

	FP – 004.1 Formal Grievance and Dispute Resolution Procedure	Date Approved: 15 March 2022 Authors: J Hamilton A Mackenzie
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1. PURPOSE AND SCOPE

1.1. This procedure constitutes the Formal Grievance and Dispute Resolution Procedure referred to in section 3.1 of the Grievance and Dispute Resolution Policy approved by the Board of Scouts WA, and must be read and applied together with that Policy. It provides a process intended to resolve personal disputes and grievances which may occur in Scouts WA amongst volunteers.

1.2. All parties are reminded of their obligations and responsibilities under the Scouts Australia National Adults in Scouting Policy, Code of Conduct, Code of Ethics, Scout Law, and the Mutual Agreement terms contained in the Scouts WA A1 Adult Membership Application Form as amended from time to time.

The Association acknowledges the principle of 'whistle-blower' and will endeavour to protect complainant(s) from being victimised during or after the process. Any victimisation relating to a complainant may result in an investigation which may lead to disciplinary action.

1.3. These procedures shall not apply if the subject of the grievance or dispute directly concerns:

a) The issuing or revocation of a Certificate of Adult Appointment (CoAA) and/or Certificate of Proficiency (COP) and/ or Membership of the Association (which are covered under Regulation 4 of the Association);

b) Criminal complaints:

i. If the allegation relates to any form of conduct towards a youth member such as physical abuse, emotional abuse, sexual abuse, grooming, exposure to domestic violence or any other form of child abuse as defined in the Child Protection Policy and Prescribed Procedures it must be reported to the Western Australian Police for further direction before any further action under this policy may be followed.

ii. If the allegation is of a nature which might constitute a breach of criminal law (other than conduct covered by 1.3.c.i), then the person reporting it should be encouraged to also report the matter to the Western Australian Police. This would not necessarily preclude a Scouts WA investigation being conducted in regard to possible breaches of the Code of Conduct. Any allegation which may be a breach of criminal law must also be reported to Scouts WA Branch for further direction, before any further action either Formal or Informal under this policy may be continued.

c) Complaints that are:

i. Historical as in older than 12 months when they occurred (unless it relates to a child protection matter).

ii. Anonymous: If the complainant will not identify themselves, due process cannot occur and therefore the matter will not be accepted.

iii. Third Party: If the complaint comes via a third person and not the aggrieved person directly. (The exception being a parent acting on behalf of a child).

iv. Malicious, vexatious, defamatory or slanderous: if, on investigation, the complaint is found to be in these categories, the matter at hand will not be progressed.

1.4. If an allegation is made against an Adult in Scouting, the Group Leader (GL), the District Commissioner (DC), or Regional Chief Commissioner (RCC), subject to the

organisational location of the Adult in Scouting, will make a recommendation to the Chief Commissioner (CC) for a decision on whether the Adult in Scouting is to, for the duration of the enquiry process:

- a) Remain in their current role;
- b) Be temporarily placed in another role; or
- c) Be stood down from Scouting duties for the duration.

1.5. Chief Commissioner's Discretion: At any time, the Chief Commissioner may, at their own initiative and in consultation with the Branch Leadership Team (or members thereof) assume responsibility for the review of an allegation. The Chief Commissioner may then deal with the allegation as a discretionary matter.

1.5.1. The factors which may cause the Chief Commissioner to assume responsibility for the review of an allegation, or for the allegation to be referred to the Chief Commissioner, include but are not limited to the following:

- a) Where dealing with the complaint in accordance with management procedures would disclose the identity of a person or of confidential information in circumstances where that identity or information must or should reasonably be kept confidential;
- b) The seriousness of the complaint;
- c) The extent of future harm to any person or to the Association if the allegation were to be true.

1.5.2. If the allegation/grievance refers to an issue between a member of Scouts WA and a Scout member from another state/country, the Chief Commissioner has the right to consult with the Australian Chief Commissioner and refer to National Policy and Procedures.

1.5.3. Discretionary Procedures: When dealing with an allegation as a discretionary matter, the Chief Commissioner may, in their unfettered discretion and without any obligation to give notice, to permit a hearing, or to give reasons:

- a) Withdraw a Leader's Certificate of Adult Appointment (CoAA);
- b) Withdraw a Leader's Certificate of Proficiency (CoP);
- c) Withdraw the membership of the Adult in Scouting;
- d) Direct the Adult in Scouting to undertake refresher training and/or development;
- e) Direct the Adult in Scouting that he/she is to conduct Scouting activities only under supervision (this could be for a designated period);
- f) Advise the Adult in Scouting that he/she is to be placed in a different role within their current or a different section; or
- g) Refer the matter for determination in accordance set out in paragraphs 1.3 and 1.4.

1.5.4. Right of appeal: When dealing with an allegation as a discretionary matter, if the Chief Commissioner has withdrawn the Certificate of Adult Appointment (CoAA) and/or Certificate of Proficiency (COP) and/or the Certificate of Adult Membership (CoAM), the recipient of such notice is still entitled to a right of appeal, in compliance with Regulation 4.2.1 and 4.2.2 to the Rules of the Association.

1.6. Subject to the Privacy Policy (which permits the disclosure of personal information in limited circumstances):

- a) Any information of a personal nature provided by a party to a formal or informal grievance or dispute process shall remain confidential to the parties to that process, any decision-maker and any Reviewer;

- b) The Decision-maker or Reviewer has the discretion to protect the identity of a Youth Member where this deemed to be in the best interests of the Youth Member

2. DEFINITIONS

For the purpose of this procedure:

- 2.1. "Grievance" means any problem or condition related to Scouts WA activities which a member of Scouts believes to be unfair, inequitable, and discriminatory or a hindrance to their effective operation.
- 2.2. "Dispute" means a situation where two or more individuals or parties within Scouts WA cannot agree on a particular matter or issue.
- 2.3. "Timely Manner" means being implemented or happening at the appropriate or proper time.
- 2.4. "Chief Commissioner's Panel" means a decision-making body comprised of three persons (other than the Chief Commissioner) who in the Chief Commissioner's opinion have sufficient knowledge, skills and expertise to resolve the grievance or dispute. The composition of the panel will reflect diversity of age, gender and role and will either include the Deputy Chief Commissioner Member Support or the Assistant Chief Commissioner, or their nominated delegate.
- 2.5. "President's Panel" means a decision-making body comprised of three persons (other than the President) who in the opinion of the President can review the decision concerning the grievance or dispute impartially, and have sufficient knowledge, skills and expertise to do so.
- 2.6. "Board Chairman's Panel" means a decision-making body comprised of three persons (other than the Board Chairman) who in the opinion of the Chairman of the Board can resolve the grievance or dispute impartially, and have sufficient knowledge, skills and expertise to do so.
- 2.7. "Decision-maker" means
 - a) The Group Leader for disputes or grievances between Members and non-members of that Group, including Youth Members, Leaders, Adult Helpers, and Parents. Notification to Branch of Grievances or Disputes which are settled at Group level is not required.
 - b) The District Commissioner for disputes or grievances concerning:
 - i. Adult Members at a District level
 - ii. Adult Members at a Group level which have not been resolved by the Group Leader or the District CommissionerNotification to Branch of Grievances or Disputes which are settled at District level is not required.
 - c) The Chief Commissioner's Panel for Grievances or Disputes concerning:
 - i. A Regional Chief Commissioner
 - ii. A Deputy Chief Commissioner
 - iii. An Assistant Chief Commissioner
 - iv. A Branch Commissioner
 - v. A Branch Adviser
 - vi. A Branch Leader
 - vii. A District Commissioner
 - viii. Adult members at a Region level which have not been resolved.
 - d) The President's Panel for Grievances or Disputes concerning:

- i. Conduct of the Board or its committees, including matters of governance
 - ii. Conduct of a member of the Board (excluding the Chairman, Chief Commissioner and Honorary Treasurer)
 - iii. The conduct of any recognised Branch entity that exists to deliver and/or support Scouting in Western Australia
 - e) The Board Chairman's Panel for Grievances or Disputes concerning:
 - i. Matters of governance, excluding the Board
 - ii. Conduct of senior office holders, including the Chief Commissioner, Vice President, President and Honorary Treasurer
 - f) The Board in the absence of the Board Chairman for Grievances or Disputes concerning the Board Chairman
- 2.8. "Decision-maker" means
 - a) The District Commissioner for any decision made by the Group Leader
 - b) The Regional Chief Commissioner for any decision made by the District Commissioner
 - c) The Chief Commissioner for any decision made by the Regional Chief Commissioner or the Chief Commissioner's Panel
 - d) The President's Panel for any decision made by the Board Chairman or the Board
 - e) The President for any decision made by the President's Panel
- 2.9. "Can't" or "cannot" means an inability to do something, the denial of permission to do something, incapacity to do or attain something.
- 2.10. Procedural Fairness: Procedural fairness (also known as 'natural justice') requires that a person whose interests are to be affected by a decision (whether adjudicative or administrative) receive a fair and unbiased hearing before the decision is made. Procedural fairness is concerned with the procedures used by a decision maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. Scouts WA consider it highly likely that a decision maker who follows a fair procedure will reach a fair and correct decision.
- 2.11. "Vexatious" complaint means a complaint meant to bother, or embarrass, or cause legal expense to the Association or an individual. A vexatious complaint is a form of abuse as it has the power to hurt or disrupt another person's life and may result in psychological injury.
- 2.12. "Certificate of Adult Appointment" means a certificate issued to a qualified adult member, which permits them to fulfil the role designated on the certificate.
- 2.13. "Certificate of Proficiency" (CoP) means a certificate issued to an adult member, which indicates the completion of the relevant training pathway. This Certificate specifies the role that an adult members is eligible to be appointed in, as either a Youth Program Leader or Program Support Leader.

3. INFOMAL RESOLUTION OF GRIEVANCES AND DISPUTES

- 3.1. It is the responsibility of all members of Scouts WA to ensure that they attempt to resolve disputes or grievances informally where appropriate.
 - a) All parties will seek to resolve concerns in a respectful, constructive and reasonable way that reflects the Scouts Australia Code of Conduct and Code of Ethics.
 - b) All parties will endeavour to resolve concerns in a fair and timely manner. Refer Policy Estimated Timeline (3.2).

- c) All parties will be given opportunity to know the substance of the concerns and be able to respond.
- d) The aggrieved retains the right to withdraw their grievance.

3.2. Estimated Timeline

Process	Maximum Duration (Days)
Delegate Assessment (initial complaint)	7
Panel Review Period	30
Adults right of reply period	14
Delegate Evaluation (determination of Panel Recommendation) and final advice to adult.	14
SUB TOTAL	65
Appeal request	14
CC Appeal Review period	30

4. FORMAL PROCESSES AND RESOLUTION OF GRIEVANCES AND DISPUTES

4.1. Process for commencing formal resolution

Where the grievance or dispute cannot be resolved informally, a member may give written notice to the Decision-maker (or, where the Decision-maker is a panel, the officer by whom the panel was convened) of their intention to have the grievance or dispute formally resolved. The written notice must include:

- a) A concise statement of the facts surrounding the grievance or dispute;
- b) A summary of previous (informal) actions taken
- c) Copies of any relevant documents;
- d) Identification of the specific rights the member believes have been violated;
- e) The remedy that is sought

4.2. The Decision-maker shall provide a copy of the written notice to any parties to whom the grievance or dispute directly relates.

4.3. The grievance or dispute shall be resolved by the applicable Decision-maker.

4.4. A party to a grievance or dispute resolution process shall have the right to a support person at any stage of the process, at their own cost. The support person may be present for the emotional support of the party but is not to act as an advocate and speak on behalf of the party, unless the party has a documented disability which requires the support person to speak on their behalf in order to ensure that the party receives a fair hearing.

4.5. If the grievance or dispute involves a Youth Member, the Youth Member must have the assistance of an adult nominated by the Youth Member and approved by the Youth Member's parents or legal guardian.

4.6. Each party must provide a written submission concerning the grievance or dispute to the Decision-maker.

4.7. The Decision-maker must provide to each party a copy of the written submission against them.

- 4.8. The Decision-maker must give each party a reasonable opportunity to make an oral submission in the presence of each other party.
- f) a) If an Adult in Scouting is unable or refuses to participate in an interview within an appropriate timeframe as stipulated by the Decision-maker (Refer to Estimated Time Line 3.2), then a show cause letter may be issued in lieu of an interview. The show cause letter must allow at least seven (7) days for the recipient to be able to respond in writing.
 - g) b) If the recipient of a show cause letter fails to respond within seven (7) days in writing, then the Decision-maker will take their non-response as acceptance of the resulting Decision which will be made in their absence, and the recipient thereby voids any rights of appeal against that Decision.
 - h) c) If the show cause response defines issues that will prevent due process occurring in a timely manner, the Decision-maker will make recommendations based on the nature of the grievance as to whether the Organisation will pursue the matter, make a Decision or dismiss the grievance.
- 4.9. The Decision-maker may conduct an investigation through a confidential process of:
- a) Ascertaining from the complainant the substance of the grievance, so as to determine what issues in relation to the grievance are of sufficient substance to require investigation;
 - b) Obtaining relevant information, from any relevant source, which can be considered by the Decision-maker;
 - c) Taking any necessary steps to obtain relevant facts;
 - d) Seeking a response to the substance of the grievance from the person(s) whose alleged conduct is of concern;
 - e) Seeking confidential testimony from any witnesses relevant to the investigation;
 - f) Seeking expert assistance where necessary and relevant.
- 4.10. Any grievances raised other than those in good faith or without reasonable grounds may be assessed as vexatious and will be dismissed. The membership of a person who has lodged a complaint which is assessed as vexatious may be subject to review under Regulation 4 of the Association.

Complaints may be considered to be vexatious where they meet one or more of the following criteria:

- a) The complainant persists in pursuing a complaint where the procedure for handling the complaint has been fully and properly implemented and exhausted.
- b) There is repeated unwillingness to accept documented evidence given as being factual, denying receipt of an adequate response in spite of correspondence answering their complaint, or not accepting that facts can sometimes be difficult to verify.
- c) There is regular and continuous focus on a trivial matter to an extent which is out of proportion to its significance.
- d) The complainant persistently raises new issues, unassociated issues or seeks to prolong contact by raising further concerns or questions whilst the complaint is being addressed. (Care should be taken to not disregard pertinent new issues which are significantly different to the original complaint.
- e) The complainant makes unreasonable demands which impose a significant burden on the Association and where the complaint clearly is designed to disrupt or annoy or has the effect of harassing another person or can otherwise be characterised as obsessive or manifestly unreasonable.
- f) The complainant makes repetitive complaints and allegations which ignore the replies previously supplied.

Consideration will also be taken in regard to the complainants' actions which could be seen as defamatory or slanderous.

- a) Generally, whether something is defamatory is to be determined on the basis of its 'natural and ordinary meaning' and the impact to the reputation of an individual.
 - b) The Defamation Act requires the aggrieved person to establish that material has been communicated (either in writing or orally) about them to a third person; that the communication has caused the third person to form a reduced opinion of them; and that the defamatory material has caused, or is likely to cause, serious harm to their reputation.
 - c) It does not matter whether or not the publisher of the material intended to refer to or disparage a particular person, it is generally enough if the words reasonably lead persons acquainted with the complaining person to believe that person is referred to; and that the material discredits the persons character and reputation.
 - d) It is not enough to establish that the publication caused only slight or insubstantial harm; if the matter is to be referred to as defamation or slander, it must be considered as 'serious harm' to establish cause of action. If the matter is not at this level of impact, it will be referred back to the definitions of vexatious behaviour.
- 4.11. If the appointed panel is unable to reach a decision in a timely manner, the panel should submit a 'show cause' report to the convening officer explaining the factors causing the delay. If the problems are due to difficulties arising from within the panel then the convening officer may dissolve that panel and appoint a new panel immediately.
- 4.12. All decisions shall be recorded in writing by the Decision-maker, together with the reasons for the decision, and copies provided to the parties involved. The decision advice letter may be individual to each party and aspects of the decision may remain confidential to each party.
- 4.13. A copy of the written decision shall be provided to the Executive Manager to be recorded in a register of disputes.
- 4.14. Actions and recommendations may include, but are not restricted to:
- a) The complainant gaining a better understanding of the situation and no longer being aggrieved.
 - b) The complainant receiving a verbal or written apology
 - c) Training and performance alignment
 - d) Mediation
 - e) Disciplinary action(s)
 - f) Termination of Membership/ Certificate of Adult Appointment/ Certificate of Proficiency
- 4.15. The aggrieved retains the right to withdraw their grievance.

5. FORMAL PROCESSES AND RESOLUTION OF GRIEVANCES AND DISPUTES

- 5.1. If any party involved in a grievance or dispute wishes to have a decision concerning the grievance or dispute reviewed, there is a right for one appeal only. The party may, within seven calendar days of being notified of the decision, appeal in writing to the applicable Reviewer.
- 5.2. The review of a decision is not confined to matters that were before the Decision-maker. New material may be considered, irrespective of whether or not it existed during the course of the initial process.

- 5.3. A party to a review process shall have the right to a support person at any stage of the process, at their own cost. The support person may be present for the emotional support of the party but is not to act as an advocate and speak on behalf of the party, unless the party has a documented disability which requires the support person to speak on their behalf in order to ensure that the party receives a fair hearing.
- 5.4. The Reviewer shall consider:
- a) The parties' written submissions to the Decision-maker;
 - b) The decision and the reasons for the decision;
 - c) Any new material which a party wishes to put before the Reviewer, including any further written submissions.
- 5.5. The parties shall not have the right to make any oral submissions to the Reviewer.
- 5.6. The Reviewer may:
- a) Confirm the decision; or
 - b) Reject the decision and substitute for that decision the decision the Reviewer considers ought to have been made.
- 5.7. All review decisions shall be recorded in writing, together with the reasons for the decision, and copies provided to the parties involved as appropriate.
- 5.8. A copy of the written review decision shall be provided to the Executive Manager to be recorded in a register of disputes.
- 5.9. The decision of the Reviewer shall be final. Grounds for appeal are based solely on due process not being adhered to. There is a right for one appeal only.
- There is no procedure for 'escalation' of a complaint once the original complaint has been examined and the outcome known.

6. APPEAL OF THE PROCESS

- 6.1. If any party involved in a grievance or dispute believes that, after the completion of a review as outlined in clause 5, any part of the process only was not followed, the party may, within seven calendar days of being notified of the decision of the Reviewer, notify their wish to appeal in writing to the Reviewer one position up the standard chain of command.
- 6.2. Should the process be found to be sound then the matter is deemed closed and as per clause 5.9, the decision of the original Reviewer is final.
- 6.3. Should the process be found to not be sound then the Reviewer responsible for the appeal will conduct another review, as per clause 5. The decision of any such review is final and there is no further course of review or appeal available to any party.
- 6.4. All appeal decisions shall be recorded in writing, together with the reasons for the decision, and copies provided to the parties involved.
- 6.5. A copy of the written appeal decision shall be provided to the Executive Manager to be recorded in a register of disputes.

7. REGISTER OF DISPUTES

- 7.1. The Executive Manager will on behalf of Scouts WA retain a copy of the decisions for all formal grievances and disputes in a register of disputes.
- 7.2. The register will be reviewed periodically by the Audit and Governance Subcommittee of the Board of Scouts WA in order to inform ongoing policy and risk management recommendations.
- 7.3. All Board or Committee dealings with the register of disputes will be considered as confidential matters for the purposes of meeting procedures and minute taking.

8. CONFLICT

- 8.1. A Decision-maker or Reviewer must be substituted for a Scouts WA office holder of an equivalent or higher level where a Conflict of Interest exists, as defined by the Conflict of Interests Policy.

9. REVIEW

- 9.1. This procedure shall be reviewed every three years by the Policy and Procedures Committee (PPC), or earlier if directed by the Board. The PPC shall provide a report to the Board, together with any recommendations arising from the review.

10. APPROVAL

This procedure was approved by the Board of Scouts WA on 15 March 2022.