

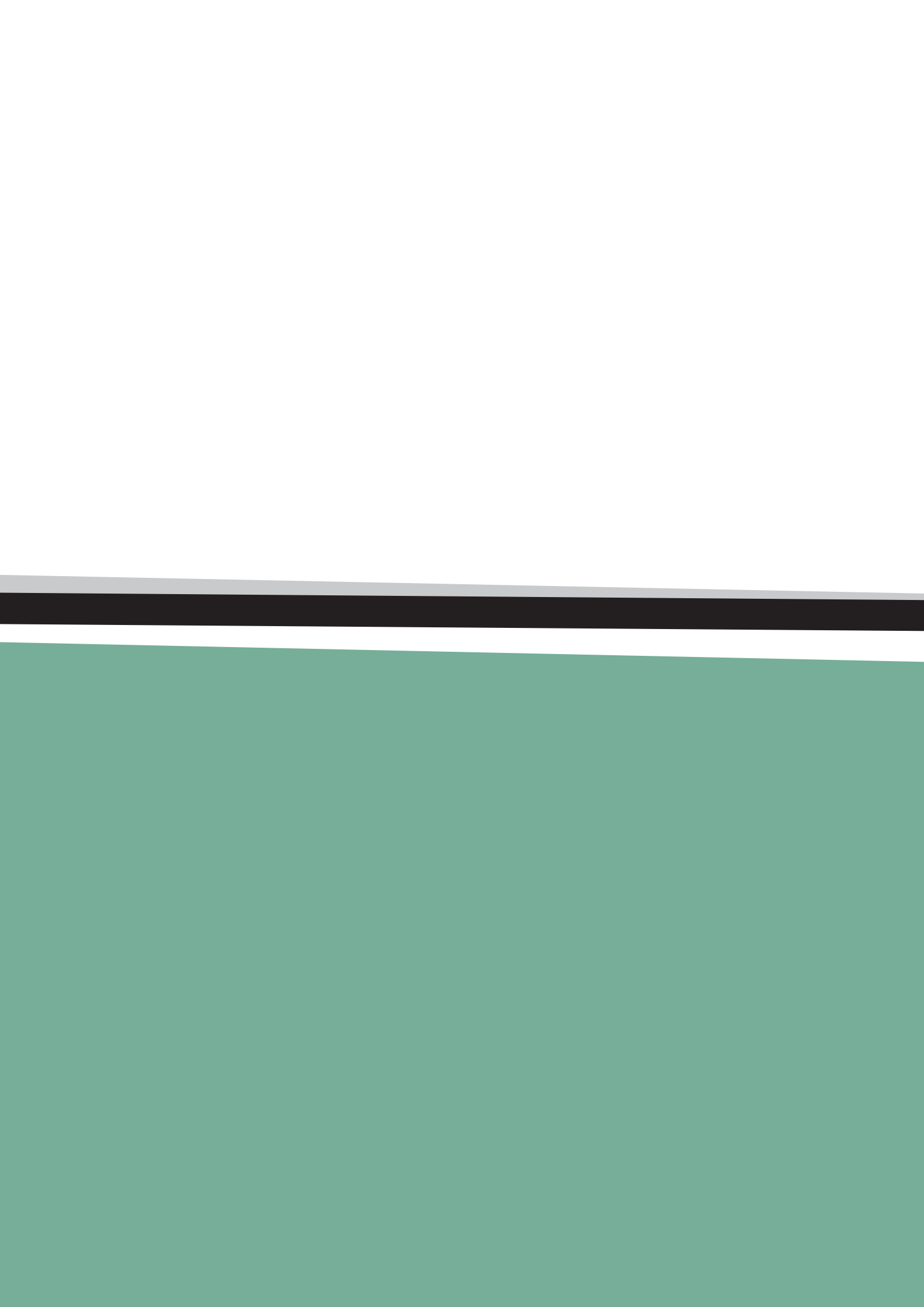


 **Ombudsman**
New South Wales

COMPLAINT HANDLING AT UNIVERSITIES:

AUSTRALASIAN BEST PRACTICES GUIDELINES

JANUARY 2015



Complaint handling at universities:

Australasian best practice guidelines

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Foreword

Universities are unique institutions. The complaints that will inevitably arise in this environment require correspondingly unique procedures.

For many years, the Ombudsman offices of Australia and New Zealand have been giving detailed advice to a range of organisations in their jurisdictions and many have published complaint handling guides. We decided it would be useful to put together some of the information in these guidelines and tailor it specifically for universities.

Mishandled complaints have a high potential cost, both financially and in damage to reputations. All universities should therefore adopt an organised and professional approach to complaint handling. These guidelines point the way to a best practice approach.

Sound and comprehensive policies and procedures are essential for effective complaint handling. However these documents must be supported by the explicit and ongoing commitment of senior management. Proper resourcing of the complaint handling process is also essential. It is a small price to pay to insure against the damage to students, staff and the university that may come from mishandled complaints.

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CHAPTER 1

Introduction

Purpose, audience and principles

These complaint handling guidelines are intended to assist universities to make their complaint handling systems more robust and effective. The purpose is not to infringe the independence of universities, but to identify best practice minimum standards that will protect the rights of students, staff and the university itself.

The audience for these guidelines is executives, managers and complaint handling staff in universities. Other education providers, both public and private, may also find them useful.

Meeting standards and requirements

Standards Australia has recently revised its standard on complaints handling in organisations with a focus on effective investigation of complaints and produced a joint Australia - New Zealand standard.

A technical committee — including representatives from the NSW Ombudsman, Australian Law Reform Commission, Society of Consumer Affairs Professionals, New Zealand Ombudsman and various other industry groups — was responsible for the technical content of the standard which has been adopted.

Where a reference occurs within square brackets in these guidelines, for example [A/NZ S 1.1], the purpose is to guide interested parties to relevant information in the standard.

The principles underpinning these guidelines are based on those outlined in the Australian Standard, *Guidelines for complaints handling in organisations* (AS ISO 10002:2014) [A/NZ S 5]. They are that:

- There is a need for an accessible, well publicised and transparent complaint handling system.
- There should be no financial cost to making a complaint.
- Complaints should be dealt with on their merit.
- Each complaint should be managed in an objective and unbiased manner.
- Complaint handlers should afford procedural fairness to all parties to a complaint.
- Complaints ought to be properly investigated or otherwise dealt with. [A/NZ S 7.7]
- All steps of handling a complaint should be adequately documented. [A/NZ S 7.4 & 7.8]
- The organisation's complaint handling process should provide avenues for review of the complaint outcome by people other than the original decision maker. [A/NZ S 6.6]
- The organisation's complaint handling policy should address the issue of how to manage the conduct of complainants who act unreasonably.
- People making complaints and other parties to the complaint handling process should be treated with respect and engaged in the complaint handling process as far as practicable.
- The organisation should provide support for complainants if necessary. [A/NZ S 7.2]
- The organisation should take all reasonable steps to ensure that complainants are not adversely affected because of a complaint made by them or on their behalf.
- Private or confidential information about any individual should be kept confidential and only used or referred to where this is necessary to address the complaint.
- The organisation should comply with all relevant privacy laws when managing a complaint.
- The organisation should ensure that staff are properly empowered to implement an effective complaint handling system as relevant to their role.
- Responding to and learning from complaints should be an essential part of an organisation's commitment to continual quality improvement. [A/NZ S 8]

Australian universities that provide services to overseas students are also required — by the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* — to develop complaints and appeals processes. These guidelines will assist universities to comply with these requirements.

Developing the guidelines

These guidelines originated from work undertaken by the NSW Ombudsman between 2004 and 2006. A detailed survey was done of NSW public universities and other stakeholders and interested parties – including university staff, unions and student representative organisations. This led to the development and publication of complaint handling guidelines for universities in NSW in 2006. Following this, all of the public universities in NSW reported back at a series of university complaint handling forums run by the NSW Ombudsman and agreed that the guidelines worked well in practice.

A meeting of Australasian Deputy Ombudsman in Darwin in May 2012 supported the idea of expanding and updating these guidelines to meet the needs of universities in Australia and New Zealand.

Although the principles from the NSW guidelines are incorporated into this document, the guidelines have been extensively re-examined in a national and – given the participation of the New Zealand Ombudsman in the project – international context and reorganised, revised and updated accordingly.

These guidelines should be considered a 'living document'. They will be revised in the light of the experiences of university complaint handlers and others that use them.

CHAPTER 2

Complaint management systems

The value of complaints

There are many practical benefits of effective complaint handling. Complaints deliver direct information from students and staff about faulty decisions, poor service delivery and defective programs. Universities should use this information to:

- **Evaluate and improve programs and services** – complaints should be used to identify and repair any weaknesses in a university's policies, procedures, practices and service delivery. Complaints can strengthen a university by highlighting areas for improvement in its services and programs.
- **Inform decisions about future service delivery** – universities need to think ahead. They need to develop and implement new programs, in accordance with university policy and legislated requirements, and offer different services. Complaints help a university see what is needed and how to make systems work more effectively. Complaint information is a valuable resource for evaluating strengths and weaknesses in existing as well as new programs and services.
- **Provide an appropriate remedy for a complainant** – a person who has been unfairly disadvantaged should be given a remedy that will correct the disadvantage.
- **Maintain good relations with the public and staff and build student and staff loyalty** – public support is important to all universities. Improved student and staff support will be reflected in better interactions between the university, its staff and students in the future.

Those receiving complaints should resist any initial temptation to see them as negative attacks by misguided or disaffected people, or people seeking some unwarranted advantage. Complaint analysis should be part of the continuous cycle of review and improvement in a university.

If a university has not received many complaints in the past this does not mean that complaint handling mechanisms are not needed. It is more likely that it reflects the lack of an appropriate way for complainants to air their grievances.

Proper complaint management is good business

An effective complaint management system is an essential part of providing quality service. People who have poor experiences with universities will speak out as loudly as they can to as many people as they can. Social media has the capacity to spread negative comments far more pervasively than ever before.

On the other hand, people whose problems are quickly resolved will often praise the institution. The way a university deals with complaints will therefore be a significant contributor to its reputation and performance. Given universities now operate in a competitive market – particularly for overseas students – effective complaint handling will have a direct effect on long term financial health.

A complaint management system is an organised way of responding to, recording, reporting and using complaints to improve service. It includes procedures for 'customers' to make complaints and guidelines for staff to resolve them. It also provides information to managers and staff that can help them to prevent customer dissatisfaction in the future.

Universities should promote a culture that responds to complaints positively and professionally. This should be encouraged by adopting, disseminating and regularly reinforcing policies and by emphasising complaint handling systems in the induction of new staff. As part of their strategic and operational planning processes, universities should regularly consider the potential to further improve their complaint handling systems.

Ensuring commitment

A strong commitment from staff at all levels in the university is essential for effective complaint handling. The following table sets out the nature of the commitment expected from staff and the way that commitment should be implemented. [A/NZ S 6]

Who?	Their commitment	How?
Head and executive of the university	<ul style="list-style-type: none"> • make complaint handling a priority of the university 	<ul style="list-style-type: none"> • include complaint handling standards in the university's service charter, business plans and service standards • report publicly on complaint handling in annual reports and other high-level corporate documents • receive regular internal reports on the quality and timeliness of complaint handling • use complaint information in the reviews of programs and service delivery • have awareness of systemic and/or potentially serious complaints.
Managers responsible for complaint handling	<ul style="list-style-type: none"> • establish and manage an effective, professional complaint system 	<ul style="list-style-type: none"> • recruit appropriate staff • provide comprehensive training to complaint handling staff • properly manage and support complaint handling staff • report on serious matters to the executive • promote strong internal networks to enable complaint handling staff to work with and be supported by other staff • provide regular reports to other areas of the university on issues arising from complaint work • analyse complaints to identify systemic issues and make recommendations to the executive about systemic reforms.
Complaint handling staff	<ul style="list-style-type: none"> • display exemplary practice in handling complaints 	<ul style="list-style-type: none"> • behave professionally in dealing with complainants • know complaint handling procedures well • comply with internal policies • keep informed about the university's work and developments in programs and services • maintain interest in best practices in complaint handling.
Other staff	<ul style="list-style-type: none"> • know and respond appropriately to the university's complaint system 	<ul style="list-style-type: none"> • be aware of the university's complaint handling policies and procedures • help students and other complainants to access the complaints process • assist complaint handling staff to resolve problems • help complaint handling staff understand the university's business • address systemic issues that arise in individual complaints.

Making information accessible

It is fundamental to the effective operation of any complaint handling system that there is widespread knowledge of the system and ready access to comprehensive information about the system and its processes. [A/NZ S 7.1]

In a modern university environment this means up-to-date information should be available on the university's website with ample, user friendly, cross-reference links. The website could also have appropriate flow charts to summarise the course an individual complaint might take. This web-based information should

also be supplemented by including information about complaint handling in the induction procedures and documentation for all new staff and students, as well as in the annual university and faculty/school handbooks.

As a minimum standard, the complaint handling system should be set out in an adopted university policy with, where appropriate, relevant provisions incorporated in a registered enterprise agreement.

The essential information about the complaint system that needs to be clearly conveyed includes:

- how and where a complaint can be submitted, including if a complaint form is available
- the university's timeliness standards for handling complaints
- limitations on the university's jurisdiction to handle complaints, including time limits on lodging complaints and special issues that are dealt with by another agency or complaint mechanism
- a cross-reference to the university's policy on protected /public interest disclosures
- a policy on how complaints data will be recorded and used to address identified issues in university management
- the options available if a person is dissatisfied with how their complaint was handled or the outcome. [A/NZ S 7.1]

Overcoming barriers

A complaint system must be responsive to the needs of complainants. Special measures may be required to help students who have particular needs and to manage contact with vulnerable people. For example, complaint staff should be ready to explain the complaint process to complainants who have difficulty understanding written information.

Complainants from a non-English speaking background should have access to the assistance of an interpreter if necessary. Cultural barriers that can impede use of complaint options should also be highlighted in cross-cultural training of complaint staff.

Students who have a visual impairment may need information in large print or access to web-based information in text rather than pdf format. Students with a hearing impairment may benefit from the use of TTY (teletypewriter) facilities. Another useful resource is the National Relay Service, an Australian Government initiative to assist people who are deaf or have a hearing or speech impairment to communicate over the telephone. [A/NZ S Annexure B]

Future improvements in technology are likely to make communication easier. Universities should consider implementing any appropriate innovations as soon as they become available.

Some people face greater difficulty than others in articulating a grievance or making a complaint – for example, those with physical impairments, mental health issues or addictions. These conditions can also make it difficult for people to maintain a consistent interest in their complaint and to provide further information or comment when requested.

A university must be flexible in dealing with complaints and be alert to the needs of vulnerable complainants. Staff should show a readiness to deal with a guardian, friend, advocate or nominee who acts on behalf of a complainant. The person's authority to act on the complainant's behalf may need to be verified if personal information is involved.

Operating the complaint management system

Universities should make people feel welcome to make a complaint. It should be simple and clear how they can do this. [A/NZ S 7.1, 7.2]

Wherever possible, complaints should be resolved quickly. Delay is one of the most frequent causes of increased stress and dissatisfaction with the complaint handling process for all concerned. [A/NZ S 7.3]

However even when complaints can be quickly resolved, the information in a complaint should be recorded to encourage consistent decision making, identify trends, monitor implementation of any undertakings given – and as a tool to help avoid the recurrence of situations that have been shown to lead to problems. [A/NZ S 7.8, 8.2]

More serious complaints should be dealt with at a senior level. The Vice-Chancellor should be promptly notified whenever a particularly serious and/or sensitive complaint is made.

Different types of complaints and disclosures require different types of complaint handling mechanisms and investigation techniques. What is required depends on factors such as:

- The nature of the complaint or disclosure – for example, is it about policies, procedures and practices or about the conduct of individuals?
- The seriousness of the allegation(s) and possible outcomes [A/NZ S 7.7.1].
- The potential impact on and/or risks to the complainant/informant/witnesses.

Integrating complaint handling

Complaint handling is most effective when it is integrated within a university's core business activities. It is not possible for complaint-handling to cause no disruption, but recognising the importance (and inevitability) of complaint handling ought to allow for such disruption to be minimised. Universities that deliver services jointly with other universities or in partnership with private education providers may also need to integrate their complaint handling arrangements.

Integration within a university

Integrating the complaint system with the university's other activities can benefit a university in many ways. Information from complaints can be used to identify weaknesses in a university's services and lead to improvements. Keeping informed about complaints and how they are resolved ensures that managers keep an eye on all aspects of their operations. It maintains their focus on the university's reputation which is integral to its success.

All the skill and knowledge that a university has should contribute to resolving any problems. Ensuring that all members of staff are potentially involved in dealing with complaints can lead to problems being resolved more efficiently and effectively. Complaints can raise issues that are not apparent to complaint handling staff. Those responsible for developing or administering a program are often best placed to decide how to resolve a grievance that may arise in their area.

The proper integration of a complaint system with the work and structure of a university can be achieved in various ways. For example:

- the complaint unit should be recognised as a separate unit or branch that is shown on the organisational chart
- the complaint unit should be headed by, or report directly to, a senior manager
- reports on complaints and complaint trends should be a regular agenda item for executive management meetings
- how complaints have been handled and finalised should be a performance measure for the university.

Integration between organisations

Few universities work independently of other organisations. Two or more organisations/education providers may provide a joint program or may work alongside each other in the provision of a service. Decisions made by a university may partially depend on actions taken or information supplied by the other organisation.

When a problem arises, a student complainant might not understand the division of functions or responsibilities between organisations. It can be difficult to know who to complain about or who to complain to. Confusion will be compounded if university staff lack insight, wrongly deny responsibility for an issue, or are uninformed about another organisation's complaint handling arrangements.

Universities should consider whether and how their different complaint systems can be integrated. For example:

- Complaint staff should be fully informed of activities in their university that interact with those of other organisations.
- Organisations should exchange information about their complaint systems and how a complaint can be lodged.

- Consideration should be given to establishing a procedure for referring complaints (or complainants) between organisations, and ensuring that a list of nominated contact officers is maintained.
- If staff of different organisations work alongside each other in a public area, steps should be taken to easily identify staff and their employing organisation, and for cooperation between organisations in dealing promptly with student complaints.
- Where different organisations work together to deliver a service or regulate an activity, consideration should be given to jointly publishing information on how to complain, or to creating a joint process to handle or investigate complaints.
- Where functions of a university are outsourced to a private organisation, the contract should stipulate how complaints will be handled and reported upon (individually or periodically) to the university. The university, as part of its continuing responsibility for delivery of the function, will also need a procedure for receiving and investigating complaints against the contracting organisation.

Providing training

Training of complaint handling staff must occur at multiple stages and in many ways.

When first assigned to a position that involves complaint handling, a staff member must be trained in the university's complaint policies and procedures. [A/NZ S 6.10] This should be supplemented by training that deals with special challenges that arise in complaint handling. The training should reinforce the key competencies of a complaint handler – such as having an excellent telephone manner, good writing skills, sound record keeping skills, a capacity to deal with difficult or unreasonable behaviour by complainants, and a knowledge of the privacy issues that affect the handling of complaints.

It is also important to educate complaint staff about all aspects of the business of their university. This training should focus on the university's programs and services that affect students and members of the public and could give rise to complaints. Those programs and services will change and develop over time, and it is important that complaints staff are made aware of those changes. There should be regular interaction between program and complaint staff, both informally and in a structured manner. One theme in those discussions should be the options available to the university to provide a remedy for unexpected or intractable problems.

Staff could also benefit from participating in one of the many complaint handling forums that are held around Australia. These forums hold periodic seminars and conferences and publish newsletters. Because of the strong similarities in complaint handling in all areas of government and industry, there is much to be learnt by sharing experiences and best practice. Support for these forums also promotes the principle that complaint handling is an important activity that must be undertaken in a professional and committed way.

Training objectives are best achieved if there is a structured training program with a specific budgetary allocation and performance measures. At a cultural level, a university must believe that time devoted to training – which often involves the temporary absence of staff from their complaint handling duties – is a necessary and productive strategy.

It is essential that all staff who formally investigate complaints should have had basic investigation training and be able to access any additional information or advice they need to help them conduct an investigation. For example:

- Staff should have a clear understanding that administrative investigations are inquisitorial, fact-finding processes and that investigators are not prosecutors acting in an adversarial environment.
- All relevant staff should have a clear understanding of the principles of procedural fairness and how they apply to investigations undertaken under the applicable provisions of the relevant enterprise agreements that universities will have entered into with their staff.
- Investigators in particular need to understand the application of the *Briginshaw* principle to establishing the relevant standard of proof required to reach conclusions in administrative investigations. The *Briginshaw v Briginshaw* (1938) 60 CLR 336 judgment established this sliding scale – as issues in question become more serious in nature or consequence, the standard of proof required to reasonably satisfy a decision-maker (or investigator) is correspondingly higher.

Ensuring that complaints staff are adequately trained is the best form of insurance against the financial and reputational costs that can arise from incompetently or improperly handled complaints.

Basic training for staff designated as initial complaint recipients should, as a minimum, cover:

- knowledge of all significant complaint handling paths available within the university
- all record keeping requirements for receiving and processing a complaint
- how to distil from a complaint the key issues that need to be addressed
- assessing whether they may have a conflict of interests in handling the complaint
- eliciting and managing complainant expectations
- assessing the need to make preliminary inquiries
- assessing whether a complaint is suitable for ADR
- assessing whether a complaint may be a protected/public interest disclosure or is subject to other legislative schemes
- assessing whether a complainant's identity or that of other parties can, in practice, be kept confidential and, if so, whether this ought to occur
- assessing the risk of reprisals against a complainant for having complained
- assessing the risk of reprisals/detriment to other parties
- assessing whether a complaint alleges serious misconduct or academic misconduct to ensure that the correct procedures are applied
- knowledge of external referral options for complaints
- providing adequate reasons for complaint handling decisions.

More rigorous additional training should be provided for those who may be given responsibility for conducting formal or complex investigations.

This advanced training should cover:

- investigation planning
- drafting terms of reference
- procedural fairness requirements
- gathering evidence and the rules of evidence
- determining the appropriate standard of proof for individual findings
- special requirements for protected/public interest disclosures
- managing the parties to a complaint
- preparing investigation reports.

Given the generic nature of most of these training requirements, there would be substantial advantages and savings in a number of universities cooperating to run a common training program for their complaint handlers.

Establishing a complaints centre

Universities that do not have a centralised complaint handling unit – a complaints centre – should give careful consideration to establishing one.¹

Establishing and properly resourcing a complaints centre offers many advantages in ensuring complaints are properly, consistently and professionally dealt with. It also helps to maximise the value of complaints as a management tool and facilitate analysis of complaint records.

A complaints centre should have its own site on the university website with a 'complaints policy library' indexing links to all policies that relate to complaints and appeals about complaint decisions. The site should also contain a guide to making and lodging complaints, and include template forms to help people lodging the most common types of complaints.

Key resources and responsibilities

The proper resourcing of a complaints centre is critical. It requires not only adequate well-qualified staff and information technology equipment but also ready access to external investigators, the university solicitor and other professional expertise.

¹ Since the publication of the NSW Ombudsman's university complaint handling guidelines in 2006, all of the public universities in NSW have taken action to make their complaint handling processes more centralised.

The centre's responsibilities should include:

- recording details of all complaints and their determination in the centre's database
- maintaining the complaints database
- registering all staff designated to receive complaints and their level of expertise
- conducting or commissioning relevant training for all staff involved in complaint handling
- maintaining a database of qualified/experienced investigators
- reviewing and regularly updating a detailed manual for complaint handlers
- where referral is required, identifying the most appropriate person or agency to which the complaint should be sent
- referring to the Vice-Chancellor any allegations that give rise to a reasonable suspicion that corrupt conduct may be involved
- advising on all aspects of the complaint process including the conduct of investigations
- drafting, advising on and/or settling the terms of reference for at least any major investigations
- appointing or advising on the appointment of appropriate investigators for major matters
- monitoring the progress of investigations to ensure they are of high quality and there are no delays
- assessing the actions of investigators and ensuring relevant information is provided to management
- setting and monitoring complaint data security standards and overseeing the maintenance of relevant privacy requirements
- monitoring complaint trends to identify opportunities for system improvement.

Maintaining a complaints database

A good complaint recording system can help to identify, assess and manage risks. Preventing and managing risks should be an integral part of a university's management practices and procedures. Enough detail needs to be captured to allow an appropriate level of analysis. This should facilitate monitoring of performance standards, including timeframes for responses to complaints and the success of different complaint handling methods.

Data should be collected on:

- | | |
|--|--|
| <ul style="list-style-type: none"> • numbers of complaints • compliance with performance/timeliness standards • issues raised in complaints • trends in complaints over time • academic or other university units the subject of complaints | <ul style="list-style-type: none"> • sources of complaints • methods of handling complaints • what remedy/redress was actually instituted • recommendations/strategies to prevent or limit recurrences • service improvements initiated due to complaints data. |
|--|--|

Registering conflicts of interests

To ensure that conflicts of interests do not taint complaint handling, the complaint centre should maintain a register of all conflicts of interest declarations by staff involved in complaint handling – that is, when complaint handlers make a declaration of interest this is recorded.

Governance of the complaints centre

Within a university's administrative structure, the director/manager of the centre should report directly to a deputy vice-chancellor (DVC) or equivalent. Where it is the role of a DVC or equivalent to be the university's protected /public interest disclosures coordinator, it would be logical to report to that person. In any event, there needs to be a formal mechanism to ensure close cooperation between the protected /public interest disclosures coordinator and the director/manager.

The chair of the university council's audit committee should be ex-officio a member of the selection panel for appointing the director/manager of the complaints centre. The director/manager should also have a specific duty to report directly to the chair of the audit committee on any complaints about the conduct of the DVC (or equivalent) – to whom the director/ manager normally reports – or the conduct of the Vice-Chancellor.

CHAPTER 3

Taking complaints

What types of complaints are there?

A 'complaint' can be defined as any expression of dissatisfaction made directly or indirectly, explicitly or implicitly, to a university or its staff about the university. It may relate to any aspect of teaching, supervision, research, policies and/or services provided by the staff of the university.

The range of complaints that fit within this definition is very broad. These guidelines cover complaints that universities may receive from students who have a grievance of this kind – but they also cover complaints and disclosures from both academic and non-academic staff of universities.

For the purposes of these guidelines, the term 'disclosure' refers to a disclosure of improper conduct under the 'whistleblower' protected disclosure/public interest disclosure type legislation in place within a jurisdiction.

Complaints/disclosures can be divided into three broad categories:

- **Disputes** – matters which raise issues about university management or administration that fall short of being systemic. For example complaints about assessments, exclusions, discontinuation of courses, lack of procedural fairness, and/or grievances about bullying or transient workplace conditions lodged by staff.
- **Mismanagement** – covers such things as unreasonable decisions, inconsistent application of policy, denial of procedural fairness, failure to provide rights, failing to consider relevant matters, wrong advice leading to detriment, and negligence.
- **Misconduct** – includes ethical and integrity issues such as plagiarism, unethical or biased marking, conflicts of interests, fraud, bribery, dishonesty, improper favouritism, discrimination and harassment.

An effective complaint handling system will be able to cater for each type of complaint or disclosure.

How can a complaint be made?

Students and staff should be given a range of contact options. At a minimum, this means a telephone number (preferably toll-free), email address and postal address. Guidance on how to complain should ideally be readily available from the front page of the university website. There should also be a capacity for face-to-face contact with a staff member as well as for lodging complaints online using a complaint form.

Universities should review their processes from time to time – including consulting with potential complainants about their preferred method of contact and improvements that would help them to access the complaints process more easily. Even if complainants tend to use one complaint option more often than others, all contact options should be properly maintained and supported.

Some complaints cannot be properly investigated unless put down in writing or supported by other documents, but it is important not to make this a barrier to complaining. Students in particular should be encouraged to discuss or raise issues orally, as a complaint can often be resolved swiftly at this stage.

Universities should check if there are barriers to complaining that need to be addressed. Some of the reasons that students give for not complaining include lack of time and a perception that it would be too much trouble. [A/NZ S 7.2]

Cultural issues may also be important. In some cultures making a complaint is seen as insulting behaviour, while in others it may lead to unwelcome consequences.

These and other barriers can be reduced if students are told that complaints are welcomed, will be handled confidentially, and will be used by the university to address any identified problems and improve its services.

Who can make a complaint?

Complaint handling policies should specify who is able to make a complaint. This should include:

- students – including past students
- staff – including honorary, adjunct or conjoint appointees and past staff
- a representative authorised in writing by a student or staff member
- an organisation recognised by the university as being representative of a community of its staff or students – such as staff unions, student unions or representative councils

- members of the public with an objectively significant personal or financial interest in a matter within the university's responsibility or those significantly affected by a university decision.

Anonymous complaints may need to be pursued if they contain prima facie evidence of misconduct or some other significant institutional flaw.

There are legitimate obstacles to dealing with complaints that are remote in time. It is therefore reasonable for the university to ask complainants to show cause why complaints should be considered if they relate to events that occurred more than one year before the complaint was lodged. However, a complaint of that age should not automatically be considered 'out of time'. The university should exercise its discretion – taking into account both the importance of the conduct being complained about, and whether the matter is one where documentary evidence is available and would help in determining the matter.

To whom should a complaint be made?

Complaint handling policies should designate certain staff (or the holders of certain positions) as those who can receive complaints. Information about these people should be set out in the university handbook and on the university's website.

If universities have a centralised complaints centre, this would be the natural place for complainants to go to with a difficulty that was not easily resolved.

A complaint management system should also define the responsibilities of staff receiving complaints. [A/NZ S Annexure F]. Clear written delegations should define their responsibilities for dealing with complaints and their ability to remedy problems. These complaint-handlers should be readily accessible to potential complainants and capable of clarifying issues and assessing the seriousness of a complaint.

They should be in positions where they have the authority to promptly deal with and determine minor matters, and should also know where and when to refer complaints they are unable to deal with.

What can be complained about?

Appeals against strictly academic decisions awarding marks/grades should be distinguished from complaints about other conduct. All universities have developed appeal procedures that in specified circumstances provide for a review of the award of an academic mark or grade. [A/NZ S 5]

An academic appeal should only be brought into the general complaint system if the ground for appeal goes beyond simple disagreement with a mark or grade. However if an appeal for a remark also contains elements of alleged misconduct or impropriety – for example bias, prejudice, taking irrelevant considerations into account, or failing to afford procedural fairness – on the part of the marker or examination committee involved, then it should be considered to be a complaint.

The subject matter of a complaint could also include:

- academic misconduct
- corrupt conduct
- maladministration
- racist, homophobic, sexist or other discriminatory conduct
- conduct of groups of staff or students – such as examination committees, student unions or student associations – where the university has a responsibility for overseeing that conduct
- the improper use of university facilities
- an unreasonable or unfair university policy or procedure
- the quality/adequacy/relevance of a university course.

Managing expectations

It is good practice at the start to ask a complainant how they would like to see their complaint resolved – the outcome they are seeking. Sometimes a university can meet the complainant's expectations and sometimes not, but taking account of those expectations is important. Often what the complainant is seeking will be straightforward – an apology, a refund of money paid or compensation. In other cases they might have an

altruistic purpose, such as a desire to raise awareness of the problem or ensure that other people will not find themselves in the same difficulty.

Some issues may not be simple to resolve – such as a significant policy or program change. If so, it is important that the complainant knows that their concern is being taken seriously and work on it is progressing.

Best practice complaint handling emphasises the need to manage complainant expectations, and for staff to be trained how to do this. Some complainants will seek an outcome that is inappropriate or disproportionate, such as having a staff member sacked because of a minor mistake. It is therefore highly desirable to establish at the outset what a complainant expects from the complaint process and immediately dispel any unrealistic or misconceived expectations before they become entrenched. It is important to explain why the request cannot be met and offer an alternative solution if possible. Complainants also need to be told that the university will be impartial in dealing with their complaint.

To manage expectations, the following points should be covered on or immediately after receiving a complaint. You should:

- explain the anticipated process for handling the complaint
- if you are going to handle the complaint, find out what the complainant wants done and if that result is not possible, or unlikely to occur, tell them this at the outset [A/NZ S 7.1 & 7.7.4]
- if you need to refer the complaint to another person, explain why
- clarify and confirm your understanding of the key points of the complaint
- outline possible outcomes and tell the complainant about the limits to your powers
- provide realistic timeframes for dealing with the complaint.

Make sure you follow through on any promises made. If it becomes clear that – despite your best efforts – you are going to be unable to meet any undertaking you have given to a complainant, the sooner you let them know the better.

Always ask: 'What is it you hope the university can do to help resolve this for you?'

This question usually elicits valuable information and should provide a sense of how important the issue is to this particular complainant. Any misconceptions are best corrected at the outset.

All of these factors should continue to be considered throughout the whole life of a complaint.

Dealing with unreasonable complainant conduct

Some complainants can act in ways that are difficult to deal with. Common problems include rude or aggressive behaviour, obstinacy in communicating with complaint staff, exaggeration or dishonesty in explaining their complaint, unreasonable persistence with a complaint that has been investigated or closed, and demands that are unrealistic or disproportionate. Dealing with such behaviour can consume a volume of resources altogether disproportionate to the merits or seriousness of the complaint. [A/NZ S 5.2.3 & Annexure E]

The university has a responsibility to act professionally in regard to these types of problematic behaviour. Clear guidance and training must be given to staff on dealing with unreasonable behaviour by complainants, and staff may need special support in coping with it. Further information on strategies for managing unreasonable behaviour – including effective communication skills and advice on the steps to take if the university needs to restrict access or services provided to a complainant – is available at:

[[[Provide link from the resources of your organisation or link, with attribution, to:

<http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/unreasonable-complainant-conduct-manual-2012>

and/or

<http://www.ombudsman.gov.au/pages/publications-and-media/better-practice-guides/unreasonable-conduct.php>]]]

In limited circumstances, it is justifiable to restrict a complainant's access to the university's complaint handling system. This will depend on the nature of each case. For instance, if a complainant is ringing or making constant visits and raising the same issues with different staff, it may be appropriate to notify them that a single nominated staff member will deal with those calls or visits in future and appointments must be made with that staff member.

In the small number of cases where it is clear someone will not accept the university's decision on a matter and all avenues of internal review or appeal have been exhausted, it may be reasonable – if they continue to contact the university – to notify them that in future:

- no phone calls will be accepted or interviews granted about the specific matter(s) already reviewed
- all further communication with the university must be in writing
- any correspondence will be received, assessed and filed – but only acknowledged or responded to if they provide significant new information about their complaint or raises new issues which, in the university's opinion, warrant fresh action.

CHAPTER 4

Assessing complaints

Early assessment of a complaint is essential for effective complaint handling. The assessment should be done by a person or team that specialises in this task. In organisations that receive a large number of complaints, the initial assessment is usually done by an intake screening unit. Further preliminary assessment may be required by other specialist staff if the complaint is more complex or difficult.

Complaints differ widely. Some complaint issues and the relevant facts may be apparent from the information a complainant provides, while in others a lengthy investigation may be needed to sort out disputed factual or legal issues. Often the scope of a complaint is not clear initially – either to the complainant or the university – and clarification is required. Some complaints can be resolved by an explanation or apology, while others will need a decision or policy to be reconsidered or financial compensation provided.

Many complaints in universities are about education standards and administrative actions, while some raise specialist legal or technological issues. A complaint may raise several related but different issues that require separate handling or referral to some other organisation. In all allegations that give rise to a reasonable suspicion that corrupt conduct may be involved, the person responsible for the assessment should report these immediately to the Vice-Chancellor or the appropriate officer delegated with responsibility for misconduct matters. In some jurisdictions, there is a legislative requirement that such matters need to be reported to the watchdog body responsible for investigating corrupt conduct. Regardless of whether or not this is a legislative requirement, it is a step the university should consider if the complaint contains strong evidence of corruption.

One element of effective assessment is deciding whether priority should be given to dealing with one or more aspects of a complaint. For example, decisions will need to be made based on the priorities of a situation if:

- There may be an escalating dispute between a complainant and the university that will worsen if not addressed promptly.
- There may be a time limit that governs whether a practical outcome can be secured for a complainant if their complaint is upheld.
- It is a sensitive issue that may need special handling – such as one raised by a Member of Parliament, or one arising from a legislatively protected disclosure made in the public interest, a matter raised by a parliamentary Ombudsman or one that may attract media attention.

A complaint unit owes a duty to all complainants to deal efficiently with their complaints. Resources should be allocated so that the priority given to some complaints does not prevent other complaints from also being appropriately managed.

Handling protected/public interest disclosures

If a complaint is assessed as being (or as likely to be) a disclosure that falls under 'whistleblower' type legislation, particular care must be taken to ensure that there is no breach of the relevant legislative requirements. Each apparent disclosure should be notified immediately to the university's designated protected/public interest disclosure coordinator. That person's advice should be sought about how best to meet requirements about confidentiality and to ensure protection for the complainant against possible detrimental action in reprisal for making the disclosure. Because internal disclosures are often more serious in both substance and potential impact/outcomes than ordinary complaints, they merit greater care in all aspects of their processing.

It would be prudent to consult the guidelines on whistleblowers prepared by the Ombudsman, public interest disclosure or corruption prevention bodies with jurisdiction over the university.

For more information, go to **[[Each jurisdiction to provide its own URL]]**

Acknowledging complaints

A complaint should be acknowledged quickly to reassure the complainant that their complaint is receiving attention. An acknowledgement can be an important tool in managing the complainant's expectations. [A/NZ S 7.6]

The acknowledgement should outline the complaint process, provide a contact number and preferably the name of a contact person. As far as possible, the acknowledgement should indicate how long it is likely to take for the complainant to next be contacted.

A written acknowledgement can be beneficial, but is not always necessary. If the complaint is made by telephone and cannot be resolved straight away, it may be more efficient to explain orally how the complaint will be handled and when the complainant will next be contacted. Similarly, a complaint made by letter that can be resolved quickly can sometimes be acknowledged at the same time as giving advice on the outcome.

Complaint lodgement systems that operate by using email or filling out an online form can be programmed to send an automatic response – to reassure the complainant that their complaint has been received. This response should provide an email address and complaint identification number for the complainant to use in future contacts.

Possible actions to take

Identifying the key issues and the seriousness of a complaint will dictate the appropriate path for handling that complaint. [A/NZ S 7.7.2; Annexure J & Annexure I]

Some options for actions on complaints include:

- If the complaint or its preliminary assessment does not raise any evidence of wrong conduct, communicating to the complainant that no further action will be taken.
- If only minor issues are raised, and there are no serious or systemic issues, then noting the concerns but declining to act may be appropriate.
- Informal resolution – including giving an explanation or apology or changing a decision.
- Alternative dispute resolution (ADR) techniques – such as mediation or conciliation.
- Preliminary inquiries – in less serious cases where basic facts are unclear or in dispute.
- Internal reviews – if a complaint raises questions about the systems the university has in place.
- Formal investigation – often a pre-requisite if disciplinary action is likely.
- Referral to an external agency – such as the police, Ombudsman, corruption prevention agencies or auditors.

Depending on the nature and seriousness of the complaint, there should be a specific power to move immediately to a formal investigation or referral to an external agency after an assessment has been done. However, skipping preliminary inquiries will only be appropriate in a small minority of more serious cases.

Resolving complaints informally

There are several informal ways in which a complaint can be successfully finalised.

Resolving a complaint may involve:

- giving more information
- providing an explanation
- suggesting a solution
- having a decision made or changed
- expressing sympathy and understanding where there is no solution
- giving an apology.

One of the most effective ways to resolve a complaint is by giving an appropriate apology. Certain Australian jurisdictions (New South Wales, the Australian Capital Territory and Queensland) have introduced statutory protections for a 'full' apology – that is, an apology that includes an admission of fault or responsibility. In the other states and territories there is statutory protection for a 'partial' apology – that is, an apology that is an expression of sorrow or sympathy but does not include any admission of fault or responsibility.

Detailed advice on making an effective apology can be found at [[each jurisdiction should provide its own applicable URL; the NSW Ombudsman apology guideline can be used, with attribution, in the absence of an appropriate guideline

[[[http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0013/1426/Apologies-Guidelines-2nd-edition-March-2009_.pdf]]]

Using ADR

ADR techniques are a useful tool for dealing with complaints. Mediation is a voluntary and confidential process where a neutral third party – the mediator – assists the parties in dispute to find some common ground and reach a settlement through a structured process. Complaint handling staff should be trained both to identify disputes suitable for mediation and other forms of ADR and to understand the relevant protocols.

It ought to be noted that mediation is only one of a number of ADR approaches and other ADR approaches to conciliating complaints are available.

Successful mediation depends largely on the skill of the mediator and the parties' confidence in his or her independence. Only trained mediators should be used, selected from a panel maintained by a reputable body. The mediation process also needs to meet normal standards of public accountability.

As mediation can only be voluntary and requires the agreement of all parties, there needs to be a specific provision in a university's complaint policies/procedures for any party (complainant or respondent) to refuse mediation.

The voluntary nature of mediation almost always applies to the other alternative ADR approaches as well.

Referring complaints

Once the initial assessment is completed, it may be necessary to transfer the complaint to another staff member in the university or advise the complainant to approach a different organisation. This can be frustrating for complainants and can delay their complaint being resolved. To lessen that risk, a university should ensure that this stage of the process is seamless and properly explained to complainants. The contact number of the person who will be dealing with the matter should be given to the complainant to prevent him or her from getting lost in the process.

Complaint staff must have the authority to resolve straightforward matters, but they must also be able to escalate matters that require closer consideration. If the staff member who receives a complaint is not able to handle it themselves, it is essential that they have been trained to make an immediate referral to a person or body that is able to deal with the complaint.

If there is a statutory requirement to refer matters to the police or another outside agency, it would usually be good practice to advise the complainant that such a referral will take place. If it is not appropriate to do this, the university should ensure that the reasons for the decision not to tell this to the complainant are recorded.

Keeping records

After receiving a complaint, the following information should be recorded and – if the university has a complaint centre – forwarded to the complaint centre's database. This information should include at a minimum:

- the complainant's name and contact details
- a brief abstract of issues raised in the complaint – including, if provided, the remedy/outcome sought
- the identity of people and/or policies/decisions/courses complained about
- the action (attempts to resolve/conciliate, determination or referral) taken or proposed
- a brief statement of reasons for that action. [A/NZ S 7.4 & 7.7.4]

CHAPTER 5

Investigating complaints

Most complaints will not be so serious as to require a formal investigation. The nature and seriousness of a complaint will determine whether it requires the expenditure of resources that a formal investigation entails. It will also determine the nature and scope of any investigation.

Choosing the appropriate type of investigation

Some form of investigation is often required if additional evidence is needed to confirm or reject allegations. This is most frequently the case where accounts of an incident differ or facts are or may be disputed. An investigation may consist of relatively informal inquiries or operate in terms of a formal process – such as commonly set out in staff enterprise agreements.

Investigations can take many forms, depending on factors such as:

- **Statutory requirements** – any statutory powers or obligations that apply to the investigation may specify particular procedural requirements.
- **The nature of the issue** – whether the issue relates to policies, procedures, practices or to the conduct of individuals, academic or other units has an important bearing on matters such as the powers necessary and available for the investigation, the resources that will be needed, the authorisations necessary to do the investigation, and the nature of the possible outcomes of the investigation.

It is useful to characterise an investigation as either problem-focused or evidence-focused:

- **Problem-focused investigations** – are directed at identifying and remedying problems. They therefore seek to obtain sufficient information for a fair and informed judgement to be made about the issues in question, particularly if those issues relate to policies, procedures or practices. A problem-focused investigation may require no more than consideration of the terms of the complaint and a study of any relevant documents to, for example, amend a defective procedure.
- **Evidence-focused investigations** – seek to pursue all lines of inquiry in a way that will meet all legal and procedural requirements, particularly if there is a possibility of criminal or disciplinary action or a finding of wrong conduct against an individual that could significantly affect that person's employment, reputation or other interests.

For more advice about the investigation process, go to:

[Link here to information about investigation processes in your jurisdiction; the NSW version of the guidelines would link to:

http://www.ombo.nsw.gov.au/__/data/assets/pdf_file/0010/4213/Investigating-Complaints.pdf].

Appointing an investigator

Universities should maintain a list of qualified investigators and, before engaging an external investigator, should be fully satisfied about their skills and experience.

Universities should also ensure that investigators do not have a significant actual or reasonably apprehended conflict of interests in regard to the principal parties to the complaint or to the subject matter of the complaint. Further information on this point can be found at the following link:

[Link here to information about conflicts of interests from your jurisdiction; the NSW version of the guidelines would link to:

<http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/state-and-local-government/conflict-of-interests>].

It will often be the case within an academic or administrative unit that a designated complaint handler will already know the complainant and/or the staff member or student the subject of complaint. This situation requires an assessment of whether the nature of that acquaintance could reasonably give rise to a perception that it may bias or otherwise taint the handling of the complaint. The more serious the complaint, the greater the level of prudence required in dealing with this issue. At times, it may be sufficient to either advise of this conflict – or alternatively to advise and obtain the consent of the parties involved for a nominated investigator to handle the complaint.

The choice of investigator should also take account of the type of investigation that is likely to be required and the investigator's capacity in terms of their training and experience to undertake it.

Universities employ specialist investigators in, or source investigation advice from, different areas of their administrations. Some use their internal audit units. These units have the virtue of a degree of independence from other areas of the administration. Other universities have used their human resources area. If a complaints centre is established, there is a case for positioning one or more specialist investigators in it. In the end, this is a decision for each university to make. However the key requirement is that investigators or the sources of investigation advice should be seen to be objective and independent from the parties involved in any individual case. Ignoring this requirement will leave the investigation process open to criticism and invite the propagation of conspiracy theories.

The independence of the investigator is likely to assume particular importance in cases involving academic misconduct or other serious misconduct where senior staff members are significant parties. If referral to an external review agency is not mandatory, consideration can be given to either seeking to do so or engaging an investigator external to the university. An explicit capacity for this to be done should be included in the university's complaint handling policy.

Planning and authorising the investigation

Because formal investigations are often resource intensive and require the investigator to have formal authority, they will require authorisation for their initiation, terms of reference and implementation from a designated and appropriately senior staff member.

It is prudent to prepare a short written plan to guide the drafting of the terms of reference for the investigation. This plan should:

- define the issue or issues to be investigated
- list the steps in investigating the complaint and state whether further information is required, either from the complainant or another person or organisation
- estimate the time that will be taken to resolve the complaint
- identify the remedy the complainant is seeking, whether their expectations are realistic or need to be managed, and other possible remedies
- note any special considerations that apply to the complaint—for example, if the complainant has asked for their identity to be withheld from others, or if there is sensitive or confidential information that needs to be safeguarded.

A written plan will focus attention on the issues to be investigated. This will ensure that important issues are not overlooked and the investigation does not wander off course.

A plan also enables the course of the investigation to be reviewed. This is especially important if the investigation cannot be completed by the person to whom the complaint was initially assigned. A frequent cause of inefficiency and delay in complaint investigation is that responsibility for investigating a complaint is passed from one staff member to another, without proper handover or planning.

Planning and conducting an investigation is a dynamic and ongoing process. It is not always possible to know at the outset how an investigation will develop. More complex investigations can extend over long periods. It is therefore important to revisit the investigation plan regularly and make adjustments as circumstances change and new information becomes available.

Setting terms of reference

The terms of reference for a formal investigation effectively set the boundaries of inquiry and assist in establishing a focus and limits for the investigation. Drafting terms of reference should take into account practical matters such as the resources available to the investigator and acceptable timeframes.

Both the informal planning process and the formal framing of terms of reference should take into account the following principles of a fair investigation:

- **Impartiality** – each complaint should be approached with an open mind, and the facts and contentions in support of a complaint should be weighed objectively.
- **Confidentiality** – a complaint should be investigated in private, and care should be taken in disclosing to others the identifying details of a complaint.

- **Transparency** – a complainant should be advised of the steps in the complaint process, and given an opportunity to comment on adverse information or before a complaint is dismissed.

These principles echo the requirements of administrative law, which universities must also observe during complaint investigations. Administrative law requirements are outlined in five best practice guides published by the Administrative Review Council (www.ag.gov.au/arc).

Among the requirements that are relevant to complaint investigations are:

- A finding on a disputed factual issue must be based on evidence that is relevant and logically capable of supporting the finding – not on guesswork, preconceptions, suspicion or questionable assumptions.
- A written note should be kept of evidence that is provided orally.
- There is no onus of proof on a complainant to substantiate each fact or element in their complaint, although it is reasonable for the investigator to ask a person to assist the investigation by providing documents they have or explaining things that they know.
- The rules of evidence that apply in court proceedings do not apply to administrative investigations, and an investigator can use reliable information obtained from any source.
- To accord natural justice, a complainant should be given an opportunity to comment on contrary information or claims from another source before a decision is made to dismiss the complaint.

It is not always possible to resolve each disputed issue. The evidence available to the investigator may be scant, inconclusive or evenly balanced – and this should be explained to a complainant. Thought should also be given to alternative means of resolving a complaint, if these seem feasible.

Explaining complainant responsibilities

In almost all cases of significance, a number of issues need to be discussed with the complainant at the outset. This initial discussion provides a valuable opportunity to explain certain essential information to them.

By the very act of complaining, a complainant shows some recognition of the university's responsibilities to consider and respond to their complaint. However, they may have little or no idea that as a complainant they too have responsibilities. Outlining complainant responsibilities at, or immediately after, a complaint is lodged can prevent many problems and false expectations arising that can disrupt successful complaint handling.

An important responsibility of complainants that should be communicated to them at the outset is to cooperate fully with those considering and investigating their complaints. The most important element of that cooperation is that – at the time of making their complaint or immediately afterwards – they provide all relevant information in their possession or to their knowledge. In short, it is reasonable for university complaint handlers and investigators to ask complainants to lay all their cards on the table. Dribbling in items of information (known from the beginning to the complainant) during the course of an investigation can jeopardise the proper course of the investigation. It is also frequently an indication of the complainant's wish to manipulate the investigation. Any such attempt at manipulation inevitably calls into question the complainant's good faith in pursuing their case.

Ensuring procedural fairness

All investigations should afford procedural fairness to all affected parties. This requirement has implications for both the conduct of an investigation and the choice of investigator.

Procedural fairness requires an investigator (depending on the circumstances) to:

- inform the subjects of an investigation of the substance of any allegations against them or grounds for proposed adverse comment or findings about them
- provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise
- hear all parties to a matter and consider submissions
- make reasonable inquiries or investigations before making a decision
- ensure that no person decides a case in which they have a direct or significant indirect interest
- act fairly and without bias
- conduct the investigation without undue delay.

It is important to ensure appropriate procedural fairness is afforded to any person who is the subject of complaint that has reached the point of being investigated. This is not confined to providing them with an opportunity to answer or make submissions about the allegations against them. They are also entitled to be advised of the results of an investigation, regardless of whether any material adverse to them is produced in the investigation report.

Monitoring investigations

The university should exercise a broad monitoring role on the progress of investigations. That role should include ensuring that both the university and the complainant receive regular progress reports. It should also enable the responsible university staff to respond promptly to senior management requests for briefings on complaints of acute interest and to alert management to complaints that raise systemic issues.

Universities with a centralised complaint centre will have an advantage in this process. This centre should be the repository for all finalised investigation reports and information from these should be used to assist in reviews and benchmarking of investigation timeliness.

Giving progress reports

Consistent with the timeframes for major steps in the complaint handling process set out in the relevant policy (but as modified during any initial discussion with the complainant), complainants should normally be advised as and when each step is completed. [A/NZ S 7.5]

If an investigation is required, this will generally involve – at a minimum – advice to the complainant when:

- the matter has been allocated to an investigator
- the preliminary investigation report, prepared to obtain submissions, has been completed
- the investigation report has been finalised
- the university has made a decision on the complaint/outcome of the investigation.

Irrespective of the times taken for these steps, it is generally unwise to leave too long a time between updates. If standard timeframes are exceeded, advice should be provided about such delays. Silence tends to cause uncertainty in a complainant's mind. More than a month at a time without contact can lead to further complaints or attempts to involve other individuals, agencies or the media – in an effort to overcome what may be a misconception about the causes of delay. A 'no progress' report is better than no report at all.

It may be appropriate to provide more frequent updates if a complaint involves significant stress to the complainant or other events – such as eligibility for enrolment or visa extension – may be affected by the investigation outcome.

A single person should be designated as the point of contact for the parties and to provide them with any updates. This reduces the possibility of conflicting information being provided. During the time an investigation is being conducted, this contact person will normally be the person supervising or coordinating the investigation.

Recording and giving reasons

It is essential that reasons are recorded for all significant decisions taken during the complaint handling process. These records can be vital in protecting the integrity of the decision of the relevant academic or administrative unit in the case of internal appeals, or the university in the case of reference to external scrutiny – including litigation or media attention.

A common form of attack on complaint decisions is a claim that procedural fairness was denied to one or more parties, so recording the steps taken and the reasons for decisions is essential for a successful defence against such claims.

A requirement to record reasons also reduces the risk of poorly thought out, arbitrary or other obviously flawed decisions. The complainant and, where relevant, the subject of complaint should always be given reasons for the ultimate decision made about a complaint.

If a matter has been informally resolved, the 'brief statement of reasons' needs to be just that – although care should be taken that it is not so brief as to be unintelligible. In more serious cases, the reasons for actions or decisions taken should be sufficiently detailed to permit any party with a right of appeal or review to decide

whether the reasons provide adequate grounds to pursue that right. The reasons should also be sufficient to adequately explain the decision in lay terms if some external scrutiny mechanism is invoked.

Finalising an investigation

Once a matter has been investigated, a final report must be prepared by the investigator. This will be given to the university, but providing a copy of the final report to the complainant or to a person who has been the subject of the investigation will depend upon the circumstances. It is important wherever possible to try to achieve 'closure' of a complaint. This needs more than just giving the complainant a bald statement of a not sustained/sustained outcome. It generally requires:

- A statement of the reasons for the complaint determination that is sufficiently detailed to permit an assessment of its validity and the viability of pursuing any available avenue of appeal.
- Advice about the existence of any avenues of appeal or review and how to access them.
- Where practical, provision of a copy of or at least significant extracts from or summaries of the content of the report of the complaint investigation.

The explanation should be in a style that the complainant can understand. [A/NZ S 7.7.4; 7.8 & 7.9]

If the university decides it will not release all or part of a report or documents appended to a report to the parties involved, it should do so in the awareness that it remains possible a party may pursue release of these documents through legislation governing access to information.

Importantly too, the explanation should address the concern or grievance raised in the complaint. Many complainants mistakenly believe their complaint issues were not fully examined or finally dealt with because universities have not disclosed how the complaint was dealt with. One reason why universities can be reticent is privacy or other related grounds about disclosing how a complaint against a university staff member was dealt with. This is an important consideration, but it should not be a barrier to transparency and accountability.

If some action has or will be taken to address a fault or wrong suffered or disclosed by the complainant, this should be described. If a complaint is substantiated, consideration should also be given to whether an appropriate remedy can be provided to the complainant. The remedy may be as varied as a better or fuller explanation, an apology, changing or reconsidering a decision, expediting action, removing a debt or penalty, or providing financial compensation.

If, on the other hand, a claim made by the complainant has not been substantiated, this should also be noted and explained. An explanation should similarly be given if a decision has been reached not to investigate or to cease investigation of an issue raised by the complainant. The options available to the complainant to seek internal review of any adverse finding, or to pursue the complaint in another place, should be outlined. If appropriate, the complainant can also be invited to contact the investigation officer to discuss their complaint and the investigation.

CHAPTER 6

Following up on complaints
and issues

If a complainant would like the university's actions or findings to be better explained, the nominated contact person can usually do this. Contact details and an invitation to follow up should usually be given when the complainant is notified of the outcome of an investigation.

If a complainant is dissatisfied with the investigator's findings or conclusions, they should be informed of the option for an internal review. To bring finality to the investigation, it is common to set a time limit by which the complainant must seek internal review, to require them to do this in writing, and to specify the particular issue they would like reviewed and why they disagree with the investigator's view.

An external review option may also be available to a complainant. The option of complaining to the Ombudsman, or seeking a review of a decision by another watchdog body or tribunal, should be included in any finalising letter from the university. A sound internal review process will reduce the likelihood of complaints being made to an external agency as well as assist any review they undertake.

Mediation of an unresolved dispute between a complainant and a university is another option to be considered. A mediator can help to clarify issues, provide an impartial perspective, and propose solutions that both parties can agree to. Whether this is a realistic option will usually be clear from the investigation process. It should not be considered simply to give a complainant who remains aggrieved a further forum if it is not likely to ultimately bring the complaint closer to resolution.

Reviewing decisions

Good complaint handling practice provides at least one level of internal review of initial decisions about complaints. This simply recognises the possibility of error in an initial decision. Bringing fresh eyes to review that decision provides the opportunity either to detect and correct any initial error or provide greater certainty about the correctness of the initial decision.

Procedural fairness requires the review to be done by someone other than those involved in reaching the initial decision – generally someone who is more senior and/or more experienced. Appropriate senior staff should have a broad discretion to overturn previous decisions and apply remedies. [A/NZ S Annexure H]

Reasons should always be given for any decisions about a review. This applies even if there is no further avenue of internal review or appeal since, if nothing else, it gives confidence that the review was given proper consideration.

A 'three level' model has been much discussed as offering best practice in effective complaint handling. Under this model, the aim is to resolve the majority of complaints at the first level – the frontline. Level two of the model is the processes of internal assessment, facilitated resolution or internal review that the university itself would be able to offer – including investigation by an external investigator under contract. The third level of review consists of the participation of organisations such as Parliamentary Ombudsman, professional oversight bodies and anti-corruption commissions who have the capacity to investigate matters.

At each level, either the complainant or the university can decide to escalate the issue to a higher level. In some cases, a right of appeal or review to a tribunal or court may also exist and could also be considered as a third level option. Dissatisfied complainants should be advised of these avenues of appeal or review and of any relevant known time limits.

Addressing systemic issues

Resolving a person's complaint is not the last step in effective complaint handling. An individual's complaint may point to a systemic problem in the university – that is, a problem that has either occurred in other cases or could be repeated. This possibility should always be considered before finalising a complaint.

For example, a complaint may expose a need to improve university recordkeeping or provide better training or support for university staff who have given inaccurate or unhelpful advice. Delay in resolving a person's complaint may point to a need for greater efficiency in the university's complaint handling procedures and practices, or better liaison between different units of the university or other education providers or contractors that are jointly responsible for the complaint issue. A review of university procedures and policies can be another beneficial outcome, even if this will not result in the particular concerns of a complainant being addressed.

The responsibility for implementing these improvements usually rests elsewhere in the university and not with the complaint unit. It is therefore important that complaint issues and trends are reported to – and analysed by – the executive.

Complaints are a rich source of information about how well a university is performing and what improvements it might make. Complaint information can point to problems in a university's services or program delivery, or to a need to improve how complaints are handled. To capture these broader issues, universities should ensure that complaint issues and trends are a core concern in their business review processes.

Reporting and analysing data

Universities should regularly analyse complaints data to identify trends in matters such as complaint subjects, complaint root causes, performance statistics (particularly relating to timeliness), the use of ADR and the implementation of outcomes/rectification. Again, universities with a centralised complaints unit will be at an advantage. If universities are in a position to do so, they can report publicly on matters of this type via their annual report.

The following checklist could be used to identify potential system improvements:

- Are all complaints, including oral ones, recorded comprehensively?
- Is this collected data analysed on a regular basis?
- Are root causes of complaints identified and addressed?
- Does management receive and consider this analysis on a regular basis?
- Is there a widespread exchange of information within the university? For example a complaint register accessible to those who need to know, analysis reports, management reports, and solution /outcome reports?

Universities with a complaints centre could also have the centre prepare a regular report for the university council's audit committee for tabling at the following council meeting.

CHAPTER 7

Providing protections
and support

Supporting student complainants

People will not make a complaint unless certain conditions are met. There are a number of things that complainants are looking for when they are considering making a complaint.

- They must be confident they will not suffer detriment or disadvantage for complaining.
- They must believe that making a complaint will serve some good purpose – that appropriate action will be taken.
- They must believe it is acceptable to make a complaint, and know how to make it – including who to make it to, what information it must contain, and any relevant time limits. [A/NZ S 5]

The legislative protections available to staff under a university's internal reporting policy for 'whistleblowing' disclosures are not available to students who make a complaint in some jurisdictions. It is therefore important for university complaint handlers to realise that – in practice – these students are often in effectively the same position as 'whistleblowers'. For example:

- Although students are not normally on the university payroll, they are 'internal' to the organisation in the sense that they 'work' at the university.
- If students make disclosures/complaints, these are often about people that they must have regular and continuing contact with.
- The subjects of their disclosures (and their colleagues) can take detrimental action against students that can seriously affect their future.
- The higher the level of study, the more 'workplace-like' the study environment will be.

Without a legislative scheme that protects students who make disclosures about mismanagement or misconduct, universities need to address this issue administratively. This is best done by having an effective internal complaint system that provides a climate in which students feel confident they can complain without fear of disadvantage. Universities may wish to consider adopting a policy that sets out the rights and responsibilities of complainants and endorses the right of everyone covered by the policy to make a complaint (that is not knowingly false or vexatious) free from reprisals.

Protecting complainants against reprisals

There is both an individual and public interest in protecting a complainant against reprisals that may arise from a complaint made in good faith, regardless of whether the complaint is ultimately found to be sustained or dismissed.

The university should be prepared to issue strong warnings to those who may consider reprisals and, if these are ignored, act promptly and decisively against those involved in any reprisals.

In addition, the university should be prepared to make arrangements to prevent disadvantage to a complainant. These necessary steps may include, for example, arranging an alternative lecturer or course supervisor for the complainant or appointing a mentor.

Protection against reprisals or disadvantage should not extend to complaints that contain allegations that the complainant either knows are false or could reasonably be expected to know are false. Making a knowingly false complaint can be grounds for disciplinary action being taken against the complainant. Knowingly false complaints are also unlikely to qualify as disclosures under whistleblower legislation.

It should be stressed, however, that extreme care must be taken with such matters. A complaint that seems to lack plausibility or is not found to be substantiated is not necessarily false. Whether cases are decided 'beyond a reasonable doubt' or 'on the balance of probabilities', there will always be cases where there is insufficient evidence to reach certainty about the facts of a matter. This does not and cannot mean that the way is now free for that person or authority to take reprisal action against the individuals who complained about them.

Universities have a particular power imbalance between students and staff that unfortunately provides many opportunities for reprisals to be taken against student complainants in ways that may be difficult to expose. There is a corresponding responsibility on university administrations to ensure that students who make legitimate complaints are given every reasonable protection.

Ultimately, the best protection comes from strong leadership – committed to promoting an administrative culture that welcomes complaints and treats complainants as assets of good management and organisational improvement.

A 'no disadvantage test' should apply to complainants. Except where bad faith is proven, the university should ensure that a complainant does not suffer disadvantage (or equitable redress is provided for any unavoidable disadvantage) from making their complaint. [A/NZ S 5.1.2]

If there has been unavoidable disadvantage to a complainant, every effort should be made to redress that disadvantage. Options for such redress are explored in detail in Annex J of the draft Australian Standard and are grouped under five broad headings:

- **Communication** – explanations about why a problem occurred or further information about a problem.
- **Rectification** – changes or corrections to conduct or procedures or records.
- **Mitigation** – moderation of the severity of the detriment suffered.
- **Satisfaction** – an apology, an admission of fault, or the institution of disciplinary action.
- **Compensation** – financial restitution for detriment.

People who are the subject of a complaint

People who are the subject of a complaint are fully entitled to the relevant elements of procedural fairness set out above. Where practical and appropriate, the identity of the subject of an investigation should be kept confidential during the investigation.

If the complaint is found to be without substance, not proven or unable to be determined, the university should take reasonable steps to provide redress for any significant detriment that may have occurred to the subject of the complaint. This is of particular importance if knowledge of the complaint has become public. Options the university could consider would include an apology on behalf of the university and/or publishing the findings.

Witnesses or other parties to handling a complaint

Witnesses or others who help in handling a complaint may potentially be subject to reprisals or disadvantage because of their participation in that process. Their position in this respect may be little different to that of a complainant. Since there is an obvious public interest in encouraging witnesses to come forward and for others to help with handling complaints, such people should be given similar support to that offered to complainants. This could be done by, where practical, maintaining the confidentiality of their identity, appointing a mentor and facilitating access to alternative lecturers, courses and supervisors.

Maintaining confidentiality

An important issue to canvass at the outset of handling a complaint is whether there is a need for confidentiality. If there is a reasonable likelihood of detrimental action against a complainant (either by the subject of the complaint or by fellow staff or students) in reprisal for making the complaint, there should be a presumption that the complainant's identity will be kept confidential if this is possible and appropriate.

In many cases, the identity of the complainant will be obvious and confidentiality is simply impracticable. Any attempt to maintain confidentiality may mean it is impossible to effectively investigate the complaint, often because of the requirements of procedural fairness to the subject of the complaint. Issues surrounding confidentiality should be discussed with the complainant at the outset and, if confidentiality is to be preserved, the complainant should be advised of the need for them to avoid breaching the confidentiality of their identity as the complainant.

Complaints of a serious nature may qualify as being disclosures to which legislative protections apply. If this occurs, there are generally certain statutory rights to confidentiality of the complainant's identity – and the risk of significant criminal penalties for anyone who takes detrimental action against the complainant in reprisal for having made a protected /public interest disclosure. It is therefore vital at the initial assessment stage to consider whether a complaint may also be a disclosure in the public interest and have regard to the relevant legislation.

A complement to procedural fairness in an investigation is the need to ensure appropriate security for the investigation file and associated materials – such as computer hard drives and disks, tapes, photographs and other records. Maintaining proper levels of confidentiality about all aspects of the investigation during its currency (and, where appropriate, after it is finalised) is essential for those conducting or assisting with the investigation. This can be of critical importance in minimising damage to individuals who are the subject of complaint in cases where serious allegations are ultimately found to be baseless or misconceived.

For an engaging discussion about some of the confidentiality issues that may arise in the course of investigations, the following Public Interest Disclosure fact sheet by the NSW Ombudsman is recommended:

<http://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/public-interest-disclosures/confidentiality-and-its-practical-alternatives>

CHAPTER 8

Working with
overseas students

Universities that provide services to overseas students – which would be the vast majority, if not all, universities – are required by the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the ESOS Code) to develop complaints and appeals processes. For further information on the specific requirements of the code, see:

<https://www.aei.gov.au/Regulatory-Information/Education-Services-for-overseas-students-esos-legislative-framework/national-code/Pages/default.aspx>.

Standard 8 of Part D of the ESOS Code states that:

- The provider must have an internal complaints and appeals process that:
 - requires a written record if the complaint or appeal cannot be resolved informally
 - provides a student with the opportunity to formally present his or her case at minimal or no cost
 - allows the student to be assisted or accompanied by a support person
 - provides a written statement of the outcome, including details and reasons for the decision
 - requires that processes begin within 10 working days of the provider receiving the formal written lodgment of the complaint or appeal.
- The provider must maintain the student's enrolment while the complaints and appeals process is ongoing. This does not necessarily mean that a student must remain in class.
- The provider must have arrangements in place for an independent external person or organisation to hear the complaints or appeals where the provider's internal process has been completed and the student remains dissatisfied.
- The student must be granted immediate access to the provider's complaints and appeals process. The process must begin within 10 working days of the formal lodgment of the complaint or appeal.
- The provider's documented internal complaints and appeals process must include provision of a written statement of the outcome, including details and reasons for the decision.
- If the outcome of a student's appeal through a provider's internal or external complaints and appeals handling process is favourable to the student, the provider must immediately advise the student of this and implement any decision and/or corrective and preventive action required.

Ombudsman offices are independent external organisations well equipped to look at the decisions of universities. It should be noted that the ESOS code is currently under review.

Annexure A

Resources

Resources

Australian Standard® AS ISO 10002:2006 Customer Satisfaction – guidelines for complaints handling in organisations

(ISO 10002-204 MOD), Standards Australia

Dealing with Difficult Complainants, NSW Ombudsman, June 2004

[incorporated in *The Complaint Handler's Toolkit* but available separately]

Effective Complaint Handling (3rd edition), NSW Ombudsman, June 2004

[incorporated in *The Complaint Handler's Toolkit* but available separately]

Good Conduct and Administrative Practice: Guidelines for State and Local Government (2nd edition)

NSW Ombudsman, May 2006

International Standard ISO 10002:2004(E), International Organisation for Standardisation,

Geneva July 2004

Investigating Complaints: A Manual for Investigators (2nd edition),

NSW Ombudsman, June 2004

Managing conflicts of interests in the public sector – resources,

Independent Commission Against Corruption (NSW) & Crime and Misconduct Commission (Qld),

November 2004

Protected Disclosures Guidelines (5th edition),

NSW Ombudsman, May 2004

Responding to Suggestions, Complaints and Allegations Procedures,

NSW Department of Education and Training,

April 2001. On their website at www.det.nsw.edu.au/complaints/

The Complaint Handler's Toolkit (2nd edition),

NSW Ombudsman, June 2004

The why and how of complaints handling – Handbook

HB 229-2006, Standards Australia (this is the companion handbook to AS ISO 10002 above)

The National Code of Practice for Registration Authorities and Providers of Education and Training

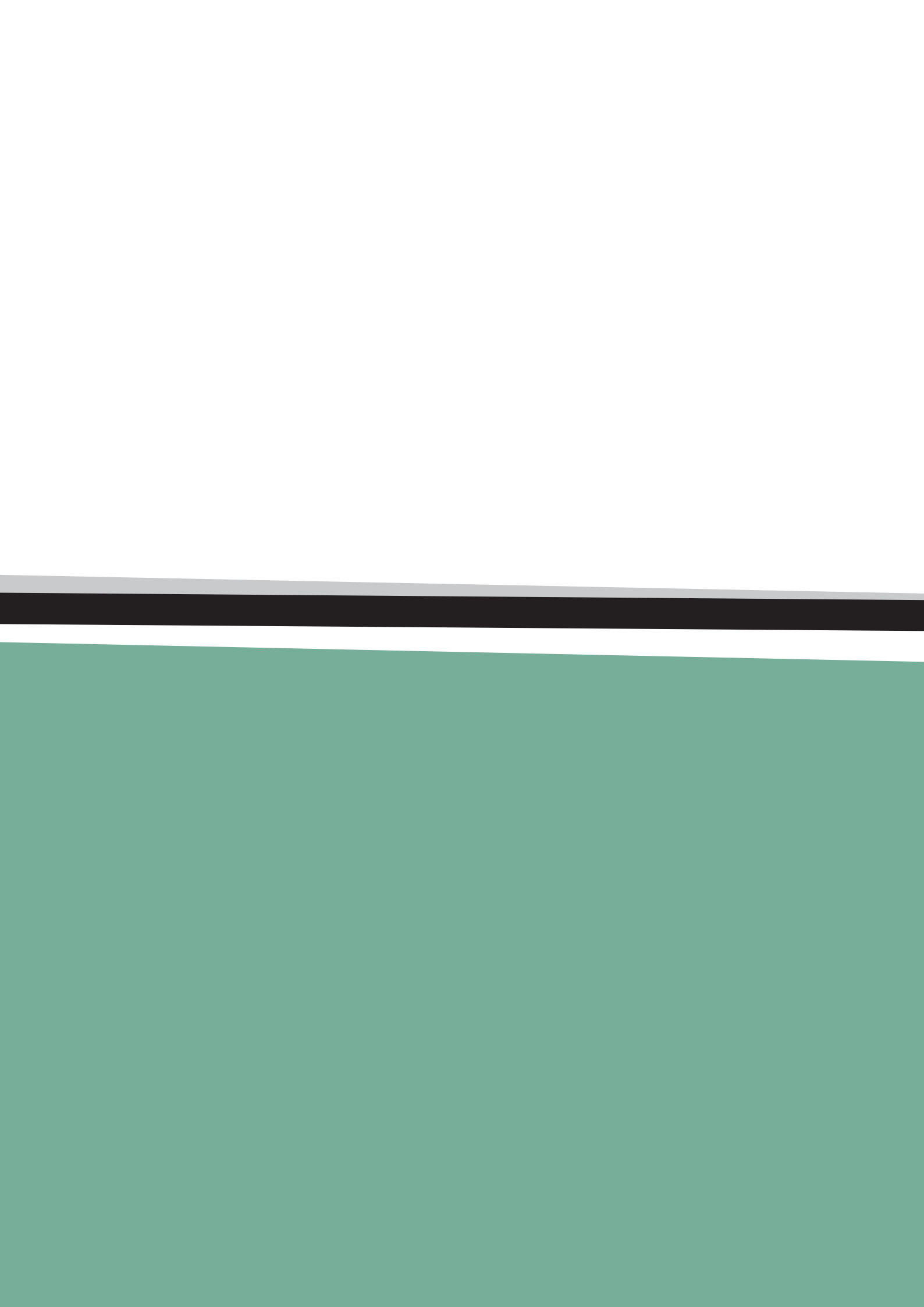
to Overseas Students, 2007

Better Practice Guide to Complaint Handling,

Commonwealth Ombudsman, April 2009

Better Practice Guide to Managing Unreasonable Complainant Conduct,

Commonwealth Ombudsman June 2009



A joint project of the Australasian Parliamentary Ombudsman

