

## Individual Rights and Mutual Responsibilities of the Parties to a Complaint

For the IGT to ensure that all complaints are dealt with fairly, efficiently and effectively and that occupational health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

### Individual rights<sup>i</sup>

#### ***Complainants have the right:***

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate<sup>ii</sup>
- to a reasonable explanation of the organisation's complaints procedure, including details of the confidentiality, secrecy and/or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>iii</sup>
- to a fair hearing<sup>iv</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>v</sup>
- to be given reasons that explain decisions affecting them
- to at least one right of review of the decision on the complaint<sup>vi</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>vii</sup>

#### ***Team member have the right:***

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>viii</sup>
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment<sup>ix</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>x</sup>

#### **Subjects of a complaint have the right:**

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by team member of the IGT
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>xi</sup>
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>xii</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

## Mutual responsibilities

### Complainants are responsible for:

- treating team member of the IGT with courtesy and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from the team member of the IGT to assist them in doing so
- providing to the best of their ability the IGT with all the relevant information available to them at the time of making the complaint
- being honest in all communications with the IGT
- informing the IGT of any other action they have taken in relation to their complaint<sup>xiii</sup>
- cooperating with the team member who are assigned to assess/ investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, the IGT may consider placing limitations or conditions on their ability to communicate with team member or access certain services.

The IGT has a zero tolerance policy in relation to any harm, abuse or threats directed towards its team member. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>xiv</sup> Any such conduct of a criminal nature will be reported to police and in certain cases legal action may also be considered.

### Team member are responsible for:

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>xv</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>xvi</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>xvii</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>xviii</sup>
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants and any people the subject of complaint with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants<sup>xix</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>xx</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If a team member fail to comply with these responsibilities, complainants may complain to the DoC and escalate complaints thereafter to the GM or DIGT as may be appropriate.

### Subjects of a complaint are responsible for:

- cooperating with the team member of another agency who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction<sup>xxi</sup>
- providing all relevant information in their possession to the investigating agency or its authorised team member when required to do so by a properly authorised direction or notice

- being honest in all communications with the investigating agency and its team member
- treating the team member of the investigating agency with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant<sup>xxii</sup> in reprisal for them making the complaint.<sup>xxiii</sup>

If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws and/or codes of conduct.

### **The IGT is responsible for:**

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially<sup>xxiv</sup>
- ensuring that team member treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible team member, consider to be satisfactory in the circumstances<sup>xxv</sup>
- implementing reasonable and appropriate policies/procedures/practices to ensure that complainants<sup>xxvi</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>xxvii</sup>, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- giving adequate consideration to any confidentiality, secrecy and/or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If the IGT fails to comply with these responsibilities, complainants may complain to another appropriate investigating agency.

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<sup>i</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>ii</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

<sup>iii</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>iv</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>v</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>vi</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>vii</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>viii</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].

<sup>ix</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>x</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>xi</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>xii</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

<sup>xiii</sup> For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings at foot.

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<sup>xiv</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>xv</sup> See Endnote 11.

<sup>xvi</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>xvii</sup> See Endnote 11.

<sup>xviii</sup> See Endnote 5.

<sup>xix</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>xx</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>xxi</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

<sup>xxii</sup> See Endnote 19.

<sup>xxiii</sup> See Endnote 20.

<sup>xxiv</sup> See Endnote 3.

<sup>xxv</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>xxvi</sup> See Endnote 19.

<sup>xxvii</sup> See Endnote 20.