

7. Complaints and disputes

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Acknowledgments

The Complaints and disputes section has been written using a number of manuals as source material. We gratefully acknowledge this input. The resources used include:

Amberlys Single Women's Refuge 1999, *Policy and Procedure Manual*

Australian Services Union 2002, *various Information sheets*

Kempsey Women and Children's Service, *Policy and Procedure Manual*

Kulkuna Cottage Women's Refuge Ltd, *various forms*

NSW Women's Refuge Movement 1999, *An Open Door — NSW Women's Refuge Movement Access and Equity Manual* NSW Women's Refuge Resource Centre Inc, Sydney

7.1 Client complaints about the refuge

Primary responsibility

Management committee/broader collective and manager/collective

Forms and Refuge record keeping books referred to

- Complaints Record form

Policy

- Clients can make a complaint about the refuge, any of its services, its staff or any representative of the refuge (including management).
- All clients will be informed that they can make complaints and given information about how to do it and what to expect. This information will be made available in written and taped form (*A&E Resolution 28*).
- Complaints procedures are to be displayed on the wall to ensure client access.
- Clients can make a complaint by speaking or writing to:
 - a worker
 - the manager
 - someone on the management committee
 - someone outside the refuge who can help bring the complaint to the refuge, for example, a worker from another organisation or a friend
 - an external agency such as the Community Services Commission.
- All complaints made by clients will be taken seriously.
- All complaints made by clients will be heard and dealt with in a fair and just manner.
- Wherever possible, complaints will be resolved through discussion and conciliation.
- Clients have the right to complain directly to the Community Services Commission if they prefer. However, it is possible that the CSC will not

formally assess the complaint until all local, informal procedures have been explored and failed.

- No client will be penalised for making a complaint of any kind (*A&E Resolution 29*).
- Workers will support clients to make a complaint if asked.

Procedure

- Workers can support clients to make a complaint, if asked, by:
 - providing accurate information about the process
 - telling clients about the Community Services Commission
 - helping clients to make a complaint by writing the complaint out for them or making the complaint on their behalf.

Complaints made to someone at the refuge

- If the complaint is concerned with the service, policy or practice provided by the refuge, the manager/collective should:
 - Meet with the client and discuss her concern or complaint. Let her know you will be recording details of her complaint.
 - Listen carefully and patiently and record detail of the complaint on the Complaint Records form (see resources).
 - Encourage the client to provide all details and ask questions to extract further relevant information.
 - Remain calm and focus on the main issues.
 - Not give an immediate answer but advise the client that the matter will be investigated.
 - Investigate the complaint, taking account of house rules, refuge policy and procedures, confidentiality and others involved.
 - Decide what action needs to be taken. This could be an apology or a change to refuge policy or procedure or service or it could be that further explanation of the policy, procedure or service is required.

- Provide an answer to the client within (*insert number*) days. Not all complaints will be resolvable to the client's satisfaction. However, the outcome of the investigation should be explained to the client in full and if no further action is required, the reasons for this should be explained.
- If the complaint is about another resident or a staff member, follow the Disputes procedures.

Complaints made to Community Services Commission

- Clients of the refuge can make a complaint directly to the Community Services Commission if they believe the refuge has acted unreasonably:
 - in the way it provides a service
 - by not providing a service
 - by withdrawing or changing a service
 - by providing a service to someone that the client believes should not be receiving it (for example, if the person were a perpetrator of violence).
- Clients should contact the Community Services Commission (CSC) for further advice about their concern/complaint. CSC can be contacted on:
Ph: (02) 9384 4999
Tollfree: 1800 060 409
TTY: (02) 9384 4984
Fax: (02) 9384 4948

7.2 Grievance and disputes procedure

It is recommended that the agency has a membership with an employers advisory organisation such as Employers First or Australia First and accesses more specific advice along the process.

Primary responsibility

Management committee/broader collective and manager/collective

Policy

A dispute is a complaint about the conduct of a person or group of people. It always involves more than one person. Disputes may arise between residents, between residents and staff, between staff, between staff and management or between management.

- All disputes will be treated seriously and acted on quickly.
- When a complaint relates to reportable or criminal behaviour, the appropriate investigative department will be informed immediately.
- All disputes will be heard and dealt with in a fair and just way as per the procedures outlined below.
- As a first priority, the refuge will try to resolve the dispute as close to the source as possible.
- No person will be penalised for making a complaint of any kind.
- All information about disputes will be kept confidential and involve as few people as possible.
- Normal duties should continue while the dispute resolution procedures are carried out except where there are occupational health and safety issues.
- Dispute policies and procedures do not limit (*Insert name*) Refuge's right as employer to dismiss any employee for misconduct which justifies instant dismissal. (See Gross Misconduct.)

Disputes where residents are involved

- A resident has the right to choose an appropriate person to provide support or act as an advocate for her. A resident can authorise an advocate to speak on her behalf during *any* stage in the disputes procedure or during the appeal.
- The person a resident chooses to support her may be another resident, a refuge worker (unless this would be a conflict of interest for that worker) or a person from outside the refuge.
- Residents have the right to by-pass refuge staff and make their complaint directly to the management committee, board or broader collective. Residents will be informed of this right.
- Residents have the right to by-pass internal dispute resolution procedures and make their complaint directly to the Community Services Commission. Residents will be informed of this right.

Disputes between staff or between staff and management

- If a dispute arises, any party may choose to take the dispute to the manager/collective, with or without a support person.
- The worker has the right to Union representation. The worker may choose to have the Union delegate confer with management and attempt to reach a settlement on their behalf.
- The refuge has the right to employer representation (if relevant).
- The steps outlined in the procedure are to be followed in order where possible.

Procedure

Step 1

- When a dispute arises, affected parties should meet, talk through the dispute together and try to reach an agreement.

However, staff or residents have the right to make their complaint directly to the manager, management committee or broader collective. It is a responsibility of the management to initiate appropriate processes in response.

- The worker, or member of the management committee/broader collective, taking the complaint is to record details on the Complaints Record form.

Step 2

- If the dispute is not resolved by discussion, then approach a third party who is not directly involved, to act as a mediator and to keep the discussion focused on reaching resolution. An appropriate third party may be:
 - a refuge worker if the dispute is between residents
 - a member of management committee/collective or the Union if the dispute is between residents and a refuge worker or between workers themselves
 - an independent mediator acceptable to all parties if the dispute is between staff and management or between management committee/collective members.
- If mediation is required, it should proceed *within one week* of the decision to proceed in this way. When discussing the conflict, the mediator must:
 - Explain the role of the mediator and the process to be followed.
 - Allow each party to tell their story without interruption. This should include the history of the dispute, a statement of what each party is unhappy with or afraid of and possible ways the dispute might be resolved.
 - Clarify any uncertainties and draw up list of issues for discussion. These will form an agenda and a focus for further discussion.
 - Work through the agenda with the parties, exploring each of the issues identified.
 - Focus on the future, clarify options and work towards common interests.

- If appropriate, meet with each party in confidential sessions to check how she/they feel(s) about the process and the issues and to see if any proposals are workable.
- Crystallise proposals and agreements between parties.
- Ensure that all agreements are written down.
- Upon resolution, or end of discussion, close the session, thank the parties and advise them that further assistance is available if required.

Note: mediation may not be appropriate in some circumstances, for example where allegations of sexual harassment or racism are involved.

Step 3

- If agreement is not reached with mediation or if the written agreement is breached, then the disputes procedure becomes formal. In these instances, the authority to hear and rule on a dispute is delegated by the management committee/collective to a specially formed Dispute Committee. A special meeting of this committee must be called to hear the dispute *within 7 working days* of notifying the affected parties in writing.
The Dispute Committee must receive written statements from both sides of the dispute. These statements must include:
 - the history of the dispute
 - what attempts have been made to rectify the situation
 - why these attempts have failed
 - what the parties recommend to resolve the dispute.
- Both parties have the right to appear at the meeting of the Disputes Committee. After open discussion on the issue, the Disputes Committee must decide what action to take. The decision can be made either by a committee decision or put to the vote. The decision must be recorded in the minutes of that meeting and tabled at the next management committee/collective

meeting. The written record of the decision will be distributed to all parties who are directly involved in the dispute and must include:

- a brief statement about the dispute
- the actions or changes required to resolve the dispute
- a timeframe for any changes to be implemented
- what will happen if these changes do not resolve the dispute.

Step 4

- Any party has the right to appeal against a decision made by the Disputes Committee.
- Appeals must be in writing and lodged with the secretary within one week of receiving the written copy of Disputes Committee's decision. The appeal must then be included on the agenda for the next scheduled management committee/collective meeting.
- At this meeting, the management committee/collective will make a decision on appropriate action. This decision will be the final stage of an internal disputes procedure.

Step 5

- If the dispute is not resolved internally, the parties have recourse to external agencies such as the Industrial Relations Commission of NSW, the Anti-Discrimination Board, the Human Rights and Equal Opportunity Commission etc.
- If the Union is not involved and the dispute is not resolved, the dispute will be referred to the Community Services Commission in relation to clients or the Industrial Relations Commission of NSW in relation to workers.

NB: Any party has the right to refer to these external agencies if they prefer to in a prior stage of the process.

7.3 Counselling and disciplinary procedures

Primary responsibility

Management committee/broader collective and manager/collective

Policy

- The management committee, broader collective or manager may take disciplinary action against a staff member if it is dissatisfied with that staff member's performance or conduct in the workplace.
- If there is a problem with a staff member's performance or conduct, they will receive counselling and at least one verbal warning and then at least one written warning, with a reasonable time between each to enable them to comply.
- Any staff member receiving counselling or a warning will be given the opportunity to respond to any concerns or allegations made.
- Where a staff member is to receive a verbal or written warning, they will be informed of their right to be accompanied by their Union or other personal representative.
- The process followed will be consistent with the requirements of the Award.
- If the disciplinary procedure has been followed and the management committee is not satisfied with the outcome, then employment may be terminated.
- The refuge can dismiss a staff member without following these procedures in circumstances that warrant summary dismissal. (See Gross Misconduct.)

Procedure

Step 1 — Counselling and verbal warning

- If there are concerns about the conduct or work performance of a staff member, the management should initiate a discussion with that staff member. The goal of the meeting is to rectify the issues concerned.
- Before the discussion, gather available relevant information. Let the staff member know they may receive a warning and that they have a right to have a Union delegate present if they wish.
- At the start of the discussion, let the staff member know what the meeting is about and the specific areas of concern.
- Allow the staff member an opportunity to respond to the concerns raised.
- During the discussion, make the staff member aware of any deficiencies in their performance or conduct and the standard of performance that is required.
- Deliberate on their response and clarify expectations required from the staff member. If appropriate, conclude the meeting with a verbal warning to the staff member to improve performance or cease the conduct complained of.
- Keep a written record of the reasons for the discussion, the actions taken, who was in attendance, the resolutions agreed to and any comments the staff member wants recorded. Ask the staff member to sign the record and keep it with their staff file. The staff member can refuse to sign the record. In this instance, note this on the file.
- After counselling (and the verbal warning if one was given), give the staff member a reasonable time to comply. Put into place strategies to assist in the resolution of the problem eg mediation, supervision, training etc.

Step 2 — Further counselling and written warning

- If, after a reasonable time has elapsed, the staff member's performance or conduct has not improved, management may further counsel the staff member and provide them with a written warning outlining concerns and reasons.

- Keep a written record of the reasons for further counselling, the actions taken, the resolutions agreed to and any comments the staff member wants recorded as well as a copy of the written warning. Ask the staff member to sign the record and keep it with their staff file. The staff member can refuse to sign the record. In this instance, note this on the file. Give the staff member a reasonable time to comply.

Step 3 — Further counselling and written warning

- If, after a reasonable time has elapsed, the staff member's performance or conduct has not improved, management may further counsel the staff member and provide them with a written warning outlining concerns and reasons.
- Keep a written record of the reasons for further counselling, the actions taken, the resolutions agreed to and any comments the staff member wants recorded as well as a copy of the written warning. Ask the staff member to sign the record and keep it with their staff file. The staff member can refuse to sign the record. In this instance, note this on the file. Give the staff member a reasonable time to comply.

Step 4 — Dismissal

- If, after the above process the staff member's performance or conduct still has not improved to the satisfaction of the management committee, the staff member's employment may be terminated without any further warning.

7.4 Gross misconduct

Note to refuges - it is ultimately the courts decision as to whether a staff member could have grounds for wrongful dismissal if they are dismissed under the gross misconduct criteria. Before dismissing a worker for gross misconduct, it is recommended that the refuge consult an employers' advisory organisation and the Union.

Always show any new staff member the refuge's gross misconduct policy.

Primary responsibility

Management committee/broader collective and manager/collective

Policy

- *(Insert name)* Refuge recognises a range of behaviours as gross misconduct.
- Gross misconduct by any worker will usually result in instant dismissal of that worker.

Procedure

- Behaviours that will not be tolerated and could result in instant dismissal include:
 - any behaviour that is of a criminal nature - for example physical violence or threats to a client or member of the organisation (staff or management committee) or sexual assault of a client or other worker
 - sexual relationship with a client
 - inappropriate disclosure of information about clients without consent unless related to duty of care or OH&S
 - behaviour which puts the refuge and/or the clients at serious risk. Serious risk could include the risk of physical harm, legal repercussions or closure of

the refuge. Behaviours therefore would include things like using or being under the influence of drugs/alcohol at work, misappropriating funds.

Resource list

7.5 Complaints record form