

Serious Misconduct and Summary Dismissal

1. Serious Misconduct

Occasionally an employee may be challenged for behaviours which constitute serious misconduct and, as a consequence, may result in the employer seeking to terminate the employee's services.

In cases of serious misconduct, an employee may be dismissed provided:

- The incident/s or behaviour have been thoroughly investigated
- The employee has been allowed to respond to the allegations in a meeting, and
- The employer considers all information received and conveys the decision in person and in writing.

Deficiencies relating to conduct, capacity or performance are dealt with under Annexure B of this Deed.

2. Termination for Misconduct

If the misconduct is so serious that dismissal is the most appropriate action, certain steps need to be followed to ensure that the dismissal conforms with guidelines and requirements set down by law and follows procedures which guarantee procedural fairness and natural justice.

Procedure

If there is some initial evidence that an employee may have a case to answer in respect of the alleged serious misconduct, the following steps need to be taken:

- (a) Ensure that the facts have been adequately investigated to make sure that there is no other explanation for what has happened. For example, if bank documents appear to show that money is missing, it should be firstly confirmed with the bank that the documents are accurate.
- (b) At an initial meeting, alert the employee to the concerns, specifying particular instances. If appropriate, the results of any investigations that have been made should be provided to the employee in writing.
- (c) At the time of arranging a second meeting with the employee, notify him/her that they may have a third party present at the meeting as an advisor of their choice. When determining the timing of the meeting the availability of the advisor must be taken into account. The status of this advisor is that of participant in the meeting.
- (d) At the meeting, the following steps should be addressed:
 - (i) The employee is requested to respond to these concerns or allegations. The employee has the right to note the allegations and respond within a reasonable time either verbally or in writing.
 - (ii) The employer must consider and investigate any alternate explanations for the alleged severe misconduct. It may be necessary to convene another meeting(s) to fully consider all the evidence.
 - (iii) If the employer believes the response is inadequate, explain to the employee why it is inadequate and give the employee the opportunity to amend their response once the nature of the inadequacy is understood.
 - (iv) If the employee admits the allegations but indicates that there are some mitigating circumstances, these should be taken into consideration when determining how the situation will be dealt with.
- (e) The discussions which take place should be documented accurately and after due consideration, both parties should be requested to sign a copy attesting to the accuracy of the written minutes. If it is established that there is no satisfactory explanation for what has happened and the alleged severe misconduct is clearly proven, the employee may be liable for dismissal. There needs to be sufficient evidence that the conduct is serious enough to justify dismissal in itself. Suitable time should be taken after the meeting to reflect upon the employee's response before a decision is made whether the employee is to be dismissed.
- (f) Should dismissal be deemed necessary, the employee will be advised in person and with written confirmation including:
 - (i) that the employer has considered all evidence and matters raised at the meeting, including the employee's response;
 - (ii) that the employer believes that the employee's behaviour is of such magnitude as to be serious misconduct

- (iii) the reasons why the employee's behaviour has lead to the decision of dismissal.
- (iv) the employer should provide the employee with written notice in accordance with the relevant statutory requirements. Payment may be made in lieu of notice.

The employer should ensure that due process has been carried out throughout all stages and thorough documentation made.

- (g) During the investigation process, the employer may choose to suspend the employee on full pay if it is deemed to be appropriate.
- (h) If, having regard to all matters investigated and the employer determines that no action is required, the employee should be advised in writing accordingly. In situations where the employer determines that while the employee's behaviour was serious it did not warrant dismissal, and may therefore choose to serve the employee with a written warning.

3. Summary Dismissal

Summary Dismissal is a very serious and decisive action and is therefore only warranted in a situation where the employee's conduct or capacity is of such a kind that it would be unreasonable or unsafe to require the employer to continue the employment during the period of notice. Therefore, this is a decision of last resort.

Serious misconduct which may lead to summary dismissal may include:

- The commission of a crime in the course of employment.
- Reporting to work under the influence of illegal drugs or alcohol, especially after pastoral counselling for similar breaches.
- Any conduct at the workplace which deliberately endangers the health and safety of the students, co-workers, or the public.
- Proven sexual abuse where the allegations fall under Child Protection policies such as "Lutheran Church of Australia Safe Place Policy" and the "National Safe Schools Framework" or State or Federal legislation and the matter is reported to and prosecuted by the Police.