

DECS Complaint Resolution for Employees

Procedure

active participation
ethics
relationships
resolution



Government of South Australia
Department of Education and
Children's Services

DECS Complaint Resolution for Employees

Contents

	Page
1 Introduction	3
2 Using the complaint procedure	3
2.1 Applicable employees	3
3 When someone is aggrieved	4
4 Seeking advice	4
5 Lodging a complaint	5
5.1 Clarifying the complaint	5
5.2 Is this the right procedure?	5
5.3 Reasons for the complaint	5
5.3.1 Health, safety and welfare	5
5.3.2 Unlawful discrimination and harassment	6
5.3.3 Personnel management	7
5.3.4 Employee deployment and promotion	7
5.4 Complaint management	8
6 Roles and responsibilities	9
6.1 Employees	9
6.2 Line managers	10
6.3 Complaint Manager	10
6.4 Personnel Advisory Committee—Education Act sites	10
6.5 Complainant	11
6.6 Respondent	11
7 Confidentiality in the complaint resolution procedure	11
7.1 Keeping the complainant's identity confidential	11
7.2 Breaches of confidentiality	12
8 Victimisation	12
9 Assessing the complaint	12
9.1 Assessing resolution options	13
9.2 Timelines and acknowledgement of the complaint	13
10 Options for complaint resolution	13
10.1 Conference with the Parties	14
10.2 Formal Investigation	14
10.3 External agency	14

DECS Complaint Resolution for Employees

	Page
11 Achieving resolution	14
11.1 Opportunity to be heard	14
11.2 Complaint unsubstantiated with explanation	14
11.3 Consequent action	15
11.3.1 Conciliation and mediation	15
11.3.2 Apology	15
11.3.3 Commitment to change behaviour	15
11.3.4 Training and development/referral to counselling	15
11.3.5 Warnings/directions	15
11.3.6 Reallocation of duties	15
11.3.7 Systemic change	16
<hr/>	
12 Administrative requirements	16
12.1 Record keeping	16
12.2 Expenses arising from the complaint process	16
<hr/>	
13 Review rights and appeal	16
<hr/>	
14 Definitions	17
<hr/>	
Appendices	19
Appendix A: Complaint Resolution Flowchart	19
Appendix B: Guide to record keeping and confidentiality	20
Appendix C: Supporting Information	22
Appendix D: Conducting a Formal Investigation	24
Complaint Notification Form	27
Complaint Management Form	28
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DECS Complaint Resolution for Employees

1 | Introduction

The Department of Education and Children's Services (DECS) is responsible for ensuring a safe, harmonious and productive environment for its employees. Therefore, an impartial system for addressing complaints must be available to employees who have been adversely affected by decisions or actions in the workplace. The objective of the *Complaint Resolution for Employees Policy* (Complaint Policy) is to resolve matters in a timely fashion, as close as possible to the source of the disagreement, ensuring that equity and due process are applied.

The *Complaint Resolution for Employees Procedure* (Complaint Procedure) outlines the associated processes for putting the Complaint Policy into practice. The complaint resolution process is illustrated in Appendix A, Complaint Resolution Flowchart.

The Complaint Policy expressly states that the complaint resolution process should:

- be inclusive
- focus on relationships
- clarify responsibilities and expectations of the process
- be seen as an opportunity for each party and DECS to learn.

Emphasis is placed on:

- resolving issues promptly at the local level where possible;
- using resolution approaches that are most likely to support effective working relationships;
- clarifying reasons for and expectations about the complaint;
- people taking responsibility for their actions.

'...an impartial system for addressing complaints must be available to employees who have been adversely affected by decisions or actions in the workplace.'

2 | Using the complaint procedure

The Complaint Procedure identifies the underlying principles to resolving a complaint and provides a guide for complaint handling. However, it is not intended to provide a step-by-step outline of all of the actions that must be taken to resolve a complaint.

There may be situations where one of the parties to a complaint may be concerned that using the Complaint Procedure will disadvantage them in some way. Such concerns should be discussed with the Complaint Manager (the person responsible for the overall management of the complaint resolution process) and any proposed changes should be agreed by negotiation with all of the parties involved. Care must be taken to ensure that any such changes remain consistent with the principles of natural justice and procedural fairness. It is recommended that a record of any agreed changes, and the reasons for those changes, be recorded as part of the documentation of the complaint resolution process.

2.1 | Applicable employees

The Complaint Procedure applies to situations where complaints have arisen as a result of the actions of one or more DECS employees in relation to another DECS employee.

In sectors such as family day care, childcare centres and out of school hours care, the Complaint Procedure is only applicable to those staff who are direct employees of DECS. Although the Complaint Procedure may provide a guide for resolution processes, complaints that involve Governing Council/ Management Committee employee, parent and other community member concerns with sites should be directed to the local level policy and procedures for resolution.

Complaints involving students will be managed in accordance with the relevant DECS policies (refer to the DECS website).

3 | When someone is aggrieved

On occasions, an employee may feel that an action is unreasonable, unfair or unduly negative in the way that it impacts on an individual or group. When this happens, many employees follow up their concerns directly with the people involved. Early action at this level generally provides the best opportunity for positive resolution. In such circumstances where a satisfactory outcome can be negotiated and the grievance resolved, the Complaint Procedure is not required.

Family members and professional networks can provide a valuable source of support and clarification when working through a situation and deciding what follow-up action is needed to resolve any subsequent complaint. However, care must be taken to ensure confidentiality.

The Complaint Procedure is required to be followed when an employee has decided that they will lodge a complaint for any of the following reasons:

- their own personal attempts at resolution have been unsuccessful;
- for reasons of a personal nature, personal resolution was not an option;
- there is a policy or statutory obligation for an investigation to be conducted owing to the nature and seriousness of the complaint.

Lodging a complaint with a departmental representative indicates that the person lodging the complaint (the complainant) seeks the involvement of the department in the complaint resolution process. The complainant must demonstrate that they are directly affected by the alleged actions/issues that are the substance of the complaint; that is, that they are the aggrieved person.

The Complaint Procedure applies to a number of situations where complaints may arise in relation to the actions of departmental employees. For more information on the situations to which the Complaint Procedure applies, refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

When an employee has decided that they will lodge a written complaint, it is important to ensure that the appropriate process is followed.

'Where an aggrieved employee approaches her or his line manager for assistance, the manager should initiate a discussion about the complaint as soon as possible.'

4 | Seeking advice

Information and advice about the Complaint Procedure is available to employees on a confidential basis.

In seeking advice about available and appropriate options and considering whether to lodge a complaint, the line manager is often able to provide assistance. The following DECS-based personnel should also be considered:

- site-based support personnel
- district and central office personnel
- Organisational Health Consultants
- Performance Management Consultants
- Ethical Standards and Merit Protection Unit (ESMPU)
- Special Investigations Unit (SIU).

Those closest to the aggrieved employee's work environment are more likely to understand the context in which the actions leading to the complaint occurred. For example, a worksite manager or relevant contact person can provide confidential advice about strategies for dealing with a grievance. Staff from culturally diverse groups, such as those from non-English or Aboriginal backgrounds, may require the support of someone from their cultural group in working through the complaint resolution process if it is initiated.

Where an aggrieved employee approaches her or his line manager for assistance, the manager should initiate a discussion about the complaint as soon as possible. The discussion should take place away from the immediate work area wherever possible, and should be uninterrupted, private and confidential. The aggrieved person should be encouraged to lead the conversation. If, at any stage, the line manager is unclear on any particular point, clarification should immediately be sought. At the end of the discussion, the line manager should outline to the aggrieved person what she/he has understood the complaint to be, and ask the aggrieved person to actively confirm that the line manager's understanding is correct. An initial step is to determine whether the employee is planning to attempt resolution through direct personal contact.

DECS Complaint Resolution for Employees

If the circumstances of the grievance are complex or involve senior managers, it is advisable to contact staff from the district office, the ESMPU or the SIU for advice.

Aggrieved employees may also seek advice from representative associations or external agencies that may have specialised expertise in a particular area. Some examples are:

- Unions;
- Employee Assistance Program (counselling for employees and managers);
- professional associations;
- external agencies; for example, Employee Ombudsman, SA Equal Opportunity Commission.

The complainant's right to lodge a complaint with an external agency is respected. Complainants should note that external agencies might have an expectation that the complaint will be addressed in the first instance using the department's own internal processes.

5 | Lodging a complaint

5.1 | Clarifying the complaint

It is usually helpful for the complainant to spend some time thinking about and recording the circumstances of the situation that led to the complaint. The complainant is expected to identify the action(s) that she/he considers to have an unreasonable, unfair or unduly negative impact on her/him. It is also important for the complainant to consider what remedy she/he is seeking.

Talking things through with someone else can help to clarify issues relating to the complaint. The complainant can seek advice from a range of people, as listed in Section 4, 'Seeking Advice'. It is important to remember that this should be done confidentially and with sensitivity to worksite relationships. The Complaint Notification form included at the end of this document provides a useful guide to the factors for the complainant to consider in the preparation of their written complaint.

'Employees can lodge a written complaint when they are aggrieved by an action that they consider unreasonable, unfair or unduly negative in its impact on an individual or group.'

5.2 | Is this the right procedure?

Not all employee complaints are covered by the Complaint Procedure. Many policies, legislation and other instructive documents provide for the management of complaints, and any such defined processes should be used where available. The Complaint Procedure is intended to complement those processes already available as well as provide complaint resolution options where none are specified. Refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs for an overview of the range of complaints that may be lodged with the department and the relevant complaint resolution procedures.

Employees can lodge a written complaint when they are aggrieved by an action that they consider unreasonable, unfair or unduly negative in its impact on an individual or group. Such actions may include:

- acting in a manner that is contrary to legislative or policy requirements;
- making a discretionary decision for an improper purpose, or taking into account irrelevant considerations, or failing to consider relevant considerations;
- failing to provide reasons for a decision when reasons should have been given;
- basing a decision wholly or partly on a mistake of law, policy or fact.

5.3 | Reasons for the complaint

Complaints can be broadly grouped into a range of categories. This section outlines those that are appropriate to be managed under the Complaint Procedure. The Complaint Procedure can also be used for situations where there is no existing or defined procedure.

5.3.1 | Health, safety and welfare

A breach of the *South Australian Occupational Health, Safety and Welfare Act 1986* (including the *SafeWork SA Amendment Act 2005*) may give rise to issues relating to the health, safety and welfare of employees. Most issues can be effectively resolved at the local level, using existing site consultative processes including working with the Health and Safety Representative (if elected) or the Health and Safety Committee (where available). For more information about the steps to be followed in resolving a health and safety issue refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs. It should be noted that the ED155 Accident/Incident Report form should only be used to notify the department of an actual incident or accident. It is not intended to be used as a mechanism to address complaints.

DECS Complaint Resolution for Employees

Bullying

Workplace bullying as defined in Section 55A (1) of the *Occupational Health, Safety and Welfare Act 1986* (SA), is any behaviour:

- (a) that is directed towards an employee or a group of employees, that is repeated and systematic, and that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed; and
- (b) that creates a risk to health or safety.

The following types of behaviour occurring as either repeated or patterns of behaviour could be considered bullying:

- verbal abuse;
- excluding or isolating employees;
- intimidation;
- assigning meaningless tasks unrelated to the job;
- setting impossible assignments;
- unfair treatment in relation to workplace entitlements (e.g. access to training and development);
- creating deliberate inconveniences;
- deliberately withholding information related to or vital for effective work performance.

Bullying is not:

- any reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee;
- a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit;
- reasonable administration action taken in a reasonable manner by an employer in connection with an employee's employment;
- reasonable action taken in a reasonable manner under an Act affecting an employee.

'Sexual and racial harassment includes, but is not limited to, ridicule, jokes, invasion of personal space, attacks on property, verbal abuse, and threats.'

5.3.2 | Unlawful discrimination and harassment

Sexual and racial harassment

Under State and Commonwealth equal opportunity and anti-discrimination laws, sexual and racial harassment are forms of unlawful behaviour. Such behaviour generally involves conduct, comments or a display of behaviours that intimidates, humiliates, offends, embarrasses, belittles, degrades or otherwise causes offence to any person(s) to whom it is directed.

Sexual and racial harassment includes, but is not limited to, ridicule, jokes, invasion of personal space, attacks on property, verbal abuse, and threats. Acts such as an assault on a person or inciting others to hateful acts based on race (racial vilification) may also be criminal offences and could become the subject of police proceedings or other legal action.

Unlawful discrimination

Under the *Equal Opportunity Act 1984* (SA), the *Racial Discrimination Act 1975* (Cwlth), the *Sex Discrimination Act 1984* (Cwlth) and the *Disability Discrimination Act 1992* (Cwlth), it is unlawful to discriminate against a person (or persons) on one or more of the following grounds: sex, race, age, impairment (physical and/or intellectual), sexuality, marital status, pregnancy, carer's responsibilities or mental illness.

Other forms of discrimination may occur outside of the grounds detailed above; however, these other grounds may not be regarded as unlawful behaviour.

Section 5 of the *Public Sector Management Act 1995* (SA) requires public sector employees to behave and make decisions in a way that is non-discriminatory. It is the responsibility of the worksite manager, chairs and members of merit and local selection panels, and all DECS staff in a leadership role to monitor the working environment to ensure that unlawful discrimination does not occur.

An employee who believes she/he has a complaint on the ground of sexual harassment and/or discrimination should consult the DECS Guidelines for Sexual Harassment Grievance Procedures.

An employee who believes she/he has a complaint on the ground of racial harassment and/or discrimination should consult the DECS Countering Racism Policy.

DECS Complaint Resolution for Employees

'Employee conflict refers to cases where an employee feels aggrieved by the conduct of another employee in the workplace and the conduct is directly and adversely affecting her/his work or home life.'

5.3.3 | Personnel management

Unreasonable management practice

Unreasonable management practice refers to situations where an employee believes that an administrative decision that has been made is unreasonable and adversely affects her/him or has a direct negative impact upon her/his role. It may also take the form of a failure by management to adhere to legislative requirements, principles and guidelines outlined in industrial awards and agreements, the *Children's Services Act 1985 (SA)*, *Education Act 1972 (SA)*, *Public Sector Management Act 1995 (SA)*, *Occupational Health Safety and Welfare Act* and DECS policies.

Action taken under this category of complaint does not preclude a complaint being made under Regulation 31 of the *Education Regulations 1997*. For further information refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

Employee conflict

Employee conflict refers to cases where an employee feels aggrieved by the conduct of another employee in the workplace and the conduct is directly and adversely affecting her/his work or home life. For example, an employee might perceive that she/he is being adversely affected by another employee's actions because her/his work practices or personal life is being discussed. Early action is encouraged as prompt intervention can be particularly effective in minimising the harm caused to individuals and the impact on performance.

Conduct issues

Minor misconduct refers to those actions and behaviours that do not warrant formal disciplinary action; for example, where the nature of the complaint focuses on the use of inappropriate language by one employee against another. Matters of this nature can usually be resolved by a mediated settlement, an apology or written direction to the offending employee.

Serious misconduct refers to those actions and behaviours that may lead to disciplinary action. This can include failing to comply with a reasonable direction, negligence, improper or disgraceful conduct or a charge or conviction of a criminal offence.

In responding to alleged misconduct, care must be taken to ensure that employee obligations as a mandated notifier of suspected child abuse, or other reportable offence, are met at all times.

There is not always a clear delineation between minor misconduct and serious misconduct and the Chief Executive may exercise his authority to undertake a preliminary investigation on any matter where there are reasonable grounds that an employee may be liable to disciplinary action.

Enquiries on matters of serious misconduct, including all conduct of a sexual nature, should be referred to the Special Investigations Unit for advice and action as appropriate.

Performance management

Where an employee is concerned that she/he has been disadvantaged or unfairly treated through the performance management process (including the Managing Underperformance procedure), in the first instance the grievance should be discussed with the line manager, the next most senior manager, or a Performance Management Consultant. If a satisfactory resolution is not achieved, a complaint can be lodged with the line manager, the senior manager or the Executive Director, Human Resources and Workforce Development.

Complaints about the implementation of the Managing Underperformance procedure can be directed to the line manager or the Executive Director, Human Resources and Workforce Development, and will be addressed in accordance with the procedure. Formal rights of appeal only come into effect when disciplinary action or penalties are proposed following the completion of the Managing Underperformance procedure.

5.3.4 | Employee deployment and promotion

Merit Selection: Teaching staff, including seconded teachers, externally advertised

Formal appeal provisions for merit selection apply to externally advertised positions with tenure of greater than one year, or as otherwise indicated in the *DECS Merit Selection Policy and Procedures, School sector, 1997*.

Merit Selection: Teaching staff, including seconded teachers, internally advertised

No formal appeal process applies to the filling of internally advertised school leadership or seconded teacher positions of 12 months or less in duration. School-based personnel can refer their concerns to the Personnel Advisory Committee. Consistent with *DECS Merit Selection Policy and Procedures*,

DECS Complaint Resolution for Employees

School sector, 1997, employees may also lodge a complaint with the Executive Director, Human Resources and Workforce Development, if they believe there has been a serious irregularity in the merit selection process.

Merit Selection: School sector (non-teaching staff)

Complaints related to merit selection of school-based non-teaching staff should be referred to the Executive Director, Human Resources and Workforce Development, and will be addressed in accordance with the *DECS Merit Selection Policy and Procedures, School sector, 1997*.

Merit Selection: Children's Services Act staff

Children's Services staff who believe there has been a serious irregularity in a merit selection process should raise the matter with the District Director. If the issue is not resolved at this level, a complaint may be lodged with the Executive Director, Early Childhood and Statewide Services. Investigation of this complaint will be in accordance with *DECS Merit Selection Policy and Procedures, School sector, 1997*.

Local Selection: School sector (teaching staff)

For positions filled through the Local Selection Process—*Recruitment and Selection of Teaching Staff in the School Sector, 2007*, an appeal process applies to those vacancies that are externally advertised and have tenure of greater than 12 months, and where a Local Selection Panel is involved in the selection process.

For other circumstances, employees may lodge a complaint with the Executive Director, Human Resources and Workforce Development, if they believe there has been a serious irregularity that may have affected the outcome of the process. Complaints will be addressed in accordance with the *Local Selection Process—Recruitment and Selection of Teaching Staff in the School Sector, 2007*.

Advanced Skills Teachers Level 1 and 2: Schools and children's services sites

Complaints relating to the Advanced Skills Teacher assessment process may be lodged with the Executive Director, Human Resources and Workforce Development, and will be addressed in accordance with the Complaint Procedure.

Complaints relating to the Advanced Skills Teacher fifth year reassessment process may be lodged with the Executive Director, Human Resources and Workforce Development, and will be addressed in accordance with the Complaint Procedure.

'To avoid unnecessary escalation, it is preferable to have complaints lodged with a manager who is as close as possible to the source of the disagreement.'

Education Act section 101B, formerly 9 (4), and Children's Services Act section 12(1) positions

No appeal process applies to the filling of vacancies advertised as Education Act section 101B, formerly 9(4), or Children's Services Act section 12(1). Complaints arising from a serious irregularity in the process may be lodged with the Chief Executive or the Executive Director, Human Resources and Workforce Development and will be addressed in accordance with the *DECS Merit Selection Policy and Procedures, School sector, 1997*.

Further information about appeal rights for Education and Children's Services Act positions can be found in the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

Merit Selection: PSM Act Employees

There are differing appeal rights against nomination for Public Sector Management Act vacancies. These vary according to the status of the applicant and the classification of the position.

Where there are no formal appeal rights, applicants may lodge a complaint with the appropriate Director. Investigation of complaints will be in accordance with *DECS Merit Selection Procedures for Panellists for Public Sector Management Act Positions 2007*.

For further information about appeal rights for Public Sector Management Act Merit Selection processes, refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

5.4 | Complaint Management

Complaint management, as outlined in the Complaint Procedure, is ultimately the responsibility of the Complaint Manager. To avoid unnecessary escalation, it is preferable to have complaints lodged with a manager who is as close as possible to the source of the disagreement. Complaints should therefore be lodged with the complainant's immediate line manager, who will then act as the Complaint Manager.

Exceptions to this process are where:

- the line manager is named in the complaint, or is seen to be otherwise associated with the complaint;
- the role, seniority or position of the respondent(s) named in the complaint requires that the complaint be lodged with a more senior manager;

DECS Complaint Resolution for Employees

- the nature and seriousness of the complaint requires that the complaint be lodged with an alternative manager of appropriate seniority or specific expertise.

Should an exception such as the above apply in the particular circumstances, the complaint should be lodged with the next level of senior manager or another appropriate manager. If a complaint is inappropriately lodged, it should be referred to an appropriate alternative manager. Complaints lodged at a more senior level must be accompanied by an explanation of the reasons for lodging the complaint at that level. The complaint may be referred back to a lower level of management if insufficient reasons are provided to support lodgement at a higher level.

Wherever possible, all complaints will be dealt with in totality to ensure that they are handled effectively in the shortest possible time. Where a complaint is multifaceted and advice is sought from a number of sources, the Complaint Manager will provide a coordinating role and a point of contact for the relevant parties.

5.4.1 | Complaint Manager and authorised persons

The Complaint Manager is responsible for the overall management of the complaint resolution process from the Assessment of the complaint and implementation of an appropriate resolution approach (Conference with the Parties or Formal Investigation) through to final settlement. An outline of the specific responsibilities of the Complaint Manager is provided in Section 6.3. It should be noted, however, that where the Complaint Manager does not have the authority to enforce a particular action, the role is limited to making recommendations only.

There may be circumstances or situations where it is desirable for the line manager to identify a separate Complaint Manager; for example, complaints involving sites with a limited number of employees where it may be advantageous to assign a Complaint Manager who does not have an ongoing employment relationship in the site.

The Complaint Manager may authorise a person (or persons) to undertake part(s) of the resolution process on their behalf. The extent of any authorisation will be determined by the nature and substance of the complaint and the capacity and/or authority of the Complaint Manager to manage the process effectively to achieve a reasonable resolution.

'Wherever possible, all complaints will be dealt with in totality to ensure that they are handled effectively in the shortest possible time.'

When authorising another person (or persons), the Complaint Manager must consider that:

- the level of authorisation, including any limits or specific instructions, must be clearly stated in writing and agreed with the person undertaking a part (or parts) of the resolution process;
- any recommendations made by a person who is not the line manager, but is involved in the resolution process, are subject to approval according to normal line management decision-making processes.

It is not envisaged that the role of Complaint Manager will be an ongoing role associated with a particular person. Rather, it is a role that is negotiated, generally with an individual based on her/his involvement in a particular complaint resolution process. In school sites, the Personnel Advisory Committee (PAC) may take on the role of Complaint Manager where the nature of the complaint is within the scope of the PAC role as described in Section 6.4.

6 | Roles and responsibilities

The department is committed to treating all complaints seriously, promptly, sensitively, confidentially and without bias. Parties to a complaint are expected to behave courteously, to act in good faith and to respect each other's rights. The department aims to balance the interests of all parties by managing a complaint from lodgement to resolution, at which point the complainant and other relevant parties are informed of the outcome and the complaint is finalised.

The responsibilities of particular parties involved in complaint resolution processes using the *Complaint Resolution for Employees Policy and Procedure* are outlined below.

6.1 | Employees

Employees have a responsibility to:

- ensure that they are familiar with the *Complaint Resolution for Employees Policy and Procedure* and understand their own responsibilities with respect to them;
- maintain their own safety and welfare while not adversely affecting the safety and welfare of others;
- identify the reasons for a complaint and their expectations regarding an outcome;
- actively participate in the resolution of a complaint with a view to minimising detrimental impact on working relationships.

DECS Complaint Resolution for Employees

6.2 | Line managers

Line managers have a responsibility to:

- ensure all employees for whom they are responsible receive information and appropriate training regarding the application of the *Complaint Resolution for Employees Policy and Procedure*;
- ensure compliance with the department's *Complaint Resolution for Employees Policy and Procedure* by treating all complaints seriously, and taking action promptly and sensitively to facilitate resolution while ensuring confidentiality is maintained at all times;
- refer employees, where appropriate, to support personnel available through the department by giving the names and roles of the relevant DECS officers who can provide information about the complaint resolution process and an appropriate Complaint Manager for lodgement of a complaint;
- ensure that systemic changes identified through the complaint resolution process are referred to the appropriate DECS officer for implementation to achieve organisational improvement.

6.3 | Complaint Manager

The Complaint Manager, for the duration of the complaint resolution process, has a responsibility to:

- ensure she/he manages the complaint process in accordance with the *Complaint Resolution for Employees Policy and Procedure*;
- ensure she/he has a detailed knowledge and understanding of the *Complaint Resolution for Employees Policy and Procedure* and her/his role and responsibilities identified within them;
- assess the complaint and determine the most appropriate approach to effect a resolution;
- ensure confidentiality is maintained throughout the complaint resolution process;
- ensure both the respondent and the complainant are treated fairly and afforded appropriate support throughout the complaint resolution process;
- ensure management of the complaint by communicating effectively with the complainant and respondent;
- monitor and take appropriate action to facilitate and support a safe and positive work environment for all employees associated with the complaint;

- manage and coordinate resolution options, including conducting interviews with the complainant, the respondent, witnesses and other relevant individuals;
- ensure proper record keeping and document handling, including secure storage of all documentation associated with the complaint (see Appendix B for details);
- make recommendations to the manager who has authority to enforce any future actions requiring approval if she/he does not have such authority;
- implement or enforce the recommendations to effect a resolution of the complaint;
- ensure that the complainant and respondent are informed of the outcome and the recommended actions being implemented to bring closure to the complaint.

The sample complaint management form provided at the end of this document may be of assistance to Complaint Managers, who can modify or adapt it to suit their needs.

6.4 | Personnel Advisory Committee—Education Act sites

The PAC has a responsibility to:

- provide advice to the principal in relation to dispute resolution as detailed in Clause 13 of the *SA Education Staff (Government, Preschools, Schools and TAFE) Certified Agreement 2005*;
- ensure complaints lodged with the PAC are in writing and clearly outline the particular concern;
- consider complaints concerning the following issues: internal selection, job and person specifications, management of class organisation and teaching load, staffing conversions, training and development priorities, the implementation of the department's part-time policy, flexible initiatives resourcing, required placement, and complaints related to these matters.

'...both the respondent and the complainant are treated fairly and afforded appropriate support throughout the complaint resolution process.'

DECS Complaint Resolution for Employees

6.5 | Complainant

In addition to the responsibilities that apply to all employees pursuant to the Complaint Procedure, the complainant has the following rights and responsibilities:

- to be treated in a fair and consistent manner as required under the Public Sector Management Act;
- to be protected from victimisation;
- to provide correct and accurate written information in good faith to substantiate their complaint;
- to co-operate with the Complaint Manager in the resolution of her/his complaint;
- obtain advice and support from within DECS and from external agencies.

6.6 | Respondent

In addition to the responsibilities that apply to all employees under the Complaint Procedure, the respondent has the following rights and responsibilities:

- to be treated in a fair and consistent manner, as required under the Public Sector Management Act;
- to be protected from victimisation;
- to provide correct and accurate information in good faith in response to the complaint;
- to be provided, where appropriate or necessary, with clear guidelines about required changes or improvements to her/his behaviour;
- to be supported in her/his endeavours to change her/his behaviour (where relevant);
- to obtain advice and support from within DECS and external agencies.

7 | Confidentiality in the complaint resolution procedure

Confidentiality must be adhered to throughout the complaint resolution process.

Confidentiality in the complaint resolution process means that a complaint can only be discussed with those people directly involved in the complaint or resolution process. Observing confidentiality helps to ensure the protection of the rights of all parties by limiting access to the details of the complaint. In addition, it helps to limit damage to any existing trust between the aggrieved parties, thereby facilitating resolution.

'Each party to a complaint is entitled to both personal and professional advice and support.'

If a complaint is made in good faith and truthfully, and the requirements of confidentiality have been observed, the complainant and those involved in the complaint resolution process are likely to have a defence against any action, such as qualified privilege. In addition, by preserving confidentiality, there will be an enhanced capacity for complaint resolution, as the parties will have greater confidence in each other when involved in the complaint handling process.

Each party to a complaint is entitled to both personal and professional advice and support. This may involve approaching and confiding in an Organisational Health Consultant, a counsellor, the relevant complaints contact person, a responsible departmental officer with expertise in the area of complaint management and/or a union representative. It is expected these people will maintain strict confidentiality.

7.1 | Keeping the complainant's identity confidential

A complainant may request that her/his identity remain confidential when making a complaint but this may limit options for negotiating a resolution with the respondent. For example, an apology is unlikely to be forthcoming if the identity of the complainant is not known. The Complaint Manager should discuss this request with the complainant, explaining that maintaining confidentiality in relation to identity may impact on the complainant's ability to achieve the remedy she/he is seeking. A respondent is entitled to have full information regarding a complaint and therefore a complainant's identity remaining confidential cannot be assured.

While every effort will be made to comply with a request to keep the complainant's identity confidential, Freedom of Information requirements may result in a complainant's identity becoming known. A complainant should be advised to write their complaint with the knowledge that the respondent may gain access to the written complaint. The Complaint Manager is responsible for ensuring that all complaints are documented in the knowledge that the identity of the complainant may be revealed. More information about recording complaints is outlined in the *DECS Administrative Instructions and Guidelines* (an extract is provided in Appendix B), and in the SIU brochure *Making a Complaint/Providing a Statement*, available on the DECS website.

DECS Complaint Resolution for Employees

7.2 | Breaches of confidentiality

A breach of confidentiality may raise questions about whether the person who has caused the breach is acting in good faith and, if not, they may be liable to a defamation action. A civil action for defamation may be brought by a person against someone who has made a statement to another or others, verbally or in written, pictorial or printed form, that is likely to lower the person's reputation in the community or cause others to shun them. Unnecessarily passing on that statement in the course of investigation or resolution of a complaint can give rise to a claim of defamation. A civil claim in defamation is an action generally taken independently of the department. This means that the aggrieved party may incur significant costs associated with any legal action.

While it is acceptable to confide in one's spouse or partner, or authorised persons, there should be no other disclosures. It should be noted that inappropriate disclosure could also leave an individual liable to disciplinary action. If there is any doubt as to appropriate disclosure, the matter should be discussed with a senior manager or an officer from the ESMPU.

8 | Victimisation

The department is committed to ensuring that there is no victimisation of any party involved in a complaint resolution process.

At all times, both during and following a complaint resolution process, the Complaint Manager must take all reasonable steps to ensure that complainants acting in good faith do not experience any detrimental impact as a result of raising an issue, lodging a complaint or seeking information about lodging a complaint.

This includes victimisation of the respondent by those who are not in agreement with the final outcome of the resolution process, or victimisation of others by the complainant, the respondent or any others who sympathise with either party to the complaint. It should be noted that any party whose actions are found to have caused or substantially contributed to victimisation may be liable to disciplinary action.

'The department is committed to ensuring that there is no victimisation of any party involved in a complaint resolution process.'

The *Whistleblowers Protection Act 1993* (SA) provides for the appropriate disclosure of illegal activities and corruption in the public and private sectors, and/or maladministration or waste in the public sector. Employees may wish to seek advice prior to making a report. In addition to departmental staff listed in Section 4, advice is available through the Commissioner for Public Employment, the Crown Solicitor's Office, the Anti-Corruption Branch of the South Australia Police and the relevant employee associations. Disclosures may be made to the Chief Executive, Executive Directors and Directors of the department, the SIU and the Chief Auditor.

The Whistleblowers Protection Act was enacted to provide protection for genuine whistleblowers and redress for individuals (via the Equal Opportunity Act) who suffer victimisation as a result of whistleblowing. However, it should be borne in mind that confidentiality regarding the identity of the whistleblower cannot be assured throughout the process. This is because natural justice requires that a person subject to a complaint be given all the information in order to provide a defence/response, and that information may include the name of the person lodging the complaint.

For further information about the Whistleblowers Protection Act refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

9 | Assessing the complaint

The assessment of a complaint is arguably the most critical part of any successful complaint handling process. As the first step following lodgement of the complaint, the assessment aims to identify and determine:

- the nature of the issues involved and the remedy sought; that is, what has happened to cause the complainant to be aggrieved and what outcome or remedy does she/he seek as a result;
- the initial facts of the matter and any relevant information;
- whether this is the most appropriate procedure to use to support resolution of the complaint. For example, is there a specific complaint process that relates to the circumstances of the complaint (as illustrated in the flowchart provided in Appendix A);
- the most appropriate person to manage the complaint resolution process;
- appropriate resolution options; for example, whether the complainant is seeking a negotiated resolution approach or whether the complaint is appropriate for, or requires, Formal Investigation.

DECS Complaint Resolution for Employees

'It is expected that every effort will be made to effect resolution as soon as possible.'

The critical analysis of the actual purpose of the complaint will necessitate careful clarification with the complainant. The complainant will also be asked to nominate her/his preferred resolution approach and her/his expected outcome. This is best achieved through an interview with the complainant and taking an active listening approach. It is important that following such discussion, the outcome of the discussion is confirmed with the complainant in writing.

9.1 | Assessing resolution options

The various resolution options are examined in detail in Section 10. In keeping with the *Complaint Resolution for Employees Policy*, negotiated resolution is considered to provide the best opportunity for maintaining good relations in the working environment, thus promoting an equitable, safe, productive, cooperative, constructive and healthy environment for all. However, through the assessment process, and based on the seriousness of the presenting issues and the remedy sought by the complainant, a decision can be made as to whether the complaint is appropriate for, or requires, a Formal Investigation.

When assessing a complaint, indicators for Formal Investigation include:

- the department's legal obligation to address a serious issue such as an allegation of misconduct;
- the likelihood of a complainant initiating legal proceedings or pursuing a legislated process following complaint resolution;
- significant health, safety and welfare issues arising for any of the parties if a less formal process is followed;
- the repeat nature of matters complained about involving the same respondent;
- the complainant or respondent being a senior officer of DECS;
- failure by the respondent to cooperate during a Conference with the Parties approach.

9.2 | Timelines and acknowledgement of the complaint

When using the Complaint Procedure, complainants should be advised of the receipt of their complaint within three working days.

As part of acknowledging the complaint, the complainant should be advised of:

- the Assessment process;
- who the contact person (Complaint Manager) is and any support persons who may be involved in the complaint resolution process.

The Complaint Manager should keep all parties informed of the progress of the resolution process and expected timelines for settlement of the complaint. It is expected that every effort will be made to effect resolution as soon as possible. Within 15 working days of receipt of the complaint, the Complaint Manager is required to have either concluded the resolution process and settled the complaint, or informed the parties about the intended steps to manage the resolution process and the indicated timelines.

10 | Options for complaint resolution

After obtaining advice from an appropriate person (or persons), an aggrieved person may seek to personally address and resolve the issue(s) between themselves and the other party without lodging a complaint. This approach does not involve the assistance of a third party and is an option for resolution only prior to lodging a complaint with the department. If appropriately handled, this approach can contribute significantly to maintaining employee relationships, safety, wellbeing and continued productivity in the workplace, and prevent escalation through the involvement of third parties.

If, however, a complaint has been lodged and assessed, the Complaint Manager will inform the complainant and respondent of the outcome of the Assessment. This includes:

- a summary of the issues underpinning the complaint and the remedy sought;
- confirmation that the complaint is appropriate to be managed under the Complaint Procedure;
- confirmation that the Complaint Manager has been deemed appropriate to manage the resolution process;
- the resolution options available given the nature of the complaint, including whether Formal Investigation has been determined as the appropriate resolution option;
- the proposed timeline for resolution.

DECS Complaint Resolution for Employees

10.1 | Conference with the Parties

If, upon assessment of the complaint, the Complaint Manager determines that a Conference with the Parties is the most appropriate resolution approach to take, the cooperation of the parties to a complaint will be sought to encourage their active participation in the process.

Conferencing brings the complainant and the respondent together to negotiate a resolution. The process of negotiation between the parties seeks to resolve the complaint through identifying a way forward rather than determining wrongdoing. The Complaint Manager acts as an impartial facilitator in this process and negotiation may be undertaken with or without the assistance of other parties, such as an external facilitator. In some situations it will be appropriate for the parties to be in separate rooms; for example, to manage a power imbalance between the parties. Conferencing in this situation is to be conducted using a shuttle approach between the parties.

Wherever possible, negotiated resolution options through a Conference with the Parties will be explored with all parties involved in the complaint. In keeping with the *Complaint Resolution for Employees Policy*, negotiated resolution is considered to provide the best opportunity for maintaining good relations in the working environment, thus promoting an equitable, safe, productive, cooperative, constructive and healthy environment for all. See Appendix C for further details.

10.2 | Formal Investigation

A Formal Investigation occurs when there is a need for a systematic and detailed examination of the circumstances leading to the complaint to determine whether inappropriate behaviour has occurred and the need for, and nature of, any further action. Information is gathered in relation to the allegations and is used to determine a finding and inform a recommended resolution.

Based on the seriousness of the presenting issues and the remedy sought by the complainant, a decision will be made as to whether the complaint is appropriate for, or requires, a Formal Investigation. Where a matter is judged as being appropriate for Formal Investigation, every effort will be made to respect the complainant's right to request, and the respondent's desire to seek, a negotiated resolution through Conference with the Parties. Some situations will, however, require that a Formal Investigation be conducted even when a negotiated resolution has been requested.

Refer to Appendix D for details regarding conducting a Formal Investigation.

'The process of negotiation between the parties seeks to resolve the complaint through identifying a way forward rather than determining wrongdoing.'

10.3 | External agency

Complainants have the right (where available) to lodge a complaint with an external agency. It should be noted that external agencies may have an expectation that the complaint will be addressed in the first instance using the department's internal processes. The complaint may be directed to an entity or agency external to DECS; for example, a union, Teachers Appeal Board, Promotion and Grievance Appeals Tribunal, Employee Ombudsman. Refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

11 | Achieving resolution

11.1 | Opportunity to be heard

Procedural fairness requires that all parties to a complaint have the opportunity to be heard and are treated fairly and without bias. It is important that a complainant have an opportunity to voice concerns and be listened to. Respondents are entitled to know, and have provided to them in writing, the details of the allegation(s) made against them prior to any scheduled interview in order to exercise their right to respond.

11.2 | Complaint unsubstantiated with explanation

If, in the course of the complaint resolution process, it is found that there is insufficient evidence to substantiate a complaint, both the complainant and the respondent will be advised of the circumstances that have led to this finding. The explanation provided may be of itself a reasonable outcome leading to resolution of the matter. If the complainant is dissatisfied with this outcome, she/he may seek a single review, but must give reasons for requesting this further action (refer to Section 13, Review Rights and Appeal).

DECS Complaint Resolution for Employees

11.3 | Consequent action

If discussion itself has been sufficient to resolve the complaint, then no further action is necessary beyond recording the discussion and ongoing monitoring for a reasonable period of time. In other cases, exploration of the cause of the problem may suggest a need for further action.

Any consequent action that is determined to be appropriate, may, depending upon the circumstances, include but is not restricted to:

- a mediation conference
- an apology
- referral to counselling
- on-the-job training or nomination of the respondent employee for appropriate training courses
- a verbal and/or written warning or direction to the respondent employee to change the behaviour
- reallocation of duties
- systemic change.

11.3.1 | Conciliation and mediation

If either a conciliation or mediation process is deemed to be an appropriate course of action as determined by the Complaint Manager, the agreement of the parties to the complaint must be sought and obtained prior to commencing such a process. Complaint Managers engaging in/conducting the mediation process should refer to Appendix C, *Conference with the Parties*.

11.3.2 | Apology

Where an apology is deemed an appropriate means of achieving resolution, it can be effected either through a personal apology at a meeting convened for that purpose or a written apology provided to the complainant by the respondent. To achieve long-term change in addressing a grievance, it is important that any apology is willingly given. Any written apology should not be regarded as a formal admission of liability that could be used for any other purpose; for example, legal action seeking damages.

'The Complaint Manager will seek and make a referral to the training or counselling/support service that best meets the employee's needs.'

11.3.3 | Commitment to change behaviour

Where it has been established that the respondent to a complaint has behaved in an inappropriate manner, then a commitment to change that behaviour may be deemed an appropriate resolution to the complaint. This commitment should be agreed in writing. Any document to this effect should include an appropriate review schedule and notification of the consequences of the respondent failing to comply with the agreement.

11.3.4 | Training and development/referral to counselling

If the Complaint Manager establishes/determines that for reasons of non-compliance with respect to departmental or other policy requirements, a respondent to a complaint is in need of training and development or counselling/support, the respondent may be required to make a commitment to change her/his behaviour. The Complaint Manager will seek and make a referral to the training or counselling/support service that best meets the employee's needs.

11.3.5 | Warnings/directions

Where a complaint has been substantiated through a Formal Investigation process, the respondent may be instructed by the Complaint Manager, or an appropriate alternative manager, in relation to her/his behaviour. She/he may be issued with a written warning in relation to behavioural expectations in the future.

In some instances, the appropriate line manager may issue a warning or direction to the respondent that a particular course of action must be taken or specific behaviours must be changed or stopped. Warnings or directions of this nature will be accompanied by information outlining the consequences of failing to comply with the warning or direction of a senior officer.

11.3.6 | Reallocation of duties

Where the grounds of a complaint are upheld and the relationship between the complainant and respondent is such that it interferes with the capacity of the work environment to function appropriately, a decision may be made to relocate one of the parties. Such a decision would only be made after proper consultation has occurred. The Complaint Manager or an appropriate alternative manager will however, decide on the final action to be taken.

DECS Complaint Resolution for Employees

11.3.7 Systemic change

Where it is identified that policies and procedures within the organisation are contributing factors to the cause of a complaint, DECS is committed to reviewing these and effecting the implementation of changes for organisational improvement.

It is the responsibility of the Complaint Manager to ensure that recommendations for systemic change are brought to the attention of the appropriate personnel at the conclusion of the complaint resolution process. Such recommendations may include, for example, the need for training and development activities with a group of employees as identified through the complaint resolution process, or the review of aspects of a departmental procedure.

12 | Administrative requirements

12.1 | Record keeping

Once a complaint has been lodged, the department has a responsibility to ensure that the resolution process is conducted appropriately and is followed through to settlement of the complaint. Where a Conference with the Parties is undertaken, written records should be kept of all aspects of the complaint resolution process. These records should be placed in a DECS Confidential File and retained by the Complaint Manager during the resolution process. This may not necessarily include matters discussed during mediation or conciliation, but a record of the outcomes must be retained. Any disposal of records should be in accordance with the approved Disposal Schedule.

Where a Formal Investigation is conducted, the investigation report and all documentation collected during the investigation should be placed in a DECS Confidential File and retained at the worksite of the Complaint Manager for the duration of the investigation. At the conclusion of the investigation the file should be returned to DECS Record Management and retained in accordance with *State Records—Record Disposal Schedule No 1418* (Appendix B).

Any copies of documents retained at the worksite should be housed in a file identified as 'Confidential' and cross-referenced to the DECS Confidential File. The workplace file should be stored in a secure, confidential filing cabinet and disposed of in accordance with state disposal requirements (Appendix B).

'Once a complaint has been lodged, the department has a responsibility to ensure that the resolution process is conducted appropriately and is followed through to settlement of the complaint.'

12.2 | Expenses arising from the complaint process

Managers are responsible for the authorisation of expenditure in the management of a complaint, consistent with current DECS policy and delegations. Prior approval must be sought from the Complaint Manager or a line manager with appropriate authority before any expenses are incurred or claimed.

13 | Review rights and appeal

If a party to a complaint has concerns about the complaint resolution process that has been followed or the resulting outcome, it is recommended that the concerns be discussed with the Complaint Manager in the first instance.

If concerns are not satisfactorily or effectively addressed at this level, there is the opportunity to seek a single review from the Chief Executive. A single review can be sought either during the course of or following the final outcome of a resolution process under the *Complaint Resolution for Employees Policy and Procedure*.

Requests for a single review must be directed to the Chief Executive, who will generally refer the matter to the ESMPU for independent investigation and advice.

The party seeking a single review is expected to specify her/his reason(s). The Chief Executive will only initiate a review where it can be shown that there are sufficient grounds to support the request, and will restrict such review to the specific relevant matters.

DECS Complaint Resolution for Employees

In circumstances where the ESMPU was significantly involved in the original investigation, the Chief Executive will identify an impartial person to undertake the review. This person will be identified from a register of individuals compiled in consultation with the President of the Australian Education Union, the General Secretary of the Public Service Association, the relevant professional associations and the Executive Director of Human Resources and Workforce Development.

The register will be prepared on a biannual basis, with each of these groups nominating a person (or persons) to be included on the register who:

- is not a current employee of the department;
- has the confidence of the nominating group in relation to undertaking the review process;
- has knowledge and experience that would be beneficial for understanding possible complaint situations in the department.

It is not expected that individuals on the register will have an ongoing relationship with the department. Their involvement will be only if, and when, they are identified as being the most appropriate person to undertake a review.

The Chief Executive's decision following such review will be final.

Depending on the nature of the complaint, the complainant may have access to further avenues of appeal or review through external agencies. For a summary of external appeal processes, refer to the Complaint Quick Reference Guide at www.decs.sa.gov.au/HR1/pages/default/docs.

14 | Definitions

For the purposes of the policy and procedure *for Complaint Resolution for Employees 2007*, the terms below are defined as follows (listed in alphabetical order).

Assessment

The process whereby the nature of a complaint is assessed to evaluate the grounds for the complaint and to determine an appropriate response. The assessment process is generally conducted by a manager with responsibility for the overall management of the complaint process.

Complaint

An act to register protest against the action or inaction of a person, group of people or organisation that has caused another person or group of people to be aggrieved.

Complainant

A person (or group of people) who is aggrieved by the action or inaction of another person, group of people or organisation and takes action through submission of a complaint to resolve her/his grievance.

Complaint Manager

The person responsible for management of the complaint resolution process. This may be the immediate line manager, the next level of senior line manager or, under certain circumstances, another person authorised by a line manager to undertake the complaint management role.

Conference with the Parties

An optional pathway to resolution in which the complainant seeks resolution to the complaint by acting in consultation/ collaboration with the parties involved in the actions leading to the complaint. Other departmental staff may also be involved.

Confidentiality

Ensuring that the privacy of the parties involved in a complaint is protected to avoid giving grounds for possible defamation action; that is, information is kept within a group of people who need to know. This includes persons who are deemed to have a legal right to know, those who may need to know because they have a role in the process, or those who have an accountability requirement.

Employee/staff

Person/s employed by the Department of Education and Children's Services, whether on a permanent, contract, temporary or casual basis.

'Depending on the nature of the complaint, the complainant may have access to further avenues of appeal or review through external agencies.'

DECS Complaint Resolution for Employees

Formal Investigation

A possible pathway to resolution that may be identified through the Assessment process when a complaint is submitted. Formal Investigation involves having a representative of the department undertake a process of identifying the facts of the situation and determining whether the allegations contained in the complaint can be substantiated.

Grievance

The cause or source of a complaint. The cause to feel wronged by an action or inaction of a person, group of people or organisation.

Local level

The principle of resolving complaints by limiting those involved in the resolution process to those people closest to the source of the disagreement.

Observer

A person present with an investigating officer at an 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 her/his role. The investigator determines whether written minutes or a tape recording is appropriate. Should a tape recording be the preferred method of recording minutes, this can only be used with the consent of the parties involved.

Procedural Fairness

The principles of natural justice require that the resolution process is fair and free from bias. Procedural fairness includes the right for all parties to be heard, treated without bias and provided with full information about resolution and support options. This means that the subject of the complaint (the respondent) must be fully informed of the allegation(s) and given adequate opportunity to respond.

Reasons for complaint

The legislative or policy basis that provides the foundation for a complaint to be assessed as valid. Examples include the breach of a right or the imposition of an unfair administrative decision.

'Procedural fairness includes the right for all parties to be heard, treated without bias and provided with full information about resolution and support options.'

Reasonable resolution

Ensures that the complaint has been appropriately addressed through a Conference with the Parties and/or Formal Investigation. The remedy sought by the complainant will be assessed when determining the appropriate outcome(s); however, a reasonable resolution may be achieved on the basis that there has been a fair and unbiased assessment of the facts and an explanation provided to all parties about the reason(s) for the initial direction or action being adopted. In some instances, the nature of the complaint will necessitate additional action by the department to ensure that policy and legislative requirements are fulfilled.

Respondent

A person (or group of people) who is the subject of a complaint, or a person who answers to a complaint on behalf of an organisation.

Support person

Both the complainant and the respondent are entitled to have a support person and/or an interpreter present at an interview conducted as part of a Formal Investigation. This person may be a trusted colleague, a union representative, or any other person who acts as a support to the person being interviewed. The support person should not be directly involved in the complaint, and is expected to maintain the confidentiality of any information acquired as a result of her/his role.

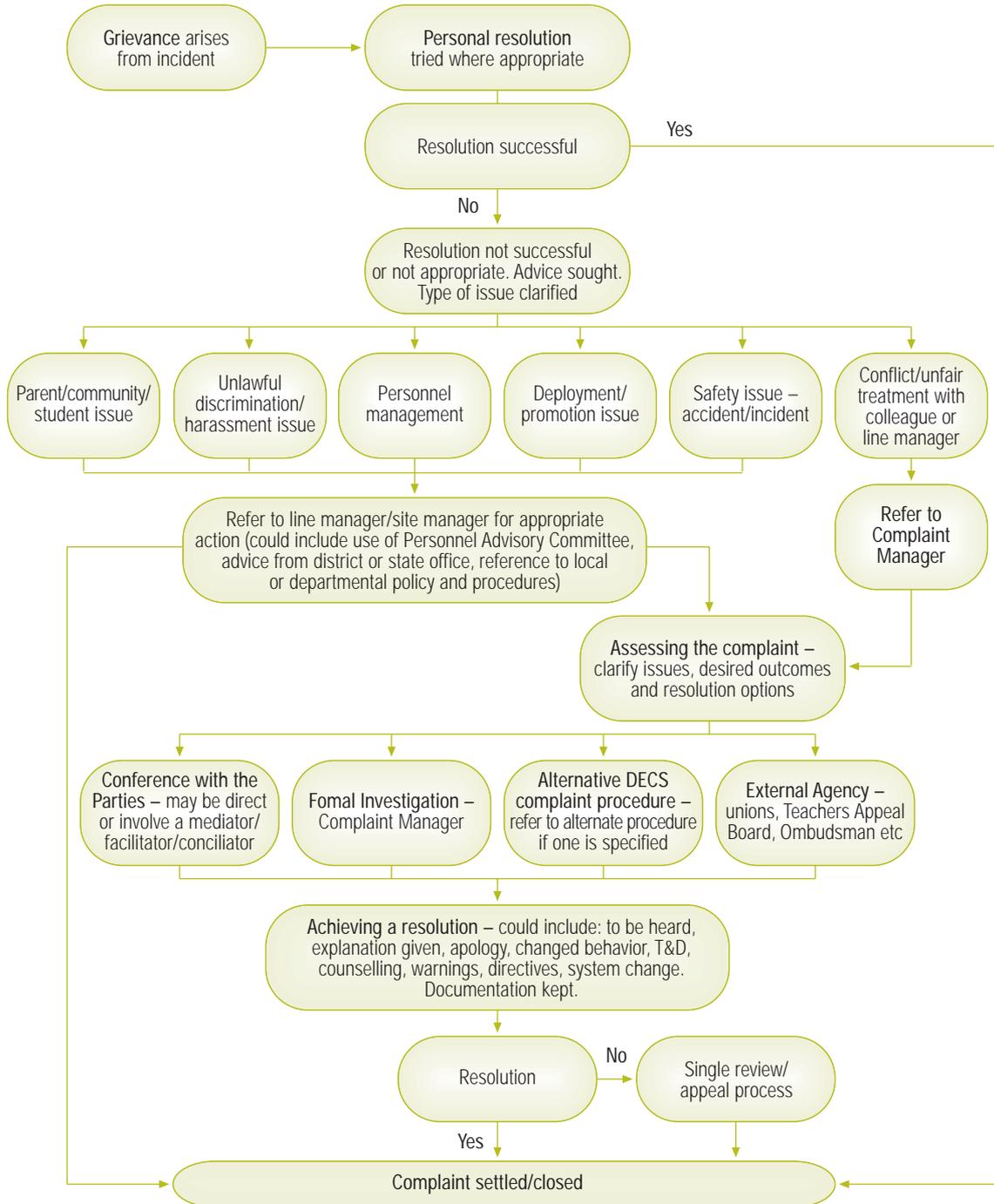
Victimisation

The singling out of a person or group of people for unfair treatment. At all times, during and following investigation of a complaint, the Complaint Manager must take all reasonable steps to ensure that complainants who act in good faith do not experience any detrimental impact as a result of lodging a complaint or seeking information about lodging a complaint. Similarly, there should be no victimisation of the subject of the complaint (the respondent) by those who are not in agreement with the final outcome of the investigation. Nor should there be victimisation of others, including students, either by the person about whom the complaint was made or by others who sympathise with that person.

Appendix A: Complaint Resolution Flowchart

Complaint Resolution Flowchart

(Must be used in conjunction with full Complaint Procedure)



Appendix B: Guide to record keeping and confidentiality

Guide to record keeping and confidentiality

Confidentiality relating to the complainant's identity

The *Administrative Instructions and Guidelines* provide guidance for action that is relevant to all confidential matters. These guidelines make specific reference to teachers; however, the principles apply to all employees involved in the complaint resolution process. The relevant section is as follows:

When any written or oral complaint is received, it is necessary to assess whether the complaint is such that, in order to deal with it effectively it may be necessary to disclose the complainant's identity and/or the precise terms of the complaint. If so, the complainant should be advised and his/her consent obtained before the complaint is investigated. If the complainant does not consent, he/she should be advised of the extent to which the complaint may be dealt with (perhaps only in a general way). If the nature of the complaint is such that it can be investigated and resolved without disclosing that information, it is still necessary to identify whether the complainant intended his/her identity and/or the precise terms of the complaint to remain confidential. Where the circumstances surrounding the making of the complaint, or the terms of the complaint itself, do not make the matter clear, it will be necessary to establish whether confidentiality was intended by reverting to the complainant. If the complainant indicates confidentiality was intended in one or more respects, then the principal should indicate his/her willingness to maintain confidentiality subject to any contrary legal requirement. This may include consideration of whether the document should be released or exempt in relation to a Freedom of Information application. It also includes the common law requirement that a teacher is entitled to be appraised fairly of the case against him/her in disciplinary proceedings. The general terms of the complaint may be communicated to the teacher. Transcripts of witnesses' statements should not be supplied.

Where confidentiality is established as above by both parties to the complaint, and this agreement is documented, if the subject of the investigation applies for access under the *Freedom of Information Act 1991 (SA)*, then she/he would normally be given a copy of the complaint with deletions of any information that would tend to identify the complainant. However, if such information is used as a basis for disciplinary action, then it may need to be released, if not under Freedom of Information then in the course of the disciplinary action, a subsequent appeal to the Teachers Appeal Board, or criminal proceedings.

Freedom of information determinations are subject to appeal by the applicant to the Ombudsman or the District Court and the appeal may overturn the decision. Consequently, it is not possible to guarantee confidentiality to the complainant/interviewee.

Preparing, storing and securing documentation

When monitoring an employee or a work environment in response to a concern, documentation should be prepared and used according to the following protocols:

- Individuals have a right to know that information about them is being held or is to be gathered, the purpose of the information, whether the collection is required by or under law and, in general terms, who will have access to that information.
- Individuals have a right to request access to information that pertains to them.
- Recorded information must be accurate and factual and not a subjective interpretation of events or information. Opinions need to be recorded as 'In my view...' or 'It is my opinion that...'.
• Information must be dated and appropriately referenced, and not excessively personal. It must also record the author and be signed by that person.
- Data must be stored confidentially.
- Where monitoring information is used to inform or respond to a complaint, the individual being monitored has a right to access data held on them in accordance with the provisions of the Freedom of Information Act. Information collected by a departmental employee should not be released without prior consultation with the relevant DECS officers.

Disposal of DECS records

All official DECS records must be disposed of in accordance with an approved Disposal Schedule. DECS sites and business units should adhere to the retention periods established through the relevant schedules. Refer to the DECS Records Management website for specific details.

Appendix B: Guide to record keeping and confidentiality

Retention periods

Retention periods for temporary files commence from the date the file is closed after last action. If the file is reactivated the retention period recommences from the subsequent date of file closure.

Where a file contains folios that fall into more than one disposal action, either in this or the General Disposal Schedule, the file is retained in accordance with the longest retention period.

Recommended custody

It is recommended that files be transferred into secondary storage when administrative use ceases. Files that are to be retained permanently should be transferred to State Records soon after their administrative use has ceased.

Appendix C: Supporting Information

Conference with the Parties

Negotiation

Negotiation occurs in many facets of professional and personal life. When resolving complaints, negotiation is a focused and conscious process that produces a change to resolve a complaint. During negotiation there is a change in the relationship between the parties who are negotiating.

Roger Fisher and William Ury, working on the *Harvard Negotiation Project*, have developed a negotiating method called 'Principled Negotiation', which is a way of negotiating on the merits of a situation. It involves four main principles:

- Separate the people from the problem.
- Focus on interests, not positions.
- Invent options for mutual gain.
- Insist on using objective criteria.

Mediation

Mediation is distinguished from negotiation by the presence of an impartial third party who facilitates the disputing parties working out an agreement.

Mediation is distinguished from arbitration (i.e. the court system) in that the mediator does not have the power to impose a solution on the parties. Through facilitation, the mediator is able to assist the parties to explore the issues and reach the best joint decision possible in the circumstances.

The aim of mediation is to achieve agreement between parties on the basis of a balanced power relationship between the parties. The parties are to be treated with respect and fairness.

Mediation provides an opportunity for people to communicate with each other; to exchange feelings, ideas and perceptions; and to negotiate with each other and participate in making decisions about their own lives. The parties in dispute, not the mediator, are the ones who decide the terms of the agreement. Therefore, the principle of empowerment of the parties is very important in the area of mediation.

Mediation is intended to be an informal process, and to be confidential (i.e. not in the public domain). Mediation can deal with a number of different issues and provide a range of alternatives for parties that may not be available in a more conventional system. Mediation is a voluntary process.

Conciliation

Conciliation is similar to mediation; however, it is generally used by an agency that administers rights granted under legislation, such as the Equal Opportunity Commission. It also may be used as a process prior to hearing in tribunals or courts (e.g. in the Industrial Commission or at a Workers' Compensation Tribunal).

Conciliation also requires the presence of an impartial third party; however, the Conciliator has another duty—to act as an advocate for the legislation. Sometimes the Conciliator will take a more active role in making suggestions or advising on the best way to resolve a complaint. However, the Conciliator cannot make the final determination on behalf of the parties. The Conciliator does have an obligation to ensure the terms of settlement are appropriate in protecting the rights that have allegedly been infringed.

Unlike mediation, attendance at a conciliation conference may not be a voluntary process. A party can be compelled to attend a conciliation conference once a complaint has been made.

Guide to conducting Negotiated Resolution

Negotiated Resolution should not be used in situations where it is considered likely that one of the parties will engage in acts of victimisation of the other as a result of the complaint.

Attitudes for Negotiated Resolution prior to conferencing

The Complaint Manager needs to be acceptable to both parties. Conferencing is the process of bringing together the parties to the complaint.

The Complaint Manager should approach the process keeping the following in mind:

- In situations prior to the conference where only one party is being interviewed, care must be taken to avoid judgements about the absent person.
- Be seen to be objective.
- Questions rather than statements can be asked to assist in clarification.
- A non-threatening and private environment should be provided where people will feel safe and comfortable in discussing their concerns.
- Judgements about who was right and who was wrong should be actively discouraged.

Appendix C: Supporting Information

Introductions and agreements

The following procedure should be followed:

- Explain the process to be undertaken and summarise the stages of Conferencing.
- Establish time constraints.
- Clarify the roles of the personnel present. This should include the complainant, respondent, Complaint Manager and, if appropriate, a minute recorder or observer.
- Explain the Complaint Manager's role as that of an impartial, neutral facilitator, and that the purpose of the conference is to arrive at a mutually acceptable solution.
- Establish basic rules within the process. These include no interruptions when the other party is responding (e.g. mobile phones are switched off).
- Determine the note-taking process and the access to these notes by the parties.
- Reiterate the need for confidentiality and explain the consequences if it is not observed.
- Explain that victimisation of the complainant by the respondent as a result of the complaint, or victimisation of any person involved as a result of the outcome, is strictly prohibited, and that victimisation includes any action that could result in a detrimental impact on the other person.

Some guidelines

- Use calm conciliatory language.
- Define the Complaint Manager's role as supporting the restoration of positive working relationships and a safe working environment.
- Clarify what documentation is to be kept, where it will be stored and for what period of time.
- Obtain agreement from both parties about a basic willingness to resolve the complaint.
- Allow the complainant and respondent to identify the complaint. Ensure that both parties understand the other's position.
- Guide the conversation towards a joint problem-solving approach and aim for a result that is acceptable to both parties. Do not allow statements that amount to personal attack.
- Where possible, reframe a negative statement as a neutral description of a legitimate concern.
- Ensure that at the end of the conference, all parties are clear about the expected action, including achievable timelines.

The Complaint Manager should ensure that notes detailing the nature of the complaint, options discussed for resolution and any agreed future actions are clearly documented.

A copy of agreed outcomes or future actions in relation to the complaint must be provided to the complainant and respondent in a timely way.

Any follow-up action must be documented. Records should be stored in a secure place by the Complaint Manager for a period of two years of active employment following the resolution of the complaint, unless there is any subsequent related complaint or the employee has a current worker's compensation claim. In these cases, documentation should be retained for a period of two years after resolution of the above matters.

Should conferencing not be successful, the Complaint Manager should determine what further course of action is required to resolve the situation and recommend this to the appropriate manager.

Appendix D: Conducting a Formal Investigation

Conducting a Formal Investigation

Effective personnel management practices aim to ensure that, wherever possible, preventative measures are used to minimise the necessity to conduct Formal Investigations. Confidentiality requirements must be adhered to throughout all complaint resolution processes, to preserve personal information and to avoid causing unnecessary damage to working relationships.

Indicators for Formal Investigation include:

- serious conduct issues being alleged;
- the likelihood of a complainant accessing outside legal or legislative processes following complaint resolution;
- significant health, safety and welfare issues arising for any of the parties if a less formal process is followed;
- the repeat nature of matters complained about involving the same respondent;
- the complainant or respondent being an officer in the Executive stream;
- failure by the respondent to cooperate during a Conference with the Parties approach.

Where there is evidence of a pattern of inappropriate conduct, or evidence of a sufficiently serious isolated act, the Complaint Manager may need to seek advice from the relevant District Director or Special Investigations Unit, as the matter may need to be referred for consideration.

Investigations at the local level are to be managed by the Complaint Manager. A Complaint Manager may conduct the investigation or may authorise another person to conduct the investigation on their behalf. Advice regarding Formal Investigation may be sought from the Ethical Standards and Merit Protection Unit.

Details of the allegations

The complainant is required to submit written details of the allegations in a clear and concise manner, outlining the incident(s) that precipitated the complaint. Where possible, dates and time should be included along with the names of any witnesses to the incident(s).

Critical analysis of the actual purpose of the complaint will necessitate careful clarification with the complainant. This is best achieved through discussion with the complainant, taking an active listening approach. It is important that following such discussion, the Complaint Manager confirms her/his understanding of the details of the complaint with the complainant.

Timing

When a complaint is lodged and the incident is more than 12 months old, the decision to investigate must be based on duty of care issues to other departmental employees, volunteers and children. The Complaint Manager must ascertain the reason for the delay, as this will influence the decision as to whether or not it is reasonable in the circumstances to proceed.

Support persons

The complainant and respondent are both entitled to have a support person present at any interview if required. The support person should have no direct involvement with the complaint. This person may be a colleague, Health and Safety Representative, union representative, or any other person who acts as a support to the person being interviewed.

The role of the support person should be clearly defined prior to the commencement of the interview; that is, to observe, advise and provide support in relation to the process. A support person cannot answer questions on behalf of the employee but can advise the employee not to answer. The employee and the support person may need to confer privately during the process. The support person will be required to maintain confidentiality.

Meeting observers and note takers

An observer may be required to be present with the investigating officer at the interview(s). It is advisable that the observer acts as a confidential minute taker during all interviews to ensure accurate details are recorded. The minute taker will be required to maintain confidentiality. The investigating officer will determine whether written minutes or a tape recording is appropriate.

Interpreters

Where indicated as being beneficial, the complainant and or respondent may have access to an interpreter at the interview. Interpreter services can be accessed through *The Interpreter and Translating Centre, Multicultural SA*. The cost of this service will be borne by the unit from which the complaint originated.

Establishing interviews

The gathering of information to inform the investigation of a complaint requires that the complainant be informed of the process to be used and that further information regarding the allegation(s) be sought.

The respondent must be informed of the allegation(s) and then interviewed to determine her/his response(s) and to establish the facts around the complaint.

Appendix D: Conducting a Formal Investigation

Both the complainant and the respondent should be given the opportunity to provide any written information to assist their position. It is not always appropriate to provide either the complainant or the respondent with a copy of the written complaint or responses; however, it is preferable that there is a full and clear explanation provided to both parties by the person conducting the investigation to maximise understanding through the investigation process.

The interview

During the interview the person conducting the investigation should:

- reinforce the need for all parties to maintain confidentiality;
- explain the aims of the interview, which include the provision of the allegations to the respondent for response and, as appropriate, to identify the most appropriate options for resolution of the complaint;
- provide a reasonable opportunity for the respondent to respond to the complaint;
- explore with the respondent possible causes of the complaint
- where appropriate, or if relevant, explain clearly how the respondent's actions fall short of what is required by the department. This may include details of relevant policies, procedures, or instructions or how the respondent's actions may be affecting others in the workplace;
- discuss options for resolving the complaint;
- summarise and confirm her/his understanding of the response;
- clarify the process and storage of and access to information associated with the complaint.

In exploring causes and options, the person conducting the investigation must be aware of the need to listen, to ask open-ended questions, to avoid directive advice or judgemental comments, and to avoid unnecessary intrusion into the private lives of employees.

Persons conducting investigations need to be aware that there are instances where an action has caused a complaint but that the respondent may not be at fault. In addition, there may be some influencing factors over which a respondent has limited or no control, such as:

- poor communication;
- inadequate training and development;
- poor organisation of work tasks;
- work being beyond the respondent's capabilities or excessive based on reasonable work loads;
- mitigating domestic circumstances including illness, disability, anxiety;
- high levels of employee tension within the work site;
- misunderstandings as a result of different cultural values.

Such factors are not necessarily excuses for inappropriate conduct but may need to be addressed in order to resolve the complaint successfully.

Interviewing witnesses

It is important to be sensitive to the needs of witnesses when issues are raised about the location or timing of the interviews. Generally, for reasons of maintaining confidentiality, it is not appropriate for a witness to have a support person present when being interviewed.

When interviewing witnesses, the person conducting the interview may ask questions without necessarily giving the witness or respondent precise details, such as disclosing names, to protect the identity of those who are relevant to the investigation. The witness should be provided with sufficient information to make an informed response.

At the start of the interview, the person conducting the interview should confirm with the witness the purpose of the interview and the manner in which the witness' responses will be recorded. At the conclusion of the interview, the interviewer should confirm her/his understanding of the information provided by the witness. The witness can be asked to sign and date any record taken.

Record taking

A record of all interviews must be kept. This is generally in the form of written notes but, with the consent of the witness, can include audio or visual recordings.

The record must specify:

- the explanation provided by the person conducting the interview regarding confidentiality, protection from victimisation, the process to be followed, any resources or other people referred to, and any discussion on potential outcomes;
- date, time and location of the interview;
- the name of the person conducting the interview;
- the name and position of the interviewees, and whether they are the complainant, respondent or a witness;
- the concerns or allegations raised;
- action taken prior to interview;
- information provided at the interview;
- outcome or action decided upon and agreed to

Copies of all relevant documents are to be attached to the record of interview. The record of interview can be signed by the interviewee, who should be given a copy on request. Should the interviewee decline to sign the record of interview, this should be noted on the record. The record may only be amended with the agreement of the person conducting the interview. If the person does not agree, the point(s) of disagreement will be noted on the record.

Appendix D: Conducting a Formal Investigation

The record of interview should initially be retained by Complaint Managers and kept in a secure place, such as a locked filing cabinet, to which only they or their delegates have access. The record of interview should be stored for a period of two years following the resolution of the complaint, unless the *Record Disposal Schedule* directs differently.

Victimisation

Parties to a complaint must be afforded (as far as is reasonably practicable) protection from any victimisation as a result of a complaint being lodged, the resolution process, or the final outcome. It should be explained to the parties involved that victimisation means the singling out of a person for unfair treatment resulting in some detriment to them, and that any person found to have engaged in actions causing victimisation may be liable to disciplinary action.

Should victimisation occur, the aggrieved party should, in the first instance, bring this to the attention of the Complaint Manager or, alternatively, the next level of senior manager.

Consequent action

If discussion itself has been sufficient to resolve the problem, then no further action is necessary beyond recording the discussion and ongoing monitoring. In other cases, exploration of the cause of the problem may suggest a need for further action.

Should the need for consequent action be determined, that action will depend on the circumstances. Such action could include, but is not restricted to:

- an apology
- commitment to change behaviour
- training/referral to counselling
- a verbal and/or written warning or direction
- reallocation of duties
- systemic change.

Conciliation and mediation

If this is deemed to be an appropriate course of action by the Complaint Manager, agreement must be obtained from all parties prior to commencing any mediation process. Complaint Managers engaging in the mediation process should refer to the mediation guidelines published in this document as part of Appendix C. For advice about mediation, contact Health and Safety Services at www.decs.sa.gov.au/ohs

Apology

Where this is deemed an appropriate means of achieving resolution it can be effected either through a personal apology at a meeting convened for that purpose or a written apology provided to the complainant by the respondent. Any written apology should not be used for any other purpose (e.g. legal suit).

Commitment to change behaviour

Where it has been established through investigation that the respondent to a complaint has behaved in an inappropriate manner, then a commitment to change that behaviour may be deemed an appropriate resolution to the complaint. This commitment would be reflected in a written and signed agreement that would include an appropriate review schedule and expressly state the consequences of failing to comply with the agreement.

Training and development/counselling

If the Complaint Manager establishes that a respondent to a complaint is in need of training and development or counselling/support in relation to a departmental policy, this may form a requirement of a commitment to change behaviour. The Complaint Manager will determine the appropriate training or counselling service for the respondent, and costs will be met by the department through the work group in which the respondent is currently employed.

Warnings/directions

Where a complaint has been substantiated through an investigation, the respondent may be instructed by the Complaint Manager in relation to her/his behaviour. She/he may be issued with a verbal or written warning in relation to expected behaviour in the future.

In some instances the respondent may be issued a direction by the line manager, or an appropriate alternative manager, that a particular course of action must be taken or specific behaviours must be changed or stopped. Warnings of this nature will be accompanied by information outlining the consequences of failing to comply with the direction of a senior officer.

Reallocation of duties

Where the grounds of a complaint are upheld and the relationship between the complainant and respondent is such that it interferes with the capacity of the work environment to function appropriately, a decision may be made to relocate one of the parties to the complaint. This would be arranged through appropriate consultation with both parties and the relevant personnel within Human Resources.

Systemic change

Where it is identified that policies and procedures within the organisation are contributing factors to the cause of a complaint, DECS is committed to reviewing these and effecting the implementation of change to achieve organisational improvement.

It is the responsibility of the Manager with the relevant authority to ensure that recommendations for systemic change are brought to the attention of the appropriate personnel at the conclusion of the complaint resolution process.

Complaint Notification Form

C o n f i d e n t i a l

This form is used to clarify your complaint and to provide initial documentation.

Personal contact details

Name:

I.D. _ _ _ _ _

Contact Ph:

Site:

District:

Complaint details

Which of the following best describes the nature of your complaint? (Please tick)

- Parent/community/student issue (refer to site policy and procedures, Out of Hours School Care)
- Discrimination/harassment/bullying issue (refer to *DECS Complaint Resolution for Employees, Policy and Procedure*) (2007)
- Personnel management—(refer to Code of Conduct/ Performance Management, HR & IR)
- Deployment/promotion/selection issue (refer to HR & IR, Merit Selection Policy and Procedures, ESMPU)
- Safety issue—accident/incident (refer to H & S rep, complete (ED155) Accident/Incident Report Form if appropriate)
- Conflict/unfair treatment involving colleague or line manager (refer to *DECS Complaint Resolution for Employees, Policy and Procedure*) (2007)

Outline of the issue(s):

What steps have you already taken to resolve the issue(s)? (Include the names of people you have approached for advice and/or assistance) Attach an extra page if necessary

What resolution are you seeking?

Signature

Date: / /

(Complainant)

Submit this form to your line manager or next appropriate line manager

Signature

Date: / /

(Manager)



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For more information visit the website at www.decs.sa.gov.au/HR1/pages/default/docs

Complaint Management Form

Complaint assessment

Nominated Complaint Manager: _____

Issues underlying the complaint: _____

Resolution

Resolution Options:

- Conference with the Parties – may be direct resolution or involve a mediator/ facilitator/conciliator
- Formal Investigation – eg line manager/ district director/ ESMPU/SIU
- External Agency – eg unions, Teachers Appeal Board, Ombudsman etc.

Action(s) taken: (Attach extra page if necessary) _____

Outcome

Outcome of action taken: (could include: to be heard, explanation given, apology, changed behaviour, T&D, counselling, warnings, directives, system change—see Section 9 of Complaint Procedure)

Complaint settled: Yes No

Follow up required: _____



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