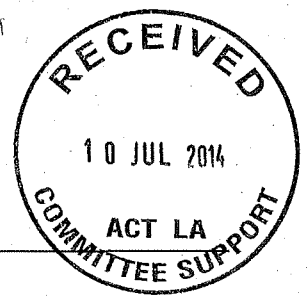




LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY



SELECT COMMITTEE ON ESTIMATES 2014-2015

Brendan Smyth MLA (Chair), Mary Porter MLA (Deputy-Chair),
Giulia Jones MLA, Yvette Berry MLA

**ANSWER TO QUESTION TAKEN ON NOTICE
DURING PUBLIC HEARINGS**

Asked by Ms Julia Jones MLA on Monday 23 June 2014: Ms Joy Burch, Minister for Education and Training took on notice the following questions:

Hansard Transcript 23 June, PAGE 30

In relation to: Bullying in the workplace

MRS JONES: So, I just wanted to ask how many reports of bullying have been made in the last five and 10 years? How many nonofficial reports as in ones that were not escalated up a chain but where someone has made an actual complaint were made? How many of them were substantiated?

How many of these people experiencing bullying or who claim to experience bullying are currently off work on worker's compensation? And over the same time period have there been reports of sexual harassment or other types of harassment such as pregnancy harassment and what is the method for dealing with them?

No, I do not necessarily need the detail today. I am very happy to have it taken on notice from the transcript if that is easier.

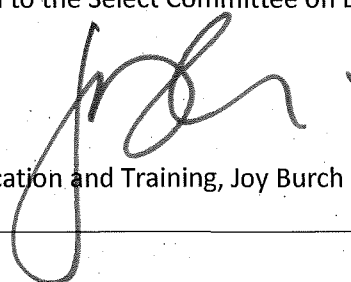
Minister Burch: The answer to the Member's question is as follows:—

1. The Government has made a significant investment into ensuring respectful work environments. In particular that investment has been made in training identified cohorts of employees with the RED Framework. The values of Respect, Integrity, Collaboration and Innovation guide our work across whole of Government. These values are integrated into workplaces within the Directorate through the development and display of staff charters and value statements in our schools.
2. There has been a strong, deliberate communication strategy encouraging all employees to participate in the WHO *People Matters Survey* which has a strong emphasis on measuring positive values, behaviours and culture within the workplace. This year we have planned a strategic response to the information provided through the staff survey, supplemented by other data relating to leave, conduct, and from particular cohorts of employees.
3. A large number of workplace conflict complaints are resolved informally, without need for investigation. In comparison to total workforce numbers reports regarding bullying represent approximately 0.5% of workforce. The majority of these are resolved using alternative dispute resolution mechanisms.

4. Since 2010 the Directorate has received 30 complaints of alleged bullying and/or harassment which, after preliminary evidence gathering, went to investigation. These matters were raised through the Directorate's Human Resources department.
5. When allegations of bullying and harassment are made, a decision is made to gather further evidence through a preliminary evidence gathering process. The purpose of the preliminary evidence gathering is to determine whether an investigation is required.
6. Of the 30 complaints of alleged bullying and harassment that went to investigation a finding was determined in 12 cases (bullying and harassment was found in five cases and the remaining determinations relate to other conduct matters).
7. Of those employees currently on workers' compensation, three have made complaints alleging bullying and harassment.
8. The Directorate has a strong focus on prevention. Code of conduct training is undertaken with all school based staff at least annually. Extensive Respect, Equity and Diversity (RED) training is undertaken with all staff in supervisory positions and this training is extended at the local level to all workplaces. All staff have access to Respect, Equity and Diversity Contact Officers (REDCOs) and REDCOs are located in around 90 workplaces throughout the Directorate. The Directorate also has 23 trained conflict coaches. These roles involve current employees trained as coaches to support the informal resolution of conflict where appropriate. The Directorate has developed a *Dispute Resolution Toolkit* which has been commended by the ACT Public Service Commissioner and is available on the staff intranet. I have included a copy of that toolkit for your reference.

Approved for circulation to the Select Committee on Estimates 2014-2015

Signature:



Date:

10.7.14

By the Minister for Education and Training, Joy Burch MLA



ACT
Government

Education and Training

ACT Public Service

**Respect, Equity and Diversity
Framework**

'Creating Great Workplaces with Positive Cultures'

Employee Complaints and Disputes Resolution Toolkit



**The document applies to employees and volunteers of the
ACT Education and Training Directorate**

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Introduction

About this Toolkit

Every employee of the Education and Training Directorate may reasonably expect to pursue their work in a safe, supportive and respectful environment, free from discrimination, bullying and harassment.

A situation may arise however where an employee perceives and complains that they have been treated unfairly, or a workplace dispute or conflict has occurred and working relationships have broken down.

It is often the first response for a person experiencing a workplace issue to find fault in the actions of others, and to assign blame. There are many productive benefits of a process which allows all parties to reflect on the circumstances of a conflict situation, and reach a satisfactory, negotiated resolution.

The main purpose of this document is to provide employees with a *Toolkit* of practical guidance and strategies to lead them to understand the circumstances of the conflict situation and to effectively manage complaints, disputes and other workplace issues that may impact their wellbeing. It provides guidance for managers to identify early, the risk factors that contribute to the development of complaints and disputes.

More broadly however, *the Toolkit* seeks to generate a positive organisational culture towards complaints and dispute management, by focussing on the productive benefits that an effective resolution can bring to a workplace.

Complaints and disputes provide an opportunity to improve the performance of the Directorate by:

- using complaint and dispute information in planning.
- informing risk management processes.
- informing the regular review of policy and procedures.

Effective management of complaints and disputes can also provide an opportunity to foster better relations, support the Directorate's values, enhance the reputation of the Directorate, provide information about services and address issues that may impact on the well being of employees.

Inappropriate workplace behaviour is inconsistent with Section 9 of the Public Sector Management Act 1994, the ACT Public Service Code of Conduct, the Teachers' Code of Professional Practice and the standard of behaviour expected of all employees.

Accordingly, any such behaviour, if substantiated, may lead to disciplinary action in accordance with the Misconduct and Discipline provisions of the relevant Enterprise Agreement.

How to use the Toolkit

The *Employee Complaints and Disputes Resolution Toolkit* should be used by employees of the Education and Training Directorate as a strategic guide to managing issues at work. It provides strategies and options to resolve work related complaints and disputes, including concerns relating to bullying, harassment and discrimination. In particular, *the Toolkit* is designed to provide useful advice in situations where:

- an employee believes they have been treated unfairly;
- a supervisor has identified a possible conflict and has discussed concerns with the employee;
- working relationships have broken down;
- a dispute is apparent.

The Toolkit contains two key elements. The first is the conceptual framework — which enables an understanding of the main triggers of workplace complaints and disputes, workplace conflict, and the important role that perceptions play in shaping understandings of complaints and disputes. The second element is designed as practical management tools to assist employees in managing and resolving workplace issues.

This *Toolkit* is relevant to the Dispute avoidance/settlement procedures provisions of the Enterprise Agreements for the Education and Training Directorate. In the event that a dispute is not resolved the relevant Enterprise Agreement provides for a party to the dispute to refer the matter to Fair Work Commission.

Where the Toolkit fits

The Toolkit provides broad advice on common workplace issues that employees may face. It should be used in conjunction with the following documents and legislation:

- *Teaching Staff Enterprise Agreement*
- *Staff Enterprise Agreement*
- *The Teachers' Code of Professional Practice*
- *The Public Sector Management Act 1994*
- *ACT Discrimination Act 1991*
- *Work Health and Safety Act 2011*
- *Worksafe ACT Publications on Managing and Preventing Bullying at Work*
- *Preventing Work Bullying Guidelines - Respect, Equity and Diversity (RED) Framework.*

What are Complaints and Disputes?

For the purposes of this *Toolkit*, a **complaint** can be defined as an **expression of dissatisfaction with an aspect of employment**. Through a process of reflection and discussion, the employee identifies a situation in which they perceive they have been treated unfairly.

If a complaint is left unresolved, or its main causes are ignored, a dispute can arise. A **dispute** is defined as a **situation where the contributing causes of a complaint have escalated, and conflict affects the working relationship of the employee**.

Once escalated, a dispute can be damaging for everyone involved. It is best if complaints and disputes are communicated early, and that potential causes are discussed and recognised. It is recognised that causes could include:

- communication – rudeness, misunderstanding, attitude.
- employee entitlements such as leave, allowances.
- information – inadequate, misleading or incorrect information.
- processes – failure to follow procedures or to consult in decision making.
- a decision or action regarding performance management.
- professional conduct.

Identifying and communicating these causes can be complex. A strategy to assist you in contextualising and communicating a complaint is outlined on page 10 of *the Toolkit*.

Complaints and disputes, once reported, should be handled fairly, be treated seriously and sensitively. Due regard should be made to procedural fairness, confidentiality and privacy (extending to the use and storage of any information and related records).

Reasonable directions, comment and feedback from supervisors on the work performance or work-related behaviour of an individual or group of employees, provided in an appropriate manner, should not be confused with harassment or bullying.

It is important to note that the strategies contained in *the Toolkit* do not apply if the subject of the complaint or dispute relates to:

- actions required by legislation, including industrial legislation or policies of the Education and Training Directorate; and
- matters involving a selection process.

Common Elements of Complaints and Disputes

Triggers

What are Triggers?

Triggers are the actions of others that 'push a button', 'get our backs up', offend provoke or hurt us. It is the stimulus creating negative emotional responses that can lead to disputes.

Identifying what triggers a negative response enables us to reflect deeply on situations and to take control of our own responses.

Identifying our triggers means identifying what it is about me that leads to a certain response to another person's behaviour.

Triggers to conflict and disputes can include the perception of challenges to:

- reliability – questioning your trustworthiness or dependability.
- competence – questioning your intelligence, skills or capacity to do your job.
- autonomy – trying to take control by imposing decisions and actions.
- moral values – questioning your integrity or making decisions which conflict with your own values.

Identifying Triggers

Being able to recognise one's triggers is essential in resolving conflict. These triggers exist as part of our need to protect ourselves. It is a natural response to want to fight back or argue. This is usually not the best way to respond. For example, if an employee has had a high level of autonomy over their work, and a new supervisor desires involvement in allocating tasks and decision making, a conflict may arise because the employee perceives they are no longer trusted to do their tasks, and their level of autonomy and control is challenged.

When you are aware of your triggers in conflict situations you increase your chances of managing emotional responses and getting drawn into the conflict.

"Every person you fight with has many other people in his life with whom he gets along quite well. You cannot look at a person who seems difficult to you without also looking at yourself". – Jeffrey Kottler

Conflict

What is Conflict?

Conflict may be defined as the **inevitable differences between people that provide opportunities to improve relationships and clarify situations and accept or reconcile the differences**. Conflict occurs when a person's values, needs and/or identity are challenged, threatened or undermined.

The origins of a conflict are often complex and diverse. There may be perceptions that are not shared by all parties, leading to misunderstanding and poor communication. A situation of conflict may not be recognised by both or all parties involved.

Conflict can also be influenced by cultural and personal background. Previously experienced or observed conflict instances may shape a person's view of a current conflict situation. Important to understanding conflict is the idea of latent conflict.

Latent conflict occurs when conflict is not open but is a potential threat. Latent conflict refers to social tensions, differences and disagreements that are hidden or undeveloped. This is the stage at which incompatible goals may exist, but parties may either not be acutely conscious of them or not be willing to reveal themselves or their interests in the conflict. Conflict may be allowed to remain latent because of fear, distrust, peer pressure or financial reasons.

Identifying conflict

Identifying and intervening at an early stage is usually more effective than expensive and time-consuming intervention later. "Later" may also be "too late". However, remember also that "doing nothing" and "monitoring the situation" can be valid choices - sometimes intervention makes a conflict worse.

The following are some potential signs that someone is experiencing conflict:

- not going to morning tea in the staffroom as usual;
- leaving work early;
- isolation in classroom or office;
- behaviour which is unusual for that person;
- gossip;
- avoidance;
- resistance;
- exclusion;
- absenteeism;
- mood change;
- silences, or a drop in the amount of communication;
- inappropriate communication;

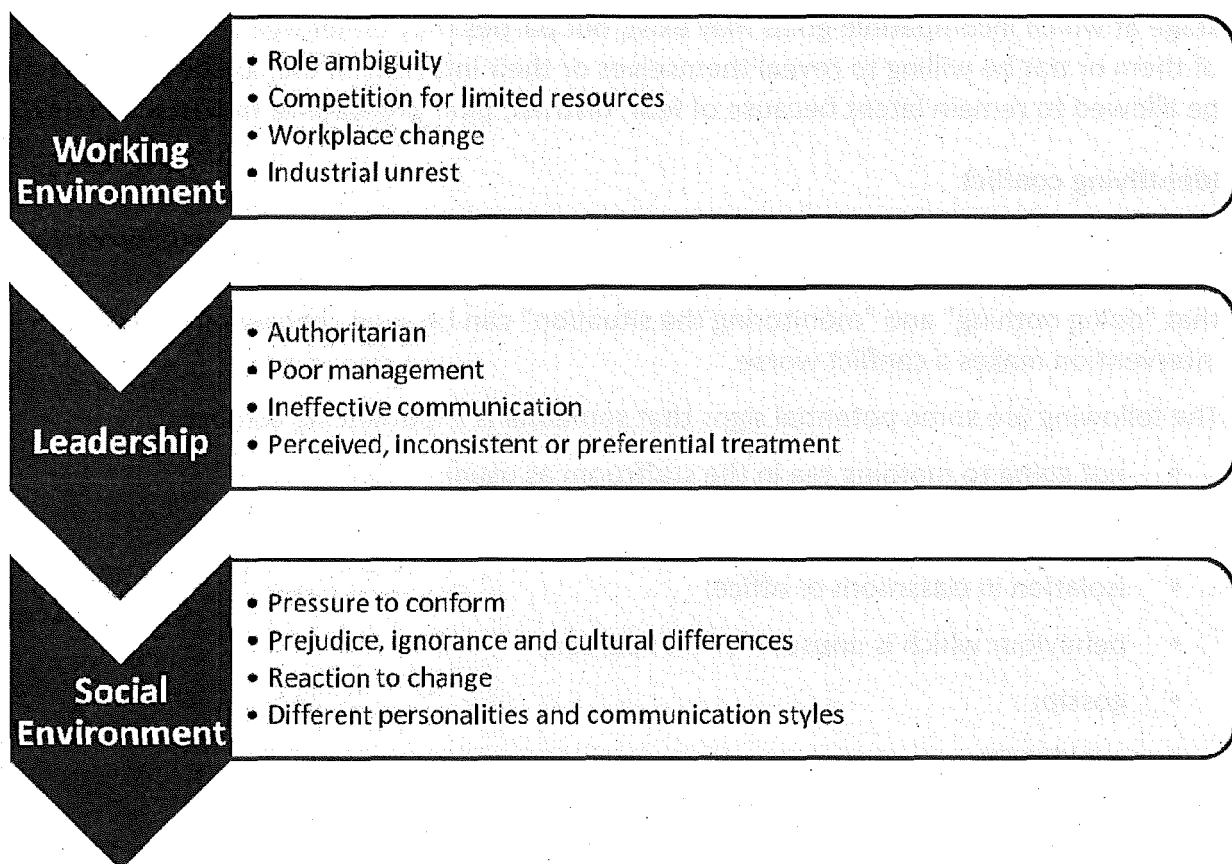
- negative body language;
- continual complaining or arguments;
- change in work and decision-making styles;
- change in social patterns, and
- recurring problems.

Causes of conflict

Conflict can be a creative, constructive force for improvement if people learn the skills to analyse and manage it in a constructive and participatory manner.

Conflict can take many different forms, and not all conflicts can be fully resolved at the local level.

The factors that contribute to conflict or dispute, especially in relation to workplace bullying can be grouped in the following way:



Perceptions

What are Perceptions?

Perceptions are defined as the way in which a person regards, understands or interprets a situation. It's the way we interpret sensory information and make meaning of it. Perceptions

are not necessarily based on reality, but are perspectives from a particular individual's view of a situation.

Perceptions are a key element of complaints and disputes. Conflict between employees often arises because perceptions of a situation are not shared or understood.

Acknowledging that people have different perceptions of concepts, events and actions enables us to begin to unpack and resolve a complaint or dispute. These concepts are demonstrated through the following scenario:

Scenario - The Annual Professional Discussion

A principal during the annual professional discussion makes mention of a meeting with parents where the teacher made comments about the value of the kids breakfast program run by a colleague.

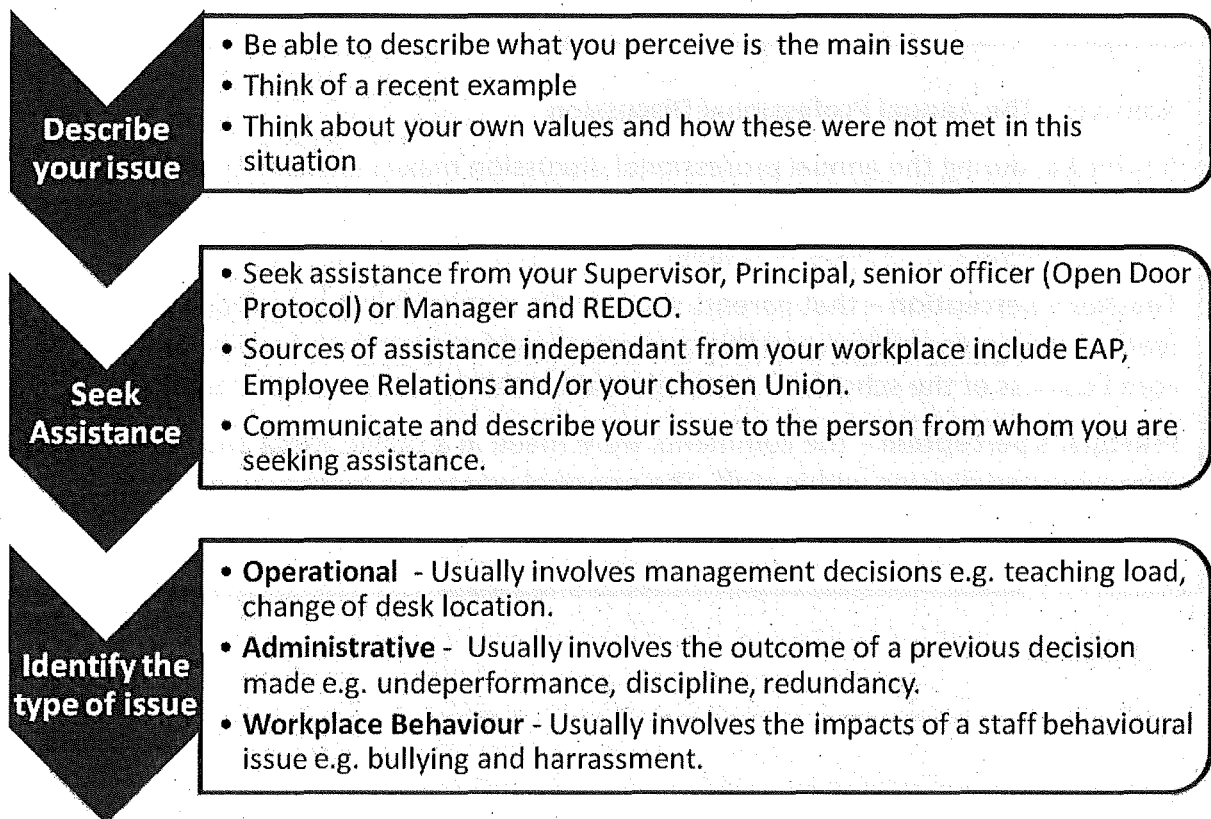
Teacher's perception – that parents should take responsibility for adequately feeding their own children and this program should not be given funding as it isn't core business of the school. Teachers should be able to be honest and frank.

Principal's perception – the comments were made in a public arena and demonstrated division within staff. The principal wants the teacher to be more sensitive to colleagues and mindful of projecting an appropriate public image.

How to raise Issues and make a Complaint

When you are experiencing a workplace issue, it can be a challenging and confusing time. It is common to experience uncertainty about what to do, or who to turn to for assistance.

The following flowchart provides a strategy outlining the first step in working things out. Sometimes by simply going through these steps, and discussing the issue with a third party, you may actually resolve what has been worrying you. If not, their advice will be useful in working out the kind of issues present, and the next appropriate path to take.



The Complainant Responsibilities:

When considering making a complaint, the complainant should consider the following responsibilities:

- the complaint should be made in a reasonable manner free from threats and bullying;
- the complainant should act professionally and respectfully;
- responsibility must be taken to substantiate any complaints made;
- frivolous or vexatious complaints should not be made;
- the complainant should recognise that the respondent has the right to be made aware of the details of the complaint and the right to respond in a fair process;
- the complaint or dispute should only be discussed with the parties involved in its resolution, including those who are assisting;
- the complainant should participate in the resolution process in good faith with a view to restoring a professional working relationship; and
- a complainant may withdraw from the process at any time by giving written advice. This may not prevent the Directorate from continuing to pursue the matters raised in the complaint or dispute, where it is appropriate to do so.

More than one complainant

Where two or more complainants make a complaint or are involved in a dispute which have common aspects or are identical, they may be dealt with as a single process. Both the complainants and the respondent/s should have access to appropriate information, support and assistance in resolving the complaint or dispute as soon as possible.

Protection for the complainant

No person should be victimised because they make a complaint or are associated with a complaint or dispute. Victimisation of a complainant or whistleblower may be regarded as an adverse action in accordance with the Fair Work Act 2009.

Advice for Making a Complaint

It is at this stage that you have already discussed the issue with someone, and it is recommended that you make a complaint as part of the process to resolve the issue.

1. Familiarise yourself with the Respect Equity and Diversity Framework, including the Preventing Work Bullying Guidelines.
2. You can make a complaint or raise an issue verbally, by email or in writing. You don't have to make a complaint in writing, however, the Complaints Form included in Preventing Work Bullying Guidelines will assist you if you are advised to do so.
3. Make an appointment to discuss the issues with your Principal, Manager or Senior Officer (Open Door Protocol). Your issue is important to you so make certain you have allowed time to convey this.
4. Focus on the factual aspects of the issue you have raised, ie when, where who. Then describe the affect is has had on you and details of anything you have already done to address the issue.
5. Have in mind some outcome you would like in order to have the issue resolved and working relationships restored.
6. Even though you may be feeling angry and frustrated, it is important that you stay calm and focus on the main problem. Take a few moments to identify the issue that you want to complain about, and what you think should be done to fix it. Do not get distracted by minor details.
7. Keep in contact with the progress of your complaint. You could reach an agreement with your Principal or Manager about when they will contact you to update you on progress.
8. Keep your cool and always behave in a manner in keeping with Section 9 of the Public Sector Management Act 1994 and the Teachers' Code of Professional Practice.
9. Unreasonable complaint behaviour can lead to difficulties in resolving issues. Poor behaviour can sidetrack the process of resolution.

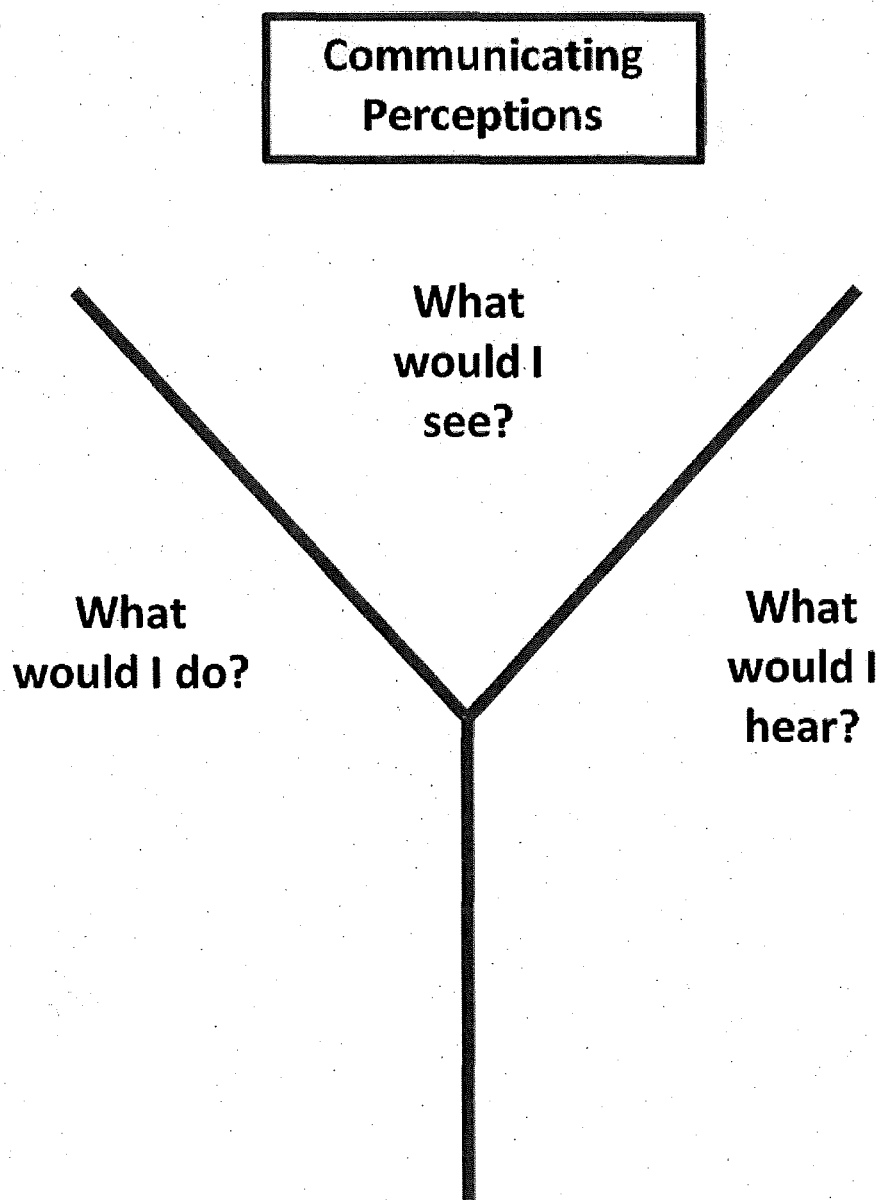
Communicating Effectively

Communication issues are at the heart of disputes and conflicts. Ambiguity of language can lead to different perceptions and understandings.

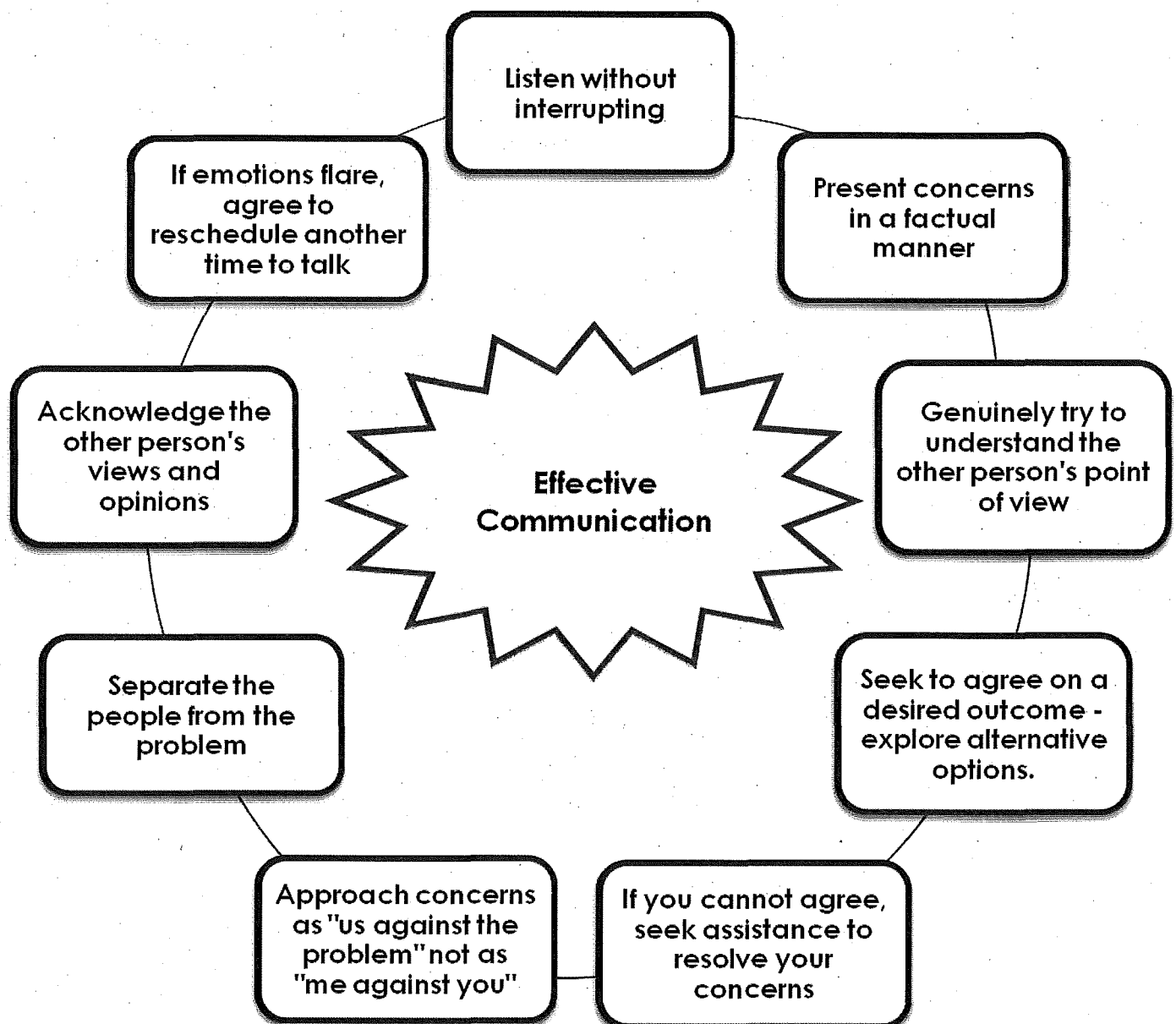
For example: a concept such as 'respect' means many different things. Sharing of perceptions of what you would see people do, what you would hear people say and what you would do in a respectful workplace can assist greatly in achieving a positive resolution to a complaint or dispute.

When making a complaint, the complainant should do their best to explain their perception of the issue.

The following 'Y Diagram' can be utilised to assist you in effectively communicating your perceptions of the behaviour you want in your workplace.



Additionally, some basic ground rules for effective communication when resolving differences are:



Often a complaint or dispute can be resolved within the workplace and at the time it arises. Such action as the provision of an explanation and accompanying information, and correction of an administrative action may be a successful resolution. In addition, principals and managers should not underestimate the power of an apology. An apology can acknowledge the harm done and the intention to restore working relationships. An apology can be made because of the person's perspective on the issue without agreeing with that perspective. In many cases an apology is the only outcome sought by a complainant.

How to Receive a Complaint

If a complaint is made about you, you will have an opportunity to respond as part of natural justice. Your response is the opportunity for you to have your say and provide your account of events. You may not be provided with the written complaint, however you must be provided with sufficient detail about the nature of the complaint to enable you to fully respond.

If you respond to a complaint verbally a meeting, you should endeavour to have a support person with you. A support person could be an official of your union, a colleague, friend or family member.

The Respondent's responsibilities

The Respondent should:

- recognise the complainant's right to raise their concerns;
- participate in the resolution process in good faith with a view to restoring a professional working relationship;
- not victimise or harass the complainant or others involved in resolving the complaint or dispute; and
- only discuss the complaint or dispute with the parties involved in its resolution, or those who are assisting.

Advice for Respondents

1. Have a support person with you at meetings. This enables you to legitimately discuss the matter without breaching privacy and confidentiality.
2. Focus on the factual aspects of the issues. Seek assistance in developing a response to a complaint.
3. If a complaint goes to investigation, you will be advised when the matter is referred for investigation.
4. The investigator will contact you with details of allegations and an opportunity to respond at interview and/or in writing.
5. Familiarise yourself with the provisions in the relevant Enterprise Agreement regarding Misconduct and Discipline.

How to Manage a Complaint Collaboratively

It is more likely that a successful outcome will occur if supervisors (Principals and Managers) work collaboratively with employees to resolve a complaint or dispute. This may involve early identification of a dispute or a breakdown in working relationships. Refer to pages 7 and 8 on ways to identify conflict and emerging disputes.

Supervisor Responsibilities

In discussing the complaint or dispute with the employee, supervisors should:

- be aware of the RED Framework and the Preventing Work Bullying Guidelines
- model behaviour that promotes high standards of conduct
- take prompt action to resolve a work related complaint or dispute
- in accordance with the principles of procedural fairness, take all reasonable steps to impartially and fairly assist employees to resolve work related complaints or disputes
- assess the seriousness of the complaint/grievance.

Advice for Supervisors

1. Resist discussing an employee's issue or complaint on the run or in the corridor – make an appointment.
2. First contact may be by phone, email or in person. Make notes of the conversation, ask clarifying questions.
3. Determine the nature of the issue or complaint and offer to meet with the officer if appropriate.
4. Meeting should be in a room that offers privacy. Consider providing water and tissues.
5. Consider having someone present to take notes.
6. Ask the employee to describe the situation they are in:
“What’s been happening?”
“Tell me what has been going on”
7. Listen and make notes yourself to guide clarifying questions. Don’t interrupt. Allow silences to happen. Try to be still and make eye contact. Maintain a neutral demeanour by not agreeing with the employee’s statements. Use neutral comments such as “OK”, not “yes” or “right”.

8. Ask the employee what values or needs they have that were not met in the situation.
9. What would the situation have looked like if their values or needs had been met?
10. With the employee consider options for the next step.
11. Make an initial judgement about whether the matter involves possible misconduct. If the matter is likely to involve possible misconduct contact Employee Relations on 62059149. Be mindful that if you are the supervisor, there may still be conflict or dispute in the workplace that needs to be contained.
12. Closing the initial meeting:
Thank the employee for bringing the matter to your attention.
"I'm sorry this has happened to you".
Reassure the employee that you have understood what the issue is. Look to the future: "I'm sure we can do something".
13. What will you do? - Supervisor
 - Employee
14. Make any appropriate agreements and arrange a time to follow up with the employee.

Assessing the Seriousness of a Complaint or Dispute

When a complaint or dispute cannot be resolved easily and quickly, risk management strategies can be applied to assess the seriousness.

Assessing complaints and disputes for risk assists in the management of complex and sensitive matters appropriately.

Where the assessment of a complaint or dispute indicates that the matter cannot be resolved without external assistance, the Principal or Manager should contact the Employee Relations section of Human Resources.

It is important that the complainant be consulted about the action.

Serious Complaint

While all complaints are taken seriously, a number of issues, conflicts or disputes will have regard to serious matters which, if proven, could amount to a breach of Section 9 of the Public Sector Management Act 1994 and could include:

A breach of legislation, policy, procedure or contract likely to lead to discipline action, or conduct of a criminal nature.

If assistance is needed to determine whether or not a complaint is “serious”, advice should be sought from the relevant School Network Leader, or Director. Support is also available from Employee Relations.

Assessment of a complaint or dispute is to be documented and decisions not to act on a complaint must be recorded. The Risk Assessment Matrix on the following page should be used to determine the level of seriousness of a complaint or dispute.

Why do risk assessment of an employee issue?

Using the Risk Assessment Matrix will assist Managers and Principals in considering a range of possible consequences as a result of an employee issue. Where a possible consequence is major and likely to occur, mitigating action should be taken. For example, where an employee raises an issue of perceived bullying, it may be appropriate to negotiate a workplace relocation of one of the parties to mitigate escalation while the issue is addressed.

Risk Assessment Matrix

RISK ASSESSMENT MATRIX		Consequence				
		Insignificant	Minor	Moderate	Major	Catastrophic
Likelihood		1	2	3	4	5
Almost certain	5	Medium	High	High	Extreme	Extreme
Likely	4	Medium	Medium	High	High	Extreme
Possible	3	Low	Medium	Medium	High	Extreme
Unlikely	2	Low	Medium	Medium	High	High
Remote	1	Low	Low	Medium	Medium	High

Table 1 Risk Assessment; Likelihood and Consequence

Rating	Scale	Criteria
1	Rare	- Remote chance of risk event and even then in highly exceptional circumstances, 1 in 10,000
2	Unlikely	- Risk event unlikely to occur but change of circumstances or situation may create opportunity for risk to arise 1 in 1,000
3	Possible	- Foreseeable that risk event may occur, but is not expected to occur 1 in 500
4	Likely	- Risk event likely to occur at least once 1 in 100
5	Almost Certain	- Expect frequent occurrences 1 in 10

Table 2 Risk Likelihood

Rating	Description	Remarks
1	Insignificant	- No Injuries - Negligible community disruption - No disruption to excursion - No environmental or other damage. - Minimal financial risk or loss (1% of budget)
2	Minor	- Small number of injuries - Only first aid required - Limited disruption to excursion - Some environmental or other property damage - Some financial risk or loss (2.5% of budget)
3	Moderate	- Ambulance / Hospital Treatment required - Some community inconvenience - Some activities unable to proceed - Some environmental damage (minor long term effect) - Other property damage - Significant financial risk or loss (5% of budget)
4	Major	- Extensive injuries - Significant hospitalisation - Some community displacement - Extensive environmental damage (long term effect) - Other extensive property damage - Serious financial risk or loss (10 % of budget)
5	Catastrophic	- Fatalities - Injuries and extended hospitalisation periods - Widespread community displacement - Extensive and widespread property damage - Significant short or long term environmental damage - Extreme financial risk or loss (25% of budget)

Table 3 Risk Consequences

Strategies to Resolve a Dispute

There are a number of options available to an individual which could resolve a complaint or dispute without involving a third party. These options include:

- Seeking advice - A Respect Equity and Diversity Contact Officer (REDCO) is appointed at most work sites/schools. The REDCO is able to provide information and contacts to assist an officer who is aggrieved or experiencing a dispute or conflict at work. They may also be a support person. To contact a REDCO, please visit:
<https://index.det.act.gov.au/resources/equity.html#contacts>
- Seeking support – Davidson Trahaire Corpsych is the Directorate's Employee Assistance Provider and offers one on one counselling and advice which is free to ETD employees and their family. *Davidson Trahaire Corpsych* can be contacted on 1300 360 364 during and after hours. The relevant union will also provide support for members including support during meetings.
- Utilising Conflict Management Coaching to determine specific goals to resolve an issue and to what steps are needed. Contact Employee Relations on 62059149 for further information around Conflict Management Coaching.
- Speaking directly to the person. *
- Developing strategies to deal with what is the cause of the dispute. *Davidson Trahaire Corpsych* may be able to provide advice on strategies to deal with people who for example shout and intimidate.

*If talking directly to the person does not resolve the matter, you should approach your immediate supervisor.

Important things to consider when you are one of the parties in conflict or complaint or dispute are:

- take ownership and responsibility for your part in the complaint or dispute;
- identify your triggers and make a conscious decision to keep your emotions in check - see the information on Triggers page 6;
- state clearly what you believe the problem to be and how you feel about it;
- state clearly what you believe the outcome should be and what it will look like (consider the Y diagram on pg. 13);
- express your interests and concerns assertively and respectfully;
- listen to the other person's position without interrupting;
- generate collaborative solutions openly and inclusively;
- make a time to check how things are going in the near future;

- seek further assistance and advice to more effectively support your efforts; and
- look after yourself – the Employee Assistance Program, Davidson Trahaire Corpsych may be contacted on 1300 360 364.

Wherever possible, a complaint or dispute should be resolved in the workplace through discussion, cooperation and conciliation. This provides the best opportunity for achieving the objective of restoring professional working relationships.

Workplace Resolution – Strategies for Managers and Principals

Role of Manager or Principal

Complaints and disputes may be lodged in writing or orally. However, the real issues may not always be apparent in an initial communication of a complaint. In almost all cases a meeting between the complainant and their manager or principal will be necessary. The manager or principal will work with the complainant to understand the issue and manage the process for resolution. It is important the manager or principal:

- identify their role in the process
- confirm what has been said
- be attentive but not defensive
- explain options for the next steps
- agree on a communication strategy
- commit to ensuring the complaint receives attention and agree on next steps

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a range of informal processes to resolve workplace disputes. Using ADR can often defuse a situation before it escalates.

Examples of ADR include; informal discussions, facilitated more formal discussions between parties, mediation, conciliation, arbitration.

The benefits of ADR are that that are:

- voluntary;
- confidential;
- allows parties to select the most appropriate process to resolve a dispute;
- undertaken in a respectful environment;
- easily accessible; and
- includes such strategies as mediation and Conflict Management Coaching.

Collaborative dispute management

Collaborative dispute management promotes joint decision-making and seeks voluntary agreement among disputants in win-win solutions.

Because collaborative dispute management is based on voluntary agreements, enforcement depends solely on the willingness of all parties to comply with an agreement. A third party may facilitate this process, but cannot force agreements on the disputants.

Collaborative dispute management works best with conflict stakeholders who are fairly equal in strength. It involves the parties creating an agreed outcome that may be unique to their situation.

Preparing for a collaborative negotiated resolution.

While in managing any conflict there are factual considerations, it is also important to give regard to how the parties relate to one another.

The aim of negotiation is to meet the needs and interests of all parties. Attention should be drawn to shared needs and interests.

Acknowledge and accept that parties may have different perceptions of an incident or an issue. Have the parties to the dispute describe their own perceptions, and consider using the Y Diagram on page 13 to facilitate this. Identify shared aspects of perception.

Develop a range of options which maintain a sense of fairness and attempt to meet the needs and interests of all parties.

Workplace Resolution – Strategies for Third-Party Assistance

As far as possible, complaints and disputes should be resolved within the immediate workplace. Sometimes however this is neither possible nor appropriate. It may be instead appropriate to seek external advice.

Conflict Management Coaching

Conflict Management Coaching is a concept that combines dispute resolution and coaching principles. It is a one-on-one confidential and voluntary process in which coaches work with individual clients to help them resolve disputes and to prevent unnecessary ones. The process facilitates deeper self reflection and understanding of situations leading to conflict and dispute.

Conflict Management Coaching is a one on one approach to resolving conflict.

Conflict Management Coaching has a wide application for coaching individuals to participate in mediation, negotiation and complaint resolution. Conflict Management Coaches also work with managers responsible for managing conflicts in their workplaces.

Conflict Management Coaches work with individuals to:

- reflect on an incident which has created or escalated conflict
- identify values and needs which have been affected
- perceive the conflict from the other person's point of view and recognise their values and needs
- explore options and plans
- reconstruct ways of managing the situation
- identify any challenges.

Conflict Management Coaches do not provide advice or act as an advocate or representative.

Contact Employee Relations 62059149 for a list of trained Conflict Management Coaches.

Mediation

In some complaint or dispute situations, a third party (mediator) could assist. A mediator will, to some extent, be able to:

- help the parties to examine their interests and needs
- help them to negotiate an exchange of viewpoints
- assist them in redefining their relationship in a way that is mutually satisfactory.

The mediator is bound to confidentiality by legislation and the parties usually reach agreement about their own disclosures.

What is mediation?

Mediation is a process in which an independent, trained mediator helps people in dispute to focus on a mutual problem, talk about it, explore options for resolution and try to reach agreement.

At a confidential conference, each party has the opportunity to voice their point of view. The mediator facilitates communication between the parties to promote understanding of the real issues of the dispute and options for resolving them.

The mediator does not give advice on the dispute or determine a solution. Agreements reached between the parties are usually written down and signed but are non-binding. If the parties do not agree to a result, the dispute remains unresolved.

Why mediation?

Mediation is a relatively informal, quick and effective means of settling a dispute when each party is prepared to negotiate in good faith and work towards a mutually satisfying solution.

Mediation often leads to a satisfactory outcome for both parties and, at the very least, the parties will have had an opportunity to discuss and clarify the disputed issues.

Mediation is particularly useful in complex disputes involving parties in ongoing contact where less formal communication may be helpful. It can help the relationship between the parties to survive their dispute because it allows them to formulate their own joint solutions.

**For further information about mediation services contact
Davidson Trahaire Corpsych on 1300 360 364**

Conciliation

In complex matters, the options realistically available to parties can be impacted by Enterprise Agreements, Department policy and procedures as well as legislation such as the Work Health and Safety Act 2011. In such instances, a conciliated approach may be appropriate.

A complainant may seek assistance from the School Network Leader or appropriate Director to facilitate a conciliated resolution.

Conciliation is when the parties to a conflict or dispute meet to discuss the matter. This is facilitated by an impartial third party who will set some ground rules about how the meeting will operate. The conciliation helps parties to reach a common understanding and preserve on-going working relationships.

Ideally conciliation will result in certain agreements reached, such as an apology or a plan for training or professional development.

Conciliation is private, confidential and voluntary.

Investigation

A complainant may request a fact finding investigation. A fact finding investigation may be requested through the Director Human Resources and must:

- be in writing
- describe the specific circumstances including dates, times and names of any witnesses
- describe the outcomes sought.

An anonymous complaint may not be investigated.

The fact finding investigation will be conducted in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the ACTPS.

The fact finding investigation will be undertaken by an independent person who may be an:

- Officer in Employee Relations area of Shared Services
- Education and Training Directorate Officer of SLC or SOGC level or above.
- Officer from another ACT Government Directorate of SOGC level or above.
- Person from a list of independent reviewers approved by the Commissioner for Public Administration.

A fact finding investigation will produce a report and recommendations, based on factual evidence.

If, after the fact finding investigation, the Director Human Resources is of the opinion that misconduct has not occurred or is not sufficiently serious to warrant a misconduct investigation, the respondent will be informed that no discipline action will be taken and further investigation is not necessary.

If, after the fact finding investigation, the Director Human Resources is of the opinion that misconduct has occurred but the matter is likely to be resolved informally, the relevant Director of the line area or School Network Leader will be advised, and will discuss the particular behaviour with the employee as soon as possible. The discussion will set out clear expectations of future behaviour and that a recurrence could lead to discipline action.

The complainant will not have a role in determining the outcome of the investigation, including discipline action if any.

The complainant may not be informed of outcomes of the investigation process because of privacy constraints. However, the complainant will be informed that the investigation process has been completed and if the allegations were substantiated or not.

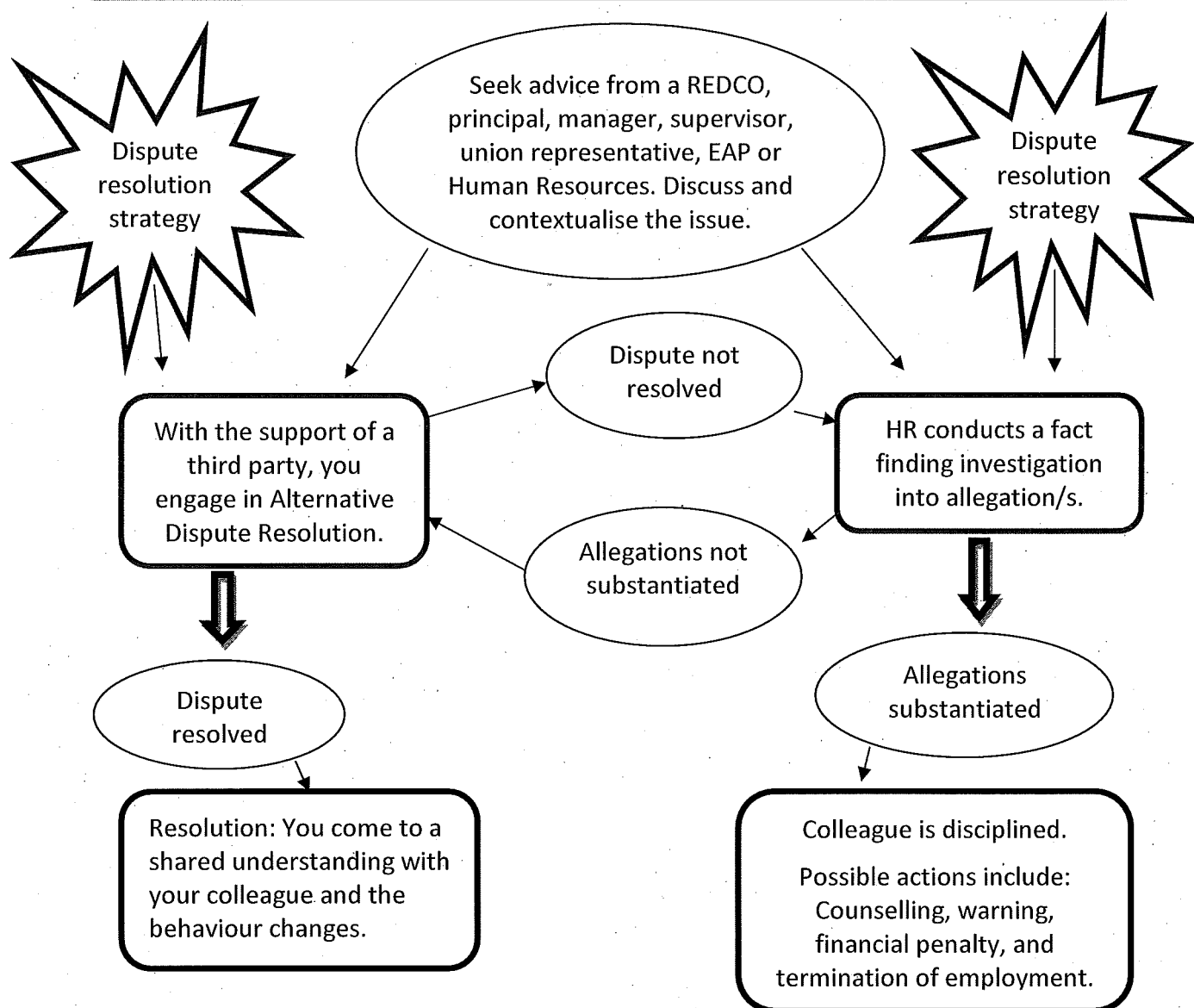
An investigation into an employee complaint or dispute will not usually lead to a resolution at the workplace. Such an investigation will be a fact finding examination to determine if misconduct occurred. If misconduct is proven, discipline action may be taken in accordance with the relevant Enterprise Agreement.

Scenarios

A Behavioural Complaint - Bullying and Harassment

A colleague is behaving in a way that makes you uncomfortable.

You have just started a new job. Your new team is great and almost everybody is very polite and helpful. One colleague does not greet or acknowledge you, however, habitually makes jokes at your expense in front of your team. Furthermore, your colleague arranged a number of after work team social events but does not ever invite you. You feel uncomfortable with this and believe the colleague's behaviour may constitute bullying or harassment.



In accordance with the Dispute Avoidance/Settlement Procedures in the relevant Enterprise Agreement a party may refer the matter to Fair Work Commission.

An Operational Dispute – Moving Desks

An operational decision has been made by your supervisor that you don't agree with.

You have been directed to relocate your work area to another floor. The space provided is smaller than your current work station and you are no longer seated near a window. You are not happy with this decision.

Reflect and try to identify the pros and cons of the move. Identify any safety issues you perceive.

If you are unsure whether the decision is fair and reasonable seek advice from a REDCO, principal, manager, union representative, EAP or Human Resources.

Collaborative Conflict Management
Request a meeting with your supervisor. Put forward your views, offer alternatives and seek reconsideration of the decision.

Dispute resolution strategy

Dispute resolved

Resolution: You come to a shared understanding with your supervisor regarding the decision to move desks.

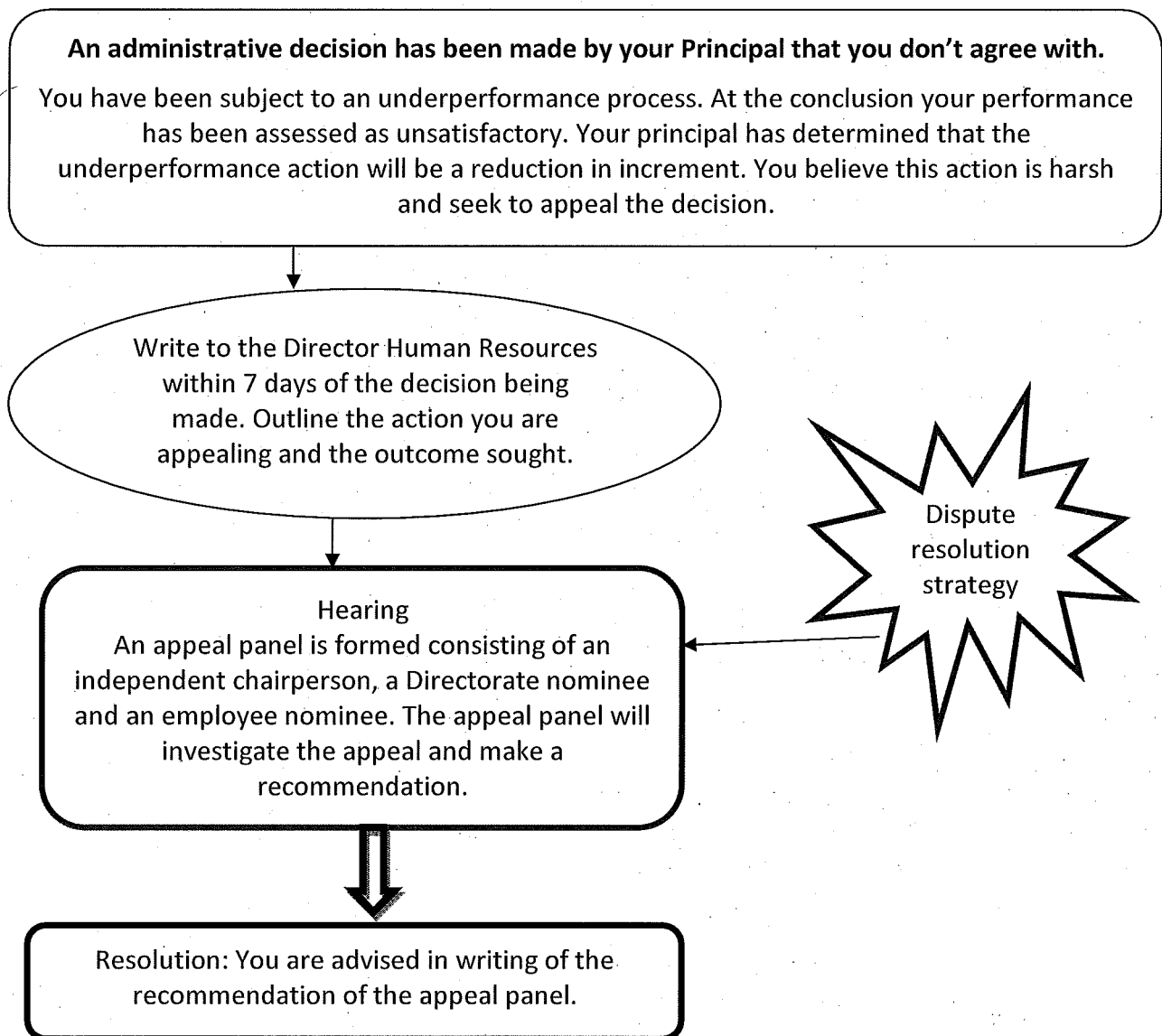
Dispute not resolved

The next strategy is Mediation to come to a facilitated negotiated outcome.

Dispute resolution strategy

Resolution: by third party mediation you come to a shared understanding with your supervisor regarding the decision to move desks.

An Administrative Dispute – Underperformance



In accordance with the Dispute Avoidance/Settlement Procedures in the relevant Enterprise Agreement a party may refer the matter to Fair Work Commission.