

Greenkeeping/Groundskeeping/Curator Agreements

Sporting Clubs may wish to engage a contractor to undertake their greenkeeping, groundskeeping or curating (from this point on referred to as greenkeeping) where their volunteers don't have the expertise or time to do so and/or employing someone is not feasible due to cost and the times when the service is needed etc.

Independent Contractor Relationship

Before entering into an agreement with a greenkeeper, 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 have been terminated and this can be shown to have been harsh, unfair or unjust. Information on what constitutes a contractor relationship can be found on 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 obligation that need to be provided. Further information on this is on pages 4 – 8 of the Contracting Guide.

Clubs also need to pay attention in particular to superannuation as there are circumstances that will result in contractors being eligible for super payments. More information can be found [here](#).

Services

When engaging someone to undertake greenkeeping, a Club needs to be very clear in what services they are providing and in what areas. The details of this can be kept in the body of the agreement, however, should this be extensive then a Club can consider adding this on as a schedule to the agreement.

Clubs should not however place controls on how exactly the services should be provided and a true contractor relationship would allow them control as to how any work is done.

Clubs can make a statement in the agreement as to what standard they expect the work to be done though.

Equipment

A contractor should provide all or most of the equipment and other assets that are needed to undertake their services. As such it should be specified that they will be expected to have the necessary equipment to undertake the services.

Where a Club has some greenkeeping equipment, they could also make this available to the greenkeeper to use, but should be careful to limit how much equipment is provided. Any Club equipment they can use should only be used alongside their own equipment and not in lieu of, as to do so would be a factor that indicates an employer/employee type relationship.

Clubs should also ensure they are clear in the liability for any damage caused and who has ownership (e.g. any items of the Club will remain their property).

A Club should also consider such things as will they provide fuel for the contractor's equipment and if so to what limit..

Noise

As the work done has the potential to generate a significant amount of noise, both the Club and greenkeeper should be mindful that they do not cause disruption to any presiding properties, particularly on weekends and early mornings.

Clubs should also consider what laws and council regulations may also limit or restrict noise and ensure that the contractor is aware of, and complies with these restrictions.

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 greenkeeping 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:

- **Access to Premises and Security** – If the greenkeeper will come in to do work out of hours then the Club should specify what keys or codes they are given and that these need to be returned and any loss notified to the Club ASAP.
- **Staff** – If the greenkeeper will be providing their own staff to do the work then a clause should be included making it clear that they will be responsible for sourcing them and any pay, superannuation, workers compensation etc.
- **Insurance** –What types of insurance will the greenkeeper need in order to limit the risk to the Club? E.g. if they have staff, workers compensation and to protect the Club in case the greenkeeper or its staff's negligence results in a loss (e.g. the Clubs property is damaged) the Club could consider requiring the greenkeeper to have personal indemnity and public liability insurance.
- **Indemnity** - What indemnities will the Club seek from the greenkeeper in order to limit their liabilities? e.g. where a greenkeeper (or their employees,

sub-contractor or agent) act or omission makes the Club liable for a claim such as where poor workmanship results in a member's injury.

- **Confidentiality** – A Club should seek to have a clause not allowing for any confidential information to be disclosed that the greenkeeper may become privy to. A confidentiality clause can be one way (that is one owes an obligation not to disclose the others confidential information) or it can be mutual.
- **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 Greenkeeping 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.

Please note, whilst the term greenkeeping and greenkeeper have been used in the template, this is still suitable for a groundsperson and curator. This has been outlined in the beginning of the template, however, should Clubs wish to amend the term used in the template to groundsperson or curator then they can do so.