# Grievance Resolution

**Human Resources Policy**

**Effective Date:** April 2010

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PURPOSE</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>APPLICATION</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>GUIDELINES</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>DELEGATION</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>REFERENCES</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>SUPERSEDES</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>POLICY</td>
<td>2</td>
</tr>
<tr>
<td>7.1</td>
<td>Principles</td>
<td>3</td>
</tr>
<tr>
<td>8</td>
<td>APPLYING THE POLICY</td>
<td>3</td>
</tr>
<tr>
<td>8.1</td>
<td>Transition arrangements</td>
<td>3</td>
</tr>
<tr>
<td>8.2</td>
<td>Grievance and dispute resolution for matters not related to Queensland Public Health Sector Certified Agreement (No.7) 2008 - other than nursing staff</td>
<td>3</td>
</tr>
<tr>
<td>8.2.1</td>
<td>Stage one – local and informal grievance resolution</td>
<td>4</td>
</tr>
<tr>
<td>8.2.2</td>
<td>Stage two – lodging a formal grievance (if not resolved)</td>
<td>4</td>
</tr>
<tr>
<td>8.2.3</td>
<td>Procedure for resolving formal grievances under Directive 11/07 – Grievance Resolution</td>
<td>5</td>
</tr>
<tr>
<td>8.3</td>
<td>Grievance and dispute resolution for matters relating to the interpretation, application or operation of the Queensland Public Health Sector Certified Agreement (No.7) 2008 - other than nursing staff</td>
<td>7</td>
</tr>
<tr>
<td>8.4</td>
<td>Grievance and dispute resolution – nurses and midwives</td>
<td>8</td>
</tr>
<tr>
<td>8.5</td>
<td>Managing workplace harassment grievances</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>DEFINITIONS</td>
<td>9</td>
</tr>
<tr>
<td>10</td>
<td>HISTORY</td>
<td>11</td>
</tr>
</tbody>
</table>
1 PURPOSE

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.

2 APPLICATION

This policy applies to employees of Queensland Health.

3 GUIDELINES

Guidelines may be developed to facilitate implementation of this policy. The guidelines must be consistent with this policy.

4 DELEGATION

The ‘delegate’ is as listed in the Queensland Health Human Resource Delegations Manual as amended from time to time.

5 REFERENCES

- Public Service Act 2008
- Health Services Act 1991
- Right to Information Act 2009
- Information Privacy Act 2009
- Anti-Discrimination Act 1991
- Nurses and Midwives (Queensland Health) Certified Agreement (EB7) 2009
- Queensland Public Health Sector Certified Agreement (No.7) 2008
- Health Practitioners’ (Queensland Health) Certified Agreement (No.1) 2007
- Directive 11/07 – Grievance Resolution
- Access to Employee Records HR Policy F3
- Workplace Harassment HR Policy E13

6 SUPERSEDES

- IRM 3.5 Grievance Resolution and EB6 Grievance Settling and Industrial Disputes

7 POLICY

Queensland Health employees have access to the following grievances and dispute resolution processes:

- Grievance procedures contained within the relevant industrial Award.
- Grievance Resolution procedure under Directive 11/07 – Grievance Resolution, as amended from time to time.
- The grievance procedure detailed in the Queensland Public Health Sector Certified Agreement (No.7) 2008 in relation to enterprise bargaining matters.
- The associated provisions in the Nurses and Midwives (Queensland Health) Certified Agreement (EB7) 2009.
7.1 Principles

When possible, employee grievances are to be resolved in an informal manner at the local workplace level. All grievances are to be managed in a way which is open, transparent and fair, and which affords natural justice to all parties to the grievance.

Grievances alleging workplace harassment, or when otherwise appropriate, mediation by a suitably qualified mediator between the parties to a grievance is to be assessed as an option for resolving the grievance. When grievances cannot be resolved at the local level, formal grievances are to be addressed in a timely, efficient, effective and confidential manner.

Queensland Health is to implement strategies to actively address allegations of sexual harassment or workplace harassment. A party to a grievance is entitled to representation by a relevant registered industrial union of employees at all stages of the grievance process.

A party to a grievance under Directive 11/07 – Grievance Resolution may not be represented by a lawyer, other than a lawyer who is an employee of a relevant industrial association.

A person who performs the role of mediator for any given grievance is not to be appointed as an investigation officer for the same grievance or vice versa.

When possible and appropriate, Queensland Health employees who have been trained in grievance investigation skills are to be appointed to investigate grievances. When this is not possible or appropriate, processes are to be implemented to ensure that grievances are investigated using approved techniques.

When 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.

8 APPLYING THE POLICY

8.1 Transition arrangements

A grievance lodged before the commencement of this policy is to continue to be resolved in accordance with provisions as applicable at the time of lodgement.

8.2 Grievance and dispute resolution for matters not related to Queensland Public Health Sector Certified Agreement (No.7) 2008 - other than nursing staff

This section 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.7) 2008. The processes available to resolve these grievances are:

- the process as outlined in a relevant industrial award

Or
• the process outlined in Directive 11/07 – Grievance Resolution.

Nursing staff are to refer to section 8.4 of this policy. Nursing employees are to be treated no less favourably than other employees in relation to the action required by a delegate upon receipt of a formal grievance.

8.2.1 Stage one – local and informal grievance resolution

Regardless of which grievance process is used, the employee with the grievance is to 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:

• When the grievance relates to the actions/conduct of the employee’s immediate supervisor, it is to be referred to the supervisor’s reporting officer.
• When the grievance relates to the actions/conduct of a senior employee, it is to be referred to the relevant authorised delegate, as appropriate.
• When the grievance alleges sexual harassment, it is to be lodged as a formal grievance with the relevant authorised delegate.
• When the grievance relates to the actions/conduct of the Director-General, it is to be lodged as a formal grievance with the Public Service Commission (PSC) Chief Executive.

8.2.2 Stage two – lodging a formal grievance (if not resolved)

When 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 11/07 – Grievance Resolution.
• When a formal grievance is to be lodged, the employee is to specify in writing at the time of lodgement which option they have chosen (i.e. the process in their award or the directive).
• An employee may not use more than one grievance procedure for substantially the same matter.
• When an employee does not choose an option in writing, the default is to be the procedure under Directive 11/07 – Grievance Resolution. However, if the grievance is in relation to a circumstance identified below, the award procedure is to apply.
• When an employee elects to pursue a grievance under an industrial award, they are to refer to that award for information regarding the procedure. Refer section 8.2.3 for the formal grievance procedure in accordance with Directive 11/07 – Grievance Resolution.
8.2.3 Procedure for resolving formal grievances under Directive 11/07 – Grievance Resolution

Circumstances when formal grievance may be lodged
An employee may lodge a formal grievance with the relevant authorised delegate when 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
- the conduct of an employee, agent or contractor of Queensland Health adversely affects them and is unfair or unreasonable
- the behaviour of a Queensland Health employee, agent or contractor whether by action or inaction, constitutes sexual harassment or workplace harassment.

An employee may not lodge a formal grievance under this section:

- unless the employee can provide evidence they have made reasonable attempts to resolve the matter locally and informally (except in circumstances when local resolution is not viable)
- about an act or omission that is the subject of another grievance procedure
- about a decision to discipline the employee
- about a decision to retire the employee in accordance with the Public Service Act 2008
- 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.

Requirements for lodging a formal grievance
When an employee lodges a formal grievance, it is to be in writing specifying 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.
- The action which the employee believes would resolve the grievance.
- The attempts that the employee has made to resolve the grievance locally.

Action required by delegate upon receipt of a formal grievance
When a grievance alleges workplace harassment, the relevant authorised delegate is to assess the effectiveness of mediation in resolving the grievance. For other grievances when it is considered appropriate, and with the agreement of the parties to the grievance, mediation may be initiated.

If mediation is successful, a record is to be prepared and retained in relation to the outcome of the mediation process. If mediation is not appropriate or is unsuccessful in resolving the grievance, the authorised delegate is to promptly instigate appropriate action to resolve the grievance. This action may include appointing an independent investigator to investigate the grievance and preparing a report. The delegate is to
immediately notify the parties to the grievance the name/s of the appointed investigator/s.

If a party to a grievance object to the appointment of one or more investigation officers, they are to notify their objection in writing to the delegate prior to the commencement of the investigation. The submission to the delegate is to include reasons for the objection.

At the end of an investigation, the authorised delegate is to provide the parties to the grievance a written copy of the grievance investigation findings, decisions and reasons for the decisions.

All documentation associated with a grievance is to be kept in a confidential and secure manner and held separately from employees’ personal records.

Timeframes
When mediation is agreed to be appropriate, mediation is to be initiated within two working days of notification of the grievance. Unless otherwise agreed between the parties, mediation is to be completed within seven calendar days of the commencement of the mediation process.

Unless otherwise agreed between the parties, a decision is to be issued in relation to a grievance within 21 calendar days of written notification of the grievance. When a party to a grievance requests information about progress made to resolve the grievance, this information is to be provided within seven calendar days of such request, unless the request is unreasonable or provision of the information would prejudice the satisfactory resolution of the grievance.

Appeals
A party to a grievance may lodge a fair treatment appeal with the PSC Chief Executive when:

- 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.

A party to a grievance may refer an unresolved grievance to the Queensland Industrial Relations Commission (QIRC) under a dispute notification.

Reporting requirements under Directive 11/07 – Grievance Resolution
The following information is to be recorded by the relevant area managing the grievance:

- The number of grievances lodged under Directive 11/07 – Grievance Resolution.
- 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.
• Whether the grievance was resolved through mediation, following an investigation and determination by the relevant Queensland Health delegate, or on appeal to the PSC Chief Executive.

8.3 Grievance and dispute resolution for matters relating to the interpretation, application or operation of the Queensland Public Health Sector Certified Agreement (No.7) 2008 - other than nursing staff

The parties to the Queensland Public Health Sector Certified Agreement (No.7) 2008 are to use their best endeavours to cooperate in order to avoid grievances arising between the parties or between an employer and individual employees. The emphasis is to be on negotiating a settlement of any issue at the earliest possible stage in the process.

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. 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.7) 2008, the following procedures are to be followed:

• 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 is to take place at this level. This stage is to take no longer than seven days.
• If the parties at the local level cannot resolve the matter, it is to 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 is to take no longer than 14 days.
• If the matter cannot be resolved, then either party is to refer the matter to the State Bargaining Unit (SBU). When the SBU forms a unanimous view on the resolution of the grievance, this is the position that is to be accepted and implemented by the parties and is to be given effect by the district CEO.
• If the matter identified above remains unresolved then either party may refer the matter to the QIRC.
• When a bona fide safety issue is involved the district/ division is to ensure that:
  o the status quo prior to the existence of the grievance or dispute is to continue while the procedure is being followed
  o the employee is not work to in an unsafe environment. When appropriate, the employee is to accept reassignment to alternative suitable work/work environment in the meantime
  o the employer/management in conjunction with the Occupational Health and Safety Committee promptly ensures that the problem(s) is/are resolved having regard to occupational health and safety standards.
• On condition maintenance of the status quo is not to apply in an unsafe environment.

In relation to industrial disputes, the normal range of options available in legislation is available to the parties, especially if service delivery is threatened.
8.4 Grievance and dispute resolution – nurses and midwives

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

In applying the grievance and dispute procedures, nursing and midwifery employees are to be treated no less favourably than other employees. All grievances and disputes are to be addressed in accordance with schedule 2 of the Nurses and Midwives (Queensland Health) Certified Agreement (EB7) 2009.

Matters relating to the interpretation, application and implementation of the Nurses and Midwives (Queensland Health) Certified Agreement (EB7) 2009

Grievances and disputes in relation to the interpretation, application and implementation of the Nurses and Midwives (Queensland Health) Certified Agreement (EB7) 2009, are to be resolved in accordance with the Interpretation, Application and Implementation of Agreement Grievances Procedure as detailed in clause 1, Schedule 2 of the agreement.

Nursing workloads

Grievances and disputes in relation to nursing workloads are to be resolved in accordance with the Nursing Workloads Grievance Procedure as detailed in clause 2, Schedule 2 of the agreement.

Other matters

Grievances and disputes in relation to all industrial matters as defined under the Industrial Relations Act 1999, except grievances relating to the interpretation, application and implementation of the agreement, are to be resolved in accordance with the Other Grievances Procedure as detailed in clause 3, Schedule 2 of the agreement.

In resolving grievances under this procedure nursing employees are to be treated no less favourably than other Queensland Health employees. Reference is to be made to the procedure under Directive 11/07 Grievance Resolution, as outlined in section 8.2.3 of this policy.

8.5 Managing workplace harassment grievances

Workplace Services, People and Culture Corporate, manages allegations relating to workplace harassment issues. The following steps set out the process followed in managing these matters.

Step one – informal process

The aggrieved employee’s supervisor (if not implicated in the grievance/complaint) is to talk to the employee (and their union if applicable) and ascertain how the issues may be resolved. The supervisor may seek advice from the local HR unit or more senior local management regarding the best way to address the issue. HR may seek advice about options from Workplace Services.

If the supervisor is unable to resolve the matter, a more senior manager (e.g. unit director, district CEO or HR manager) is to 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 objective is to attempt to resolve the matter as quickly as possible and to maintain and/or improve working relationships.

Step one constitutes the informal process as per Directive 11/07 – Grievance Resolution.

**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 is to be lodged if it has not already.

If a formal grievance is lodged or a written complaint made, the district CEO (or delegate) is to present the written allegations to the person/s identified (accused) as required under the provisions of Access to Employee Records HR Policy F3 relating to a detrimental record. The person/s is to 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 Workplace Services by the District CEO (or delegate).

Workplace Services is to make an assessment of the grievance. They may discuss the matter with the managers, the employee's union, and relevant people in the district including supervisors, HR and district CEOs with a view to attempting to reach a resolution. The relevant district may also assist in resolving the matter.

**Step three – investigation**
Workplace Services 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 Workplace Services is to manage the process. They are to appoint an appropriate investigator and outline the terms of reference of the investigation.

**Step four – report**
The investigator is to provide Workplace Services with a report. Workplace Services is to provide the relevant delegate with a copy of the report and offer assistance if required. The delegate is to make the decision within 14 days and provide Workplace Services with a copy of the decision.

The delegate is to 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).

It is expected that the district manage the outcome.

### DEFINITIONS

| **Assess effectiveness of mediation** | 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 when there is:
| • a reasonable apprehension of violence to one of the parties
<p>| • a clear indication that one of the parties will not |</p>
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<th><strong>Grievance Resolution</strong></th>
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<td>Please note that any material printed is regarded as an uncontrolled copy. It is the responsibility of the person printing the document to refer frequently to the Queensland Health Internet site for updates.</td>
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<tr>
<th><strong>Issue of conscience</strong></th>
<th>A conflict between a religion or other similar belief, and the performance of a specific authorised work activity.</th>
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<td><strong>Lawyer</strong></td>
<td>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.</td>
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<td><strong>Natural justice</strong></td>
<td>Is concerned with ensuring that an objective decision-maker reaches a procedurally fair decision. There are two basic rules of natural justice:</td>
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<td>• The hearing rule requires that when an action could adversely affect an employee’s interests, the employee is to have a chance to state his/her case before the action is taken.</td>
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<td>• 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.</td>
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<td>In the context of a grievance, this requires that when material is obtained that may reasonably be considered to be detrimental to an employee’s interests, that employee is to be provided with access to the material as soon as practicable and given an opportunity to respond to such material. Material provided is to include the factual information to be examined, and is to be in sufficient enough detail to enable adequate preparation of a response. However, provision of material to a party to a grievance is to be in accordance with Access to Employee Records HR Policy F3. This HR policy specifies circumstances in which it is not appropriate to provide material to certain parties.</td>
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<td>Review Tribunals such as the PSC and the QIRC 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.</td>
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<td><strong>Relevant authorised delegate</strong></td>
<td>The employee who has authority to make decisions in relation to formal grievances in accordance with the Human Resource Delegations Manual.</td>
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<td>Sexual harassment</td>
<td>As per section 119 of the <em>Anti-Discrimination Act 1991</em>.</td>
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| Status quo        | Subject to legislation, while a grievance procedure is being followed, work is to continue as it was prior to the grievance occurring except in the case of a genuine safety issue, e.g. sexual harassment, an issue of conscience, or when to do so could create a legal liability for Queensland Health. No party is to be prejudiced as to the final settlement by this clause.

Without limiting an employee’s right to pursue a grievance, no party is to 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. |
| Workplace harassment | When 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
• the person considers to be offensive, intimidating, humiliating or threatening
• 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. |

10 **HISTORY**

| April 2010 | Developed as a result of the HR policy consolidation project. |