

<i>Title:</i>	<b>3.5a GREIVANCES RESOLUTION</b>		
<i>Version:</i>	<b>1.0</b>	<i>Type:</i>	<b>Org Wide</b>
<i>Approved by:</i>	<b>BOARD AND CEO</b>	<i>Date:</i>	<b>10/10/22</b>
<i>Status:</i>	<b>APPROVED</b>		

## 1. BACKGROUND

CoMHWA is committed to a grievance resolution process that provides a mechanism for dealing with member and employee concerns in the workplace. This policy provides guidance to all CoMHWA members and employees including volunteers and students with managing grievances related to the organisation.

This policy does not apply to grievances with consumers or managing any issues of grievance between Board members.

This policy does not apply to employees who are currently undergoing performance management in relation to underperformance or misconduct, where the grievance relates to the underperformance management or misconduct management process. For example, an employee cannot use this the Grievance Resolution Policy and Procedure to lodge a grievance against the manager who is managing their underperformance because they do not agree with the way this issue is being managed.

Employees who are part of an underperformance management process must refer to the Managing Underperformance Policy and Procedure and not the Grievance Resolution Policy or Procedure.

## 2. DEFINITIONS

**Employee** encompasses all paid workers including sub-contractors.

**Volunteer** refers to an individual or groups including volunteers, students and the Board of Management.

**Member/s** refers to an individual or group of individuals who join the organisation to support our objectives at service, local and regional level.

**Grievance** is any real or perceived problem, concern or complaint related to the CoMHWA environment. With a workforce comprised of people with different life experiences, values, thoughts and opinions about how to do things, individuals will, on occasion, have grievances relating to issues arising from the workplace.

**Natural Justice** requires that a person receive a fair and unbiased hearing before a decision is made that will negatively affect them. The three main requirements of natural justice that must be met are:

- Adequate notice
- Fair hearing
- No bias.

**Vexatious** describes a claim or complaint (or a series of many) that is specifically being pressed on to cause an act of harassment, annoyance, frustration, worry, or even bring financial cost.

**Underperformance** is when a worker is not doing their job properly or is behaving in an unacceptable way at work.

**Grievance Resolution** is the process by which outcomes in response to a worker expressing concerns about decisions or actions giving rise to problems or perceived problems in the workplace are addressed.

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### 3. RATIONALE

- CoMHWA is an equal opportunity employer and considers that every employee should be able to carry out their job in an environment that promotes job satisfaction, worker safety, health and wellbeing and maximises performance.
- CoMHWA is committed to creating and maintaining such an environment and ensuring that all employees are treated in a fair and equitable manner in decisions and processes that affect them.
- Grievance management aims to address issues raised between relevant parties to promote healthy ongoing relationships.
- CoMHWA also acknowledges its legal and industrial responsibilities to take every reasonable step to prevent and resolve grievances.
- All grievances, formal and informal, will be considered seriously and will be attended to promptly and in the strictest confidence. Where possible, individual, or collective grievances should aim to be resolved informally. Where this is not possible or not appropriate as preferred by the complainant, a formal complaint may be lodged in accordance with the Grievance Resolution Procedure.
- All parties will be supported in an appropriate manner throughout the process and after the process if required. Lodgement of a grievance will not result in unfair treatment.
- Each phase of the grievance process should be completed within the procedure's timeframe unless all parties agree to an alternative timeframe.
- It is important that employees are made aware that an external **Employee Assistance Program** service is always available to them during the grievance process.
- Not every matter complained about pertains to a grievance. The manager or coordinator are generally responsible for resolving concerns and may intervene in instances where inappropriate behaviour or actions have been observed or reported by others.
- The CoMHWA Grievance Resolution Policy and Procedure aims to assist in the resolution of problems but, grievances must be lodged in good faith and not be vexatious.
- If following investigation, a manager or coordinator in consultation with the CEO, determine that a grievance is vexatious, disciplinary action may be taken in relation to the vexatious grievance.
- All parties involved in the grievance process must ensure that their interactions with any of the other parties involved, always adhere to the CoMHWA Code of Conduct.
- During any stage of a grievance resolution process, employees may request the support of another person (i.e. a support person) to assist them with a complaint. A support person may be a friend or a work colleague who can accompany the person who has a grievance to meetings to provide emotional support but cannot engage on behalf of the worker. If a support person or representative is invited to attend any meetings the other parties involved must be informed of this in advance.
- The role of the support person is to assist the employee to understand the process and any questions that are being asked. The support person is not to advocate for the worker and does not speak on the employee's behalf. The support person does provide emotional support and can suggest reasonable breaks when supporting the employee. Support persons must maintain confidentiality and may be required to sign a confidentiality agreement.
- All parties to a grievance must maintain confidentiality. Persons responsible for resolving a grievance must inform support persons of their responsibilities in relation to their required behaviour and confidentiality.

### LOGGING A GRIEVANCE ABOUT ANY ISSUE OF CONCERN

General grievances do not need to be in writing unless they are **formally** referred to a Line Manager for investigation and/or resolution. General grievances may or may not result in a formal resolution process depending on an assessment made about their seriousness and best approach to resolving the issue raised.

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To lodge a **formal grievance**, employees must complete an **Employee Grievance Registration Form** (Refer to Appendix 1) and submit this to their Line Manager (or if the grievance involves the Line Manager, the form must be submitted to the direct supervisor).

There are occasions when it may be decided not to commence a grievance resolution process. For example, this may occur under the following circumstances.

- The grievance is not lodged within a reasonable time of the events that resulted in the grievance. Where there is a delay in lodging a grievance, the CEO may ultimately determine, in consultation with the parties to the grievance, whether the time frame is reasonable.
- An issue is being dealt with as part of an underperformance management process that contains a specific process to deal with poor performance.
- A complaint has been made to an external regulatory or statutory authority.
- When a grievance is lodged in writing, the aggrieved worker is required to outline:
  - How a decision, action, policy of procedure has been detrimental; and
  - The action or remedy being sought.

## GRIEVANCE INVESTIGATION

Once aware of it, a manager or coordinator must inform the CEO if a formal grievance is lodged. At this point a decision will be made in consultation with the CEO as to whether the grievance warrants a formal investigation. When a grievance is investigated, the outcome may be to:

- Determine that a grievance is substantiated and provide the remedy sought by the aggrieved.
- Determine that a grievance is substantiated and provide an alternative action or remedy to resolve the complaint.

If a grievance relates to an unlawful activity or behaviour and/or actions considered to be inappropriate (e.g. misconduct), CoMHWA will act to fully investigate the issue irrespective of whether the aggrieved employee wishes to withdraw a complaint.

Manager's or coordinators are required to take all necessary steps to protect employees from victimisation. Employees of CoMHWA commit an act of misconduct if they subject, or threaten to subject, a party to a grievance to any detriment because the party has either:

- Lodged, or proposes to lodge, a grievance; or
- Has provided, or proposes to provide, any information to a person performing any functions under the grievance resolution process.

Equal opportunity and public interest disclosure laws provide protection from victimisation and provide a formal channel for redress if their provisions are breached.

## PRINCIPLES OF NATURAL JUSTICE

All actions undertaken by employees in relation to grievance handling are to be in accordance with the principles of natural justice. In practical terms these principles require:

- Consistent and fair decision-making.
- Equality in the treatment of individuals.
- The opportunity to respond to claims.
- The right to open communication and the provision of adequate resources and support services.

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- The right to be fully informed on all aspects of the grievance, the direction of any action taken under these guidelines as well as any possible future consequences.

A person who is required to investigate a grievance should:

- Ensure to the best of their ability that any statements made are true or fair comment.
- Act fairly and in good faith without bias, malice, ill will or improper motive.
- Maintain strict confidentiality. Persons who investigate a grievance may need to inform persons who have a duty to know about the issues of concern or may be witness to the alleged grievance.

## CONFIDENTIALITY

- Respondents to a grievance are entitled to be informed of any allegations that have been made against them and have the right to respond to those allegations.
- All persons involved with grievance resolution are required to treat the matter confidentially and any discussions regarding grievances should be on a need-to-know basis only.
- Employees involved in a grievance can seek support and advice from people in whom they trust.
- While seeking support and advice, only information that is necessary should be disclosed. Identifying personal data of other parties should not be divulged unless necessary to do so.
- All documents and paperwork relating to a grievance are stored in a secure manner and should only be directed to others under confidential cover.

## GRIEVANCE DOCUMENTATION AND RECORD RETENTION

It is recommended that issues of concern and the actions taken to resolve them are documented. Maintaining adequate records is fundamental to effective management as records may be needed to justify decisions. The quality of decisions made in the grievance process is dependent on the availability of good quality evidence and good documentation.

If an aggrieved employee submits a written grievance, they should receive confirmation of any findings and resolutions in writing. Formal worker grievances must be retained for (7) **seven years** after action is completed.

As a guide retention of any records created should to be retained as follows:

- Informal employee grievances must be retained for two years after action is completed; and
- Formal employee grievances must be retained for seven years after action is completed.

A record could be anything on which there is writing.

## RESOLUTION GUIDELINES

Managers or coordinators are responsible for:

- Ensuring employees are aware of the grievance process.
- Informing the CEO of any formal grievances that are lodged.
- Dealing with grievances professionally, sensitively, confidentially and within the recommended timeframes.
- Taking all necessary steps to protect employees from victimisation.
- Keeping aggrieved persons and respondents informed of the progress of the grievance.
- Recognising and identifying worker problems and concerns and attempting to resolve matters as they occur.

Facilitating the resolution of formal grievances with the relevant parties to the grievance and documenting the actions undertaken to resolve the grievance.

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## PROCEDURE FOR MANAGING A FORMAL GRIEVANCE

The Line Manager will meet with the aggrieved party and where practical and appropriate will complete the following actions:

- Arrange a private meeting with the aggrieved person as soon as possible. Advise the aggrieved party that they may have a support person present.
- Maintain a record of all meetings.
- Determine the facts of the grievance by asking the aggrieved party to clarify the issues raised.
- Seek specific examples and instances if the information has not already been provided.
- Remain neutral and objective about the parties involved.
- Ask what the aggrieved has done already to resolve the grievance.
- Ask the aggrieved not to discuss the matter with other people who do not have a legitimate role in the resolution process.
- Ask the aggrieved to discuss their expectations and the outcomes they are seeking from the grievance process.
- Advise the aggrieved of alternative options and explain resolution process.
- Consider and discuss alternative ways the grievance may be resolved.
- Explain the actions to be taken as part of the grievance process (e.g. respondent to be advised, timeframes, stages of process).
- Ensure aggrieved is aware of support services available.

Grievance about another employee's actions or behaviours:

- After meeting with the aggrieved, meet with the other employee (i.e., respondent)
- Arrange a meeting with the respondent as soon as possible.
- Advise the respondent they may have a support person present.
- Make it clear the aim is to resolve the grievance and that the discussion is not a disciplinary matter nor has any judgement been made.
- Advise respondent that all employees have the right to raise grievances through this procedure.
- Remain neutral and objective about the parties involved.
- Outline the nature of the grievance with the summary details as provided by the aggrieved. Details regarding allegations against other people that are not directly relevant to the respondent, should not be given to the respondent. If unsure about what may or may not be discussed, seek advice from the Line Manager before the meeting.
- Give the respondent time to think about their response. When faced with a complaint about them, a common reaction is to become defensive and upset.
- Take notes and make sure the respondent agrees with what is written. The respondent should sign the documentation to indicate agreement.
- Remind the respondent about confidentiality.

If the aggrieved and respondent work closely together, work out a contingency plan for their being able to continue working without disruption while the resolution process is in progress. Be wary of moving any of the parties out of the immediate workplace, even temporarily, as it may be perceived as a judgement and form of punishment (or reward). If there are exceptional circumstances, this may sometimes be considered as an option.

Seek advice if these issues are likely to arise (See below).

Once both parties have been consulted on the grievance seek assistance as required.

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- Upon hearing the grievance and after speaking to other parties to the grievance, information consultation and reference of policies, practices, agreements, or technical operations may be required.
- Before suggesting the options for resolution to the aggrieved person, discuss the proposed resolution with the CEO to confirm that the options and resolutions are consistent with CoMHWA policies and practices.

## **RESOLVING THE GRIEVANCE**

Inform the aggrieved and respondent of the resolution or the decision on the appropriate course of action. If a grievance results in disciplinary action or management of underperformance (e.g., coaching or counselling) the details of those processes must be treated confidentially between the line manager and relevant employee.

Disciplinary and management of underperformance processes are separate to a grievance and the details of such processes would not ordinarily be discussed with anyone, but the employee involved.

- Accept that the aggrieved person may not agree with the outcome. In this case, ensure that the employee is aware of their rights to continue with the grievance and the process for doing this.
- Monitor the implementation of outcomes.
- If the aggrieved chooses to progress the grievance to the next stage of the process, ensure a full report on the history of the action taken to resolve the grievance is forwarded to the person who will be dealing with the grievance i.e., CEO or third party tasked to investigate the grievance, and ensure all parties are advised of the decision to progress the matter.

## **WORKER RIGHTS AND RESPONSIBILITIES**

Employees lodging grievances are responsible for:

- Following the grievance procedures.
- Cooperating and participating in resolving the grievance.
- Supporting agreed actions from the resolution process.
- Maintaining confidentiality by only involving people who are involved in the resolution process.

## **GUIDELINES FOR PERSONS WHO HAVE A GRIEVANCE**

- If you can, try to sort out the problem with the person involved in the first instance. If you are unable to approach the party directly, seek assistance from your line manager. If the party involved is your line manager, seek assistance from your line managers, manager.
- If someone is acting inappropriately, by letting him or her know his or her behaviour is not acceptable they have the chance to stop or change what they are doing.
- If you wish to lodge a formal grievance, complete the Grievance Registration Form and submit it to your line manager. There are some situations where you may not want to take your complaint or grievance to your line supervisor (for example if the complaint is about or directly involves the line manager). If that is the case, take your grievance to the next level of management.
- Describe the events factually providing dates, times and sequence of events. Outline your grievance objectively and avoid use of emotive language.
- Your grievance needs to describe how a decision, action, policy or procedure has impacted you and your ability to perform your job and state what action or remedy you are seeking.

## **GRIEVANCES MADE AGAINST AN INDIVIDUAL**

Rights and responsibilities when a grievance is made about a respondent.

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- Respondents will be notified of any complaints made about them and are entitled request relevant information.
- Respondents have the right to seek advice and respond to complaints.
- Respondents are required to attend conciliation meetings as required by the person at the time responsible for resolving the grievance.

### **FORMAL GRIEVANCE WITHDRAWAL**

Aggrieved employees may withdraw a formal grievance at any time. Formal grievances should be withdrawn in writing and the person responsible for that stage of the process advised. Notwithstanding this, if a grievance relates to an unlawful activity or behaviour and/or actions considered to be inappropriate (e.g., misconduct), CoMHWA will continue to act on the complaint.

All parties to the grievance will be advised of a request to withdraw a grievance where a decision to do so is appropriate.

When a grievance is withdrawn, all papers are to be forwarded to the Human Resource Officer under confidential cover and maintained in a secure file for a period of 3 months

### **STANDARDS MONITORING**

The service monitors relevant standards in relation to this policy, ensuring the policy can be applied in practice.

### **REVIEW OF THE POLICY**

This policy will be routinely reviewed as needed, based on its application to practice at the service, any relevant amendments to the legislation, and feedback from stakeholders.

### **REFERENCE DOCUMENTS**

- National Standards for Mental Health Services (2010)
- *Privacy Act 1988 (Commonwealth)*
- Consumers of Mental Health WA Constitution 2019

## **2 VERSIONS**

VERSION	DATE	Comment
0.1		Initial draft released, separated from Complaints policy
1.0	10/10/22	Approved by Board and CEO