

INTEGRATED (HR / IR) RESOURCE MANUAL

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1. PRELIMINARY

Queensland Health employees have access to the following options for resolution of grievances or disputes:

1. Grievance procedures contained within the relevant industrial Award;
2. The Grievance Resolution procedure under Public Service Commissioner Directive 04/03 – *Grievance Resolution*, as amended from time to time;
3. The grievance procedure detailed in the *Queensland Public Health Sector Certified Agreement (No.6) 2005* in relation to Enterprise Bargaining matters; and
4. The associated provisions in the *Nurses (Queensland Health) Certified Agreement (EB6) 2006*.

(NB. Option 2 does NOT apply to Nursing staff, who are covered under the *Nurses (Queensland Health) – Certified Agreement 2006* – refer PART C of this IRM)

2. PURPOSE

The purpose of this policy is to:

- outline the circumstances under which an employee may lodge a grievance; and
- explain the process to be followed in relation to the resolution of grievances and disputes.

3. PRINCIPLES

- 3.1. Where possible, employee grievances will be resolved in an informal manner at the local workplace level;
- 3.2. All grievances will be managed in a way which is open, transparent and fair, and which affords natural justice to all parties to the grievance;
- 3.3. For grievances alleging workplace harassment, or where otherwise appropriate, mediation by a suitably qualified mediator between the parties to a grievance will be assessed as an option for resolving the grievance;
- 3.4. Where grievances cannot be resolved at the local level, formal grievances will be addressed in a timely, efficient, effective and confidential manner;

- 3.5. Queensland Health will implement strategies to actively address allegations of sexual harassment or workplace harassment;
- 3.6. A party to a grievance is entitled to representation by a relevant registered industrial Union of Employees at all stages of the grievance process;
- 3.7. A party to a grievance under Directive 04/03 may not be represented by a lawyer, other than a lawyer who is an employee of a relevant industrial association;
- 3.8. A person who performs the role of mediator for any given grievance must not be appointed as an investigation officer for the same grievance or vice versa;
- 3.9. Where possible and appropriate, Queensland Health employees who have been trained in grievance investigation skills should be appointed to investigate grievances. Where this is not possible or appropriate, processes must be implemented to ensure that grievances are investigated using approved techniques; and
- 3.10. Where an employee lodges two or more grievances about related matters, or two or more employees lodge separate grievances about related matters, they may be managed as one grievance.

4. Definitions

- 4.1. **Assess effectiveness of mediation** – means discussion with the parties to establish whether mediation is likely to resolve the grievance; and, if appropriate, organising a suitably qualified mediator, and arranging times for the mediation to proceed.

Mediation is unlikely to be a suitable option where there is:

- (i) A reasonable apprehension of violence to one of the parties; or
- (ii) A clear indication that one of the parties will not participate; or
- (iii) A clear intention of one party to use the process to further harass another party; or
- (iv) Diminished capacity of one party to negotiate on their own behalf which cannot be offset by the skill of the mediator; or
- (v) Evidence that the process will cause unreasonable psychological stress to a party.

- 4.2. **Issue of conscience** - refers to a conflict between a religious or other similar belief, and the performance of a specific authorised work activity.

- 4.3. **Lawyer** – a barrister, solicitor or other legal practitioner who derives their income from practice as a lawyer and has been engaged by a party to a grievance.
- 4.4. **Natural justice** – is concerned with ensuring that an objective decision-maker reaches a procedurally fair decision. There are two basic rules of natural justice:
- The hearing rule – requires that where an action could adversely affect an employee's interests, the employee must have a chance to state his or her case before the action is taken; and
 - The rule of bias – requires that the decision-maker brings, and is seen to bring, an impartial and prejudice free mind to resolving the question to be decided.

In the context of a grievance, this requires that, where material is obtained that may reasonably be considered to be detrimental to an employee's interests, that employee should be provided with access to the material as soon as practicable and given an opportunity to respond to such material.

Material provided should include the factual information to be examined, and should be in sufficient enough detail to enable adequate preparation of a response.

However, provision of material to a party to a grievance must be in accordance with IRM 3.3-2 – *Access to Employee Record*. This IRM specifies circumstances in which it is not appropriate to provide material to certain parties.

Review Tribunals such as the OPSC and the Industrial Relations Commission (IRC) may overturn decisions if they are found to be procedurally flawed. Therefore, the role of decision-makers in ensuring all of the necessary steps in the process are followed is an extremely important one.

- 4.5. **Relevant authorised delegate** – the employee who has authority to make decisions in relation to formal grievances in accordance with the *Human Resource Delegations Manual*.
- 4.6. **Sexual Harassment** – has the meaning given to it by section 119 of the *Anti-Discrimination Act 1991*.

- 4.7. **Status Quo** - subject to legislation, whilst a grievance procedure is being followed, work must continue as it was prior to the grievance occurring, except in the case of a genuine safety issue, sexual harassment, an 'issue of conscience', or where to do so could create a legal liability for Queensland Health. No party will be prejudiced as to the final settlement by this clause.

Without limiting an employee's right to pursue a grievance, no party will use the grievance procedure to prevent the introduction of the outcomes of organisational change or restructuring undertaken in accordance with the relevant industrial instrument or to limit matters agreed between the parties in accordance with Award provisions.

- 4.8. **Workplace Harassment** – is where an employee is subjected to repeated behaviour, other than behaviour which constitutes sexual harassment, by another employee or group of employees 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, intimidating, humiliating or threatening.

Workplace harassment does NOT include reasonable management action taken in a reasonable way by the Director-General or delegate in connection with the employee's employment.

5. TRANSITION ARRANGEMENTS

- 5.1. A grievance lodged before the commencement of this IRM must continue to be resolved in accordance with provisions as applicable at the time of lodgement.

PART A. GRIEVANCE AND DISPUTE RESOLUTION FOR MATTERS NOT RELATED TO QUEENSLAND PUBLIC HEALTH SECTOR CERTIFIED AGREEMENT (No.6) 2005- OTHER THAN NURSING STAFF.

This part relates to grievance and dispute resolution for matters other than those relating to the interpretation, application or operation of the *Queensland Public Health Sector Certified Agreement (No.6) 2005*. The processes available to resolve these grievances are:

- 1) the process as outlined in a relevant industrial award; or
- 2) the process outlined in Public Service Commissioner Directive 04/03.

(Note: This part of the IRM does not apply to nursing employees, however nursing employees should be treated no less favourably than other employees in relation to the application of paragraph 7.3 of this part).

6. PROCEDURE

Stage One - Local and informal grievance resolution

Regardless of which grievance process is utilised, the employee with the grievance **MUST** attempt to resolve it through discussion and cooperation with their immediate supervisor before taking the matter further.

The following circumstances are the only exceptions to this principle;

- Where the grievance relates to the actions/conduct of the employee's immediate supervisor, it should be referred to the supervisor's reporting officer;
- Where the grievance relates to the actions/conduct of a senior employee, it should be referred to the relevant authorised delegate, as appropriate;
- Where the grievance alleges sexual harassment, it should be lodged as a formal grievance with the relevant authorised delegate;
- Where the grievance relates to the actions/conduct of the Director-General, it should be lodged as a formal grievance with the Public Service Commissioner.

Stage Two - Lodging a Formal Grievance (if not resolved)

Where local and informal processes have failed to resolve a grievance, the parties to the grievance may lodge a formal grievance with the relevant authorised delegate:

- The delegate is to advise the employee of their options in relation to lodging a formal grievance. An employee may choose to lodge a grievance under the provisions of their relevant industrial Award, or use the grievance procedure under Directive 04/03.
- Where a formal grievance is to be lodged, the employee must specify in writing at the time of lodgement, which option they have chosen (ie the process in their Award or the process in the Directive).
- An employee may not use more than one grievance procedure for substantially the same matter.
- Where an employee does NOT choose an option in writing, the default will be the procedure under Directive 04/03. However, if the grievance is in relation to a matter identified in paragraph 7.1.2, the award procedure will apply.
- Where an employee elects to pursue a grievance under an Industrial Award, they should refer to that Award for information regarding the

procedure. Please refer below for the formal grievance procedure in accordance with Directive 04/03.

7. PROCEDURE FOR RESOLVING FORMAL GRIEVANCES UNDER PUBLIC SERVICE COMMISSIONER DIRECTIVE 04/03

7.1. Circumstances where a formal grievance may be lodged

7.1.1. An employee may lodge a formal grievance with the relevant authorised delegate where they have an honest belief based on reasonable grounds that:

- An administrative decision made in Queensland Health adversely affects them, and is unfair or unreasonable; or
- The conduct of an employee, agent or contractor of Queensland Health adversely affects them and is unfair or unreasonable; or
- The behaviour of a Queensland Health employee, agent or contractor whether by action or inaction, constitutes sexual harassment or workplace harassment.

7.1.2. An employee may NOT lodge a formal grievance under this section:

- Unless the employee can provide evidence that they have made reasonable attempts to resolve the matter locally and informally (except in circumstances where local resolution is not viable); or
- About an act or omission that is the subject of another grievance procedure; or
- About a decision to discipline the employee; or
- About a decision to retire the employee in accordance with section 85(3)(b) of the *Public Service Act 1996*; or
- About a decision that decides the policy, strategy, nature, scope, resourcing or direction of a service or work unit within Queensland Health or the Department generally.

7.2. Requirements for lodging a formal grievance

7.2.1. Where an employee lodges a formal grievance, it must be in writing and must specify the following:

- The grounds on which the employee believes they have been adversely affected by an administrative decision or by the conduct or behaviour of an employee, agent or contractor; and
- The action which the employee believes would resolve the grievance; and

- The attempts that the employee has made to resolve the grievance locally.

7.3. Action required by delegate upon receipt of a formal grievance

- 7.3.1. Where a grievance alleges workplace harassment, the relevant authorised delegate must assess the effectiveness of mediation in resolving the grievance.
- 7.3.2. For other grievances where it is considered appropriate, and with the agreement of the parties to the grievance, mediation may be initiated.
- 7.3.3. If mediation is successful, a record must be prepared and retained in relation to the outcome of the mediation process.
- 7.3.4. If mediation is not appropriate or is unsuccessful in resolving the grievance, the authorised delegate must promptly instigate appropriate action to resolve the grievance. Such action may include appointing an independent investigator to investigate the grievance and preparing a report.
- 7.3.5. The delegate must immediately notify the parties to the grievance the name/s of the appointed investigator/s.
- 7.3.6. Should a party to a grievance object to the appointment of one or more investigation officers, they must notify their objection in writing to the delegate prior to the commencement of the investigation. The submission to the delegate must include reasons for the objection.
- 7.3.7. At the end of an investigation, the authorised delegate must provide the parties to the grievance a written copy of the grievance investigation findings, decisions and reasons for the decisions.
- 7.3.8. All documentation associated with a grievance must be kept in a confidential and secure manner and must be held separately from employees' personal records.

7.4. Timeframes

- 7.4.1. Where mediation is agreed to be appropriate, mediation must be initiated within 2 working days of notification of the grievance.

- 7.4.2. Unless otherwise agreed between the parties, mediation must be completed within 7 calendar days of the commencement of the mediation process.
- 7.4.3. Unless otherwise agreed between the parties, a decision must be issued in relation to a grievance within 21 calendar days of written notification of the grievance.
- 7.4.4. Where a party to a grievance requests information about progress made to resolve the grievance, this information must be provided within 7 calendar days of such request, unless the request is unreasonable or provision of the information would prejudice the satisfactory resolution of the grievance.

7.5. Appeals

- 7.5.1. A party to a grievance may lodge a fair treatment appeal with the Public Service Commissioner where:
- They have not received a decision in relation to a grievance within 21 calendar days (or other timeframe as agreed between the parties) from the date of written notification of the grievance; or
 - Within 21 calendar days from the date of written notification of the decision by the authorised delegate.
- 7.5.2. A party to a grievance may refer an unresolved grievance to the Queensland Industrial Relations Commission under a dispute notification.

7.6. Reporting Requirements under Directive 04/03

- 7.6.1. The following information **MUST** be recorded by the relevant area managing the grievance (please refer to Attachment 1 – Flowchart for further information):
- The number of grievances lodged under Directive 04/03;
 - The number of grievances lodged under an Industrial Award;
 - The nature of each grievance – whether regarding an administrative decision, employee conduct, sexual harassment or workplace harassment;
 - The work unit and geographical location of each grievance; and
 - Whether the grievance was resolved through mediation, following an investigation and determination by the relevant Queensland Health delegate, or on appeal to the Public Service Commissioner.

PART B. GRIEVANCE AND DISPUTE RESOLUTION FOR MATTERS RELATING TO THE INTERPRETATION, APPLICATION OR OPERATION OF THE QUEENSLAND PUBLIC HEALTH SECTOR CERTIFIED AGREEMENT (No.6) 2005- OTHER THAN NURSING STAFF.

8. POLICY

The parties to the *Queensland Public Health Sector Certified Agreement (No.6) 2005* will use their best endeavours to cooperate in order to avoid grievances arising between the parties or between an employer and individual employees. The emphasis will be on negotiating a settlement of any issue at the earliest possible stage in the process

9. APPLICATION

Two or more current grievances made by the same employee about related matters, or a grievance from more than one employee about related matters may be dealt with as one grievance.

10. PROCEDURE

In the event of any disagreement between the parties as to the interpretation, application or implementation of the *Queensland Public Health Sector Certified Agreement (No.6) 2005*, the following procedures shall be followed:

- 10.1. A grievance is identified at the local level by an accredited union representative, the employee(s) concerned or a management representative and an initial discussion should take place at this level.
This stage shall take no longer than 7 days.
- 10.2. If the parties at the local level cannot resolve the matter, it should be referred to either the relevant union official for the enterprise in the case of employees or to the District management (or equivalent) in the case of management, for resolution. *This stage shall take no longer than 14 days.*
- 10.3. If the matter cannot be resolved, then either party shall refer the matter to the State Bargaining Unit (SBU). Where the SBU forms a unanimous view on the resolution of the grievance, this is the position that must be accepted and implemented by the parties and shall be given effect by the Chief Executive Officer.

- 10.4. Where a bona fide safety issue is involved the Health Service District (or equivalent) shall ensure that:
- the status quo prior to the existence of the grievance or dispute is to continue while the procedure is being followed; and/or
 - the employee shall not work in an unsafe environment. Where appropriate, the employee shall accept reassignment to alternative suitable work/work environment in the meantime;
 - the employer/management in conjunction with the Occupational Health and Safety Committee will promptly ensure that the problem(s) is/are resolved having regard to occupational health and safety standards.
- 10.5. Provided that maintenance of the status quo shall not apply in an unsafe environment.
- 10.6. If the matter identified in subclause 10.3 remains unresolved then either party may refer the matter to the Queensland Industrial Relations Commission.

11. INDUSTRIAL DISPUTES

In relation to industrial disputes, the normal range of options available in legislation is available to the parties especially if service delivery is threatened.

PART C. GRIEVANCE AND DISPUTE RESOLUTION – NURSING STAFF

Nothing in this grievance and dispute resolution procedure is to limit the application of an interest based (mutual gains) approach to resolving any matter.

12. PROCEDURE

- 12.1. Application – In applying the Grievance and Dispute procedures under this part, nursing employees should be treated no less favourably than other employees are to be treated under paragraph 7.3 of Part A of this IRM.
- 12.2. Grievances and disputes in relation to workload management will be addressed in accordance with clause 17.2 - Nursing Workloads Grievance Procedure, of Schedule 4 of the *Nurses (Queensland Health) Certified Agreement (EB6) 2006* (the *Nurses (Queensland Health) Section 170MX Award 2003*).

- 12.3. Grievances and disputes in relation to the interpretation and implementation of the *Nurses (Queensland Health) Certified Agreement (EB6) 2006*, will be addressed in accordance with clause 8.1 of the agreement.
- 12.4. All other grievances and disputes will be addressed in accordance with clause 9 - Grievance Procedure, of Schedule 2 of the *Nurses Queensland Health Certified Agreement (EB6) 2006* (the *Nurses (Queensland Public Hospitals) Award – 2004*).

PART D. CHECKLIST FOR MANAGING BULLYING/HARASSMENT GRIEVANCES

The Director General has established a Workplace Investigation Unit (WIU) specifically to manage allegations relating to bullying and harassment issues. The following steps set out the process that WIU follows in managing these matters:-

Step One – Informal Process

- Grievance/complaint raised - The aggrieved employee's supervisor (if not implicated in the grievance/complaint) would talk to the employee and their union if applicable, and ascertain how the issues may be resolved. The supervisor may seek advice from HR or more senior local management regarding best way to address the issue. HR may seek advice about options from the WIU.
- If the supervisor is unable to resolve the matter, a more senior manager (eg Unit Director, District Manager or HR Manager) will discuss the matter with the employee and their Union if applicable. Solutions such as mediation, facilitation or other informal process may be offered to the employee. The object is to attempt to resolve the matter as quickly as possible and maintaining and/or improving working relationships. (Step one constitutes the informal process as per Directive 04/03)

Step Two – Formal Process

- If all possible local, informal solutions are exhausted or the parties are not willing to resolve the matter informally, a formal grievance or written complaint should be lodged if it has not already.
- If a formal grievance is lodged or written complaint made, the District Manager (or equivalent) must present the written allegations to the person/s identified (accused) as required in under the provisions of IRM 3.3.2 relating to a detrimental record. The person/s will be given 14 days to respond to allegations. If responses do not resolve the

matter or an investigation is required, the matter is referred to the WIU by the District Manager or equivalent. - email to WIU@health.qld.gov.au

- The WIU will make an assessment of the grievance. The WIU may discuss the matter with the managers, the employee's Union and relevant people in the district including supervisors, HR and District Managers with a view to attempting to reach a resolution. The relevant Area Health Service may also assist in resolving the matter.

Step Three – Investigation

- The WIU may attempt to continue an informal path, refer the matter back to the District if appropriate or, launch a formal investigation.
- If a formal investigation is required the WIU will manage the process. The WIU will appoint an appropriate investigator and outline the terms of reference of the investigation.

Step Four - Report

- The investigator will provide the WIU with a report.
- The WIU will provide the relevant delegate with a copy of the report and offer assistance if required.
- The delegate will make the decision within 14 days and provide the WIU with a copy of the decision
- The delegate will provide the relevant information from the report to the appropriate parties to the matter within 14 days of making the decision (In accordance with FOI principles).

Outcome

- It would be normally expected that the District or Area Health Service will manage the outcome.