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| **Formal Complaints** | |
| Procedure code: OP-EP2 | Current version: January 2020 |
| Last review date: September 2017 | Next review date: January 2023 |
| Section: Empowering Our People | Sub-Section: Workforce Culture & Wellbeing |
| 1. Overview This document sets out:   * The obligations which Western Health requires all employees, volunteers, honorary appointees and visiting contractors (**Western Health personnel**) to meet; and * The internal procedures in relation to Western Health personnel raising complaints about matters arising out of their employment (**workplace issues**).   This document is not exhaustive. It does not purport to set out all personnel obligations.  This document does not form part of any employment contract. Nor does it form part of any contract for service.  To the extent that this document does or may refer to obligations of Western Health, these are taken to be guidance only for Western Health and do not form part of any Western Health personnel’s contract of employment. Nor do they form part of any contract for service.  This document is not to be taken as making any representation or promise on which any employees can or should rely.  The objective of this procedure is to set out the obligations of Western Health employees in relation to the making of formal complaints about workplace issues.  This document also outlines the process for investigating and dealing with formal complaints.  Although Western Health encourages employees to use the EMPOWIR process where appropriate to raise and resolve any workplace issues that they may have, employees may choose to raise a complaint separately through this formal process in addition to using the EMPOWIR Process. | |
| 2. Applicability The procedure applies to all Western Health employees, including honorary appointees, contractors, volunteers, students and agency staff and these roles will collectively be referred to as Western Health ‘personnel’ in this document. This procedure supersedes all previous related policies or procedures.  Where the provisions of Awards, Agreements, individual contracts, Federal or State legislation vary from this procedure, those provisions shall apply. | |
| 3. Responsibility All Employees, Managers/Supervisors/Department Heads, Directors and People and Culture have a responsibility for the ongoing application and compliance with this procedure.  Managers/Supervisors at Western Health have the responsibility to ensure all personnel are informed of and comply with this procedure. | |
| 4 Authority The approval to make changes to this procedure and to coordinate the implementation of this procedure (including responsibility for any required electronic or written forms) rests with the Director, People, Culture and Safety. | |
| 5. Associated Documentation In support of this procedure, the following Manuals, Policies, Instructions, Guidelines, and/or Forms apply:   |  |  | | --- | --- | | Code | Name | | P-EP2 | Code of Conduct | | P-EP2 | Employee Support and Workplace Relations | | OP-EP2 | Critical Incident Stress Management (CISM) | | OP-EP2 | Disciplinary Procedure | | OP-EP2 | Employee Assistance Program (EAP) | | OP-EP2 | Management and Prevention of Workplace Bullying and Harassment | |  | Western Health EMPOWIR Process: http://inside.wh.org.au/departmentsandservices/PeopleServices/Pages/A-Positive-Workplace-at-Western-Health.aspx | |  | Victorian Public Sector Code of Conduct | |  | Employee Complaint Form | |  | All relevant Industrial Awards / Agreements / Individual contracts binding on Western Health Services | | |
| 6. Definitions and Abbreviations6.1 Definitions For the purpose of this procedure, unless otherwise stated, the following definitions shall apply:   |  |  | | --- | --- | | Complainant | Any Western Health personnel who have submitted a complaint regarding a workplace issue. | | Fair and Transparent Process | Is the procedural principle which must be adhered to throughout complaint investigations. These include providing the individual with the particulars of the claim against them, allowing the individual an opportunity to respond, giving due consideration to their response and offering individuals the option to have a support person present in any interviews. | | Respondent | The individual against whom a complaint has been made. | | Personnel | All full-time, part-time, visiting, sessional and casual employees, honorary appointees, agency staff, volunteers, students and contractors. |  6.2 Abbreviations For purposes of this procedure, unless otherwise stated, the following abbreviations shall apply:   |  |  | | --- | --- | | CISM | Critical Incident Stress Management | | EAP | Employee Assistance Program | | EMPOWIR | Employee Positive Workplace Issue Resolution Strategy | | |
| 7. Procedure Detail7.1 Guiding Principles When possible, complaints are to be resolved in the first instance via an informal manner at the local workplace level through the use of EMPOWIR.  Complainants who wish to have a complaint dealt with formally under this procedure must put their complaint in writing or complete a complaint form. Reasonable assistance will be offered to the Complainant if they have difficulty in completing the form.  Formal complaints are to be addressed in a timely, efficient and confidential manner.  All complaints are to be managed in a fair and transparent manner for all parties to the complaint.  Individuals who raise a complaint, who are the subject of a complaint or are interviewed as part of a complaint investigation are to be advised on their rights and responsibility to maintain confidentiality at all times.  Personnel who are found to have submitted a complaint which they had reason to know to be false and/or who make frivolous complaints, may have such conduct dealt with under the Western Health disciplinary process.  Any victimisation of a complainant will be considered to be misconduct and dealt with under the Western Health disciplinary process. 7.2 Complaint Resolution Procedure Procedure:   * In the first instance attempts should be made to resolve the complaint with the immediate Manager/Supervisor. A support person may be present if desired by any party to the complaint. * If the complaint is not resolved then the complainant may elect that the matter be referred to the responsible Department Head/Director/Divisional Director. This must be in writing to that person. The Director, People, Culture and Safety will also be advised at this stage. * Any meetings to be held at this stage with the responsible Department Head/Director/Divisional Director may also involve a representative of People and Culture. A support person may be present if requested by any party to the complaint. * The above steps shall take place as soon as practicable within 28 days or a longer period where required as advised to the complainant by Western Health. * If the complaint has not been resolved, the Complainant may refer the complaint to the appropriate external body (as determined by State or Federal legislation or the relevant Award or Enterprise Agreement). * Until the complaint is determined, work shall continue normally in accordance with custom and practice existing before the complaint arose. No party shall be prejudiced as to the final settlement of the complaint by the continuance of work. * Health and safety matters involving an immediate risk are exempted from the operation of this sub clause.   An employee may lodge a formal complaint where they consider:   * An administrative decision made by Western Health adversely affects them and is unfair or unreasonable; * The conduct of a Western Health personnel adversely affects them and is unreasonable; or * The behaviour of personnel (by action or inaction) constitutes inappropriate workplace conduct or behaviour, which contravenes the Western Health Code of Conduct policy and The Management and Prevention of Workplace Bullying and Harassment procedure.  7.3 Informal Complaint Process Personnel who have a complaint should in the first instance discuss the issue with their Manager/Supervisor.  Western Health personnel can elect to commence the EMPOWIR (Employee Positive Workplace Issue Resolution Strategy) process. EMPOWIR is an informal, non-disciplinary peer resolution process that is available for all personnel to utilise to resolve workplace issues, complaints or concerns. (Please refer to the [Western Health Positive Workplace at Western Health](http://inside.wh.org.au/departmentsandservices/PeopleServices/Pages/EMPOWIR%20-%20Employee%20Positive%20Workplace%20Issue%20Resolution%20Strategy.aspx) Intranet site for more information about EMPOWIR). 7.4 Formal Complaint Process If it is not appropriate to do so, or attempts to resolve the workplace issue informally are unsuccessful, the Complainant may submit a formal complaint in writing to People and Culture. In submitting a complaint, the Complainant should complete a Complaint Form which is available on the Western Health Intranet Site.  All sections of the Complaint Form should be completed, providing as much detail as possible regarding:   * The nature of the complaint; * Grounds for the complaint; * Steps taken to resolve the complaint; * Desired/anticipated outcome(s).   Complainant may seek the assistance of their Manager/Supervisor or another person in completing the Complaint Form. The Complainant should sign the form acknowledging that it was recorded with their consent.  Once a formal complaint has been received by People and Culture, a determination will be made in consultation with the Complainant’s immediate manager and/or Divisional Director whether the complaint will be investigated by the Employee Relations/ Business Partnership team internally or through an external investigator appointed by Western Health.  If the Employee Relations/ Business Partnership team investigates the complaint, the following steps provide guidelines for the process:   * Identify the Problem/Issues:   + The information provided by Complainant may be insufficient or incomplete. Further clarification by the person dealing with the complaint may be required. It is the Complainant’s obligation to provide sufficient information for People and Culture to investigate or address the complaint or to take appropriate action(s). * Conduct the Investigation:   + People and Culture may conduct an investigation of a complaint in conjunction with the Manager/Supervisor and / or Department Head/Director/ Divisional Director of the Complainant. An investigation is a systematic review of all relevant information and facts relating to the complaint. This involves the collection of further information through a range of activities including but not limited to interviewing those involved, inspecting work locations, and reviewing documents, policies and procedures. Where necessary an interpreter or other support for the Complainant may be provided. * Complete Final Report/ Plan of Action: * People and Culture will develop a final report detailing the background, the investigation findings and recommendations for action. The Manager/Supervisor and / or Department Head/Director/ Divisional Director of the Complainant in conjunction with the Manager of Employee Relations/ Business Partnerships and/or Employee Relations Advisor/ Business Partnership decide what action to take.   The complainant may receive a verbal/ written summary of the report. The report is confidential and not for further distribution.   * Monitor Implementation of the Plan of Action * Implementation must be monitored and where necessary modified to meet changing circumstances. Failure to implement agreed actions may result in ongoing issues or escalation.   During the investigation there may be a need to interview other Western Health personnel. The Complainant, Respondent and any Western Health personnel interviewed will be required to maintain confidentiality. Any attempt or action taken to harass or victimise the Complainant about the complaint or as a result of the complaint is prohibited and such conduct will be dealt with under the Western Health disciplinary process. 7.5 Possible Outcomes or Resolution7.5.1 Direct Party Mediation or Facilitated Discussions Western Health may implement mediation or facilitated discussions between the Complainant and Respondent if Western Health considers it appropriate. 7.5.2 Disciplinary Action Recommendations flowing from the investigation of a complaint may include taking formal disciplinary action against Western Health personnel. Any disciplinary action is to be in accordance with the Western Health Disciplinary Procedure. 7.5.3 Complaint Dismissed Where no evidence or information can be established following an investigation to support/substantiate the complaint made, Western Health may advise the Complainant that the matter is concluded as the complaint was not substantiated. 7.6 Confidentiality All complaints must be handled in a confidential manner. Every step should be taken to ensure that information regarding the details of a complaint is restricted to those who are directly involved in the complaint and the complaint handling process.  All parties must treat information gathered during the investigation of complaints sensitively and confidentially. Western Health personnel should be advised that the information they provide will be used as part of the investigation and is confidential.  Any breaches of confidentiality, on the part of any of the parties involved may be considered as misconduct and such will be dealt with under the Western Health disciplinary process. 7.7 The Rights of Individuals Involved in Complaints In dealing with complaints it is important for those involved to know their rights. This will assist with achieving procedural fairness and minimising the risk of either escalating the issue or having further complaints made about the conduct of the investigation. 7.7.1 Support Person A support person may for example include another employee, a relevant union representative or a friend.  A support person has the following rights:   * To be a witness at meetings and interviews involving the individual they are supporting. * To provide support to the individual they are attending the meeting or interview with, but **not as an advocate for that person.** * To be provided with a copy of this procedure. | |
| 8. Document History Number of previous revisions: 5  Previous issue dates: June 2002, September 2008, September 2011, November 2015 and September 17  Minor amendment: not applicable this version  Documents superseded or combined:   |  |  | | --- | --- | | Code | Name | | OP-HR5.2.5 | Grievance | | OP-HR5.2.5 | Complaints | | |
| 9. References All Award and Agreement binding on Western Health Services.  The Fair Work Act 2009 (Cwlth)  Victorian Public Sector Code of Conduct Western Health Code of Conduct (P-GO2.2) Equal Opportunity Act 2011 (Vic)  Australian Human Rights Commission Act 1986 (Cwlth)  Victorian Equal Opportunity and Human Rights Commission Website: <http://www.humanrightscommission.vic.gov.au/>  Charter of Human Rights and Responsibilities Act 2006 (Vic)  Occupational Health and Safety Act 2004(Vic)  State Services Authority: <http://www.ssa.vic.gov.au/CA2571410025903D/0/BA92E6AAE7DF94C2CA25715000293623> | |
| 10. Sponsor Director of People, Culture and Safety | |
| 11. Authorisation Authority Executive Director of People, Culture and Communications | |