

Complaints function for unlawful or undesirable conduct in the workplace

SafeWork NSW

5 December 2023



Nous Group acknowledges Aboriginal and Torres Strait Islander peoples as the First Australians and the Traditional Custodians of country throughout Australia. We pay our respect to Elders past, present and emerging, who maintain their culture, country and spiritual connection to the land, sea and community.

This artwork was developed by Marcus Lee Design to reflect Nous Group's Reconciliation Action Plan and our aspirations for respectful and productive engagement with Aboriginal and Torres Strait Islander peoples and communities.

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Executive Summary

In 2023, the NSW Government commissioned an 'Independent Review' of SafeWork NSW. This is the first whole-of-organisation review conducted since SafeWork NSW was established in 2015.

The Hon. Robert McDougall KC is conducting the Independent Review into SafeWork NSW (the Review). This review includes a consideration of the processes and approaches applied on behalf of SafeWork NSW to manage internal workplace complaints and grievance processes (related to alleged unlawful or undesirable conduct in the workplace).

This report responds to the question: *Are the Department and SafeWork NSW's current processes and practices appropriate to deliver effective and compliant outcomes for complainants and respondents? How can they be improved?*

In addressing this question, this review has asked:

- **What are the principles of a best practice internal workplace complaints and grievances function?** This includes understanding existing best practice guidelines (such as from the Commonwealth Ombudsman and drawing on previous Nous experience in similar reviews).
- **To what extent do existing processes and practices align to best practice?** This includes a review of all documented processes and an assessment of case files from previous complaints.
- **What are the areas for improvement?** This includes an understanding of the current processes alignment to best practice, and determining opportunities to improve the process.

SafeWork NSW relies on support from the Department of Customer Service to manage complaints and grievance processes

The People and Culture Division (P&C) of the Department of Customer Service (DCS) is responsible for the management of complaints and grievance processes within SafeWork NSW. The function of P&C is to receive, assess, resolve, and report on complaints and grievance processes, initiated by SafeWork NSW staff. To manage this work, P&C has prepared specialised resources of SafeWork NSW staff. It also allocates a portion of its resources to the management of complaints and grievance processes that relate to SafeWork NSW staff.

Some complaints and grievance processes are managed in house by P&C. In some cases, P&C engages external experts to resolve complaints – in particular due to resourcing constraints. For matters where a clear OHS risk is identified, and SafeWork NSW would ordinarily be the appropriate agency to manage a complaint, the matter is referred to the NSW Resource Regulator. This ensures that the right expertise – and appropriate legislative powers – can be used to resolve the matter.

A review of case files for past complaints and grievance processes highlights gaps in the approach taken to resolve them

A review of 12 sets of case files highlighted limitations in the way cases were managed. Generally, the resolution of cases maintained appropriate levels of confidentiality and engaged parties where relevant. However, the review identified gaps in the processes applied to resolve cases. Approaches to resolving cases did not generally align to good practice and there were gaps in the documentation prepared as part of the resolution of those cases. The review also highlighted that a high proportion of cases were resolved externally to P&C – partly as a result of resourcing constraints.

This review of cases provided insights that informed all other aspects of the review of the complaint and grievance process resolution approach applied by P&C on behalf of SafeWork NSW.

Clear standards exist for good practice in complaints handling and grievance resolution

In general terms, complaints resolution and grievance processes will be considered to be appropriate where:

1. Processes used are accessible and person-centred
2. Processes adhere to principles of procedural fairness
3. Matters are resolved in an appropriately efficient way
4. Processes and approaches are effective in delivering high quality outcomes
5. Complainant information is handled with appropriate confidentiality
6. There is end-to-end accountability for the complaints handling and grievance process by the responsible agency
7. The complaints handling and grievance process should provide a seamless, supported, experience for the stakeholders that need to engage with it – including staff and managers.

The approach applied by P&C on behalf of SafeWork NSW was reviewed against these criteria, with the following features identified:

Resolution processes are fair and confidentially is appropriately maintained

The complaint and grievance resolution process in place for SafeWork NSW demonstrates commitment to principles of both fairness and procedural fairness in its design and application. A review of SafeWork NSW' policies and guidelines demonstrate that staff are clearly informed of their roles and responsibilities towards ensuring that the complaints handling process meets principles of fairness and procedural fairness as defined in the relevant standards and legislation. This commitment was evident in practice from review of past case files and engagement with staff involved in the process that demonstrated consistent application of the principles across SafeWork NSW.

The complaint and grievance resolution process in place for Safework NSW is sufficient to maintain the confidentiality of participants' information. A review of internal process documents, past case files and engagement with staff from the Department's P&C teams indicated that there are appropriate systems in place to ensure confidentiality across the complaints process.

Confidentiality, however, is not absolute and the nature of the complaints handling procedure means that information in a complaint may need to be shared to investigate the matter and determine an appropriate resolution. In addition, anonymous reporting channels don't always contribute to the delivery of effective and appropriate outcomes as tensions may arise between maintaining confidentiality and procedural fairness and effective investigation.

Processes could become more person centred and better allocate effort to areas of highest need

The complaint and grievance resolution process applied for SafeWork NSW staff is generally accessible and person centric. A review of case files and documented processes and policies, suggests many features of an accessible and person-centred complaints system are in place. This includes making clear material on complaints processes readily available, as well as ensuring that this material is accessible for a wide range of users. However, there are critical gaps in materials that prevent staff from having a full understanding of how complaints will be managed, and grievance processes handled. The supports available to ensure accessibility are also insufficiently tailored and may not allow all staff to appropriately utilise materials.

P&C's approach to triaging and referring matters generally allows them to be allocated to, and resolved by, the most appropriate channel. Staff and managers generally work in an appropriate way to make sure that work is appropriately allocated, however this allocation generally relies on their judgement and can be inconsistent. Consultation with P&C and SafeWork NSW staff, note opportunities to further strengthen training of managers and the partnership between SafeWork and P&C to support more effective triaging of matters.

Process efficiency, accountability and ease of use could be improved

The efficiency of the complaints handling process cannot be easily quantified. Staff seek the timely resolution of matters and work effectively toward that goal. However, current systems do not track the timeliness or efficiency of delivery. Records made available to the review do not enable a conclusive determination that the process is either efficient or inefficient. More investment in tracking delivery timeframes, is required.

Record keeping and case management of complaints and grievance processes for SafeWork NSW could improve. Appropriate management of complaints requires detailed record keeping and an appropriate system for coordinating effort. Software systems used by the P&C area within the department do not automate the record keeping or workflow management required for effective complaints handling. A review of case files, and engagement with staff, suggests that records are not kept as consistently as would be desirable. Similarly, case management is not as consistent or effective as would be desirable. Improvements to record keeping and case management are essential for ensuring appropriate oversight and increasing the satisfaction of complainants and other parties with the resolution of matters. It is noted that a new case management system was being implemented by the Department during the engagement, and was in place by 9 October 2023. The new system is understood to be a minimum viable product with new features to be added over time. The system may be sufficient to address some of the improvement opportunities noted by this report. However, this remains to be demonstrated in practice

Complaints handling and grievance processes could be made into a more seamless experience for staff and managers at SafeWork NSW. Current approaches provide only limited consistency of support for complaints. They also require significant manual effort on behalf of SafeWork NSW staff and managers – with this approach representing a significant departure from historical practice.

Summary of improvement opportunities

Draft recommendations for SafeWork NSW's internal complaints handling and grievance management function are presented in Table 1 below.

Table 1 | Draft improvement opportunities

Opportunity	Details
1. Update the Positive and Productive Workplace Policy and accompanying intranet material	Undertake a complete review of the Positive and Productive Workplace Policy. This should include, in-depth consultation with SafeWork staff and Employee Reference Groups to under what users of the policy require. A revised policy should include key information on each step of the process, written in a clear and transparent way for all employees to be able to understand. An available contact should be provided for employees to clarify their understanding and provide further feedback.
2. Invest in new processes and supports to ensure accessibility of complaints process for all SafeWork employees	<p>The Department should take a user-centred approach to the review of complaints processes. This could include:</p> <ul style="list-style-type: none"> • working directly with Employee Reference Groups and other advocates who may represent vulnerable employee cohorts to obtain feedback on the existing information, processes and supports. • Use behaviour insights from employee representatives to map the complaint journey from the perspective of employees and understand what accessibility reforms are required. • Develop a 'lists of services' which can be made available to employees experiencing a complaints process. This list of services should include guidance on referral pathways to specialist services for people involved in a complaint, including people who are culturally and racially marginalised, people who identify as LGBTIQ+, or people with disability. Information about support options should be made clear and accessible on the DCS Intranet.
3. Better track delivery times for complaints and grievance issues	Over time, and especially once new systems are embedded, develop approaches for capturing data on the resolution of each stage of each complaint and grievance process. This should include time to complete each stage, as well as data on performance against other relevant KPIs. Draw on this data to analyse delivery timeframes, identify areas of potential delay, and drive process changes and resourcing changes to ensure rapid, effective, delivery of work to resolve complaint and grievance matters.
4. Expand training for managers to identify and support the resolution of workplace grievances	Develop a mandatory training program for SafeWork managers to equip them with the skills to manage workplace conflict, have difficult conversations and to understand when and how to engage P&C. Review and update existing induction training for all staff to include detail on workplace conflict, unacceptable behaviour and how to manage grievances.
5. Consider clarifying how confidentiality is maintained and balanced against effective investigation of issues	Enhance the guidance for SafeWork employees and staff to make clear the value of confidentiality and to address potential gaps in maintaining confidentiality through current processes. Enhanced guidance should also provide clarity how confidentiality should be balanced with the need for administrative simplicity and a requirement that all complaints be effectively investigated and resolved.
6. Revise triaging tool to support more consistent decision-making to determine the	The Department should develop a new triaging tool which provides detailed guidance on the factors which may influence the severity of the case, or the required level of support. This new tool should be informed by an understanding of the different identities within the organisation, and how different power dynamics and relationships may play out in the context of conflict resolution. As part of the guidance, the Department and SafeWork should consider developing

Opportunity	Details
appropriate pathway for complaint resolution	<p>a risk assessment framework, with accompanying detail on the resulting triage, protocols, supports, and accommodations required. The triage tool and risk assessment framework could be incorporated into the new case management system.</p> <p>Once a triage system is implemented, monitor its use and the demand for different resolution pathways and invest in the appropriate resources to manage demand.</p>
7. Ensure record keeping and oversight is systematised, and automated where appropriate	<p>Ensure that systems and processes are established to automate the collection and archiving of all documents related to each complaint or grievance matter managed by the People and Culture area. Using the record keeping and management system currently subject to implementation, ensure that all records generated as part of the resolution of a matter are linked to that matter and saved in a way that ensures that the People and Culture area meets appropriate record keeping requirements and can support all of its decisions with appropriate evidence.</p>
8. Ensure greater consistency and support in the complaints and grievance handling work performed by the People & Culture team on behalf of SafeWork NSW	<p>Improve current service delivery approaches to provide a more consistent and seamless suite of supports for SafeWork NSW staff and managers. This should include: increasing the consistency of knowledge of People & Culture staff engaging with the People & Culture team; improving the accessibility of the People & Culture team to SafeWork NSW staff and managers; and, reducing the manual effort required by SafeWork NSW staff and managers to progress complaints and grievance processes.</p>

1 Background and methodology

SafeWork NSW is the statutory body responsible for regulating workplace health and safety in New South Wales. It administers and enforces functions primarily under the *Work Health and Safety Act 2011 (NSW)* (WHS Act).¹

In 2023, the NSW Government commissioned an organisation-wide Independent Review of SafeWork NSW. This is the first whole-of-organisation review conducted since SafeWork NSW was established in 2015.

The Hon. Robert McDougall KC is conducting the Independent Review into SafeWork NSW (the Review). The Review aims to examine SafeWork NSW's performance of its regulatory functions under the WHS Act in accordance with Terms of Reference set by the NSW Government. An Interim Report was provided to the Minister in May 2023 and the Final Report will be provided in November 2023.

This document is designed to support the Review in its assessment of SafeWork's internal workplace complaints and grievances processes (as to alleged unlawful or undesirable conduct in the workplace). This may include, but is not limited to, complaints of harassment, bullying, discrimination and/or other breaches of relevant Codes of Ethics and Conduct. The Department of Customer Service (the Department) has primary accountability for internal workplace complaints.

This report responds to the primary question: *Are the Department and SafeWork NSW's current processes and practices appropriate to deliver effective and compliant outcomes, for complainants and respondents? How can they be improved?*

In addressing this question, this review has asked:

- **What are the principles of a best practice internal workplace complaints and grievances function?** This includes understanding existing best practice guidelines (such as from the Commonwealth Ombudsman and drawing on previous Nous experience in similar reviews).
- **To what extent do existing processes and practices align to best practice?** This includes a review of all documented processes and an assessment of case files from previous complaints.
- **What are the areas for improvement?** This includes an understanding of the current processes alignment to best practice and determining opportunities to improve the process.

Nous designed a methodology to support a short, sharp sprint which would follow five steps. These are set out in Table 2.

¹ SafeWork NSW is also responsible for the administration of the *Explosives Act 2003 (NSW)*, *Dangerous Goods (Road and Rail Transport) Act 2008 (NSW)*. SafeWork NSW inspectors also have certain powers relevant to the compliance and enforcement under the *Work Health and Safety Regulation 2017* and Acts administered by the State Insurance Regulatory Authority (*Workers Compensation Act 1987 (NSW)* and the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*).

Table 2 | Key review process steps

Step	Activities by Nous
Map and test the current internal complaints handling process used by SafeWork.	<p>Review over 35 documents on current processes and guidance material.</p> <p>Test current state understanding with key staff in People and Culture (P&C).</p> <p>Develop and test detailed process maps to reflect different pathways for complaint resolution.</p>
Developed analytical framework to assess current process against best practice.	<p>Develop six principles for a best practice complaints handling function. Draft guiding features for each principle, based on existing research and guidance from the Commonwealth Ombudsman.</p> <p>Test and refine best practice principles with SafeWork NSW</p>
Review insights against framework and test hypothesis.	<p>Consult with SafeWork staff and the P&C team to reflect on their experience with complaint process.</p> <p>Review 12 unidentified case files for previous complaints from 2016 – 2023.</p> <p>Generate insights on the complaints and grievances process and how it operates in practice, drawing from consultations, review of sample cases, and anonymised summaries of submissions to the Independent Review.</p> <p>Assess the complaints and grievances process as documented and in practice against the good practice framework.</p>
Draft and finalise the report.	<p>Consolidate findings in a draft report and test factual matters with SafeWork NSW.</p> <p>Finalise the report and provide to the Review.</p>

Nous collected insight from a broad range of sources in preparing this report.

- Nous engaged with staff across the Department of Customer Service and SafeWork NSW:
 - Nous engaged seven stakeholders in the Department of Customer Service Governance Risk and Assurance team, and P&C team to understand the current complaints handling process, and opportunities for improvement
 - Nous engaged five senior leaders across SafeWork NSW to understand the perspectives of the accessibility and effectiveness of the complaints and grievances function, from managers and directors.
- Nous conducted an extensive review of documents provided by SafeWork NSW and the Review. This included a review of:
 - Legislative requirements applicable to the complaints and grievances process
 - Documentation on policy, procedures, and guidance material for the reporting and investigation of grievances, and complaints
 - 12 case files of previous complaints from 2016 – 2023
 - Summary insights from the People Matter Employee Survey from 2018 – 2022
 - Thematic summary of all submissions related to the complaints and grievances process (compiled by the Review).

2 Principles for good practice complaints handling

Nous has worked to develop a set of good practice principles to guide our analysis and assessment. These principles draw on Nous' experience working with regulators and public-sector organisations in reviewing their complaints and grievance functions and existing literature.

These principles are set out at Table 3. This material has been prepared with reference to reports and analysis summarising good practice, including:

- Guidelines for complaint management in organisations²
- Commonwealth Ombudsman: Better Practice Complaints Handling³
- NSW Ombudsman: Effective complaint handling guidelines⁴
- Fair Work Ombudsman: Effective dispute resolution⁵
- Australian Human Rights Commission: Good practice guidelines for internal complaint processes⁶
- Australian Human Rights Commission: Standards 6 & 7 of the Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth)⁷
- Previous Nous reports and analysis.

These principles are set out at Table 3. They are presented along with a set of features that Nous considers would indicate whether the principle has been met. As part of our analysis, we have considered whether these principles are in place in the current complaints and grievances process. To the extent they are, we are more likely to conclude that the complaints process is appropriate and less likely to make recommendations.

² Guidelines for Complaints Handling in Organisation, AS/NZS 10002:2022.

³ Commonwealth Ombudsman, Better Practice Complaints Handling, 2023.

⁴ Ombudsman NSW, Effective complaint handling guidelines, 2017, <https://www.ombo.nsw.gov.au/guidance-for-agencies/effective-complaint-handling>.

⁵ Fair Work Ombudsman, Effective Dispute Resolution Best Practice Guide, 2023, <https://www.fairwork.gov.au/sites/default/files/migration/711/effective-dispute-resolution-best-practice-guide.pdf>.

⁶ Australian Human Rights Commission: Good practice guidelines for internal complaint processes, <https://humanrights.gov.au/our-work/employers/good-practice-guidelines-internal-complaint-processes>.

⁷ Australian Human Rights Commission: Guidelines for Complying with the Positive Duty under the Sex Discrimination Act 1984 (Cth), 2023, <https://humanrights.gov.au/sites/default/files/2023-08/Guidelines%20for%20Complying%20with%20the%20Positive%20Duty%20%282023%29.pdf>.

Table 3 | Principles for a best practice complaints handling function

Principle	Definition
1. Confidential	A confidential complaints handling function ensures that staff can share their concerns freely, without fear of their personal details or grievances being shared. This promotes trust and open communication and supports a fair and independent resolution of complaints.
2. Accessible and person-centred	The complaints and resolution process should be centred around the people involved and be culturally responsive, inclusive, accessible, and trauma informed.
3. Fair	Procedural fairness, impartiality, and natural justice should be reflected in all facets of the complaints handling process. A fair and impartial process is one where the resolution approach and outcomes are proportionate to the severity of the complaint, and like issues are treated alike. Procedural fairness is the cornerstone of an effective complaints handling function. ⁸ It maintains the integrity of the process and assures individuals that all matters will be handled objectively and independent of influence.
4. Efficient	Efficiency involves ensuring that the complaints handling process utilises resources appropriately to enable a timely resolution of complaints that addresses the underlying cause.
5. Effective	Effectiveness concerns the complaints handling process' ability to resolve complaints in a proportionate and appropriate manner that meets the minimum legislative requirements.
6. End-to-end accountability	System accountability refers to the openness of the complaints handling process to scrutiny and evaluation, and its responsiveness to challenges and feedback.
7. Seamless support	Overall, the complaints handling and grievance process provides a seamless, supported, experience for the stakeholders that need to engage with it – including staff and managers.

⁸ Code of Ethics and Conduct for NSW government sector employees.

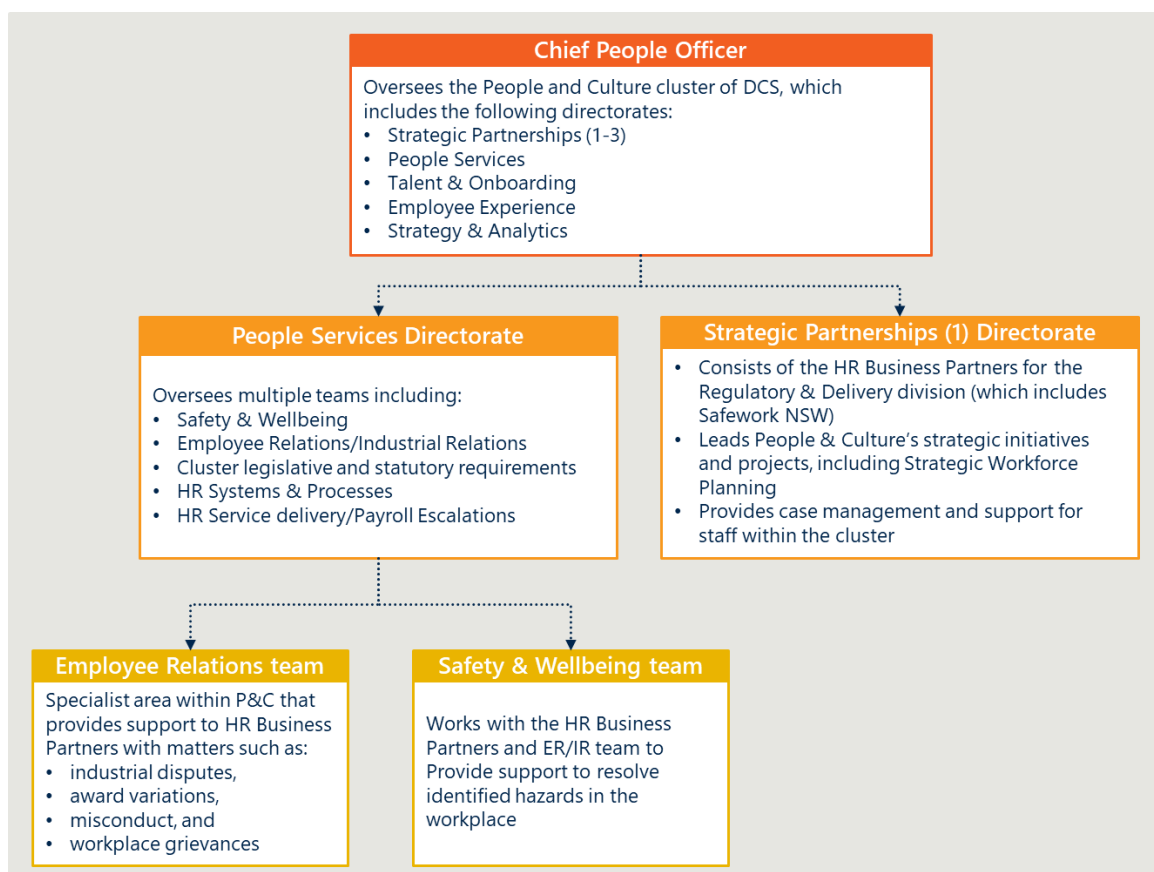
3 SafeWork NSW's complaint handling model

This section describes the current state of the complaints and grievances process relating to SafeWork NSW. As SafeWork NSW sits within the Department of Customer Service (DCS or the Department), the existing process is defined and delivered by the Department's P&C team.

3.1 Organisational structure of P&C

The Department's P&C team is responsible for triaging and resolving grievances and complaints. The P&C team are supported by a HR Business Partner for SafeWork NSW, who works directly with the Employee Relations/Industrial Relations team and Safety and Wellbeing team, to investigate matters relating to safety and wellbeing at SafeWork. The relevant functions of the Department's P&C team are described below in Figure 1.

Figure 1 | Organisational structure of the Department's P&C team



3.2 Current complaints handling model

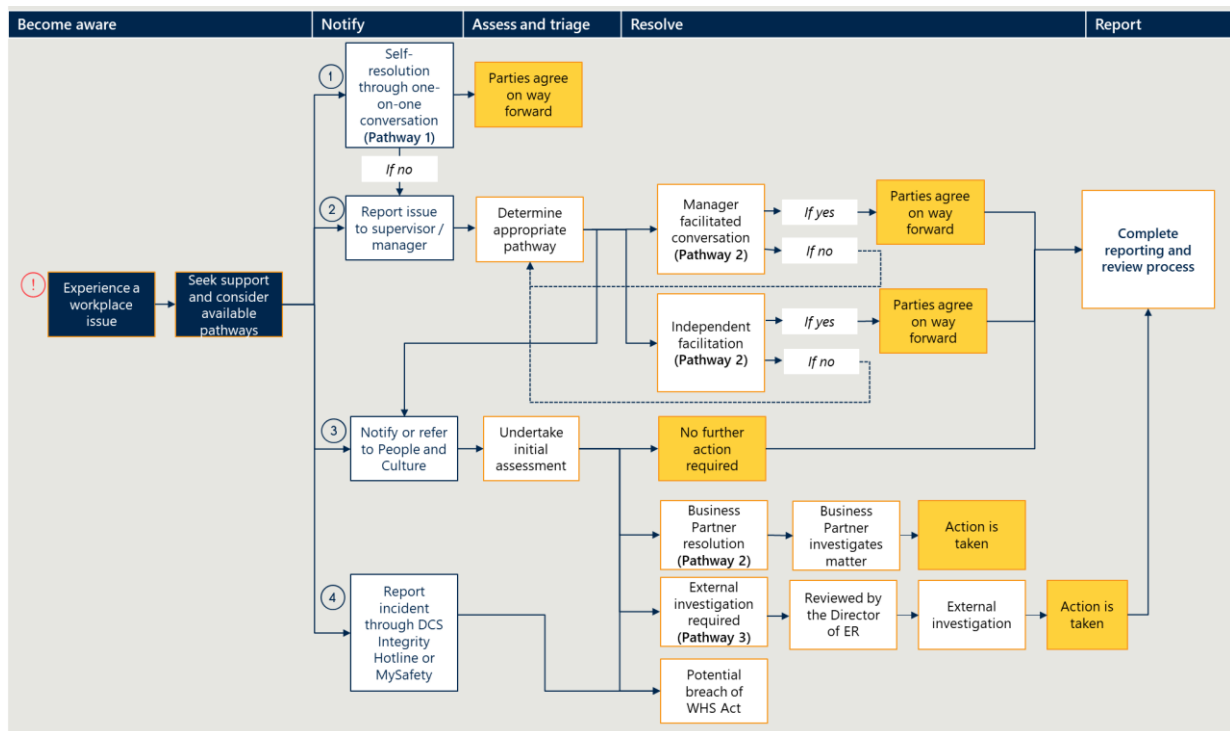
The Department's complaints and grievances process is designed to be compliant with a series of legislative requirements, awards, and policies. A full list is provided in Appendix A.

The Government Sector Employment Act 2013 (NSW) and associated Regulations and Rules are the primary legislative requirements which define the complaints and grievances process:

- Section 69 of the Act states that the person exercising employer functions relating to an employee of a government sector agency is responsible for handling misconduct by that employee and prescribes how they can act in response to findings of misconduct. The Act grants power to the Government Sector Employment Rules to handle misconduct by government sector employees and the procedural requirements for dealing with allegations of misconduct.
- Part 8 of the Government Sector Employment Rules, sets out the procedural requirements for misconduct allegations, investigations, and outcomes. These include:
 - the respondent must be informed of an allegation if investigations proceed, and granted the opportunity to provide a statement
 - after assessing the allegation, the employer may decide not to proceed if it is vexatious, trivial, or difficult to establish the facts
 - the respondent must be given a reasonable opportunity to make submissions to be considered by the employer before any action can be taken
 - written records must be kept of proceedings and actions taken in response to misconduct allegations

The Department's complaint and grievances process is defined into three pathways with multiple points of referrals and decision-making. This is illustrated in Figure 2 and described in more detail below. More detailed process maps of each stage are provided in Appendix B.

Figure 2 | Overview of the Department's current complaints and grievances process



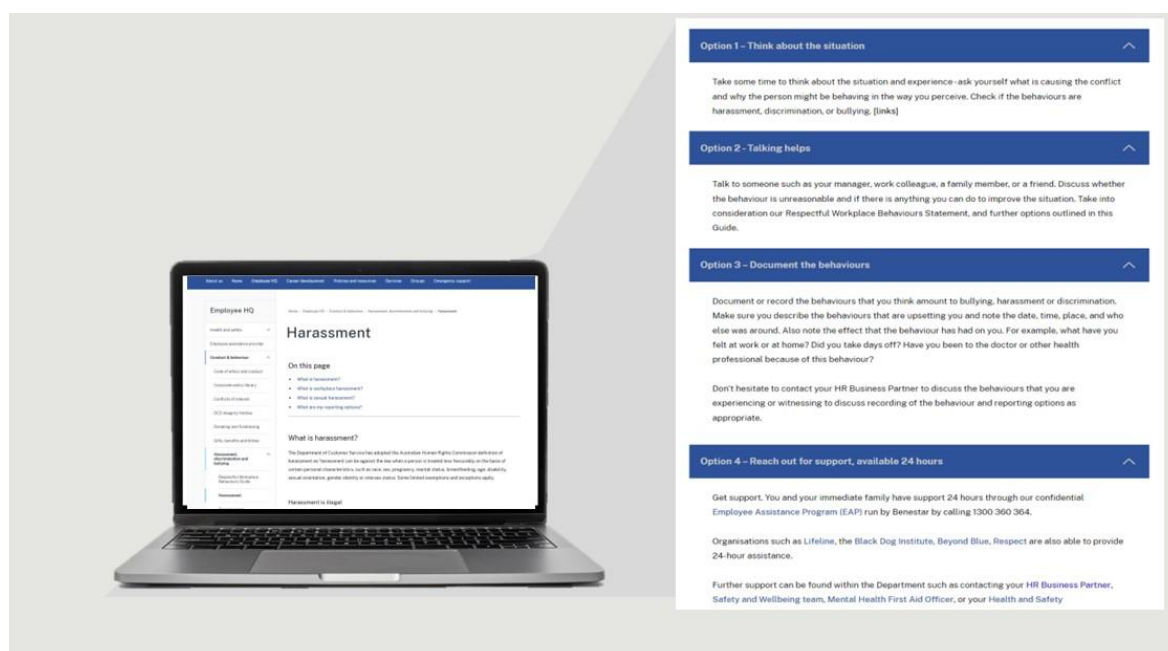
Step 1: Become Aware

There are several policies and procedures which describe the complaints process and provide SafeWork employees guidance on how to identify and report complaints. These include:

- Positive & Productive Workplace Policy 2017, which outlines the DCS' process for handling grievances such as bullying, harassment, discrimination, and other workplace issues. The Policy provides detail on the different elements of the process including the resolutions processes and pathways, the roles of staff throughout the process, documentation and reporting requirements and the legislative and policy framework governing the process.
- Respectful Workplace Behaviours Policy and associated Guide that outlines the DCS' commitment to a safe, inclusive, and respectful workplace and provides suggestions for staff on how to identify and respond to disrespectful behaviour, and where to go to find support.
- Workplace Dignity and Respect Charter, that outlines the DCS' commitment to fostering a respectful workplace, where everyone treats each other with dignity and respect. The Charter provides staff with a definition, and examples of bullying, clarification of the differences between bullying and performance management, and the principles which staff can abide by to promote a respectful workplace.

Further, there is detailed information on the Department's intranet to explain different types of unacceptable behaviour, how to recognise this behaviour and, the different channels and pathways available to staff to report and resolve such behaviour. Figure 3 provides an illustration of the Department's intranet.

Figure 3 | Extract from the Department's Intranet on complaints and grievances



Step 2: Notify

SafeWork and DCS offer a robust collection of channels available to report various types of complaints and grievances. These channels are promoted to staff on the internal intranet site, trainings, and other internal communications. A visual summary of these channels is illustrated in Figure 4 and described in more detail in the table below.

Figure 4 | Illustration of available reporting channels

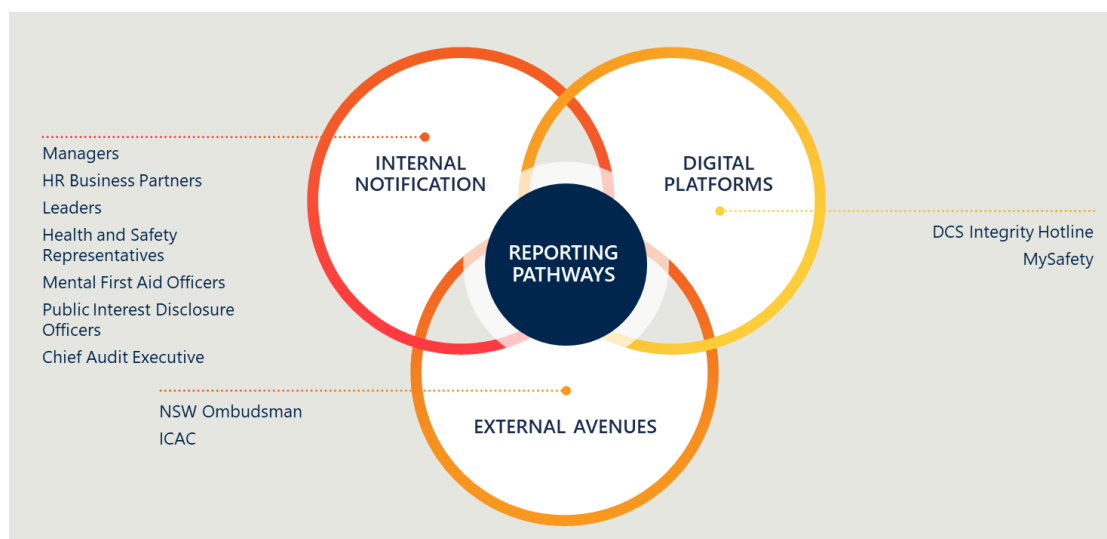


Table 4 | Summary of reporting channels

Notification channel	Description
Internal notification	Existing policies encourage staff to raise grievances directly with their managers or leaders to help resolve the matters directly at a local level. This includes reporting matters through Managers, HR Business Partners or other SafeWork leaders and representatives. Internal notification channels are frequently utilised by SafeWork staff, with 13 of the 55 complaints triaged to the P&C team between 2015 and 2023, reported through SafeWork leaders, and a further 10 reported via HR Business Partners.
Digital Platforms	<ul style="list-style-type: none"> The DCS Integrity Hotline provides an anonymous channel to report concerns or risks relating to fraud and corruption, misconduct, unethical conduct, WHS matters, or other breaches of policy. The channel is operated by the Governance, Risk and Performance team with relevant complaints triaged to the P&C team for resolution. The Integrity Hotline has been seldom used for matters triaged to P&C, with only 1 of the 55 complaints between 2015 and 2023, reported through the integrity hotline. The MySafety portal also provides a channel to report WHS hazards or incidents, including, both physical and psychological hazards, and injuries. The channel has been in place since 2021 and is operated by the Safety and Wellbeing team. MySafety does not appear to be frequently utilised as a channel for lodging complaints, with only 2 of the 18 complaints between 2021 and 2023, reported through the portal. .
External avenues	Like all NSW Public Sector employees, SafeWork staff can raise complaints through the NSW Ombudsman or the NSW Independent Commission Against Corruption

Step 3: Assess & triage

Once grievances are reported by an employee, they are subjected to an initial review by the receiver of the complaint to assess the appropriate reporting and resolution pathway. There are three pathways for resolution which are described in the next step 'resolution'. The process at this stage depends on if the matter is notified directly to SafeWork staff or to P&C.

Managers & leaders

Depending on the nature of the grievance, managers or leaders may determine that the grievance can be resolved locally (refer to *Pathway 2* below). More serious matters such as bullying, harassment and discrimination are referred to the P&C team for assessment. Incidents requiring formal reporting to P&C include:

- Serious bullying, harassment, or discrimination
- Serious WHS concerns
- Breach of workplace policy, including the Code of Ethics and Conduct
- Serious misconduct, fraud, corruption, and maladministration

P&C team

The P&C team conduct an initial fact-finding of the grievance to assess the appropriate resolution pathway. This involves a review of the details surrounding the complaint, including the seriousness of the complaint, the evidence provided by complainants, any history of complaints towards the staff involved, and any potential conflicts of interest arising in the handling of the complaint. If the case does not require investigation, P&C can determine what further action, if any, is needed to resolve the complaint. These are outlined under *Pathway 2* below. Cases that are determined to require investigation will be referred to the Employer Relations/Industrial Relations (ER/IR) team for resolution through *Pathway 3* or may be referred to external investigation.

Step 4: Resolution

As noted above, there are three pathways for resolution.

Pathway 1: Direct resolution

For many grievances, the optimal process will be to directly raise the issue with the respondent and work together to resolve it. This pathway is best suited to less serious grievances and relies on the ability of staff to effectively communicate their grievances and be mindful of the perspectives and experiences of their colleagues.

Pathway 2: Facilitated resolution

For more serious grievances that are unable to be resolved through direct resolution, a formal process of facilitated resolution is in place to assist staff to resolve the issue. There are three options for complainants depending on the nature of the dispute and their personal preference:

- Manager-facilitated resolution – the manager works with the complainant and respondent to find a mutually agreeable solution. They are then responsible for ensuring that the solution is properly implemented, and for monitoring the situation to ensure further issues do not arise.
- P&C-supported resolution – P&C are involved in the resolution process and responsible for liaising with the complainant, respondent and the managers and leaders overseeing the business unit to determine an outcome to address the issue. In this case, the manager and P&C representative work together to facilitate a resolution.
- Independent facilitation - As an alternative, the complainant can request an internal or external conflict coach to conduct the mediation process. The conflict coach is responsible for facilitating a constructive dialogue between the parties and helping them work towards an agreeable solution.

Pathway 3: Investigation and external resolution

For serious or complex cases, as well as grievances that have not been addressed by other resolution pathways, the P&C team will triage the case to the ER/IR team to determine the appropriate investigation pathway. There are three potential outcomes from this stage:

- The ER/IR team can conduct an internal investigation to determine the necessary action, if any, that needs to be taken. The findings are then provided to the line managers and HR Business Partners to resolve the complaint.
- The ER/IR team may choose to refer investigations to be conducted by an external provider. External investigations can be sought in cases where independence of the investigation is a concern, however the process is also used regularly due to limited capacity of the ER/IR team. The external providers are sourced through a competitive government panel, and generally consist of firms with police and WHS experience.
- In the event of a conflict of interest, a matter may be referred to the Resource Regulator for resolution. This process is established through a Memorandum of Understanding between the Resource Regulator and SafeWork.

Step 5: Reporting

Following the completion of each of the steps outlined above, staff involved in the process meet to discuss outcomes. In this meeting, staff determine what updates to internal reporting systems are required, and whether any notices regarding the resolution of matters should be sent. In some cases, a review may be conducted into the resolution of the case. The findings of the review, if conducted, would be reported to leadership within SafeWork NSW and the P&C team.

4 Assessment of past complaints

A key source of insight for this report was a review of past complaints and other matters. These files were identified by the Independent Review and reviewed against standardised criteria and questions. In general, this case file review highlighted limitations in the effective resolution of complaints and grievance processes. Documentation was consistently poor, and required procedures were not always followed. However, outcomes appear to be broadly correct and a focus on participant comfort and experience was a key feature of most cases reviewed.

Case assessment approach

As part of this review Nous reviewed 12 previous complaint cases against the principles of good practice. Each case was assessed against the following questions to determine their compliance, effectiveness, and appropriateness:

- Has each stage in the process occurred in a manner consistent with SafeWork's internal policies and procedures?
- Has the complaint been appropriately resolved considering the gravity or seriousness of the issue?
- Have appropriate records pertaining to the complaint been kept?
- Has the confidentiality of parties involved in the matter been appropriately maintained, with what is reasonably practicable?
- Is there demonstrated consideration of the complainant and respondent needs?

Against each of the questions above, the case has been reviewed as 'demonstrated non-compliance', 'evidence of potential non-complete' or 'demonstrated compliance'. All available documents including complaint outcomes, communications between complainant and P&C (e.g., email threads), and additional reporting has been reviewed as part of this assessment.

Case assessment findings

Satisfactory resolution of cases was observed in only half of cases assessed. Strengths of the case files reviewed included a focus on complainant experience and confidentiality. As well as appropriate communication with the complainant and other parties on outcomes and next steps. Key challenges identified as part of the assessment process included:

- Generally poor documentation relating to investigations and relatively limited detail recorded on outcomes or findings.
- Inconsistencies in terms of how processes for determining resolution pathways were established and followed.
- Frequent use of external contractors to investigate matters, in part due to resourcing constraints.

A case-by-case summary is set out at Table 5. A detailed assessment is provided in Appendix B (Table 6 and Table 7).

Note: Due to limitations in case file detail, the review's ability to establish overarching trends and insights has been limited.

Table 5 | Summary of case file assessments

Case No.	Year	Did the case demonstrate good practice?	Summary of assessment findings
1 & 2	2016	No	An external investigation found bullying had likely occurred and made recommendations on addressing them. No documentation provided supports any resolution having occurred.
3	2017	No	Allegations of bullying behaviour were not resolved through informal pathways. A formal complaint was then closed on the complainant's resignation despite no evidence of the bullying behaviour being addressed.
4	2018	Yes	Correct procedure was followed in referring a WHS matter for external investigation. Once the case was found not to constitute a WHS matter, the issue was correctly referred for facilitated resolution by HR.
5	2019	No	The ER/IR team faced under-resourcing which delayed their ability to progress the case by 2 months.
6 & 7	2019	Yes	A hazard report lodged through MySafety was correctly triaged to P&C due to the severity and risk of the matter. P&C followed procedure to involve the relevant teams and develop solutions to manage the hazard.
8	2020	Yes	Correct processes were followed and thoroughly documented in referring a WHS complaint for external investigation. The findings were communicated to the complainant who was provided the option to dispute them or pursue facilitated resolution.
9	2020	No	Additional complaints were raised by a complainant disputing the outcome of a previous complaint. Documentation provided did not clarify whether these further enquiries occurred.
10	2021	No	There is no supporting evidence that a confidential report received through the DCS Integrity Hotline was properly investigated.
11	2022	Yes	The complaint was correctly identified as relating to a performance management issue which had been thoroughly documented by the complainant's manager. This allowed an efficient investigation and resolution options to be developed.
12	2022	Yes	The complaint received through MySafety was appropriately assessed by P&C to be suitable for facilitated resolution, which they supported management to deliver.

5 Assessment and recommendations against principles of good practice

This section provides an assessment of SafeWork's current complaints handling process against the six principles of good practice identified by Nous.

It assesses the extent to which good practice is followed in respect of the complaints handling and grievance process in the extent to which:

1. Processes used are accessible and person-centred
2. Processes adhere to principles of procedural fairness
3. Matters are resolved in an appropriately efficient way
4. Processes and approaches are effective in delivering high quality outcomes
5. Complainant information is handled with appropriate confidentiality
6. There is end-to-end accountability for the complaints handling and grievance process by the Department and SafeWork NSW.
7. Overall, the complaints and grievance handling process provides a seamless, supported, experience for SafeWork NSW.

After an assessment against each principle, Nous has found that the grievances and complaints process and systems applied to SafeWork NSW is generally conducted in alignment to good practice.

The steps to report and triage complaints are clear and enable matters to be dealt with through various channels (relative to the seriousness of the issue). There is demonstrated evidence of a commitment to procedural fairness and no suggestion existing processes are not in accordance with requirements under the Government Sector Employment Rules 2014 or Work Health and Safety Regulation 2017. A review of case files, process documentation and consultation, indicate that confidentiality is maintained at every stage of a complaint, and the process, as described, is applied in practice.

There are, however, opportunities for improvement to strengthen the management of complaints in practice, to be more effective. Specifically, there is a gap in processes to document and store complaint information and outcomes. This limits the ability for end-to-end accountability and system reporting on complaints to inform continuous improvement. It has also limited the ability for Nous to assess the efficiency of the complaints function. Further, information available to staff on the current processes and key steps could be improved to provide greater clarity for employees seeking to report issues, and managers responsible for implementing the policy.

5.1 Complaint processes are maturing to become more accessible and person-centred

The complaint and grievance resolution process applied for SafeWork NSW staff has the foundations of an accessible and person centric system, however poor access to information on the process may lead to poor outcomes. An accessible and person-centred complaints system removes barriers by providing clear information on the process, how to report and what to expect. It puts people at the centre, with processes that enable culturally responsive, inclusive, and trauma informed system. A complaints process that meets these principles supports a culture of awareness and early reporting, which will enhance the performance of the organisation and staff experience.

A review of case files and documented processes and policies, suggests some features of an accessible and person-centred complaints system are in place. The Department intranet describes existing complaint policies and is designed for accessibility needs. During complaint processes, employees are consistently referred to the Employee Assistance Program (EAP), while additional supports are available for various cohorts including people from Culturally and Linguistically Diverse (CALD) backgrounds, Aboriginal and Torres Strait Islander peoples and those living with disability. The Department staff note they are investing in continual improvement to incorporate and reflect employee experiences in their complaints process, through increasing wellbeing checks to staff involved in a complaint.

The accessibility of the current system may be limited due to poor availability of information on the complaints and grievance handling process. The materials and supports available to staff are not always easy to find or actively promoted to ensure that staff can easily understand their requirements and the supports available to them when involved in the process. In addition, the existing policies lack specific and up to date information necessary for staff to navigate the process.

Improvements to the intranet to provide more specific and detailed guidance would likely increase the accessibility and person-centric nature of the complaint system.

An accessible and person-centred approach promotes an inclusive and responsive process

In a mature, good practice, complaints process, all employees are supported proportionate to the seriousness of the complaint, and parties are provided agency over the complaints process. Good practice features minimise barriers that may discourage employees from participating in the process and includes:

- clear information on all available complaints processes, what complaints they can resolve, and how they can be used
- access to additional supports and assistance to parties to a complaint when requested (e.g., cultural support, disability advocates, support persons)
- removing barriers that may prevent specific groups of employees such as those living with disabilities and those from a CALD background from participating in the process.

The Department has begun to set the foundations for an accessible and person centred approach

The Department's current processes demonstrate some features of good practice for an accessible, person-centred approach. Information which describes the Department's policies relating to workplace behaviour and complaints, is designed to be easily accessible for all staff and is perceived by staff many as user friendly. Where a complaint occurs, the Department has standard guidance on accessing the EAP, and it is consistently implemented in practice.

Materials set expectations for performance and have been designed with accessibility in mind

The Department's HR policies are available and accessible on the intranet for all SafeWork employees. The intranet provides information on the Department's Code of Ethics and Conduct, including guidance on what is a respectful workplace and the different channel to report a complaint or incident. Plain English explanations on the types of behaviour which may constitute harassment, discrimination and bullying are available for staff to understand what is appropriate, what is not and what should be reported.

The information is designed to be functionally accessible, and staff consulted find it clear and useful. Banners on the intranet clearly designate where information sits in the portal, and information is structured using drop downs, downloadable PDFs and videos explaining the available text, all included to support accessibility by staff. SafeWork staff engaged in this review, generally considered the information online to be fit for purpose and accessible. Several staff members noted that if an issue arose, they would first access the intranet to understand what to do. This perception among consulted staff indicates that information on appropriate behaviours and reporting mechanisms is clear and available.

Existing processes and practices provide staff with access to supports during the complaints process

Staff involved in a complaint are referred to the EAP and given the opportunity to bring a support person to meetings at each stage of the complaints process. The Department has developed template communication materials for managing complaints and matters relating to unsatisfactory performance. All communication materials include standard text on the EAP program, and access to a support person. This is included in email responses from P&C to complainants communicating that a grievance has been received. It is also present in summary reports on the outcome of investigation. The standard text described below is clear and acknowledges the difficulty of the experience to those involved:

I am aware that matters of this nature may be personally difficult and that you may wish to seek support. I would like to remind you that the Department's Employee Assistance Program (EAP) provider, Benestar is available to you. The EAP provides free and confidential counselling services. Should you feel this may be of benefit to you, I would encourage you to contact them on 1300 360 364.

Similar text is included in many communications to notify staff of the opportunity to bring a support person. Case file analysis demonstrates that in all instances, SafeWork employees were made aware of the EAP program showing that, in practice, these supports are consistently provided.

The Department has also introduced some features of the Department's system that can support a culturally responsive and trauma informed complaints process. Specific resources are available on the intranet for diverse groups of employees, including those living with disabilities, Aboriginal and Torres Strait Islander people and those from a CALD background. Examples currently in place or in development were reported to include:

- a crisis support number for Aboriginal and Torres Strait Islander staff
- a specific HR email accessible for Aboriginal and Torres Strait Islander staff
- 12 Employee Resource Groups (ERGs), including for CALD, Aboriginal and Torres Strait Islander, women, and LGBTIQ+ employees and employees living with disability.
- guidance for staff, managers, and leaders on supporting employees with disability
- a support line to provide Aboriginal and Torres Strait Islander employees access to a qualified clinician with cultural awareness and experience (currently in development)
- an Aboriginal Peer Support Officer Program (APSO) program to enhance the experience of Aboriginal employees (currently being planned for launch)

Limited information on the complaints process affects accessibility

A poor understanding of the complaints process by staff can be a barrier for staff reporting and lead to inconsistent implementation of policies. Information on who to contact, what process will be followed, and what is expected of employees, should be readily available and clearly communicated to all staff to overcome these barriers.

Available materials and supports are not always easy to find or actively promoted

Much of the information available to staff on the complaints handling process is spread across multiple pages and documents on the intranet. During consultations, multiple staff stated that it was difficult to find all the information they required, and that they would appreciate having a single document to summarise the process. For the numerous supports available to make the process more accessible and inclusive for staff with diverse backgrounds and needs (as described above), information is limited and not readily promoted as a key component of the complaints handling process. On review of the Department's internal process documents, no reference to specific supports such as the HR email and crisis support number for Aboriginal and Torres Strait Islander staff were found. These supports also weren't readily promoted by P&C staff in communications examined in the case file documentation, with staff being referred to the EAP provider as standard practice. In addition, staff consulted during the review did not raise many of these supports and appeared unaware that they were available.

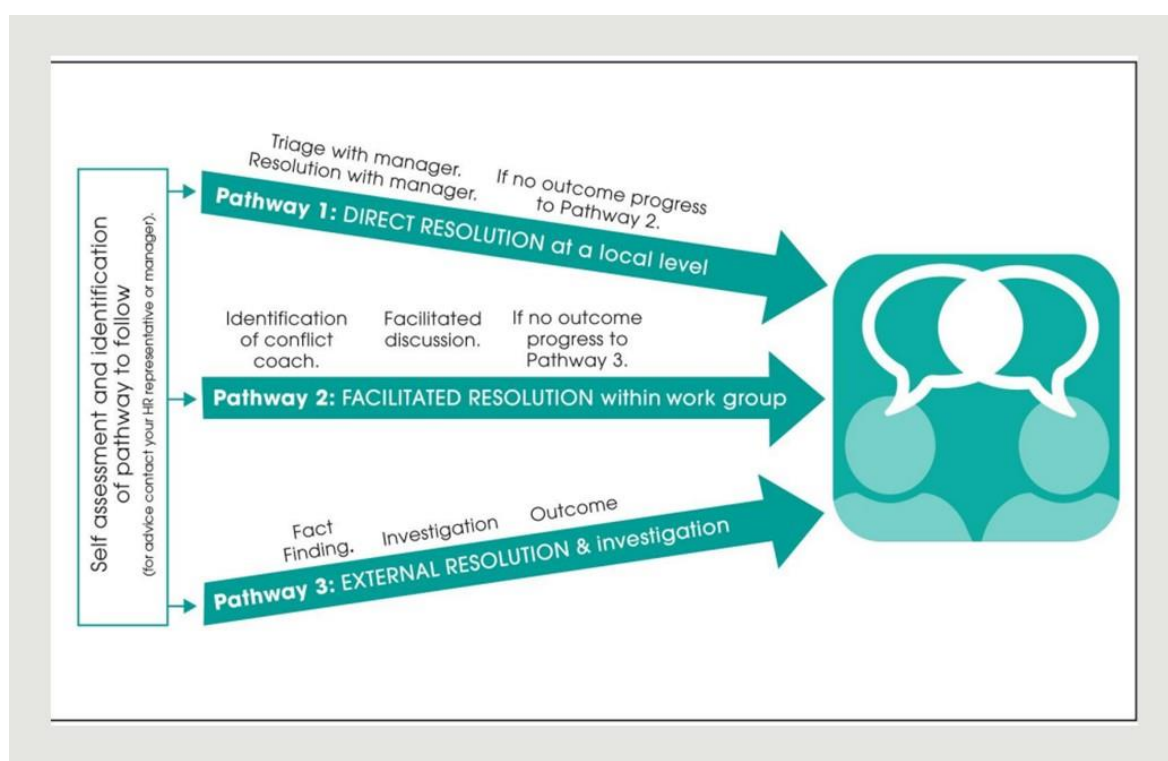
Existing policies lack detailed and current information on the complaints handling process

The Department's existing policies (as described on the Department intranet) may not be appropriately accurate or detailed to overcome these potential barriers. SafeWork staff note that a lack of clear information presents barriers to participating in the complaints handling process and can lead to poor outcomes.

The intranet description of the complaints process could be more accurate and up to date. The process as it is visualised, is shown in Figure 5. This process was up to date as at 2017, but has subsequently evolved. Certain complaints – for example serious bullying, WHS issues, or breaches of the Code of Ethics – are now treated differently to the historical practice described in this documentation. In particular, they must be referred to the P&C team, where the previous articulation of the process, set out in the Positive and Productive Workplace Policy allows for a degree of employee choice. This creates the potential for confusion by staff and for the managers and other leaders who support them.⁹

⁹ Department of Customer Service, Positive and Productive Workplace Policy, 2017.

Figure 5 | Current visualisation of complaints process



Information which is needed for a complainant and respondent to understand the process is not widely available on the intranet. Identified gaps include:

- Limited guidance on potential timelines or decision-making points, if a complaint was to proceed
- Information for respondents to a complaint to understand the potential implications and what to expect
- Information for contractors or other employee categories and how the complaints process and outcomes may be different
- Detail on the different external resolution pathways (e.g., Resource Regulator), when and how they are used
- Specific procedures for raising complaints on behalf of other employees

To support an accessible complaints system staff should have access to clear guidance about how to enable, receive, manage and resolve complaints. These gaps in information may present a barrier to an accessible and consistent understanding of the process, which leads to opportunities for interpretation and inconsistent implementation of policies.

Improvement opportunity 1: Update the Positive and Productive Workplace Policy and accompanying intranet material

Undertake a complete review of the Positive and Productive Workplace Policy. This should include in-depth consultation with SafeWork staff and Employee Reference Groups to understand what users of the policy require. A revised policy should include key information on each step of the process, written in a clear and transparent way for all employees to be able to understand. An available contact should be provided for employees to clarify their understanding and provide further feedback.

Improvement opportunity 2: Continue investing in new processes and supports to ensure accessibility of complaints process for all SafeWork employees

The Department should take a user-centred approach to the review of complaints processes. This could include:

- working directly with Employee Resource Groups and other advocates who may represent particular employee cohorts to obtain feedback on the existing information, processes and supports.
- Use behaviour insights from employee representatives to map the complaint journey from the perspective of employees and understand what accessibility reforms are required.
- Develop a 'lists of services' which can be made available to employees experiencing a complaints process. This list of services should include guidance on referral pathways to specialist services for people involved in a complaint, including people who are culturally and racially marginalised, people who identify as LGBTIQ+, or people with disability. Information about support options should be made clear and accessible on the DCS Intranet.

5.2 Existing processes demonstrate a strong focus on fairness

The complaint and grievance resolution process in place for SafeWork NSW demonstrates commitment to principles of both fairness, and procedural fairness, in its design and application. A fair complaints handling system ensures that staff can participate in the process and be treated equally and without bias regardless of their status or background. Procedural fairness guarantees that the process is conducted in a consistent and transparent manner that provides participants with the right to respond to allegations and findings.

A review of SafeWork NSW' policies and guidelines demonstrate that staff are clearly informed of their roles and responsibilities towards ensuring that the complaints handling process meets principles of fairness, and procedural fairness, as defined in the relevant standards and legislation. This commitment was evident in practice from review of past case files and engagement with staff involved in the process that demonstrated consistent application of the principles across SafeWork NSW.

Fairness in complaints and grievance handling requires equal treatment, while procedural fairness requires an appropriate opportunity to respond

Fairness relates to equality of treatment. That is, ensuring that all parties receive the same response and treatment, regardless of their title, background or circumstances. Good practice for fairness would see:

- all matters of a similar type and nature treated the same way, regardless of the background of the person bringing the complaint
- all parties given an equal and fair hearing and being treated equally throughout the process
- all parties perceive themselves (and are perceived by others) to have been treated fairly throughout the process by all involved.

In contrast, procedural fairness relates to the ability of a party to a complaint or grievance process receiving adequate information about it and having an adequate opportunity to respond to evidence and findings. Examples of good practice for procedural fairness include:

- respondents are advised of the allegation and provided an opportunity to respond
- complainants and respondents are treated with respect throughout the process, with staff acknowledging their concerns and addressing them with sincerity
- complainants and respondents are communicated with throughout the process in a way that is suitable for the individuals involved
- communicate the reasons and supporting evidence for decisions to complainants and respondents
- allow participants the opportunity to respond to adverse information and decisions
- make lawful decisions that are independent of influence or bias
- conduct regular reviews of consistency.

Reviewed processes are fair in their application

Current processes are applied equally, and with equal diligence, regardless of the complainant or matter at hand. Current processes do not provide for differential treatment – other than establishing different streams of focus for different complaint types. P&C staff express a commitment to fair and equal treatment of all complainants, and all people responding to complaints. This commitment was reflected in observations from case studies reviewed.

Standards for staff in the resolution of complaints and grievance process encourage fairness

The standards set for the resolution of complaints and grievance matters are designed to apply universally. The *Government Sector Employment Regulations and Rules* (NSW) outline general approaches and protections for complainants, and people subject to complaints, that are designed to be applied

consistently. Other relevant legislation and regulations similarly seek to embed fair and equal treatment into the resolution of complaints and grievance processes. This is also reflected in guidance made available to people managers within the NSW public service – for example on the *People Manager Hub* maintained by the NSW Public Sector Commission.¹⁰

The complaints handling and grievance processes established by the Department, and applied at SafeWork NSW, follow these principles of fair and equal treatment. A review of the existing process documents, highlights that they seek to embed fair and equal treatment for all complainants and people subject to complaints. Material available to staff on the intranet highlights a consistent approach with universal application.

The 'Positive and Productive Workplace Policy' which guides the conduct of complaint and grievance processes, expressly commits to the "fair resolution of all workplace grievances". This document provides a specific obligation of fairness for complainants and respondents to complaints. The document implies, but does not expressly state, that Managers and P&C staff resolving complaints are subject to a similar standard.

Standards for fairness have been observed in practice

Staff with experience of complaints handling and grievance processes highlight they are fair in practice. All complaints handling and grievance work at the Department and for SafeWork NSW is subject to requirements for procedural fairness outlined in Part 8 of the *Government Sector Employment (General) Rules* 2014. P&C staff interviewed highlighted their knowledge of, and commitment to, requirements for fairness in the management of complaints handling and grievance processes. Each staff member in the P&C area engaged provided examples of seeking to be fair and equal in their treatment of both complainants and respondents to complaints.

Managers and leaders in SafeWork NSW with experience of complaints and grievance processes also highlight that P&C staff seek to work in a way that is fair to all parties. Staff across SafeWork NSW broadly support this conclusion, with 64% of SafeWork NSW reporting in the 2022 PFES survey that they felt a grievance raised by them would be handled in a fair and objective manner.

A review of example complaint and grievance case studies suggests fair and equal treatment. Case files and records reviewed suggest that the P&C team engages fairly and constructively with all parties to a complaint. They collect evidence and information in a way that appears even handed and without obvious bias to one party or another. Decisions are informed by facts and reasons for decisions are communicated to parties.

Procedural fairness has also been observed in practice

Procedural fairness will be present when each party to a complaint has a meaningful opportunity to respond to allegations made against them, the evidence supporting those allegations, and any findings made that refer to them. It requires that staff are given an appropriate and timely opportunity to consider and respond to complaints and grievance processes, as well as the support necessary to make that engagement meaningful and effective.

Current processes and approaches for complaint and grievance resolution have been established with considerations of procedural fairness in mind. Each process established by the Department and used to resolve matters at SafeWork NSW includes multiple instances where both parties can consider evidence and findings. There are also specific opportunities for staff to respond to adverse findings.

Engagement with P&C staff, and a review of previous case studies, suggests that these opportunities for parties to see and respond to evidence and findings are followed in practice. This suggests that good practice for procedural fairness is adhered to.

¹⁰ <https://www.psc.nsw.gov.au/workforce-management/people-manager-hub>.

5.3 There is insufficient evidence to determine the efficiency of the current complaint handling process

The efficiency of the complaints handling process cannot be easily quantified. Staff seek the timely resolution of matters and work effectively toward that goal. However, current systems do not track the timeliness or efficiency of delivery. Records made available to the review do not enable a conclusive determination that the process is either efficient or inefficient. More investment in tracking delivery timeframes is required.

An efficient complaints process addresses issues in a timely and appropriate manner

An efficient system will respond to complaints in a timely manner, minimise delays and ensure prompt resolution of complaints to meet the agency's requirements for expeditious investigation under the Code of Ethics and Conduct for NSW government sector employees. It also contributes to the satisfaction and confidence of employees in the organisation's ability to handle complaints in a reasonable timeframe.

Good practice in ensuring efficiency includes:

- resolving complaints within reasonable time frames that meet legislative requirements
- developing appropriate KPIs for the different resolution pathways, such as time to resolution
- assessing and triaging complaints to resolve less complex complaints early and focus resources on high complexity complaints.

HR systems do not support effective tracking of delivery time

The systems used for complaint and grievance resolution do not provide guidance on appropriate timeframes. P&C staff utilise standard Department systems as part of their work. These systems do not include a case management system or other processes that track matters by default. This means that staff do not receive guidance or reminders on how long particular matters should take to resolve, or any guidance on whether appropriate timeframes have been met. A review of case files demonstrated that in no previous cases reviewed were timeframes for outcomes communicated to the complainant or respondent.

Certain systems available to staff, like Microsoft Teams and Microsoft Outlook, could be used to provide reminders for certain activities, or to provide high level insight into delivery times. However, these are not the function of these systems, and it is unclear whether staff have the capability to use them in this way.

Resolution timeframes, and other performance data, are also not captured by existing systems. The software used by the P&C team does not record information on how long each aspect of a complaint takes to resolve. They also do not allow for any comparisons to be made between the resolution time of one complaint, and other complaints, without significant manual effort. Information capture – and automated insight generation – on other KPIs relating to complaint and grievance resolution is also limited.

Note: Staff in the P&C area have informed Nous that a record keeping and case management system (Service Now), was being implemented by the Department during the engagement and was in place by 9 October 2023. This system was described as a 'minimum viable product' that would automate basic process management and record keeping. Additional features are expected to be added over time. This system may drive better outcomes over time. However, it will only begin to address concerns raised in this report to the extent that it: a) is effectively implemented; b) supports effective workflow management and reporting; and c) supports better record keeping and document management.

Staff practice seeks a timely resolution of matters, with varying outcomes

Staff in the P&C team seek to resolve matters as quickly as is possible. As trained HR professionals they recognise the benefits of the speedy resolution of such matters and seek to resolve them as quickly as possible. All P&C staff engaged highlighted that they seek to resolve matters quickly and in line with the high level timeframes set out by relevant guidance documents. However, several of these staff highlighted the challenges of rapid resolution without effective process management, or tracking tools.

P&C staff highlighted external resolution pathways, and limited resources, as key drivers of delay. Once matters are referred to external investigation, or sent for comment by complainants, respondents or managers, the P&C function does not have the ability to drive their resolution. Staff in the P&C team highlighted that this was a source of delay on some matters, but that it was beyond the control of their team. Staff in the P&C team also highlighted that team resources are also a source of delay – even where timeframes are set for resolution, resources are needed to ensure that relevant work can be completed.

Staff satisfaction regarding resolution remains relatively high. While P&C staff highlight concerns about the length of time they take to complete matters, these concerns are not shared universally within SafeWork NSW. The 2022 PFES Survey highlighted that 84% of staff at SafeWork NSW were confident that work health and safety issues they raised would be addressed promptly. Engagement with managers at SafeWork NSW highlighted that most felt that very serious people issues would be resolved quickly, although there were concerns about resolution times for less serious matters.

Improvement opportunity 3: Better track delivery times for complaints and grievance issues

Over time, and especially once new systems are embedded, develop approaches for capturing data on the resolution of each stage of each complaint and grievance process. This should include time to complete for each stage as well as data on performance against other relevant KPIs. Draw on this data to analyse delivery timeframes, identify areas of potential delay, and drive process changes and resourcing changes to ensure rapid, effective, delivery of work to resolve complaint and grievance matters.

5.4 Complaint information is treated with an appropriate degree of confidentiality

The complaint and grievance resolution process in place for SafeWork NSW is sufficient to maintain the confidentiality of participants' information. However, improvements exist that could deliver a more secure system. A confidential complaints handling system protects the privacy of all participants involved in the process. The system embeds a commitment to confidentiality across the business and all stages of the process and has clear procedures to address breaches when they occur.

A review of internal process documents, past case files and engagement with staff from the Department's P&C teams indicated that there are appropriate systems in place to ensure confidentiality across the complaints process. SafeWork NSW staff are provided with an anonymous option to report complaints through the DCS Integrity Hotline (refer to section 3.2, 'Step 2: Notify').

There are also existing processes to restrict access to confidential information only to necessary staff, as well as to minimise the possibility of accidental breaches of confidentiality by limiting the sharing of sensitive information. The processes are aligned to good practice, and from the review, staff were shown to have a clear understanding of the importance of confidentiality and work effectively to ensure that they are followed.

Confidentiality, however, is not absolute and the nature of the complaints handling procedure means that information in a complaint may need to be shared to investigate the matter and determine an appropriate resolution. In addition, anonymous reporting channels don't always contribute to the delivery of effective and appropriate outcomes as tensions may arise between maintaining confidentiality and procedural fairness, and effective investigation.

Enhancements to the guidance on existing processes could add clarity on when and how information may be shared beyond the complainant and how confidentiality should be balanced with the effective investigation and resolution of complaints.

Good practice confidentiality approaches should protect the privacy of all parties

A mature confidential complaints handling system protects the privacy of all parties and provides clear steps to address breaches in confidentiality. Such a process establishes that all staff have a responsibility to keep matters confidential. Features of a mature complaints handling process include:

- complaints are referred to using a unique identification number and all reporting is de-identified
- folders and systems with personally identifiable information are locked and only available to specific authorised staff
- complainants are provided an option to report anonymously
- personal information is only disclosed to other staff on a need to know basis
- unless specifically required, all reporting processes de-identify complaints.

There are sufficient systems in place to ensure confidentiality of the complaints process

The Department takes the confidentiality seriously and has a robust set of processes to protect the confidentiality of all parties to a complaint. How confidentiality is maintained through the complaints handling process is outlined below.

SafeWork NSW employees can report complaints anonymously through the DCS Integrity Hotline

The DCS Integrity Hotline provides a phone number, email address, PO box and online form for staff to lodge complaints without disclosing their identity. Each of these channels is managed by Core Integrity, an external contractor, that receives the complaint and is the only party able to communicate with the complainant through the portal. Consultations with DCS staff and the review of the case reported through

the Integrity Hotline indicated that Core Integrity conducts an initial assessment before triaging the case to the appropriate team within DCS. For matters triaged to P&C, Core Integrity provides a case report detailing the allegations to the Director of the Department's People Services Directorate and the Employee Relations/Industrial Relations team, noting any sensitivity requirements specified by the complainant.

It was also raised by one Department staff member that the MySafety platform maintained by the Department previously had a MyConfidential option within it for confidential reporting, however this was taken offline due to operational issues.

Access to confidential information is restricted to select staff

Based on consultations with Department staff and review of the case files and process documentation, access to folders and emails containing confidential information is restricted to specific P&C employees on a need-to-know basis. It was stated by a P&C Director that reported issues are first assessed and triaged by a set team of 6 within P&C, who only refer the complaints once there is a clear understanding of who else the information should be shared with.

For DCS Integrity Hotline issues triaged to the Employee Relations/Industrial Relations, a dedicated resource manages cases received through the Hotline before triaging them to the relevant staff member or team.

Current reporting on cases occurs through Excel spreadsheets maintained by the different teams involved in the process (P&C, Employee Relations/Industrial Relations and Safety and Wellbeing), which staff noted were only accessible to specific users within the relevant teams through either password protection, or log-in requiring specific staff emails.

Sensitive information is only shared when necessary

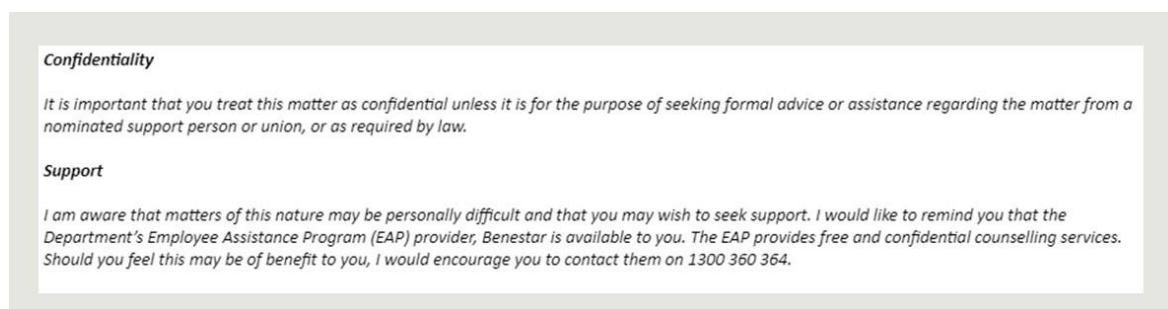
P&C staff highlight that sensitive material is shared only when required, and redacted where appropriate. Staff will only share, complaint outcomes, reporting processes and other internal communications related to complaints where required. If these are shared, staff will redact sensitive information, unless it is absolutely necessary, to minimise the potential for accidental breaches. Case files and reporting documents reviewed indicate that P&C staff invest in efforts to remove personally identifiable information from documents and emails accessible to staff, beyond the specific staff detailed above.

Other system factors outside of the defined process can impact the confidentiality of complaints

Despite process controls, confidentiality cannot be absolutely projected as part of complaints handling. Process controls exist and are used by staff, however confidential information can be shared during the complaints process due to limited supports and awareness of staff responsibilities.

Complainants and respondents have a responsibility to maintain the confidentiality of the process. Standard text is included in all the reviewed communication materials which reminds participants of their obligations to maintain confidentiality. An example is provided below from the email template provided to complainants to communicate the outcome of a complaint.

Figure 6 | Excerpt from email template used in a complaint



However, consultation with SafeWork employees and review of case files, indicates there are examples where confidentiality was breached by those involved in the complaint. Case files included reports where participants involved in the matter were discussing the complaint with their colleagues while a resolution process was still underway.

A lack of available support mechanisms may lead to complainants sharing confidential information about a complaint. SafeWork staff noted previous cases where complainants had breached confidentiality by reaching out to colleagues for support during the investigation process. Confidentiality requirements during an investigation can leave people feeling isolated, unsupported, and anxious. SafeWork may not provide sufficient channels for support during this time to address complainant issues. Information can then be shared by complainants seeking informal support and unknowingly affecting the integrity of the outcome.

Anonymous reporting channels do not always contribute to effective and appropriate outcomes

There is a tension between the provision of anonymous complaint channels, procedural fairness, and effective investigation. Confidential reporting channels are a feature of good practice which exists in SafeWork's current process. Anonymous complaints should be investigated, as far as is reasonably practicable if they are assessed as having some substance.¹¹ However, confidential channels can make the resolution process more difficult and, in some cases, not possible.

One reviewed case file provides an example where an allegation of bullying was made against a manager. As the complaint was lodged through the DCS Integrity Hotline, there was no mechanism to speak to the complainant and understand the issue further, while the complainant had not responded to Core Integrity's enquiries. In addition, as P&C were unaware of the complainant's identity, their enquiries were restricted to minimise the risk of inadvertently exposing their identity. Documents provided to Nous indicate that this issue may not have been resolved. This presents a challenge for the Department in effectively addressing all matters it receives with appropriate seriousness and resources.

There will always be an ongoing tension between providing channels for anonymous reporting of issues, and effective investigation of those issues. Complainants and staff must be clear on the implications of confidential reports and its limitations as a method to achieve outcomes. Further, clear guidance is required for P&C to address challenges of confidentiality where allegations arise such as the one described above.

Improvement opportunity 4: Consider clarifying how confidentiality is maintained and balanced against effective investigation of issues

Enhance the guidance for SafeWork employees and staff to make clear the value of confidentiality and to address potential gaps in maintaining confidentiality through current processes. Enhanced guidance should also provide clarity how confidentiality should be balanced with the need for administrative simplicity, and a requirement that all complaints be effectively investigated and resolved.

¹¹ Ombudsman NSW, Effective complaint handling guidelines, 2017, <https://www.ombo.nsw.gov.au/guidance-for-agencies/effective-complaint-handling>, p.22.

5.5 Current systems broadly enable effective triaging and resolution

A complaints system is most effective when matters are addressed proportionate to their seriousness and complexity. The Department's approach to triaging and referring complaints enables matters to be allocated to the most appropriate channel.

Evidence from consultation and case files indicate that the triage processes currently in place reflect good practice. Existing guidance material, however, does not clearly set out the processes which operate in practice. As personnel in P&C change, it is important that clear guidance sets out best practice processes to ensure consistent ongoing application.

SafeWork staff are an important resource in recognising and addressing behaviour issues and potential workplace grievances. P&C play a critical role in supporting the resolution of matters at the organisational level. Consultation with P&C and SafeWork NSW staff note opportunities to further strengthen training of managers and the partnership between SafeWork and P&C to support more effective triaging of matters.

An effective complaint system is proportionate in its processes and response

An effective complaints handling process is one where complaints are handled in a way that is proportionate to the nature of the complaint. Features of an effective complaint handling system are:

- complaints being identified and referred to the appropriate complaint handling channel
- avenues existing for the early resolution of complaints, where possible and appropriate
- staff involved in the complaint (from Managers to P&C) having the resources, skills and authority to adequately resolve complaints

Systems and processes are designed to support effective triaging and proportionate response

Complaints are managed through a tiered system which enables simple issues to be resolved quickly, and more complex matters to be referred to appropriate investigation. Simple complaints are resolved through managers who are best placed to facilitate informal resolution, this is made clear in the description of managers role in the Positive and Productive Workplace Policy.¹² In line with the Ombudsman best practice guidance issues reported to P&C first undertake an initial triaging and fact finding, before being referred to the appropriate pathway, depending on seriousness and complexity.¹³

The P&C team is designed with clear roles and responsibilities for particular matters. Where an issue arises relating to a work health safety matter, it is directly referred to the Employee Relations/Industrial Relations team (IR/ER). Where issues present potential wellbeing risks, the safety and wellbeing team are notified to support resolution. Staff within P&C note the current team structure enables focus on particular issues and functions, which enables consistency in triaging and response.

Many matters referred to P&C are multi-faceted and require the involvement of a range of functions. The P&C team is designed to enable cross-functional resolution. Each team (HR, IR/ER team and wellbeing team) sits under the Chief People Officer for oversight and meets weekly to discuss triaging decisions and multi-disciplinary approaches to resolving disputes.

Triage practice by the Department has evolved over time

P&C staff describe their practice in triaging complaints and other matters as having evolved in response to legislative and other changes. Staff note that their practice is flexible and responsive. They highlight examples where changes in the law and in good practice have caused the Department, and their team, to

¹² Department of Customer Service, Positive and Productive Workplace Policy 2017, p.9

¹³ Commonwealth Ombudsman, Better Practice Complaint Handling Guidance, p.14

alter approaches. However, changes in approach have not necessarily always been clearly recorded or applied consistently.

P&C staff indicate that as of the date of writing, allegations of bullying are referred to and treated as potential work health safety (WHS) matters in accordance with the current guide for preventing and responding to bullying in the workplace.¹⁴ This represents a change to previous approaches, following the recent introduction of duties relating to psychological hazard and risk under the Work Health and Safety Act 2011. Updates to guidance materials, and to the Department's approach to managing and investigating allegations of bullying, were made as a result of this legislative change.

According to P&C, all matters of bullying or harassment are now treated as a conflict and hazard. They are then reported into MySafety (the Department's reporting mechanism for WHS matters) and referred to the ER/IR team for review. Consultation and review of case files does suggest that the Department treats bullying allegations seriously, regularly referred them to external investigation, in line with SafeWork Australia guidance.

Since 2016, 45 per cent of matters relating to bullying were referred for external investigation. An additional 30 per cent which were considered for external investigation were resolved internally at the request of the complainant. The other cases were reviewed as WHS matters by SafeWork's internal IR/ER team. There is, however, limited documentation of this standard approach, this is discussed below.

Guidance material may not support effective triaging decisions

Clear guidance for P&C staff involved in triaging is important to ensure consistency in practice and process. Components of the Department's current guidance - the Grievance Assessment Support Guide – are not fit for purpose.

The tool is designed to function as more of a reporting tool, then a triage tool. As demonstrated in Figure 7, the document enables the input of details about the complaint and documents the referred pathway. It does not provide guidance on which complaints should be prioritised, or which information/evidence constitutes a serious allegation and should therefore be externally referred.

¹⁴ <https://www.safeworkaustralia.gov.au/system/files/documents/1702/guide-preventing-responding-workplace-bullying.pdf> p.17

Figure 7 | Extracts from DCS grievance assessment tool

Section 1 – Grievance Details

Employee Name	Click or tap here to enter text.
Division	Click or tap here to enter text.
Team/Business Unit	Click or tap here to enter text.
Location	Click or tap here to enter text.
Manager/Director	Click or tap here to enter text.

If a written grievance has been received from the employee, HR Business Partner to review written grievance to determine if below details have been provided. Where gaps in information exist, HR Business Partner should have a conversation with the employee submitting the grievance to gather the additional information.

1. What are the behaviours and/or incidents that have occurred?	Click or tap here to enter text.
2. How often has the behaviour/issue occurred?	Click or tap here to enter text.
3. When did this behaviour/issue begin?	Click or tap here to enter text.
4. How long has the behaviour/issue been going on?	Click or tap here to enter text.

Section 2 – HR Assessment
Attach any additional case notes as required.

- Does the grievance primarily consist of a work performance matter that is causing the employee concern or distress? Choose an item.
- Does the grievance primarily consist of a recruitment matter that the employee is not satisfied with? Choose an item.
- Does the grievance relate to the employee's manager and assistance is required to resolve the issue? Choose an item.
- Does the grievance primarily relate to bullying, harassment, or discrimination? Choose an item.
 If no, does the grievance primarily relate to behaviour that, if sustained, is likely to result in bullying, harassment, or discrimination? Choose an item.
- Does the grievance primarily relate to matters that may be criminal, or may constitute corrupt conduct, maladministration, or substantial waste? Choose an item.
- What are the potential risks if this issue is not resolved promptly and satisfactorily?
 Click or tap here to enter text.
- Has the employee provided a medical certificate or other evidence in relation to the matter? Choose an item.
 If yes, report to Safety & Wellbeing and ensure that an Incident/Injury Report form is completed.
- Has the employee raised a similar grievance previously? Choose an item.
- Have similar concerns been raised in relation to the respondent/s previously? Choose an item.

A good initial assessment stage should help staff determine what action is required, where to direct the matter and whether it needs to be prioritised. It is not clear whether the Department's existing tool achieves this.

Department and SafeWork staff note recent issue with staff turnover within the People and HR division. Staff involved in triaging may therefore not have the institutional knowledge to know when and how to refer certain matters. In this case, clearly documented guidance becomes critical in enabling consistent and compliant practice.

Staff practices do not always enable the early resolution of complaints

SafeWork and P&C staff both indicate concerns with the consistency of manager's people management skills to identify and support the resolution of complaints. Managers are a critical resource and should be trained appropriately to detect early concerns, handle complaints confidentiality and impartiality and understand where further escalation is required.¹⁵ The role of managers in early resolution is a necessary feature of an effective complaints system which addresses non-complex matters quickly and proportionately. Where managers are not appropriately equipped to resolve issues matters are at risk of escalation.

At present, SafeWork managers and senior staff may not possess the appropriate skills to address issues relating to poor performance and breaches of the Code of Ethics. The 2022 PMES survey indicates that only 55% of employees consider managers appropriately deal with employees who perform poorly. Staff consulted indicate that this gap in capability contributes to inconsistent support of performance issues which can then escalate into larger more protracted grievances.

At present, little training is provided to SafeWork managers and directors to build capability. The only available training on the complaints process is provided through induction when joining. No refresher training or specialist training (where appropriate) is provided, despite being best practice.¹⁶ What training is provided focuses on awareness of existing processes and where to find information on the intranet. No training is provided on managing unreasonable complainant conduct, receiving feedback of complaint

¹⁵ Commonwealth Ombudsman, Better Practice Complaints Handling, 2023.

¹⁶ Commonwealth Ombudsman, Better Practice Complaints Handling, 2023.

process and/or implementing change in response to complaints. Existing training does not therefore support early resolution and the role of managers as leaders in supporting an effective complaints system.

Note: SafeWork has recently invested in a new leadership training program 'Elevate', it is not clear that complaint resolution is a focus of this program. P&C staff note the development of such programs are part of a greater investment in building the leadership skills of SafeWork employees. The program, however, is focused on senior leaders and it not yet targeting managers.

Increased coordination between SafeWork and P&C may support earlier resolution of non-serious complex matters

Informal engagement between SafeWork NSW and the P&C Team is limited. As a result, P&C are often not made aware of grievances until informal resolution is not possible. According to one senior P&C staff member, 80 per cent of formal complaints could have been handled more effectively early in the process.

Nous has observed in interviews that there is limited interaction between P&C and SafeWork employees in seeking advice on potential grievances and supporting early resolution. SafeWork staff note limited consistent relationships with P&C staff. One staff member suggested that few managers are aware of their P&C contact. Those that are, have typically been with SafeWork for a longer period and rely on historical knowledge of the P&C team. According to SafeWork employees this can present challenges in actively seeking advice on workplace issues.

Early notification and support by P&C can contribute to the successful information resolution of complaints. Stronger partnership between SafeWork managers and P&C may contribute to more early and effective resolution of workplace grievances before they escalate to formal channels.

Improvement opportunity 5: Expand training for managers to identify and support the resolution of workplace grievances

Develop a mandatory training program for SafeWork managers to equip them with the skills to manage workplace conflict and the difficult conversations that relate to it. As well as to provide training for managers to understand when and how to engage P&C.

Review and update existing induction training for all staff to include detail on workplace conflict, unacceptable behaviour and how to manage grievances.

Improvement opportunity 6: Revise triaging tool to support more consistent decision-making to determine the appropriate pathway for complaint resolution

The Department should develop a new triaging tool which provides detailed guidance on the factors which may influence the severity of the case, or the required level of support. This new tool should be informed by an understanding of the different identities within the organisation, and how different power dynamics and relationships may play out in the context of conflict resolution. As part of the guidance, the Department and SafeWork should consider developing a risk assessment framework, with accompanying detail on the resulting triage, protocols, supports and accommodations required. The triage tool and risk assessment framework could be incorporated into the new case management system.

Once a triage system is implemented, monitor its use and the demand for different resolution pathways and invest in the appropriate resources to manage demand.

5.6 SafeWork's current practices and systems do not clearly demonstrate end to end accountability

Record keeping and case management of complaints and grievance processes for SafeWork NSW could improve.

Appropriate management complaints requires detailed record keeping and an appropriate system for coordinating effort. Current software systems used by the P&C area within the department do not automate the record keeping or workflow management required for effective complaints handling. This requires staff to apply manual processes – which are subject to variation based on team composition and turnover.

A review of case files, and engagement with staff, suggests that records are not kept as consistently as would be desirable. Similarly, case management is not as consistent or effective as would be desirable. This limits the ability of the P&C area to demonstrate that appropriate records have been kept, or to show that matters are managed consistently and effectively. It also limits the ability for reporting to feedback insights on system issues to inform continual improvement.

Improvements to the consistency of record keeping and the workflow management of complaints, would likely increase satisfaction with their resolution and enhance oversight.

Effective complaints handling requires consistent record keeping and accountability

An accountable complaints handling system ensures the transparency and integrity of the process and allows it to identify and address areas of improvement. Accountability in this context is essential to validate the trust of complainants and stakeholders that their concerns will be addressed, and that the organisation is committed to learning and growing.

Good practice for accountable processes may include:

- maintaining a record of reasoning for all significant decisions per the Code of Conduct⁸
- encouraging staff and managers to report insights and areas of improvement
- having formal processes for reviewing and evaluating the performance of the complaints handling system
- analysing complaints data to identify patterns or recurring issues

Technological barriers exist to effective end-to-end accountability

The Department does not currently have appropriate systems in place to ensure accountability for complaints and grievance processes. There is no single platform or tool that allows for case management of complaints and grievance processes. Records are kept, and work is allocated, using generic business systems and processes. The current use of existing systems has not enabled appropriate record keeping or allocation of effort. However, work is underway to introduce bespoke systems.

The Department does not, at the date of writing, have a dedicated human resources record management or process management software tool. Staff in the P&C team store files in folders on the Department's internal network. Matters are tracked through manual effort, often using ad hoc spreadsheets or other informal tools.

The lack of a case management system reduces the effectiveness of resource allocation and progress tracking.

Staff in the P&C area within the Department rely on informal tools to track the complaints and grievance processes they are managing. P&C staff and managers comment that this affects how well they can monitor and manage the matters they are responsible for. They also highlight that it raises challenges when a staff member leaves the P&C team – current systems rely on the knowledge of individual staff, and on appropriate handovers. Gaps can arise over time if there is rapid or unexpected turnover.

Informal complaints and grievance tracking is also seen to complicate resourcing of their management. Staff and managers in the P&C area highlight that it is difficult for them to understand the level of demand they or their peers are under at any given time. Management decision making on resource allocation currently relies on informal reports provided by staff to managers about their own capacity. There is no way for Managers to understand the demand for complaint and grievance services over time without engaging in further manual effort.

The P&C area is unable to offer reporting on complaint or grievance trends without manual effort. Tracking trends in the reports made, outcomes generated, and other factors related to complaints and grievance processes is an effective tool for improving practice or ensuring resources can be right-sized. Because data is captured only informally, and using ad hoc tools, the P&C area within the department is significantly limited in terms of the types and extent of reporting it is able to undertake,

Informal document management and insight capture also complicates the management of complaints and grievances.

Good practice and the Government Sector Employment Rules require documents and file notes relating to complaints or grievance processes to be captured and stored for a significant amount of time. These records must remain associated with the matter they relate to for them to have value. Similarly, they must be searchable and accessible – regardless of whether the original staff member filing them has left the Department.

A review of case files highlights that case and document management has been inconsistent over time. Record keeping has used different formats and materials have been saved in different places and in different ways over time. Similarly, the level of information and the range of documentation captured has varied consistently from case to case and from year to year. Files documenting the process and actions taken could not be provided for 1¹⁷ of the cases requested. Further, input from a staff member in the P&C area suggested that a lack of consistent record keeping had made locating the files that Nous requested more difficult than had been expected. This does not align with expected practice.

Practice and procedures could improve to drive better accountability

System limitations are compounded by a lack of consistent practice relating to record keeping or reporting. Effective filing requires manual effort on behalf of individual staff within the P&C area. It also requires effort from managers to ensure that each staff member uses a consistent approach, and that this approach remains consistent over time. This has resulted in inconsistencies in the material that is captured by the P&C area, along with inconsistencies in how it is used.

Staff and managers are focused on driving consistency, but this can be affected by turnover. All staff and managers in the P&C area indicated that they make it a priority to capture accurate records, and to support their peers to do the same. However, each also acknowledged that this takes time and effort, as well as being dependent on the discipline and attention to detail of staff.

Some staff in the P&C area, and some managers in Safe Work NSW, noted that the adherence to process in the P&C area is highly dependent on the staff that occupy roles in the team. With stakeholders making this observation also highlighting that there are regular personnel changes in the P&C area which can have a negative impact on consistency.

Note: Staff in the P&C area have informed Nous that a record keeping and case management system (Service Now) was being implemented by the Department during the engagement and was in place by 9 October 2023. This system was described as a ‘minimum viable product’ that would automate basic process management and record keeping. Additional features are expected to be added over time. To the extent that this system is effectively implemented, and to the extent that it contains effective workflow management and reporting tools, as well as record keeping and document management tools, it may support better outcomes than those observed in practice.

¹⁷ One case study from the initial 12 requested for the case file review had to be replaced due to difficulties accessing appropriate records in the timeframe of the Review

Improvement opportunity 7: Ensure record keeping and oversight is systematised, and automated where appropriate

Ensure that systems and processes are established to automate the collection and archiving of all documents related to each complaint or grievance matter managed by the People and Culture area. Using the record keeping and management system currently subject to implementation, ensure that all records generated as part of the resolution of a matter are linked to that matter and saved in a way that ensures that the People and Culture area meets appropriate record keeping requirements and can support all of its decisions with appropriate evidence.

5.7 Current approaches to complaints handling do not offer a seamless experience for SafeWork NSW staff or managers

Complaints handling and grievance processes could be made into a more seamless experience for staff and managers at SafeWork NSW. Current approaches provide only limited consistency of support for complaints. They also require significant manual effort on behalf of SafeWork NSW staff and managers – with this approach representing a significant departure from historical practice.

Good practice complaints handling process should offer a seamless experience

Good practice in complaints handling and grievance management requires that each element of the relevant system works together well to deliver outcomes. Staff and managers engaging with this process should be well supported and should not need to work around service gaps – the experience should be seamless. Features of such a system should include:

- A single, enduring, point of contact
- Clarity regarding what relevant processes look like and how to engage with and use them
- Relative stability in terms of what processes are used
- Response times that are as short as possible, and responses which are comprehensive.

The complaints and grievance handling processes applied does not provide SafeWork NSW staff with a consistent, seamless, experience

Current processes do not provide sufficient consistency of support

A lack of dedicated P&C supports for SafeWork NSW reduces the efficacy of complaints handling and grievance processes.

The P&C team does not have dedicated resources allocated to supporting SafeWork NSW in a 'HR business partner' role. Ad hoc meetings and support are available. However, supports are often provided by different staff. This reduces the SafeWork NSW specific knowledge that P&C staff bring to their engagements with managers and others in SafeWork NSW.

SafeWork NSW leaders do not always feel comfortable raising sensitive matters through generic channels. The means of communication between SafeWork NSW leaders and the P&C team are limited to a generic email helpline and phone number. Where SafeWork NSW leaders require advice on a specific complaints or grievance related matter, they lack a distinct channel for raising it. Where matters are sensitive many staff and leaders at SafeWork NSW feel uncomfortable using the current, generic, channels to engage with the P&C team.

Variation in the P&C team members providing support reduces their ability to drive consistency in responses. Record keeping and case tracking within P&C is limited. This means that it is difficult for new (or newly reassigned) staff to keep across matters related to SafeWork NSW. Institutional memory is limited, and is reliant on P&C staff effectively briefing their colleagues before they meet with SafeWork NSW staff. As this briefing is not always possible, SafeWork NSW report experiences where sensitive complaint or grievance matters are not handled by staff with appropriate context or insight on the challenges and issues at play.

The complaints and grievance handling processes applied does not provide SafeWork NSW staff with a seamless experience

Effective complaints and grievance management for SafeWork NSW requires significant effort on behalf of managers and staff. Establishing appropriate approaches and procedures requires manual work on behalf of SafeWork NSW staff and managers – as clear, up to date guidance is not always available. Obtaining input from People & Culture managers on sensitive issues or non-standard matters can be time

consuming, and requires knowledge of the People & Culture team by the manager or staff member seeking advice. SafeWork NSW consider that ensuring rapid responses from the People & Culture team requires significant manual effort to escalate matters, and the use of channels that go outside what is recommended by the People & Culture team.

Current approaches are optimised around 'self service' rather than the management of complaints by managers on behalf of staff. SafeWork NSW staff and People & Culture team staff highlight the strength and availability of tools designed to support individual staff members to make complaints and receive a response. SafeWork NSW staff have highlighted that the current model has significant room for improvement in terms of managing matters raised by SafeWork NSW managers and other senior staff.

The P&C team previously operated a 'HR business partner' model for SafeWork NSW, with a single contact point available to support staff and managers within SafeWork NSW. However, this model was resource intensive. Resourcing constraints across the Department led to this model being replaced with the current, shared, structure. The People & Culture team recognise that the current model requires a different way of working for SafeWork NSW. However, they have indicated that processes, documentation and systems are currently being updated to support better outcomes from this approach.

Improvement opportunity 8: Ensure greater consistency and support in the complaints and grievance handling work performed by the People & Culture team on behalf of SafeWork NSW

Improve current service delivery approaches to provide a more consistent and seamless suite of supports for SafeWork NSW staff and managers. This should include: increasing the consistency of knowledge of People & Culture staff engaging with the People & Culture team; improving the accessibility of the People & Culture team to SafeWork NSW staff and managers; and, reducing the manual effort required by SafeWork NSW staff and managers to progress complaints and grievance processes.

Appendix A Legislative requirements relevant to the complaints and grievances process

Legislation	Requirements
Fair Work Act 2009, Part 6-2	<ul style="list-style-type: none"> Employees have access to the dispute resolution procedure set out in the award or agreement that covers them (see Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009). This procedure can be used to settle disputes related to that award or agreement, or to the National Employment Standards
Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009	<ul style="list-style-type: none"> The employee must notify their immediate manager in writing, stating the dispute and desired remedy If the dispute involves sensitive material, the employee may notify the next appropriate level of management The immediate manager must convene a meeting within two days to resolve the dispute If the matter remains unresolved, the employee may request a meeting with the next level of management The Department Head may be involved if the matter is not resolved If the matter remains unresolved, the Department Head must provide a written response The employee can request representation by an Association representative at any stage The matter can be referred to the Industrial Relations Commission of New South Wales if unresolved All parties must comply with any lawful recommendation from the Industrial Relations Commission Normal work should continue unless agreed otherwise or if it poses a risk to health and safety.
Government Sector Employment Act 2013 (NSW), Part 5, s.69	<ul style="list-style-type: none"> The person responsible for employer functions in relation to an employee of a government sector agency is responsible for handling misconduct by that employee. In cases of misconduct, the following actions can be taken: <ul style="list-style-type: none"> Terminate the employment of the employee without allowing them to resign voluntarily Terminate the employment of the employee after giving them an opportunity to resign Impose a fine on the employee, which can be deducted from their pay Reduce the amount of money payable to the employee as remuneration Decrease the employee's classification or grade Assign the employee to a different role Issue a caution or reprimand to the employee.
Government Sector Employment Regulations and Rules (NSW), Part 8, s. 38-41	<p>Initial stage for dealing with allegations of misconduct:</p> <ul style="list-style-type: none"> An allegation of misconduct can be made by any person to the employer After assessing the allegation, the employer may decide not to proceed if it is vexatious, trivial, or difficult to establish the facts If the employer proceeds, the relevant employee must be informed of the allegation and potential actions

Legislation	Requirements
	<ul style="list-style-type: none"> • The relevant employee has an opportunity to provide a statement regarding the allegation • Based on the statement, the employer may decide to proceed or not, and the decision must be notified to the employee and the person making the allegation. <p>Inquiries:</p> <ul style="list-style-type: none"> • The employer can conduct appropriate inquiries to determine if misconduct has occurred • There is no formal hearing with legal representation or cross-examination for allegations of misconduct. <p>Findings by employer:</p> <ul style="list-style-type: none"> • The employer can make a finding of misconduct or determine that misconduct has not occurred, notifying the employee accordingly • The employee must be given the opportunity for submissions before any action can be taken • Instead of taking action, the employer may monitor the employee's conduct over a specified period • If misconduct occurs during the monitoring period, the employer can take action without seeking further submissions. <p>Records relating to misconduct:</p> <ul style="list-style-type: none"> • The employer is required to keep written records of proceedings and actions taken in response to misconduct allegations • The personnel file of the employee may include information about misconduct findings deemed to be in the public interest, considering the nature and seriousness of the misconduct.

Appendix B Assessment of case files

Table 6 | Case file assessments

Case No.	Year	Complaint Type	Summary of findings
1&2	2016	Bullying	<ul style="list-style-type: none"> Detailed documentation and reporting of outcomes demonstrates case was appropriately investigated by P&C, respondent provided right of reply. Determination made to refer externally due to WHS matter. Process was not timely, took 5 months to complete from when complaint was made.
3	2017	Grievance	<ul style="list-style-type: none"> The grievance occurred due to ongoing behaviour that was not appropriately resolved through informal resolution. Documented reports demonstrates each step in process was followed. External investigation was not sought at the request of the complainant. Case was closed when the complainant resigned, no evidence the respondent's behaviour was addressed.
4	2018	Bullying	<ul style="list-style-type: none"> Case referred to appropriate pathway. Triage of complaint referred allegation of WHS matter to external investigation. Once determined no WHS matter, issue then referred for facilitation resolution by P&C. Detailed documentation on the process and outcomes was reported and provided to the complainant.
5	2019	Grievance	<ul style="list-style-type: none"> The ER/IR team faced under-resourced which delayed their ability to progress the case by 2 months. A secondary claim was lodged against the Director due to perceived lack of support and alleged bullying in supporting the initial claim. Allegation made against director responsible for reviewing the complaint. Therefore, matter escalated to Resource Regulator for external review at the request of the complainant.
6 & 7	2019	Grievance	<ul style="list-style-type: none"> A hazard report lodged in MySafety was triaged to P&C based on the severity and risk of the matter. The required documentation for hazard reports was complete.

			<ul style="list-style-type: none"> P&C worked with the local manager to develop short- and medium-term solutions to manage the hazard while longer term solutions were assessed. P&C took multiple measures to ensure the complainant's safety and wellbeing, including referring the complainant to the EAP and ensuring that the Employee Safety & Wellbeing team were involved.
8	2020	Bullying/harassment	<ul style="list-style-type: none"> The complaint was referred for external investigation as it related to a WHS issue. The outcome of the complaint was communicated to the complainant, who was provided with the option of pursuing a mediated conversation with the respondent as well as the option to dispute the outcome. A detailed timeline of all incidents and communications with the complainant was kept with supporting documentation attached
9	2020	Grievance	<ul style="list-style-type: none"> Documentation provided does not confirm if new allegations that were assessed by P&C as requiring further review were appropriately investigated. Throughout the process, the complaint was appropriately escalated to the ER/IR team and the CPO of the Department due to the seriousness of the allegations and the complexity of the complaint. The complaint was withdrawn at the request of the complainant due to their displeasure with the process and the outcome of their previous complaint. Considerable effort was put into ensuring the wellbeing of the complainant throughout the process and after their withdrawal of the complaint
10	2021	Grievance	<ul style="list-style-type: none"> The complaint was reported through the Integrity Hotline which stipulated an employee was fired unfairly. Efforts were taken to ensure the investigation was conducted in a way that didn't reveal the complainant's identity. Insufficient documentation within the SafeWork team on reasons for firing meant P&C were unable to make a determination. Due to the confidential nature of the initial report, the matter could not be investigated further.
11	2022	Bullying/harassment	<ul style="list-style-type: none"> The complaint was referred to P&C for investigation and found to be unsubstantiated as it related to a pre-existing performance management issue with the complainant. All interactions involving the performance management of the complainant were recorded in detail which allowed the complaint to be easily investigated and resolution options to be developed.

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2022

Grievance

- The complaint was lodged through MySafety and appropriately assessed by P&C to be suitable for facilitated resolution, which they supported management to deliver.
- Confidentiality was included in the standard email templates for communications with the participants, however the complainant was reported to have breached confidentiality by telling other staff of the complaint.

Table 7 | Case assessment against each criteria

Case No.	1 & 2	3	4	5	6 & 7	8	9	10	11	12
Year	2016	2017	2018	2019	2019	2020	2020	2021	2022	2022
Complaint Type	Bullying	Grievance	Bullying	Grievance	Grievance	Bullying/harassment	Grievance	Grievance	Bullying/harassment	Grievance
Did the case demonstrate good practice?	No	No	Yes	No	Yes	Yes	No	No	Yes	Yes
Reason for assessment	An external investigation found bullying had likely occurred and made recommendations on addressing them. No documentation provided supports any resolution having occurred.	Allegations of bullying behaviour were not resolved through informal pathways. A formal complaint was then closed on the complainant's resignation despite no evidence of the bullying behaviour being addressed.	Correct procedure was followed in referring a WHS matter for external investigation. Once the case was found not to constitute a WHS matter, the issue was correctly referred for facilitated resolution by HR.	The ER/IR team faced under-resourcing which delayed their ability to progress the case by 2 months.	A hazard report lodged through MySafety was correctly triaged to P&C due to the severity and risk of the matter. P&C followed procedure to involve the relevant teams and develop solutions to manage the hazard.	Correct processes were followed and thoroughly documented in referring a WHS complaint for external investigation. The findings were communicated to the complainant who was provided the option to dispute them or pursue facilitated resolution.	Additional complaints were raised by a complainant disputing the outcome of a previous complaint. Documentation provided did not clarify whether these further enquiries occurred.	There is no supporting evidence that a confidential report received through the DCS Integrity Hotline was properly investigated.	The complaint was correctly identified as relating to a performance management issue which had been thoroughly documented by the complainant's manager. This allowed an efficient investigation and resolution options to be developed.	The complaint received through MySafety was appropriately assessed by P&C to be suitable for facilitated resolution, which they supported management to deliver.

Case No.	1 & 2	3	4	5	6 & 7	8	9	10	11	12
Has each stage in the process been followed appropriately?	●	●	●	●	●	●	●	●	●	●
Has the complaint been resolved correctly?	●	●	●	●	●	●	●	●	●	●
Have appropriate records pertaining to the complaint been kept?	●	●	●	●	●	●	●	●	●	●
Are the appropriate staff involved?	●	●	●	●	●	●	●	●	●	●
Is there demonstrated confidentiality?	●	●	●	●	●	●	●	●	●	●
Is there demonstrated consideration of the complainant	●	●	●	●	●	●	●	Insufficient evidence	●	●

Case No.	1 & 2	3	4	5	6 & 7	8	9	10	11	12
and respondent needs?										
Overall assessment of case	●	●	●	●	●	●	●	●	●	●
Key										
●	Partial evidence of assessment criteria									
●	Clear evidence of assessment criteria									
●	No evidence of assessment criteria									