

Student Grievances and Discipline Matters Project

Good Practice Guide for Handling Complaints and Appeals in Australian Universities

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UNIVERSITY OF
TECHNOLOGY SYDNEY

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1. Introduction

1.1. Background

Since the mid 1990s, participation in Australian higher education has increased markedly. According to statistics published by the Commonwealth, the total number of students enrolled in Australian higher education institutions in 1995 was 604,176. That figure increased to 1,029,846 in 2007, an increase of about 70.5%.¹

There has been much speculation about whether there has been a marked increase in complaints (including litigation). While our research reveals a marked increase in overall numbers of complaints (including litigation), commensurate with increases in student numbers since 1995, it is another thing to say that the rise in complaints is out of proportion to increases in student numbers. Indeed, our research findings were inconclusive (Jackson, Fleming, Kamvounias, & Varnham, 2009, Ch 3.2.6).

Since the establishment of the Australian Universities Quality Agency in 2000, universities have had to turn their attention to improvements in the provision of quality teaching and learning. However, unlike developments in the United Kingdom, little attention has been paid to establishing any code, set of principles or guidelines in relation to the handling of student grievances and discipline matters. The project team is of the view that quality learning and teaching in universities should encompass quality in internal mechanisms for handling student complaints and appeals. To that end, the project team undertook research in this area during 2007 and 2008 to identify and scope some of the problems that arise in the way universities handle complaints and appeals, and to suggest ways in which mechanisms might be improved.

1.2. About the research project

The Student Grievances and Discipline Matters Project was funded by the Australian Learning and Teaching Council, and commenced in mid-2007. Its purpose was to gain a better understanding of why and how conflicts between students and universities arise and, in some cases, escalate into external complaints or litigation. To that end, the project team:

- (a) reviewed relevant literature and cases to identify particular trends;
- (b) collected information (by way of surveys and interviews) from students, university staff, student associations and others, to obtain personal perspectives rarely discernable from reading published reports of cases; and
- (c) reviewed the procedures and mechanisms of all thirty-nine Australian universities, as published on their websites to gain an insight, from a student user's perspective, about how accessible and easy to understand that information is as it appears on the website. Those policies and procedures were also reviewed to test compliance with relevant regulatory regimes, such as the *National Code of Practice 2007* (enacted under the *Education Services for Overseas Students Act 2000* (Cth)).

¹ Source: Department of Education, Employment & Workplace Relations, Selected Student Statistics, 1995-2007 available at http://www.dest.gov.au/sectors/higher_education/publications_resources.

1.3. Summary of key findings and recommendations from research project

The final report for the project (“Final Report”) Jackson, Fleming, Kamvounias, & Varnham, 2009) is available on the website of the Australian Learning and Teaching Council (at www.alt.edu.au/project-student-greivance-discipline-matters-scu-2007). The key findings and recommendations from the Final Report were:

Key findings

(a) From our review of universities’ websites and policies:

- many universities do not locate or present information in a way which makes for easy navigation and accessibility for students;
- universities are inclined to place too much reliance on their statutes, policies and procedures as a means of conveying important information;
- the language used in many statutes, policies and procedures that we reviewed relied too heavily on the use of legal language or university jargon, and did not explain common university or legal terms;
- there is disparity and inconsistency in internal processes for dealing with different types of complaints or appeals and, in some cases, too many stages within a process;
- there are some inconsistencies within rules, or between policies and procedures underpinning them; and
- the categorization by most universities of complaints or grievances as either “informal” or “formal” may be problematic because this may lead to unnecessary or inappropriate escalation of minor complaints to a formal stage.

(b) From student surveys and interviews with students and student associations:

- many students do not know where, how or with whom to raise problems and have difficulty in accessing information;
- students are frustrated at the complexity of processes and the length of time taken to resolve their complaints. There is widespread concern among students that university personnel are not prepared to listen objectively to their concerns and make genuine efforts to resolve them. For this reason, students who raise a complaint or concern quite often experience a sense of futility when they do so. This was made particularly clear in interview responses from international students which suggest that they experience difficulties in their relationships with university staff;
- in relation to issues of plagiarism, there was a sense from those interviewed that students are often unclear about what is expected of them;
- despite the fact that VSU was not a specific theme in our research, it emerged as a concern in terms of lack of funding of students’ associations for advocacy and other services; and
- there was some support for campus ombudsmen, but there were reservations about the level of independence.
- student association interviewees generally supported the idea of a national student ombudsman, although some had reservations that this would just add another layer to already complex range of external forums for redress. However, there was an overall

feeling that a national student ombudsman would act independently and could identify and address systemic problems across the sector.

- (c) From staff surveys and interviews, and external interviews:
- staff perceive that students more readily and persistently challenge decisions about assessment in a higher education environment;
 - although vexatious complaints are relatively rare, both academic and general staff expressed concern about unreasonable behaviour of students while pursuing complaints;
 - lack of training, particularly for academic staff, in handling complaints and appeals stands out as a significant area of concern, particularly as it relates to adherence to existing internal processes by staff, their understanding of their roles and responsibilities, and the treatment of students throughout the complaints process; and
 - support among university staff interviewed for a national student ombudsman, along the lines of the Independent Adjudicator for Higher Education in the UK, was also mixed for similar reasons identified by student association staff. Those who did not support this idea felt it would just add another layer to an already complex range of external forums for redress. They instead thought there should be more focus on improving university internal systems, including through greater use of alternative dispute resolution.

Key recommendations

- (d) In order to work towards minimizing complaints universities should set criteria that address best practice in their processes and protocols in relation to:
- the admission of students to courses and programs to enable a realistic assessment of a student's prospects of success;
 - the identification and management of academically "at risk" students;
 - user-friendly and clear documentation to enable agreement on the university's expectations;
 - the provision of up-to-date and accurate information to students, and training and information to staff;
 - consistent but fair application of policies relating to matters such as special consideration and credit transfer;
 - the provision to students of accurate advice in relation to concerns raised by them.
- (e) In relation to the use of websites for publicizing information about complaints and appeals:
- these should be easily and intuitively navigable with strategies such as hyperlinks, FAQs and flowcharts to convey information that can be easily understood by all students, particularly those whose first language is not English. The information should include:
 - A. names and contact details of key staff, including student advocacy services where available; and
 - B. links to external agencies such as state or territory ombudsmen and anti-discrimination agencies;
 - website information should be reviewed regularly to ensure currency;

- in addition to websites, information should be available at faculty counters, student centres and at orientation programs;
- (f) In relation to the documentation for complaints and appeal processes:
- students should be encouraged to raise their concerns with university staff, and they should be made aware of the conduct expected of them in such a situation, and of what they may expect from the process;
 - statutes, rules and policies should be drafted in clear and plain language to enable a clear understanding of them for all involved. Jargon and legalese should be avoided where possible, or clearly defined;
 - the numbers of stages for dealing with complaints or appeals should be limited to no more than three or four where possible, while adhering to principles of natural justice;
 - the conduct of investigations and decision-making functions should be vested in those with proper training and who can bring an independent and impartial mind to their role;
 - alternative methods of dispute resolution such as mediation should be made more widely available where appropriate, and information made available as to what the process involves and what students can expect from that process.
- (g) In relation to record-keeping :
- universities should implement centralised systems of record keeping for complaints and appeals in order to identify systemic problems and trends.
- (h) In relation to training and guidance for staff:
- complaints should be regarded by universities as an essential ingredient to quality teaching and learning. Universities should encourage feedback that identifies problems which need to be resolved as part of an overall cultural change;
 - universities should, as far as possible, ensure that *all* staff have sufficient guidance and training in matters of student appeals, complaints, concerns and academic misconduct to ensure an awareness of expectations and responsibilities in relation to students;
 - student ombudsmen should be properly trained, be scrupulously independent, and seen to be so by both staff and students. Their performance should be monitored through feedback from staff, students and student associations.

1.4. Acknowledgements

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- (b) Elizabeth Humphrys, The University of New South Wales; and
- (c) Charlotte Long, Students' Representative Council, The University of Sydney.

2. Description of this Guide

2.1. Aims

This guide is one of the deliverables for the Student Grievances & Discipline Matters project, which was funded by the Australian Learning and Teaching Council. Its aim is to provide a practical framework for Australian universities to improve complaints and appeals processes, and to promote more positive attitudes towards complaints and appeals for the benefit of both students and university staff. This guide represents the views of the authors only and does not represent the views of any of the research institutions or the Australian Learning and Teaching Council.

This guide is intended to be read in conjunction with other guides and guidelines already available, such as those issued by the NSW and Victorian Ombudsman (NSW Ombudsman, 2006), (Ombudsman Victoria, 2005). Although this guide reflects and draws upon the key findings and recommendations in the Final Report, it is not intended as a best practice benchmark or standard for two reasons. First, the diversity and complexity of Australian higher education institutions means that a “one-size-fits-all” approach is inappropriate. Second, the project team recognises that approaches to complaint handling and appeals require continuous review and refinement to meet the changing needs of the Australian higher education landscape. Accordingly, the suggestions and recommendations in this guide are not intended to be prescriptive.

This guide is a *general guide only*, and is not or intended to be legal or other professional advice. Independent legal or other professional advice should be sought in relation to specific questions or circumstances.

2.2. Organisation and description of this guide

This guide is organised into the following sections:

- (a) Section A – Designing a complaints and appeals regime
This section sets out some of the issues to be considered when designing a complaints and appeals regime.
- (b) Section B – Getting the Message Across
This section suggests methods by which universities can improve the way they communicate information to students and staff about their policies and processes.
- (c) Section C – Documenting complaints and appeals processes
This section suggests ways in which universities can improve the way they document their complaints and appeals processes.
- (d) Section D – Training and support
This section suggests a training model and key elements of training for those involved in complaints and appeals.
- (e) Section E – Other resources and contacts
This section contains a number of useful references and resources for further reading or research.

Each section also contains some suggested examples. These are illustrative rather than prescriptive.

2.3. Meaning of certain terms

Throughout this guide, we use a number of terms to which we ascribe the following meanings:

Appeal	An appeal by a student against a finding of academic or non-academic misconduct, or a request for review by a student of his or her grade or other assessment
Complaint	A problem or concern raised by a student about something affecting his or her studies or life as a student, which has crystallised into an informal or a formal complaint
Complaints and appeals regime	A set of policies and procedures (including procedures prescribed under a university's statutes) for the handling and resolution of complaints and appeals
ESOS National Code	<i>National Code of Practice 2007</i> enacted under the <i>Education Services for Overseas Students Act 2000</i> (Cth)
Formal complaint	A complaint raised by a student with a university staff member which is dealt with under a formal process of the university
Informal complaint	A complaint raised by a student with a university staff member which is dealt with directly by a staff member (usually in the first instance) but not under a formal process. Informal complaints can sometimes be in writing (including email)
National Governance Protocols	<i>National Governance Protocols in Higher Education</i> made under the <i>Higher Education Support Act 2003</i> (Cth) as amended by the <i>Higher Education Support Amendment (Removal of the Education Workplace Relations Requirements and National Governance Protocols Requirements) and Other Matters Act 2008</i> (Cth)
Problem or concern	A question or other issue raised by a student in relation to his or her studies or life as a student, but which has not yet crystallised into a complaint
Student Advocacy Guidelines	<i>Student Services, Amenities, Representation and Advocacy Guidelines</i> made under the <i>Higher Education Support Act 2003</i> (Cth) (as amended)
University statutes	As appropriate, a university's enabling act, and any delegated legislation (for example, by-laws, regulations or rules) that a university may make under its enabling act

3. Section A – Designing a complaints and appeals regime

3.1. Introduction

Protocol 7 of the *National Governance Protocols* requires all Australian universities to codify their:

“ internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.”

While the National Governance Protocols identified “grievances” as one component of governance, they do not prescribe the operational aspects of grievance regimes. Other regulatory regimes, such as the ESOS National Code, and the proposed *Student Services, Amenities, Representation and Advocacy Guidelines*, also set certain minimum standards in relation to student complaints and appeals, however (in their form at the time of writing this guide) these do not prescribe operational aspects of those regimes.

Australian universities are extremely diverse in terms of their size, geographic location, student demographic and levels of devolution of administrative authority. It is therefore very important that universities design a regime that suits their particular needs and those of its students.

3.2. Issues to be considered when designing a complaints and appeals regime

Set out below are some issues that should be considered when establishing a complaints or appeals regime.

(a) The stakeholders involved and their level of consultation or involvement in the design

Designing a complaints and appeals regime is complex and time-consuming and should be treated as a major project. The process should involve consultation with all those who have a stake in its operation or implementation and who have had past involvement in any existing regimes (this is particularly important to help address any systemic problems that have arisen under existing regimes). At the very least, these include:

- those university staff involved in investigating or deciding complaints and appeals including university ombudsmen or deans of students;
- those involved in the administrative aspects of those procedures (for example, sending notices, taking minutes or meetings or hearings);
- students;
- student associations;
- university staff involved in legal or other compliance aspects of those procedures (such as in-house lawyers or internal audit); and
- any stakeholders external to the university such as state or territory ombudsmen.

(b) The types of complaints or appeals to be included

A complaints or appeals regime needs to be specific about what students can and cannot complain about or appeal against. This helps to minimise confusion and unrealistic expectations. Complaints and appeals should obviously bear some relationship to a student’s studies or life as

a student. In other words, there needs to be a link between the complaint or appeal and the student's studies or the student's relationship with the university.

In relation to appeals against academic assessment, universities need to be specific about the basis or grounds on which students can complain or appeal. Many universities do not permit students to appeal against decisions of "academic judgment", but often do not explain what this term means. A suggested definition of this term is given in Example 18 of this guide.

In relation to appeals against findings of misconduct, it is very important to be clear about whether the appeal is on procedural aspects only or is an appeal on merits. In most cases, universities allow appeals on procedural grounds only, but also include a "fresh evidence" ground.² An example of grounds of appeal on procedural aspects is set out in Example 1.

Example 1 – Possible grounds of appeal against misconduct findings

- *That the decision is unreasonable in all the circumstances or cannot be supported by the evidence that was available at the time the decision was made;*
- *That any part of the misconduct procedure was misinterpreted or not followed and resulted in a decision that is manifestly unfair;*
- *That relevant evidence was not considered in reaching the decision; That irrelevant evidence was relied upon in reaching the decision;*
- *That there was a failure to observe procedural fairness (a suggested definition of this term is given in Example 16);*
- *That fresh evidence has become available to the student which was not available or not known to the student at the time the allegation was heard or decided;*
- *That the finding made or penalty imposed is excessive or inappropriate, taking into account all the circumstances of the case.*

- (c) How complaints or appeals will be recorded and the information used to provide useful feedback to the university as a means of improving its processes

Our research revealed that while most universities have some systems of recording complaints and appeals, these often do not consist of a single university-wide system, and individual units responsible for handling a particular process implement their record-keeping systems and procedures. For example, a university equity unit will only record complaints that are dealt with as part of their functions. However, some universities have moved to a university-wide system of recording complaints and appeals,³ with a designated officer responsible for recording data about the complaint and its management. The designated officer may also perform a "triage" role in assigning particular complaints to be dealt with under particular processes and may also provide support and "follow-up" services for those involved in investigating or resolving the complaint.

While a single university-wide system of recording complaints and appeals must be suitable to the needs of the university, it does offer significant advantages, depending on the level of detail collected and analysed and its level of integration with other systems (such as the student administration system).

⁵ See for example, clause 79(2)(c) (iv) of Chapter 8 of the *University of Sydney By-Law 1999* and clause 29(6) of the *Southern Cross University (Student Misconduct) Rule*

³ For example, the University of Western Sydney

Some of these advantages include:

- assist in achieving consistency throughout a university in the way in which complaints are identified, monitored and resolved. For instance, centralised recording of penalties imposed for various types of misconduct will help inform misconduct committees about appropriate levels of penalties to apply in particular cases;
- help to identify systemic problems or patterns or behaviour in particular areas of the university;
- identify particular student demographics that may need support;
- measure the effectiveness of current systems for identifying and resolving complaints and appeals;
- if properly integrated with other university systems (such as student administration systems) minimise the potential for complaint “forum shopping” within the university;
- Complaints sometimes overlap into more than one category, for instance, an unsuccessful appeal against a grade might trigger a claim for unlawful discrimination. Given that most universities have separate processes for dealing with different types of complaints or appeals, a single university-wide system may facilitate a more holistic approach to managing and resolving the complaint or appeal, even where these are dealt with under separate processes. This can be particularly important for students who have some underlying personal or other problems that have triggered or exacerbated the complaint or appeal, but which might not be readily apparent.

Example 2 – Examples of information recorded on a university-wide system

- *Details about the student (name, course, whether international or local, gender, whether they are registered with a disability)*
- *Faculty or school*
- *Type of complaint or appeal*
- *When complaint first made (this will depend on a university’s internal regime, particularly where they differentiate between “informal” and “formal complaints”)*
- *Person or committee to whom complaint or appeal has been assigned for investigation, resolution, decision-making*
- *Whether the complaint is appropriate for mediation or other forms of alternative dispute resolution*
- *The outcome or determination of the complaint or appeal*
- *Whether the complaint or appeal is the subject of any external review or appeal and, if so, to whom*
- *The outcome of that external review or appeal*
- *File numbers of various student files (for cross-referencing purposes)*

- (d) How the progress and outcome of complaints and appeals will be monitored to ensure compliance and no delays

It is critical to the success of complaints and appeals regime that progress and outcomes of complaints and appeals are monitored and, where appropriate, followed up. The NSW Ombudsman recommends that this is best achieved through the establishment of a centralised “complaints centre”, whose functions include monitoring progress and quality of investigations, oversight of the complaints database and monitoring and reporting on complaints trends (NSW Ombudsman, 2006, pp. 26-29)

- (e) Whether there should be one set of procedural principles for dealing with all complaints (albeit, with different people or committees dealing with them, and the numbers of stages involved)

Most universities have different processes established for handling different types of complaints or appeals, recognising that different types of complaints will require different investigation and decision-making techniques. However, our review of university procedures revealed that there can be some inconsistency in the way the roles and responsibilities of committees and individuals involved in investigating and deciding complaints and appeals are described, which can lead to confusion or uncertainty. In some cases, this can lead to procedural error which may lend itself to external scrutiny.

Accordingly, we are of the view that there is some scope for universities to adopt a common set of procedural principles for investigating and deciding complaints and appeals. A suggested example is set out in section 5.3 of this guide. We think a common set of procedural principles will minimise confusion or uncertainty about roles and responsibilities, and achieve more consistency in the way complaints and appeals are investigated and decided.

However, universities need to be careful that particular groups of students (such as international students) are not unintentionally penalised by or disenfranchised from complaints or appeals regimes. Student demographics within a university can vary widely – from those students (both local and international) who attend lectures on campus, to those who study by means of distance education, including through an overseas institution in partnership with an Australian university. Universities need to ensure that their complaints and appeals mechanisms accommodate all students and are sufficiently flexible to allow them timely, fair and complete access to those regimes.

- (f) How the regime and its procedures intersect with other internal and external complaints regimes

Many internal complaints processes intersect with other internal and external regimes, for example, protected disclosures, anti-corruption laws, privacy laws and unlawful discrimination laws. In some cases, student complaints involve allegations of misconduct against staff, which bring into play misconduct provisions found in staff industrial agreements. These all need to be considered when designing a complaints or appeals regime. In particular, universities need to consider what will happen to a process if another is triggered (such as staff misconduct proceedings) and how student expectations will be managed through that other process.

- (g) Whether mediation or another form of alternative dispute resolution is available

Our research revealed that a number universities offer alternative dispute resolution (usually in the form of mediation) as a means of resolving some types of complaints, but that, overall, it seems to be available only in a very *ad-hoc* fashion. This is notwithstanding that there was widespread support for mediation in appropriate cases among those we interviewed and surveyed.

While not every complaint (for example complaints involving allegations of sexual harassment or serious student misconduct) will be suitable for mediation, we recommend that universities incorporate mediation and/or other forms of alternative dispute resolution as part of a process and promote it as a desirable means of trying to resolve complaints. However, universities need to ensure that:

- student participation is always voluntary;
- it is confidential;
- mediators have proper training and experience.

(h) The types and levels of resources needed to establish, implement and operate the regime properly

The success of a complaints or appeals regime will depend largely on the resources that underpin it. These include properly qualified and trained staff, as well as suitable accommodation and technology.

Given that different administrative units are often responsible for handling particular types of complaints and appeals, it is important to ensure that those resources are used effectively and efficiently. It may be possible to re-align or centralise some functions (such as investigation functions) to achieve efficiency and ensure consistency in approaches. This is also important where complaints overlap into more than one process.

(i) How to promote the regime to staff and students

Critical to the success of any complaints and appeals regime is its use and acceptance by students and staff. Our research revealed that many students find it difficult to access and understand information about complaints and appeals regimes. Inaccurate or out of date information was also cited as a concern by many students and student associations, which can trigger further complaints, or exacerbate existing ones. Section B of this guide deals with how universities might better promote their complaints and appeals regimes to staff and students.

(j) How the regime will be documented

Universities use various means to document their systems, including complaints and appeals regimes. These range from statutes (see definition at front of this guide) to policies and procedures.

Section C of this guide deals with issues of good design of complaints and appeals system, taking into account issues of legal compliance, as well as user-friendliness from the perspectives of both staff and students.

(k) Training needs of those involved in the functional and operational aspects of the regime

Our research revealed that university staff (particularly academic staff) often do not receive regular and adequate training (or else do not participate in it) to assist them to perform their role and responsibilities for handling complaints or appeals. Regular and targeted training programs are critical to assist staff to resolve disputes at an early stage and feel confident about doing so. Training programs also need to be reasonably regular to take into account staff turnover.

Section D of this guide deals with the type and scope of training that we consider essential to the success of a complaints and appeals regime.

- (i) How the regime will be monitored and reviewed to determine its responsiveness to the needs of the university and its stakeholders

Our research revealed that the majority of students who experience an unfavourable outcome to their complaint or appeal tend to continue with, and in many cases, complete their studies, even though feelings of frustration and anger can linger. While we did not undertake any detailed research, our surveys and interviews indicate an attrition rate of about 10% to 15% of that cohort. We identified this as an area of potential further research in the Final Report.

Our research also revealed that what happens to the student following the outcome of their complaint or appeal is rarely recorded. We think this is an area that should be explored further, as part of a university's general feedback, to determine levels of attrition rates. This data will inform universities about the effectiveness of their complaints and appeals regimes.

In addition, and as mentioned above, only a minority of Australian universities have centralised systems of recording complaints and appeals. We think centralised systems are essential to monitoring complaints and appeals regimes to determine their responsiveness to the needs of the university and its various stakeholders.

4. Section B – Getting the message across

4.1. Introduction

Our research reveals that, despite (or perhaps because of) the plethora of information normally available through university websites, students still find it difficult to find out how they can raise a concern, make a complaint or lodge an appeal, and what they can expect from that process. Many websites reviewed relied on the text of policies and statutes to convey information. Bad website design also made it difficult to locate information about the correct person to contact or the right way to raise a problem or a concern: in summary, information tended to be “buried”. This makes it very difficult for students to seek assistance in resolving a problem or concern, or reporting a complaint.

University staff who participated also reported experiencing difficulty in finding information about how to deal with complaints which left them confused about their role and responsibilities in the process. Moreover, inaccurate or out of date information given by staff to students was cited as a significant problem by students, student associations and some staff.

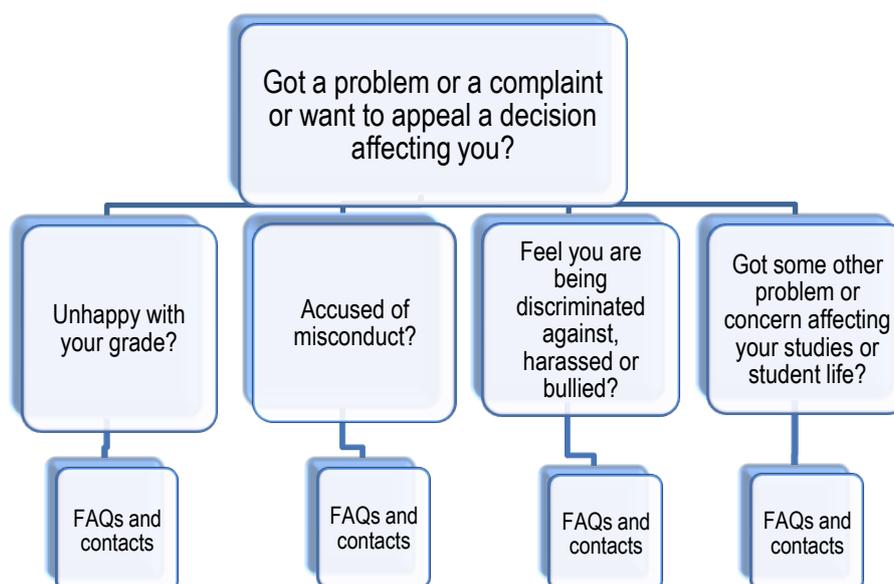
As outlined in section 3.2(e), it is important that all students, whether they study on-campus or from a distance (including offshore), are given ample opportunity to access complaints and appeals regimes. In the case of those students who study through offshore collaborators, it is particularly important that they are not left feeling confused about their rights to access university procedures.

4.2. University websites

Universities rely on their websites as the principal means of conveying systemic information to staff and students. It is therefore critical to the success of complaints and appeals regimes that staff and students know where to access accurate information.

- (a) Users should be able to find information quickly and easily. Information should be displayed prominently and intuitively on (as the case may be) the “staff”, “current students” and “international students” web pages. Use of buttons and menus with plain language headings are recommended, as illustrated in Example 3.

Example 3 – Suggested hierarchy of information buttons or menus on “current students” page



- (b) FAQ's, plain English guides, flowcharts and diagrams are often more user-friendly means to convey information, particularly for users whose first language is not English. While it is important to include links to policies and statutes, these should not be the only sources of information available. FAQ's and plain English guides are also a good way to communicate additional information that may not be evident to a student from the text of a policy or statute, but which is nevertheless important, as Example 4 demonstrates:

Example 4 – FAQ for students raising a concern or a problem for the first time

It is important that you give us full details about your problem or concern when you first bring it to our attention. This will help us to understand and deal with it properly.

- (c) FAQ's or other plain English guides should also be used to explain to staff their role and responsibilities in a complaints or appeals process.

Example 5 – FAQ for staff approached by students with a problem or concern

You should, within the limits of your authority, help students to resolve problems or concerns as quickly and early as possible. This helps to avoid them escalating into formal complaints or appeals. While some problems or concerns may seem trivial or ill-founded, you should listen attentively and dispassionately, and focus on realistic ways to help the student resolve his or her problem or concern. If you cannot solve the problem for the student yourself, then you should assist the student to resolve the problem themselves, or else refer them to someone else in the university who may be able to help them.

- (d) Avoid using jargon and legalese, and use plain English terminology that most students are likely to understand.

Example 6 – A bad example of how to find information about raising a problem or concern

Students with a grievance are advised to review the relevant policy applicable to their particular grievance in order to find out the right process to follow.

We suggest instead that information be organised so that students can find it intuitively, as set out in Example 3.

- (e) Take into account students with disabilities, such as visual impairment or dyslexia, when designing the website and presenting information;
- (f) Information should always be up to date and accurate. Information that has become inaccurate or out of date should be archived or removed so that students do not find and rely on it inadvertently through use of keyword searches of the university or another website (such as Google);
- (g) Include (and keep up to date to avoid confusion) contact details of relevant university staff, including names, telephone numbers and email addresses, rather than relying on statements such as "contact the Director of Student Equity". Explain what their role is in the complaints or appeals process (again, through use of FAQ's);
- (h) Include a statement to reassure students that the university treats all concerns, complaints or appeals seriously, and will treat students fairly at all times.

Example 7 – Reassuring students with a legitimate problem or concern

We want you to have the best possible learning experience, and we need to know if you have a problem or concern that is affecting your studies or your life as a university student. We take all complaints seriously and will try to resolve them as quickly and fairly as possible.

- (i) Include information about where students can obtain information or support for their complaint or appeal (including contact details or links to relevant websites, for example, student ombudsman, student association, university counselling or medical service) and include hyperlinks to help students find that information easily.

4.3. Student handbooks

Although printed student handbooks are used less frequently these days and are more often available for downloading from a university website, the same recommendations and examples in section 4.2 are equally applicable here.

4.4. Pamphlets and posters

Universities should promote their complaints and appeals regimes through use of printed pamphlets and posters that are available at places frequently accessed by students, such as libraries, dining halls, student residential accommodation, student association offices, faculty and student centre counters, bulletin boards and so on. For those students who study through partnership or collaboration arrangements, partner and collaborator institutions should make these available to students. These documents should include links to websites, telephone contact details of key people (for example, the student ombudsman or dean of students) and so on.

4.5. Orientation and induction programs

Our research indicated that undergraduate students sometimes do not pursue complaints through lack of knowledge about or familiarity with the process.

Universities should consider including a session about problems or concerns (including appeals) in any orientation or induction program for all new students (especially international students, distance education students and students studying offshore). Student associations that provide welfare or advocacy support for students should also be invited to participate and make their services known to students.

4.6. Reminders

Another strategy is to remind students via email, at the time they are sent their results, of any deadlines for lodging appeals, and include relevant web links to information about lodging complaints or appeals. Tell them whom to contact in the first instance to discuss their results if they have a concern (for example, their lecturer or supervisor – this information need not include contact information as it is assumed this would be a university-wide reminder).

This is particularly important where universities employ casual academic staff who are not available to discuss assessment with students after the end of semester.

4.7. De-briefing

De-briefing with a student after he or she has used a complaints or appeals process is a good way to receive some useful feedback about the way in which his or her complaint was handled and the process generally. It is also a useful means of identifying any systemic problems, either in relation to the complaint itself or the process used to try and resolve it.

More importantly, even if the student did not achieve the result he or she wanted out of that process, a properly handled complaint may give the student a better understanding of what went wrong and why and thus assist his or her learning experience at university overall.

Our research revealed that although most students continue with their studies in circumstances where they remain dissatisfied with the outcome of their complaint or appeal, they nevertheless feel resentful about their experiences. In the authors' view, this detracts from the student's learning experience and their overall relationship with the university, both as a student and as a future alumnus.

5. Section C – Documenting complaints and appeals processes

5.1. Introduction

Statutes, policies and procedures documents play an important part in conveying information to readers about complaints and appeals processes. It is therefore important that they be designed in such a way that all readers understand that information, and the role and responsibilities they have in the process described.

5.2. Design issues

Complaints and appeals policies and procedures should be designed to be read and understood by all those involved in the process described, including staff and students. This involves more than simply adopting a particular format and style. Issues that need to be taken into account when designing a process include:

- (a) The role of statutes, policies and procedures, and how they relate to one another;
- (b) This relationship is sometimes confused, for instance, by including procedures in policy documents. The difference between the three may be explained as follows:
 - statutes are the means by which power is conferred or an obligation is imposed on a university to do something. Most Australian universities are established under statutes that describe their functions and powers. Those enabling acts also include specific powers to enact delegated legislation in the form of by-laws, rules or regulations to give operative effect its functions and powers; and
 - policies establish and prescribe a set of principles and the framework within which a university operates in relation to a particular matter, for example, dealing with discrimination, bullying and harassment.

Example 8 – Policy statement

The University is opposed to all forms of bullying and harassment and is committed to a healthy work and study environment that promotes tolerance and respect for others. The University will seek to achieve this in the following ways

- Procedures that describe in detail the process that will be followed to implement a particular policy. These processes are often found in university by-laws, rules or regulations.
- (c) The regulatory and compliance framework under which Australian universities operate

In addition to their enabling acts, universities are also subject to a large number of other Commonwealth and state or territory laws⁴ that affect the way in which they exercise their functions and powers. Examples of these include freedom of information laws, protected disclosure laws, anti-corruption laws, anti-discrimination laws and privacy laws.

⁴ For instance, the *Higher Education Support Act 2003* (Cth) and the *Education Services for Overseas Students Act 2000* (Cth)

- (d) The number of processes and stages needed to deal with a complaint or an appeal

Ideally, there should be one model set of procedural principles for dealing with all or most types of complaints or appeals (see section 5.3), even though different individuals or committees may be involved in making decisions about particular types of complaints or appeals. In addition, universities should avoid incorporating too many stages into the process. While a review or appeal process is a useful way to detect and correct any earlier errors, too many stages can involve unnecessary diversion of resources. Moreover, this can delay a student's ability to seek external review, because most forms of external review cannot be triggered unless and until the student has exhausted all internal review avenues. For these reasons, we recommend that, generally speaking, there should be no more than three stages involving:

- informal resolution process (either through informal discussions, mediation or other forms of alternative dispute resolution);
- formal resolution process;
- internal review or appeal process.

The advantages of this approach are that it will:

- promote consistency in the way complaints or appeals are dealt with and handled;
- provide a consistent framework where a student brings more than one type of complaint or appeal that has some degree of overlap.

- (e) Language and style

It is very important that university statutes, policies and procedures convey information about rights, roles and responsibilities in clear and unambiguous terms. Use of plain English and active voice are two methods of achieving this.

There are a number of texts and guidelines available to assist in developing statutes, policies and guidelines. Some of these are listed in Section E.

5.3. Common procedural principles

A good complaints and appeals regime should have a common set of procedural principles applicable to processes within that regime. These should include a clear explanation and delineation of the roles and responsibilities of investigators, decision-makers and students. Principles that should always be included are:

- (a) a description of the functions and powers of an investigator or decision-maker (including any limitations on those powers in particular circumstances) and whether these are mandatory or discretionary, through use of the words, *shall* or *must* (which indicates they are mandatory) or *may* (which indicates they are discretionary);
- (b) a statement that investigators and decision-makers must act fairly and impartially, and exercise independent judgment;

Example 9 – Statement to act fairly, impartially and exercise independent judgment

Staff who investigate or decide complaints or appeals must act fairly and impartially. While they may seek legal or other professional advice about the process, or their responsibilities under it, they still must exercise independent judgment about the particular complaint or appeal, based on their objective assessment of the evidence.

Staff who investigate, hear, decide or are otherwise involved in the resolution of student complaints or appeals are expected to conduct themselves in a professional and courteous manner at all times. While staff may at times be faced with rude, aggressive or otherwise unreasonable behaviour, they should remain calm and dispassionate to avoid any perception of bias.

- (c) a statement requiring confidentiality of those involved in the process;

Example 10 – Confidentiality statement

Staff who investigate or hear complaints or appeals must treat them, and the process as confidential, and not discuss with anyone not involved in that process. Any disclosures of information to others involved in the process should only be on a strictly “need-to-know” basis, depending on the nature of their role in that process.

- (d) a statement about how to identify and manage conflicts of interest;

Example 11 – Statement about conflicts of interest

Staff involved in complaints or appeals should disclose actual, perceived or potential conflicts of interest (whether personal, financial or otherwise) as soon as they become aware of them. That staff member’s supervisor (or other person to whom they are accountable under that process) must assess whether that conflict is or is likely to (or be seen to) preclude that staff member from acting fairly and impartially. If so, then another person must be appointed to replace the staff member.

Staff who have previously advised or support a student should not be involved in any investigation or decision-making in relation to that student’s complaint or appeal.

- (e) a statement that an investigator or decision-maker can make such inquiries as he or she thinks fit (subject to obligations of privacy and confidentiality that apply);

Example 12 – Statement about evidence and rules of evidence

Staff who hear and decide a complaint or an appeal are not bound by the rules of evidence and may make or initiate such other inquiries as they think appropriate in the circumstances. However, this does not mean that the rules of evidence can be simply ignored where it is fair to follow them, for example, to weigh or exclude particular evidence such as hearsay evidence.

Oral evidence does not always have to be given in the presence of a student, but the substance of it must be given to the student, who must also be given a reasonable opportunity to respond. Wherever possible, that documentary evidence should be provided to the student a reasonable time before the hearing to avoid unnecessary delays in the process.

- (f) a statement that an investigator can only make recommendations, or a decision-maker can only make findings, based on the evidence before that person at the time;

Example 13 – Statement about how findings or recommendations must be based

Staff who decide (or make recommendations to a decision-maker about) a complaint or an appeal must assess the evidence fairly and objectively and base their recommendations or decisions on all relevant evidence. Evidence is relevant when it is logically probative and rationally leads to the conclusions drawn about a particular fact that is in issue (whether alone or combined with other evidence). Irrelevant evidence must always be disregarded.

If there is a conflict in evidence about a particular version of events, efforts should be made to try and corroborate those versions to ascertain which should logically be preferred over the other.

*In disciplinary and administrative complaints or investigations conducted by the University, the standard of proof for allegations is “balance of probabilities” (known as the civil standard of proof), that is to say, that it must be more probable than not that the events or conduct alleged actually occurred. For more serious allegations, the degree of probability increases. This is known as the “Briginshaw test” after the case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. In that case, the High Court said that a measure of flexibility is required, so that standard of proof increases according to the seriousness of the allegation.*

- (g) a clear description of what an investigator or decision-maker can decide (for example, outcomes of appeals, the types of penalties in the case of misconduct), taking into account the powers conferred under the relevant university statute;

Example 14 – Statement about findings that can be made in cases of misconduct

A misconduct committee may make one of the following findings in relation to any one or more of the allegations of misconduct made against the student:

- *That the student is guilty of misconduct; or*
- *That the student is not guilty of misconduct.*

A misconduct committee may, in relation to a finding of misconduct, impose no penalty, or impose any one or more of the following penalties. Any penalty imposed must be appropriate to the type and level of misconduct and may take into account any previous instances of misconduct:

- *A warning or caution;*
- *A reprimand;*
- *Failure or reduction of a mark or grade in a unit of study;*
- *A fine not exceeding \$500;*
- *Suspension from using specified facilities or services of the university or entering university grounds or buildings for a specified period of time;*
- *Suspension from the student’s course or attending classes for a specified period of time;*
- *Expulsion from the university.*

The committee may suspend the operation of any penalty (except a warning, caution or expulsion) on those terms it considers appropriate, taking into account the circumstances of the student, including whether he or she is likely to re-offend

- (h) a clear statement of what is required of a student during the process, for example, supply of information, cooperation with investigation, standards of behaviour in a hearing, and so on.

Example 15 – Statement of expectations of students in complaints or appeals process

It is important that you give us full details about your complaint or appeal, including any documentary evidence that you intend to rely to support it (for example, medical certificates, counsellor statements). We also expect you to fully cooperate with any investigation into your complaint or appeal, and to attend any hearings or meetings (including meetings held by means of teleconference or video link). Otherwise, we cannot deal with your complaint or appeal properly, which in turn may disadvantage you.

We also expect you to behave in a reasonable and courteous manner at all times. While we understand that you may at times feel frustrated or stressed, rude, aggressive or other unreasonable behaviour towards staff or others is unacceptable and will not be tolerated. This may result in misconduct proceedings against you.

5.4. Managing student expectations

Students are entitled to know what they can expect from a complaints or appeals process, including how it will be conducted, deadlines, who does what and potential outcomes. A properly detailed complaints or appeals process will also assist those staff and officers involved in the process to understand their role and responsibilities.

Ideally, the process should describe:

- (a) what types of complaints or appeals can be dealt with under that process;
- (b) whether a complaint or an appeal can be dealt with informally in the first instance and, if so, a description of how the student can have it dealt with informally, whom to contact, and what they can expect from having it dealt with informally (including next steps if the student is dissatisfied with the outcome);
- (c) how, where and (if applicable) when to lodge a formal complaint or appeal, with whom it must be lodged and whether it has to be in writing (which may depend on whether it is a formal or informal complaint);
- (d) the meaning of any key terms or phrases used in the process, for example, *academic merit*, *academic judgment* and *natural justice*. Some useful examples include:

Example 16 – Suggested definition of “natural justice” or “procedural fairness”

“Natural justice” (also called “procedural fairness”) is essentially a code of fairness for making decisions. It applies to all universities and can be enforced by courts or tribunals. In the context of academic appeals and student misconduct matters, essential elements include:

- *Giving the student a reasonable opportunity to be heard. If the matter involves student misconduct, the student should know what the allegation against him or her is in sufficient detail so that he or she can answer it;*
- *Giving the student reasonable opportunity to respond before the decision is made; and*
- *Genuinely considering all the evidence without bias; and*
- *Basing the decision on evidence that supports it.*

Example 17 – Suggested definition of “academic judgment” for coursework

“Academic judgment” means the process by which a student’s performance is measured in an assessment task, taking into account the stated learning outcomes and assessment criteria set for that assessment and based on the professional judgment of the academic staff member concerned.

Example 18 – Suggested definition of “academic judgment” for research theses

“Academic judgment” means the process by which a student’s research thesis is examined for its originality and contribution to the field of study, based on the professional judgment of the examiner(s) concerned.

- (e) time frames, how they are applied, whether any exceptions apply in extenuating circumstances (which should be described), and what is required (for instance, notification to the student) if a time frame cannot be met;
- (f) who will investigate or make decisions about the complaint or appeal, and what that person or committee can do or decide;
- (g) a description of how each stage of the process will be conducted, including what is required before a complaint or an appeal can progress to the next stage;
- (h) whether a student may be accompanied or represented at any meetings or hearings. If students are not normally allowed representation (either by a student association advocate or legal practitioner), some flexibility may be desirable in extenuating circumstances, for instance, if the student has a disability that affects their ability to present their case effectively, if their grasp of English in these circumstances is poor, or if the student faces serious consequences, such as expulsion. If the university is represented by a lawyer, then the student should also be given the opportunity of being represented by a lawyer;
- (i) how hearings or meetings will be conducted. There should be sufficient flexibility to accommodate the needs of students (such as distance or offshore students) who cannot attend meetings or hearings in person through use of telephone or video conferencing links;
- (j) How the student will be notified of the outcome of his or her complaint or appeal, and that reasons for the decision will be given, in addition to the decision itself;
- (k) any further internal rights of review or appeal if the student is dissatisfied with the result, including a description of any grounds of appeal, and a description;
- (l) whether mediation is available as a means of dispute resolution and, if so, the circumstances in which it is available, how and by whom it will be conducted;
- (m) a statement that investigations will be conducted in a fair and impartial manner and that the student will be accorded procedural fairness.

key terms, such as “natural justice” or “academic judgment” should be explained (see Examples 16 and 17).

5.5. Staff guidelines

The success of any complaints or appeals regime depends on how well those staff who are involved in the process understand their roles and responsibilities. While good design of procedures goes a long way to achieving this, it is critical that staff also have clear and unambiguous guidelines to assist them throughout the process.

As a minimum, staff guidelines should include these elements:

- (a) a statement of what the University expects of its staff in the way they deal with students, including making themselves available to students who wish to query grades or assessments, and not becoming angry or taking it personally when a query is raised;
- (b) a description of the various steps involved in the process and, where necessary, an explanation of why a particular step is critical to the process (for example, declaring any conflicts of interest);
- (c) an explanation of when staff are expected to exercise their judgment about particular types of complaints or student misconduct, and when they are expected to follow a particular course of action. An example is suspected plagiarism. Some universities take an educative approach to first or minor instances of plagiarism.

6. Section D – Training and support

6.1. Introduction

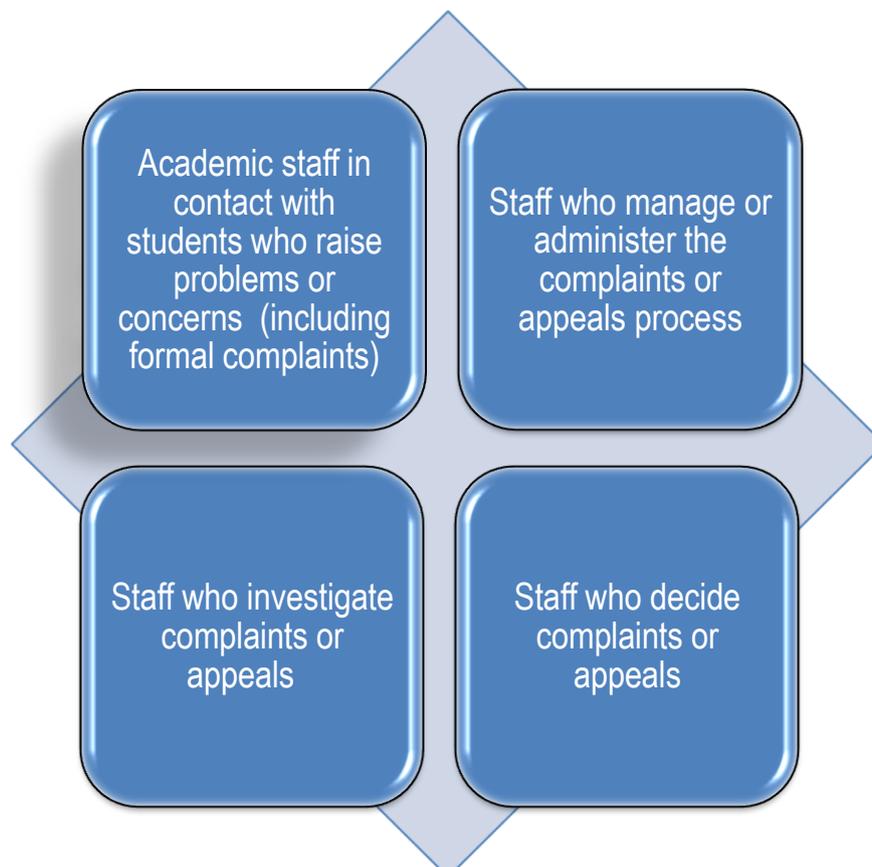
There are a number of benefits that flow from training staff regularly and properly about complaint and appeals handling, including:

- staff will feel more confident and supported when dealing with complaints or appeals;
- staff will be less likely to make procedural or other errors;
- students will feel more comfortable and assured about approaching staff with a problem, concern or complaint in the knowledge that it will be dealt with properly; and
- the risk of university decisions being amenable to scrutiny or review by external bodies (such as courts, tribunals or state and territory ombudsmen) is lessened.

6.2. Training model

We suggest the following model as essential to the success of complaints and appeals regimes. The differing roles and responsibilities of all involved are interconnected. It also takes into account that particular functions (such as investigating and decision-making) may be integrated into one role.

Example 19 – Suggested training model



We have set out what we recommend as critical areas for training for each role indicated in Example 19.

Example 20 – Suggested critical training areas for staff in contact with students who raise problems or concerns

Academic staff in contact with students who raise problems or concerns (including formal complaints)

- Basic knowledge of process, including unit responsibility
- Good understanding of role and limits of authority and what university expects at front line of complaints process
- Techniques to identify complaint
- Managing students' expectations about what can and cannot be done for them
- Being impartial and avoiding conflicts of interest
- Where to seek advice or support
- When and where to refer students for further advice or support (eg, counselling service, medical service, student association)
- When to record complaint or notify others about it
- Confidentiality, privacy and protected disclosures
- Dealing with difficult, unreasonable or unreasonably persistent behaviour
- Accommodating cultural differences

Example 21 – Suggested critical training areas for staff who manage or administer a complaints or appeals process

Staff who manage or administer a complaints or appeals process

- Sound understanding of process(es) managed or administered including rules of procedure
- Meaning of important legal terms such as "procedural fairness" and "standard of proof"
- How to draft formal notices and other documents necessary to process(es)
- Confidentiality, privacy and protected disclosures
- Dealing with difficult, unreasonable or unreasonably persistent behaviour
- Accommodating cultural differences
- When and where to refer students for further advice or support (eg, counselling service, medical service, student association)

Example 22 – Suggested critical training areas for staff who investigate complaints or appeals

Staff who investigate complaints or appeals

- Thorough understanding of process and procedural requirements
- Nature and limits of role and powers
- How to identify whether suitable for alternative dispute resolution
- Planning and conducting investigations
- Managing expectations about what is being investigated
- Interviewing techniques (including dealing with difficult or uncooperative behaviour)
- Gathering and analysing evidence
- Assessing weight and relevance of evidence
- How to write a report, including drawing conclusions and making recommendations
- Sound knowledge of requirements of procedural fairness and standard of proof
- Being impartial and avoiding conflicts of interest
- Confidentiality, privacy and protected disclosures

Example 23 – Suggested critical training areas for staff who hear and decide complaints or appeals

Staff who hear and decide complaints or appeals

- Thorough understanding of process and procedural requirements
- Nature and limits of role and powers
- Sound knowledge of rules of procedural fairness
- How to identify whether suitable for alternative dispute resolution
- Planning and conducting hearings
- Managing expectations about what is being heard and decided
- Ensuring that students are given a reasonable opportunity to be heard
- Dealing with difficult, unreasonable or unreasonably persistent behaviour
- Accommodating cultural differences
- Assessing weight and relevance of evidence presented
- Applying appropriate standard of proof
- How to write a decision and give adequate reasons
- Being impartial and avoiding conflicts of interest
- Confidentiality, privacy and protected disclosures

7. Section E – Useful references and resources

7.1. References

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7.2. Useful websites

Name	Web Link
ACT Ombudsman	http://www.ombudsman.act.gov.au/act/publish.nsf/Content/home
Commonwealth Ombudsman	http://ombudsman.gov.au/commonwealth/publish.nsf/Content/home
Northern Territory Ombudsman	http://www.omb-hcsc.nt.gov.au/
NSW Ombudsman	http://www.ombo.nsw.gov.au/
Queensland Ombudsman	http://www.ombudsman.qld.gov.au/
South Australian Ombudsman	http://www.ombudsman.sa.gov.au/
Tasmanian Ombudsman	http://www.ombudsman.tas.gov.au/
Victorian Ombudsman	http://www.ombudsman.vic.gov.au/www/html/7-ombudsman-victoria.asp
Western Australian Ombudsman	http://www.ombudsman.wa.gov.au/
Office of the Independent Adjudicator for Higher Education	http://www.oiahe.org.uk/

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Promoting excellence in higher education