

Letter of termination (on notice)

This precedent has been authored for LexisNexis by **Justine Turnbull, Partner**, LexisNexis **Commission, Sydney** and **Michael Byrnes, Senior Counsel**, LexisNexis **Commission, Sydney**.

This document is part of a LexisNexis suite of Employment Law documents prepared by Specialist Editor **Justine Turnbull, Partner**, LexisNexis **Commission, Sydney**.

This precedent is current to **4 May 2014**.

Introductory note

In most employment contracts there is a provision that allows the employer to terminate the employment agreement on notice. Under the **Employment Standards Act (Cth) (Act)**, an employer must give this notice in writing.

Generally the employment agreement sets the notice period. If the agreement is silent as to the notice period, the **Act** applies.

The **Act** provides the employer with the option to terminate the employment agreement on notice or to be paid in lieu of notice.

When considering whether to terminate the employment agreement, the employer must be aware of the laws relating to unfair dismissal. The **Act** provides that an employer must not terminate the employment agreement if the termination is unfair. For more information on these laws, see the **Unfair Dismissal** precedent in this suite.

LexisNexis Sample

Letter of termination (for misco

This precedent has been authored for LexisNexis
**Commission, Sydney; Michael Byrnes, Spec
Principal, Legally Speaking.**

This document is part of a LexisNexis suite of E
of Specialist Editor **Justine Turnbull, Partner,**

This precedent is current to **7 May 2014.**

Introductory note

This precedent is a letter of termination to b
engaged in serious misconduct. The letter

If you need a letter to terminate employem
misconduct, there is a separate precedent
(with notice)").

Please note the following issues relating to

Litigation risk

Terminating employment due to poor perfo
with litigation risk. Every employer should t
manage poor performance in the workplace
in a Human Resources Policy which includ
employees.

Given the high risk that an employee termi
is very important that the entire process is v
can be used by the employer as evidence s

Misconduct and poor performance

Misconduct is regarded as seriously "bad" l
immediate dismissal.

Misconduct is not to be confused with poor
work performance, non-compliance with wo
behaviour. See the separate precedent lett

Relevance of unfair dismissal

When considering terminating the employm
dismissal and unfair termination laws to en
For example, where an employee has the r
Act 2009 (Cth), the employee can allege, a
to inadequate provision of warnings, insuffi

LexisNexis Sample

Formal warning letter

This precedent has been authored for LexisNexis by **Michael Byrnes, Special Counsel, Clayton Utz & Co., Sydney**; **Brooke Pendlebury, Partner, Fawcett & Partners, Sydney**; and **Michael Byrnes, Special Counsel, Clayton Utz & Co., Sydney**.

This document is part of a LexisNexis suite of Employment Law precedents, edited by Specialist Editor **Justine Turnbull, Partner, Fawcett & Partners, Sydney**.

This precedent is current to **7 May 2014**.

Introductory note

Terminating employment due to poor performance carries a high risk of litigation. Every employer should take steps to manage poor performance in the workplace by developing a Human Resources Policy which includes procedures for terminating employees.

Given the high risk that an employee terminated due to poor performance may bring a claim, it is very important that the entire process is properly documented and can be used by the employer as evidence should a claim be brought.

What constitutes poor performance

In Australia, underperformance (or as it is commonly known, unsatisfactory work performance, or disruptive or negative behaviour).

Underperformance is not to be confused with "bad" behaviour such as theft or assault and sexual harassment.

Relevance of unfair dismissal

When considering whether to terminate the employment of an employee, the provisions of the laws relating to unfair dismissal and award conditions must be taken into account and not fall foul of these laws.

For example, where an employee has the right to be consulted under the Fair Work Act 2009 (Cth), the employee can allege, among other things, that there was inadequate provision of warnings, insufficient consultation, or that there was no valid reason for dismissal.

When using this precedent

It is a myth that an employer must give an employee a written warning for poor performance. Each circumstance is different and the steps that an employer should take depend on the nature of underperformance and the employee's position. An employer should take steps to address it.

Final warning letter

This precedent has been authored for LexisNexis by **Michael Byrnes, Special Counsel, Clayton Utz & Co., Sydney**; **Brooke Pendlebury, Partner, F&L**; and **Michael Byrnes, Special Counsel, Clayton Utz & Co., Sydney**.

This document is part of a LexisNexis suite of Employment Law documents, edited by Specialist Editor **Justine Turnbull, Partner, F&L**.

This precedent is current to **7 May 2014**.

Introductory note

Terminating employment due to poor performance carries a high risk of litigation. Every employer should take steps to manage poor performance in the workplace, including the development of a Human Resources Policy which includes provisions for terminating employees.

Given the high risk that an employee terminated due to poor performance may bring a claim, it is very important that the entire process is properly documented and can be used by the employer as evidence should a claim be brought.

What constitutes poor performance

In Australia, underperformance (or as it is commonly known, poor performance) is a form of unsatisfactory work performance, not a form of disruptive or negative behaviour.

Underperformance is not to be confused with disruptive or negative behaviour such as theft or assault and battery.

Relevance of unfair dismissal

When considering whether to terminate the employment of an employee, the provisions of the laws relating to unfair dismissal and the Fair Work Act 2009 (Cth) must be taken into account and not fall foul of these laws.

For example, where an employee has the right to be consulted under the Fair Work Act 2009 (Cth), the employee can allege, as a ground for unfair dismissal, that there was inadequate provision of warnings, insufficient consultation, or that there was no valid reason for dismissal.

Formal warnings

It is a myth that an employer must give an employee a formal warning before terminating employment due to poor performance. Each circumstance is different and the steps that an employer should take depend on the nature of underperformance and the employee's position. An employer should take steps to address it.

Deed of release (termination)

This precedent has been co-authored for LexisNexis by **Workplace Law, Sydney** and **Elise Margow, Partner**.

This document is part of a LexisNexis suite of Employment Law documents prepared by Specialist Editor **Justine Turnbull, Partner**.

This precedent is current to **14 May 2014**.

Introductory note

This precedent is a deed of release for an employment that has been terminated. The deed is signed by the employee to the employer in return for payment and benefits.

It contains ongoing confidentiality and non-solicitation and ongoing post employment restraints in the deed.

There is a deed of release specific to a redundancy claim that has been challenged by the employee (usually at the time of termination).

LexisNexis Sample

Letter of termination (for poor p

This precedent has been authored for LexisNexis
Commission, Sydney and **Michael Byrnes, S**

This document is part of a LexisNexis suite of E
of Specialist Editor **Justine Turnbull, Partner,**

This precedent is current to **7 May 2014.**

Introductory note

This precedent is a letter of termination to b
unsatisfactory work performance, or behav
notice to the employee.

If you need a letter to terminate employem
performance, there is a separate preceden
without notice”).

Please note the following issues relating to

Litigation risk

Terminating employment due to poor perfo
with litigation risk. Every employer should t
manage poor performance in the workplace
in a Human Resources Policy which includ
employees.

Given the high risk that an employee termi
is very important that the entire process is v
can be used by the employer as evidence s

What constitutes poor performance

In Australia, underperformance (or as it is c
form of unsatisfactory work performance, n
disruptive or negative behaviour.

Underperformance is not to be confused w
“bad” behaviour such as theft or assault an
precedent is available for termination witho

Relevance of unfair dismissal

When considering whether to terminate the
of the laws relating to unfair dismissal and
fall foul of these laws.

LexisNexis Sample