

## 11. Managing Complaints and Grievances

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### 11.1 Process for Formal Complaints

This section sets out the formal procedures to be followed by LES, supervisors, and post management when a problem or complaint has not been satisfactorily resolved through the normal procedures associated with good management. It applies to all LES *engaged* by DFAT, including those whose salaries are funded by other agencies. Overseas Engaged Employees (OEE) employed by Austrade are not formally covered under these arrangements as they are not employed by DFAT.

This section contains guidance on the effective informal and formal management of workplace disagreements involving LES. All A-based staff and LES should make themselves familiar with the procedures and posts should ensure that their management guidelines are revised accordingly, translating into local languages where appropriate. These procedures have no formal legal status, and should not be viewed as part of any formal legal process. They represent a genuine attempt by the department to bring aggrieved parties together in a spirit of cooperation. The procedures do not preclude an aggrieved employee from approaching outside bodies, but provide LES with the option of a formal process for having a complaint or grievance addressed within a familiar environment.

The procedures outlined below have been developed to address unresolved complaints and grievances. These formal procedures do not replace the need for effective day-to-day communication and should only be followed when all informal dispute resolution procedures have been exhausted. The procedures apply to all LES engaged by DFAT, including those whose salaries are funded by other agencies.

Post managers should ensure that they are familiar with any provisions of local labour law that may impact on these procedures, in order to avoid jeopardising the position of either the LES or the post. Posts should aim to adhere to the timeframes below where possible.

### 11.2 Where a complaint or grievance does not involve a HOM/HOP

LES who have a complaint or grievance should submit a written minute detailing the issue to the Senior Administrative Officer (SAO). This should normally be done within a few days of the occurrence which gave rise to the complaint or grievance. If the complaint or grievance involves the SAO or has been made regarding an administrative procedure or action, LES should submit the minute to an alternative A-based staff member at the mission.

Within five working days of the receipt of the advice, the SAO (or alternative A-based) will arrange and chair a mediation meeting involving the parties concerned.

Other parties may be present at this meeting upon prior agreement of the parties concerned. In the event that the complaint or grievance relates to an administrative process and not a specific individual, the SAO will represent post administration in the matter.

If the issue is not resolved through mediation, the SAO (or alternative A-based) will refer the matter to the HOM/HOP. The HOM/HOP will appoint a committee of two staff - one A-based and one LES, both of whom have had no prior involvement in the matter - to investigate the complaint or grievance. The committee will provide a report with recommendations to the HOM/HOP within five working days.

Following receipt of the committee's report, the HOM/HOP will take a final decision within ten working days. A written outcome will be provided to the LES and also to any party that may have been the subject of the complaint or grievance.

### **11.3 Where a complaint or grievance involves a HOM/HOP**

Where a complaint or grievance involves a HOM/HOP, LES should submit a written minute detailing the issue to the Senior Administrative Officer (SAO). This should normally be done within a few days of the occurrence which gave rise to the complaint or grievance.

Within five working days of the receipt of the advice, the SAO will arrange and chair a mediation meeting involving the parties concerned. Other parties may be present at this meeting upon prior agreement.

If the issue is not resolved through mediation, the SAO (or alternative A-based) will refer the matter to First Assistant Secretary, Corporate Management Division (FAS CMD). The latter will appoint an appropriate individual, or if considered necessary, a committee of two people to look into the matter and provide a report with recommendations to FAS CMD within five working days. Following receipt of the report and recommendations, FAS CMD will take a final decision within ten working days. A written outcome will be provided to the LES and also to the HOM/HOP.

### **11.4 Managing complaints and grievances at small posts**

If there is a complaint at a small post and it is against an A-based officer, the case should be referred to FAS CMD, who will determine the most appropriate way to manage the complaint or grievance. This recognises the difficulty in establishing a committee at post (consisting of one A-based and one LES who have had no prior involvement with the matter) where the post is small (two or three A-based or less).

Where a complaint or grievance involves an LES engaged by DFAT but working for and funded by an attached agency, the same procedures outlined above should be followed as DFAT remains the legal employer of LES working overseas (apart from Austrade employees). Where complaints or grievances involving such LES are brought to the attention of the HOM/HOP, the committee investigating the complaint or grievance should consult with the senior A-based staff representative of the attached agency, provided they are not the subject of the complaint or grievance. Where complaints or grievances involving such LES are referred to FAS CMD, the latter will inform the relevant agency in Canberra, and invite it to work closely with DFAT in addressing the grievance before taking a final decision.

## **11.5 Guidelines for Post Managers and Committee Members**

This document outlines basic guidelines for post managers and those concerned with establishing the facts surrounding an LES complaint or grievance. In view of the different cultural contexts and work cultures at posts, the department recognises there should be latitude to develop procedures which are the most appropriate and effective for each particular work environment. This process is intended to be a more structured approach after informal processes have failed to resolve the matter.

The role of committee members inquiring into a complaint or grievance is to examine all relevant contributing factors to the complaint or grievance. A key objective of the investigation is to consider specific outcomes requested by concerned parties, and make appropriate recommendations. For example, if a complainant seeks an apology, the committee should make a recommendation on whether or not the apology is warranted. Likewise, if one party seeks to have a decision rescinded, the committee should make a recommendation on whether or not this should occur. The committee should endeavour to identify management practices, either by individuals or as part of mission procedures, which may have contributed to the complaint or grievance, or prevented resolution of the complaint or grievance at an earlier stage. If any such practices are identified, the committee should consider recommending action that would prevent a repetition of the circumstances leading to the complaint or grievance.

**Committee Reports** - The committee members must present a report to the HOM/HOP on the complaint or grievance. While the committee has discretion to determine the contents and format of the report, the report should contain recommendations aimed at bringing the parties together to resolve the complaint or grievance. Where possible, it should include recommendations for improving management practices within the mission that may have contributed to the complaint or grievance.

**Committee Members** - A committee should be two officers - one A-based staff and one LES. Both committee members should be independent of both the substance and the individuals involved in the complaint or grievance.

**Timeframe** - Committees will have five working days from their appointment to establish the basis of the complaint or grievance and produce a report to the HOM/HOP.

**Information to be made available** - All relevant documents that pertain to the substance of the complaint or grievance (formal written submissions, e-mail etc.) should be made available to the committee by the HOM/HOP. The committee may also request or accept written accounts of events surrounding the grievance from concerned parties. Inquiry officers may speak with any relevant party to the grievance.

## **11.6 Guidelines for Mediation Meetings**

The purpose of mediation is to bring affected parties together with a view to resolving conflict. It allows an opportunity for the parties to constructively discuss their differences and where possible, come to a consensus about how the issue may be resolved.

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**The role of the chair** - The chair will arrange a time and place for the mediation meeting and prepare a structure for the meeting to follow - i.e. an agenda allowing the opportunity for each party to raise their issues and concerns and to respond to the other party's position. The chair should ensure that both parties are fully aware of, and understand, the complaints and grievance procedures circular and that they have received a copy of these guidelines in advance of the meeting. At the outset, the chair of the mediation meeting should remind the parties of their interdependence, mutual interests, and the positive impact that early settlement can have on the working environment.

The chair should guide the discussion between the two sides with aim of moving towards an agreement.

It is important that the chair remain impartial in the process and understand that their role is one of facilitator only. The parties will have a greater opportunity to resolve their issues if they can be certain that the chair is remaining independent and non-judgmental. At the conclusion of the meeting, it will be the chair's job to write up a mediation report which will cover the outcomes achieved, or will summarise the main discussion points in the event that no outcome was achieved. Copies of the mediation report are to be provided to both parties and to the HOM/HOP (who will forward it to the investigation committee). Where the HOM/HOP is the officer being complained about, the mediation report should be forwarded to FAS CMD.

### **11.7 Tips for participants:**

- Think beforehand about what you want to say. It's important to state clearly what the problem is and how you feel about it.
- Give the other party a chance to tell you their side of the story. Be prepared to relax, listen and take everything in, even if you don't agree with what they are saying. This will help ease any tension and allow for an environment in which a resolution may be reached.
- Try to work on the dispute cooperatively. Work out what you both have to do to resolve the problem. It is a very rare case where one or the other party is faultless.
- Since you're taking the time to work on a problem, take as much time as you need to make sure all aspects of the issue are out in the open. Don't leave anything out, including things that you may find hard to talk about.
- Be sure to consider in advance what your desired outcome is - for example if the basis for the complaint or grievance was inappropriate behaviour on the part of a supervisor, an apology may be your goal. Make your desired outcome clear from the outset.
- Participants may have a "buddy" present in the mediation meeting but must ensure the "buddy" understands they are to observe only and may not contribute to the meeting.



## **11.8 Confidentiality**

Communications in mediation are confidential and should not be disclosed to any party outside of the process without the agreement of both parties. All records are to be marked staff-in-confidence.

**Note:** If a mediation matter is complex or there are concerns about the independence or appropriateness of a proposed chair, it will be at the post's discretion to engage the services of a professional mediator or external party, or to seek local legal advice.