

Disciplinary Policy and Procedure

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Purpose

Auspicious Arts Projects (AAP) seeks to create a healthy, safe and rewarding working environment based on the principles of fairness, equity and tolerance. The purpose of this policy is to provide disciplinary guidelines that ensure procedural fairness and follow the principles of natural justice.

Scope

This policy applies to all employees, including contractors engaged by AAP under an agreement. Employees must be aware of the consequences of their actions. This policy provides a framework for the management and application of a disciplinary action relating to misconduct and serious misconduct.

Procedure

It is everyone's responsibility to report suspected misconduct for the sake of AAP employees' health and safety. When an issue of misconduct is observed by, or brought to the attention of an AAP Client Manager or AAP Director, the manager will, as soon as possible, undertake a confidential preliminary enquiry to determine whether a formal investigation is required. Other people may need to be involved, including the Director of AAP, however the Client Manager will ensure as far as is practicable that confidentiality is maintained by all parties. All cases are to be treated with respect and sensitivity.

The objective of this policy is to ensure that behaviours are consistent with, and supportive of the law, and that AAP's values and desired culture are reinforced. In this respect, and depending on the severity of the misconduct, AAP recognises that an informal, supportive response may be more effective than initiating formal disciplinary action. For the purpose of this policy, misconduct includes the following:

- misdemeanours, including inappropriate behaviour;
- failure to comply with organisational policies or a provision of any statute or regulation that applies to the employee in the employee's employment;
- unauthorised absence from duty;
- inappropriate use of organisation's property and facilities.

Serious misconduct includes wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment (which could take the form of criminal behaviour) and/or conduct that causes serious and imminent risk to the health and safety of a person, or the reputation, viability or profitability of the employer's business. Where serious misconduct is involved, it may not be appropriate to follow each of the Disciplinary Action steps below concerning informal verbal warnings or formal written warnings. In such matters, AAP may suspend the employee with or without pay.

The Disciplinary Policy and Procedure should be provided to the employee prior to any discussions taking place and they are to be offered the option of having a support person attend any meeting. A support person may be a work colleague, union representative or any other person chosen by the employee, but cannot be a family member or lawyer.

Disciplinary Action

After observing or being notified of misconduct by an employee, the Client Manager, or AAP Director, should establish the facts as soon as possible. An independent third party may be called engaged to investigate the issue. The Client Manager, AAP Director, or independent third party will:

- gather relevant facts and assess any relevant documentation;
- undertake an interview with persons who may (or should) have knowledge of the employee's behaviour and who may have witnessed any incident or event;
- review any relevant policies and procedures, taking into account the employee's past record, and;
- prepare a chronology of events to record what has occurred, and make a critical assessment to determine an appropriate course of action.

Once sufficient information (facts) has been collected, the Client Manager, or AAP Director, should arrange an appropriate time to meet with the employee concerned. The employee must be given the opportunity to respond to issues raised.

VERBAL OR FIRST WARNING

The employee will be issued with a warning when the employee engages in misconduct or when his or her performance is not at the required standard.

The purpose of this action is to clearly indicate to the employee that a problem exists, which must be addressed, and of the possible consequences if the problem is not resolved.

When an employee is issued with a verbal or first warning from the Client Manager, or AAP Director, the:

- advice will be provided orally during a disciplinary meeting with the employee and a written warning document will also be provided to the employee;
- a copy of the warning document will also be placed on the employee's employment file;
- if a period of up to 12 months elapses without any further disciplinary action being taken against the employee, the active period of warning will end. Depending on the circumstances, AAP may nonetheless rely on any previous warnings in determining appropriate disciplinary action.

Another warning may be given to an employee when the employee engages in continued unsatisfactory performance or the employee continues to engage in misconduct. In these circumstances, termination or a final warning may not be appropriate whereas an additional warning alerts the employee that they are continuing to behave or perform unacceptably.

FINAL WARNING

An employee shall receive a final warning from the Client Manager, or AAP Director, either:

- as a first and final warning; or,
- after one or more written warnings, the employee has not shown an indication of improving his behaviour to the required standard.

The purpose of this action is to clearly indicate to the employee that a problem exists, which must be addressed, and to communicate the possible consequences if the problem is not resolved in the time frame for resolution.

The employee will be issued with a final warning in the case of misconduct that does not justify termination, or if there is continued unsatisfactory performance.

The Client Manager, or AAP Director, will advise the employee in writing and during the disciplinary meeting that they are being issued with a final warning.

In circumstances of continued unsatisfactory performance, the final warning shall specify the areas of unsatisfactory performance which were originally notified to the employee and which have not been rectified, or of any fresh instances of unsatisfactory performance, and will indicate that termination could occur if the deficiencies are not rectified within a specified period.

If a period of up to 12 months elapses without any further disciplinary action being taken against the employee, the active period of the warning will end.

NOTICE OF DISMISSAL

A meeting will occur if after a final written warning has been issued and, with a reasonable period of time to monitor and review, it is evident that the behaviour has not and will not reach the expected standards. The Client Manager, or AAP Director, will review the entire discipline process to date to ensure it has not been harsh, unjust or unreasonable. Any decision to terminate an employee must be endorsed by the AAP Director.

The Client Manager, or AAP Director, will then arrange a meeting with the employee. At the meeting, the manager will:

- advise that the unacceptable behaviour has continued;
- reiterate the behaviour that was required, and;
- provide details of previous meetings and warnings issued.

The employee will be provided with an opportunity to respond to give reason or provide details of any other relevant matters that may avert their potential termination of employment. After taking a reasonable time to consider the employee's response, if it is determined termination is appropriate, the employee will be provided with confirmation of the termination of their employment in accordance with the Fair Work Act 2009. After the meeting, the Client Manager, or AAP Director, will prepare a Disciplinary Policy and Procedure report and a copy will be placed on the employee's employment file.

The notice of termination will be applied in accordance with the National Employment Standards.

Attendance at a disciplinary meeting is compulsory unless permission is sought prior to alter the timing of the meeting. Failure to attend a disciplinary meeting may result in further disciplinary action.

In the event an employee fails to attend a disciplinary meeting, AAP may proceed to determine its position without the benefit of the employee's input.

If the employee has engaged in serious misconduct, the employee's employment may be terminated summarily.

Other

It is not expected that parties will commence any action permitted under the Fair Work Act 2009 or any other action until internal policies and procedures have been applied and followed.

This Disciplinary Policy and Procedure document has been developed to ensure AAP complies with the Fair Work Act 2009 and any other relevant legislation.

Further Information / Reference

Age Discrimination Act 2004

Disability Discrimination Act 1992

Equal Opportunity Act 2010 (Vic)

Fair Work Act 2009

Fair Work Regulations 2009

Australian Human Rights Commission Act 1986

Racial and Religious Tolerance Act 2001 (Vic)

Sex Discrimination Act 1984

Racial Discrimination Act 1975

National Employment Standards

Occupational Health and Safety Act 2004 (Vic)

Australian Human Rights Commission Regulations 1989

Protected Disclosure Act 2012 (Vic) replacing Whistleblowers Protection Act 2001 (Vic)