

## Issue Resolution and Investigation Procedure

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<b>Responsible Officer:</b>	Director, People and Culture	<b>Current Version:</b>	6/08/2020
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### Purpose

To outline how GOTAFE manages any allegations, concerns, complaints, disputes and grievances (referred to in this document as 'grievances') or allegations which arise against members of GOTAFE.

This procedure will ensure:

- Individuals are encouraged to raise genuine grievances or allegations through the appropriate channels;
- Grievances/allegations are addressed in a timely and constructive manner;
- Consistent, fair and equitable outcomes;
- Decisions and processes embody the principles of natural justice;
- Decisions are documented and capable of review;
- Appropriate confidentiality is maintained; and
- Sanctions, if imposed, are appropriate

### Relevant Policy/Policies

- Anti-discrimination, Bullying and Harassment Policy
- Termination of Employment Procedure
- Discipline Policy for PACCT
- Discipline Procedure for PACCT
- Discipline Policy for Employees other than PACCT staff
- Discipline Procedure for Employees other than PACCT staff

### Roles and Responsibilities

This procedure applies to grievances or allegations involving members of GOTAFE including temporary or permanent employees, job candidates, contractors, sub-contractors and volunteers.

This procedure does not apply to issues such as physical occupational health and safety issues other than allegations of bullying or misconduct, management action for performance or conduct, or disputes raised under the provisions of the relevant industrial instruments.

GOTAFE may not assist an individual with a grievance or allegation where:

- The issue has been satisfactorily dealt with or resolved previously (unless another incident has occurred since).
- The grievance or allegation is made anonymously and it is lacking in substance, or sufficient detail about the circumstances surrounding the incident.
- The grievance or allegation is frivolous, vexatious or malicious for example false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to a resolution. (Note: these types of grievances or allegations could lead to disciplinary action)

### Everyone

Anyone involved in a grievance or allegation, or its investigation, must ensure that the circumstances and facts of the grievance or allegation are disclosed only to those people who are directly involved in progressing its investigation and resolution or have a need to know. In particular it is important that individuals whom either lodge a grievance or make an

allegation, or may be a witness to the circumstances giving rise to the grievance or allegation do not discuss the matter outside the investigation and resolution process. All parties involved in any investigation process, including the person making the grievance or allegation may be asked to sign a confidentiality agreement document and are bound by the confidentiality clause in their employment contract and by the provisions of the *Privacy and Data Protection Act 2011 (Vic)*.

All parties have the right to raise and seek to resolve issues under this procedure without victimisation or the threat of victimisation. Protection from victimisation covers persons who raise grievances or allegations, have grievances or allegations made against them and extends to any witnesses, advisors, investigators, decision makers and management involved in the grievance or allegation.

### **Parties to the grievance**

The parties to the grievance or allegation should use their best endeavours to ensure the continuation of work as normal while the issue is being resolved. Neither party should take any action likely to exacerbate the issue. This includes the maintenance of the pre-existing status quo or establishment of a mutually acceptable holding position pending the resolution of the grievance or allegation. Employees are encouraged to access the Employee Assistance Program (EAP) for assistance if required.

Parties are responsible to ensure:

- Grievances or issues are reported as soon as possible to the appropriate Director, Manager, Coordinator or People and Culture.
- The grievance or allegation is made honestly and in good faith.
- All of the facts regarding the grievance or allegation are provided.
- They fully participate and cooperate in the investigation and resolution process and maintain confidentiality.

### **Executive Directors, Directors, Managers and Coordinators**

If an individual brings a grievance or allegation to your attention:

#### **Do**

- Document the grievance or allegation, and report it to People and Culture to obtain advice regarding appropriate approach
- Ensure employees are directed to follow GOTAFE policies and procedures.
- Protect complainants and respondents from victimisation.
- Suggest that individuals resolve the grievance using self-management techniques if they feel comfortable and provide the appropriate support, coaching and mentoring to assist in this process.
- Resolve the grievance or allegation as quickly as possible, giving consideration to the most appropriate approach.
- Be sympathetic, sensitive and serious, the grievance or allegation is obviously serious to the person making it.
- Encourage employees to access the Employee Assistance Program (EAP) if appropriate.
- Support the complainant through the appropriate process.

#### **Do Not**

- Ignore the grievance or allegation or make a judgement about whether it is true or not.
- Tell the individual making the grievance to sort it out themselves if they are seeking further support and assistance
- Say that the individual should put up with the conduct that they are reporting.

- Talk to anyone about the grievance or allegation except those involved in the investigation and resolution.
- Prejudge the merits of the grievance or allegation.

## Procedure

### STAGES OF ISSUE RESOLUTION / INVESTIGATION

The following stages are available for managing and resolving grievances or allegations, noting intervention must be attempted at Stage 1 or 2 if possible if appropriate to do so prior to initiating stage 3;

**Stage 1 - Self Management**

**\*Stage 2 - Informal Management**

**\*Stage 3 - Formal Management**

\*People and Culture will attempt to conduct a welfare check on impacted employees (and/or support person as required) as soon as practical following a grievance meeting. Following any meeting where an employee is witnessed to have experienced an emotional response, mechanisms to ensure the health, safety and wellbeing of the impacted employee are confirmed including, ability to drive, safe transport from the working environment in the instance they are not in a fit state to drive and arrangements for first aid or medical treatment if required.

#### **Stage 1 - Self Management - Dealing with the grievance yourself**

Individuals experiencing a grievance are encouraged where possible to raise it privately with the person causing the problem. The individual is encouraged to speak directly with the person and request the behaviour stops and mention that it is inappropriate and state the policy or procedure that is being breached. However, GOTAFE recognises that it may not necessarily be possible to raise the grievance with the person concerned and, where the grievance is considered to be of a serious nature, other processes may be required.

#### **Stage 2 - Informal Management - Seeking guidance and support from a Director/Manager or People and Culture to help you deal with the grievance**

In many cases an individual may raise a potential or actual grievance which can be resolved quickly and without the need for formal management. Directors/Managers have a responsibility to resolve those issues at a local level in a timely manner. If the complainant feels more comfortable, they may approach People and Culture directly. The Director/Manager should seek support from People and Culture to discuss the best strategy to resolve the grievance or allegation. Once a Director/Manager, Coordinator, or People and Culture is aware of a grievance or allegation they must take appropriate action in a timely manner.

The strategies taken to address the grievance could include:

- coaching of an individual if the individual wishes to address the grievance themselves,
- informally speaking with the individual or facilitating a meeting with all parties to discuss the grievance or allegation,
- utilising an independent third party for mediation,
- conciliation,
- a facilitated conversation,
- group conferencing.

### **Stage 3 - Formal Management including possible Investigation**

A formal investigation may be appropriate where informal resolution is not possible or successful, or the alleged misconduct is serious, including if it is a serious breach of GOTAFE policies, procedures or relevant legislation.

Prior to the investigation of a grievance or allegation, the Director/Manager, in consultation with People and Culture, will assess whether the issue/s raised in the grievance or allegation fall within the scope of the procedure and/or warrant proceeding to a formal investigation. Consideration may also be given to whether there is likely to be sufficient evidence available to support an investigation.

Other options if informal resolution is not possible or successful include:

- Putting allegations to a party to seek their response without an investigation
- Engagement of a third party independent facilitator to address issues (particularly in the case of cross-complaints)
- Waiting for resolution by a third party regulator, court or tribunal (where a third party is considering the matter and this is the appropriate course of action by GOTAFE).

Formal investigations may be undertaken internally or externally, the investigator/s appointed must be impartial. Internal investigators will be GOTAFE employees who have not been involved in the issue, which may include a People and Culture representatives, Coordinators, Managers, Directors, Executive Directors or the Chief Executive Officer. External investigators will be an independent third party external to the organisation.

To determine if an internal or external investigation process will take place the following criteria will be considered; the nature and the potential severity of the grievance or allegation, seniority of the respondent, the relationships involved, confidentiality of the matter, possible legal issues, and the capacity of the organisation to deal with the grievance or allegation appropriately.

Formal investigations will take the following steps;

#### Step 1 – Lodging the issue for formal management

Individuals are encouraged to first contact a Director, Manager, Coordinator, or a People and Culture representative to discuss the matter.

A grievance or allegation is recognised as formal when it is lodged in writing via a formal management issue form, or when it is verbally advised and is considered as serious misconduct or a serious breach of GOTAFE policies, procedures or relevant legislation. Any other verbal comments on an issue will not normally be treated as a formal under this procedure.

Complainants can report formal grievances or allegations to one of the following people:

- A Director, Manager or Coordinator
- A People and Culture representative
- An Executive Director or the Chief Executive Officer
- Grievances or allegations may also be received via the Complaints and appeals from students and clients policy and procedure

#### Step 2 – Initial Response

Investigation of a grievance or allegation must commence in a timely manner of receipt of a formal notification form by a Director, Manager, Coordinator, People and Culture or the Chief Executive Officer.

Following an initial meeting with the complainant to clarify the details and gain further information, the relevant Director/Manager in conjunction with People and Culture should consider the following prior to determining the appropriate form of action:

- Have attempts been made to resolve the grievance or allegation via either self management or informal management, or are these methods not appropriate?
- Is a formal investigation justified? A formal investigation may not be justified if the allegations were substantiated but they do not constitute a breach in legislation, policy or procedure.
- If investigation is justified, appropriateness of making alternative arrangements (i.e. standing down an employee, changing reporting lines).
- Is an internal or external investigation appropriate?

If the relevant Director/Manager in conjunction with People and Culture, does not think a formal investigation is justified they must notify the complainant and provide advice and support to the complainant to resolve the issues using informal strategies or mediation.

If the relevant Director/Manager in conjunction with People and Culture, thinks a formal investigation is justified they must appoint appropriate investigator/s and notify the respondent (and where appropriate the complainant) of the pending investigation in writing. The selection of the investigators will require approval from the relevant Executive Director or People and Culture.

People and Culture will store documentation involved in the investigation centrally, and will be responsible for keeping a register and monitoring the conduct of any investigation taking place to ensure they are progressing appropriately and are closed out in a timely manner.

### Step 3 – Investigation

A formal investigation process will involve the investigator/s interviewing all relevant parties including any reported witnesses to an incident. Parties interviewed can bring a support person to the meeting if they wish to do so.

Any person involved in the investigation and resolution of a grievance or allegation must not be the subject of a conflict of interest and should act independently and impartially regardless of any prior relationship with any of the parties involved in the issue.

People and Culture will provide the investigator/s with this procedure and may assist with the scoping.

### Step 4 – Investigation Findings

In most cases the investigator/s will determine whether the allegations are substantiated or whether there is insufficient evidence or information to make a conclusion. The investigator/s will provide the relevant Director/Manager and People and Culture with their findings and the reasons for them in writing. In some cases, GOTAFE may appoint another person to review the investigator's report and make findings about whether the allegations are substantiated.

### Step 5 - Outcome

The relevant Director in conjunction with People and Culture will determine the outcome following the investigation findings and decide on a suitable course of action.

The relevant Director will then;

- Notify the complainant and the respondent of the investigation finding and actions. If the allegation is substantiated actions will include a written record of the investigation being placed in the respondents personnel file. Disciplinary matters of any nature are not to be discussed with the complainant.
- If the allegations are unsubstantiated ensure that there is no action taken against the person whom the grievance was made and that the notes that are kept about the

grievance are retained in the personnel file, reflecting that the grievance was unsubstantiated.

- Ensure the appropriate action based on the findings of the investigation are undertaken promptly.

Such action may include:

- An apology (written or verbal / public or private).
- An undertaking that the behaviour will cease.
- Changes to workplace practices.
- Closer supervision or training.
- Mediation or relationship building interventions if appropriate.
- Notes placed in personnel file.
- Disciplinary sanctions if applied must be appropriate and with a primary objective to improve the employees conduct. Disciplinary sanctions, may range from counselling, written warning, suspension, or in more serious cases, discipline up to and including dismissal. Any disciplinary sanctions will be guided by the relevant enterprise agreement and/or discipline policy and procedure.

### **Review or Appeal**

Either party to the grievance or allegation may appeal the decision in writing to the People and Culture. In the event of an appeal the Director, People and Culture will be the final decision maker. If required during an appeal process the Chief Executive Officer may be involved in the decision making process, depending on the nature and the potential severity of the issue.

### **Definitions**

#### **Allegation**

A claim or accusation that someone has done something wrong.

#### **Complainant**

The person raising the grievance or allegation.

#### **Grievance**

A Grievance is generally, but not only, a situation where one or more parties feel resentment about the conduct of an individual that is seen as producing an injustice or something wrong or offence that is grounds for action by the complainant.

#### **Principles of Natural Justice**

- The right of an individual to know the allegation(s) being made against him or her;
- The right of each party to be heard (including in writing) in respect to the allegations;
- The right of each party to be treated fairly;
- The right of each party to an investigator and a decision maker who acts fairly and in good faith; and
- The right that a decision is based on evidence.

#### **Respondent**

An individual in which a grievance or allegation has been made against.

#### **Serious Misconduct**

Serious misconduct is defined as:

- wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; and
- conduct that causes imminent and serious risk to:
- the health or safety of a person; or

- the reputation, viability or profitability of the employer's business;
- conduct which includes an employee in the course of the employee's employment engaging in:
  - theft; or
  - fraud; or
  - assault; or
  - being intoxicated at work; or
  - refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract.

### **Victimisation**

Victimisation is the action of singling someone out for cruel or unjust treatment. Victimisation may occur when someone makes defamatory or hurtful statements against someone for raising a grievance or allegation, having a grievance or allegation filed against them or providing information in relation to a grievance or allegation.

### **Documentation and regulation**

- Formal management issue form FHR-123
- GOTAFE investigation confidentiality agreement FHR-119