

Cleaning Agreements

A common service that Clubs look to contract out is cleaning. Where the Club has extensive areas and/or the amount of time that needs to be attributed to the cleaning can't be undertaken by the Club, hiring a cleaner can ensure that the Club remains neat and tidy and complies with all necessary WHS and Food Safety requirements.

Independent Contractor Relationship

Before entering into an agreement with a cleaner, a Club firstly needs to ensure that the relationship created between the two parties is very much that of an independent contractor and not that of an employee and employer.

Should a Club engage a contractor and this is later disputed and it is found that they were in fact an employee, then a Club risks underpayment claims and other claims such as unfair dismissal should the agreement be terminated and can be shown to have been harsh, unfair or unjust. Information on what constitutes a contractor relationship can be found in the Contracting out Services & Independent Contractors Guide (**Contracting Guide**) which is available on the Clubs SA Members Site.

Where a Club is found to have deliberately sought to define an employee as an independent contractor instead, they could be guilty of "sham contracting". This is discussed further on page 4 of the Contracting Guide.

Clubs also need to be aware that while there are certain entitlements such as leave that do not need to be given to a contractor, there are still a number of obligations that need to be provided. Further information on this is on pages 4 – 8 of the Contracting Guide.

Cleaning Services

When a Club is looking at contracting out its cleaning, special attention needs to be given to the services the Club wants and to be specific in this regard. When a Club provides a vague description of the service, this can lead to confusion and potential disputes over what is acceptable. Clubs also need to ensure that they specify the areas they want cleaned.

Equipment & Maintenance

Due to the fact that Clubs will have their own cleaning supplies (**equipment**), a Club could consider if they want to provide these to the cleaner and if so how. This may not be necessary however, as the cleaner may have all the necessary supplies.

A contract should also specify who will be responsible for any damage to equipment and who will need to be notified should this occur. Generally whoever owns the equipment should be responsible for any necessary repairs or replacement unless where the other party caused this by their negligence.

Access to Premises

As it is commonplace for cleaning to be done out of hours, a section covering access to premises is important in any agreement. Should a Club provide keys to the premises then they should specify clearly what keys are provided and to what areas, so that after ending the agreement it is clear what needs to be returned.

If a Club wants to be cautious, they could also ask that the cleaner provides or authorises them to undertake a police clearance. This will allow the Club to have “peace of mind” and it is also good practice as the cleaner will often be left on premises out of hours.

Other Considerations

In addition to the above, there are a number of other clauses that should be included or at least considered in any agreement to contract out cleaning services.

As well as the general considerations needed with any contractor arrangement e.g. the length of the agreement, specifying the agreement is one between an independent contractor and the Club etc. other things that should be covered includes:

- **Provision of Staff** – If the cleaner will be providing their own staff then a clause should be included making it clear that they will be responsible for sourcing them and paying of any pay, superannuation, workers compensation etc.
- **Insurance** –What types of insurance will the cleaner need in order to limit the risk of a Club? E.g. if they have staff, they should have workers compensation insurance and to protect the Club in case the cleaner or its staff’s negligence results in a loss (e.g. the Club has items stolen or damaged) the Club could consider requiring the cleaner to have personal indemnity and public liability insurance.
- **Indemnity** - What indemnities will the Club seek from the contractor in order to limit their liabilities? e.g. where a Contractors (or their employees, sub-contractor or agent) act or omission makes the Club liable for a claim.
- **Confidentiality** – A Club should seek to have a clause not allowing for any confidential information to be disclosed that the cleaner may become privy to.
- **Sub-contracting** – Will the Club allow sub-contracting at all and if so a Club should require their consent so as to know who the intended sub-contractor is and agree or disagree accordingly.

Template

A Cleaning Agreement template is available in the Agreement Templates section. When looking at this Agreement, Clubs are reminded that this is a template only and Clubs will need to ensure the terms meet their requirements, whilst still ensuring that the terms of the Agreement are clear to avoid disputes arising.