

Kitchen / Catering Agreements

Where a Club does not have the capability nor expertise to provide meals at their venue, a Club could consider entering into an agreement for a caterer to use and operate its kitchen facilities and to provide meals to its members and the public.

These agreements can allow for an experienced caterer to come into the Club and provide the meals, enabling the Club to focus on other areas. Clubs should only enter into these agreements after lengthy consideration, as risks exist.

Independent Contractor Relationship

Before entering into a Catering Agreement, 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 pass off 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 provided 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.

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](#).

Costs of Agreement

When entering into an agreement for an outside party to provide catering services to a Club, a Club needs to determine the cost effectiveness for the Club and what payments the Club will seek. With these agreements, a Club firstly needs to consider if they will charge a usage fee. This is a fee payable by the contractor for the benefit of using the Club premises and for selling food to the Club’s members and the public.

The usage fee is often paid in instalments throughout the duration of the contract and is payable weekly, monthly etc. A Club needs to look at their own circumstances and set a fee that will allow this to be a profitable venture, but not so high as to put off potential caterers.

Consideration also needs to be given as to how the profits of the food services will be distributed. Where a Club believes that they will derive enough benefit from people attending the Club, buying drinks from the bar etc, then the agreement could allow for all of these food profits to be retained by the service provider. Alternatively, a Club may wish to retain a % of the profits earned on the sale of food, however, if they are also charging a general usage fee then this may make the costs too high for a caterer to be interested. A sensible balance needs to be achieved.

A Club should also be clear in setting out who will be responsible for paying any expenses, for example the utilities. Is it to be paid by both, what percentage will each pay etc.

Services

Whilst an agreement will state that it is for the use of a Club's facilities to offer catering to Club members and the general public, Clubs need to ensure they provide sufficient information on the nature of the services and who will be responsible these services.

A Club needs to be clear on the standards they expect and any control they want to impose on the catering service provider, such as the need for any pricing to be authorised by the Club. A Club should also consider the extent of control over the menus and whilst it is important for a Club to have input, including any final say, they should ensure the caterer has sufficient control to properly provide good meals at competitive prices on behalf of the Club.

It is also important that whilst the agreement can specify the services to be provided and if authorisation is needed, the Club should not exercise excessive control over how the Caterer actually undertakes their work.

Other items that need to be considered in relation to the quality of service are the expected standard of dress and hygiene of the caterer's staff, the need to make clear that smoking, drugs and alcohol will not be allowed on the premises etc.

Cleaning and Maintenance of Equipment

As the caterer will have access to the Club kitchen premises, any agreement would need to clearly cover the cleaning and maintenance of equipment. A Club should ensure that the caterer is required to undertake cleaning after use and to comply with relevant food safety legislation e.g. the *Food Act 2001* (SA) and the Australia New Zealand Food Standards Code.

Beyond normal compliance and regular cleaning, a Club should also consider whether they want to include any other cleaning requirements e.g. scrubbing of the floor.

In terms of maintenance of equipment, generally this will be done by whoever owns it, although where the other party damages the equipment, then the agreement should specify that they are the ones liable to fix it.

A Club can allow the Caterer to use the Club's general equipment and assets in the Kitchen, however, they should ensure the Caterer also brings its own equipment and enough that is necessary to undertake the services outlined. If a Club provides the Caterer with all necessary equipment and assets then this is a factor that more so indicates an employment relationship.

Other Considerations

As well as the costs, services, cleaning and maintenance of equipment, Clubs have a number of other things they need to consider when looking into an agreement with a caterer.

As well as the general considerations needed with a 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 in a catering agreement includes:

- **Provision of Staff** – As catering will require a number of people to undertake these services, a Club needs to specify that the caterer will provide its own staff and be responsible for their payments etc.
- **Purchase of Food** – Ensure that it is specified that the caterer will be the one who will be responsible of ordering food in order to undertake the services outlined in the Agreement.
- **Compliance** – What will the caterer be expected to comply with? E.g. the Food Act and Australia New Zealand Food Standards Code as well as Club policies.
- **Bookings** – Will the Club want to specify that their bookings take precedent over any other bookings made by the general public?
- **Insurance** –What types of insurance will the caterer need in order to limit the risk to the Club? E.g. if the contractor has staff then they should be registered to have workers compensation insurance and due to the associated risk of injury in the kitchen, a Club should look at requiring the contractor 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, subcontractor or agent) act or omission makes the Club liable.
- **Confidentiality** – A Club should seek to have a clause not allowing for any confidential information to be disclosed by the caterer. A Club may make this clause one way e.g. the caterer agrees not to disclose confidential information, but these can also be made as a mutual clause so both parties agree not to disclose confidential information.
- **Intellectual Property** – Will there be the potential for any intellectual property to be generated in providing of the services e.g. designs and trademarks? If so will the Club seek to keep ownership of any of these created in the providing of these services or will it be with whoever creates it?
- **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 Kitchen / Catering 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.