

## Giving References - Don't Get Caught Out

Giving references isn't as easy as it used to be. Some recent cases have shown that you can be successfully sued by a former employee's new employer for misleading them. The Consumer & Competition Act (formerly the Trade Practices Act) and the Fair Trading Act prohibit misleading and deceptive conduct. This can extend very broadly to include your involvement in helping your ex employee get a new job.

### Mum's the Word...

This area is particularly fraught with risk where you're doing a deal to get rid of a poorly performing employee. You might offer to provide them with a good reference in order to sugarcoat a termination to help avoid them making a claim against you. However you may be opening yourself up to being sued by their new employer if it turns out that your reference is not true and the employee fails to perform at their next workplace.

Of course, at the other end of the spectrum, being overly frank is not recommended either. That is, you don't want to go ahead and publicise how bad you think the employee is either because then you could be sued for defamation. In the case of a difficult former employee it's best to take the advice of your mother: "If you don't have anything nice to say...don't say anything at all", especially in writing.

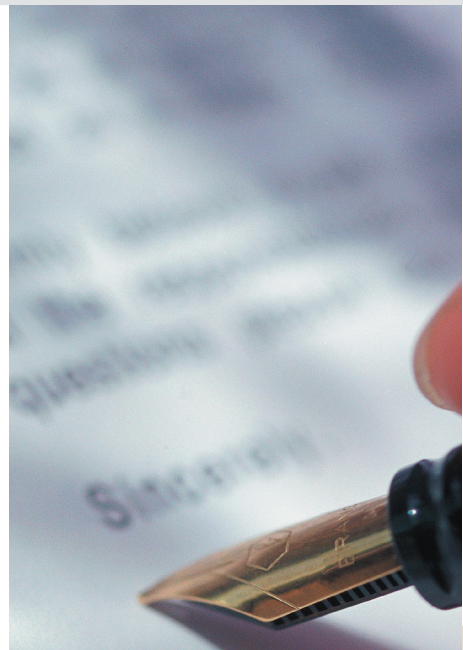
These days many businesses have a policy of only providing a Statement of Service for verification purposes, rather than a full reference. The Statement of Service provides the essential facts relevant to the work performed, position, commencement & termination dates, etc without referring to the character of the employee, or providing any opinions. Most employers will simply confirm the content of the Statement of Service if called for a reference check.

Another risk of providing a positive reference to an employee that's been terminated for poor performance or misbehaviour, is that the employee may use that document in a claim against you to counter your claims that they were a poor performer.

### What to Do?

If one does not already exist, you should consider what your policy on giving references is, and then stick to it. Locating, selecting, employing and then managing employees in the modern workplace is a complex task that requires careful and constant attention. Our Business Health Check will help you apply Quality Best Practice employment processes which can help your business run smoothly & avoid the pitfalls that can cause so much angst and damage to your operations.

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### PHONE:

1300 306 335

### EMAIL:

[info@dooley.com.au](mailto:info@dooley.com.au)

### WEBSITE:

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