

U3A MOUNT TAMBORINE COMPLAINTS HANDLING PROCEDURE

Background

The Management Committee of U3A Mount Tamborine and its members aim to provide a simple, confidential and trustworthy procedure for resolving complaints based on the principles of procedural fairness. We understand our obligation to ensure that our complaints procedure has integrity and is free of unfair repercussions or victimisation against any person making a Complaint. We also understand that Complaints should be dealt with quickly where possible and fairly.

This procedure is compliant with requirements of the Incorporated Associations Queensland Act.

Complaints may be resolved informally or formally. This Procedure provides for resolution of complaints in a variety of ways. These range between:

- low key informal resolution where both parties accept the basic facts of a situation and it is possible to counsel the party who has acted inappropriately about a better way to have acted;
- situations where the complainant wishes to make a formal complaint in writing and further investigation is required; (**See Attachment 1**)
- resolution through mediation; (**See Attachment 2**) Mediation is a confidential process that allows those involved in a complaint to discuss the issues or incident in question and come up with mutually agreed solutions. Mediation can occur before, after or instead of the investigation of a Complaint.
- Hearings by a Tribunal. (**See Attachment 3**) The Tribunal can investigate and/or determine Complaints referred to it by the Management Committee; or conduct appeals requested by a Complainant or a Respondent to a Complaint.

There are some complaints, for example those related to discrimination or unlawful activity, where the complainant/s may wish to have their complaint handled by an external agency under anti-discrimination, child protection, criminal or other relevant legislation.

Responsibilities

The Management Committee is responsible for appointing a Complaints Officer at the first meeting after election of the Management Committee.

The Management Committee will when necessary, appoint a Tribunal to be comprised of at least three people who possess a particularly useful skill – such as human resources management, business management, corporate governance or like skills - to convene if and as required.

The Complaints Officer is responsible for receiving complaints and managing the process for resolution.

The Management Committee and members must take all necessary steps to make sure that the people involved in a Complaint are not victimised.

The Management Committee will discipline a person who harasses or victimises another person for making a Complaint or supporting another person's Complaint.

The Complainant is responsible for ensuring that their complaint is true, not maliciously motivated or intended to cause distress to the Respondent. Persons making such complaints can be subject to disciplinary action.

Who Can Lodge a Complaint?

Any person (Complainant) may report a complaint (Complaint) about a person, people or organisation bound by the policy (Respondent) if they feel that they have been discriminated against, harassed, bullied or there has been any other serious breach of our policies or Code of Conduct.

Complaints are preferred in writing but this is not essential.

The Complaints Handling Process

1. In the first instance, Complaints should be reported to the Complaints Officer.
2. A Complaint may be dealt with formally or informally. An example of an informal process would be a low-key conversation where the Complaint is resolved by agreement between the people involved with no need for disciplinary action.
3. The Complainant may indicate his or her preference and the Complaints Officer should consider whether the preferred process is an appropriate way to handle the particular complaint, for example the law may require that the Complaint/allegation be reported to an appropriate authority.
4. If a Complaint is not resolved to the Complainant's satisfaction through an informal process, the Complainant may make a formal Complaint in writing. Individuals or organisations may seek to have their Complaint handed by an external agency under relevant legislation.
5. Where a Complaints Officer decides that a complaint should be the subject of an investigation process, it should take place in accordance with Attachment 1.
6. Once the Complaints Officer receives a written report from the investigator (in accordance with Attachment 1), the Complaints Officer will determine what, if any, further action to take. This action may include: (a) A direction to the investigator to make further enquiries and obtain additional information; (b) Disciplinary action; or (c) Referring the Complaint to an informal or a formal mediation session, a hearings tribunal and/or the police or other appropriate authority. The Complaints Officer may also determine to take no further action and dismiss the complaint.
7. If a Complainant wishes to resolve the complaint with the help of a mediator, the Complaints Officer will, in consultation with the Complainant, arrange for an independent mediator where possible. Lawyers will not be permitted to participate in the mediation process. The Complaints Officer will determine which party or parties (e.g. the Complaints Officer, the Complainant or the Respondent) are responsible to pay any costs of the mediation process.
8. Where a Complaints Officer refers a complaint to mediation, the mediation should proceed in accordance with the process in Attachment 2. NB: Mediation might not be a suitable method for resolution of a Complaint in all cases.
9. The Tribunal may be convened to hear a proceeding referred to it by the Complaints Officer. Where the Complaints Officer refers a Complaint to the Tribunal, the Tribunal should proceed in accordance with Attachment 3.
10. If at any point in the Complaint handling process the Complaints Officer considers that a Complainant has knowingly made an untrue Complaint, or the Complaint is malicious or inappropriately intended to cause distress to the Respondent, the

matter may be referred in writing to the Tribunal for review and appropriate action, including disciplinary action against the Complainant.

11. Every Complaints Officer bound by this policy will recognise and enforce any decision of a Tribunal.

ATTACHMENT 1 - INVESTIGATION PROCEDURE

There will be times when a complaint will need to be investigated and evidence gathered. An investigation helps determine the facts relating to the incident, as well as produce findings and recommendations. Any investigation that a Complaints Officer conducts should be fair to all parties involved.

If a Complaints Officer decides that a Complaint should be investigated the following steps should be followed:

1. A written brief will be provided to the investigator to ensure the terms of engagement and scope of the investigator's role and responsibilities are clear.
2. The Complainant will be interviewed by the investigator and the complaint documented in writing.
3. The details of the complaint will be conveyed to the person/people complained about (Respondent(s)) in full. The Respondent(s) will be given sufficient information to enable them to properly respond to the Complaint.
4. The Respondent(s) will be interviewed by the investigator and given the opportunity to respond. The Respondent'(s)' response to the Complaint will be documented in writing.
5. If there is a dispute over the facts, statements from witnesses and other relevant evidence will be obtained to assist in a determination.
6. The investigator will determine whether the complaint is:
 - a. substantiated (there is sufficient evidence to support the complaint);
 - b. inconclusive (there is insufficient evidence either way);
 - c. unsubstantiated (there is sufficient evidence to show that the complaint is unfounded); and/or
 - d. mischievous, vexatious or knowingly untrue.
7. The investigator will produce a report documenting the complaint, investigation process, evidence, and findings and, if requested, recommendations. This report will be given to the relevant Complaints Officer.
8. The relevant Complaints Officer will provide a report documenting the complaint and summarising the investigation process and key points that were found to be substantiated, inconclusive, unsubstantiated and/or mischievous will be provided to the parties.
9. Both parties are entitled to support throughout this process from their chosen support person (who is not empowered to speak on their behalf).
10. The parties may have the right to appeal against any decision based on the investigation. Any appeal should be in accordance with the appeals process provided in this Complaints Procedure

ATTACHMENT 2 - MEDIATION PROCEDURE

Mediation is a process that allows all people involved in a Complaint to talk through the issues with an impartial person – the mediator – and work out a mutual solution.

The mediator does not decide who is right or wrong and does not tell either side what they must do. Instead, he or she helps those involved talk through the issues making sure that the process is as fair as possible for all concerned.

The following is the general procedure for the conduct of mediations under this policy.

1. The people involved in a formal Complaint (Complainant and Respondent(s)) may work out their own resolution of the Complaint or seek the assistance of a neutral third person or a mediator. Mediation may occur at any time.
2. Mediation will only be recommended:
 - a. after the Complainant and Respondent have had their chance to tell their version of events to the relevant Complaints Officer; and
 - b. the relevant Complaints Officer does not believe that any of the allegations warrant any form of disciplinary action - proven serious allegations will not be mediated, no matter what the Complainant desires; and
 - c. mediation looks like it will work (i.e. the versions given by the Complainant and Respondent align or almost align and/or at the very least, it looks as though it will be possible for each party to understand the other party's point of view).
3. Mediation will **not** be recommended if:
 - a. the Respondent has a completely different version of the events and they won't deviate from these;
 - b. the Complainant or Respondent are unwilling to attempt mediation;
 - c. when the issues raised are sensitive in nature;
 - d. when there is a real or perceived power imbalance between the people involved;
 - e. matters that involve serious, proven allegations; or
 - f. the Complaint is not suitable for mediation due to the nature of the Complaint, the relationship between the Complainant and the Respondents and any other relevant factors.
4. If mediation is chosen to try and resolve the Complaint the relevant Complaints Officer will, in consultation with the parties arrange for a mediator to mediate the Complaint.
5. The relevant Complaints Officer will notify the Respondent(s) that a formal Complaint has been made, provide them with details of the Complaint, and advise them that it has decided to refer the matter to mediation.
6. The mediator's role is to assist the parties reach an agreement on how to resolve the issues between them. The mediator, in consultation with the parties, will determine the procedures to be followed during the mediation. An agenda of issues for discussion will be prepared by the mediator.
7. The mediation will be conducted confidentially and without prejudice. The rights of the parties to pursue an alternative process if the Complaint is not resolved will be preserved.
8. If the Complaint is resolved by mediation, the mediator will prepare a document that sets out the agreement reached between the parties and it will be signed by them as

their agreement. The relevant Complaints Officer will be advised of the resolution of the matter. MC expects parties involved to respect and comply with the terms of the agreement executed.

9. If the formal Complaint is not resolved by mediation, the Complainant may:
- a. write to the relevant Complaints Officer within 14 days of the mediation to request that they reconsider the Complaint, particularly whether they refer the Complaint to a resolution process other than mediation; or
 - b. approach an external agency such as an anti-discrimination or equal opportunity commission to resolve the matter.

ATTACHMENT 3 - HEARINGS & APPEALS TRIBUNALS PROCEDURE

The following hearing procedure will be followed where a Complaints Officer convenes a hearings tribunal (**Hearings Tribunal**) in Queensland.

1 - HEARINGS

Where MC receives a Complaint referred to it under the above procedure(s) the procedure set out below shall be followed:

1. Upon receipt of the Complaint the relevant Complaints Officer shall appoint a Hearings Officer. It is preferable that the Hearings Officer is fresh to the details of the complaint and the resolution steps already taken, though this may not be possible in all situations. The Hearings Officer shall, as soon as possible, do the following:

- a. determine the composition of the Hearings Tribunal, as set out in clause 1(2) below; and
- b. send to the Complainant(s) and Respondent(s) a notice setting out the alleged breach (collectively referred to as **Notice of Alleged Breach**) in accordance with clauses 1(4) and 1(5) of this Attachment; and
- c. send a copy of the Notice of Alleged Breach to the chairperson of the Hearings Tribunal.

2. The Hearings Tribunal for each hearing shall be that appointed by the Management Committee in each year and may include:

- a. a barrister or solicitor or if after reasonable attempts have been made to obtain such person without success, then a person with some experience in disciplinary/hearings tribunal;
- b. a person with a thorough knowledge of the relevant issues (e.g. safety); and
- c. a person of experience and skills suitable to the function of the Hearings Tribunal, provided that such persons do not include:
 - i. a person, who would, by reason of their relationship with any of the parties, be reasonably considered to be other than impartial.

3. Frivolous, vexatious or malicious Complaints

- a. If within 48 hours of receiving the Notice of Alleged Breach, the Respondent alleges in writing to the Hearings Officer that the Complaint is frivolous, vexatious or malicious, the chairperson of the relevant Complaints Officer shall as a preliminary issue, determine whether or not such Complaint is frivolous, vexatious or malicious and advise the parties of his or her determination.
- b. The Hearings Officer shall provide to the other parties to the hearing (see clause 6) a copy of the written allegation made by the Respondent that the Complaint is frivolous, vexatious or malicious.
- c. The chairperson shall determine the preliminary issue of whether the Complaint is frivolous, vexatious or malicious as

soon as practicable and in whatever manner the chairperson considers appropriate in the circumstances provided that he or she does so in accordance with the principles of natural justice.

d. If the Complaint is determined to be frivolous, vexatious or malicious by the chairperson, then the Complaint will be dismissed. e. The decision of the chairperson under this clause 1(3) is not subject to appeal.

4. The Hearings Tribunal will send a Notice of Alleged Breach to the Respondent(s) in writing informing them that a Hearings Tribunal hearing will take place. The notice will outline:

- a. that the Respondent has a right to appear at the Hearings Tribunal to defend the Complaint/allegations;
- b. the details of the Complaint and of all allegations, as well as the provision or clause of any policy, rule or regulation that has allegedly been breached;
- c. the date, time and venue of the Hearings Tribunal hearing;
- d. that verbal and/or written submissions can be presented at the Hearings Tribunal;
- e. that witnesses may attend the Hearings Tribunal to support the position of the Respondent/s;
- f. an outline of any possible sanctions that may be imposed if the Complaint is found to be substantiated;
- g. that legal representation will not be allowed.
- h. that the respondent may be assisted by a support person at a Hearings Tribunal. For example, where the respondent is a minor, he or she should have a parent or guardian present. However a person cannot be a support person if he or she has been admitted to practice as a lawyer or worked as a trainee lawyer.
- i. A copy of any information/documents that have been given to the Hearings Tribunal (e.g. investigation report findings) will be provided to the Respondent(s).

5. The Hearings Tribunal will send a Notice of Alleged Breach to the Complainant(s) in writing informing them that a Hearings Tribunal hearing will take place. The notice will outline:

- a. that the Complainant has a right to appear at the Hearings Tribunal to support their Complaint/allegations;
- b. the details of the Complaint, including any relevant rules or regulations the Respondent is accused of breaching;
- c. the date, time and venue of the Hearings Tribunal hearing;
- d. that verbal and/or written submissions can be presented at the Hearings Tribunal hearing;
- e. that witnesses may attend the Hearings Tribunal hearing to support the Complainant's position; and
- f. that legal representation will not be allowed.
- g. A copy of any information/documents that have been given to the Hearings Tribunal (e.g. investigation report findings) will be provided to the Complainant.

6. The Hearings Tribunal shall hear and determine the alleged breach in whatever manner it considers appropriate in the circumstances

(including by way of teleconference, video conference or otherwise) provided that it does so in accordance with the principles of natural justice. The purpose of the hearing shall be to determine whether the Respondent has committed a breach of any relevant rule, regulation or policy of MC. If the Hearings Tribunal considers that the Respondent has committed such a breach of this Policy, it may impose any one or more of the sanctions set out in clause 3 below.

7. The parties to the hearing shall include the Complainant, the Respondent, the relevant Complaints Officer and any relevant witnesses which the Hearings Tribunal considers necessary.

8. If upon receipt of the Notice of Alleged Breach the Hearings Tribunal considers that pending the determination of the matter the Respondent may put at risk the safety and welfare of the Complainant or others it may order that the Respondent be:

- a. suspended from any role they hold with MC;
- b. banned from any event or activities held by MY CLUB; and/or
- c. required not to contact or in any way associate with the Complainant or other person about whom the alleged breach relates, pending the determination of the hearing.

9. There is no right of appeal of the decision by a Hearings Tribunal under clause 1(8).

10. No party to the hearing may be legally represented. The chairperson of the Hearings Tribunal may grant leave for a party to the hearing to be legally represented where their livelihood or a proprietary right is at risk. The onus is on the party seeking representation to prove that livelihood or a proprietary right is at risk.

11. Each party to the hearing shall bear their own costs in relation to the hearing.

12. The Hearings Tribunal shall give its decision as soon as practicable after the hearing and the Hearings Officer will deliver to the following a statement of the written reasons:

- a. the Complainant;
- b. the Respondent; and any other party represented in the hearing.

13. Each member of each Hearings Tribunal established under this Policy shall be indemnified by the Complaints Officer which appointed them from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Hearings Tribunal. Each party appearing before a Hearings Tribunal shall release each member of that tribunal from any claim or action for loss, damages, or costs made against them arising out of, or in connection with, their function as a member of the Hearings Tribunal. If required by the tribunal each party will sign a document giving effect to such release.

14. All members of the Hearings Tribunal shall keep all matters relating to the hearing (including but not limited to the nature of the Complaint, information obtained before and during the hearing, and the decision of the Hearings Tribunal) confidential.

2 - APPEALS

A party represented at a Hearings Tribunal may appeal a decision of that Hearings Tribunal on the sole ground that natural justice has not been provided at the hearing of the Hearings Tribunal.

1. An appeal against a decision of a Hearings Tribunal established by a Complaints Officer, shall be made to the appeals tribunal established by MC (**Appeals Tribunal**). Subject to the discretion of the chairperson of the

Appeals Tribunal all appeals shall be heard at the principal place of business of MC.

2. There is only one right of appeal following the decision of the initial Hearings Tribunal. Any appeal must be solely and exclusively resolved by the Appeals Tribunal and the decision of such Appeals Tribunal is final and binding on the parties. There is no further right of appeal. It is agreed that no party to such appeal may institute or maintain proceedings in any external court or tribunal until they have exhausted their appeal rights under these procedures.

3. The process for such appeal is as follows:

a. the party wishing to appeal ("Appellant") shall within 72 hours of a Hearings Tribunal delivering its decision advise, in writing, the Hearings Officer of MC of their intention to appeal (**Notice of Intention to Appeal**);

b. as soon as possible after receipt of the Notice of Intention to Appeal, the Hearings Officer of MC shall advise the Management Committee, who will act as the Appeals Tribunal to hear and determine the appeal (which shall comprise of persons in

accordance with clause 1(2) above but not the same persons who were part of the Hearings Tribunal that made the decision to which the appeal relates); and

c. within 5 days of lodging the Notice of Intention to Appeal, (or such shorter time as determined by the Appeals Tribunal if there is urgency) the Appellant shall:

i. pay a non-refundable appeal fee of \$550.00 (including GST) to the Hearings Officer of MC; and

ii. submit to the Hearings Officer of MC, four written copies of the grounds of appeal. The Hearings Officer of MC shall provide a copy of the grounds of appeal to the other party, to the chairperson of the Hearings Tribunal who made the decision which is the subject of the appeal and the chairperson of the Appeals Tribunal. If either of the requirements in this sub-clause are not met by the required

time the appeal shall be deemed to be withdrawn;

d. Upon completion of the procedures in clauses 2(3)(a)-(c) above, the Hearings Officer of MC (as the case may be) shall determine a time and date for the hearing of the appeal and as soon as possible thereafter notify all parties to the appeal in writing of such details; and

(a) The procedure for the appeal shall be the same as the procedure for the Hearings Tribunal as set out in clause 1 of the Hearings section of this Attachment provided above.

4. An Appeals Tribunal may reject an appeal on the basis that the grounds of appeal are not satisfied.

5. Upon hearing the appeal the Appeals Tribunal may do any one or more of the following:

- a. dismiss the appeal;
- b. uphold the appeal;
- c. impose any of the sanctions set out in clause 3 below; and/or d. reduce, increase or otherwise vary any sanction imposed by the initial Hearings Tribunal.

6. Every member shall recognise and enforce any decision and penalty imposed by an Appeals Tribunal under this policy.

7. The Appeals Tribunal has no power to award costs and each party shall bear their own costs in relation to any appeal.

8. The hearing and appeal procedures set out above prevail over any other rules, regulations and policies of MC.

3 - SANCTIONS

1. Any disciplinary measure imposed by a Hearings Tribunal or Appeals Tribunal must:

- a. conform to the principles of natural justice;
- b. be fair and reasonable;
- c. be based on the evidence and information presented; and d. be within the powers of the Hearings Tribunal and Appeals Tribunal to impose the disciplinary measure.

2. If a Hearings Tribunal or Appeals Tribunal considers that a person or organisation has breached a rule, regulation or policy of MC it may impose any one or more of the following penalties:

For breaches committed by individual persons. If the Hearings Tribunal or Appeals Tribunal considers that an individual person has breached a rule, regulation or policy, it may impose any one or more of the following penalties on such person:

- i.direct that the offender attend counselling to address their conduct;
- ii.recommend that MC terminate the appointment of the role which the offender holds with such organisation;
- iii.(where there has been damage to property) direct that the offender pay compensation to the relevant organisation which controls or has possession of the damaged property;
- iv.impose a monetary fine for an amount determined by the Hearings Tribunal;
- v.impose a warning;
- vi.consider termination of membership under the association's constitution;
- vii.any other such penalty as the Hearings Tribunal considers appropriate.

3. When imposing any form of discipline, it will be accompanied by a warning that a similar breach of policy by that individual in the future may result in the imposition of a more serious form of discipline.