

# Staff Complaint Resolution and Appeal Policy

## Preamble

Tuggerah Lakes Community College Incorporated, encompassing TLK Community College and TLK Alesco School, is committed to ensuring that appropriate and fair avenues exist for staff to resolve complaints. The Staff Complaint Resolution and Appeal Policy is formulated to enable staff complaints to be resolved promptly and as close to the cause as possible with graduated steps for further discussion and resolution at higher levels of authority as necessary.

## Scope

The Staff Complaint Resolution and Appeal Policy may apply to the handling of staff complaints in all circumstances except:

- Where staff are accountable for poor or unsatisfactory performance of duties or misconduct and if appropriate disciplined or otherwise counselled under the College's Performance Management Policy
- Where industrial and legal instruments apply
- Independent contractors where individual contractual agreements cover dispute settlement arrangements
- Complaints being considered under State or Federal legislation or by any external agency.

For matters involving an allegation of discrimination and/or harassment, this policy may be applied in conjunction with the College's Discrimination and Harassment Policy and Procedures.

Where concern is felt that raising a complaint under the Staff Complaint Resolution and Appeal Policy could lead to reprisals, the College recommends the matter may be reported as a Protected Disclosure under the College's Whistleblower Policy.

When a complaint involves alleged criminal conduct or an alleged breach of any Australian law, the College may be required to notify the Police or other relevant government authority as appropriate. The College may suspend any action or investigation pending an investigation by the Police or government authority.

## Definitions

**Appeal:** a process for requesting a formal change to an official decision; the decision may be an investigation decision or a decision concerning any other aspect of the College's operations.

**Appellant:** an individual or several individuals who lodge an appeal.

**Client:** may refer to:

- Individuals such as a student, parent, guardian or carer of student or
- Entities such as business, another College or any government department dealing with the College.

**Complainant:** an individual or several individuals who lodge a complaint.

**Complaint:** any type of problem, concern or grievance where a situation is deemed to be unsatisfactory or unacceptable or a situation believed to be wrong or unfair. General feedback and comments about administration, programs and services would not normally be viewed as a complaint unless specific action was requested. Complaints may include, but are not limited to:

- The conduct of others including the conduct of:

- Staff
- Volunteers
- Students and/or
- Contractors
- Discrimination, harassment or bullying
- Workplace safety or environmental issues and
- The manner in which policies and procedures of the College are applied.

**Formal complaint or appeal:** a complaint or appeal made in writing, generally made through completion and submission of a College Complaints and Appeal Form.

**Investigator:** a member of the College community who is independent from the complaint or appeal and is capable of investigating the matter according to procedural fairness and without conflict of interest.

**Observer:** a person present with an investigator at any interview/s, preferably acting as a confidential minute taker to ensure that accurate details are recorded. The observer/minute taker is required to maintain the confidentiality of any information acquired as a result of this role. The investigator determines whether written minutes and/or a tape recording is appropriate. Should a tape recording be the preferred method of recording minutes, this can only be done with the consent of all the parties involved.

**Procedural fairness:** the processes by which a result is reached and not the result itself. Procedural fairness, which may also be referred to as natural justice, requires that a respondent to a complaint is provided with:

- Sufficient details of the complaint to enable the respondent to formulate a response
- Information about the process by which the matter is to be resolved
- Opportunity to put their case and respond to the complaint.

In addition:

- Any investigator must act impartially and without bias
- All relevant submissions and evidence must be considered
- Irrelevant matters must not be taken into account
- The complaint must be dealt with in a timely manner.

**Respondent:** a person about whom the complaint has been made.

**Staff:** any person who carries out work for the College which includes:

- Employees
- Trainees/apprentices
- Volunteers and affiliates
- Outworkers
- Work experience students
- Contractors or sub-contractors
- Employees of a contractor or sub-contractor and employees of a labour hire company assigned to work for the College.

**Student:** all persons enrolled in a course with the College and includes prospective students seeking enrolment with the College and all graduated students of the College for a period of twelve (12) months after graduation. The term 'student' may also refer to a group of students.

**Support person:** refers to a trusted colleague, representative, or any other person accepting the role/position as a support to a person being interviewed. A support person should not be directly involved in the complaint and is expected to maintain the confidentiality of any information acquired as a result. Both the complainant and the respondent are entitled to have a support person and/or an interpreter present at any interview conducted as part of a complaint investigation.

**Working days:** means business days excluding weekends or public holidays.

## Statement of General Principles

- Complaints must be fully described by the person making/lodging a complaint
- Complaints are dealt with promptly, seriously, sensitively, confidentially, without bias and according to procedural fairness
- All parties are expected and encouraged to act in good faith and respect the rights of others while seeking to balance the interests of all parties
- The complainant has a responsibility to communicate clear reasons for and details of the complaint and to nominate a preferred resolution approach and desired outcome/result
- The views and needs of complainants and respondents are taken into account in the investigation
- The outcome/result sought should aim to minimise detrimental effects on ongoing relationships
- Processes are inclusive of cultural and gender perspectives
- Processes take into account the potential influence of power in relationships between individuals and/or groups
- There is consistency with the provisions of any relevant legislative frameworks and industrial agreements while working to achieve a reasonable resolution
- Complaints are treated as a potential learning experience for all involved
- The experience gained from the complaint resolution process will be used to identify any changes necessary to improve practise.

## Procedures

Complaint resolution involves the following graduated steps aimed at achieving a reasonable resolution at a level most appropriate and closest to the parties involved:

### Step 1: Personal Resolution

Complainants are encouraged to try to settle any complaint directly with the person/s concerned in the first instance and where reasonable, engage in a resolution process. This level is quite informal and verbal. It may be reasonable for the complainant to identify the specific conduct which has caused offence, explain the effect of that conduct directly with the person/s concerned and request cessation of the conduct. It may be that the person causing the problem was unaware of the consequence caused by their conduct.

The timeframe for Personal Resolution is as soon as possible.

In extenuating circumstances Personal Resolution may not be an option for reasons of individual sensitivity, cultural or power relationships, or where there is a policy or statutory obligation for an investigation owing to the nature and/or seriousness of the complaint.

Where personal resolution is not an option, or has been unsuccessful, the matter may proceed to submitting a formal complaint under Step 2: Local Complaint Resolution.

### **Step 2: Local Complaint Resolution**

Unless extenuating circumstances exist, local complaint resolution should not normally be invoked unless the complainant has attempted to settle the complaint directly with the respondent.

To commence local complaint resolution, the complainant should complete a *Complaints and Appeals Form*, available online at [www.tlkcc.com/forms](http://www.tlkcc.com/forms) or from College reception, detailing the substance of the complaint and the remedy sought. The form should be submitted to the complainant's manager, except where the:

- Line manager is named in the complaint or is seen to be otherwise associated with the complaint
- Role, seniority or position of the respondent/s named in the complaint requires that the complaint be lodged at a higher level
- Nature and seriousness of the complaint requires that the complaint be lodged with an alternative manager of appropriate seniority or expertise.

This may include circumstances where the health, safety or wellbeing of workers or students may be in jeopardy or where misconduct or serious misconduct may have occurred.

Complainants should be aware that the manager handling the complaint will generally need to disclose details of the complaint with the respondent, if there is one, in order to afford the respondent procedural fairness.

At this level, the complainant's manager is responsible for the complaint resolution process, with a broad range of options available. The focus is on finding a resolution which is acceptable to all parties and available options for the manager may include:

- Meeting with the complainant and the respondent (either separately or together) to discuss the issues and explore possible resolutions
- Writing to the complainant and respondent to obtain further information about the complaint and explore possible resolutions
- Arranging mediation or conciliation
- Exploring an issue and options to address the issue (for example, resolving a Work, Health and Safety issue or an environmental issue) on behalf of the complainant.

Where it is determined that the subject matter of the complaint falls outside the definition of a complaint, the manager may advise the complainant in writing. The manager may dismiss a complaint if in the manager's view the complaint is ill-advised, misguided, frivolous, malicious or vexatious.

If the matter is resolved to the satisfaction of all parties, the matter will be concluded.

If settlement of the complaint has not been achieved for any reason, including as a result of a determination by the manager that the subject matter falls outside the definition of a complaint, or as a result of the complaint being dismissed under local complaint resolution, the complainant may seek settlement of the complaint through formal complaint resolution procedures under Step 3: Formal Complaint Resolution. For efficiency, information collected through the local complaint resolution process may be provided to the person handling the formal complaint resolution.

The College may take action without a formal complaint request where the health, safety or wellbeing of workers or students may be in jeopardy or where misconduct or serious misconduct may have occurred.

Under local complaint resolution, action should normally be taken by the manager within twenty one (21) days.

### **Step 3: Formal Complaint Resolution**

Unless extenuating circumstances exist, formal complaint resolution for the settlement of complaints will not normally be invoked unless the matter has been first referred for settlement under Local Complaint Resolution.

Formal complaint resolution may only be commenced by lodging a *Complaints and Appeals Form* with the Chief Executive Officer (CEO) or delegate. For matters unresolved through local complaint resolution, the manager may forward the original *Complaints and Appeals Form* to the CEO or delegate, together with any additional information thought relevant to the investigation.

The CEO or delegate may appoint an investigator to hear the complaint. The investigator may be required to:

- Interview both the complainant and respondent, where applicable, and other persons involved and
- Seek any further information considered necessary.

At interview individuals may choose to bring a support person and the investigator may utilise an observer/minute taker to assist in the investigation.

The investigator may determine whether the complaint is justified and recommend appropriate action, which may include but is not limited to:

- Counselling for either or both parties
- Arranging for conciliation of the complaint
- Recommending disciplinary action or
- That no further action need be taken.

If, in the investigator's view, the complaint is ill-advised, misguided, frivolous, malicious or vexatious, the CEO or delegate may advise the complainant and where appropriate other parties in writing of this finding and the reasons for the finding and action may be taken against the complainant in accordance with relevant staff provisions under the College's Performance Management Policy.

On receipt of the Investigator's report, the CEO or delegate may notify in writing both the complainant and respondent of the result of the process, the reasons for the decision and specify any action which is to be taken. The details provided in the notification will accord with any confidentiality constraints.

In circumstances where the complaint is about the CEO, or the complaint otherwise necessitates referral to the next level, the CEO will forward the matter to the College's Board of Governance. The Board of Governance will have discretion as to the appropriate procedure to be used in determining whether a complaint has substance and the appropriate investigative process within the spirit of the Staff Complaint Resolution and Appeal Policy for settling the complaint and any subsequent appeal.

Under formal complaint resolution, action should normally be taken within twenty one (21) days after receipt of the complaint.

## Right of Review and Appeal

If, after being advised the result of the investigation, the complainant or any respondent seeks to appeal the decision made by the investigator, a single appeal may be requested by:

- Stating in writing the reasons for the appeal using a *Complaints and Appeals Form* and
- Submitting the form to the College within ten (10) working days.

The CEO or delegate may appoint an independent investigator to review the case. The investigator will determine whether the principles of fairness were followed. The appellant or respondent will be given an opportunity to put their case in person.

Where more than sixty (60) calendar days are required to process and finalise the review, the College will inform the appellant or respondent as to why this extended period is required.

On receipt of the investigator's report, the CEO or delegate will advise the appellant or respondent of the decision.

Internal complaints and appeal services are free of charge.

## External Authorities

Depending on the nature of the complaint, a complainant may have access to further avenues of appeal through external agencies. A complainant may decide on referral to an external agency at any stage of the process. An external agency may include:

- The Industrial Relations Commission of New South Wales,
- The Anti-Discrimination Board of New South Wales, or
- The Fair Work Commission.

External agencies may expect that the matter has first been attempted to be addressed using the College's internal processes before they become involved.

## Data Collection and Record Keeping

Complaints and appeals results will be recorded in the College's Complaints' Register. A copy of the written result may be kept with the complainant's file for a period of five (5) years and if the matter is substantiated, a copy may also be kept with the respondent's file.

## Confidentiality

Information identifying the complainant/appellant will be used to address the complaint and will be protected from disclosure unless express permission is granted by the complainant. Confidentiality constraints prevent the College from informing complainants/appellants of the action taken against individuals, including Staff, where a matter is substantiated.

## Operational Responsibilities Summary

### The Chief Executive Officer

The Chief Executive Officer has a responsibility to:

- Ensure complaint resolution is managed in accordance with the endorsed Staff Complaint Resolution and Appeal Policy
- Ensure any organisational issues identified by the complaint process are addressed and rectified

- Ensure there is improvement in the Complaints and Appeals Procedures of the College where deficits have been identified
- Provide a review mechanism for complaints that is based on procedural fairness and is:
  - Equitable
  - Efficient and
  - Effective.

### **Line Managers (includes TLK Alesco School Principal)**

Line managers have a responsibility to:

- Ensure all Staff for whom they are responsible receive information regarding the application of the Staff Complaint Resolution and Appeal Policy
- Support access to training for staff expected to undertake management of the complaint resolution process
- Ensure the College's Staff Complaint Resolution and Appeal Policy is followed by:
  - Treating all complaints seriously
  - Taking action promptly and sensitively to facilitate resolution and
  - Ensuring confidentiality is maintained at all times
- Undertake the management of complaint resolution processes as appropriate
- Ensure any organisational issues identified by the complaint process are addressed and rectified.

### **Staff**

Staff have a responsibility to:

- Understand the Staff Complaint Resolution and Appeal Policy and be familiar with the responsibilities of their position held within the College
- Work towards maintaining the safety and welfare of both self and others without adversely affecting the safety and welfare of anyone
- Identify the reasons and the desired outcome for any complaint lodged
- Actively participate in the resolution of a complaint, regardless of role, with a view to minimising detrimental effects on staff working relationships.

### **College Accountability**

The College, via the CEO, is accountable for and reports to the College's Board of Governance on any actions and decisions taken in response to a complaint or resulting from the handling of a complaint.

### **Policy Forms**

*Complaints and Appeals Form*

### **Related College Policies**

Staff Code of Conduct

Harassment, Bullying and Discrimination Policy

Staff Code of Conduct

Student Rights, Responsibilities and Code of Behaviour Policy

Student and Client Complaints and Appeals (Consumer Protection) Policy.

Whistleblower Policy