



## Grievance Policy Educators and Staff

### Relevant Legislation

Federal and NSW State Equal Opportunity Legislation

Education and Care Services National Law Act 2012

Education and Care Services National Regulations 75(b)(i); 77; 8185; 86; 93; 94; 168 (2)(i); 169 (2)(d); 170-171

National Quality Standard for Early Childhood Education and Care and School Age Care Element 2.3.1; Element 4.2.1; Element 4.2.3; Element 7.2.1; Element 7.2.2;

Fair Work Act 2009.

Tathra Children's services Collective Teachers Agreement 2010

### Introduction

At Tathra Preschool we seek to promote equitable and fair workplace employment practices.

As an employer we have an understanding of Equal Employment Opportunities legislation; the Fair Work Act and other relevant award/enterprise agreement conditions; and the requirements contained within the Education and Care Services National Law which provide a framework for this policy.

### Policy Goals

Tathra Preschool aims to foster positive relations between all educators, staff, volunteers and management. Every employee or volunteer has the right to a harmonious and supportive working environment.

Solutions will be sought to resolve all disputes, issues or concerns in a transparent, fair, prompt and positive manner which recognises the importance of:

- ❖ Procedural fairness and natural justice;
- ❖ Ethical conduct;
- ❖ A culture free from discrimination and harassment; and
- ❖ The opportunity for review and further investigation.
- ❖ Confidentiality

Any issue in regard to an employee's work performance or conduct will be addressed in compliance with all Fair Work Act codes and employee rights. The employee will be provided with opportunities to respond to any allegations, and to overcome any unsatisfactory performance.

## Strategies: What will we do?

### What is a grievance?

A grievance is a statement by a staff member that he/she has a work related problem, concern or complaint. The grievances may be, for example:

- A complaint of harassment or bullying in the workplace
- Allocation of work or developmental opportunities
- Workplace communication and interpersonal conflict
- Changes in work processes or location
- Interpretation, application or operation of an industrial award/agreement

### The Nominated Supervisor will ensure:

- Every employee is provided with clear written guidelines detailing grievance procedures.
- All grievances will be dealt with promptly and confidentially in a manner that:
  - Values the opportunity to be heard;
  - Promotes conflict resolution;
  - Encourages the development of harmonious relationships;
  - Ensures that conflicts and grievances are mediated fairly; and
  - Is transparent and equitable.
- All employees are provided with full guidelines about their roles and responsibilities, and regular reviews of their performance are carried out in accordance with our Appraisal Policy.
- All confidential conversations/discussions will take place in a quiet area away from children, parents and other educators/staff, and confidentiality of individual issues will be maintained.
- Where possible all grievances will be discussed directly with the person concerned. If a resolution is not found then the relevant procedures for dealing with the grievance will be followed
- In the case of wrongful allegations, all records pertaining to these allegations will be taken from the staff member's file and destroyed.

### Grievance Procedures

A grievance should be raised as soon as possible with the Nominated Supervisor, either verbally or in writing. The statement should include:

- What the grievance is about
- Who is involved in the grievance
- What is the desired outcome.

It is expected that all grievances are lodged with the Nominated Supervisor unless this person is a party to the grievance or you have personal reasons for not lodging the grievance with this person. In such cases, the grievance may be lodged with President of the Committee. In addition, advice may be sought from the relevant union, if the matter is in relation to industrial awards/agreements and working conditions or Employment Assistance Program.

*The following procedures are to be followed where a grievance arises:*

### **Step 1**

The educator/staff member should endeavour to resolve the grievance with concerned parties in the first instance, if appropriate. See exception below.

### **Step 2**

The educator/staff member raises the grievance with the Director, if it cannot be resolved.

### **Step 3**

Investigating the grievance, the Director, will interview the staff member, fill in a complaint form and seek clarification.

### **Step 4**

The Director will interview the educator/staff member complained about or any other parties referred to as part of the investigation. Any written grievances are to be provided to the educator/staff member(s) concerned.

### **Step 5**

Staff members are entitled to have their union representative or other support person in attendance.

### **Step 6**

If deemed necessary, the Director may interview the staff member lodging the grievance and the staff member complained about simultaneously in order to resolve the grievance to the satisfaction of both/all parties.

### **Step 7**

If the matter cannot be resolved at this level, the grievance will be referred to the President of the Committee. The parties will be advised of such action.

Staff should note that any grievances are not to be raised with parents or any other external parties. A breach of this provision could lead to disciplinary action. The exception is where the staff member seeks the assistance of his/her union representative or other support person non-staff member (to maintain confidentiality).

During the course of any grievance being raised or the subsequent investigation of the grievance, all staff members concerned should adopt an approach of genuinely addressing the problem with a view to resolving the matter.

During the period of grievance resolution, all staff members concerned must ensure that they continue to perform their duties in a professional and courteous manner.

## **Confidentiality**

The confidentiality and integrity of all educators/staff members concerned will be maintained. All educators/staff members involved have a responsibility to ensure that information regarding the grievance is treated with the utmost confidentiality and it is not to be discussed with any party not directly involved with the resolution of the grievance.

## **When is a grievance resolved?**

A grievance is resolved when the staff member(s) agree on a course of action which should correct the grievance and encourage harmony in the workplace.

Should the matter still not be resolved it may be referred by the parties to the NSW Industrial Relations Commission for settlement.

## **Employee's rights**

Under the Fair Work Act 2009, employees under the national workplace relations system have defined rights. General protections within the Act aim to protect employees from adverse actions in breach of the following rights:

- workplace rights - such as the entitlement to benefit under workplace law (i.e. award or enterprise agreement) or the entitlement to make a complaint or inquiry in relation to their employment;
- industrial activities - such as the entitlement to take industrial action or to belong or not belong to a union or employer association;
- other protections - such as freedom from discrimination (on the grounds of a person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin) or the entitlement to take a temporary absence from work due to illness or injury;

The employer will not take action against an employee that will compromise the employee's rights under the Fair work Act 2009.

If an employee believes that their termination of employment or treatment as an employee is a breach of their general protections under the Fair Work Act, they may seek assistance from Fair Work Australia. Applications relating to general protections where the employee has been dismissed must be lodged with Fair Work Australia within 60 days of being dismissed.

## Unfair Dismissal

Tathra Preschool will ensure the employee is not dismissed in a manner that is 'harsh, unjust or unreasonable' by conducting an unfair dismissal check prior to termination. This check will include and ensure:

- There was a valid reason for the dismissal related to the employee's unsatisfactory conduct, performance or capacity to do the job
- The employee was clearly warned that they were not doing the job properly and would have to improve their conduct or performance, or otherwise be dismissed;
- The employee was provided a reasonable amount of time to improve his/her performance or conduct
- The preschool offered to provide the employee with training or another opportunity to develop his or her skills;
- The employee did not improve their performance or conduct to the required standard;
- The employee was notified of the reason for dismissal and given an opportunity to respond;
- The employee was given the opportunity to have a support person present to assist in discussions relating to the dismissal;
- A record of all warnings made to the employee or discussions on how his/her conduct or performance could be improved;
- The employer used the full expertise that the enterprise was able to provide to ensure a fair dismissal process.
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If an employee believes that their employment has been terminated unfairly, they may apply to Fair Work Australia for assistance to resolve the matter through conciliation. Applications relating to a dispute over unfair dismissal must be lodged with Fair Work Australia within 14 days of dismissal.

## Evaluation

Whenever a grievance is addressed the process will be analysed to determine whether policy revision or development is required.

The grievance policy for educators/staff is reviewed and evaluated annually or whenever an incident occurs, to ensure the processes are clear and non-discriminatory

### Procedures and Forms

- Complaints Form
- ECA Code of Ethics
- Code of Conduct
- Job Description
- Training and professional development plans

### Links to other

- Confidentiality and Privacy Policy
- Appraisal Policy

## Policies

- Enrolment and Orientation
- Payment of fees
- Guiding Children's Behaviour Policy
- Staff Induction Policy
- Appraisal Policy
- Staff Immunisation Policy
- Grievances and Complaints Policy
- Interaction with Children Policy
- Arrivals and Departures Policy
- First Aid Policy
- Emergency Procedures Policy
- Sun Protection Policy
- Water Safety Policy
- Health Hygiene and Infection Control
- Incident, Injury, Trauma, Illness Policy
- Medication and Medical Conditions
- Work Health and Safety Policy
- Nutrition Policy
- Staff ,Student, Volunteer Induction Policy
- Child Protection Policy

## Sources and References

DEEWR child Care Services Handbook 2011-2012. (Department of Education, Employment and Workplace Relations). ; *Section 6.7 What are my service's responsibilities to educators?* -[www.deewr.gov.au/EarlyChildhood](http://www.deewr.gov.au/EarlyChildhood)

Fair Work Australia - Best Practice Guides to help employers and employees achieve happier, fairer and more productive workplaces.-  
[www.fairwork.gov.au/resources/best-](http://www.fairwork.gov.au/resources/best-)

Fair Work Australia - Small Business Fair Dismissal Code - [www.fwa.gov.au](http://www.fwa.gov.au)

Privacy Law. Access website [www.privacy.gov.au/law](http://www.privacy.gov.au/law)

Early Childhood Australia (ECA). Code of Ethics. Access website:  
[www.earlychildhoodaustralia.or.au/codeofethics](http://www.earlychildhoodaustralia.or.au/codeofethics)

DEEWR (2009). Belonging Being and Becoming: The Early Years Learning Framework for Australia.[www.deewr.gov.au](http://www.deewr.gov.au).

Community child Care Co-operative : NQF in a Box: [www.cccnsw.org.au](http://www.cccnsw.org.au)

National PSC Alliance : [www.pscalliance.org.au](http://www.pscalliance.org.au)

## Date Adopted

December 2012

## Review Date

2017 Updated  
2021 Review or when  
procedure, practice or  
legislation changes.