

Conflict resolution at the Australian Short Story Festival

A best practice dispute resolution process should:

- be simple
- allow appropriate stages so that matters can, wherever possible, be resolved at the festival
- encourage parties to agree on a process that suits them
- provide the Fair Work Commission with the necessary discretion and power to ensure settlement of the dispute if the dispute remains unresolved after the early stages of the dispute resolution procedure have been attempted.

Best practice dispute resolution outcomes should be:

- quick - the issues should be resolved quickly rather than allowing them to escalate through inaction
- fair - all relevant parties should be consulted so that all sides of the story are taken into account
- handled sensitively - disputes should, where possible and appropriate, be resolved in a confidential context in order to minimise impact on employees and committee members not affected by the dispute
- transparent - the procedure should be made known to every employee and committee member

A good complaint process will be:

- **Fair** – This means that both the person complaining (the complainant) and the person being complained about (the respondent) should have the opportunity to present their version of events, provide supporting information and respond to any potential negative decisions. In addition, the person investigating and/or making decisions about the complaint should be impartial; that is, he or she should not favour the complainant or the respondent or prejudge the complaint in any way.
- **Confidential** – This means that information about a complaint is only provided to those people who need to know about it, in order for the complaint to be actioned properly.
- **Transparent** – The complaint process and the possible outcomes of the complaint should be clearly explained and those involved should be kept informed of the progress of the complaint and the reasons for any decisions.
- **Accessible** – The complaint process should be easy to access and understand, and everyone should be able to participate equally. For example, an employee may require a language interpreter to understand and participate or a person with a disability may need information provided in a specific format.
- **Efficient** – The complaint process should be conducted without undue delay. As time passes, information relevant to the complaint may deteriorate or be lost, which will impact on the fairness of the process. In addition, unresolved complaints can have a negative and ongoing impact on a workplace.

A good complaint process will also include provisions to:

- protect employees from being victimised because they have made a complaint
- protect employees from vexatious and malicious complaints
- ensure appropriate confidential records are kept about complaints and that this information is stored and managed appropriately.

Stages in a complaint process

1. Initial contact point

The organisation's discrimination and harassment policy should explain how to make a complaint and identify an initial contact person. In smaller organisations, this person may be a line manager or supervisor. The contact person should not be the same person who is responsible for investigating or making decisions about a complaint.

The contact person should:

- be available to listen to an employee's concerns about discrimination or harassment
- not form a view of the merit of any allegations
- provide information about the internal complaint process
- advise the person that in some situations where serious allegations are raised – for example, allegations that may expose the organisation to legal liability – the issue may need to be reported to management and dealt with as a formal complaint
- where appropriate, provide support for a person if he or she wants to try and resolve the issue personally
- provide information about available support services, for example, workplace counselling services
- outline other options available to the person, such as lodging a complaint of discrimination or harassment with an external agency.

2. Early resolution

In some situations, it may be appropriate to consider early resolution of an initial complaint without undertaking an assessment of its merit. This approach may be useful where:

- the complainant indicates a desire to sit down and discuss the matter with the respondent informally and this seems appropriate in the circumstances
- the information on hand supports a view that the complaint has arisen from a misunderstanding or miscommunication
- the behaviour being complained about is not serious and does not appear to be discrimination or harassment, as defined by the organisation's policy.

Early resolution may involve:

- a direct private discussion between the complainant and the respondent
- an impartial third person conveying information between those involved

- an impartial third person helping those involved to talk to each other and find a solution.

In some situations, the impartial third person may need to be someone external to the organisation, such as a professional mediator.

3. Formal resolution

If a person wants to proceed with a formal complaint about discrimination or harassment, or if this is considered to be the most appropriate course of action, the following steps are recommended.

a. Obtain information from the complainant

The person handling the complaint (the complaint officer) should:

- provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation
- ensure the allegations are documented, either by the complainant or the complaint officer
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaint will be kept, for how long and where
- explain the action that may be taken if the complaint is found to be vexatious or malicious
- ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the complaint officer should try to obtain this information before taking any further action.

b. Advise the respondent about the complaint

The complaint officer should:

- advise the respondent that a complaint has been made against him or her and provide as much information as possible about the allegations and supporting information (where applicable)
- confirm that he or she will be given the opportunity to respond to the allegations in writing or through an interview
- provide information about the complaint process, potential outcomes and options for assistance/support
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaints will be kept, for how long and where
- explain that it is unacceptable to victimise someone who has made a complaint.

c. Assess the information

If the respondent confirms that he or she did what is alleged to have occurred, and if this behaviour would be considered discrimination or harassment as defined in the organisation's policy, the next step is to consider an appropriate outcome (see below). It is recommended that the respondent is provided with the opportunity to comment on any proposed decision and outcome before a final decision is made.

If there is disagreement about what happened, the complaint officer should consider whether there is other information that will help to determine what happened. It is generally understood that the person making the decision should be satisfied that it is 'more probable than not' that what is alleged to have happened did happen.

Given the nature of discrimination and harassment, there may often be no direct witnesses or documents to support the complainant's version of events. This does not mean that the allegation is untrue. In these situations the complainant should be given the opportunity to comment on the information that has been provided by the respondent and to provide any other information to support his or her allegations before a final decision is made.

4. Outcomes from the process

a. Where the allegations are admitted or substantiated

Outcomes for the respondent may include:

- disciplinary counselling
- an official warning
- a requirement to attend discrimination and harassment awareness training
- a requirement to provide a formal apology to the complainant
- disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal)
- participation in mediation to restore relationships in the workplace.

Outcomes for the complainant may include:

- re-crediting of any leave taken as a result of the discrimination or harassment
- supportive counselling
- a change in the work environment, as requested, for example, a change in work teams or location
- participation in mediation to restore relationships in the workplace.

It is important that the complainant is provided with general information about the outcome of a complaint, as this may affect their decision to pursue the matter with an external agency. The level of detail provided should be balanced against the need to respect the privacy of the respondent.

b. Where the allegations are not admitted or substantiated

Where allegations have not been admitted or substantiated, it may still be appropriate for the employer to take some action as a result of the complaint. For example, it may be appropriate to:

- provide refresher training for all staff regarding appropriate workplace behaviour, and/or
- re-issue the discrimination and harassment policy or code of conduct to all employees.

If such action is taken, it is important that it is not done in a way which could be seen as singling out or punishing the respondent, especially where there has been no finding that he or she has breached the organisation's policy or code of conduct

5. Investigating a Less Serious Grievance

- 1. The method of investigation can vary according to the circumstances of the specific grievance. For less serious matters investigation strategies might include an informal, verbal investigation by meeting both parties, and documenting only the outcome.
- 2. The following steps provide a basic outline of the steps to follow to investigate and where feasible resolve a grievance:
 - a. listen to the complainant and provide advice on options available to the complainant, including providing advice on managing the grievance themselves;
 - b. maintain the confidentiality of proceedings;
 - c. consider the wishes of the complainant wherever possible, but this may not include taking no action where duty of care or other legal requirements need to be considered;
 - d. respond seriously and impartially and deal with it promptly;
 - e. advise the complainant and respondent of the responsibilities of all parties as outlined in the Grievance Policy;
 - f. seek a response to the allegations from the respondent;
 - g. provide copies of relevant policies and procedures;
 - h. ask the complainant:
 - i. What other avenues they have explored to try and resolve the matter,
 - ii. What action they are requesting,
 - iii. What expectations they have for an outcome.
 - i. examine the grievance and the response;
 - j. pursue any questions and speak to other relevant parties;
 - k. evaluate any relevant documents and information and consider mitigating factors;
 - l. seek advice from a more senior manager

m. propose a resolution, where appropriate, with input from the complainant and respondent; and

n. implement or facilitate the implementation of the resolution.

- 3. Where a resolution cannot be agreed, alternate strategies will be discussed in order to bring closure to the matter.

6. Investigating a Serious Grievance, Including Unlawful Behaviour

- 1. Refer to Section 5 of the Grievance Policy before commencing the investigation of a serious grievance or unlawful behaviour. You may need to refer the matter to the relevant specialist unit.
- 2. In addition to the basic steps outlined in clause 4.2, investigators will need to:
 - a. seek and examine all documents and information relevant to the grievance;
 - b. provide the respondent with a copy of any written complaint or list of issues to be answered by the respondent;
 - c. interview parties relevant to the grievance;
 - d. evaluate the persuasiveness of the information and findings;
 - e. apply the correct standard of proof (i.e. - on the balance of probabilities);
 - f. seek relevant documentation; and
- 3. Record and document all matters relating to the grievance. A complaint should not be dismissed solely on the grounds that no one else saw or heard the subject of the grievance.
- 4. The investigator will provide a detailed report to the director setting out evidence, facts and mitigating circumstances.
- 5. The director will make a decision as to the appropriate course of action.
- 6. The complainant and respondent will be advised of the course of action

7. Appropriate Timeframe for an Investigation

- 1. The investigator shall commence the investigation within ten working days of the complainant requesting an investigation.
- 2. At the outset, the investigator should determine likely timeframes with both the complainant and respondent, and should advise both parties if any variation is necessary during the course of investigating the grievance.
- 3. As a general rule, grievances should be handled and resolved as quickly as possible. It would normally be realistic to resolve a grievance within eight weeks.

Grievances of greater complexity or requiring a more formal approach will take longer.

8. Managing Grievance Outcomes

- 1. Once the investigation has been conducted, appropriate resolutions to the grievance should be considered.
- 2. Wherever possible, a resolution should allow work to continue productively and harmoniously, and enable essential relationships to be restored, preserved, and enhanced. Appropriate outcomes should be discussed with the parties in the course of an investigation.
- 3. If any allegations have been made and are substantiated, appropriate outcomes might include:
 - a. a requirement that the complainant receives an apology and/or the issue complained of is addressed or the behaviour modified;
 - b. a requirement that the respondent undertake training or development
 - c. measures to address any potential workplace repercussions;
 - d. where the complainant agrees, seeking resolution through mediation by an agreed, trained professional;
 - e. counselling, with a trained counsellor, including external counsellors, for complainant and/or respondent;
 - f. establishing a monitoring period to assess progress of the strategies undertaken; or
 - g. disciplinary action. In which case the matter would be referred to the appropriate discipline procedure.
- 4. If the allegations are not substantiated, appropriate outcomes might include:
 - a. the complainant is provided with feedback to gain a better understanding of the situation so that his/her concerns are addressed; and
 - b. measures to restore the work relationship such as facilitation or mediation by an agreed, trained professional.
- 5. If the allegations cannot be proved or disproved, appropriate outcomes might include:
 - a. advice to both parties that no further action is required;
 - b. training and development for both parties;

c. measures to restore the work relationship such as facilitation or mediation by an agreed, trained professional;

d. negotiation of “behaviour agreements” setting out how the parties will, or will not, behave towards each other in future and what will happen if this does not occur; and

e. establish a monitoring period to assess progress of the strategies undertaken.

- 6. During the investigation, if systemic issues are identified which involve Festival policies, requirements or practices, the grievance outcomes can include recommendations to address those issues. These recommendations should be submitted to the appropriate unit for consideration.
 - 7. Depending on the formality of the investigation, recommendations for appropriate outcomes should be set out in a report, and/or summarised in writing for both parties.
8. If the grievance remains unresolved, in certain circumstances and depending on the nature of the grievance, the matter may be taken to an external agency.