public Service Act 2008* (Qld); or
    - ii. a fair treatment decision, under section 194(1)(eb) of the *Public Service Act 2008* (Qld); or
  - b. notification to the QIRC of an industrial dispute under an industrial instrument; or
  - c. an application to the QIRC in relation to an alleged contravention of a workplace right under Chapter 8, Part 1 of the *Industrial Relations Act 2016* (Qld); or
  - d. an application to the QIRC for a stop bullying order under section 273 of the *Industrial Relations Act 2016*; or
  - e. a complaint to the QIRC in relation to alleged sexual harassment, racial vilification or religious vilification under Chapter 7, Part 1 of the *Anti-Discrimination Act 1991* (Qld); or
  - f. a complaint to the Queensland Ombudsman under the *Ombudsman Act 2001* (Qld)<sup>2</sup>.

### Complaints about the Director-General of the department

For complaints which involve, or may involve, corrupt or inappropriate conduct by, or corruption of, the Director-General, follow the [Complaints involving the 'public official' \(Director-General\)](#) procedure.

All other complaints about the Director-General should be directed to the PSC Chief Executive as outlined in paragraph 7.6 of the [Managing employee complaints \(Directive 02/17\)](#).

(Note: there is no avenue for [internal review](#) in relation to decisions made by the PSC Chief Executive).

### Definitions

<b>administrative decision</b>	A decision made by the department in relation to the administration of its affairs and includes the failure to make a decision within a specified timeframe where a department is required to do so.
<b>aggrieved</b>	A 'person aggrieved by a decision' includes a person whose interests are adversely affected by the decision (or the failure to make a decision). <a href="#">Judicial Review Act 1991 (Qld)</a> s.7.
<b>PSC Chief Executive</b>	Means the Chief Executive of the Public Service Commission.
<b>corrupt conduct</b>	Corrupt conduct has the same meaning as defined in section 15 of the <i>Crime and Corruption Act 2001</i> (Qld).

<sup>1</sup> Sections 425 and 449 of the *Industrial Relations Act 2016* (Qld) precludes an employee from lodging more than one type of application to the Queensland Industrial Relations Commission in relation to the same decision, conduct or behaviour, except where the matter relates to bullying in the workplace.

<sup>2</sup> Note that under section 23 of the *Ombudsman Act 2001*, the Ombudsman has a wide discretion to refuse to investigate a complaint, for example, if the complainant has a right of appeal or review they have not used or where the complainant has used and exhausted another type of review or appeal.

	<p>Corrupt conduct is conduct that could, if proved, be:</p> <ol style="list-style-type: none"> <li>a) a criminal offence; or</li> <li>b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.</li> </ol> <p>This includes conduct which adversely affects the department's honest or impartial performance of its powers, knowingly or recklessly breaches public trust, or misuses the department's information. Examples: fraud, extortion and offering secret commissions.</p>
<b>employee</b>	Any departmental employee whether permanent, temporary, full time, part-time or casual.
<b><a href="#">Employee Assistance Program</a></b> (DoE employees only)	<p>A free, short-term, confidential counselling services:-</p> <ul style="list-style-type: none"> <li>• for both staff and immediate family members</li> <li>• to provide confidential support services for all departmental staff with supervisory responsibilities.</li> </ul>
<b>employee complaint</b>	A complaint lodged in writing by an employee in accordance with this procedure.
<b>fair treatment decision</b>	<p>A decision that an employee considers to be unfair and unreasonable.</p> <p>Fair treatment has the same meaning as defined in section 194(1)(eb) of the <i>Public Service Act 2008</i> (Qld).</p>
<b>gender identity</b>	<p>Gender identity has the same meaning as defined in the schedule of the <i>Anti-Discrimination Act 1991</i> (Qld).</p> <p><i>Gender identity</i>, in relation to a person, means that the person—</p> <ol style="list-style-type: none"> <li>(a) identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or</li> <li>(b) is of indeterminate sex and seeks to live as a member of a particular sex.</li> </ol>
<b>Internal Review Decision Maker</b>	The person who is responsible for making a decision about an internal review request as detailed in the <a href="#">HR Delegations Manual</a> (DoE employees only).
<b>QIRC</b>	Queensland Industrial Relations Commission
<b>parties to an employee complaint</b>	includes the complainant (person making the employee complaint) and the respondent (either the department or employee who is the subject of the employee complaint)
<b>personal information</b>	Personal information has the same meaning as defined in section 12 of the <i>Information Privacy Act 2009</i> (Qld).



	<p>Personal Information is information or an opinion, including information or an opinion forming part of a database, whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.</p>
<b>privacy</b>	<p>Management of personal information in accordance with the <i>Information Privacy Act 2009</i> (Qld).</p>
<b>racial vilification</b>	<p>Racial vilification has the same meaning as defined in section 124A of the <i>Anti-Discrimination Act 1991</i> (Qld).</p> <p>By a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.</p> <p>Race has the same meaning as defined in the schedule of the <i>Anti-Discrimination Act 1991</i> (Qld).</p> <p><b>Race</b> includes—</p> <ul style="list-style-type: none"> <li>(a) colour; and</li> <li>(b) descent or ancestry; and</li> <li>(c) ethnicity or ethnic origin; and</li> <li>(d) nationality or national origin.</li> </ul>
<b>religious vilification</b>	<p>Religious vilification has the same meaning as defined in section 124A of with the <i>Anti-Discrimination Act 1991</i> (Qld).</p> <p>By a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the religion of the person or members of the group.</p>
<b>sexual harassment</b>	<p>Sexual harassment has the same meaning as defined in section 119 of the <i>Anti-Discrimination Act 1991</i> (Qld).</p> <p>Sexual harassment happens if a person—</p> <ul style="list-style-type: none"> <li>(a) subjects another person to an unsolicited act of physical intimacy; or</li> <li>(b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or</li> <li>(c) makes a remark with sexual connotations relating to the other person; or</li> <li>(d) engages in any other unwelcome conduct of a sexual nature in relation to the other person; and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so—</li> <li>(e) with the intention of offending, humiliating or intimidating the other person; or</li> <li>(f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.</li> </ul>
<b>student protection matters</b>	<p>Any allegations of student harm.</p>

	Additional information outlined in the <a href="#">Student protection guidelines</a> (DoE employees only).
<b>workplace bullying</b>	<p>Workplace bullying has the same meaning as defined in section 272 of the <i>Industrial Relations Act 2016</i> (Qld).</p> <p>(1) An employee is bullied in the workplace if—</p> <p>(a) while the employee is at work, an individual or group of individuals repeatedly behaves unreasonably towards—</p> <p>(i) the employee; or</p> <p>(ii) a group of employees of which the employee is a member; and</p> <p>(b) that behaviour creates a risk to the health and safety of the employee.</p> <p>This does not apply to reasonable management action carried out in a reasonable manner.</p>

## Legislation

- [Public Service Act 2008 \(Qld\)](#)
- [Industrial Relations Act 2016 \(Qld\)](#)
- [Public Interest Disclosure Act 2010 \(Qld\)](#)
- [Crime and Corruption Act 2001 \(Qld\)](#)
- [Anti-Discrimination Act 1991 \(Qld\)](#)
- [Human Rights Act 2019 \(Qld\)](#)
- [Managing employee complaints \(Directive 02/17\)](#)
- [Appeals \(Directive 03/17\)](#)

## Delegations/Authorisations

- [HR Delegations Manual](#) (DoE employees only)

## Related policies

- [Code of Conduct for the Queensland Public Service](#)
- [Standard of Practice](#)
- [Managing employee complaints](#)

## Related procedures

- Nil

## Guidelines

- [Student protection guidelines](#) (DoE employees only)

## Supporting information/websites

- ['Appeals Guide' – Public Service Appeals](#)
- [Employee Assistance Program](#) (DoE employees only)

## Contact

For further information, in the first instance please contact your Regional HR Business Partner/Principal HR Consultant.

Further assistance is available from Employee Relations by phone (07) 3513 6512 or email [EmployeeRelations.HUMANRES@qed.qld.gov.au](mailto:EmployeeRelations.HUMANRES@qed.qld.gov.au)

## Review date

08/06/2020

## Superseded versions

*Previous seven years shown. Minor version updates not included.*

- 1.0 HRM-PR-050: Managing Employee Complaints
- 2.0 Managing Employee Complaints
- 3.0 Managing employee complaints

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