

WELCOME



Negotiating Contracts & Agreements for Club Services

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Contracts for Services

When should you use a contractor & what to consider

Where you don't have the expertise to undertake the tasks

- Contractors are generally specialists in their field

Is it an ongoing task or a short term task

What will the costs be and does it make more sense to hire an employee

Do your research on the other party – can they provide what you are after. Seek recommendations from others

Ensure you properly understand and are comfortable with any termination clauses

Weigh up the risks and liabilities your Club will incur if you sign the agreement

- Indemnities and other protections need to be in place

Independent Contractors

February 2022 High Court decisions - *ZG Operations & Anor v Jamsek & Ors* and *CFMMEU & Anor v Personnel Contracting Pty Ltd*

Written agreement is crucial – ensure you have a clear written agreement in place

Control is a major factor - If high then more likely to be an employee

Avoid providing too many items and equipment to a contractor

Sham Contracting – can result in significant penalties (up to \$12,600.00) + other claims



Independent Contractor Entitlements

What are your obligations to a contractor

- In some situations they will be entitled to be paid superannuation
 - (Where paid primarily for their labour e.g. if engaged to do freelance admin work for 15 hours a week then super is payable)
- Unfair Terms – protection from one sided agreements
- Protections from discrimination, adverse action and coercion
- Can make claims where there has been a breach of contract
- WHS – have a duty of care for a contractor who is undertaking work on your premises





Catering Agreements

Where an outside caterer is provided with the use of the Club kitchen to provide meals to the public (or members)

What do you need in the agreement:

- Payment – flat amount or proportion of sales?
 - Will there be a usage fee?
- Maintain some input over the meals provided
- State who has responsibility for the cleaning and maintenance of equipment
- Purchase of food and provision of staff
- Bookings – will you specify that members take precedent?

Ensure that any agreement specifies the need to comply with Food Standards

Cleaning Agreements



Ensure compliance with necessary WHS and Food Safety requirements

Make sure they have appropriate insurance in place – e.g. public liability

Be specific and clear in what areas and level of cleaning you want

Can we allow them to use our equipment? – Yes, but should only be in addition to their own

Consider access to premises and if proper security measures are in place



Greenkeeping Agreements

As with cleaning agreements be specific with the services you want

If need they will need to be available particularly before big events, like competitions for example, then specify

Should be bringing most of their own equipment – can allow to use some but should be providing most of what is needed

Will there be any issue with noise?

Sub-contracting – should it be allowed?

Management Agreements

Where parties enter into an agreement to work together and manage certain services at a Club e.g. an agreement to work together involving the sale, service and provision and/or share of profits from liquor sold or supplied

Could involve multiple services e.g. supplying liquor, food catering, functions, marketing etc.

Be wary of handing over too much of your Club to someone else and ensure you maintain a good level of oversight

Ensure compliance with the *Liquor Licensing Act*

- Follow the conditions contained in your club licence
- Ensure that the other party understands an RP always needs to be present unless an exemption exists
- No prescribed entertainment without authorisation

Confidentiality and Intellectual Property protection important



Profit Sharing Agreements



What are they?

Where parties enter into a management agreement that involves the sale, service and provision and/or share of profits from liquor sold or supplied and one of the parties is not licensed

Need approval from the Liquor and Gaming Commissioner or it is a breach of the Liquor Licensing Act



How do you get approval?

Need to send a request to the Liquor and Gaming Commissioner via Consumer and Business Services (CBS)

Need to show:

- it is likely to assist the liquor industry and industries with which it is closely associated e.g. tourism and the hospitality industry; or
- it is otherwise in the public interest; or
- there is some other good reason for approving the agreement or arrangement.

Need to show it will not have an adverse affect on the rights of those already in employment

Hire Agreements

Allows sections or all of the Club to be hired out for events

Do not need to be as extensive but should still ensure they have key terms such as:

- Indemnity and deposit
- Requirement to clean the premises
- No outside liquor to be brought on premises and/or BYO only with approval

How much should a deposit be and when can it be retained

Weigh up risk of events against potential benefit



Guides, Templates and Further Information

Members Only Site

Templates and Guides for the various agreements discussed are available online in Members Only – Workplace Relations: Policies, Fact Sheets & Agreements:

- Independent Contractors Agreement
- Cleaning Contractor Agreement
- Kitchen / Catering Agreement
- Greenkeeping Agreement
- Management Agreement
- Profit Sharing
- Hire Agreement



**THANK
YOU**

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