



Termination of employment policy

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POLICY

1. Purpose

The purpose of this policy is to outline the provisions surrounding the termination of employment at the NSW Crime Commission (the Commission).

All Commission employees are required to sign an Employment Agreement on or prior to commencement of employment or for any other reason that may be determined by the Commission. The Employment Agreement is the instrument under which the employee is employed and it details the conditions of employment. This policy should be read in conjunction with the Employment Agreement, where it relates to the termination of employment.

2. Objective

To ensure all Commission employees understand their obligations regarding notice periods, and have an awareness of termination action the Commission may take in certain circumstances.

3. Application

This policy applies to all employees who are employed by the New South Wales Crime Commission Staff Agency pursuant to the *Government Sector Employment Act 2013* (the GSE Act), with Commission Employment Agreements or other industrial instruments.

4. Definitions

Termination of employment means the termination of the Employment Agreement or other industrial instrument – the instrument under which a Commission employee is employed. This term applies whether the Commission terminates the employment or the employee resigns.

5. Policy statements

5.1 Legislation

There are conditions under which employment may be terminated by the Commission.

Section 47 of the [GSE Act](#) states:

Termination of employment

- (1) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency on any of the following grounds if the employment is ongoing employment:
 - (a) the employee has failed to meet a condition of engagement as an employee imposed under section 54,
 - (b) the employee lacks, or has lost, an essential qualification for performing the duties of the role assigned to the employee,
 - (c) the performance of the employee is determined under section 68 to be unsatisfactory,
 - (d) the employee is unable to perform the duties of the role assigned to the employee because of physical or mental incapacity,
 - (e) the employee is retired on medical grounds under section 56,
 - (f) the employee has refused to perform duties to which the employee has been duly assigned,
 - (g) the employee has abandoned his or her employment,
 - (h) a finding of misconduct has been made against the employee under section 69,
 - (i) (Repealed),

(j) the employee is determined in accordance with the regulations and the government sector employment rules to be excess to the requirements of the relevant part of the agency in which he or she is employed,

(k) on any other ground prescribed by the regulations.

The instrument is to set out the ground or grounds on which the employment is terminated.

(2) The head of a Public Service agency may, by instrument in writing, terminate the employment of a Public Service non-executive employee of the agency at any time if the employment is not ongoing employment.

Rule 14 of the *Government Sector Employment Rules 2014* states:

Termination of employment

(1) The employment of a Public Service non-executive employee may not be terminated under section 47 of the Act unless:

(a) the employee is, to the extent that it is reasonably practical to do so, notified of the proposed termination and given a reasonable opportunity to make submissions in relation to the proposed termination, and

(b) the agency head has taken any such submissions into consideration.

(2) This rule does not limit any of the other requirements under these Rules that relate to the termination of employment of a Public Service non-executive employee.

Where termination relates to unsatisfactory performance or misconduct, refer to the Commission's *Misconduct and unsatisfactory performance policy and procedures*.

5.2 Notice periods

The Commission may terminate the employment of an ongoing or fixed term employee by giving the employee 4 weeks' written notice. The Commission may terminate the employment of a casual employee by giving the employee 1 weeks' written notice.

An ongoing or fixed term employee may terminate his or her employment by giving 4 weeks' notice in writing to the Commission. A casual employee may terminate his or her employment by giving 1 weeks' notice in writing to the Commission.

Whether the Commission or the employee terminates the employment, the Commission may:

- direct the employee not to be present at the workplace or conduct any duties for any period up to the date on which the employment terminates; and/or
- make a payment to the employee in lieu of the notice period, and terminate the employment immediately.

In the case of termination due to serious misconduct, the Commission may terminate the employment without notice.

5.3 Termination payment

Where the Commission terminates the employment of an ongoing or fixed term employee, the employee will be entitled to pro-rata annual leave loading for accrued leave at the date of termination, in addition to payments required by other provisions of the employee's Employment Agreement or by law.

5.3.1 Redundancy

For ongoing employees only, if the employment is terminated as a result of a redundancy:

- the employee shall be entitled to a severance payment, calculated at the rate of 3 weeks' salary per year of service (with pro-rata payments for the final year of service if that final year is less than 365 days long) up to a maximum of 48 weeks; and
- the termination payment shall be taxed accordingly and the employee will be paid an additional amount of \$5,000 as financial assistance to seek alternative employment or obtain additional knowledge or skills. This additional amount may be increased by 2% or greater, as determined by the Commission, each 1 July; and
- pro-rata leave loading for leave accrued at the date of termination.

5.4 Suspension for misconduct

In accordance with the Commission's Misconduct and unsatisfactory performance policy, the Commissioner may suspend from duty an employee who is subject of an allegation of misconduct or who is charged with a serious offence, until such time as the allegation of misconduct or the criminal charge has been dealt with and any subsequent action has been taken.

5.5 Termination for serious misconduct

In accordance with the Commission's Misconduct and unsatisfactory performance policy, the Commissioner may take disciplinary action against the employee, which may include:

- termination of the employee's employment, without giving the employee an opportunity to resign; or
- termination of the employee's employment, after giving the employee an opportunity to resign

in addition to other options not related to termination.

In a finding of serious misconduct, the Commission may terminate an employee's employment with immediate effect.

6. Responsibilities

6.1 Commissioner

The Commissioner, as the head of the NSW Crime Commission Staff Agency, is responsible for the suspension or termination of employees under the provisions of the Commission's *Misconduct and unsatisfactory performance policy*.

6.2 Chief Operating Officer

The Chief Operating Officer is responsible for the Human Resources function at the Commission and for ensuring the provisions of this policy are adhered to.

Version control

Version	Effective date	Update comments	Author
1.0	25 Aug 2015	Initial version	Governance Team
1.1	2 Oct 2015	Addition of Rule 14 of the GSE Rules	Governance Team
1.2	26 Apr 2016	Addition of leave loading in termination payment	Governance Team
1.3	19 Oct 2016	In section 1 (a): section 44 now 54. Section 1 (i) now (Repealed).	Governance Team

Publication information

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Related documents	Commission's <i>Misconduct and unsatisfactory performance policy and procedures</i> Government Sector Employment Act 2013 Government Sector Employment Regulation 2014 Government Sector Employment Rules 2014