



**Caldwell  
Martin  
Cox**

Solicitors

**Small Business Fair Dismissal Code  
Checklist**

Fair Work Australia suggest that it is in the interests of an employer to complete this checklist at the time of dismissal and to keep it in case of a future unfair dismissal claim. However, it is not a requirement of the Fair Dismissal Code that the checklist be completed.

1. How many full time equivalent employees are employed in the business? (include the dismissed employee and any other employee dismissed at the same time).

- Under 15 full time equivalent employees
- 15 full time equivalent employees or more

[If under 15 full time employees, the Fair Dismissal Code applies]

2. Has the employee been employed in this business as a full time, part time or regular casual employee for 12 months or more?

- Yes
- No

[If no, the employee cannot make an unfair dismissal claim]

3. Did you dismiss the employee because of a genuine redundancy?

- Yes
- No

If yes, explain the reason for the redundancy (e.g. economic downturn, introduction of new technology therefore requiring less staff, or another such reason) and whether redeployment was considered

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4. Do any of the following statements apply?

I dismissed the employee because I believed

on reasonable grounds that

	Yes	No
a. The employee was stealing money or goods from the business	<input type="checkbox"/>	<input type="checkbox"/>
b. The employee defrauded the business	<input type="checkbox"/>	<input type="checkbox"/>
c. The employee threatened me or other employees, or clients, with violence, or actually carried out violence in the workplace	<input type="checkbox"/>	<input type="checkbox"/>
d. The employee committed a serious breach of occupational health and safety procedures	<input type="checkbox"/>	<input type="checkbox"/>

5. Did you dismiss the employee for some other form of serious misconduct?

Yes

No

If yes, what was the reason?

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If you answered Yes to any question in parts 3, 4 or 5, you are not required to answer the following questions.

6. Did you dismiss the employee because of the employee's unsatisfactory conduct, performance or capacity to do the job?

Yes

No

If Yes:

Yes No

a. Did you clearly warn the employee (either verbally or in writing that the employee was not doing the job properly and would have to improve his or her conduct or performance, or otherwise be dismissed?

b. Did you provide the employee with a reasonable amount of time to improve his performance or conduct?

If yes, how much time was given?

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c. Did you offer to provide the employee with any training or opportunity to develop his or her skills?

d. Did the employee subsequently improve his or her performance or conduct?

e. Before you dismissed the employee, did you tell the employee the reason for the dismissal and give him or her an opportunity to respond?

f. Did you keep any records of warning(s) made to the employee or of discussions on how his or her conduct or performance could be improved? Attach any supporting documentation.

7. Did you dismiss the employee for some other reason?

Yes

No

If yes, what was the reason?

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8 Did the employee voluntarily resign or abandon his or her employment?

Yes

No

If yes, please provide details

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### Get professional advice

It is critical that you consult an appropriately qualified lawyer to ensure that your matter, even if settled, is properly managed to protect your interests and avoid risk of future disputes or Court proceedings.

### About Caldwell Martin Cox

Caldwell Martin Cox is a law firm established for over 50 years in Picton and now in Tahmoor, Camden, and Narellan.

Our specialist lawyers advise clients on Wills and estates, Family Law, the purchase and sale of property, criminal and traffic law, litigation and dispute resolution, commercial law and business law.

We have a team of litigation and criminal lawyers, including an Accredited Specialist in Advocacy, who operate from all four offices and serve clients across a broad region.

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