

A-Z Guide

REFERENCES



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# Use This Guide to Understand

- Establishing the validity of verbal and written references
- The privacy constraints that apply to collecting personal information through references
- Obligations to current or former employees when providing a reference to any other person
- Obligations to an applicant when obtaining a reference about the applicant from any other person

## References in Employment

As an employer, you may be asked to provide a reference for a current or former employee, or seek a reference from an applicant. References can be either written or verbal and are a common, but important step in the recruitment process to confirm that the applicant has the desired skills and qualities for the position. References do have some limitations and can be a difficult subject, for example a departing employee may request you to provide a written reference even if their departure was under strained circumstances.

You should also refer to the following **A-Z Guides** for further information:

- Application for Employment
- Medical Examinations
- Pre-Employment Checks
- Privacy
- Recruitment and Selection

## Written References

We recommend that you confirm the integrity of written references. This means ensuring that it was actually written by the person identified as the author, that they wrote about the applicant, and that the referee was suitably qualified to make such statements, i.e. they were responsible for managing the applicant, and not a co-worker or manager of another department.

You may also wish to discuss the applicant with the referee. While you are entitled to confirm the document's integrity, you need consent from the applicant to ask further questions about the applicant. You may wish to ask questions such as:

- Would the referee employ the person again?
- When did the referee work with, or employ the person?
- Was there a reporting relationship between the referee and the person?
- How did the person respond to the management of any performance issues?
- How diligent was the person in his or her employment?
- Does the referee still endorse the view expressed in the written reference?

## Validity

Another reason to speak to a referee is to confirm the validity of the reference contents against the position you are recruiting for. Referees often make broad statements lacking in detail about a person's performance. If the position requires a specified level of competency or a specified range of skills, then any general statement referring to the person's skills set or competency may have limited value.

By asking the referee to qualify their statements with examples, you can assess the value of the reference. For example if the referee has little or no knowledge of the competency level or range of skills required, or cannot give examples from the applicant's employment, then it is questionable whether the referee could provide a valid reference.

## Providing a written reference

Unless you have agreed to in an employment agreement, you don't have to give employees a written reference. If you do provide a reference however, you should decide whether or not you are prepared to verify or expand your comments.

Usually, an employee expects a copy of a reference. However, you may agree to provide it on the basis that it is addressed to a particular person when it is requested, and that it is given on the basis that the employee will not have access to that information.

Be careful of making statements which are both damaging and incorrect. A former employee could potentially pursue remedies in Court for defamation or injurious falsehood.

## Verbal References

When an applicant provides you with contact details of referees, this is consent for you to contact the referee. If you seek a verbal reference from anyone other than the nominated referee, you may be in breach of the Privacy Act 2020. If a referee provides information on the basis that it be kept confidential, it may be useful to record that on any notes of the referee's comments.

## Providing a verbal reference

If you are asked to provide a verbal reference for a former employee, you should only do so if you have written authority from that employee to do so. Such authority could be on an employment application form, or curriculum vitae, if you have sighted the document.

You may wish to ensure that the person seeking a verbal reference is who they say they are. You can do this by re-contacting the person through their organisation.

If you do not want the information you provide to be disclosed to the employee concerned, then you need to advise the recipient that your comments are only given on the basis that they be confidential.

## Privacy constraints

There are certain considerations for references concerning personal information under the Information Privacy Principles in Section 6 of the Privacy Act 2020.

### Collection – Principles 1, 2 and 3

If you collect a reference about an individual from another person:

- Collect only information about the individual as it relates to the position for which the individual is applying; and
- Ensure that the individual consents to the collection of that information; and
- Ensure that you have the individual's consent to collect the information from the person providing the reference; and
- Advise the individual of the purpose for which the information is being collected (this is usually, obvious but it is not problematic to expressly state).

Any application form asking applicants for contact details of referees should include a statement about the purpose of collecting personal information. You should state the significance of the applicant's consent and that the applicant may not access the collected information if the referee requests confidentiality.

### Access and Confidentiality – Principle 6

You may hold information about another person for a period of time necessary for the purpose. For example, you may need to hold information about applicants for a period of time in relation to the appointment or any claims that may arise out of the appointment process. If you hold such information, then you must ensure that:

- The information can be readily retrieved
- The information is accessible to the individual concerned unless it is confidential and/or evaluative
- The individual who requests access to the information is advised that he or she may request the correction of that information

Refer to the **A-Z guide on Application Forms** for more information.

### Use and Disclosure – Principles 10 and 11

If you provide a reference about an employee to another person, ensure that:

- You are authorised by the individual to disclose the information
- You are authorised by the individual to disclose the information to the other person
- The disclosure of information is, or is directly related to, one or more of the purposes in connection with which the information was obtained

## Conclusion

This guide highlights some of the common issues about giving and receiving references in employment. When seeking a reference, consider the integrity and validity of the information given. When providing a reference, be careful with the type of statements you make. In both cases consider the Privacy Principles in the Privacy Act 2020.

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## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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