



Title: Employee Complaints Management Policy

Responsible Officer: Registrar Action Officer:

Complaints Contact Officer

References:

Family Responsibilities Commission:

- Queensland Public Service Code of Conduct
- Workplace Policy
- Workplace Health and Safety Policy
- Harassment Discrimination and Bullying Policy
- External Complaints Management Policy
- Employee Assistance Policy
- Discipline in the Workplace Policy – a Guideline for Management and Employees
- Privacy Policy

Relevant Legislation

- *Family Responsibilities Commission Act 2008*
- *Queensland Public Service Officers and other Employees Award – State 2015*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2011*
- *Public Service Act (Qld) 2008*

- *Public Sector Ethics Act 1994 (Qld)*
- *Anti-Discrimination Act 1991 (Qld)*
- *Information Privacy Act 2009*
- *Right to Information Act 2009*

Other

Directive 02/17 – Managing employee complaints

Unit	Family Responsibilities Commission
Manager	Registrar
Author	Maxine McLeod
Position	Registrar
Contact	(07) 4081 8400
Version	5
Issued	December 2017
Authorising Signature	
Review Date	December 2020

Table of Contents

1.0 Purpose	7.0 Obligations
2.0 Scope	7.1 Employer obligations
3.0 What is an employee complaint?	7.2 Employee obligations
3.1 What constitutes a valid complaint?	8.0 What is a facilitated discussion?
3.2 When does an employee not have the right to lodge a complaint	9.0 What can you expect with the complaints process?
4.0 What is workplace or sexual harassment?	10.0 What is expected at the workplace during the process?
4.1 Workplace harassment	11.0 Complaints lodged by an employee against the Chief Executive
4.2 Sexual harassment	12.0 Appeals
5.0 Contact Officers	13.0 Making Public Interest Disclosures
5.1 Workplace Harassment Contact Officer	
5.2 Complaints Contact Officer	
6.0 What must you specify in lodging your complaint?	

1.0 Purpose

The Family Responsibilities Commission is committed to maintaining and fostering a conflict-free workplace. The purpose of this policy is to ensure complaints are resolved as efficiently, appropriately and promptly as possible to ensure the well-being and performance of all Commission personnel.

This policy is aimed at providing Commission employees and managers, where they are unable to effect it themselves, a means to resolve disputes and complaints fairly and successfully, whilst providing a focus on management and resolution of workplace issues at a local level in the first instance, without the need for formal intervention.

This policy additionally ensures the Commission complies appropriately with section 25 of the *Public Service Act 2008* (PSA) wherein the chief executive must implement effective strategies to:

- resolve public service employees' grievances efficiently, effectively and confidentially
- actively address allegations of sexual harassment or workplace harassment and
- establish an effective and professional complaints resolution system for aggrieved employees.

In all cases natural justice will be applied by the Commission in resolving grievances.

2.0 Scope

These guidelines are provided for the assistance of:

- all temporary and permanent staff of the Commission whether employed on a casual, part-time or full-time basis and
- anyone engaged by the Commission to provide services, information or advice.

3.0 What is an employee complaint?

3.1 What constitutes a valid complaint

A valid complaint is a written complaint to a Commission manager or the Complaints Contact Officer (CCO) submitted in accordance with this policy and after all reasonable endeavours have been made to resolve the matter informally, from an employee (otherwise known as the aggrieved) who has an honest belief, based on reasonable grounds that:

- an administrative decision (a decision in relation to the administration of the Commission including the failure to make an administrative decision within a specified timeframe - i.e. a decision to transfer an employee or a decision to take action under a directive) is unfair or unreasonable and adversely affects them, or
- the conduct or behaviour of an employee, agent or contractor (otherwise referred to as the respondent) is unfair, unreasonable or constitutes sexual or workplace harassment (refer 4.0 below), racial vilification, religious vilification or vilification on the grounds of gender identity or sexuality which adversely affects them, or
- the conduct or behaviour of an employee is a breach of the Code of Conduct, or
- their personal information has not been handled in accordance with the Information Privacy Principles in the *Information Privacy Act 2009* (Qld). Refer to the Privacy Policy in regard to the complaint process (section 11.0).

All allegations of adverse omission or conduct must first be raised informally by the aggrieved with either the person who has caused them the grievance, or a manager. Only in a circumstance where the Registrar determines that a local resolution is not reasonable or appropriate can the aggrieved file a formal grievance without having attempted some informal facilitation.

3.2 When does an employee not have the right to lodge a complaint

An employee does not possess the right to lodge a complaint in regard to:

- conduct or omission that has already been submitted via a complaints procedure under an industrial instrument,
- a disciplinary decision, or a decision to retire a public servant which complies with the PSA
- a decision relating to the recruitment or selection of a public service employee
- a decision under Chapter 5, Part 7 of the PSA relating to mental and physical incapacity
- a decision relating to a person's work performance other than a decision about the person's work performance that is recorded in a formal way as part of a periodic performance review
- a decision relating to the resolution of a grievance under an industrial instrument, other than a decision about the outcome of a grievance

- a decision relating to the development or performance management of a chief executive or senior executive.

Additionally, an employee cannot lodge a complaint against a decision which determines the policy, strategy, nature, scope, resourcing or direction of the Commission.

4.0 What is workplace or sexual harassment?

4.1 Workplace harassment (also termed bullying)

Repeated behaviour towards an employee (other than behaviour amounting to sexual harassment) by a manager, co-worker or group of co-workers, someone who works for you, a client or customer, or a member of the public that:

- is unwelcome or is not invited
- the employee considers to be offensive, intimidating, humiliating or threatening and
- a reasonable person would consider to be offensive, intimidating, humiliating or threatening and
- is behaviour which creates a risk to the health and safety to the employee.

Workplace harassment does not constitute a single incident of harassing type behaviour, reasonable management action taken in a reasonable and just manner, ordinary differences of opinion or disagreements within the workplace or acts of unlawful discrimination, vilification or sexual harassment (these are covered under different legislation).

4.2 Sexual Harassment

Sexual harassment is any unwelcome sexual attention, by any individual and does not have to be repeated or ongoing. Examples may include a person who:

- subjects another person to an unsolicited act of physical intimacy or
- makes an uninvited demand or request (whether directly or indirectly) for sexual favours from the other person or
- makes sexual or suggestive comments, jokes or taunts or
- displays sexual material (e.g. photos, pictures, emails, faxes or letters) and
- the person engaging in the conduct described above does so with the intent of offending, humiliating, intimidating the other person, or in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

For further information in regard to both workplace and sexual harassment refer to the Commission's Harassment Discrimination and Bullying Policy which details more specifically what is expected behaviour in the workplace and the definition of harassment, discrimination and bullying.

5.0 Contact Officers

5.1 Workplace Harassment Contact Officer

A crucial element in implementing effective workplace harassment discrimination and bullying procedures is the provision of an appropriately trained Workplace Harassment Contact Officer (WHCO).

WHCOs do not resolve complaints. They provide information to employees, managers and supervisors about harassment and bullying behaviour, on the processes and options for resolving complaints and sources of support. A WHCO is trained in understanding the nature of harassment and bullying and in dealing with complaints in line with Commission processes and the law. Generally, a WHCO should not give advice to both the person making the complaint and the person against whom the complaint is made.

At the Commission, the Trained Safety Advisor (TSA) acts in a WHCO capacity. An aggrieved employee may seek clarification of the complaints procedures from the TSA in the first instance, or may contact their line manager directly.

5.2 Complaints Contact Officer

The Complaints Contact Officer (CCO) for the Commission is:

The Registrar
Family Responsibilities Commission
Level 3, 107 Lake Street, Cairns
Telephone (07) 4081 8400 Fax (07) 4041 0974

- The preliminary assessment of a matter should be completed by the direct line manager within 14 days (unless the matter immediately involves the direct line manager – refer 6.0 below).
- Should the matter be determined for possible facilitation, penalty or disciplinary action, the manager must hand the matter on to the CCO.
- Depending upon the complexity of the matter, the CCO may elect to refer the matter to an external agency to investigate to the conclusion of the matter, or may elect to hand the matter back to the manager to be 'managed' to a conclusion.
- Where an external investigating officer has been appointed, such officer will carry out the functions of the CCO during the complaints process.

In all instances, whether the initial contact is with the TSA, the Manager, or the CCO, the aggrieved/s and respondent/s should be referred to the Commission's Employee Assistance Policy to assist each party in coping with the issues raised, and any future issues that may arise as a result.

6.0 What must you specify in lodging your complaint?

A complaint must be in written form and lodged with a Commission manager or CCO as soon as *reasonably possible* after the alleged decision/conduct/behaviour/omission, specifying the following:

- the conduct, decision and/or behaviour which constitutes the unfair or unreasonable treatment or harassment
- why and in what respect the decision or treatment is considered unfair and/or unreasonable
- a history of the attempts made to resolve the problem in an informal manner

- what in the opinion of the aggrieved would resolve the issue or issues

Should the complaint concern your direct line manager, lodge the complaint with the manager to whom your line manager reports or the CCO. Should the complaint be in regard to the CCO, lodge the complaint with the Commissioner. Should the complaint be in regard to the Commissioner, refer to section 11 below. If in doubt as to whom to lodge a grievance with, the TSA or CCO will be able to assist.

7.0 Obligations

7.1 Employer Obligations

The Commission must implement and maintain an employee complaints management system (procedures and policies used to receive, record and process complaints) consistent with section 25 of the PSA. The system must be supported by a written policy readily available to employees. The management of complaints will be effected in accordance with this policy and through:

- local action in the first instance
- internal review of a decision made through local action in the second instance and
- where applicable external review of a decision made at internal review in the third instance.

Managers must proactively manage workplace issues by identifying situations which have led or may lead to future employee complaints whilst ensuring the principles of natural justice are adhered to. The two rules of natural justice are:

- decision makers are to be objective, free of bias and have no personal interest in the matter being decided and
- an individual is to be informed of the substance of allegation/s against them and have the opportunity to answer the case prior to a decision being made.

Resolution of a complaint will be effected through investigation of the complaint, facilitated discussion, mediation, conciliation, negotiation or other actions deemed appropriate under the circumstances and within 28 days of receipt of the employee complaint (refer section 9.5 below).

Regular information must be provided to the parties involved in the complaints process so that parties are aware of the progress of the matter at all times.

7.2 Employee Obligations

Employees must submit their complaint at the earliest opportunity following an administrative decision, alleged conduct or alleged behaviour which has occurred. The complaint must be in a form sufficient for the Commission to investigate and resolve. Employees must:

- engage in the complaints process in good faith and
- may be supported by a person or persons of their choosing or
- may be represented by a union representative or member of a professional association.

8.0 What is a facilitated discussion?

A facilitated discussion is a discussion between aggrieved and respondent parties initiated and guided by an independent third party to review the complaint and assist the parties in negotiating their own outcome to a satisfactory and lawful conclusion. Such a meeting may be by means of negotiation, mediation or conciliation. The facilitator guides the discussion in order to allow the parties to identify and clarify issues in dispute. In all cases the facilitator will be an independent third party external to the Commission, who is suitably trained in mediation, conciliation or negotiation skills. The skills and experience of the facilitator must be made known to all parties.

All parties must have confidence in the facilitator's capacity and impartiality. A party to the grievance may request a different facilitator should sufficient and reasonable concerns be demonstrated.

A facilitation process is not a "win at all costs" scenario. The process aim is to reach a compromise between parties that is considered satisfactory and workable in the environment.

Should there be an apparent clear intention from one or more parties to use the process to further harass or harangue the other party, then the facilitation is inappropriate and other actions will be considered to resolve the grievance.

9.0 What can you expect with the complaints process?

1. The CCO/investigating officer may, with the agreement of all parties, initiate a facilitated discussion to resolve the complaint. The discussion should be completed as soon as practicable from the commencement of the complaints process.
2. Where one or all parties are reluctant to participate in a facilitated discussion, the CCO/investigating officer may require each party to meet separately with the facilitator to be informed on how the facilitation process works. Each party must be given the opportunity to make an informed decision in regard to every step of the complaints process, and every endeavour should be made to encourage parties to reach a resolution.

It may be deemed inappropriate for the parties to have face to face facilitation in the event of an alleged sexual or other harassment grievance. Individual facilitation will be effected in such a circumstance prior to further investigation (refer to the Commission's Harassment Discrimination and Bullying Policy).

3. If the aggrieved party or respondent refuses to participate in a facilitation process, and the CCO/investigating officer determines the refusal to be unreasonable in all the circumstances, he/she may elect to take no further action in regard to the complaints process. A written decision must be provided to all parties.

Facilitated discussions are of little use unless all or both parties are committed to reaching a resolution. Genuine and reasonable efforts must be made by both the aggrieved and the respondent in the grievance process. Vexatious or frivolous complaints are not considered valid complaints and will not be dealt with by the Commission.

4. If facilitated discussions have failed to resolve the complaint, or have been considered inappropriate in the circumstances, the CCO/investigating officer must initiate other actions to attempt a resolution as soon as possible. Such actions may comprise, but are not limited to:
 - launch an investigation into allegations raised
 - review the reasons for an administrative action or decision which have caused the grievance

- initiate further conflict resolution or negotiation strategies
- involve other agencies in the conflict who may offer expertise in dispute resolution
- further training for one or more relevant parties or
- initiate other actions as are deemed reasonable in the circumstances.

A written record must be kept by the CCO/investigating officer of alternative methods utilised.

5. Having attempted resolution through facilitation and all other methods deemed appropriate, the CCO/investigating officer must make a determination on the complaint within twenty-eight (28) calendar days of receiving the complaint and deliver a written determination to all parties inclusive of reasons. Details provided must include the resolution procedure, action to manage the employee complaint, outcome of the complaints process, reasons for the decision and be retained along with other pertinent documentation on a confidential file. The decision must be capable of review. The confidential file should be kept securely by the CCO in a complaints file separate from the normal personnel file. A reference should be made on the personnel file to refer the file manager to related files such as the complaints file. A sample of a decision letter is provided in Appendix A.
6. An extension of the twenty-eight (28) day timeframe may be granted by the Commission subject to agreement between the parties, however, the CCO/investigating officer (with the approval of the Commissioner) may initiate such an extension without prior agreement where it has been demonstrated that reasonable attempts have been made to progress the matter, but due to unforeseen circumstances the timeframe has been insufficient.
7. Should an extension be granted, all parties must be informed of the status of the complaint, projected timeframe and reasons for the extension.
8. In every instance where a request is made by a party to the complaint for information on the status of the matter, the CCO/investigating officer must inform such party of the status within seven (7) calendar days of having received the request, subject to the request being reasonable. Where the provision of such information may prejudice the resolution of the grievance, the request may be denied.
9. Regular and timely feedback must be provided by the CCO/investigating officer to all parties. A written record must be kept of each stage of the complaints process, including outcome, and kept on the confidential file.
10. In the case of a complaint in regard to an administrative decision, should a complainant not receive a decision from the CCO/investigating officer within the 28 day timeframe without agreement of extension, it will be deemed that the administrative decision has been confirmed and the complainant (if still aggrieved) may make a request for internal review.
11. If the outcome of a complaints process is that an employee or manager is to be disciplined, management and staff should refer to the Discipline in the Workplace Policy – a Guide for Management and Employees.

10.0 What is expected at the workplace during the process?

1. Where a complaint is considered vexatious, frivolous, does not meet the definition of an employee complaint as specified in this policy or if an employee unreasonably refuses to participate in a resolution of the complaint, the CCO/investigating officer will take no further action and will deliver a written decision to all parties concerned within twenty-eight (28) days of the complaint being lodged.
2. Matters concerning the complaint, process of determination and any other matters are to remain confidential, and all parties are required to comply with the confidentiality requirement. Personal information which is accessed through the complaints process and in investigating and responding to complaints will be managed in accordance with the Commission's Privacy Policy and Right to Information Guidelines, together with the relevant legislative provisions of the *Information Privacy Act 2009* and the *Right to Information Act 2009*. Any breach of confidentiality will be dealt with under the Commission's Workplace Policy and the Queensland Public Service Code of Conduct.
3. Work must continue at the Commission during the dispute process as it was prior to the lodging of the complaint, unless there is a demonstrated health and safety issue, sexual or other harassment allegation which may create a legal or financial liability to the Commission.

11.0 Complaints lodged by an employee against Chief Executive

Complaints against the Commission's Chief Executive (the Commissioner) must relate to the Commissioner's actual conduct. Complaints cannot be lodged against the Commissioner in regard to an administrative decision, or the Commissioner's review of an administrative decision. A conduct complaint must be lodged directly with the Public Service Commission Chief Executive (CCE) in writing, along with the actions considered necessary by the complainant to resolve the complaint. The complaint must be lodged on the basis that the conduct is either unfair, unreasonable, constitutes sexual or workplace harassment, or has a substantial and direct adverse effect upon the employee. Complaints which may indicate official misconduct by the Commissioner will be referred by the CCE to the Crime and Corruption Commission (CCC).

In resolving a complaint against the Commissioner, the CCE (or delegate) may request a copy of this policy to assist in the decision-making process. The CCE must formally advise the Commissioner of the complaint and request a written response to the issues raised. The Commissioner's written response may, in certain circumstances, be provided to the complainant for a final right of reply.

The CCE, upon considering the complaint, may determine that there is no further action required in the following circumstances:

- the complaint is considered frivolous or vexatious
- the complaint is misconceived or lacks substance, or
- the complainant unreasonably refuses to participate in resolving the matters raised.

The decision of the CCE (including a decision to take no further action) must be provided to the complainant in writing. The following detail is required:

- actions taken in managing the complaint
- reasons for the decision
- actions taken as a result of the decision
- review rights available to the complainant.

Review rights in regard to a decision of the CCE may be made via an application to the Queensland Industrial Relations Commission (QIRC), or an application for a statutory order of review under the *Judicial Review Act 1991*.

12.0 Appeals

An employee who wishes to lodge a fair treatment appeal is required to have used the Commission's complaints mechanism prior to lodging the appeal except in the following situations:

- a finding that a disciplinary ground exists for an employee (an employee may lodge a public service appeal in relation to the decision) and
- a decision to suspend an employee from duty without pay (an employee may lodge a public service appeal in relation to that decision)

If an employee is aggrieved with the decision of the CCO/investigating officer at the conclusion of the complaints process, the employee may proceed with an appeal to the Commissioner for an **internal review**. The appeal must:

- be submitted in writing
- be received to the Commissioner *within 14 days* of receiving a copy of the decision
- state the reasons for appeal, the standard of which must satisfy the Commissioner beyond a belief of unfairness or unreasonableness
- state what is required to resolve the matter.

Once a request for an internal review has been received, the Commission must notify the employee in writing that the request has been received, the name and contact information for a contact person, and must inform the employee of the 14 day timeframe for making a decision upon the written request for internal review.

The Commissioner (or delegate) must then make a determination as to whether there is a justifiable case for review. Should the Commissioner (or delegate) determine that a review is not warranted (i.e. frivolous/vexatious/complainant refusal to participate) a written decision must be provided to the employee.

Internal review must be completed *within 14 days* of receipt of the written appeal unless extended by mutual agreement or where the Commissioner can demonstrate that reasonable attempts have been made to progress the matter, however, due to unforeseen circumstances the timeframe was too restrictive. A written decision must be provided to the complainant employee. Details provided must include what action was undertaken to determine the appeal, the reasons for the decision, any action the Commissioner (or delegate) proposed to take and outline any avenues of external review including relevant timeframes. The decision must be capable of review.

If the Commissioner (or delegate) fails to make a decision within the 14 day timeframe, the absence of such decision will be considered as confirmation of the original decision made by the CCO/investigating officer.

Should the employee remain aggrieved with the decision of the Commissioner (or delegate), he/she may apply for **external review**. Avenues for external review include a public service appeal under the PSA, the Queensland Ombudsman or the Queensland Industrial Relations Commission.

13.0 Making Public Interest Disclosures

A Public Interest Disclosure (PID) is a report of suspected wrongdoing or danger. In the interests of encouraging open and transparent governance the Queensland Government has enacted the *Public Interest Disclosure Act 2010* effective from 1 January 2011. The *Public Interest Disclosure Act 2010* (PID Act) replaces the prior legislation which provided for public interest disclosures, the *Whistleblowers Protection Act 1994 (Qld)*.

The PID Act provides protection from the threat of reprisal or punishment for those who wish to reveal suspected wrongdoing. This protection was deemed necessary following the Fitzgerald Inquiry in 1989 which brought to light the difficulties people faced in disclosing information about wrongdoing, either in their agency or in external agencies.

The Commission is committed to promoting the public interest by facilitating disclosures of wrongdoing and ensuring that public interest disclosures are correctly assessed, appropriately and thoroughly investigated, and dealt with in accordance with the PID Act.

For further information in regard to how the Commission will deal with a PID, refer to the Commission's Public Interest Disclosure Policy and Procedure.

For further information and assistance contact:

The Registrar
Family Responsibilities Commission
Level 3, 107 Lake Street, Cairns
Telephone (07) 4081 8400 Fax (07) 4041 0974

APPENDIX A

Date ***[Decision on complaint notification]***

Address 1
Address 2
Address 3

Dear

I refer to your written complaint dated ***[insert date of complaint notification]*** in which you detailed a grievance in regard to:

[insert administrative decision/failure to make administrative decision/conduct/behavior]

which you believe to be ***[unfair/unreasonable]*** and which you also believe adversely affects you.

I confirm your advice that this/these issue/s have first been informally raised with ***[insert name of respondent/manager]*** in order to attempt a resolution and that both yourself and the respondent have in the first instance been referred to the Commission's employee assistance service providers.

Consideration has been given to all the evidence before me and I ***[do/do not]*** believe that you are aggrieved in the circumstances.

[Address here any points raised to dismiss the complaint i.e. frivolous/vexatious/not meeting the requirement of a valid complaint]

or

I confirm that following receipt of your complaint, and investigations into the allegations raised, the following resolution strategies were initiated:

[Address here what processes were followed i.e. facilitation/mediation/conflict resolution/negotiation/review of administrative decision etc and what management actions were made to manage the issue/s during the process]

The outcome of the above actions are:

[Address what the outcome of the process was i.e. matter resolved, disciplinary process to follow etc]

A record of this complaints procedure and outcome will be retained on a separate confidential file and may be considered in any future related complaints notification. Your personnel file will contain only the outcome of the complaints procedure and a notation that a separate complaints file exists.

You may apply for an internal review of this decision should you still feel aggrieved to the Commissioner **within 14 days** of your receipt of this letter. If no application for an internal review is received within 14 days, the matter will be determined as concluded.

Should you have any questions regarding this letter, please do not hesitate to contact ***[insert name]*** on telephone number ***[insert telephone number]***.

Yours sincerely

**Complaints Contact Officer
Family Responsibilities Commission**