



**Russell Kennedy  
Lawyers**

## Workplace Relations Checklist

### Termination of employment for poor performance or misconduct

March 2017

**When an employee is not performing at the required standard, or has engaged in misconduct, you want to fix the problem as quickly and efficiently as possible. Often, dismissal looks like the best and simplest option for your business – get rid of a problem, hire a replacement, and all will be well.**

However, except in extraordinary circumstances, dismissal should not be an employer's first response to misconduct or poor performance. There are a number of questions which you should consider before looking at dismissing an employee.

- Does the employee's conduct warrant termination, or might some other step be appropriate (for example a warning, or counselling)?
- Is the employee still within a probationary period?
- Are there any obligations regarding dismissal set out in the employee's contract, or any applicable award or enterprise agreement?
- Are there any workplace policies which limit the circumstances in which you can dismiss an employee?
- Has the employee been given warnings in the past regarding similar conduct or performance?
- If the issue relates to conduct, has the employee been given an opportunity to respond to any allegations or to explain their conduct?
- If the issue relates to performance, has the employee been given opportunities to improve their performance?

If, having considered these questions, you are satisfied that dismissal is an appropriate remedy, you still need to ensure that you follow a fair and reasonable process. Even if the unfair dismissal system does not apply, employees have a number of other avenues to dispute a dismissal, and the right process can significantly reduce the risk of a bad outcome in court.

#### **As a minimum, you should:**

- give the employee an opportunity to have a support person present at the termination meeting;
- put the reason for termination to the employee at that meeting;
- take the employee's explanation into consideration before making any final decision; and
- provide a letter confirming the termination.

Our experience is that obtaining legal advice prior to implementing a decision to terminate is the most cost effective option. Please contact the Russell Kennedy [Workplace Relations, Employment and Safety team](#) if you would like to discuss a proposed dismissal process, or if you would like assistance with correspondence regarding a proposed dismissal.