



**U3A Rockhampton and District Inc.**

*ABN 83 907 668 103*

# **INTERNAL GRIEVANCE PROCEDURES**

## **Background**

The management committee and members of U3A Rockhampton and District Inc. aim to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness. U3A Rockhampton and District has an obligation to ensure that the complaints procedure has integrity and is free of unfair repercussions or victimisation against any person making a complaint, and that complaints will be dealt with fairly and quickly.

Complaints may be resolved informally or formally. This procedure provides for resolution of complaints in a variety of ways:

- a. low key informal resolution where both parties accept the basic facts of a situation and come up with mutually agreed solution;
- b. situations where further investigation is required (See Attachment 1);
- c. resolution through mediation before, after or instead of investigation (See Attachment 2);
- d. Hearings by a Tribunal to investigate and/or determine complaints or conduct appeals to a previous decision (See Attachment 3).

Some complaints may be handled by an external agency under anti-discrimination, criminal or other relevant legislation.

## **Responsibilities**

The management committee is responsible for investigating a complaint received by the Secretary but may appoint one or more of the committee members to manage the procedures. The committee will, when necessary, appoint a Tribunal comprised of three appropriate people to resolve a complaint.

The management committee and members of the association must take all necessary steps to make sure that the people involved in a complaint are not victimised. A person who harasses or victimises another person for making a complaint or supporting another person's complaint will be disciplined.

The person making the complaint is responsible for ensuring that their complaint is true, not maliciously motivated or intended to cause distress to the other person.

## **Who Can Lodge a Complaint?**

Any person (the complainant) may report a complaint about a person, people or the organisation if they feel that they have been discriminated against, harassed, bullied or there has been any other serious breach of U3A Rockhampton and District policies or Code of Conduct.

Complaints must be made in writing to the Secretary.

## **The Complaints Handling Process**

1. In the first instance, complaints should be reported to the Secretary and thence to the management committee.
2. A complaint may be dealt with formally or informally. An example of an informal process would be a low-key conversation where the complaint is resolved by agreement between the people involved with no need for further action.
3. The complainant may indicate his or her preferred process of handling the complaint. The management committee should consider whether the preferred process is an appropriate way to handle the particular complaint, for example, the law may require that the complaint/allegation be reported to an appropriate authority.
4. If a complaint is not resolved to the complainant's satisfaction through an informal process, the complainant may seek to have their complaint handed by an external agency under relevant legislation.
5. Where the management committee decides that a complaint should be the subject of an investigation process, it should take place in accordance with Attachment 1.
6. Once the management committee receives a written report from the investigator, the committee will determine what, in any, further action to take. This action may include:
  - (a) a direction to the investigator to make further enquiries and obtain additional information;
  - (b) disciplinary action; or
  - (c) referring the complaint to an informal or a formal mediation session, a hearings tribunal and/or the police or other appropriate authority.

The management committee may also determine to take no further action and dismiss the complaint.

7. If a complainant wishes to resolve the complaint with the help of a mediator, the management committee will, in consultation with the complainant, arrange for an independent mediator where possible. Lawyers will not be permitted to participate in the mediation process. The management committee will determine which party or parties are responsible to pay any costs of the mediation process.
8. Where the management committee refers a complaint to mediation, the mediation should proceed in accordance with the process in Attachment 2.
9. The management committee may convene a tribunal to hear a proceeding. The tribunal should proceed in accordance with Attachment 3.
10. If at any point in the complaint handling process, the management committee considers that a complainant has knowingly made an untrue complaint, or the complaint is malicious or inappropriately intended to cause distress to another person, the matter may be referred in writing to the Tribunal for review and appropriate action, including disciplinary action against the complainant.
11. The management committee will recognise and enforce any decision of a tribunal.

## **ATTACHMENT 1 - INVESTIGATION PROCEDURE**

The management committee will determine whether a complaint will need to be investigated and evidence gathered to determine the facts relating to the incident, and produce findings and recommendations. Any investigation should be fair to all parties involved.

If a complaint requires investigation, the following steps should be followed:

1. A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. The complainant will be interviewed by the investigator and the complaint documented in writing.
3. The details of the complaint will be conveyed to the person/s complained about in full and the person/s will be given sufficient information to enable them to properly respond to the complaint.
4. The person/s subject to the complaint will be interviewed by the investigator and given the opportunity to respond. The response to the complaint will be documented in writing.
5. If there is a dispute over the facts, statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator will determine whether the complaint is:
  - a. substantiated (there is sufficient evidence to support the complaint);
  - b. inconclusive (there is insufficient evidence either way);
  - c. unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
  - d. mischievous, vexatious or knowingly untrue.
7. The investigator will produce a report documenting the complaint, investigation process, evidence, and findings and, if requested, recommendations. This report will be given to the management committee. The management committee will provide a report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the parties.
9. Both parties are entitled to support throughout this process from their chosen support person (who is not empowered to speak on their behalf).
10. The parties may have the right to appeal against any decision based on the investigation. Any appeal should be in accordance with the appeals process provided in this Complaints Procedure.

## **ATTACHMENT 2 - MEDIATION PROCEDURE**

Mediation is a process that allows all people involved in a Complaint to talk through the issues with an impartial person – the mediator – and work out a mutual solution.

The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved talk through the issues making sure that the process is as fair as possible for all concerned.

The following is the general procedure for the conduct of mediations under this policy.

1. The people involved in a formal complaint may work out their own resolution of the complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur at any time.
2. Mediation will only be recommended:
  - a. after both parties to the complaint have had their chance to tell their version of events to the management committee; and
  - b. the management committee does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the complainant desires; and
  - c. mediation looks like it will work (i.e., the versions given by both parties align or almost align and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
3. Mediation will not be recommended if:
  - a. both parties have a completely different versions of the events and they won't deviate from these;
  - b. either party is unwilling to attempt mediation;
  - c. when the issues raised are sensitive in nature;
  - d. when there is a real or perceived power imbalance between the people involved;
  - e. matters that involve serious, proven allegations; or
  - f. the complaint is not suitable for mediation due to the nature of the complaint, the relationship between the parties any other relevant factors.
4. If mediation is chosen to try to resolve the complaint, the management committee will, in consultation with the parties, arrange for a mediator to mediate the complaint.
5. The management committee will notify the subject of the complaint that a formal complaint has been made, provide them with details of the complaint, and advise them that it has decided to refer the matter to mediation.
6. The mediator's role is to assist the parties reach an agreement on how to resolve the issues between them. The mediator, in consultation with the parties, will determine the procedures to be followed during the mediation. An agenda of issues for discussion will be prepared by the mediator.
7. The mediation will be conducted confidentially and without prejudice. The rights of the parties to pursue an alternative process if the complaint is not resolved will be preserved.

8. If the complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement reached between the parties and it will be signed by them as their agreement. The management committee will be advised of the resolution of the matter. The parties involved are expected to respect and comply with the terms of the agreement executed.

9. If the formal complaint is not resolved by mediation, the complainant may:

- a. write to the management committee within 14 days of the mediation to request that they reconsider the complaint, particularly whether they refer the complaint to a resolution process other than mediation; or
- b. approach an external agency such as an anti-discrimination or equal opportunity commission to resolve the matter

## **ATTACHMENT 3 - HEARINGS & APPEALS TRIBUNALS PROCEDURE**

### **1 - HEARINGS**

Where the management committee receives a complaint referred to it under the above procedure(s) the procedure set out below shall be followed:

1. Upon receipt of the complaint the management committee shall -
  - a. determine the composition of the Hearings Tribunal, as set out in clause 1(2) below; and
  - b. send to both parties a notice setting out the alleged breach (collectively referred to as Notice of Alleged Breach) in accordance with clauses 1(4) and 1(5) of this attachment; and
  - c. send a copy of the Notice of Alleged Breach to the chairperson of the Hearings Tribunal.
2. The Hearings Tribunal for a hearing shall be appointed by the management committee and may include:
  - a. a barrister or solicitor or if after reasonable attempts have been made to obtain such person without success, then a person with some experience in disciplinary/hearings tribunal;
  - b. a person with a thorough knowledge of the relevant issues; and
  - c. an impartial person of experience and skills suitable to the function of the Hearings Tribunal.
3. Frivolous, vexatious or malicious complaints
  - a. If within 48 hours of receiving the Notice of Alleged Breach, the subject of the complaint alleges in writing to the Hearing Tribunal that the complaint is frivolous, vexatious or malicious, the Tribunal shall as a preliminary issue, determine whether or not such complaint is frivolous, vexatious or malicious and advise the parties of their determination.
  - b. The Hearing Tribunal shall provide to the other parties to the hearing (see clause 6) a copy of the above-mentioned written allegation.
  - c. The Hearing Tribunal shall determine the preliminary issue of whether the complaint is frivolous, vexatious or malicious as soon as practicable and in whatever manner the tribunal considers appropriate in the circumstances provided that it is done in accordance with the principles of natural justice.
  - d. If the complaint is determined to be frivolous, vexatious or malicious by the tribunal, then the complaint will be dismissed.
  - e. The decision of the tribunal under this clause 1(3) is not subject to appeal.
4. The Hearings Tribunal will send a Notice of Alleged Breach to the complainant in writing informing him/her that a Hearings Tribunal hearing will take place. The notice will outline:
  - a. that the complainant has a right to appear at the Hearings Tribunal to defend the complaint/allegations;

- b. the details of the complaint and of all allegations, as well as the provision or clause of any policy, rule or regulation that has allegedly been breached;
- c. the date, time and venue of the Hearings Tribunal hearing;
- d. that verbal and/or written submissions can be presented at the Hearings Tribunal;
- e. that witnesses may attend the Hearings Tribunal to support the complainant's position;
- f. an outline of any possible sanctions that may be imposed if the complaint is found to be substantiated;
- g. that legal representation will not be allowed.
- h. that the respondent may be assisted by a support person at a Hearings Tribunal. A person cannot be a support person if he or she has been admitted to practice as a lawyer or worked as a trainee lawyer.
- i. A copy of any information/documents that have been given to the Hearings Tribunal (e.g., investigation report findings) will also be provided.

5. The Hearings Tribunal will send a Notice of Alleged Breach to the complainant(s) in writing informing them that a Hearings Tribunal hearing will take place. The notice will outline:

- a. that the complainant has a right to appear at the Hearings Tribunal to support their complaint/allegations;
- b. the details of the complaint, including any relevant rules or regulations the subject of the complaint is accused of breaching;
- c. the date, time and venue of the Hearings Tribunal hearing;
- d. that verbal and/or written submissions can be presented at the Hearings Tribunal hearing;
- e. that witnesses may attend the Hearings Tribunal hearing to support the complainant's position; and
- f. that legal representation will not be allowed.
- g. A copy of any information/documents that have been given to the Hearings Tribunal (e.g., investigation report findings) will be provided to the complainant.

6. The Hearings Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances (including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice. The purpose of the hearing shall be to determine whether the subject of the complaint has committed a breach of any relevant rule, regulation or policy of the association. If the Hearings Tribunal considers that such a breach has been committed, it may impose any one or more of the sanctions set out in clause 3 below.

7. The parties to the hearing shall include the complainant, the subject of the complaint, management committee members and any relevant witnesses which the Hearings Tribunal considers necessary.

8. If upon receipt of the Notice of Alleged Breach the Hearings Tribunal considers that pending the determination of the matter, the subject of the complaint may put at risk the safety and welfare of the complainant or others, it may order that the subject of the complaint be:

- a. suspended from any role they hold with the association;
- b. banned from any event or activities held by the association; and/or
- c. required not to contact or in any way associate with the complainant or other person about whom the alleged breach relates, pending the determination of the hearing.

9. There is no right of appeal of the decision by a Hearings Tribunal under clause 1(8).

10. No party to the hearing may be legally represented. The Hearings Tribunal may grant leave for a party to the hearing to be legally represented where their livelihood or a proprietary right is at risk. The onus is on the party seeking representation to prove that livelihood or a proprietary right is at risk.

11. Each party to the hearing shall bear their own costs in relation to the hearing.

12. The Hearings Tribunal shall give its decision as soon as practicable after the hearing and will deliver a statement of the written reasons to both parties.

13. Each member of each Hearings Tribunal established under this Policy shall be indemnified by the management committee which appointed them from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Hearings Tribunal. Each party appearing before a Hearings Tribunal shall release each member of that tribunal from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Hearings Tribunal. If required by the tribunal, each party will sign a document giving effect to such release.

14. All members of the Hearings Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the complaint, information obtained before and during the hearing, and the decision of the Hearings Tribunal) confidential.

## **2 - APPEALS**

A party represented at a Hearings Tribunal may appeal a decision of that Hearings Tribunal on the sole ground that natural justice has not been provided at the hearing.

1. An appeal against a decision of a Hearings Tribunal shall be made to an Appeals Tribunal established by the management committee. Subject to the discretion of the Appeals Tribunal, all appeals shall be heard at a mutually agreed venue.
2. There is only one right of appeal following the decision of the initial Hearings Tribunal. Any appeal must be solely and exclusively resolved by the Appeals Tribunal and the decision of such Appeals Tribunal is final and binding on the parties. There is no further right of appeal. It is agreed that no party to such appeal may institute or maintain proceedings in any external court or tribunal until they have exhausted their appeal rights under these procedures.

- 3 The process for such appeal is as follows:
  - a. the party wishing to appeal shall within 72 hours of a Hearings Tribunal delivering its decision advise the management committee, in writing, of their intention to appeal (Notice of Intention to Appeal);
  - b. The management committee will act as the Appeals Tribunal to hear and determine the appeal (which shall comprise of persons in accordance with clause 1(2) above but not the same persons who were part of the Hearings Tribunal that made the decision to which the appeal relates); and
  - c. within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeals Tribunal if there is urgency) the party wishing to appeal shall:
    - i. pay a non-refundable appeal fee of \$550.00 (including GST) to the association; and
    - ii. submit to the management committee four written copies of the grounds of appeal, which will be provided to the other party, to the Hearings Tribunal who made the decision which is the subject of the appeal and the Appeals Tribunal. If either of the requirements in this sub-clause are not met by the required time, the appeal shall be deemed to be withdrawn;
  - d. Upon completion of the procedures in clauses 2(3)(a)-(c) above, the management committee shall determine a time and date for the hearing of the appeal and notify all parties to the appeal in writing. The procedure for the appeal shall be the same as the procedure for the Hearings Tribunal.
4. An Appeals Tribunal may reject an appeal on the basis that the grounds of appeal are not satisfied.
5. Upon hearing the appeal the Appeals Tribunal may -
  - a. dismiss the appeal;
  - b. uphold the appeal;
  - c. impose any of the sanctions set out in clause 3 below; and/or
  - d. reduce, increase or otherwise vary any sanction imposed by the initial Hearings Tribunal.
6. Every member shall recognise and enforce any decision and penalty imposed by an Appeals Tribunal under this policy.
7. The Appeals Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.
8. The hearing and appeal procedures set out above prevail over any other rules, regulations and policies of the association.

### **3 - SANCTIONS**

1. Any disciplinary measure imposed by a Hearings Tribunal or Appeals Tribunal must -
  - a. conform to the principles of natural justice;

- b. be fair and reasonable;
- c. be based on the evidence and information presented; and
- d. be within the powers of the Hearings Tribunal and Appeals Tribunal to impose the disciplinary measure.

2. If a Hearings Tribunal or Appeals Tribunal considers that a rule, regulation or policy of the association has been breached, it may impose any one or more of the following penalties:

- i. direct that the offender attend counselling to address their conduct;
- ii. recommend that the association terminate the position the offender holds in the organisation;
- iii. where there has been damage to property, direct that the offender pay compensation to the association for the damage;
- iv. impose a monetary fine for an amount determined by the Hearings Tribunal;
- v. impose a warning;
- vi. consider termination of membership under the association's constitution;
- vii. any other such penalty as the Hearings Tribunal considers appropriate.

3. When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.