

WORKPLACE ISSUES RESOLUTION PROCEDURE

1. Introduction and purpose of the Procedure

The Workplace Issues Resolution Procedure provides a framework for the fair, equitable, transparent, and timely resolution of Workplace Issues resulting from the effect of decisions, actions or conduct connected to employment in CSIRO.

All CSIRO staff members have an obligation to comply with the requirements of the *Science and Industry Research Act 1949*, CSIRO Terms and Conditions of Service and CSIRO Code of Conduct. Further, all staff have an important role in contributing to positive culture by working and behaving in a professional and productive manner at all times.

CSIRO:

- encourages a proactive and positive approach to addressing Workplace Issues, resolving conflict and supports action, where appropriate, taken at a local workplace level by both staff and Line Managers; and
- expects that most Workplace Issues will be resolved in normal day-to-day interactions at the local level between relevant staff and/or line management.

This Procedure sets out possible resolution pathways and options for resolving Workplace Issues including where and how to obtain support during the resolution process.

2. Principles

The following principles underpin the resolution of Workplace Issues in CSIRO:

- all Workplace Issues raised will be treated respectfully and seriously;
- the health and wellbeing of all staff members and affiliates is paramount and must be considered and monitored throughout the resolution process as appropriate and for a reasonable period of time after it has concluded;
- staff have the right to be represented, including by a staff or union representative in accordance with clause 57 of the CSIRO Enterprise Agreement 2017 - 2020;
- parties to a Workplace Issue will be treated with due consideration of diversity and fairness;
- the privacy and confidentiality of information obtained in the process will be treated in accordance with privacy requirements and only necessary and appropriate disclosures made on a need to know basis;
- the principles of natural justice and procedural fairness will apply;
- any persons directly involved in a resolution process must advise the Senior Manager as soon as possible if they have, or may be seen to have any conflict of interest or bias or prior involvement in the issue;
- decision makers will act without bias or self-interest and will base their decisions on evidence that is relevant to the facts at issue;
- all Workplace Issues will be dealt with as promptly and thoroughly with a view to finding a resolution as soon as practicable;
- staff members and affiliates who report a Workplace Issue or are involved in its resolution must not be victimised or disadvantaged because of such involvement;
- parties to a Workplace Issue will be kept informed of progress on the issue and be given the opportunity to provide input and have their input considered, the nature of which will depend on their role (for example as the person who has raised the issue, a witness, support person or person against whom an issue has been raised);
- all Workplace Issues raised will be confidential, noting however that the confidentiality of the person reporting the issue cannot be guaranteed in all circumstances;

- breaches of the Code of Conduct will be addressed in accordance with this Procedure and disciplinary action may be applied; and
- the process for resolving Workplace Issues should be carried out with as little formality and with as much expedition as a proper consideration of the issues allows.

3. What is a Workplace Issue?

A Workplace Issue is an issue that arises from the effect of a decision(s), action(s) or conduct, connected to employment in CSIRO.

4. What is covered by this Procedure?

This Procedure will cover Workplace Issues about one or more of the following matters, where no other formal avenue of appeal exists:

- the application of existing employment conditions;
- probation or selection procedures;
- how we treat each other in the workplace;
- Conduct by a staff member(s);
- an official instruction; and
- management of underperformance reviews.

5. Two types of Workplace Issues

Workplace Issues covered by this Procedure will be evaluated, categorised and managed as either a Conduct Issue or a Non-conduct Issue.

6. What is not covered by this Procedure?

This Procedure does not cover Workplace Issues where a formal CSIRO or external avenue of review exists and excludes matters solely about the following:

- salary/performance and development step decisions;
- decisions to annul appointments during probation;
- classification decisions;
- decisions to terminate employment;
- redundancy;
- Health, Safety and Environment incidents (an incident is an event that has occurred, whether there was an outcome eg injury or environmental impact, or potential for an outcome (a near miss incident)); and
- workers compensation matters.

Additional reasons that CSIRO may exclude a Workplace Issue from this Procedure include where:

- a staff member has initiated action in a court or tribunal about the matter(s) that is the subject of the Workplace Issue;
- the Workplace Issue is more appropriately dealt with by an external body and it is likely to be resolved in a timely manner;
- the Workplace Issue relates to a probation issue and is not confined to procedural matters;
- the Workplace Issue is lodged out of time (see clause 7. Time Limits); or
- a staff member against whom misconduct has been alleged, ceased employment with the exception of serious conduct matters that are being investigated at the time employment ceased.

This Procedure does not cover Workplace Issues in respect of the conduct of staff members who are:

- on probation;
- specified term staff who have been employed for less than six (6) months; or
- casual staff;

all of whom are covered by other specific procedures. This does not preclude such staff from reporting a Workplace Issue(s).

7. Time limits for reporting Workplace Issues

Non-conduct Issues must be raised within a 12 month timeframe from the date of the alleged event or action. Where supporting evidence for a Workplace Issue extends beyond the 12 month timeframe, such evidence will be considered as part of the resolution process.

Non-conduct Issues relating to events that are more than 12 months old will be permitted where it is demonstrated that circumstances beyond the staff member's control prevented the staff member from reporting the Workplace Issue within the 12 month timeframe.

Conduct Issues do not have a time limit for reporting, however it is expected that staff members will report conduct related matters as and when they arise enabling those issues to be managed promptly in accordance with this Procedure.

8. Who can report a Workplace Issue and how?

A Workplace Issue can be reported by a staff member to their Line Manager or an alternative manager, to Human Resources (HR) staff, Equity Contact Officers (ECO), staff representatives or other staff member with whom they feel comfortable to do so. A CSIRO affiliate may also report a Workplace Issue and be involved in its resolution, provided that the Workplace Issue is related to the conduct of a staff member.

Conduct Issues may come to the attention of a Senior Manager by means other than direct reporting and includes but is not limited to:

- direct observation and subsequent reporting of actions of a staff member(s);
- allegations made in the media, including social media,
- a review of audit reports or other reports;
- records of court or tribunal proceedings; and/or
- a complaint raised by a member of the public or non-CSIRO partners.

In some situations a staff member reporting a conduct related matter may seek confidentiality with respect to their report and/or request that the matter is not pursued by CSIRO, however, it may be appropriate and in some circumstances mandatory, that CSIRO takes action.

9. What is the framework for this Procedure?

Staff members and their managers are expected to attempt to resolve matters at the workplace level before they escalate to a 'Workplace Issue' but once a Workplace Issue is reported, it will be managed under this Procedure. This does not however, prevent staff members and/or managers from continuing to try and resolve Workplace Issues at the workplace level and at any stage of the Procedure.

The Workplace Issues Resolution Procedure is based on the following framework:

- Workplace Issue being notified/reported;
- Workplace Issue assessed as a Conduct Issue or a Non-conduct Issue;
- Workplace Issue dealt with either informally and/or formally as appropriate to the type of Workplace Issue and possibly including an investigation;
- outcome of the Workplace Issue advised to relevant parties and matter closed unless a request is made for a review by a Chief Executive Review Panel if appropriate, with any subsequent decision of the Chief Executive being final and the matter closed.

10. Starting the Workplace Issue Resolution Process

Where a matter has not been able to, or is not appropriate to be resolved at the workplace level and is then reported as a Workplace Issue, it will be managed as either a Conduct Issue or a Non-conduct Issue as determined by the evaluation of the matter.

11. Evaluation and categorisation of a Workplace Issue

Following notification/reporting of a Workplace Issue, an evaluation of that issue will be undertaken in order to determine firstly, if the issue should be managed under this Procedure, and if so, whether it should be managed as a Conduct Issue or a Non-conduct Issue.

The Evaluator role will be undertaken by the Line Manager in conjunction with assistance from Human Resources In-Business (HRIB) and other relevant staff if required.

If there is any actual or perceived bias or a conflict of interest relating to the Line Manager, the next level manager or another appropriate manager will undertake the Evaluator role. Similarly if there is actual or perceived bias or a conflict of interest relating to HRIB staff, those staff will be replaced by other HR colleagues.

Where it is determined that a Workplace Issue is not covered by this Procedure or should be managed under another procedure (e.g. Management of Underperformance), the Evaluator will advise the appropriate parties accordingly. Where another Procedure is identified as relevant for the management of the Workplace Issue or if the Workplace Issue should be remitted back to the workplace level for further attempts at informal resolution, the Evaluator will initiate action under that Procedure and/or refer the Workplace Issue to the appropriate manager for action.

If it is likely that a Workplace Issue will be categorised as a Conduct Issue, advice should be sought from the Workplace Relations team before any further action is taken in accordance with this Procedure.

11.1. Factors to consider when evaluating Workplace Issues

When evaluating a Workplace Issue, the Evaluator should consider any and all relevant factors including but not limited to the following:

- whether there is sufficient information to be able to evaluate the Workplace Issue;
- whether the Workplace Issue contains allegations of bullying, harassment or discrimination;
- whether the Workplace Issue can and should be managed at the workplace level via assisted resolution (e.g. apology, mediation);
- whether the Workplace Issue would be more appropriately managed under another procedure and/or is excluded from coverage under this Procedure;
- whether there are any health and/ or safety concerns relating to staff members and requiring HSE input or intervention;
- whether serious misconduct is involved;
- whether criminal conduct is involved requiring legal and/or security involvement;
- whether suspension from duty of the staff member(s) should be considered either with or without pay;
- whether the issue could be considered malicious, frivolous or vexatious; or
- any other considerations as appropriate.

Once an evaluation of available material has been conducted and a decision made on the future management of the Workplace Issue, staff will be advised as appropriate.

11.2. After a Workplace Issue has been evaluated

Once a Workplace Issue has been evaluated next steps will depend on whether the Workplace issue is to be managed as a Conduct Issue or a Non-conduct Issue. Generally, the resolution pathways available under this Procedure incorporate the following steps:

1. Informal Process
2. Formal Process
3. Outcome/Decision
4. Request for Review

Workplace Issues may be escalated to a formal process (without being managed in the informal process), if the Evaluator believes it is appropriate to do so. A staff member can at any time request that the Evaluator consider escalation to a formal process.

Workplace Issues may move from the Conduct Issue pathway to a Non-conduct Issue pathway and vice versa if information becomes available that indicates that a change in pathway is required. If a change is necessary, the Evaluator will determine at which step of the relevant pathway a Workplace Issue will transition to. If the change in pathway is to a Conduct Issue (from a Non-conduct Issue), the staff member subject to the conduct concerns, must be advised of the potential for disciplinary action if misconduct is found.

If a staff member refuses to participate in the resolution of a Workplace Issue, it may be appropriate for the resolution process to continue without their participation. In such circumstances the staff member will be made aware that the process will continue without their participation and any decisions made as appropriate.

12. Managing Non-conduct Issues

12.1. Informal Process

Non-conduct Issues should be addressed and resolved at the workplace level wherever possible and prior to initiation of action under this Procedure if appropriate.

Where a matter has been evaluated as a Non-conduct Issue which is to be managed by informal resolution, the Line Manager must firstly consider whether they are the appropriate person to deal with the matter in terms of actual or perceived bias or conflict of interest or whether an alternative Manager should manage the process.

If the Workplace Issue results from a decision of the Line Manager, the Line Manager should review that decision and consider whether in making that decision, regard was given to all the relevant facts and information in-line with their Line Manager responsibilities.

If the Workplace Issue appears to be an interpersonal issue, the Line Manager may initiate discussions with the staff member to determine if assisted resolution might be a viable option. If the issue is able to be resolved informally, the Line Manager should make a file note to that effect and provide a copy to the staff member(s) (email is acceptable) seeking their acknowledgement that the matter has been satisfactorily resolved.

The Line Manager should ensure that the staff member concerned is aware of their right to be accompanied by a representative or a support person at any stage of the process.

The Line Manager may escalate an issue immediately to the formal process if, based on the available material, they believe that the Workplace Issue will not be able to be resolved informally or is not suitable to be resolved informally. If attempts at informal resolution are not successful or not appropriate, the issue can be escalated, at the request of the staff member or the Line Manager or relevant manager considering the matter, for formal review by the Senior Manager.

12.2. Formal Process

If a Non-conduct Issue is not able to be resolved informally, it can be formally reviewed by the next level manager or another Senior Manager. Depending on the complexity and level of details provided, this Senior Manager review may be conducted solely on the available documentation or the Senior Manager may elect to discuss the Workplace Issue with the staff members and/or other affected persons before making an informed decision.

In some cases a Senior Manager may determine that an investigation is necessary. This investigation may be conducted by an internal or external investigator.

12.3. Outcome

Possible outcomes for a Non-conduct issue include but are not limited to:

- resolution of differences and/or agreement on a compromise between the parties or by provision of an apology (written or verbal);
- withdrawal of the Workplace Issue;
- finding that the Workplace Issue is not able to be substantiated and the issue is closed with no further action to be taken;
- confirmation, variation or setting aside of the of the decision related to the Workplace issue;
- a change in work practice(s) either by agreement or by direction of a line or Senior Manager;
- referral of the Non-conduct Issue for further management under another procedure e.g. Management of Underperformance or as a Conduct Issue under this Procedure; and/or
- one or both parties agreeing to participate in some form of counselling, training and education or other assisted resolution process.

12.4. Chief Executive Review Panel

Matters available for review include where the staff member provides evidence to support claims that the decision making process or the investigation (if conducted), was procedurally flawed. In the case of matters subject to an investigation, a review may be requested where the Senior Manager does not accept or varies the recommendations of the investigator.

The Chief Executive will establish a Review Panel to undertake the review. The panel will consist of:

- an independent chairperson nominated by CSIRO;
- a staff member nominated by CSIRO; and
- a staff member nominated by the staff member requesting the review or relevant union.

The Panel will make a recommendation, in writing, to the Chief Executive. The Chief Executive's decision is final and will be notified in writing to the staff member.

Matters will not be referred to the Chief Executive Review Panel where a period of 14 days has elapsed since the date of the advice to the staff member by the Senior Manager. However, the Chief Executive may consider matters where circumstances beyond the staff member's control rendered the staff member incapable of referring the matter to the Chief Executive within the 14 day time frame.

13. Managing Conduct Issues

Following a Workplace Issue being evaluated as a Conduct Issue (involving suspected misconduct) and being brought to the attention of the relevant Senior Manager, the Senior Manager must make the following initial decisions and undertake the following initial actions before the matter proceeds:

- Decide whether counselling is an appropriate way to deal with the suspected or admitted misconduct and if so, ensure that the counselling is provided to the staff member;
- Consider whether they are, or could be seen to be, involved in or connected to the suspected misconduct or if it is otherwise inappropriate for the Senior Manager to be the decision maker in relation to the Workplace Issue. If it is inappropriate for the Senior Manager to be the decision maker, their manager, or the Chief Executive, will nominate another person to perform the role of Senior Manager in relation to the suspected misconduct;
- ensure that a Health Risk Assessment (HRA) is undertaken (and updated at other key decision points during the process) by the Line Manager or other appropriate Manager and with support from HRIB and other relevant staff as required; and whether it will be necessary for the staff member concerned to undergo a medical assessment;
- ensure that the staff member concerned is aware of their right to have a support person or a representative present during the resolution process.
- is there a need for further information gathering to occur in order to determine whether or not misconduct may have occurred;

- whether admission by the staff member to the conduct in question gives rise to the prospect that the issue should be able to be resolved informally, by mutual agreement between the parties;
- whether the Workplace Issue may be of such a serious nature that serious misconduct may have occurred and consider whether suspension of the staff member with or without pay or a temporary transfer of the staff member to other duties and/or an alternate manager is warranted and must ensure that the staff member concerned is aware of their right to have a support person or representative present during meetings or discussions regarding a possible transfer or suspension;
- decide if they suspect that the staff member may have committed a crime and if so, whether it is necessary to refer the matter to the Police and whether further internal action should be delayed pending the outcome of any criminal investigation civil legal process.

13.1. Informal Process

The Line Manager, if they are not the subject of the specific complaint or conflicted in any way, should consider if additional information is required in order for the Senior Manager to determine if misconduct may have occurred. If the misconduct is admitted, the Workplace Issue is to be referred to the relevant Senior Manager for a decision on the appropriate action.

The Senior Manager should give consideration as to whether counselling in the form of a discussion with the staff member about their conduct relevant to the Workplace Issue, is an appropriate action under this process and if so, remind the staff member prior to the counselling meeting that they are entitled to be accompanied by a representative or a support person during the counselling meeting.

13.2. Formal Process

If a Conduct Issue is not able to be resolved informally or is not suitable for informal resolution, an investigation may be conducted. At this point the Workplace Issue is to be referred to the Workplace Relations Team for assistance and who will work with HRIB staff and the Senior Manager to manage the investigation process.

The Senior Manager must ensure that a HRA has been completed for the staff member(s) and that the assessment is taken into consideration when determining next steps. The Senior Manager may decide that it is necessary for the staff member to undergo a medical assessment conducted by a healthcare professional to identify and manage any potential risks to the staff member's health and wellbeing. Assistance should be sought from HR In-Business, the HSE Injury Management Team or Workplace Relations Team when a decision has been made to refer a staff member for an independent medical assessment. The staff member may be directed to attend the medical assessment if necessary.

If a staff member refuses to participate in the resolution of a Conduct Issue, they will be made aware that the process will continue without their participation.

The process for determining whether a staff member has committed misconduct must be carried out with as little formality, and with as much expedition as a proper consideration of the matter allows and be consistent with the principles of procedural fairness.

13.2.1. Investigation process

In determining whether a staff member may have committed misconduct, the Senior Manager may seek the assistance of an Investigator who is either:

- a suitably qualified or skilled staff member; or
- a suitably qualified or skilled person who is external to CSIRO.

Before an investigation commences, the Senior Manager will provide the staff member with a written Investigation Notice, and if not already provided, a Privacy Notice. The Investigation Notice must contain a number of matters including details of the nature of the suspected misconduct and

that the staff member has the right to be accompanied by a support person or a representative of the staff member's choice during any interview or formal discussion which takes place regarding or associated with the suspected misconduct providing that the chosen attendee has no involvement in the relevant allegations.

If a staff member resigns or retires during the course of an investigation into their conduct, that investigation will be discontinued.

The Senior Manager may determine that it is not necessary to carry out an investigation into suspected misconduct if:

- the staff member has admitted to the suspected misconduct; or
- the misconduct has been the subject of a criminal conviction or finding by a court.

If either applies, the Senior Manager will determine whether any disciplinary action is to be taken in accordance with this Procedure and the nature of that action.

13.2.2. Appointment of an Investigator

An Investigator may conduct an investigation into any or all aspects of the alleged breach(es) of the Code of Conduct in accordance with this Procedure, gather evidence and make a report of factual findings on the balance of probabilities and provide recommendations regarding disciplinary action(s) or any other action that may be appropriate. Prior to collecting any written or oral information from people involved in the investigation, the Investigator must confirm that each person has been given a Privacy Notice. If the Notice has not been provided, HRIB staff or the Investigator must provide the Notice as soon as possible but prior to any interview with the Investigator.

A staff member has a right to object to the person appointed to conduct the investigation and must give detailed reasons for the objection. The Senior Manager will consider any such objection and either confirm the investigator or appoint another person to conduct the investigation.

13.2.3. Outcome following the conduct of an investigation

Where an investigation was conducted and upon receipt of the investigation report, the Senior Manager must read the report and decide what action will be taken under this Procedure. The actions can include no further action, counselling of the staff member or taking disciplinary action.

The Senior Manager is required to provide a letter to the staff member stating the outcome of the investigation and disciplinary actions that the Senior Manager proposes to take (if any) and enclosing a copy of the investigation report (redacted if necessary). Where disciplinary action is proposed, the staff member must be advised that they have 7 calendar days (from the date of receipt of the letter from the Senior Manager) to comment on the proposed disciplinary action (written or oral).

Following consideration of any response from the staff member, the Senior Manager will confirm their decision in relation to any disciplinary action that will be taken and the reasons for that decision. The staff member must also be advised of any rights they may have to request a review by a Chief Executive Review Panel.

13.3. Decision not to commence an investigation

Where an investigation was not conducted but the staff member suspected of misconduct admits the misconduct or if the suspected misconduct has been the subject of a criminal conviction or finding by a court, disciplinary action may still be taken against the staff member. In this situation HRIB staff must provide a brief report to the Senior Manager including any recommendation for disciplinary action. Upon receipt of the HRIB report, the Senior Manager read the report and provide a letter to the staff member advising that an investigation will not be conducted and whether the Senior Manager believes that misconduct has occurred and advise of any disciplinary action the Senior Manager proposes to take (if any). The Senior Manager must enclose a copy of the HRIB report (redacted if necessary) and where disciplinary action is proposed, the staff member

must be advised that they have 7 calendar days (from the date of receipt of the letter from the Senior Manager) to comment on the proposed disciplinary action (written or oral). Following consideration of any response from the staff member, the Senior Manager will confirm their decision in relation to any disciplinary action that will be taken and the reasons for that decision. The staff member must also be advised of any rights they may have to request a review by a Chief Executive Review Panel.

13.4. Disciplinary Actions

The process for determining any disciplinary action that will be taken must be consistent with principles of procedural fairness.

Disciplinary action can be taken if an investigation establishes that misconduct has occurred; a staff member admits to misconduct; or a staff member is convicted of a criminal offence or a court finds that the staff member has committed an offence, that the Senior Manager has decided on the available evidence, constitutes misconduct.

The disciplinary actions that may apply will vary depending on the seriousness of the offence(s) and any mitigating circumstances. The range of actions are:

- Reprimand;
- Transfer to another position at the same classification level;
- Reduction in salary within the same classification level;
- Reduction in salary within the same classification level and transfer of position;
- Transfer and reduction to a lower classification level and commensurate duties; and
- Dismissal.

13.4.1. Record of decision and disciplinary action

If a decision is made in relation to suspected misconduct by a CSIRO staff member, a written record must be made of:

- the suspected misconduct;
- any decision as to whether the staff member has committed misconduct; and
- any disciplinary action taken as a result of the determination that the staff member has committed misconduct.

13.5. Chief Executive Review Panel

A staff member who is disciplined for misconduct, other than by dismissal, may request a review by a Chief Executive Review Panel. The staff member must make the request in writing (via post or email) setting out the ground(s) on which the request is made. The request must be provided to the Chief Executive within 14 days after the staff member received advice of the disciplinary action(s) to be imposed by the Senior Manager. The available grounds for review are either or both that:

- the finding by the investigation that misconduct had occurred is procedurally flawed; and/or
- the disciplinary action taken is unduly severe.

There is no right of review to the Chief Executive about a decision to dismiss a staff member.

The Chief Executive will establish a panel to undertake the review. The panel will consist of:

- an independent chairperson nominated by CSIRO;
- a staff member nominated by CSIRO; and
- a staff member nominated by the staff member requesting the review or relevant union.

The Panel will make a recommendation in writing, to the Chief Executive. The Chief Executive's decision is final. The outcome of the review will be notified in writing to the staff member.