



Policy

Termination Policy

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1. Purpose and Authority

This policy outlines the considerations and the process for parliamentarians and authorised officers to follow when terminating the employment of a *Members of Parliament (Staff) Act 1984* (MOP(S) Act) employee.

Under section 16 of the MOP(S) Act, an employing parliamentarian may terminate the employment of an employee at any time, by notice in writing. The parliamentarian is required to consult with, and have regard to any advice provided by, the Parliamentary Workplace Support Service (PWSS) before terminating a person's employment.

Section I (clauses 72 to 76) of the *Commonwealth Members of Parliament Staff Enterprise Agreement 2024-27* (EA) outlines provisions on termination of employment.

This policy does not cover automatic termination of employment under Section 14 of the MOP(S) Act.

2. Key Principles

- Procedural fairness will be afforded to an employee when considering termination of employment.
- An employee must be advised, in writing, of the specific reason/s that are relied on for the termination of employment.

3. Responsibilities

3.1 Parliamentarians and their authorised officers

- Must consult with, and have regard to any advice provided by, the PWSS regarding the termination of an employee's employment. If a parliamentarian fails to consult with the PWSS, the Chief Executive Officer (CEO) of the PWSS may include details about the failure in a public report.
- Ensure an employee is provided with a reasonable opportunity to respond to any preliminary view to terminate prior to a final decision being made.

3.2 PWSS

- Provide timely and considered advice to parliamentarians regarding the termination of an employee's employment.
- If requested, assist parliamentarians in drafting and/or reviewing written correspondence relating to the termination of an employee's employment.

4. Termination of employment

A parliamentarian may, at any time, terminate the employment of an employee, by notice in writing. In accordance with the MOP(S) Act, the grounds for termination must be specified in the written notice.

Any decision to terminate employment must be consistent with:

- the MOP(S) Act and *Parliamentary Workplace Support Service Act 2023* (PWSS Act)
- the *Fair Work Act 2009* (FW Act), including in relation to unfair dismissal and adverse actions
- other employment and administrative law, including in relation to procedural fairness, and
- any relevant employment instruments.

5. Grounds for termination

The decision to terminate the employment of an employee can be made for a range of reasons, including (but not limited to):

- Loss of trust and confidence in the employee.
- Misconduct.
- Non-performance or unsatisfactory performance of duties.
- Failure to meet a condition of engagement, including probation.
- Employee is excess to requirements of the office due to an office restructure.
- Significant conflict of interest that is unable to be mitigated.
- Failure to adhere to the Behaviour Code and Standards, and/or Ministerial Staff Code of Conduct (where applicable).

5.1 Sufficient Reasoning and Evidence

There must be sufficient reasoning and evidence to support grounds for termination. Examples can include (but not be limited to):

Loss of trust and confidence

- Behaving in a way that causes a reputational risk to the parliamentarian.
- Behaving in a way that is not in the best interest of the parliamentarian.
- Breaching confidentiality, including accessing and/or sharing information and records without authorisation.
- Disrespectful behaviour towards the parliamentarian, colleagues or members of the public.
- Improper use of their position.
- Failure to disclose a conflict of interest.

Serious Misconduct

- Failure to act in accordance with the Behaviour Standards, Behaviour Code for MOP(S) staff, and/or Ministerial Staff Code of Conduct (where applicable).
- Failure to disclose a conflict of interest.
- Sexual harassment.

- Theft of information or possessions.
- Fraud.
- Intoxication at work.
- Refusal to carry out lawful and reasonable instructions consistent with the employment contract.
- Serious breaches of workplace health and safety.
- Where termination of employment is a recommendation of the [National Anti-Corruption Commission](#).

Non-performance of duties

- Non-performance of duties includes situations where an employee has:
 - taken an unauthorised absence and has not responded satisfactorily to reasonable attempts by the office of the parliamentarian to have them return to duty, or
 - attended the workplace but is not undertaking the assigned duties.
- An unauthorised absence also includes where the employee was granted leave but has not returned to work at the end of the period of approved leave. An unauthorised absence can, in specific circumstances, be considered abandonment of employment.

Unsatisfactory performance of duties

- The employee's performance or behaviour does not meet the expected standard required for their role.
- The employee has not delivered satisfactory results, even with feedback, a reasonable time in which to improve and supports.

Failure to meet a condition of engagement

- Failing to obtain, or retain, particular conditions of engagement which may relate to:
 - successful completion of probation
 - citizenship
 - formal qualifications
 - security and character clearances, and
 - health clearances.

Excess to requirements due to office restructure

- An office restructure results in a role being made redundant.

Significant conflict of interest that cannot be mitigated

- Not declaring, or appropriately managing, a conflict of interest.
- An employee having a conflict of interest that has a significant impact on their role, and no mitigating action is appropriate.

6. Termination Process

If the matter is considered moderate to serious, then the following steps outlined in this section should be followed.

If the matter involves serious misconduct, summary dismissal may be considered. Further information about that process is available at [Section 7](#).

6.1 Consult with the PWSS

Before a decision is made to terminate the employment of an employee, the parliamentarian must consult with, and have regard to any advice provided by, the PWSS.

Prior to consulting with the PWSS, the parliamentarian should gather any relevant supporting information and documentation which may include emails, file notes, and text messages.

A parliamentarian should also consider that terminating an employee's employment:

- may result in action being taken in the Fair Work Commission, which may include but is not limited to, unfair dismissal or general protections claims, and
- may generate adverse media exposure and reputational risks.

6.2 Draft the preliminary view to terminate letter

Where a parliamentarian is considering termination of an employee's employment, they must write to the employee to advise of their preliminary view to terminate employment. The letter must inform the employee of the reasons why termination of employment is being considered and provide a reasonable opportunity (i.e. 7 days) for the employee to make a statement in relation to the preliminary view on termination.

The PWSS can assist in the drafting of written correspondence.

6.3 Issue the preliminary view to terminate letter

Once the preliminary view to terminate letter is drafted, the parliamentarian should issue the employee with the preliminary view letter.

Where practicable, and safe to do so, it is recommended that the parliamentarian organise a meeting with the employee to discuss the matter and issue the correspondence. The employee should be provided at least 24 hours' notice of when the meeting will be held and be offered the opportunity to bring a [support person](#). The parliamentarian may also have a support person present. Consideration should be given to the availability of either party's support person when scheduling the meeting; however the meeting should not be unduly delayed. It is important for parliamentarians to prepare and retain a written record of the discussion (i.e. a file note). The record should capture both sides of the discussion.

'Termination' should not be mentioned until the meeting to ensure the employee can be appropriately supported when first hearing about the matter.

In exceptional circumstances, or at the request of the employee, the correspondence may be issued via email. Parliamentarians should ensure the employee has adequate support available upon receiving the letter.

6.4 Issue final termination letter or take alternative action

The parliamentarian must consider any response from the employee and all other relevant information when deciding whether to proceed with the termination or take alternative action.

If the parliamentary proceeds with the termination decision, the employee must be informed of that decision in writing. The final termination letter should include:

- The reason/s for the termination of employment, addressing any response provided by the employee
- The notice period and date of effect
- Details on where and when to return passes and/or equipment (i.e. laptop/mobile phone)
- Support service information.

Correspondence may be issued in person, or via email.

6.5 Complete Form 107 ‘Termination of Employment’

Once the final termination letter has been issued to the employee, the parliamentary must complete [Form 107 ‘Termination of employment’](#) and attach the final termination letter.

The form should be completed within 48 hours of the final letter being issued.

A copy of the final termination decision letter must be retained by the parliamentary.

7. Summary Dismissal

In some serious instances, summary dismissal may be warranted.

Summary dismissal is a serious and immediate termination of an employee’s contract due to a severe breach of employment terms. It has immediate effect – there is no notice, or payment in lieu of notice, of the date of termination. Procedural fairness must still be afforded.

Before a decision is made to terminate the employment of an employee, the parliamentary must consult with, and have regard to any advice provided by, the PWSS.

A parliamentary should:

- identify what the serious misconduct was and the impact of the conduct
- discuss the serious misconduct with the employee, provide them with an opportunity to respond, and create a written record of the conversation. Both parties should be offered the opportunity to bring a support person to this meeting
- review all available information and determine whether it warrants summary dismissal
- draft and issue the letter of termination detailing the serious misconduct, the impact as well as the final date of employment.

The PWSS can assist in the drafting of written correspondence.

8. Notice period

An employing parliamentarian must provide the required notice period, or a payment in lieu of notice, when terminating the employment of an employee, except where there is serious misconduct.

| Length of continuous service employed by the Commonwealth* | Notice Period |
|--|---------------|
| Not more than 1 year | 1 week |
| More than 1 year but not more than 3 years | 2 weeks |
| More than 3 years but not more than 5 years | 3 weeks |
| More than 5 years | 4 weeks |

*Includes, for example, continuous service under the MOP(S) Act with other Members.

An employee over 45 years of age who has completed two years' continuous service at the time of termination is entitled to one additional week's notice of termination.

9. Review of Decision

The PWSS is unable to review a parliamentarian's decision to terminate the employment of their employee.

Employees who have had their employment terminated may wish to obtain independent legal advice (at their own cost) or contact the [Fair Work Commission](#) to discuss options available in relation to unfair dismissal or general protections.

10. Support

9.1 Parliamentary Workplace Support Service (PWSS)

The PWSS is available to provide a range of human resource and work health and safety support and guidance to Parliamentarians and employees. We also provide wellbeing support, conflict resolution and early intervention to all employees.

The PWSS can also be contacted via phone 24/7 on **1800 747 977**, by SMS on 0487 112 755, email at support@PWSS.gov.au, or in person at M2.105 in APH from 8.30am-8:00pm sitting days or 8.30am-5:00pm all other business days. Visit pwss.gov.au for more information.

For advice relating to this policy, call 1800 747 977 (option 2) or email hr@pwss.gov.au.

9.2 Employee Assistance Program (EAP)

The Employee Assistance Program (EAP) is a professional and confidential program which aims to enhance the emotional, mental and general psychological wellbeing of parliamentarians, employees and their immediate family and household members.

The EAP can be contacted 24 hours per day, 7 days per week by calling 1300 360 364 or visit one.telushealth.com | **Username:** pwss | **Password:** Wellbeing

11. Definitions

| Term | Definition |
|---------------------------|---|
| Authorised Officer | A person who has been authorised by a parliamentarian to exercise duties on their behalf. |
| Employee | Employees are staff employed under the <i>Members of Parliament (Staff) Act 1984 (Cth)</i> . MOP(S) Act employees are employed by Parliamentarians on behalf of the Commonwealth. |
| Parliamentarian | This term refers collectively to Members of the House of Representatives and Senators. |
| PWSS | Parliamentary Workplace Support Service |
| Serious misconduct | As defined under the Fair Work Regulations 2009 . |

12. Useful Resources

| Legislation | Industrial Instrument | Websites |
|--|---|--|
| <ul style="list-style-type: none">• Members of Parliament (Staff) Act 1984• Parliamentary Workplace Support Service Act 2023• Fair Work Act 2009 | <ul style="list-style-type: none">• Commonwealth Members of Parliament Staff Enterprise Agreement 2024-27 | <ul style="list-style-type: none">• Fair Work Commission• Fair Work Ombudsman |