

HR 011: TERMINATION OF EMPLOYMENT

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Objective

1. To ensure that where applicable correct procedure is followed in relation to severance payments.
2. To ensure that appropriate procedures are applied in instances of redundancy to employees.
3. To ensure that an employee is given substantive and procedural fairness when the need arises to discipline or terminate.

Policy

For the purpose of Section 5.50(1) of the *Local Government Act 1995* (the 'Act') this policy will set down circumstances and manner of assessment upon which the Shire of Esperance will pay an employee an amount (severance payment) in addition to any amount to which the employee is entitled under a contract of employment, award, industrial agreement or order by a Court or Tribunal.

A terminating employee is entitled to severance pay and benefits in accordance with:

1. Any federal or state award or industrial agreement applicable to that employee;
2. Any applicable provisions within the employee's contract of employment;
3. Any applicable award or order made by a federal or state industrial tribunal arising from the circumstances of that employee being specifically brought before that tribunal, subject to any right of appeal;
4. Where Council so agrees, any recommendation made by a federal or state Industrial Commissioner arising from the circumstances of that employee being specifically brought before that Commissioner.

Where a dismissed employee has taken or is proposing to take legal action, Council may decide to settle to avoid expensive litigation. Matters to be taken into consideration by Council as to whether it will seek a settlement and if so, the extent of any financial offers may include:

- possible exposure to litigation;
- the cost of legal advocacy and support;
- the cost of witnesses;
- the cost of travel and accommodation in running the case;
- the cost of having staff tied up in the preparation and hearing of the case; and

- the disruption to operations.

Council may decide to settle in a situation where an employee, due to illness or impairment is unable to perform his/her job and there has been mutual agreement that employment must end.

Matters to be taken into consideration by Council in determining the extent of any financial offers may include:

- the length of service;
- the conscientiousness of the employee over the past employment;
- the value of the employee's service having regard to position(s) held and the regard given by Council to the employee's contribution;
- the personal circumstances of the employee including family responsibility, future employment prospects and alternative sources of income; and
- possible exposure to litigation if the employee was dismissed having regard to obligations of Council under the State Equal Opportunity Act, the Commonwealth Disability Discrimination Act and the Commonwealth Workplace Relations Act.
- circumstances of the severance

The term "weeks' pay" means the normal weekly salary or wage payable to the employee including any penalty rates normally paid but excluding overtime or intermittent payments. The term also includes salary or wages specifically sacrificed for additional non-award benefits but does not include the value of any non-award benefit normally provided for the employee's position (such as a vehicle in the case of a senior position, the normal superannuation provided to all employees etc.).

Nothing in this Policy prevents Council from determining that in special circumstances, terminating employees may be paid additional moneys or provided with additional benefits where justified. If Council so determines, details of the severance pay and benefits shall be published in accordance with Section 5.50 (2) of the Act.

Staff Redundancy

The appropriate award provisions and adopted Procedures will apply to this Policy, which is to be read in conjunction with the Shire of Esperance Enterprise Agreement.

1. Consultation

- a) The Local Government will consult employees likely to be affected by any proposed change as to the need for and/or reason for the change and no definite decision will be made until this process has been followed.
- b) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone, and this is not due to the ordinary and customary turnover of labour and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and with their representative.
- c) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (b) hereof, and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

- d) For the purposes of the discussion the employer shall as soon as practicable provide in writing to the employees concerned and their representative, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of workers normally employed and the period over which the terminations are likely to be carried out.
 - e) Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.
2. Transfers Within the Organisation
- a) Wherever possible and practical, appropriate employees should be offered a transfer to other positions within the enterprise and also offered the necessary and reasonable training to effect a successful transition.
 - b) Where an employee is transferred to other duties for the purpose of avoiding retrenchment and those duties attract a lesser rate of pay than the incumbents previous position, the Local Government will make up the difference between the two rates of pay for a period of twelve months (or 2 years in the case of employees covered by Clause 4 below). After this time, the lesser rate will apply.
3. Redundancy Benefits

Where a position has been made redundant and a suitable transfer has not been possible, an employee may be retrenched on the following basis:

- a) A maximum period of notice possible but in any event no less than 4 weeks or payment in lieu of notice to a maximum of 4 weeks.
- b) Payment of 2 weeks pay.
- c) Redundancy provisions in accordance with the Shire of Esperance Enterprise Agreement
- d) All other prorata entitlements payable under the appropriate award or agreement to a terminating employee will be paid.
- e) During the notice period the employee shall be allowed reasonable time off from the job without loss of pay to attend employment interviews or other similar activities to assist the employee find employment.
- f) Where the employee was originally engaged from a distant location, reasonable relocation assistance may be provided to the place of engagement or another place (at a cost no more than relocation to original point of hire). Relocation assistance will be at Council's discretion and considered according to circumstances.
- g) Where the circumstances of a retrenched employee are such that it will be extremely difficult for that employee to find another job, Council may exercise its discretion to provide additional benefits to such employees. In this event, details of the total redundancy package for such an employee shall be published in accordance with Section 5.50(2) of the Local Government Act.
- h) The term "weeks pay" means the normal weekly salary or wage payable to the employee including any penalty rates normally paid but excluding overtime or intermittent payments. The term also includes salary or wages specifically sacrificed for additional non-award benefits but does not include the value of any non-award benefit normally provided for the employee's position (such as a vehicle in the case

of a senior position, the normal superannuation contribution provided to all employees etc.).

4. Local Government Boundary Changes, Amalgamations and Break-ups

- a) Where a restructuring of Local Government boundaries (such as a break up of a Local Government or an amalgamation of Local Governments) results in a surplus of employees, Schedule 2.1 clause 11(4) of the Local Government Act provides for two years guaranteed employment except where employer and employee are able to agree to a mutually acceptable severance package.
- b) Where a transfer is not possible, retrenchment will be offered on the basis of Clause 3 above. Additional benefits may be offered in accordance with Clause 3 in an endeavour to reach a mutually acceptable severance package.
- c) If agreement on a severance package is not possible, the employee will be offered work for two years on conditions no less favourable than the existing contract of employment.
- d) At any time during the two years additional employment the Local Government and employee may re-open negotiations in an endeavour to reach agreement on a mutually acceptable severance package.
- e) Where an employee remains in employment for two years pursuant to Schedule 2.1 of the Local Government Act and is then made redundant, there will be no entitlement to the redundancy benefits provided in Clause 3. Redundancy benefits in accordance with the appropriate award will still apply.

5. Counselling

- a) Counselling by a professional counselling service shall be available for any employee who has been or is to be retrenched.
- b) In appropriate circumstances an outplacement service may also be offered. In this event no payment in lieu of such service will be made.

6. Termination During Notice

An employee who has been given notice of retrenchment in accordance with Clause 3 may terminate during the period of notice and shall be entitled to the same benefits and payments as if he/she had remained until the expiry of the notice. Provided that in such circumstances, the employee shall not be entitled to payments in lieu of notice.

7. Alternative Work

- a) Should the Local Government have made suitable arrangements for alternative employment and the employee is not consequently unduly prejudiced, the additional benefits over and above the appropriate award arising from this Policy shall not apply.
- b) In addition the Local Government may make application to the Commission to have the award severance pay prescription varied in the case of such an employee according to the particular circumstances.

8. Exclusions

- a) Benefits provided under this Policy, which go beyond the appropriate award, shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty.

- b) This Policy does not apply in the case of casual or temporary employees who were engaged for a specific time period or for a specific reason or specific task, project or program.
- c) This Policy also does not apply to an employee engaged on a fixed term contract where the term of the contract expires.

Discipline/Dismissal

To ensure that an employee is given substantive and procedural fairness (when the need arises to discipline or terminate) the following process will be used:

1. The Manager or mediator of the conflict situation will document and record all meetings and subsequent findings.
2. Final outcomes of action taken will be at the discretion and with the full authorisation of the Chief Executive Officer.
3. All documentation relating to the investigation and meetings held should be placed on the personnel file of the employee.

Unsatisfactory Performance

In the case of unsatisfactory performance five (5) procedural steps will be followed firstly, the employee should be given a verbal warning in a counselling session between the Manager and the employee. During the session the Manager should:

1. clearly outline the performance problems and ensure work standards have been set and confirm conduct expected.
2. explain that the discussion may constitute a formal warning.
3. provide the employee an opportunity to respond.
4. Identify, assess and analyse the problem and take appropriate action to improve work performance/conduct
5. fix an agreed review date to re-assess the performance.

If performance has not improved at the agreed date then the Manager may give a written warning outlining the nature of the problem. If it is the intent of the Manager to forward a written warning at this stage an offer to the employee of having a representative present will be made.

Again the Manager should make the employee aware that if unsatisfactory performance continues his/her job could be in jeopardy. Once again at this stage counselling or training will be offered.

Where there is a need for performance improvement, the manager, HR and the employee may develop a Performance Improvement Plan (PIP). Should performance remain unsatisfactory after the review date then the employee should again be counselled in accordance with the above procedures. A final written warning will be issued and a date set for review.

Finally, performance should again be reviewed at the date set and if it is still unacceptable the Manager should consider whether alternatives to termination are available and if alternatives are not practicable the decision to terminate with notice may be taken.

Termination

Prior to any discussion of termination with the employee the Manager will consult and present written findings to the Chief Executive Officer. Should termination of the employee be decided then the following process will take place:

1. A meeting will be held with the employee, his/her supervisor and representative if requested.
2. Review the steps taken to counsel the employee inclusive of the documented verbal warning and/or written warnings.
3. The employee will be given an opportunity to respond to the termination proposal.
4. The CEO will determine an appropriate outcome or course of action.
5. Issue the employee with a written notice of termination explaining the reasons for dismissal and all entitlements owing.

All discussion relating to discipline or dismissal procedures will remain confidential.

..... Policy Ends