

SESLHD POLICY COVER SHEET



Health
South Eastern Sydney
Local Health District

NAME OF DOCUMENT	Industrial Relations
TYPE OF DOCUMENT	Policy
DOCUMENT NUMBER	SESLHDPD/248
DATE OF PUBLICATION	July 2018
RISK RATING	Low
LEVEL OF EVIDENCE	National Safety and Quality Health Standard 1 Governance for Safety and Quality in Health Service Organisations (Criterion 1.1)
REVIEW DATE	July 2023
FORMER REFERENCE(S)	SESLHD Policy Directive PD 031 - Industrial Relations
EXECUTIVE SPONSOR or EXECUTIVE CLINICAL SPONSOR	Director Workforce Services joy.hiley@health.nsw.gov.au
AUTHOR	Industrial Relations Specialist cassandra.hann@health.nsw.gov.au
POSITION RESPONSIBLE FOR THE DOCUMENT	Director Workforce Services joy.hiley@health.nsw.gov.au
KEY TERMS	Award; Tribunal; Legislation; Dispute
SUMMARY	This document sets out the legislative framework, information and procedures for the administration of industrial relations matters within South Eastern Sydney Local Health District (SESLHD).

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1. POLICY STATEMENT

Industrial relations matters that arise during the daily management of employment relations in the Local Health District (LHD) is covered by relevant legislation, industrial instruments and agreed consultation processes.

These industrial relations matters are generally managed by local management, often with assistance from the Human Resources Advisory Services and Industrial Relations within the LHD. This localised management aims to adhere to guidelines and requirements set out in the current legislation, industrial instrument and memorandums of agreement between key stakeholders such as employee unions and the Ministry of Health.

Best practice management of industrial relations matters is facilitated by the continuous improvement of service by the LHD, contemporary knowledge of industrial relations practices and the regular evaluation of industrial relations outcomes.

2. AIMS

The purpose of this policy is to provide relevant information about the industrial relations framework under which the LHD operates.

The policy sets out an outline of management for the administration of industrial relations matters and provides key information about the current management of industrial relations matters in the LHD.

Increased knowledge of industrial relations information and management, across the LHD, will provide employees and management a greater understanding of the legislative framework and processes that contribute to the administration of industrial relations.

3. TARGET AUDIENCE

All LHD employees

4. RESPONSIBILITIES

Workforce Services, Directors, Service Directors, and all employees involved in the management of employees.

All managers should seek information and advice when they are dealing with an issue which may lead to an escalated industrial relations matter requiring management from Workforce Services. Important features of effective industrial relations in the workplace are compliance with policies, procedures and industrial instruments such as Awards and Agreements.

Managers should ensure all employees are given clear communications about employment relations matters that may affect them, access to trade union representation if desired and regular informal discussions about any possible industrial issues. This informal involvement with employees often assists to ensure there is efficient resolution of workplace matters before they escalate.

It is acknowledged that some industrial relations matters often proceed to a higher level of industrial dispute without presentation of the issue to management affected and can often not be managed informally without the support or guidance of Human Resources Advisory Services and Industrial Relations.

Workforce Services have the responsibility for the following:

- Interpretation of Award and Agreement entitlements and conditions including provision of advice
- Resolution of industrial or potential industrial disputes
- Industrial Advocacy within relevant jurisdictions as required
- Advice on employment relations law and practice
- Coordination of the Union Specific Consultative Committee (USCC) with the Health Services Union
- Coordination of the Joint Consultative Committee (JCC)
- Provision of expert advice and guidance to site Staff Consultative Committees.

5. DEFINITIONS

Dispute committee - A committee consisting of not more than six members with equal representation of the employer and the trade union. The committee is created to discuss all the matters in dispute and make recommendations for resolution where relevant.

Industrial instrument – A formalised document that sets out employment conditions. This can include an award, an enterprise agreement, a public sector industrial agreement, a former industrial agreement, a contract determination or a contract agreement.

Industrial matters – as defined in the *Industrial Relations Act 1996*, means matters or things affecting or relating to work done or to be done in any industry, or the privileges, rights, duties or obligations of employers or employees in any industry.

Industrial relations - Industrial relations is about the interaction between employers, employees, and the government; and the institutions and associations through which such interactions are mediated. It particularly concerns the employment relationship between management, employees and key stakeholders such as Trade Unions and the NSW Ministry of Health.

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Tribunals - Tribunal in the industrial relations sense is a deemed person or institution with the authority to judge, adjudicate on, or determine claims or disputes - whether or not it is called a tribunal in its title.

6. POLICY

6.1 Legislative Framework

The appropriate industrial legislation for the employees employed by the LHD is covered by NSW State legislation, namely the *Industrial Relations Act 1996*. Employees engaged by the LHD are covered by NSW State legislation and regulations with specific conditions of employment bound by the appropriate industrial instrument such as awards and agreements made by the NSW Industrial Relations Commission (IRC) in accordance with the *Industrial Relations Act 1996*.

6.2 Industrial Instruments

An industrial instrument is defined in the *Industrial Relations Act 1996* as an 'award, an enterprise agreement, a public sector industrial agreement, a former industrial agreement, a contract determination or a contract agreement'. In the case of LHD employment, the most common industrial instruments are awards.

The IRC may make an award that prescribes the minimum rates of pay and/or conditions of employment for a class or classes of employees. Such awards are legally enforceable.

The main difference between awards and agreements or determinations is that agreements/determinations reflect a consensus reached by the parties in respect of terms and conditions, while the IRC can prescribe the content of awards. Awards usually reflect a consent agreement reached by the parties to that award. This is known as a Consent Award.

The contents of agreements may be varied following negotiation and agreement by parties, whereas an award cannot be varied without the approval of the IRC. Similarly, an agreement/determination may be terminated by the parties while an award needs the approval of the IRC to do so.

6.3 Consultation

Effective industrial relations is often achieved when management and employees engage in a joint consultation process, allowing employees to be involved in the decision making process. The engagement in a proper formal consultation process allows all parties affected by the decision making process to contribute and identify solutions for the outcomes that may affect them. It is anticipated that this form of consultation should lead to reduced grievances and work towards greater harmony in the workplace.

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The Ministry of Health implemented a formal policy for consultative arrangements in 2011 (NSW Health PD2011_022). Part of the current consultative arrangements in place are the LHD Union Consultative Committees. These include the three levels of escalation commencing with the Level 1 Site Consultative Committees and Service Consultative Committees, Level 2 Union Specific Consultative Committees and Level 3 Joint Consultative Committee. When level 1 and 2 committees are unsuccessful at resolution, the issue may be raised at the Joint Consultative Committee.

For direction when specific change is anticipated or occurring, employees and management should refer to the [SESLHDPD/180 – Change Management Procedure](#) for guidance and assistance. This document sets out the procedures for managing change within the LHD's including:

- Managing the restructure process
- Managing redeployment of excess employees
- Managing offers of voluntary redundancy.

Managers may seek advice from Workforce Services on all matters relating to employment and industrial relations. Such consultation will ensure that a consolidated and consistent approach is applied to all employees across the LHD in matters pertaining to their terms and conditions of employment.

6.4 Dispute Resolution

It is the role of Managers within the LHD to ensure that any employment conflict that may arise is minimised and that there are effective systems in place to deal with grievances and disputes.

Formal grievance resolution procedures provide a process whereby issues of conflict can be identified, explored and resolved without recourse to industrial action. Refer to the [PD2016_046 Resolving Workplace Grievances](#).

Managers should ensure that they, and their employees, are familiar with dispute settling procedures within the organisation. NSW Health Awards and the *Industrial Relations Act 1996*, set out procedures to be followed in the event of a dispute arising. Managers should familiarise themselves with these, and with the [PD2016_046 Resolving Workplace Grievances](#), [NSW Health PD2018_016 Prevention and Management of Workplace Bullying in NSW](#) and [PD2014_042 - Managing Misconduct](#).

Where an informal process of dispute resolution has failed between manager and employee, the matter should be dealt with in line with the above policies and in accordance with the relevant award dispute resolution clause.

Where these internal dispute resolution processes fail to resolve the disputed industrial matter, the dispute may be submitted to a designated dispute committee containing equal members of the LHD and the trade union. Such committee will assess the matter in dispute and make recommendations for resolution where appropriate. In the event of no mutual

decision being arrived at by such a committee, and if a dispute still exists, the matter in dispute may be referred to the Industrial Relations Commission in accordance with the provisions of the *Industrial Relations Act 1996* by one of the disputing parties.

6.5 Tribunals

Workforce Services represent the LHD in tribunals to resolve industrial relations issues such as unfair dismissal claims, public sector promotional appeals and disputes and discrimination and harassment claims. Workforce Services may seek to resolve the LHD's industrial relations matters before they proceed to a tribunal by practices such as a disputes committee.

The Ministry of Health (Workforce Relations Branch) will lead representations for matters that are considered State wide. The Ministry may seek assistance or support from the LHD Workforce Services if deemed appropriate.

Relevant tribunals include:

- NSW Industrial Relations Commission (IRC)
- Anti-Discrimination Board (ADB)
- Administrative Decisions Tribunal (ADT)
- Australian Human Rights Commission (AHRC).

The NSW Industrial Relations Commission (IRC) conciliates and arbitrates to resolve industrial disputes and unfair dismissals. IRC also sets conditions of employment and fixes wages and salaries by making industrial awards and approving enterprise agreements. Most commonly for the LHD, the IRC hears cases about unfair dismissal and award dispute matters.

The Anti-Discrimination Board (ADB) accepts complaints of discrimination and investigating and conciliating complaints when appropriate. The ADB will attempt to resolve claims of discrimination through ongoing communication between the complainant and the respondent. If the communication between the parties does not resolve the complaint, then the ADB will recommend a conciliation conference, if appropriate, in the first instance. Complaints that are not resolved at the conciliation conference or considered not appropriate for conciliation may be recommended to the President of the Anti-Discrimination Board for hearing by the Administrative Decisions Tribunal.

The NSW Administrative Decisions Tribunal (ADT) is responsible for reviewing decisions of some NSW government agencies, for hearing discrimination complaints referred by the President of the New South Wales Anti-Discrimination Board and for hearing complaints about professional misconduct.

The Australian Human Rights Commission (AHRC) replaces the Human Rights and Equal Opportunity Commission. The AHRC is an independent statutory organisation that reports

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to the federal Parliament through the Attorney-General. The AHRC investigate and conciliate complaints of discrimination or breaches of human rights under federal laws

6.6 Consistency with the policy

Decisions by managers should be consistent to ensure fairness and to maintain stability. This can be achieved by having access to current knowledge of relevant policies, procedures, awards, enterprise agreements and determinations. Management should seek advice about industrial relations and human resource management issues with their line managers initially and contact the relevant Human Resources Advisory Consultant for further advice.

7. REFERENCES

[Industrial Relations Act 1996](#)

[Annual Holidays Act 1944](#)

[Long Service Leave Act 1955](#)

[Health Services Act 1997](#)

Relevant Industrial instruments, Awards and Determinations

[NSW Health PD2011_022 Industrial Consultative Arrangements](#)

[NSW Health PD2016_046 Resolving Workplace Grievances](#)

[NSW Health PD2018_016 Prevention and Management of Workplace Bullying in NSW Health Workplaces](#)

[NSW Health PD2014_042 Managing Misconduct](#)

8. REVISION & APPROVAL HISTORY

Date	Revision No.	Author and Approval
August 2004	0	Ken English, SES HR Manager
September 2005	1	Antonella Sassu, in consultation with AWS Working Party. Revision of former SESAHS Policy to reflect the merged SESIAHS. Approved by the Area Executive Committee
2010	2	Moirra McLauchlan, Senior HR Consultant (Projects) (SESAHS)
2013	3	Heather Sayner, Principal Consultant – Employee Relations (SESLHD). Minor changes were undertaken including updating to SESLHD, HR Consulting and Workforce Relations was changed to Workforce Services, references to 'GREAT' were deleted and NSW Health policy references were updated. Approved by Sharon Litchfield Director Workforce Services
2018	4	Cassandra Hann – Industrial Relations Specialist (SESLHD). Minor changes were undertaken including changing HR Consulting and Employee Relations to Workforce Services and NSW Health policy references were updated. Approved by Joy Hiley Director Workforce Services
July 2018	4	Processed by Executive Services prior to publishing.

Attachment A – Frequently Asked Questions**Q. Are LHD employees covered by the NSW industrial relations legislation or the Federal industrial relations legislation?**

A. The employees of the LHD are covered by the NSW legislation. The three key pieces of legislation that employees of the LHD are bound by are:

- *Industrial Relations Act 1996*
- *Annual Holidays Act 1944*
- *Long Service Leave Act 1955*

The introduction of the 2009 federal legislation *Fair Work Act 2009* does not affect the employment and industrial relations arrangements of LHD employees.

Q. What happens when a dismissed LHD employee wishes to lodge an unfair dismissal claim?

A. If an employee believes that they have been unfairly dismissed by the LHD or that the dismissal was harsh, unreasonable or unjust, then the employee can lodge an unfair dismissal claim with the NSW Industrial Relations Commission (IRC) under NSW legislation. The claim must be lodged with the IRC no later than 21 days after the dismissal took place unless specific considerations of the circumstances under Part 6 Section 85 of the *Industrial Relations Act 1996* can be shown to the IRC.

The IRC will endeavour to resolve the unfair dismissal claim by conciliation in the first instance.

Workforce Services will represent the LHD in the IRC with support from the Manager of the dismissed employee. If conciliation is unsuccessful and the matter is listed for hearing then the relevant manager of the dismissed employee may be required to participate in preparation of documents related to the dismissal for presentation at the IRC proceedings.

Q. What happens when the Union requests an employment matter go to a disputes committee?

A. If the union believes the issue requires examination by the LHD, then the employee should initially raise it with the relevant manager as an employment query. If the employee disagrees with the response supplied by the manager, then they are within their rights to speak to their union representative about the award condition dispute.

The most common process of resolution is usually when the employee or the union considers the issue is unable to be resolved at a local level and can include issues such as breaches of the award, policy or procedure issues or legislative interpretations.

If the union requests a matter related to current employee/s go to a disputes committee for investigation, then this means the Union has asked for the matter to be escalated to a formal resolution process beyond the employee and the direct supervisor.

The Manager should always check the relevant award for industrial dispute processes covering their employee's employment. If the award provides a clause which details a dispute procedure, then this process should be followed.

Managers can seek advice and support from their own managers and/or directors if they are unsure of the correct advice or process. Human Resources Advisory Service and Industrial Relations can be contacted for interpretation of the award or advice on dispute procedures.

The union may also choose to raise the issue at a local site or staff consultative committee meeting for resolution rather than requesting a disputes committee or speak to Workforce Services directly. If the matter escalates to the union and cannot be resolved initially through advice and discussion with the employee, then Workforce Services can provide advice and guidance in managing the dispute.