

Modified from CAST (Confederation of Australian State Theatres) policy July 2021

## GRIEVANCE RESOLUTION PROCEDURE

### OUR SHARED COMMITMENT

Phoenix Ensemble is committed to providing a safe, respectful and inclusive workplace, free of discrimination, bullying and harassment (sexual or otherwise) or any other forms of unacceptable behavior.

Often, unacceptable workplace behaviour goes unreported. This may typically be because of a fear of recrimination or a belief that no action will be taken. Phoenix Ensemble urges all people associated with the company to please speak out so that any issues may be dealt with *at the earliest possible stage*. Only through early identification of potential issues can preventative measures be put in place to mitigate the risk of more serious issues.

Phoenix Ensemble is committed to taking all reports of unacceptable behaviour seriously, treating them confidentially (unless otherwise agreed) and, most importantly, taking appropriate action to stop any unacceptable behaviour from being repeated. This Grievance Procedure is a key tool in achieving this goal.

**Every individual is responsible for ensuring that their own behaviour is appropriate at all times. Everyone is also encouraged to speak up in a respectful and timely manner if they experience or witness unacceptable behaviour in others.**

Copies of policies and procedures will be made available to members prior to their engagement and Phoenix Ensemble will explain same at inductions. Policies and procedures will be readily available on our website ([phoenixensemble.com.au](http://phoenixensemble.com.au)).

### LEADERSHIP

**Everyone in a leadership role (including board and creative team members)** has a responsibility for:

- role modelling appropriate standards of behaviour;
- ensuring that this policy is clearly communicated and understood;
- treating every issue seriously, professionally, with appropriate urgency and in alignment with this and any other related policies and procedures;
- helping complainants to resolve issues informally, where appropriate;
- guiding complainants in how to raise a formal grievance if it is their wish to do so;
- using their best endeavours to prevent members who raise an issue or make a complaint from being victimised, and addressing the issue where it occurs;
- providing advice about the interpretation of this policy and others; and
- ensuring that all impacted parties are aware of the support available with regard to any issues that compromise a respectful workplace.

While some members have formal roles and responsibilities in relation to leadership, all members are encouraged to show leadership in modelling safe, productive and supportive workplace behaviours.

To ensure consistency of communication and interpretation of the policy for each Phoenix Ensemble activity a board member(s) will address each shows' cast, crew and creative team at the beginning of each production.

### PURPOSE

The **Phoenix Ensemble Respectful Workplace Policy** provides clarity about what constitutes

unacceptable workplace behaviour and how to report such behaviour whether experienced or witnessed.

The **Phoenix Ensemble Grievance Procedure** details the process to be followed in the event that an issue is raised that potentially compromises workplace health, safety and wellbeing or is not aligned with the behaviour expected in a respectful workplace.

Grievances may be raised and resolved either informally or formally. Both the informal and formal processes for grievance handling are detailed in this procedure.

The Grievance Procedure should not be used for complaints that are not involved with workplace behaviour, such as the cleanliness of the workplace or the availability of on-site parking. Such complaints should be discussed with board members.

## SCOPE

This procedure applies to everyone in Phoenix Ensemble workplaces which includes, but is not limited to:

- board members;
- show personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house);
- production and administrative staff;
- employees;
- job candidates, including people auditioning for roles;
- student placements, work experience students/interns;
- volunteers and anyone working in an unpaid capacity.

All members must comply with this procedure.

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.

## WHOM SHOULD I TALK TO?

In the interests of consistent and equitable interpretation of the Respectful Workplace Policy, the most appropriate person to speak to in the event of any concerns about inappropriate behaviours in the workplace, whether experienced or witnessed will be a member of the Phoenix Board / Management team, preferably the board liaison appointed to the production. If the complainant is uncomfortable approaching a board member they may, in the first instance, speak with a member of the creative team who will then inform the board.

Phoenix Ensemble has a flat organisational structure, whereby the Board is the immediate and only level above all other members of Phoenix Ensemble (creative teams, cast, crew, tutors, students and admin). Therefore, to avoid conflict of interests and potential escalation of conflict amongst peers, complainants should approach a member of the board to raise issues of inappropriate behaviour.

In the interests of maintaining a safe and respectful workplace, it is important that incidents of unacceptable behaviour are managed appropriately to prevent continuance or a reoccurrence.

All reports of unacceptable behaviour will be dealt with in a sensitive, impartial, professional and timely manner in accordance with this procedure and with reference to the **Phoenix Ensemble Respectful Workplace Policy**.

## REPORTING UNACCEPTABLE BEHAVIOUR

If an issue arises there are **3 potential paths to resolution**:

**Personal Action:** Generally, if you feel able, you are encouraged to deal with the issue directly in the first instance by talking to the person who has behaved unacceptably in a calm, timely and respectful manner.

You may first seek support or advice from a board member who may assist in resolving the issue.

**Informal Complaint:** If an individual believes that personal action is inappropriate or undesirable, or that the situation warrants a response that includes board attention and actions, they can initiate an informal complaint. An informal complaint may be made confidentially, and any follow up actions may also be undertaken in a confidential manner (notwithstanding that the board may be required to waive confidentiality where an immediate hazard or risk is identified). The aim of an informal complaint is to resolve the grievance by stopping or preventing the unwanted behaviour.

**Formal complaint:** If the grievance is of a serious nature the formal process will apply. This will involve a formal investigation aimed at substantiating the claims of unacceptable behaviour and determining appropriate follow up actions including any disciplinary action. An investigation may include interviews with those directly involved in the matter or with witnesses. The board may seek to engage an independent / external person if potential conflicts of interest / bias issues arise.

**The perceived status of a person alleged to have behaved unacceptably should have no influence on a decision to hear a grievance formally or informally.**

It will not always be appropriate for the person making the complaint to determine whether to use the informal or formal process. For instance, where workplace behaviours create a clear danger in the workplace, the board is compelled to act to manage risks to members. This is referred to as the board's "duty of care." However, if the person making the complaint has concerns about a proposed course of action, they may seek clarification from the full board.

Your conversation will be treated confidentially, unless agreed otherwise with you, providing there is no immediate perceived risk to health and safety. At all times you will be provided with support and your personal health, wellbeing and privacy will be treated as a high priority.

The Informal and Formal Processes to resolving grievances are described in greater detail below.

## **EXTERNAL CHANNELS**

You can also get independent information about inappropriate workplace behaviours, support or advice through the following organisations:

- Fair Work Commission: [www.fairwork.gov.au](http://www.fairwork.gov.au)
- Media Entertainment and Arts Alliance (MEAA): [www.meaa.org](http://www.meaa.org)
- Centre Against Sexual Assault: [www.casa.org.au](http://www.casa.org.au)

**The police will be informed of alleged criminal offences.**

## **INFORMAL PROCESS**

Once a complainant has raised their grievance, the board member hearing the grievance may decide to deal with a complaint informally if:

- The grievance is of a less serious nature;
- the person raising the grievance requests that the matter be dealt with informally or confidentially, and considers this appropriate; and
- the grievance has arisen from a misunderstanding or lack of/unclear, communication.

Informal ways of dealing with complaints will emphasise resolution rather than factual proof or substantiating of a complaint and can include, but are not limited to the following actions:

- a private discussion is held or mediated between the relevant parties to the grievance, where the parties agree to participate;
- an impartial third person conveys information between those involved;

- an impartial third person helps those involved to talk to each other and find a resolution;
- the grievance is resolved through conciliation or counselling;
- the aggrieved person decides to deal with the situation themselves but may seek advice on possible strategies;
- the person hearing the grievance agrees to speak to the parties involved on their behalf to privately convey the aggrieved party's concerns and reiterates the **Phoenix Ensemble Respectful Workplace Policy** without assessing the merits of the case.

An informal complaint may also be dealt with without the need to individually identify the aggrieved individual or individuals. Informal ways of dealing with the grievance may also include collective actions such as:

- providing training to all members;
- redistributing and explaining relevant policies;
- making alterations to working arrangements to reduce the risk

In some instances, an independent mediator may be engaged.

The person hearing the grievance will document the steps taken to address and resolve the grievance using the informal process via the Grievance Resolution Report in Appendix 1.

An informal process may be formalised at any point where the person hearing the grievance considers it appropriate, particularly where an informal process has been ineffective or new information is received.

## **FORMAL PROCESS**

To hear a grievance in the formal process, the seven steps listed below should be followed.

An impartial person will be appointed to lead an investigation into the complaint. This may be a member of the board or an external investigator if board members have a conflict of interest. This person will collect and consider all relevant evidence before making a determination.

There may be occasions when, having regard to the complexity of the facts and the seriousness of the allegations, the process takes longer or there is a departure from the process. All the parties to the grievance will be informed of any necessary process or timing change during the course of the investigation and the rationale for it. All practicable steps to undertake and conclude the investigation in a timely way will be taken.

### **Seven Step Process**

There are 7 key steps to hearing a formal grievance as follows:

#### **Step 1: Obtain information from the complainant**

As soon as practicable, the person hearing the grievance will contact the aggrieved to better understand the grievance and obtain any additional information. At this time, the person hearing the grievance will also:

- provide or confirm that the complainant has received a copy of the **Phoenix Ensemble Respectful Workplace Policy** and the **Phoenix Ensemble Grievance Procedure**;
- provide information about the grievance process, potential outcomes, options for assistance/support and protections from victimisation;
- ensure the completion of the Grievance Resolution Report Form
- explain that the process is confidential, what this means and why it is important;
- explain that records of the grievance will be kept confidentially in electronic form and that the aggrieved will have access to this information upon request;

- if appropriate, explain the probable action that may be taken if the grievance is found to be vexatious or malicious; and
- ask the complainant to provide relevant documents or details of witnesses that may support the allegation(s).

Where there is a concern about supporting information being destroyed or compromised the person hearing the grievance should seek to obtain this information before taking any further action.

### **Step 2: Advise the respondent/s about the grievance**

As soon as practicable but no later than one week after receiving all necessary information from the aggrieved person and understanding the scope of the grievance, the person hearing the grievance will inform the respondent/s that a grievance has been raised. The person hearing the grievance will provide details of the allegations, and if they consider it appropriate and necessary to do so, supporting information. The allegations may be provided to the relevant parties either in writing.

When the person hearing the grievance informs the relevant parties they will also;

- provide or confirm that they have received a copy of the Phoenix Ensemble Respectful Workplace Policy and the Phoenix Ensemble Grievance Procedure and confirm that the respondent will be given the opportunity to respond to the allegations;
- provide information about the grievance process, potential outcomes and options for assistance/support;
- explain that the process is confidential, what this means and why it is important;
- explain that records of the grievance will be kept confidentially in electronic form and that the aggrieved will have access to this information upon request; and
- explain that it is unacceptable to victimise someone who has raised a grievance.

The person hearing the grievance may monitor the interactions between the complainant and the respondent as the grievance processes, to identify whether there are any issues that need to be addressed. If considered necessary to the investigation, any of the parties may be instructed to remain away from the Phoenix Ensemble workplaces and not be involved in Company business until the grievance is resolved.

### **Step 3: Ask relevant parties to respond to the allegation**

All parties cited in the grievance will be provided with an opportunity to respond to the allegation(s). This should normally occur within three (3) working days of the relevant parties being notified of the allegation(s).

The person hearing the grievance will document the information obtained from the relevant parties, and the relevant parties will be asked to review and confirm the accuracy of the information.

### **Step 4: Interview any relevant witnesses**

If the person hearing the grievance considers it necessary or appropriate, they will interview any relevant witnesses. To maintain confidentiality witnesses should only be advised of the nature of the investigation insofar as it relates to them providing accurate and truthful evidence. Witnesses should also keep confidential their interactions with the investigation.

### **Step 5: Clarify contradictory or new evidence**

If new or contradictory evidence comes to light during the investigation, the person hearing the grievance will hold further discussions with the relevant parties to clarify information.

If either the aggrieved or any of the relevant parties dispute any of the new or contradictory evidence, the person hearing the grievance may need to extend the investigation to gather more evidence until they are satisfied that there is no additional evidence to be collected or no further clarification is required.

### **Step 6: Assess the evidence and make a determination**

The person hearing the grievance will assess the information and evidence gathered and form an opinion about the grievance which may be one of the following:

- the grievance is substantiated;
- the grievance is not substantiated; or
- it is not possible to make a conclusive finding about whether the grievance can be substantiated.

Where the evidence is not clear cut the person hearing the grievance will need to come to a conclusion based on the 'the balance of probabilities' – which means it is more likely than not that the alleged unacceptable behaviour occurred.

Where the grievance is substantiated, the person hearing the grievance may recommend disciplinary action up to and including cancellation of membership and dismissal. Recommendation will be made to the full board.

The person hearing the grievance, may identify areas that could be improved to reduce or avoid future issues. In this event, specific recommendations for change should be made directly to the full board

### **Step 7: Notify all relevant parties of the outcome.**

Having come to a decision, the aggrieved and other relevant parties need to be notified of the grievance outcome and the rationale for the decision. The Grievance Resolution Report Form then needs to be completed and placed on the files of the relevant parties.

If a party wishes to appeal the outcome of a formal investigation, they may do so to the full board.

### **Substantiated complaints**

Where the complaint is substantiated, a range of potential outcomes may follow, depending on the findings, which may include one or a combination of the following:

- counselling, coaching or mentoring;
- formal written warning;
- termination of membership of or employment by Phoenix Ensemble;
- facilitated meetings between the parties to attempt resolution through direct discussion;
- developing an agreed process for moving forward;
- regular monitoring of behaviour;
- further training and education;
- a commitment to a change of behaviour;
- a change in working arrangements; and
- an apology.

The most appropriate outcome in each case will depend upon factors such as:

- the severity and frequency of the unacceptable behaviour;
- the weight of the evidence;
- the wishes of the aggrieved (however this will not be determinative of the matter);
- whether the respondent has been given any prior warnings for the same or similar conduct

The disciplinary procedure will be applied in a manner that is consistent, clearly explained, fair and proportionate.

## **PROTECTION AGAINST VICIMISATION**

Victimisation means adversely treating a member who has raised a grievance or has assisted someone in raising a grievance.

Victimisation is unlawful and will not be tolerated. Any incidents of victimisation should be immediately reported to a member of the board.

It is often the case that people don't speak up in workplaces for fear of recrimination. A member who raises a grievance under this procedure will be treated with respect and the matter will be dealt with in the strictest confidence possible. Phoenix Ensemble will take all reasonable steps to ensure that no employee is treated poorly, victimised or disadvantaged as a result of:

- making or intending to raise a grievance
- providing information as a witness
- providing support to a person who has raised a grievance

## **SUPPORT PERSON**

All participants in an investigation are entitled to have a support person present when being interviewed. The support person should not be a party or a witness to the behaviour that is the subject of the complaint, and can be an individual from outside the company.

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 complaint and investigation confidential.

## **REQUEST FOR ANONYMITY**

In some cases, it will not be possible for the person raising the grievance to remain anonymous due to the right of other parties to natural justice and to know the nature of the allegation(s) being made against them. Anonymity may also delay an issue from being resolved thereby creating a potential health and safety hazard for other workers.

While the complainant's wishes will be taken into account, they do not determine whether or how the complaint should be investigated. That is the responsibility of the person hearing the grievance. A complainant will be advised in advance if the company is unable to maintain confidentiality.

## **POTENTIAL CRIMINAL OFFENCES**

Some grievances may relate to criminal offences, including physical assault, sexual as- sault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

In situations where a potential criminal offence has occurred, the person raising the grievance will receive appropriate support and the matter may be reported to the police. In situations where the person hearing the grievance becomes aware of or has reasonable grounds to believe that a criminal offence has been committed against a child or young person, he or she has an obligation to, and will, report the matter to the police or relevant authority.

Under Workplace Health and Safety laws, Phoenix Ensemble also has an obligation to notify the relevant regulator of certain types of workplace incidents.

## **GRIEVANCE RECORDS**

For all grievances raised, the Grievance Resolution Report in Appendix 1 of this procedure should be completed by the person hearing the grievance and provided to the board for secure filing.

## **GRIEVANCES INVOLVING OUTSIDE PARTIES**

Grievances may be raised involving workers from another organisation while working or associating at the same workplace.

If the person hearing the grievance deems that the matter requires further action, they will raise the matter with an appropriate representative from the other organisation. Members of the two organisations will then consult to determine the best way forward in alignment with the policies and procedures of both organisations.

## **VEXATIOUS COMPLAINTS**

If a complaint is found to be frivolous, vexatious or malicious, then appropriate disciplinary action will be taken. The purpose of this is not to prevent a member from making a legitimate complaint where they consider they have been subjected to discrimination, harassment, sexual harassment or bullying behaviour, but rather to prevent a member from making a complaint in order to create difficulties for another person.

Examples of frivolous, vexatious or malicious complaints include, but are not limited to:

- raising a grievance for the malicious purpose of deliberately harming another person;
- seeking to re-agitate issues that have already been addressed or determined;
- raising a grievance that the complainant does not genuinely believe to be true

## **PROCEDURAL FLEXIBILITY**

Nothing in this procedure prevents Phoenix Ensemble, at its absolute discretion, from implementing or following a different process or procedure that it deems appropriate in any individual circumstances.

## **QUESTIONS ABOUT THIS PROCEDURE**

If you have a query about this procedure or need more information, please contact the Phoenix Ensemble board.

## **VERSION CONTROL**

|                 |                               |
|-----------------|-------------------------------|
| Effective Date: | 14 December 2022              |
| Review date:    | 14 December 2023              |
| Author:         | Stephen Wood, Finance Manager |
| Status:         | Final                         |



# PHOENIX ENSEMBLE GRIEVANCE RESOLUTION REPORT

This report must be completed by the production liaison manager when dealing with a grievance, whether or not any action is taken as a result.

Complete the report with reference to the **Phoenix Ensemble Grievance Resolution Procedure**.

The Report should be maintained as a working document whilst the grievance is being dealt with.

Once the grievance has been resolved the production liaison manager should sign and date this report and send to the Phoenix Ensemble board

## 1. Personal details of the person (s) reporting the issue/grievance

First name

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Last name

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Email address

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Contact number

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Position

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## 2. Full details of the issue/grievance

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, investigatory findings etc. to this report.

Continue on separate sheets if necessary

### 3. Path to Resolution

With reference to the Phoenix Ensemble Grievance Procedure, please indicate, by placing a tick in the appropriate box below which of the 3 paths to grievance resolution you have decided to follow:

|                         |  |
|-------------------------|--|
| <b>Personal Action</b>  |  |
| <b>Informal Process</b> |  |
| <b>Formal Process</b>   |  |

Please outline the reasons for your decision and whether or not the aggrieved person agrees with your decision.

### 4. Path to Resolution

If the person decides to address their grievance through personal action, follow up within a reasonable timeframe to ensure that the grievance has been effectively resolved before signing and dating this report. Whichever path is followed maintain a full record of events and actions below until the grievance is finally resolved, continuing on separate sheets if necessary.

**Date**                      **Event/Action/Comment**

Continue on separate sheets if necessary

## **5. Grievance Resolution**

Only complete this section once the grievance has been resolved and appropriate monitoring has occurred over time. Summarise briefly your view on the status of the grievance, the health and wellbeing of the aggrieved person and any further actions that should be taken. Finally, sign and date this document and forward on to the Administration Director (or other board member) for secure filing.

**Name:**

**Signature:**

**Date:**

**Forwarded to:**