



Title	Grievance and Dispute Resolution Policy
Policy Category	Human Resources
Policy Type	Best Practice
NQF Standard	NQS: Quality Area 4 and 7
Related Legislation	See legislation map

Background and Context

GEKA aims to maintain a harmonious work environment. The purpose of this policy is to provide a means for employees and volunteers to bring problems and complaints concerning their work and wellbeing to the attention of management. This policy aims to assist to resolve grievances effectively, to the satisfaction of all concerned and in both a timely and confidential manner. The rights of employees will be respected in the grievance process.

This policy will be delivered in accordance with the Early Years Management Policy Framework and Operating Guidelines and as determined by the Victorian Early Childhood Teachers and Educators Agreement (VECTEA). Both GEKA and Representatives of GEKA (see Definition) must abide by their obligations under any relevant industrial award or agreement.

The principles that apply to the management of grievances/complaints are:

- everyone has a right to be treated with respect, sensitivity and dignity
- everyone has the right to “due process” (i.e., the person against whom the allegation is made has the right to know what is alleged against them, the right to put their case in reply, the right for any decision to be made by an impartial decision-maker, the right to appeal against the decision)
- grievances/complaints will be treated in confidence and where confidentiality cannot be guaranteed, this will be clearly indicated
- access to counselling for effected persons
- all incidents of discrimination will be dealt with promptly, fairly and with confidentiality
- GEKA is under the legal obligation of a duty of care to provide a safe workplace and any grievances/complaints that are reported must be investigated, sometimes informally in the first instance, and formally if required in order to comply with this duty of care.

Scope

This policy applies to all permanent, temporary and casual employees, including management, along with volunteers, whether employed directly or through other related or unrelated entities including employment and/or labour hire agencies (collectively referred to in this Policy as a GEKA “Representative”).

This policy does not apply to situations where minor differences between Representatives are able to be resolved by amicable discussion.

Further, the policy does not apply where a Representative has a grievance relating to the actual or threatened termination of their employment, or in situations where GEKA has implemented or it is reasonably anticipated that GEKA may commence disciplinary action against a Representative (including an investigation into alleged conduct or performance of a Representative).

Where issues emerge between a GEKA Representative and a parent/guardian (who are in some cases represented on a volunteer Parent Advisory Group), concerns will be addressed through GEKA's Complaints and Grievances Policy for Children's Services.

Definitions

Complainant: refers to the person who has submitted the grievance against another Representative of GEKA.

Grievance/complaint: can be about anything done, or not done, by another Representative/s including members of management, which a Representative believes affects them unfairly or unjustly. A grievance can also relate to discrimination, harassment, or any other employment related decision or behaviour that a Representative believes is unfair, unjust or upsetting.

Manager/Management: means GEKA's managers, supervisors, leaders, team leaders (whichever are relevant) and all Representatives with supervisory responsibilities.

Representative: refers to paid staff, volunteers/students on work experience placements.

Respondent: means the person against whom a grievance has been raised.

Without reasonable cause: means that a claim is made without there being any real reason, basis in fact(s) or purpose. Such claims include allegations that are:

- so obviously untenable that the claim cannot possibly succeed
- manifestly groundless and/or
- insufficiently particular.

Vexatious means that:

- the main purpose of a claim is to harass, annoy or embarrass the other party or
- there is another purpose for the grievance other than the settlement of the issues arising in the claim (or response).

Victimisation: is seen to occur when a Representative who has made a grievance/complaint experiences a negative consequence as a result of raising the grievance/complaint.

Policy

1. Resolving Grievances

Representatives can resolve grievances in a number of ways, either via:

- a. Speaking to the person directly involved in the grievance

The first preference, where possible, is to resolve the matter informally through discussions between the parties

- .
 - b. Speaking to Representative's own direct manager

The second option, if unable to speak to the person directly or unable to reach an outcome that is acceptable to both parties, is to seek support from the complainant's own line manager to enable the parties to express their concerns and perspectives, and guide the parties to a resolution.

Discussions will be held in good faith between the complainant and their manager, to genuinely resolve the grievance at the workplace level. The respondent will be given full details of the complaint against them, and they will be given the opportunity and a reasonable timeframe to respond before the process continues in line with relevant procedures.

c. Make a formal complaint

Representatives can lodge a formal complaint at any time. However, a formal complaint is typically made when informal attempts to resolve the matter have been unsuccessful.

All formal complaints are submitted to the complainant's direct manager, or if the grievance relates directly with the complainant's manager, to the appropriate member of the senior leadership team or CEO. If the grievance is against the CEO or a member of GEKA's Board of Directors, the complaint must be made in writing and submitted to the Board chairperson at chair@geka.org.au

Where a formal complaint has been raised with GEKA, an investigation will be undertaken in accordance with Section 2. The process to be used by the Board chairperson will be the same as that outlined in this Policy, except that the chairperson will be responsible for managing the grievance.

2. Investigation of Grievance

Broadly speaking, the investigation will focus on working with the parties to resolve the issue by:

- understanding the respective concerns of parties
- assessing and articulating the potential impact of the issue, e.g. on Representatives health and wellbeing and on continuity of quality service provision
- consulting with other relevant internal and/or external stakeholders to understand the issue and its impact.

Once a formal grievance/complaint is received, the CEO must be immediately informed before an investigation commences. The investigation will proceed in a timely manner and no more than seven days after the grievance/complaint has been submitted.

At any time during the grievance process, an independent consultant may be involved in the discussions, at GEKA's discretion. Their role may involve investigating the grievance, providing recommendations to the CEO about resolving the matter and/or providing independent mediation between the parties.

The senior manager and/or external consultant undertaking the investigation may interview all parties involved, including witnesses. All Representatives are expected to participate and make themselves available for the investigation processes.

The senior manager and/or external consultant will manage the grievance through to a final resolution, taking it to the CEO for final arbitration, if necessary.

During the grievance process, the complainant and respondent are entitled to have a support person present. The support person must not act as an advocate for the Representative.

A Representative may appoint a recognised independent consultant, such as a union representative, for the purpose of settling disputes related to matters arising under the VECTEA or the National Employment Standards.

3. How will the Grievance be Handled?

The grievance will be treated with the utmost confidentiality and protect the complainant from any reprisal. It is important that all involved Representatives maintains confidentiality.

All complaints (informal and formal) will be taken seriously, and all parties involved are treated fairly and impartially.

Each complaint will be handled in as short a time as possible in each circumstance.

While the parties are trying to resolve the dispute:

(a) a Representative must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and

(b) a Representative must comply with a direction given by GEKA to perform other available work at the same workplace, or at another workplace, unless:

- (i) the work is not safe; or
- (ii) applicable occupational health and safety legislation would not permit the work to be performed; or
- (iii) the work is not appropriate for the Representative to perform; or
- (iv) there are other reasonable grounds for the Representative to refuse to comply with the direction.

3.1 Positive Duty

GEKA has a positive duty to all Representatives to ensure that they are safe within the workplace. If an incident has occurred where a complaint has been submitted that contains unlawful behaviour, such as sexual harassment, violence, bullying or drug use, GEKA is required to act regardless. The complainant will be notified of the organisation's decision to act and will be informed of the relevant process and practices.

3.2 Victimisation

Representatives must not be victimised for proceeding with a grievance/complaint.

3.3 Vexatious Claims and Claims Made Without Reasonable Cause

Representatives must not raise allegations which are vexatious or without reasonable cause (see Definitions).

Where a claim is determined as vexatious or made without reasonable cause, the complainant will receive written notification of the determination, which will include reasons as to why the complaint was deemed vexatious and/or without reasonable cause.

Making false or malicious complaints will be regarded as a serious disciplinary offence, which if proven, may result in disciplinary action being taken.

At no time is any reference to any complaint to be referred to in a public forum of any kind.

4. Possible Outcomes to a Grievance

Outcomes can include (but not restricted to) any or a combination of the following:

- Any mutually acceptable resolution arising out of the informal resolution process
- Attendance at training and education programs
- Counselling of the respondent
- Disciplinary action against the respondent
- Official warning noted on the respondent's personnel file
- Formal apology by the respondent
- Stand down pending investigation
- Employment termination in the event of gross misconduct

- Disciplinary action against the complainant if after investigation, the complaint is found to be vexatious or malicious and not upheld.

5. Appeals

If the outcome does not meet the satisfaction of one or more parties, a Representative may make a request to the CEO in writing for a review be undertaken, with all parties involved at any stage thereafter. The CEO will determine the best person to lead the review process; it will not be undertaken by the same person who led the initial investigation.

Subsequent appeals may be lodged to the CEO and it is at his or her discretion whether there are reasonable grounds for a subsequent investigation to be undertaken.

If a resolution to the dispute cannot be reached at the workplace level via the pathways outlined in this policy, a party to the dispute may refer the matter to the Fair Work Commission.

The Fair Work Commission may deal with the dispute in two stages:

- (a) The Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
- (b) if the Fair Work Commission is unable to resolve the dispute at the first stage, the Fair Work Commission may then:
 - (i) arbitrate the dispute; and
 - (ii) make a determination that is binding on the parties.

The parties to the dispute agree to be bound by a decision made by the Commission. However, an appeal may be made against the decision in circumstances permitted under the Fair Work Act.

Where the dispute relates to significant issues affecting service quality or the continuity of GEKA managed services, the Department of Education and Training (DET) can be referred to when all other dispute resolution processes have been exhausted (i.e. GEKA's grievance and dispute resolution processes and other independent dispute resolution processes, such as through the Fair Work Commission). If DET becomes involved in a dispute, DET's regional office will lead the process in close consultation with central office. In cases where a mutually agreed solution cannot be found, DET will make a final determination.

Approvals and Revision

Date	Version	Author	Revision Description
Q2 2018	1.00	GEKA Management	New Policy
Q1 2021	5.00	GEKA Management	Annual Review