



**Russell Kennedy**  
Lawyers

## Workplace Relations Checklist

### Complaints and investigations – key questions to consider

January 2017

In recent years we have seen a shift in what is considered to be acceptable workplace behaviour. Employees are now much less tolerant of bad behaviour, they are more willing to raise complaints about the conduct of their co-workers and managers, and they expect to see action in response.

With the introduction of the bullying jurisdiction at the Fair Work Commission, and the willingness of the Fair Work Ombudsman and State safety regulators to enter workplaces and investigate, employers have a strong incentive to take complaints seriously and take steps to address them.

Every workplace should have appropriate policies setting out procedures for dealing with complaints relating to bullying, discrimination and sexual harassment. However, it is still important that you are able to answer the following questions before starting to manage a workplace complaint:

#### What should the complaint management process look like?

- Is the complaint sufficiently clear, or will further information be required?
- What might be the appropriate disciplinary action if the complaint is substantiated?
- Does the workplace have an applicable policy that sets out the process to be followed?
- Can attempts be made at informal resolution as an initial step, or is an investigation required?
- Is it appropriate or necessary to suspend the accused employee on pay pending any investigation?

#### IF the complaint should be investigated – HOW?

- Can the complaint be quickly investigated by speaking to a few individuals, or are there likely to be contested versions of events and relevant documents?
- Should an internal or external investigator conduct the investigation?
- Will you want to claim legal professional privilege over any investigation reports?
- Who will be participating in the investigation process? Will you need to advise participants about confidentiality, victimisation and access to a support person?

#### What are the outcomes of the investigation?

- Do you know what evidence you will need to make reasonable findings and decide on appropriate outcomes?
- Will it be necessary to prepare a written report and, if so, what happens to that report and who has access to it?
- How will you communicate the outcomes of the investigation?

Not all workplace complaints need to lead to a formal investigation process, but every complaint needs to be assessed and managed in a way tailored to the workplace and the situation. If you are unfamiliar with managing workplace complaints, or are dealing with a complex complaint, we highly recommend that you obtain legal advice.

Please contact the [Russell Kennedy Workplace Relations, Employment and Safety team](#) if you would like advice about managing complaints in the workplace..