

 <b>MULTICULTURAL</b> COUNCIL of <i>TASMANIA</i>	<b>Termination of Employment Policy</b>	<b>Policy ID</b>	MCOT-TOE
		<b>Version Number</b>	1
		<b>Implementation Date</b>	20 June 2019
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<b>Drafted by</b>	Ron Franks	<b>Next review date</b>	April 2021

## POLICY STATEMENT:

Multicultural Council of Tasmania is committed to ensuring that when termination of employment is being considered, every employee is treated fairly and equitably in accordance with industrial standards of natural justice and procedural fair play.

The following are reasons for terminating an employee's employment:

- redundancy/retrenchment
- unsatisfactory work performance
- serious and wilful misconduct

Multicultural Council of Tasmania will not terminate the employment of an employee for unsatisfactory work performance unless the employee first undergoes a consultation process that identifies appropriate support, instructions and written warning(s) and is provided with time for improvement. Only if the unsatisfactory performance continues after a reasonable period for improvement has been allowed will termination be considered.

Multicultural Council of Tasmania believes that the consultation process is about changing unwanted behaviour and endeavouring to correct the unsatisfactory performance to the satisfaction of both the employer and employee. The consultation process assists in dealing with work performance matters in a fair and consistent manner, ensuring that:

- the relevant parties know exactly where they stand at any given time against the requirements of the position, code of conduct and conditions of employment
- the employee has opportunity to adjust and improve
- an agreed course of action has been determined
- hasty decisions are avoided

In the case of serious and wilful misconduct, instant dismissal may be justified.

## DEFINITIONS

### **Redundancy/Retrenchment**

Redundancy or retrenchment are examples of termination that come about through a change in the position an employee performs, rather than any fault on their part. It does not occur as a result of poor performance or misconduct of an employee.

Redundancy occurs when the employer no longer requires the position the employee has been employed for to be performed by anyone.

Retrenchment occurs as a result of the employer having to reduce the number of employees in the workplace, but still requires the job that the employee was doing to be done.

If the situation arises where it becomes apparent that a job or jobs will be made redundant, Multicultural Council of Tasmania will consult with the employee(s) affected, and where relevant, their union, prior to the actual decision to make specific employees redundant, in accordance with the appropriate provisions contained in the relevant Agreement/Award/Act.

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### Unsatisfactory Performance

Termination of employment for unsatisfactory work performance occurs when the employer gives an employee notice that the employment relationship will cease as a result of performance or conduct issues. The employer will give the employee notice of termination, which ordinarily has been preceded by disciplinary action, i.e. consultation sessions and the issuing of formal written warnings.

An employee's performance will be considered to be inadequate or unsatisfactory if the requirements of the position are repeatedly not being met by the employee (as set out in the employee's position description) and following notification of the poor performance by the employer.

Unsatisfactory performance or conduct issues by an employee may include:

- unauthorised absenteeism/poor record of attendance
- behaviour towards manager/supervisor
- behaviour towards co-workers
- job effectiveness, efficiency and output
- not following specific company policies, procedures or practices
- non-compliance with the requirements of the contract of employment or letter of appointment
- actions involving accident or injury (or the real possibility of accident or injury) to any employee or client, either by intent or neglect
- harassing or discriminatory behaviour towards an employee, client or customer of the company

Multicultural Council of Tasmania disciplinary procedures contain a series of steps which will be followed prior to any termination of employment or other disciplinary action, however each circumstance will determine the number of warnings and the suitable review period for the employee to remedy their performance or behaviour.

### Serious and Wilful Misconduct

Dismissal without notice may occur where an employee commits an act of serious and wilful misconduct, which may include:

- serious breaches of the employer's code of conduct or company policies, e.g. occupational health, safety and welfare, sexual harassment
- refusal to carry out a lawful instruction of a manager/supervisor
- consuming, possessing, selling, manufacturing or being under the influence of alcohol or other drugs on company or client premises
- dishonesty, theft or other unlawful activities
- gross negligence (subject to the nature of the negligence)
- vandalising, intentionally damaging or misusing company or another employee's property
- violence, either verbal or physical

Other acts may also constitute serious misconduct, depending on the circumstances of the case. It is at the discretion of senior management to determine when an act is considered serious misconduct.

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## PROCEDURES – TERMINATION OF EMPLOYMENT

### UNSATISFACTORY PERFORMANCE AND CONDUCT

The actions to be taken, where allegations of unsatisfactory work performance and/or conduct, are as follows:

1. An investigation into an allegation of unsatisfactory work performance or conduct is to be carried out as soon as the employer is made aware of the allegation.
2. The investigation will involve interviewing those persons who have knowledge of the employee's work performance and work history, assessing relevant documentation and other relevant information.
3. If after the investigation, the employer is satisfied that there is a basis to the allegation of unsatisfactory work performance or misconduct, then the employee will be interviewed as soon as possible.
4. The employer will advise the employee in writing with the time and place of the interview, the nature of the matters to be discussed and that the employee has the right to be represented by anyone whom they choose.
5. In arranging the interview, the employer will consider any particular circumstances of the employee (i.e. language skills, health, family issues) that may impact on the employee's ability to undertake the interview.
6. During the interview the employer;
  - a. Will be represented by two senior representatives.
  - b. Will take notes.
  - c. Will provide the employee with details of the unsatisfactory work performance or conduct.
  - d. Will give the employee an opportunity to respond to the allegations and raise any other relevant matter.
7. Where the employer, having considered all the matters raised, considers that disciplinary action is required, then the employer will advise the employee verbally of a formal warning:
  - a. That the employer has considered all matters raised at the interview, including the employee's response
  - b. That the employer considers that the employee's performance is unsatisfactory
    - I. Of specific details of the unsatisfactory performance
    - II. Of the specific areas of improvement and the time frame in which there must be improvement
    - III. Of the specific date at which the employee's performance will be reviewed
    - IV. That if there is no improvement, or insufficient improvement that there will be a second disciplinary warning which may lead to termination of employment
    - V. The verbal warning will be confirmed in writing. The written warning will confirm all issues raised in the disciplinary interview including that
      1. The employee was given the opportunity to be represented at the meeting
      2. The employee was given an opportunity to respond to the matters raised at the meeting

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8. If the employee's performance has improved, the employee will be advised accordingly, but the need to improve and maintain the standard will be reinforced and confirmed in writing.
9. If there is no improvement, or insufficient improvement then steps 1 to 6 of the First Warning process will be repeated.
10. If during the second disciplinary interview it is considered that there are sufficient grounds for further disciplinary action then the employee will be advised specifically both verbally and in writing that a failure to improve is likely to result in their termination of employment. A further date of review of their performance will be set.
11. The verbal second warning will be confirmed in writing.

Where prior warnings have been given to the Employee for poor performance and conduct within the preceding 12 months all such warnings are considered as part of the final disciplinary process.

The warnings for the unsatisfactory performance and conduct may be totally unrelated (e.g. poor standard of work, and verbal abuse) but they are both considered in the ongoing disciplinary process, which may lead to termination.

### **TERMINATION OF EMPLOYMENT**

If following a further review, there is insufficient improvement in performance and/or conduct then the following steps will be taken:

An interview will be arranged with the employee as soon as possible.

- 1) The same procedure as in the Second Warning process will be followed.
- 2) The employee will be advised that the employer is considering termination of employment.
- 3) The employee will be advised of their right to have representation at the meeting.

The interview will be as set out in step 6 of the First Warning process. The employee will be advised at the beginning of the interview that the employer is considering the termination of employment of the employee due to unsatisfactory performance or misconduct. The employer will specifically invite any comment from the employee as to any mitigating circumstances which the employee wishes the employer to consider in reaching the decision.

The employer will carefully consider the decision. The employer may not decide immediately, and the employee may be required to leave the premises while a final decision is reached. The employee will be advised to return at a specific time (preferably within 24hrs) so that the employer can inform the employee of the decision. (Refer to Informing the Employee of Termination below).

### **EFFECTING THE TERMINATION**

The employer will ensure that any decision to terminate employment:

- is not harsh, unjust or unreasonable
- does not include a prohibited reason as one of the factors in reaching the decision.

### **PROHIBITED REASONS (for Termination) ARE AS FOLLOWS:**

- Temporary authorised absence from work because of illness or injury

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- Union membership or participation in union activities outside of work hours
- Non-membership of a union
- Seeking office, or having acted or acting, as a representative of employee
- Filing of a complaint or participation in proceedings against an employer
- Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, notional extraction or social origin
- Absence from work during maternity or other parental leave

### **INFORMING THE EMPLOYEE OF TERMINATION**

If the decision is made to terminate employment the employee will be advised of that decision verbally as soon as practicable. This advice will be confirmed in writing, and will:

- 1) Confirm that the employee had an opportunity to be represented
- 2) Confirm that the employee had an opportunity to respond to the allegations
- 3) Note that the employer has considered all material, including the employee's response
- 4) Advise that the employee's employment has been terminated and the reason or reasons for termination
- 5) Advise of the date of termination, having regard to either award or contract of employment provisions

As soon as practicable, all legal and statutory entitlements will be paid to the employee. If deemed appropriate, payment may be made in lieu of notice. Payment details will be confirmed in writing in a letter accompanying payment.

### **SERIOUS MISCONDUCT**

Upon receipt of an allegation of serious and wilful misconduct against an employee, the appropriate manager/supervisor will interview all witnesses and will conduct a thorough investigation into the incident.

If it is believed that the investigation is to be prolonged, the employee may be suspended with pay, or alternatively, if the investigation is not likely to be prolonged, the employee may be made to wait in a suitable location away from the workplace.

The employer will advise the employee in writing with the time and place of the interview, the nature of the matters to be discussed and that the employee has the right to be represented by anyone whom they choose.

In arranging the interview the employer will give consideration to any particular circumstances of the employee (ie language skills, health, family issues) that may impact on the employee's ability to undertake the interview.

During the interview the employer;

- a. Will be represented by two management representatives.
- b. Will take notes.
- c. Will provide the employee with details of the allegations and investigation.
- d. Will give the employee an opportunity to respond to the allegations and raise any other relevant matter.

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If, pending the outcome of the investigation, the appropriate manager/supervisor believes that termination of employment is warranted, the employee concerned will be advised of this directly and their employment terminated forthwith. The employee will be provided with a written confirmation of the reasons for the dismissal no later than 24 hours following the termination.

In matters of serious misconduct, dismissal will usually be summary, and therefore the date of dismissal will be the date on which the decision is communicated to the employee

The employer will ensure that any decision to terminate employment:

- 1) Is not harsh, unjust or unreasonable
- 2) Does not include a Prohibited Reason as one of the factors in reaching the decision.

As soon as practicable all legal and statutory entitlements will be paid to the employee. As the dismissal is for serious misconduct, there is no obligation to provide notice. Payment details will be confirmed in writing in a letter accompanying payment.

## RELATED DOCUMENTS

- CEO recruitment policy
- Staff recruitment policy
- Code of Conduct policy
- Grievance policy

## AUTHORISATION

Signed by CEO: .....Date: 20 June 2019

Signed by Chair: ..... Date: 20 June 2019