# Complaint Management Procedure

# Section 1 - Introduction

(1) This document sets out the process for managing complaints made by members of the University community that do not fall under a different complaints or review process. Members of the University community include staff, students and the public. This Procedure is supported by and should be read in conjunction with the Complaint Management Policy (the "Policy").

# Section 2 - Definitions

(2) In the context of this document:

a. an Appeal Officer is the person responsible for assessing an appeal of a complaint outcome;
b. an Assessment Officer is the person responsible for assessing, investigating or determining the outcome of a complaint. An Assessment Officer may be the Complaints Officer, or any other person appointed by them;
c. a complainant is a person who makes a complaint under this Procedure; and
d. a respondent is the person who is the subject of a complaint, if any.

# Section 3 - Alternate processes

(3) This Procedure does not apply to complaints that are more appropriately managed under an alternate process.

(4) If a complaint is made under this Procedure which would be more appropriately managed under an alternate process, the Assessment Officer may re-direct the complainant to the relevant process, business unit, College or external entity responsible for that process. In some cases, it may be appropriate for a complaint or parts of a complaint to be managed under several processes at the same time as determined by the University, in which case outcomes may vary.

(5) Examples of complaints that have an alternate process are listed in the Policy.

(6) If a complaint is about the University incorrectly applying an alternate process, then this Procedure may apply.

(7) Where reasonable and appropriate, the University may choose to follow a different complaints management process to the one set out in this Procedure. In such cases, the new process will follow the rules of procedural fairness (for an explanation of procedural fairness see clause 45) and the Assessment Officer will notify the complainant of the different process in advance.

# Section 4 - Complaint process overview

| Section | Process | Detail | | Indicative timeframes |
|---|---|---|---|---|
| 6 | Informal complaint process | Complainants should first attempt to resolve complaints with the person most directly involved with the subject matter of the complaint and/or their supervisor.<br>This is appropriate for less serious and complex complaints and where the person feels comfortable to do so. | | All persons involved should provide responses within timeframes that are reasonable in the circumstances. |
| 7 | Formal complaint process | Lodge complaint | Complainants may lodge a formal complaint where informal processes have been unsuccessful or are inappropriate. | Receipt of complaint will be acknowledged within 5 working days. The complaint should relate to an event occurring within the last 12 months. |
| | | Initial Assessment | An Assessment Officer will consider whether the complaint can be resolved informally or whether it is appropriate for investigation. | Within 10 working days from the date the complaint is lodged. |
| | | Investigation | The Assessment Officer will investigate the complaint and provide an outcome. | Within 20 working days following completion of the initial assessment (or such other time as is reasonable in the circumstances). |
| 8 | Appeal | Complainants may have the option of seeking an internal review of the outcome of a formal complaint process if they believe there was a lack of procedural fairness in managing their complaint, or where new information has come to light. | | Appeals should be lodged within 15 working days following the date the complainant is notified of the outcome. |
| 11 | External Complaint Process | At any time during the complaint process the complainant has the right to lodge their complaint with an external agency, for example the NSW Ombudsman. | | Advice should be sought from external agency regarding timeframes. |

# Section 5 - Support

(8) If a complainant or respondent requires assistance at any stage of the complaint process, they are encouraged to seek independent advice and support. Available support services include:

a. staff - union representatives or hrsupport@newcastle.edu.au;
b. students – Office of Student Advocacy. Student Advocates offer free and confidential assistance in navigating University processes, including this Procedure.

(9) Support persons (but not legal representatives) are allowed to attend interviews or meetings if they have given the Assessment Officer prior notice. They are also allowed to communicate on behalf of the complainant or respondent provided they have been given authority by the complainant or respondent (as applicable) to do so. The complainant or respondent may still be required to communicate directly with the Assessment Officer, including to provide their account of events.

(10) The University also has a range of general support services available for students and staff:

a. information about student support services is available here; and
b. information about staff support services is available here.

# Section 6 - Informal complaint process

(11) This section describes the informal complaint processes available to complainants.

(12) A complainant should try to resolve their complaint informally before they lodge a complaint through the formal complaint process.

(13) A complainant does not need to try to resolve their complaint informally if:

a. they are uncomfortable engaging with the relevant person;
b. the complaint is serious or complex; or
c. going through this process would cause the complainant unnecessary or additional stress.

(14) In these cases, they may go directly to the formal complaint process. Complainants are also encouraged to seek support from the services available (see section 5) if they are unsure or have concerns about this initial informal step.

### Staff

(15) Staff should try to resolve their complaint directly with the responsible area or person(s) concerned. The staff member should give the person or responsible area an explanation of the issue, how it is impacting them and make a request for the issue to be resolved. They should attempt to do this as soon as possible after the issue has arisen.

(16) If self-resolution is unsuccessful or inappropriate, then the staff member should make a complaint to their supervisor.

(17) A supervisor may manage the complaint in a way they consider appropriate in the circumstances.

(18) If the complaint is resolved to the satisfaction of the staff member then no further action under this Procedure is required.

(19) If an issue is not resolved, the staff member may lodge a complaint through the formal complaint process.

### Students and members of the public

(20) A student or member of the public should try to resolve their complaint informally through communication with the staff member most directly involved in the subject matter of the complaint. For higher degree by research (HDR) candidates with a complaint relating to their candidature, they should try to resolve the complaint through communication with their HDR supervisor. If their HDR supervisor is the respondent, they should raise their complaint with the relevant Head of School.

(21) If a complaint is resolved to the satisfaction of the student or member of the public, no further action under this Procedure is required.

(22) If a complaint is not resolved, a student or member of the public may lodge a complaint through the formal complaint process.

# Section 7 - Formal complaint process

### Timeframes

(23) The timeframes set out in the formal complaint process and appeals process below are estimates. The University will endeavour to keep within the estimated timeframes, but this may not always be possible and will not be possible

in the following circumstances:

a. where the complaint involves several respondents;
b. where the circumstances surrounding the complaint are complex, for example where there are multiple allegations, the allegations are technical or complex or there is a high-volume of evidence to gather and consider;
c. external consultants are engaged; or
d. the Assessment Officer is waiting for further information from the complainant.

(24) The Assessment Officer will provide updates on the progress of a complaint and will tell the complainant if longer or different timeframes are to apply, except where timeframes have been extended because of delays by the complainant in providing further information.

## Lodgement of complaint under formal complaint process

(25) To lodge a complaint through the formal complaint process a complainant must submit a Complaint Form, which is available on the Complaints Webpage. The form should include all relevant information and supporting documentation so that the University can assess the complaint. The completed form will be directed to the Complaints Officer. The Complaints Officer may approve submission of a complaint through other means on a case-by-case basis.

(26) If the complainant is unable or would prefer not to complete the Complaint Form they may contact the Complaints Officer to arrange an alternative means of lodging their complaint. Contact information is available on the Complaints Webpage.

(27) Receipt of a complaint will be acknowledged in writing within 5 working days of a complaint being lodged.

(28) Anonymous complaints will only be assessed at the discretion of the University. If a complaint is lodged anonymously the complainant may not receive any correspondence or communication from the University.

(29) Complaints must be lodged within 12 months from the date the event giving rise to the complaint occurred. The University may choose to consider complaints outside this timeframe at its sole discretion.

## Appointment of an Assessment Officer

(30) The Complaints Officer may choose to assess, investigate, and determine the outcome of a complaint themselves or appoint an Assessment Officer to do some or all of these things. An Assessment Officer may be appointed or changed at any stage of the complaint process. The Complaints Officer will select an appropriate Assessment Officer at their discretion, which will usually be someone at the University with responsibility for the subject matter of the complaint. The Assessment Officer will have appropriate seniority, will be able to act independently and may have responsibility or knowledge of the subject matter of the complaint.

(31) Occasionally Assessment Officers may ask for assistance from the Complaints Officer and persons with knowledge or expertise in the subject matter of the complaint. They may also allocate tasks in the complaints process to other staff members where they consider it appropriate to do so.

(32) Assessment Officers, those assisting and those who have been allocated tasks must:

a. act fairly and impartially;
b. exercise independent judgement;
c. conduct themselves in a professional manner;
d. maintain confidentiality in accordance with the Policy; and

e. disclose any actual, perceived or potential conflicts of interest as soon as they become apparent.

(33) If applicable, conflicts of interest must be managed in accordance with the Disclosure of Interest Policy and Procedure.

## Initial assessment

(34) When receiving a complaint, the Complaints Officer or the Assessment Officer may ask the complainant to provide further information (or re-submit the form) if they think that the complaint lacks relevant detail or clarity.

(35) Within 10 working days of providing the complainant with written acknowledgement of a complaint or receiving any additional information or documentation from the complainant as requested, the Assessment Officer will undertake an initial assessment of the complaint, determine the next steps and advise the complainant of those next steps. Next steps may be any one or more of the following:

a. commence an investigation;
b. take action to address or assist the complainant to address the complaint without commencing an investigation;
c. decline to investigate or take further action for any one or more of the following reasons:
    i. the complaint is lacking in substance, and/or lacking in sufficient information to enable proper assessment;
    ii. the complaint is based on misconceived facts;
    iii. the complaint is vexatious or has not been made in good faith;
    iv. the complaint, in the Assessment Officer's opinion, appears to have been made for an improper purpose, including for the purpose of causing harm to the subjects of the complaint or any other person;
    v. the complaint is frivolous or trivial in nature;
    vi. the complainant is acting unreasonably in making the complaint or behaves in a rude, threatening or harassing manner;
    vii. the complaint (or a complaint that is very similar) is being, or has been, assessed under a different review process (whether external or internal);
    viii. the complaint is or may become subject to legal proceedings, or requires the assessment of a potential legal claim;
    ix. the complaint relates to matters of academic debate or academic freedom;
    x. the outcome requested by the complainant cannot be facilitated through the formal complaint process;
    xi. the complaint is not within the scope of this Procedure and/or has not been made in accordance with this Procedure or the Policy, for example the complaint relates to an event occurring more than 12 months prior to the lodgement of the complaint;
    xii. the Assessment Officer has a right to decline to investigate or take further action in accordance with this Procedure; or
    xiii. the complainant is an organisation or entity (or an individual acting on behalf of an organisation or entity) that the University has a contractual relationship with, and the complaint relates to issues arising from that relationship;
d. refer the complainant back to the informal complaint process, where the complaint has not been through an informal complaint process or where attempts at informal resolution have not been genuine or sufficient;
e. direct the complainant to an alternate process or relevant business unit, College or external entity, where the complaint will be more appropriately managed under an alternate process (for example, under a different policy or an enterprise agreement);
f. direct the complainant or refer the complaint to an external agency (provided the Assessment Officer has first

sought approval from the General Counsel and Chief Governance Officer to do this); or

g. direct the complainant or refer the complaint to an Affiliate, controlled entity or an external organisation or entity, where the Assessment Officer considers it appropriate to do so in accordance with clauses 14 and 15 of the Policy.

(36) If an Assessment Officer considers the appropriate next steps to be those described in clause 35b (to address the complaint without commencing an investigation), then the Assessment Officer will endeavour to complete this step within 20 working days of commencing this step or such other time as is reasonable in the circumstances.

### Investigation

(37) Complaints will usually be investigated by the Assessment Officer who conducted the initial assessment. However, depending on the nature and circumstances of the complaint, the Complaints Officer may appoint a new Assessment Officer who is another staff member considered appropriate to investigate the complaint.

(38) The Assessment Officer or Complaints Officer may engage an external consultant with appropriate expertise to assist in the investigation of a complaint. An external consultant can only be engaged with the approval of the Chief People and Culture Officer (for complaints about staff only) or the General Counsel and Chief Governance Officer.

(39) When investigating the complaint the Assessment Officer will take any steps they consider appropriate to assess the facts and reach an outcome, which may include:

a. providing the complainant, respondent and other relevant stakeholders with an opportunity to provide information relevant to the complaint;
b. examining relevant documentation, policies and procedures;
c. seeking clarification from any relevant parties on information relating to the complaint;
d. seeking advice from third parties, either internally or externally, including legal advice;
e. reviewing any actions or decisions arising from an informal complaint process and considering whether they were justified; and
f. conducting any alternative dispute resolution processes, for example mediation.

(40) Complainants, respondents and stakeholders are expected to cooperate with the investigation, attend any meetings and behave in a reasonable and courteous manner.

(41) After completion of the investigation the Assessment Officer will make a determination and confirm the outcome in writing to the complainant and any respondents, giving reasons. The outcome of an investigation may be:

a. the complaint has been upheld or partially upheld, in which case there may be recommendations for action; or
b. the complaint is unsubstantiated and most likely there will be no recommendations for action.

(42) The Assessment Officer will follow any internal processes or obtain necessary internal approvals when making recommendations for action. If the Assessment Officer has determined that the University needs to take any action, the University will initiate such action promptly.

(43) The Assessment Officer will endeavour to complete the investigation (including advising of the outcome) within 20 working days of completion of the initial assessment, or such other time as is reasonable in the circumstances.

# Section 8 - Appeals

## Grounds for appeal

(44) A complainant may wish to ask for their complaint outcome (arising from the formal complaint process) to be reviewed by someone else other than the Assessment Officer. This is called an appeal. An appeal can be requested by a complainant if they believe either of the following applies:

a. there is substantial new evidence relating to the original complaint that was not reasonably able to be provided or was not otherwise previously available to the Assessment Officer, which if considered, would have substantially changed the complaint outcome; and/or
b. there was a lack of procedural fairness in the formal complaint process.

(45) Procedural fairness is about the fairness of procedures followed by an Assessment Officer and the University when making a decision about a complaint. The courts of Australia have described certain rules that must be followed to ensure procedural fairness is upheld and a complainant receives a fair process. When these rules are broken a complainant should be entitled to a review of their complaint outcome. The rules of procedural fairness are that there should be:

a. a lack of bias during decision making;
b. sufficient evidence to support an outcome; and
c. appropriate consideration and investigation into the issues raised in a complaint.

(46) Any delays or failure by the University to comply with timeframes is unlikely to give rise to a lack of procedural fairness and therefore will not usually be a valid reason for appeal.

(47) A complainant does not have to the right to appeal a complaint outcome solely because they do not agree with the decision made by an Assessment Officer.

(48) An appeal must be made by the complainant in writing and clearly state the reason that they have a right to appeal and include any relevant supporting documentation.

## Lodgement of appeal

(49) A complainant wishing to lodge an appeal of a complaint outcome must lodge it within 15 working days of notification of the outcome of their complaint. A complainant may request to extend this period, however this will only be accepted in exceptional circumstances.

(50) To lodge an appeal a complainant must submit an Appeal Form. The Appeal Form and contact details are available on the Complaints Webpage. The Senior Legal Counsel may approve submission of an appeal through other means on a case-by-case basis.

(51) Receipt of an appeal will be acknowledged within 5 working days of the appeal being lodged.

## Appointment of an Appeal Officer

(52) The Senior Legal Counsel will appoint an Appeal Officer to review the appeal. An Appeal Officer may be a person holding any of the following positions at the University (or their nominees):

a. Senior Deputy Vice-Chancellor (Academic & Global);
b. Deputy Vice-Chancellor (Research and Innovation);
c. Deputy Vice-Chancellor Engagement and Equity;
d. Chief Operating Officer;
e. General Counsel and Chief Governance Officer; or

f. any other persons the Senior Legal Counsel considers appropriate to review an appeal.

(53) Appeal Officers are held to the same standard as Assessment Officers when reviewing an appeal (as set out in clause 32).

### Appeals process

(54) The Appeal Officer will review the appeal, make a determination and confirm the outcome to the complainant in writing, giving reasons. The outcome of the appeal will be one of the following:

a. allow the appeal and make a fresh determination and/or recommendation(s) for action (which may be the same or different to the original determination and/or recommendations for action);
b. allow the appeal and refer the complaint back to the same Assessment Officer, or a different Assessment Officer, to re-determine the complaint having regard to the Appeal Officer's decision;
c. dismiss the appeal due to insufficient grounds for appeal; or
d. dismiss the appeal because the grounds for appeal are unsubstantiated.

(55) If the Appeal Officer determines that the University needs to take any action, the University will initiate such action promptly.

(56) If the appeal is dismissed or the complainant is unsatisfied with the outcome, there are no further avenues of complaint and appeal within the University. However, a dissatisfied complainant may seek external review from an external agency in accordance with section 11.

(57) The Appeal Officer will endeavour to complete the appeals process (including advising of the outcome) within 20 working days of the date of acknowledgement of receipt of the appeal, or such other time as is reasonable in the circumstances.

# Section 9 - Withdrawal of complaints or appeals

(58) At any stage a complainant may decide to withdraw a complaint or appeal. In such cases, the University may either deem the complaint or appeal resolved or serious enough to continue the process or refer to an external agency.

# Section 10 - Collective complaints

(59) Complaints may be submitted collectively by complainants provided that each person involved in the complaint has agreed to the submission of the complaint. Collective complaints will usually be handled jointly but may be separated if an opportunity arises to resolve a complaint on an individual basis or if the University determines it is appropriate.

# Section 11 - External complaint resolution

(60) At any time during the complaint process a complainant has the right to take their complaint to an external agency. In some cases, external agencies will require completion of an internal complaint process before considering the complaint. Advice should be sought directly from the external agency.

(61) Should a complainant take their complaint to an external agency, the University may suspend its review pending the external investigation. If an outcome is reached during an external investigation process (for example the

University and complainant reach an agreement, or the agency makes a decision or gives recommendations) then the University may discontinue any assessments, investigations or reviews of the complaint that are in progress or suspended. In addition, the complainant will have no further internal right of appeal.

(62) External agencies include:

a. National Student Ombudsman;
b. Anti-discrimination NSW;
c. NSW Police;
d. NSW Ombudsman;
e. Australian Human Rights Commission; and
f. Independent Commission Against Corruption.

## Status and Details

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|---|---|
| **Status** | Current |
| **Effective Date** | 16th April 2025 |
| **Review Date** | 8th April 2027 |
| **Approval Authority** | University Secretary |
| **Approval Date** | 15th April 2025 |
| **Expiry Date** | Not Applicable |
| **Responsible Executive** | Alex Zelinsky<br>Vice-Chancellor<br>alex.zelinsky@newcastle.edu.au |
| **Enquiries Contact** | Legal and Governance Services |

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Working day"** - Any day other than Saturday, Sunday, or a public holiday in Newcastle, on which business may be conducted.

**"Controlled entity"** - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"Supervisor"** - Staff members with direct supervisory responsibility for other staff within the workplace (a Supervisor may also be member of Senior Management, with duties as an Officer as defined in the Work Health and Safety Act 2011, or any replacing legislation).

**"Affiliate"** - A person or organisation legally obligated to, or informally associated with the University.  Categories of affiliates are outlined on the University website.

**"College"** - An organisational unit established within the University by the Council.