

POLICY – STAFF COMPLAINTS & GRIEVANCES

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|-----|--|---|
| 1. | National Quality Standard | 1 |
| 2. | Purpose | 1 |
| 3. | Scope..... | 1 |
| 4. | Policy Statement..... | 2 |
| 5. | Procedures – Internal | 2 |
| 6. | Procedures – External..... | 5 |
| 7. | Recordkeeping and Privacy | 5 |
| 8. | Related Legislation and Documents..... | 6 |
| 9. | Feedback..... | 6 |
| 10. | Approval and Review Details | 6 |

1. National Quality Standard

| Area | Concept | Descriptor |
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| 7.1 | Governance | Governance supports the operation of a quality service. |
| 7.1.2 | Management Systems | Systems are in place to manage risk and enable the effective management and operation of a quality service. |
| 7.2 | Leadership | Effective leadership builds and promotes a positive organisational culture and professional learning community. |

2. Purpose

- 2.1 Baringa recognises that a positive organisational culture is critical to a successful organisation. For this reason, Baringa is committed to implementing effective dispute resolution practices in its workplaces to ensure that all grievances by and/or disputes with employees are treated fairly and dealt with promptly and efficiently. This includes the provision of appropriate training to Baringa’s Supervisors/Managers regarding the identification and handling of underperformance issues.
- 2.2 Baringa recognises that workplace disputes may arise for a variety of reasons and that it is often the case that Baringa may not be aware that a particular employee is aggrieved. Issues which are not addressed promptly have the potential to become more serious over time and more difficult to resolve, which in turn is likely to have a negative effect on Baringa’s business. Therefore, whilst raising grievances can be challenging and confronting for employees and Supervisors/Manages alike, issues do need to be raised and addressed.

3. Scope

- 3.1 This policy is only intended to apply in situations where there is no other more appropriate Baringa policy in force. For example, this policy is not intended to apply in relation to the investigation of complaints of discrimination, harassment or bullying, these complaints are dealt with in a separate Baringa policy.

- 3.2 This policy also does not apply where Baringa is required to apply a dispute resolution clause in a Modern Award or industrial instrument.

4. **Policy Statement**

General

Baringa aims to have a dispute resolution process that:

- is simple, fair, timely, transparent, sensitive and confidential in nature;
- is based on principles of natural justice;
- is cooperative;
- promotes the exhaustion of all avenues of internal dispute resolution before referring the matter to external parties; and
- minimises recourse to litigation in the resolution of disputes.

The first step will always be to identify the problem and the second to assess and analyse. From there the individuals concerned should identify the correct policy to apply to resolve the dispute (for example, that contained in an Award or Enterprise Agreement, this policy or any other relevant policy) and implement the appropriate procedures.

It will usually be appropriate for the parties to engage in an internal resolution procedure before seeking external intervention. Internal and external procedures can either be formal or informal, depending on the circumstances.

5. **Procedures – Internal**

General

- 5.1 It is Baringa's preference to attempt to resolve disputes at workplace level before seeking external intervention and it encourages all employees to do likewise.
- 5.2 The first step in the internal dispute resolution process, after a dispute is reported, will always be to identify the problem and the second to assess and analyse. From there either an informal or formal procedure should be implemented, depending on the circumstances.

Reporting

- 5.3 Issues which are not addressed promptly have the potential to become more serious over time and more difficult to resolve, which in turn is likely to have a negative effect on the productivity of Baringa's business and the welfare of its employees. Therefore, whilst raising grievances can be challenging and confronting for employees and Supervisors/Manages alike, issues do need to be raised and addressed.
- 5.4 All employees are encouraged to raise their grievances. Usually it will appropriate, in the first instance, to do this in a meeting with an immediate Supervisor/Manager.
- 5.5 Where an immediate Supervisor/Manager is unable to resolve the dispute or where it is inappropriate for the Supervisor/Manager to resolve the dispute, a meeting should be arranged with another appropriate member of Baringa's organisation such as the Centre Director, Staff Representative, Union Representative or an officer of the Board (President, Treasurer, Secretary).
- 5.6 Meetings concerning grievances should generally take place in a private, comfortable, non-threatening environment that is free from distraction and interruptions. All discussions should be open and the aggrieved employee allowed the opportunity to express their concerns and have them duly considered. Equally, aggrieved employees should allow Baringa to respond to the issues raised and express its point of view.

- 5.7 During discussions aggrieved employees and the participating representatives of Baringa should work together to attempt to resolve the issue as quickly as possible in order to preserve positive working relationships.
- 5.8 In general, internal dispute resolution processes should be completed within 14 days of the initial report of the grievance to Baringa.
- 5.9 An employee who is party to a dispute with Baringa may appoint a representative for the purposes of procedures set out in this policy.
- 5.10 An employee who is party to a dispute with Baringa must, while Baringa and employee are trying to resolve the dispute:
- (a) 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) comply with a direction given by Baringa to perform other available work at the same workplace, or at another workplace, unless the work is not safe or applicable occupational health and safety legislation would not permit the work to be performed or the work is not appropriate for the employee to perform or there are other reasonable grounds for the employee to refuse to comply with the direction.

Identification of the Grievance

- 5.11 When a Supervisor/Manager is alerted to a grievance the Supervisor/Manager should first try to correctly and specifically identify, in consultation with the individuals concerned, the nature of the issue. This will enable the Supervisor/Manager to identify the appropriate policy to adopt to resolve the situation (that is that contained in an Award or Enterprise Agreement, this policy or any other relevant Baringa policy).

Assessment and Analysis

- 5.12 Following identification of the issue the Supervisor/Manager should determine, in consultation with the aggrieved employee, the complexity and seriousness of the issue and the length of time for which it has existed. The Supervisor/Manager should then determine, in consultation with the aggrieved employee, whether it to resolve the dispute by informal or formal procedures. The course of action proposed should be agreed to by both the aggrieved employee and the Supervisor/Manager and documented.

Informal Dispute Resolution

- 5.13 Prior to embarking on a formal dispute resolution process, it will usually be appropriate for Baringa to initiate an informal process.
- 5.14 Informal dispute resolution procedures emphasise resolution of the dispute rather than factual proof of grievances and are usually appropriate where:
- (a) the allegations are of a less serious nature but the individual alleging the behaviour wants it to cease;
 - (b) the individual alleging the behaviour wishes to pursue an informal resolution; or
 - (c) the parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.
- 5.15 Informal solutions include:
- (a) the individuals involved in the grievance dealing with the situation themselves with advice on possible strategies being provided by a representative of Baringa;

- (b) a senior representative Baringa speaking to any antagonist on an aggrieved employee's behalf, conveying the aggrieved employee's concerns and reiterating Baringa conduct expectations;
- (c) following an admission made by any relevant antagonist, conciliation or counselling; or
- (d) where a senior representative of Baringa observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Formal Dispute Resolution

- 5.16 Formal procedures focus on proving whether a complaint is substantiated by investigating all allegations, applying the principles of natural justice and procedural fairness, making a finding in relation to whether the incident occurred and preparing a report with a recommended course of action to achieve and implement a determined outcome.
- 5.17 Formal procedures are usually appropriate where:
- (a) informal attempts at resolution have failed;
 - (b) the grievance involves serious allegations of misconduct and informal resolution could compromise the rights of the parties;
 - (c) the complaint is against a more senior member of Baringa's organisation;
 - (d) the aggrieved employee's allegations include victimisation;
 - (e) the allegations are denied by the individuals allegedly involved, the aggrieved employee wishes to proceed to external options and an investigation is required to substantiate the complaint; or
 - (f) the aggrieved employee wishes to make a formal complaint.
- 5.18 To ensure consistency and fairness, Baringa will document the steps involved in a formal complaint and clearly inform the parties about the processes involved in considering a complaint in advance. In the ordinary course of a formal complaint, the complainant will be interviewed and the allegations particularised in writing. Following, written particulars of the complaint will be conveyed to any alleged antagonist in full and he, she or they will be allowed a reasonable opportunity to respond and defend themselves against the allegations. If there is a dispute concerning the facts Baringa may take statements from any witnesses and collate any other relevant evidence. Baringa will then make a finding as to whether the complaint has substance, prepare a written report documenting the investigation process, the evidence and the finding, and determine and implement an outcome. The parties to a complaint may have a union official, support person, advocate or other representative accompany them to any interviews or meetings.
- 5.19 Evidence that may be relevant includes:
- (a) evidence that the aggrieved person has discussed his or her concerns with a family member, friend, co-worker, medical practitioner or counsellor;
 - (b) supervisor's reports and personnel records (for example unexplained requests for transfer or shift changes, sudden increase in sick leave);
 - (c) complaints or information provided by other employees about the behaviour of any alleged antagonist;
 - (d) records kept by the aggrieved employee;
 - (e) whether the evidence was presented by the parties in a credible and consistent manner; and/or
 - (f) the absence of evidence where it should logically exist.

- 5.20 Baringa will not dismiss a formal complaint purely because no one saw or heard the incident complained of. Instead, Baringa will consider all available evidence, including any surrounding evidence, and make a finding on the balance of probabilities. That is, whether it is more probable than not that the incident complained of did or did not occur. Findings may be that a particular incident did or did not occur, or that it is not possible to make a conclusive finding. If there is insufficient evidence to decide whether or not the incident occurred Baringa will usually nevertheless remind those involved of the expected standards of conduct, conduct further training sessions for all employees and monitor the situation carefully.

Sanctions

- 5.21 The sanctions that Baringa may implement as a result of a positive finding of inappropriate conduct include:

directions to undertake counselling, participate in conciliation/mediation (where all parties involved agree) or to deliver formal apologies;

disciplinary action against antagonists (such as the issuance of formal warnings, demotion, transfer, suspension, probation or dismissal). In some cases, the Baringa may require an antagonist to reimburse Baringa for any costs incurred by it as a result of the incident (such as the cost to Baringa of re-crediting leave taken by an aggrieved employee as a direct result of the incident); and

similar disciplinary action against the person who complained if there is compelling evidence that the complaint was vexatious or malicious.

- 5.22 The sanction eventually implemented will depend on factors such as the severity or frequency of the conduct concerned, the wishes of the aggrieved employee, whether any antagonist could have been expected to know that their behaviour was inappropriate, an antagonist's level of contrition and whether there have been any prior incidents or warnings.

6. Procedures – External

- 6.1 If Baringa's informal dispute resolution procedures do not resolve the dispute, the matter may be referred to the appropriate external agency for resolution in accordance with any applicable law.
- 6.2 Which is the appropriate external agency will primarily depend on the nature of the dispute. The Fair Work Commission will usually be the appropriate entity where there is a dispute concerning action taken by Baringa such as a dismissal. However, in situations of discrimination, bullying or harassment other bodies may be more appropriate (more information concerning these types of complaints is contained in Baringa's policy in respect of the same).

7. Recordkeeping and Privacy

- 7.1 Baringa recognises that information provided to it concerning workplace grievances are likely to contain highly sensitive and potentially damaging personal information and will necessarily involve allegations against particular individuals. Therefore, any such information Baringa records will be protected with reasonable security safeguards.
- 7.2 If a complaint is subsequently lodged with The Fair Work Commission, or proceedings are commenced in another Court or Tribunal, either the body or the parties involved in the litigation may request records as part of its investigation into the allegations. Records relating to the grievance will demonstrate that steps were taken to deal with the matter. Evidence of any internal action that was taken may assist Baringa in reducing liability.
- 7.3 If informal measures have been used to address a grievance Baringa will usually only collect and retain limited records by recording a brief summary of the issue, along with a record of the details of the discussion held on the relevant employee's personnel file. This will allow Baringa to monitor resolution of the issue and to ensure that there are no potential repercussions for Baringa's organisation.

7.4 If a formal procedure is implemented the documentation collected is likely to be much more substantial and will usually include items such as records of interview with the aggrieved employee and, where appropriate, other affected employees. Any employee involved in an interview will be given the opportunity to peruse, correct and endorse their record of interview and will be given a copy of their own record of interview if requested. To avoid any possibility of collusion, interviewees will not be provided with anyone else's statement or record of interview. All records will be placed on the employee's personnel file which can only be accessed with the authority of a specified senior management representative. These records may be removed after a reasonable period of time determined by Baringa, if there has been no repetition of the behaviour.

8. Related Legislation and Documents

Children's Services Award 2010

Baringa Childcare Centre Association and United Voice Collective Agreement 2015-2018

Behavioural Management Policy (November 2016)

Diversity & Inclusion Policy (November 2016)

Bullying, Harassment & Discrimination Policy (August 2016)

Employee Conduct Policy (September 2016)

Participation of Volunteers and Students Policy (November 2017)

Relief Educators, Student and Visitor Conduct Information Policy (August 2016)

9. Feedback

Families and staff may provide feedback about this document by emailing baringaboard@gmail.com.

10. Approval and Review Details

| Approval and Review | Details |
|---|---|
| Approval Authority | Board |
| Advisory Subcommittee to Approval Authority | Finance Subcommittee (initial) General Counsel/Legal Director (final). |
| Administrator | Centre Directors |
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| Approval and Amendment History | Details |
|--------------------------------------|--|
| Original Approval Authority and Date | 30 July 2018 |
| Amendment Authority and Date | N/A |
| Notes | This policy supersedes and replaces Policy 4.8 (Educators Grievances) approved in August 2016. It also replaces the "Dispute Resolution" section in the Staff Handbook. |