



## Termination of employment

<b>Effective date</b>	25 July 2005
<b>Date reviewed</b>	14 January 2013
<b>Review date</b>	January 2015
<b>Guideline owner</b>	Human Resource
<b>Applies to</b>	All employees of the Diocese of Lismore
<b>Related guidelines &amp; procedures</b>	Code of conduct Grievance & complaints handling Harassment & discrimination
<b>Headings</b>	Objective Introduction Poor performance or misconduct Disciplinary action other than termination Warnings Legal obligations Grounds for the termination of employment Abandonment of employment Authority levels Procedures Confidentiality Legislation
<b>Pages</b>	6

### Objective

This policy sets out the basis upon which the Diocesan Business Office may take disciplinary action and contains directions regarding the principles, processes and legal obligations involved in terminating employment.

### Introduction

The Diocesan Business Office views the termination of the employment relationship as an occurrence that should only be considered after all other courses of action have been examined. The Diocesan Business Office seeks to be a model employer whose practices exemplify the values of the Gospels and the mission of the Church. As such, the first approach of that will be taken is to see whether the employment relationship can be maintained rather than seek to sever it. In circumstances whereby maintaining the employment relationship is not possible, the following processes and procedures must be followed.



# DIOCESE OF LISMORE

---

## **Poor Performance or Misconduct**

Circumstances where disciplinary action or termination of employment may occur include, but are not limited to:

- Poor performance (for example, where you are unable to satisfactorily undertake the inherent requirements of the job, where work quality or work timeliness is unsatisfactory);
- Misconduct (Code of Conduct breaches, for example, being consistently late for work or inappropriate use of the internet or over personal use;
- Serious misconduct (wilful or malicious Code of Conduct breaches, for example, threatened or actual physical assault, verbally abusing or harassing a person at work, theft)

## **Disciplinary Action other than Termination**

Disciplinary action may include, but is not limited to the following:

- Verbal and/or written warnings
- Suspension
- Demotion
- Transfer

In the case of serious misconduct, notification to an external agency and/or criminal charges may result.

## **Warnings**

The warning process is not meant to be a staged or graduated process. There is no requirement to commence disciplinary action with a verbal warning. Similarly, there is no requirement to provide a final warning prior to termination. The action taken will be considered as an appropriate response to the circumstances of each case.

## **Verbal Warnings**

A verbal warning is the most appropriate method of dealing with unsatisfactory performance or misconduct where:

- Informal discussions about unsatisfactory performance have failed to produce change; or
- Single instance of misconduct occurs which is of sufficient seriousness to warrant formal disciplinary action being taken

## **Written Warnings**

A written warning is the most appropriate step in dealing with unsatisfactory performance or misconduct where:

- A verbal warning has already been issued for unsatisfactory performance and the performance problem continues;
- A verbal warning has already been issued for misconduct and another instance of misconduct occurs; or
- No prior verbal warning has been issued, but an instance of misconduct occurs which justifies a written warning.



# DIocese OF LISMORE

---

## Final Written Warning

A final written warning is the most appropriate step in dealing with unsatisfactory performance or misconduct where:

- A written warning has already been issued for unsatisfactory performance and the performance problem continues;
- A written warning has already been issued for misconduct and another instance of misconduct occurs; or
- No prior verbal or written warning has been issued, but an instance of unsatisfactory performance or misconduct occurs which justifies going straight to a final written warning.

If disciplinary action is taken a file note of proceedings shall be taken signed and acknowledged by all parties and shall be placed on the personnel file indefinitely.

## Legal obligations

Termination of employment is governed by the Fair Work Act 2009. Managers should seek input from the Diocesan Human Resource Manager to ensure that they understand and comply with any legal obligations.

A decision to terminate employment must be both substantially fair and procedurally fair. **Substantial fairness** means that there is a valid reason for terminating employment. **Procedural fairness** means that the Diocesan Business Office has complied with due process in respect of the termination.

## Grounds for the termination of employment

Termination of employment by the Diocesan Business Office may be:

- Summary dismissal without notice;
- Dismissal with notice; or
- Retrenchment.

**Summary dismissal without notice** results from a serious act of misconduct (eg. fraud, theft from the workplace, physically assaulting another employee). In these circumstances an employee is dismissed without notice or pay in lieu of notice. Summary dismissal occurs rarely.

**Dismissal with notice** occurs when the dismissal is not for a serious act of misconduct. Reasons for dismissal with notice may include:

- Work performance issues and circumstances where the employee cannot perform the requirements of their role; or
- Misconduct which is serious enough to warrant dismissal but not so serious that summary dismissal is warranted.

Where the Diocesan Business Office terminates an employee's employment with notice, the notice period outlined in the Fair Work Act, relevant award or agreement applies.

Where an employee's contract of employment specifies some other period of notice, the period of notice more favourable to the employee will apply.



# DIocese OF LISMORE

---

Where an employee employment is not covered by an award or agreement, the notice period in their contract of employment will apply; such notice shall not be less than the Fair Work Act 2009.

**Retrenchment** is the termination of employment as a result of an employee's position being made redundant, where redeployment is not available or retraining appropriate. Redundancy payments shall be made in accordance with the Fair Work Act schedule based on the employee's period of service.

**Abandonment of employment** is when an employee is absent from work continuously for at least 5 consecutive working days without notifying their manager and without consent. The employee is deemed to have left their employment with no intention of it being resumed.

Although this termination is at the initiative of the employee, the Diocesan Business Office should take positive steps to confirm the abandonment, through direct contact and formal letters.

## **Authority levels for dismissal**

A recommendation for termination of employment can be initiated by the employee's immediate Manager. Final approval to terminate employment is required in writing by the Diocesan Business Manager and authorised by Diocesan Human Resources.

## **Accountabilities**

### **Immediate manager**

It is the accountability of the immediate manager to:

- Apply, as a minimum, the procedures outlined in this policy;
- Seek input from Human Resources when considering terminating employees; and
- Seek his or her Manager's and Human Resources' approval for the proposed termination of any employee.

### **Human Resources accountabilities**

It is the accountability of the Diocesan Human Resource Manager to:

- Assist immediate managers in relation to the proposed dismissal of an employee; and
- Ensure that the proposed termination complies with the relevant guidelines and legal requirements.



## PROCEDURES

### **Substantive and procedural fairness**

Termination of employment is a serious matter and will only take place after careful consideration of all the facts and alternatives. In order to ensure that the termination is substantially and procedurally fair the Manager should:

Seek advice on legal and industrial implications prior to terminating given the circumstances;

Determine if, on the face of it, there is a valid reason for considering termination of employment;

Ensure that the employee is able to arrange suitable representation, whether in the form of a lawyer, trade union official or a friend;

Discuss the reasons with the employee (in the presence of a witness);

Ensure that the employee has an opportunity to respond, counter any claims which they believe to be false, and to propose alternatives to the termination of their employment;

Give full consideration to the employee's response and proposals; and

Reach their decision to terminate employment only after going through the above steps.

### **Summary dismissal**

The specific steps and processes to be followed by the immediate manager, in cases where an employee's behaviour warrants summary dismissal, are to:

1. Seek advice from Diocesan Human Resources on appropriate documentation of the matter and the decision;
2. Conduct a thorough and objective investigation of the claims;
3. Give the employee appropriate notice of a disciplinary interview and inform the employee that he or she may have a witness of their choosing present;
4. In the interview, inform the employee of the specific claims (in the presence of a witness). Give the employee an opportunity to respond to the claims made;
5. Determine whether the facts warrant summary dismissal; and
6. Make a recommendation to their next level Manager or Parish Priest for the employee's summary dismissal.

### **Dismissal with notice**

The procedure to be followed by the immediate manager in cases where an employee's behaviour or performance warrants dismissal with notice are:

Seek advice from Human Resources;

If it is then determined that termination is the appropriate course of action the immediate manager will make a recommendation to their Manager or Parish Priest for the employee's dismissal with notice.

In some circumstances the manager may consider it to be in the Diocesan Business Office best interest if the employee does not remain on the premises once the decision to terminate has been made. In these circumstances the employee will receive pay in lieu of working their notice period.



# DIOCESE OF LISMORE

---

## **Abandonment of employment**

The procedures to be followed by the immediate manager, in cases where an employee is absent from work without notification and consent, and has not returned to work, are:

To establish (by checking leave forms, etc) that the employee's absence is indeed unauthorised;

Attempt to contact the employee personally on their home telephone (or by other reasonable means, e.g. mobile phone) to determine the reason for the absence or contact their next of kin; and

If the employee cannot be contacted after 5 consecutive days, seek advice from Human Resources on the appropriate correspondence to be sent to the employee, the appropriate timeframe for a response from the employee and how to proceed with the matter.

## **Confidentiality**

All actions in relation to this guideline will be treated confidentially.

The principles of procedural fairness and natural justice prevail and require that all individuals will be provided with the opportunity to reply.

Retaliation and/or breach of confidentiality will result in further disciplinary proceedings.

## **Legislation**

[Fair Work Act 2009](#) (Cth)