

Sydney Opera House Policy

Title:	Resolving Workplace Grievances Policy
Policy Number:	2021/2
Effective Date:	14/05/2021
Authorisation:	Chief Executive Officer
Authorisation Date:	14/05/2021
Superseded Policy:	Work Related Grievances Policy – SOH132
Accompanying Procedure:	Grievance Resolution Procedure
Accountable Director:	Director, People & Government
Responsible Officer:	Head of People & Development

1. CORE PROPOSITION

- 1.1. The appropriate handling of Workplace grievances makes the Sydney Opera House (SOH) a safe, fair and inclusive environment for everyone.
- 1.2. The *SOH Resolving Workplace Grievances Policy* (the Policy) sets out SOH's commitment to handling Workplace grievances in a fair, effective and confidential manner, in line with the principles of Procedural fairness and should be read together with the *SOH Respectful Workplace Behaviour Policy*. The *SOH Grievance Resolution Procedure* sets out the process that supports this Policy.

2. SCOPE

- 2.1. This Policy applies to all Workers and Workplace grievances at SOH and extends to all channels through which Workers have contact, including digital communication such as social media, text messages and emails, and should be read together with the *SOH Acceptable Information and Technology Use and Surveillance Policy*.
- 2.2. This Policy applies when a Workplace grievance is raised by or relates to:
 - An Employee, in which case, SOH may investigate the grievance in accordance with the *SOH Grievance Resolution Procedure* and take appropriate employment action as a result of the investigation, including disciplinary action.
 - A non-Employee, in which case, SOH may, with the co-operation of the non-Employee and their employer, and depending on the circumstances, jointly or independently investigate the grievance. SOH may take contractual action against third parties, but only the employer of the non-Employee may take employment action against the non-Employee.
- 2.3. This Policy aligns with the principles and provisions of the *SOH Enterprise Agreement* and the *SOH Code of Conduct*.
- 2.4. Depending on the nature and complexity of the matter raised, more than one policy or procedure may be relevant to the management of the Workplace grievance, and different resolution paths may be followed, e.g. inappropriate Workplace behaviour, including bullying and harassment, is outlined in the *SOH Respectful Workplace Behaviour Policy*.
- 2.5. This Policy does not apply to concerns or complaints that deal with issues such as corrupt conduct, maladministration, serious and substantial waste of public money or government information contravention within SOH. Such matters are to be dealt in accordance to the conditions and procedures set out in the *SOH Public Interest Disclosures Policy*.

3. DEFINITIONS

- 3.1. **Complainant** – a person who has lodged or is considering lodging a Workplace grievance.
- 3.2. **Respondent** – the person whose action or behaviour is in question in relation to a Workplace grievance.

3.3. **Procedural fairness** – involves decision-makers:

- Informing people of a case against them;
- Providing them with a right to respond to allegations and to be heard;
- Not having a personal interest in the outcome; and
- Acting impartially based on sound reasoning and relevant evidence.

Detailed guidelines about Procedural fairness are given by the NSW Ombudsman in the *Effective Complaint Handling Guidelines*.

3.4. **Employee** – means SOH employees, including permanent, temporary and casual employees.

3.5. **Worker** – has the meaning provided in the *Work Health and Safety Act 2011* (NSW) and includes all SOH Employees, and any other person engaged to undertake work in any capacity on behalf of SOH, including contractors and subcontractors and their employees.

3.6. **Workplace** – means a place where a Worker carries out work or work-related activities.

3.7. **Workplace grievance** – a concern or complaint made by a Worker about a Workplace issue. The issue may be any act, omission, situation or decision by SOH or in the Workplace that is considered to be unfair, discriminatory or unjustified. Grievances may relate to:

- Workplace communication or interpersonal conflicts;
- Work health and safety issues;
- Allegations of unlawful discrimination; or
- Interpretation, application or operation of SOH policies, practices and agreements.

4. **PRINCIPLES FOR ADDRESSING WORKPLACE GRIEVANCES**

Grievance management

4.1. SOH is committed to providing a Workplace in which grievances are identified, heard and resolved in a prompt, impartial and confidential manner, in line with the principles of Procedural fairness.

4.2. Management and resolution of Workplace grievances will fit the seriousness, nature and context of the grievance.

Employee support

4.3. Free, independent, confidential counselling and other support resources to support wellbeing are available to all Employees and their immediate families. Information on how to access this service is available via Intouch.

4.4. At any stage of the resolution process, Employees may request a support person to assist them. A support person may be a friend, union representative or another person who can accompany them to meetings and provide emotional support. The support person acts as a witness to the process, but may not direct the process, answer questions on behalf of or act as an advocate for the Employee.

Confidentiality

4.5. All those involved in the Workplace grievance, including the Complainant, must respect the confidentiality and privacy of others by adhering to the following confidentiality requirements:

- Discuss the grievance, or share materials relating to the grievance, only with parties directly involved in the grievance resolution process;
- Follow the direction of management and Human Resources (HR) regarding confidentiality.

4.6. In certain circumstances, SOH may withhold information from process participants, for example, the names of witnesses from a Respondent.

4.7. SOH will treat breaches of confidentiality by Employees as misconduct and take appropriate disciplinary action where a breach is proven.

Frivolous, vexatious or malicious complaints

4.8. All those involved in the Workplace grievance have a duty to act honestly and in good faith.

4.9. SOH will not proceed with an investigation and attempted resolution of a Workplace grievance found to be frivolous or vexatious, meaning it is:

- False;
 - Motivated by malice; or
 - Made to cause distress to others.
- 4.10. SOH may take disciplinary action against those who raise frivolous, vexatious or malicious complaints.
- 4.11. Complaints made in good faith are not vexatious, even if not substantiated.

Victimisation

- 4.12. SOH is committed to protecting from victimisation any Employee raising, reporting, involved in, or the subject of, a Workplace grievance, or making any claim or allegation in connection with the *SOH Respectful Workplace Behaviour Policy*.
- 4.13. Any form of victimisation, such as the spreading of rumours or gossip relating to confidential Workplace grievance-related matters, or any other inciting of hostility, is a serious breach of the *SOH Code of Conduct* and should be reported immediately. SOH will take appropriate disciplinary action where such conduct is proven.

5. GRIEVANCE RESOLUTION OUTCOMES

- 5.1. Possible outcomes of a Workplace grievance include:
- All parties achieve an acceptable resolution;
 - The Complainant gains a better understanding of the situation, and as a result their concerns are addressed;
 - The Complainant receives an apology, and/or the issue or behaviour that was the basis of the Workplace grievance is addressed or modified;
 - No further action, where the facts surrounding a Workplace grievance cannot be substantiated;
 - Formal action under section 69 of the *Government Sector Employment 2013 (GSE Act)* (misconduct) in cases where the Workplace grievance is substantiated and misconduct has occurred. In these instances, HR will record the Workplace grievance and the formal action in the Employee's personnel file.
- 5.2. SOH will not necessarily share the outcome/s of a Workplace grievance with all parties to the resolution process. However, this does not indicate no action has been taken.
- 5.3. Where a Workplace grievance involves criminal conduct, corruption, or public interest disclosures, SOH may refer these matters to an external body for resolution. This may be the case even if the individual wishes to withdraw the complaint.
- 5.4. In cases where the grievance is not substantiated, SOH may still take appropriate action to support a respectful, safe and inclusive Workplace.

6. RIGHT OF APPEAL

- 6.1. Following the resolution of a grievance, the Complainant and the Respondent each have the right to seek review of the outcome, in line with the *SOH Grievance Resolution Procedure*.

7. PRIVACY AND RECORD KEEPING

- 7.1. SOH will gather only that information necessary for investigating a Workplace grievance. That information must only be made available on a need-to-know basis to fulfil the investigation.
- 7.2. In line with the *SOH Records Management Policy* and *Privacy Management Policy and Plan*, SOH will keep all records relating to Workplace grievances secure and maintain the confidentiality of all parties involved.

8. ROLES AND RESPONSIBILITIES

8.1. **Everyone** is responsible for contributing to a harmonious, equitable and supportive Workplace by:

- Adhering to the *SOH Code of Conduct* and all other SOH policies and procedures, including this Policy, the *SOH Respectful Workplace Behaviour Policy* and *SOH Grievance Resolution Procedure*;
- Seeking advice if they do not understand any aspect of this Policy;
- When appropriate, assisting in the resolution of grievances actively, professionally and in good faith;
- Maintaining confidentiality about Workplace grievances, including their resolution, regardless of the manner, or level of formality, of the resolution; and
- Following all lawful and reasonable Workplace directions.

8.2. **Complainants and Respondents** are responsible for:

- Resolving the grievance as promptly and as close to the source of the complaint as possible, in line with SOH's *Grievance Resolution Procedure*;
- Providing sufficient information about the matter, including outlining the issues seen as relevant and specifying the outcome/s sought; and
- Not raising or reporting frivolous, vexatious or malicious grievances or information.

8.3. **Supervisors, Managers and Directors** are responsible for:

- Actively promoting and supporting this Policy and *SOH's Grievance Resolution Procedure*;
- Taking all necessary steps to deal with grievances sensitively, promptly, thoroughly, impartially and confidentially; and
- Ensuring that any Employees who raise, are involved in, or are the subject of grievances, are not victimised. While the immediate manager usually leads the initial handling of Workplace issues raised by their Employee, the HR team is available to provide advice and guidance to managers on the resolution process (see below).

8.4. **HR Business Partners** are responsible for:

- Providing advice and support to any party requesting it, by:
 - o Clarifying policy, procedures, requirements, tools and/or reporting mechanisms; and
 - o Advising on possible ethical considerations and/or courses of action and providing support to access legal advice if needed.
- Monitoring the management of grievances and effectiveness of this Policy;
- Providing advice on real or perceived conflicts of interest that may arise during the management of grievances;
- When a grievance is serious or an investigation is required, advising the Director with responsibility for the HR function on the appointment of an internal or external investigator; and
- When a grievance is formally submitted to HR, taking carriage of the resolution process with line management.

8.5. **The Director with responsibility for the HR function** is responsible for:

- Deciding if a formal resolution process is required and appointing an investigator where appropriate;
- Declining to initiate a formal grievance resolution process if satisfied that:
 - o The allegation is frivolous, vexatious or malicious;
 - o The alleged incident or conduct concerned does not amount to misconduct; or
 - o There is likely to be difficulty in establishing the facts of the matter.

- Determining if a review of a decision made under the *SOH Grievance Resolution Procedure* is appropriate and, if not, appointing a senior member of management or an external party not involved in the original process or decision to review the outcome; and
- In consultation with SOH Legal, deciding if the matter is sufficiently serious to refer the claim to another agency, including the Federal or NSW Police, Independent Commission Against Corruption, SafeWork NSW or an ombudsman.

9. RELEVANT LEGISLATION AND GUIDANCE

Relevant legislation includes the:

- Age Discrimination Act 2004 (Cth)
- Anti-Discrimination Act 1977 (NSW)
- Australian Human Rights Commission Act 1986 (Cth)
- Crimes Act 1900 (NSW)
- Disability Discrimination Act 1992 (Cth)
- NSW Ombudsman, Effective Complaint Handling Guidelines
- Fair Work Commission Guide: Anti-bullying factsheet (published 19 November 2018)
- Fair Work Act 2009 (Cth)
- Government Sector Employment Act 2013 (GSE ACT)
- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Workplace Gender Equality Act 2012 (Cth)
- Work Health and Safety Act 2011 (NSW)

10. SOH SUPPORTING DOCUMENTS

- Acceptable Information and Technology Use and Surveillance Policy
- Code of Conduct
- Delegations of Authority Manual
- Employment Agreements 2016-2019, 2020
- Enterprise Agreement
- Grievance Resolution Procedure
- Privacy Management Policy and Plan
- Public Interest Disclosures Policy
- Records Management Policy
- Respectful Workplace Behaviour Policy
- Work Health & Safety Policy

Version History

Version	Approved by	Approval date	Effective date	Sections modified
1.0	Chief Executive Officer	14/05/2021	14/05/2021	New policy

APPROVED



Chief Executive Officer

Date: 14/05/2021