

DISCIPLINARY PROCEDURE

OVERVIEW

CAST companies are committed to managing performance and conduct issues fairly, consistently, professionally and in accordance with the law. This procedure explains the detailed steps required in managing performance and conduct issues.

SCOPE

This procedure applies to all CAST company employees, whether full-time, part-time or casual. For employees with less than 6 months continuous service CAST companies reserve the right to discipline or dismiss an employee without first following a disciplinary process.

This policy, and the legislation that informs it, may be amended from time to time, and to the extent that there is an inconsistency between the law and this policy, the law will prevail. For this reason, this policy is not incorporated within any employment contract or contract for services.

PROCEDURAL FAIRNESS

CAST is committed to observing due process and procedural fairness when undertaking disciplinary action as far as is practicably possible. This requires that:

- the employee must be made fully aware of the performance concerns and/or allegations of misconduct;
- an appropriate inquiry into the relevant facts and circumstances will be conducted, taking into account any mitigating circumstances, e.g. prior record, provocation;
- the employee is to be made fully aware of the potential outcomes of the disciplinary process;
- the employee must be given an opportunity to adequately respond to the allegations before the inquiry concludes;
- the employee has the right to be represented by a union delegate or any other support person at any stage of the inquiry.

Where possible the employee should be told specifics about issues raised but if there are concerns about victimisation, harassment or bullying, individual identities may be protected.

DOCUMENTATION AND CONFIDENTIALITY

All communications, events, actions and decisions relating to the disciplinary process should be documented on the CAST Disciplinary Action Report in Appendix 1. This is to ensure clarity and consistency for any future action that may be required. These reports will be securely retained by the Human Resources Manager or another person responsible for human resources management, e.g. the Executive Director.

The contents of these documents will be shared only on a “need to know” basis and not placed on employee files.

Once the disciplinary process has been completed a copy of any warnings and/or performance/conduct improvement plans should be placed on the employee’s file.

KEY PRINCIPLES

Whether a concern about an employee is classified as unsatisfactory performance or misconduct, any action taken to address that concern will always focus on the employee’s behaviour. The desired outcome is for the relevant behaviour to cease or improve and not re-occur.

Managers should, in the first instance, aim for the early informal resolution of unsatisfactory work performance or inappropriate conduct before issues become more serious in nature.

Any managers dealing with a workplace performance or conduct issue are encouraged to consult with their Human Resources Manager or person who holds human resource management responsibilities at the earliest opportunity.

UNSATISFACTORY WORK PERFORMANCE

Unsatisfactory work performance is the failure by an employee to perform to the required standards or expectations of the employee’s role.

Examples of unsatisfactory work performance include, but are not limited to:

- quality of work
 - quantity of work
 - conduct including late arrival, extended meal breaks, early departure and/or leaving the workplace without management approval
 - timely performance of work
 - competence
 - appropriate levels of customer service skills
 - accuracy of work
 - absenteeism
 - unwillingness to follow reasonable directions and procedures.
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MISCONDUCT

CAST expects all employees to conduct themselves professionally and appropriately in line with the guidance provided in the **CAST National Code of Behaviour** and the **CAST Respectful Workplace Policy**. CAST is committed to quickly addressing misconduct by employees in accordance with these procedures.

Misconduct may include, but is not limited to:

- bullying
- harassment, sexual or otherwise
- discrimination
- victimisation
- vilification, fighting or violence
- breaches of confidentiality
- inappropriate gossiping
- improper conduct in an official capacity
- a contravention, without reasonable excuse, of a lawful direction given to an employee by a person authorised to give that direction
- an employee making improper use of their position for personal gain
- an employee making improper use of information acquired by virtue of their position to gain personally, or for anyone else, financial or other benefits so as to cause detriment to the CAST company.
- dishonest or unlawful behaviour in the performance of duties
- theft of company assets or from company premises
- intentional damage to company property
- falsification of records or other fraudulent behaviour
- threatening and/or abusing a manager, colleague or any other person in the course of employment
- intoxication or impairment through the consumption of alcohol or illicit, illegal or mood-altering non-prescription drugs at work
- repeated or serious acts of negligence in performing the employee's duties of employment
- incidents of unacceptable conduct which on their own may not constitute misconduct, but are repeated in the face of recurring warnings over time, such as late arrival
- repeated serious breaches of the employee's employment contract, workplace policies and/or procedures
- unauthorised absences from duty
- ignorance or disregard of company health and safety procedures
- infringements of company smoking, alcohol, drug and/or social media policies.

Certain conduct may be deemed as serious misconduct, warranting more serious disciplinary action up to and including instant termination of employment.

DISCIPLINARY PROCEDURE

Under normal circumstances, managers are expected to follow the procedures outlined below. However, each CAST company may at its discretion take steps which fall outside of the processes set out in this policy, depending on the circumstances of the case.

Informal Management

Where a manager has concerns about an employee's conduct/performance, the manager may choose to deal with the matter informally in the first instance if appropriate. In these instances the manager should explain to the employee the impact of their behaviour, the standards expected and where improvement is required. They should also explain the likelihood that formal disciplinary action will be taken if no improvements are made.

The employee should always be given an opportunity to respond to the concerns raised and, where possible, to reach an agreement on the remedial actions required.

The local Human Resources Manager or person holding human resources management responsibility will be able to provide guidance and tools in setting appropriate performance or conduct improvement goals

All too often, conduct/performance issues are addressed too late. Where an issue arises it is best for all concerned to address the issue at the earliest opportunity.

After addressing a conduct or performance issue informally, the manager should make a detailed note of the conversation and share it with the employee to ensure clarity and consistency for any future action that may be required. It is particularly important to make notes at the time to prevent potential disagreements at a later stage.

Formal Process

In circumstances where the informal approach set out above is not appropriate or has not resulted in the change required, the manager should in the first place discuss the issue with the Human Resources Manager or another person who is accountable for human resources management.

A meeting will be arranged between the employee, the employee's manager and the Human Resources Manager (or other designated person of authority) to discuss the issues relating to the employee's performance or conduct. The employee should be notified of the date, time, location and purpose of the meeting; the specific performance or conduct issues that will be discussed; who will attend the meeting and their right to bring a support person to the meeting. All meeting participants should be provided with a copy of this procedure. The meeting should be held in a location that preserves privacy and confidentiality. If the employee requests additional time to prepare for the disciplinary meeting or to identify a suitable support person, reasonable consideration should be given to this request.

During the meeting:

- the manager should explain the exact nature of the problem, giving examples where possible, and explaining the performance or conduct standards required
- where performance is the issue, the employee should be informed of the criteria for measuring any improvements in performance
- the employee should be given the opportunity to respond to the comments made by the manager
- the manager should discuss with the employee how the improvement should occur and listen to any suggestions that the staff member may have and clarify how they will support the employee in making the changes required.

The manager then should ask the employee and their support person to leave the room prior to discussing and determining next steps with the Human Resources Manager (or equivalent person in attendance).

The manager should then call the employee and their support person back in to the meeting to notify them of their decision. The key outcomes from the disciplinary meeting will typically be one of the following:

- no further action required
- agreed actions to improve conduct or performance with a date for review with the manager
- formal warning with agreed actions to improve conduct or performance with a date for review by all meeting participants
- final formal warning with agreed actions to improve conduct or performance with a date for review by all meeting participants
- termination with notice
- termination without notice
- an extension of the timeframe to allow for further investigation

Within 2 days of the meeting, the manager should make a written record of the meeting on the **CAST Disciplinary Action Report** and provide a copy to the Human Resources Manager (or equivalent) for secure filing.

Formal Warning

If the issue(s) are deemed to be sufficiently serious or if attempts to resolve the matter through the informal process have failed, the employee should be provided with a Formal Warning.

The Formal Warning should be given orally at the meeting by the manager and subsequently confirmed in writing within 2 days of the meeting.

The warning letter should summarise the performance or conduct issues that led up to the warning and indicate that re-occurrence of any related issues will result in further disciplinary action, up to and including termination of employment. It should also summarise the actions agreed by the employee, the manager and others to achieve the required changes.

One copy of the written warning will be provided to the employee and another copy retained on the individual's employee file.

Final Warning

If there is a failure to improve performance or conduct after a written warning has been issued, or if the misconduct is of a more serious nature, a Final Warning may be issued. All the procedural steps summarised above, in the Formal Warning section, should also be followed for the Final Warning.

TERMINATION

If an employee's conduct/performance does not improve in response to a warning or if the misconduct is of a particularly serious nature it may be appropriate to terminate the employee's contract of employment.

Termination may only be authorised by the company CEO, which is typically the artistic director, executive director, or both roles as co-CEOs.

Termination may occur with notice, or with pay in lieu of notice. In circumstances of serious and willful misconduct, instant termination may occur.

ROLE OF SUPPORT PERSON

All participants in a disciplinary process are entitled to have a support person present at any formal meetings held under the procedure.

A support person's role is to provide emotional support; they should not act as an advocate or speak for the participant. A support person is required to keep all details of the meetings confidential.

SUSPENSION OF DUTIES

CAST companies have the discretion to temporarily suspend an employee from their duties, if salaried on full pay, prior to and during a full investigation of any allegations of misconduct involving that employee.

DISMISSAL FOR SERIOUS MISCONDUCT

A CAST company may instantly dismiss an employee in circumstances where the employee has committed an act of serious and willful misconduct.

An employee who is dismissed for serious and willful misconduct is not entitled to notice of termination or payment in lieu of notice.

PROCEDURAL FLEXIBILITY

Nothing in this procedure shall restrict a CAST company's right to instantly dismiss an employee where such action is justified. Nothing in this procedure prevents a CAST company, at its absolute discretion, from

implementing or following a different process or procedure that it deems appropriate in any individual circumstances.

CRIMINAL OFFENCE

Where it comes to light as part of a disciplinary process that a potential criminal act has occurred, the matter may be reported to the Police. Once the matter has been reported to the police the CAST company is not required to delay or cease the inquiry but may use its discretion to do so. Should an employee commit a criminal offence whilst not engaged in CAST company activity the impact of this offence on the organisation and the employee's ability to perform their duties will be considered with relevant action taken under this procedure where appropriate.

RELATED DOCUMENTS

Related CAST documents include:

CAST National Code of Behaviour
CAST Reporting Unacceptable Behaviour Policy
CAST Respectful Workplace Policy
CAST Grievance Resolution Procedure

Additionally, there may be CAST company member specific documents that should be referred to in conjunction with this procedure. Your Company HR Manager, or person who is responsible for human resources management, will be able to provide further advice.

QUESTIONS ABOUT THIS PROCEDURE

If you have a query about this procedure or need more information, please contact the relevant CAST member HR practitioner or Executive Director.

VERSION CONTROL

Effective Date: 1 June 2021
Review Date: 1 June 2022
Author: Steve Rowe (consultant via Sydney Theatre Company)
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Authorised by:

Black Swan State Theatre Company. Rick Heath, Executive Director
Bell Shakespeare. Gill Perkins, Executive Director
Belvoir. Susan Donnelly, Executive Director
Malthouse Theatre. Sarah Neal, Executive Producer and co CEO
Melbourne Theatre Company. Virginia Lovett, Executive Director & co CEO
Queensland Theatre. Amanda Jolly, Executive Director
State Theatre Company South Australia. Julian Hobba, Executive Director
Sydney Theatre Company. Patrick McIntyre, Executive Director

CAST DISCIPLINARY ACTION REPORT

This report must be completed by the manager or Human Resource Manager when dealing with a formal disciplinary issue. It is recommended that this form is also used to record information following any informal action taken to improve performance or conduct. This is optional but may be regarded as mandatory by some CAST member companies.

Complete the report with reference to the **CAST Disciplinary Procedure**.

The Report should be maintained as a working document whilst the disciplinary issue is ongoing.

Once the disciplinary process has been completed the manager should sign and date this report and send to the company Human Resource Manager or CEO in the absence of a Human Resources Manager.

1. Personal details of the person (s) being counselled/disciplined.

First name

Last name

Email address

Contact number

Position

Line Manager

2. Summary of events leading up to the decision to take informal or formal disciplinary action.

Complete this section fully with as many details as possible including dates, times, places, witnesses and any other relevant information. Continue on separate sheets if necessary. Append any relevant documentation - emails, performance reviews, investigatory findings etc. to this report.

Continue on separate sheets if necessary

3. Summary of Disciplinary Action Taken

With reference to the CAST Disciplinary Procedure, please indicate, by placing a tick in the appropriate box below the disciplinary action taken.

No further action required	
Improvement plan and review date set	
Formal Warning given	
Final Formal Warning given	
Termination with notice	
Termination without notice	

Summarise below the reasons for your decision to take this action and the person's response to your decision. Append detailed meeting notes to this Report.

4. Recording and Ongoing Monitoring Plan

To ensure clarity and consistency and in the event of any future challenge, maintain a full and accurate record of events, actions, conversations etc. below until the disciplinary process is completed. This may be supplemented by appending relevant documents to this report. For any action short of termination, follow up within a reasonable timeframe to ensure that the issue has been effectively resolved before signing and dating this report.

Date **Event/Action/Comment**

Continue on separate sheets if necessary

5. Process Completion

Only complete this section once the disciplinary process has been completed.

Summarise briefly your view on current status and any further actions that should be taken. Finally, sign and date this document and forward on to the Human Resource Manager (or relevant person) for secure filing.

Name:

Signature:

Date:

Forwarded to: