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## BEING A REFEREE: What are your Obligations?

**Do you remember the last employment reference you gave? Do you remember what you claimed to be true about that individual? Were your statements accurate? Now, the crucial question: have you ever considered that you can be liable for the contents of your reference?**

When giving a reference, being a referee or providing testimonial as an employer, colleague, academic, friend or the like, you should be aware of your obligations in providing a reference for an individual. Under common law, a referee owes a duty of care to an individual to ensure that the reference they provide is fair, accurate and true.

In the situation where a new employer has hired a person based on a reference that misrepresents the capabilities and qualities of the person, it is possible for the new employer to bring a claim against the referee for damages as a result of misrepresentation. However, it is difficult to determine the extent of the referee's liability as the case law in this area is fairly undecided.

Notwithstanding the hurdles of bringing a claim, one should always be vigilant about any statements they make in the capacity of referee. Here is a checklist of things to be aware of when writing a reference:

### Know your subject

- Ensure that you are the right person to give the reference. Ask yourself whether you have full knowledge of the individual's employment skills.

### Do not exaggerate skill or experience

- Avoid exaggerating the individual's level of competence in any particular field. Be honest and realistic about their capabilities.

### Do not make false statements

- Be wary not to make statements or assessments about the individual that are false or cannot be substantiated. Ensure your statements are true and accurate.



## Do not defame

- Avoid making defamatory comments about the individual. A simple way to avoid this is to respect the confidentiality of the individual and not to make any derogatory statements, particularly if they have left the organisation on bad terms.

## Do not cut and paste

- Avoid relying solely on the individual's personnel file without making sure you understand the contents of that file.

## Do not assign the task to a third person

- As you are the person providing the reference, the reference should come from your knowledge and belief of the individual's capabilities and not from anyone else.

## Use official stationery when writing in an official capacity

- Only provide a reference on official stationery of a company or organisation you are employed with if you are providing your reference in an official capacity with that company or organisation.

## Be wary of verbal references & emails

- Be mindful that the above points apply to a verbal reference or a reference given in an email. A file note can be made of a telephone conversation where your views are recorded and emails can be saved and retrieved with ease.

When next providing a reference, it is paramount to ensure that what you write (or convey verbally) fairly reflects the individual's capabilities, is a fair assessment of their skills and is an honest account of them as a prospective employee. This way you will be sure to avoid any liability that may arise against you. When in doubt, it is better to decline to provide a reference.

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**For further information  
please contact:**

**Leneen Forde, Partner**

Phone (direct) **+61 3 9608 2243**

Mobile **+61 417 165 315**

Email **L.forde@cornwalls.com.au**