

	TERMINATION OF THE EMPLOYMENT RELATIONSHIP	Document No:	HR-PRO-018
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1. Purpose

This procedure outlines the general process to be followed when an employee voluntarily decides to leave employment or when a decision has been made by the employer to terminate employment.

2. Scope

This procedure applies to all ACBC agencies.

3. Related Documents

Fair Work Act 2009
 Antidiscrimination legislation
 Modern Awards
[ACBC Conditions of Employment](#)

4. Definitions

Termination of employment

Termination of employment is the voluntary or involuntary bringing to an end of the employment relationship. There are many ways to end an employment contract. Some are initiated by the employer and others by the employee. Regardless of who initiates the termination, legislation sets out the process that needs to be followed and details the rights and responsibilities of all parties involved.

Supervisor

The Supervisor is a Bishop, an Agency Head, Director, Manager, Coordinator or Team Leader, who is responsible for the day-to-day supervision of workers.

5. Responsibilities

Supervisors

Supervisors are required to:

- Notify the Office for Employment Relations when considering a termination of employment
- Obtain advice from the Office for Employment Relations (OER) prior to taking any action on terminating employment
- Observe applicable legislation when processing a termination of employment

Office for Employment Relations

The Office for Employment Relations is responsible for:

- Providing advice on the process to be followed for termination of employment
- Obtaining legal advice in relation to the termination of employment
- Providing guidance on the documentation required for the termination of employment

6. Matters to be considered before Terminating Employment

For an employer, the risks arising from failure to terminate an employment relationship in an appropriate manner include:

- Unfair dismissal or unlawful termination claims under the Fair Work Act
- Adverse action claims
- Penalties for breaching employer obligations set by awards/agreements/legislation
- Discrimination claims

If successful, such claims can lead to orders for substantial compensation payments, or reinstatement of the employee. Such proceedings can also impact adversely on the morale of other employees.

The most obvious risk arising from the dismissal of an employee is that an application may be made to the federal or relevant state industrial commission on the grounds that the dismissal was unfair and/or unlawful.

These matters are explained in **Appendix A**

7. Ending the Employment Relationship

Generally, the employment relationship will end in one of the six ways:

By Contractual Arrangement:

- Termination by a contractual provision being fulfilled i.e. an employee employed for a specified period and that specified period comes to an end

By an Employee:

- Resignation of an employee

By an Employer:

- Breach of contract which may result in summary dismissal by the employer (Refer to [HR-PRO-013](#))
- Termination by notice (under the Fair Work Act 2009, an award or other contractual provision) given by an employer when the decision has been taken to dismiss an employee (Refer to [HR-PRO-012](#))
- Termination as a consequence of other events (e.g. abandonment, death of the employee, closure of the business etc.)
- Redundancy due to change in the business situation (e.g. technological change which may involve retrenchment of a number of employees). (Refer to [HR-PRO-017](#))

8. Termination by a contractual provision being fulfilled (e.g. Maximum or Fixed Term Contract)

A maximum or fixed term contract concludes its own volition at the end date of the contract. I.e. employment is terminated at the end date of the contract.

The Supervisor must ensure that the - employee does not work beyond the finish date of the contract. A person employed under fixed-term contract is commonly excluded from bringing unfair dismissal claims. To fall within this exclusion, the fixed-term contract must have explicit start and finish dates, and must not give either the employer or employee an unqualified right to terminate the contract prior to the expiry of the term.

For example:

- A contract with fixed dates that allows the employer to terminate the contract if the employee is guilty of serious misconduct will be a fixed term contract
- A fixed-term contract that also allows employer to terminate the employment on giving one month's notice is not considered a true fixed-term contract.

9. Resignation

Resignation is a voluntary decision by an employee to terminate employment with the employer. This is usually done by the communication (orally or in writing) of the intention to resign.

The ACBC Conditions of Employment states the notice period that employees are required to give of their intention to resign.

Notice of resignation must be submitted in writing to the employee's immediate supervisor indicating the name of the employee, the position, the date of the notice and the date from when the resignation will be effective. The employee must sign the notice.

The Supervisor should conduct an exit interview with the employee prior to their last day at work. The exit interview should aim to find out the reason that the employee is leaving, suggestions on how to improve the position, ways to improve the experience of working in your Agency, ways to improve supervision of employees and ways to transfer the knowledge that the outgoing employee has to the incoming employee. (See [HR027 Exit Interview](#))

The employer should formally acknowledge notification of resignation. (See [HR026 Acknowledgement of Resignation](#))

10. Termination resulting from Underperformance or Misconduct

In general, if the employer has made a decision to terminate employment, the employee should be advised of that decision as soon as practicable at a formal meeting, as set out in the specific procedures for managing those issues (e.g. [HR-PRO-013: Managing Misconduct](#), [HR-PRO-012: Managing Underperformance](#)).

At the meeting the Supervisor should:

- Confirm that the employee had an opportunity to be represented;
- Confirm that the employee had the opportunity to respond to any issues raised by the employer;
- Note that the employer has considered all material, including the employee's response;
- Advise that the employee's employment will be terminated, and the reason or reasons for termination;
- Specify the notice period or if the employee will be paid in lieu of that notice. Check the minimum notice provisions provided in their award, contract of employment, or the National Employment Standards. If there is a discrepancy, whichever is the more generous provision applies.
Note: While it is accepted generally that persons should be allowed to work out their notice period, in respect of persons dismissed for underperformance the employer may consider that inappropriate. If so, payment may be made in lieu of notice.
- Advise of the date of termination (their last day of work).

The above must be confirmed in writing and given to the employee. (See [HR025 Termination of Employment letter](#)).

As soon as practicable, all legal and statutory entitlements should be paid to the employee (e.g. accrued annual leave, superannuation).

Payment details should be confirmed in writing in a letter accompanying payment.

11. Termination as a consequence of other events

When contemplating a termination of employment as a consequence of the following, seek advice from the Office for Employment Relations as each case will be different and will require appropriate action that complies with relevant legislation.

- Abandonment,
- Ill health,
- Death of the employee,
- Frustration of the contract

12. Termination of Employment as a result of Redundancy

Sometimes it is necessary to restructure an organization to meet its current requirements. Sometimes this will lead to redundancies. A redundancy is when an organization no longer needs certain tasks to be done by anyone. The process to be followed when terminating employment due to redundancy is explained in detail in [HR-PRO-017 Redundancy](#). Contact the Office for Employment Relations for advice on restructures and redundancies.

13. Arrangements to be made when employment ends

Return of Property: All property that belongs to ACBC or ACBC Agencies must be returned unless other arrangements have been made. Any arrangement for retention of ACBC property must be made in writing.

Return of Information: Any information such as documents, books and reference materials, whether in hard copy or in electronic format, must be returned to the ACBC or ACBC Agency.

Access: Any keys, access cards etc. to ACBC workplaces must be returned.

Access to ACBC IT systems, networks and databases must be terminated.

Financial Items: ACBC credit cards are to be returned and reconciliations are to be completed.

Any financial status reports required are to be completed.

Access to bank accounts and cheque accounts are to be terminated.

Logins to external websites are to be made inactive.

Worker is to be removed as a signatory for financial transactions.

Handover: Arrangements are made to hand over the role. This may include discussions on the status of day-to-day work as well as any special projects

Use [HR040 Termination Checklist](#) to ensure that all termination arrangements have been completed.

14. Records

Warning letters

[HR025 Termination of Employment](#)

Letters from employees giving notice of resignation

[HR026 Acknowledgement of Resignation](#)

[HR027 Exit Interview](#)

[HR040 Termination Checklist](#)

Diary notes

All other correspondence relating to termination of employment

These records are to be maintained in a secure location. Access to them is by permission of the Agency Head or HR function.

Records are to be retained in accordance with the relevant state or commonwealth legislation.

APPENDIX A

Matters to be Considered when Terminating Employment

Anti-discrimination Legislation

Anti-discrimination legislation exists at federal and state levels in all states and territories. Where an employee is dismissed from employment and the dismissal is based, or even partially based on one of the prohibited grounds of discrimination, an employee will have access to the remedies available under anti-discrimination legislation (i.e. unlawful termination)

Unlawful termination

Generally, a dismissal is unlawful if it occurs for one of the following reasons:

- Temporary absence from work due to illness or injury (where temporary is usually taken to be six months)
- Trade union membership or activity (or non-membership of a trade union)
- Acting as a representative of employees
- Filing of a complaint or participating in proceedings against the employer
- On grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, etc. (Note: an exemption may apply if the reason is based on the inherent requirements of the role, or to avoid injury to religious sensitivities)
- Absence from work during parental leave.

Summary Dismissal

Summary dismissal refers to dismissal immediately without the usual notice of termination. This usually follows an investigation of serious misconduct (Refer to HR-PRO-013 for the process to be followed).

Obtain advice from the Office for Employment Relations when summary dismissal of an employee is being considered.

Summary dismissal is a drastic step to take, and an employer may only summarily dismiss an employee for conduct that is serious and wilful. The misconduct must be so serious as to amount to a rejection or repudiation by the employee of the obligations contained in their contract, thus rendering it null and void.

Unfair dismissal

A dismissal is unfair if it is harsh, unjust, oppressive or unreasonable. Generally, a tribunal will consider both how and why the dismissal occurred:

- Whether there was a valid reason for the termination related to the capacity or conduct of the employee, or the employer's operational requirements
- Whether the employee was notified of that reason and given the chance to respond
- If the termination related to unsatisfactory performance or misconduct
- Whether the employee had been warned and given an opportunity to improve the performance or correct the behaviour
- Other relevant matters.

Constructive Dismissal

Constructive dismissal is when it can be shown that an employer's conduct, behaviour or actions brought on the employee's decision to leave/resign. I. e. something the employer did (or failed to do) which left the employee with no other option but to leave. The onus of proof is on the employee.

Adverse Action

Unlawful adverse action is action is taken for one of the following reasons:

- The worker has a workplace right; that is, he/she is entitled to a benefit or entitled to make a complaint under a workplace instrument or workplace law
- The worker is not/is a member/officer of a union;
- The worker has engaged or proposes to engage in industrial activity (e.g. a strike);
- A discriminatory reason (e.g. because of the worker's age or pregnancy).

The Fair Work Act also contains several related offences such as the prohibition on coercing people to not exercise a workplace right

To avoid the risk of an adverse action claim Supervisors and Agency Heads should ensure that they act fairly and reasonably when dealing with disciplinary matters, transfers, demotions and alterations to the terms and conditions of employment. All disciplinary action should be initiated on a bona fide basis and in

accordance with any procedural rules, and not in response to a worker exercising a workplace or industrial right.

Supervisors and Agency Heads should also ensure that appropriate processes are in place to defend any adverse action claims by workers. All documentation relating to the worker must contain adequate detail and be reproducible if it is to be used as evidence in support of an employer's decision if a claim for adverse action is made.

Adverse action claims can be commenced within six years of the event.

Employees Exempt from Dismissal Remedies

In the various jurisdictions, certain types of employees are excluded from bringing unfair dismissal or unlawful termination claims in respect of their termination. Although the exclusions vary between jurisdictions, the main categories are:

- Employees in the first six months of employment (minimum employment period)
- Casual employees (conditions apply)
- Fixed term employees (see Section 10)

First six months of employment

Employees dismissed during the first six months of their employment (known as the minimum employment period) cannot make an unfair dismissal claim. That is, regardless of the length of the probation period, an employee cannot make an unfair dismissal claim under the Fair Work Act within six months of commencing employment.

Casual employees

Casual employees engaged for less than 12 months are generally excluded from bringing unfair dismissal claims.