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> Independent Contractors

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Independent Contractors contracts made simple

save time and money with better contracts

INDEPENDENT
CONTRACTORS
HOTLINE
1300 667 850



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Independent Contractors contracts made simple

Introduction

If you are one of Australia's many independent contractors, you are now on your way to making better contracts, improving your business relationships and better managing your business risks.

This guide could have been called 'How to prevent disputes with your hirer', because that's the essential message—get the contract right at the start of the relationship and you'll have fewer problems down the track.

Contracts made simple uses plain language and gives lots of examples to show you how to better manage your contracts. It is a quick reference guide with links to useful websites and phone numbers to make sure you have easy access to the facts.

Language and communication assistance

If you want to communicate with the hirer or the Independent Contractors Hotline in your own language, there are private and government services available. If you have a hearing or speech impairment, the National Relay Service can assist. If you are visually impaired the Independent Contractors Hotline can help.

Find an interpreter

- To speak to the hirer through an interpreter call the Translating and Interpreting Service (TIS) National on 13 14 50. TIS National provides interpreting services in around 170 languages and dialects and is available seven days a week. Note, that charges will apply unless the hirer has agreed to pay for interpreting services under your contract. For more information about TIS National, visit www.immi.gov.au and search for 'TIS National'. Before you call have the name and phone number of the person or service ready to give to the operator.
- If you want general information about independent contracting call the Independent Contractors Hotline on 1300 667 850 and ask for an interpreter in your language. The government pays for interpreters used through the Hotline.

Find a translator

If the language used in the contract is not one you're fluent in, consider getting it translated. You will need to find a private translator to do this.

- Look under 'translators' in your local telephone directory. Use an online directory, such as those on the following websites:
 - National Accreditation Authority for Translators and Interpreters at www.naati.com.au.
 - Australian Institute of Interpreters and Translators Incorporated at www.ausit.org.

Assistance for the hearing and speech impaired

If you are deaf or have a hearing or speech impairment you can call through the National Relay Service.

- **TTY users:** Call 13 36 77 for the cost of a local call or 1800 555 677 if you are calling a toll-free number.
- **Speak and Listen (speech-to-speech relay) users:** Call 1300 555 727 for the cost of a local call or 1800 555 727 for toll free numbers. Alternatively, you can make a call through the National Relay Service website at www.relayservice.com.au.

Latest edition

The information in this guide is correct at November 2010.

This guide will be updated regularly. To ensure you have the latest information, visit business.gov.au/contractors, the Australian Government's award winning business website.

Disclaimer

This publication is intended as a guide only. It is not legal advice. Before taking any action suggested by this guide, you should seek professional advice. The Commonwealth of Australia will not be liable to the users of this publication for any loss, damage, cost or expense arising out of its use.

About this guide

When you agree to do a job for another person or business in exchange for money or some other benefit, you are probably entering into a commercial contract. If so, this contract is legally enforceable regardless of whether it was a just a 'handshake deal' or a written agreement.

Who should use this guide?

This guide is for independent contractors who enter into verbal and written contracts to do work for other individuals, businesses, government bodies or organisations. This may include people who describe themselves as 'self-employed', a 'consultant' or a 'subcontractor'. See Section 1 for more information about the common law definition of an 'independent contractor'.

Why should you use this guide?

This guide takes you through the things you need to know about entering into contracts as an independent contractor. By better understanding the contracts you enter into, you will be well placed to negotiate contracts that work for you. However, it is important to get professional advice to fully understand your obligations.

How to use this guide

This guide is best used as a quick reference for basic information and for where to go for more detailed information. Use the contents page and index to navigate your way through the guide and use the glossary to better understand some of the terms used in making contracts. At the end of each section, there is a *What to do* box that provides you with sources for further information.

Contract checklist

Before you sign ...

Do you know your status?

Find out if you are considered an ‘employee’ or ‘independent contractor’ for a particular job or if you are working under an illegal ‘sham’ contracting arrangement (Section 1). Knowing your status is important for tax, superannuation and insurance purposes (Section 5).

Is the contract in writing?

Verbal contracts can be risky, so it’s always best to get your contract in writing. However, if a written contract isn’t possible, make sure you have some documentation that will help you identify what was agreed: emails, quotes, specifications and even notes about your discussions (Section 2).

Do you understand all the terms?

If possible, make sure the contract terms are written in plain English. Get advice before you sign a contract you don’t understand. Be careful with standard form contracts where you are expected to simply agree with what’s already written and just fill in the blanks: read the fine print in any contract carefully (Section 3).

□ Does it include important basic information?

The contract should identify each party to the contract (including Australian Business Numbers), state that the contractor is not an employee and be signed and dated by all the parties (Section 4).

□ Does it contain a detailed description of services or the result to be achieved?

The contract should state, in as much detail as possible, what work will be done, when the work will be done and where the work will be done (Section 4).

□ Does it set out how and when payments will be made?

The contract should set out whether payment will be by fixed fee or hourly/daily rate. Be careful of terms that provide for payment only on full completion of the contract unless the contract is for a short duration. Consider payments for completion of each stage—progress payments (Section 4).

□ Is there an arrangement for settling disputes?

A contract should outline a process to assist in resolving disputes quickly without going to court. The process might require informal discussion and negotiation first, followed by alternative dispute resolution procedures if necessary (Section 6).

Use of the term ‘hirer’

In this guide, the term ‘hirer’ refers to the person or business that engages an independent contractor. Sometimes, a contract or a law will refer to the hirer as a ‘principal’.

Use of the term ‘contract’

In this guide, the term ‘contract’ refers to a commercial contract made between an independent contractor and a hirer. Commercial contracts may include:

- a contract for the independent contractor’s labour or skills where payment is made on the basis of hourly or daily rates
- a contract for the independent contractor to achieve a result where payment is made on the basis of a fixed fee.

These commercial contracts are different to the ‘employment’ contracts that apply to employers and employees.

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SECTION 1

The contracting relationship



The contracting relationship

A contracting relationship is a legal relationship. If you perform work or provide a service for another person or business under a verbal or written contract, the law may consider you to be an independent contractor, or it may consider you to be an employee. The distinction is an important one and is dependent on all of the features of the relationship. Just because the person you are performing work for refers to you as an independent contractor, does not mean that this is your legal status.

As an independent contractor, the person or business you do the work for is called the 'hirer' (sometimes called the 'principal'). The contract is sometimes referred to as a 'services contract' or a 'contract for services'. In non-legal language, it is generally called a 'commercial contract'.

An independent contractor is not an employee

If you genuinely provide services for payment as an independent contractor, you are not an employee and the hirer is not an employer.

Know your status

It is sometimes difficult to work out whether you are an independent contractor or an employee, especially if you provide services only to one hirer. Cleaners and IT professionals, for example, may fall into either category depending on the circumstances of their engagement (including the terms of their contract).

The difference is important because different laws and mutual obligations apply to each type of relationship. You could easily be an independent contractor for one job and an employee for the next. This is often the case in the building and construction industry. It is important to understand that an

independent contractor is subject to different tax, insurance and superannuation requirements (see Section 5 of this guide).

What are the key elements of each type of relationship?

An **employee**:

- is usually supervised by an employer
- is usually required to carry out their work in a particular way, and comply with directions to perform work differently from time to time
- may be required to work only for one employer
- is entitled to paid holidays and sick leave
- is often required to represent to the public that they work for the employer (for example, by business cards, uniforms etc)
- generally cannot subcontract tasks given to him or her. A typical employee earns a fixed wage or salary and works in the business operated by the employer on a permanent, fixed term or casual basis. An employee's employer usually controls how their work is performed.

An **independent contractor**:

- has established his or her own business
- is usually paid to achieve an agreed result
- usually provides skilled services
- generally controls how those services are provided

Independent Contractors contracts made simple

- may be free to subcontract the work to others
- is free to refuse additional work
- often supplies the material or special tools to complete the job
- usually bears the risk and cost of fixing their faulty work
- can advertise to the general public
- usually has no right to employee entitlements such as paid leave.

For example, an independent contractor might be hired to perform a specific job or series of jobs and often provides specialist skills and materials.

Sham contracting arrangements

A sham arrangement is where an employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually done to avoid paying employee entitlements such as superannuation, workers' compensation, leave, and certain taxes. Sham arrangements are illegal.

Sham contracting arrangements are illegal

- An employer cannot tell an employee that he or she is an independent contractor.
- An employer cannot dismiss or threaten to dismiss an employee in order to engage them as an independent contractor to do the same (or mostly the same) work they performed as an employee and vice versa.
- An employer cannot mislead an employee (or former employee) in order to persuade them to perform the same (or mostly the same) work as an independent contractor.

The Fair Work Ombudsman, the Australian Building and Construction Commission or a union can take action against an employer for behaving like this.

Contracts with minors

Special considerations apply where one of the parties to a contract is a minor (a person under 18 years of age). A contract might not be enforceable against a minor, especially if it includes terms that are unfair to the minor. But the rules are different in each state and territory and you should get advice on the issue if it applies to you.



What to do

Understand your status as a worker

Use the *Contractor decision tool* at www.business.gov.au/contractors or call the Independent Contractors Hotline.

Clarify your status for tax and superannuation purposes

Call the Australian Taxation Office (ATO) on 13 28 66 or use its 'Employee/contractor decision tool' to help you understand whether you are a contractor or employee for tax and superannuation purposes. Visit www.ato.gov.au/businesses.

Complain about a sham contracting arrangement

- Contact the Fair Work Ombudsman on 13 13 94 to discuss your complaint or visit www.fairwork.gov.au.
- If you work in the building and construction industry, contact the Office of the Australian Building and Construction Commissioner (ABCC) on 1800 003 338 or visit www.abcc.gov.au/.
- Contact your union.

Learn more about working as an independent contractor

- Read *Independent contractors: the essential handbook* for information on a wide range of topics affecting independent contractors. Download a copy from www.business.gov.au/contractors or order a copy from the Independent Contractors Hotline.

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SECTION 2

What is a contract?



What is a contract?

A contract can be anything from a formal written document to a purely verbal promise. For example, a contract could be made simply because of a handshake deal to do a job where the only thing in writing is a quote on the back of an envelope.

Whatever its form, if you agree to provide a service to a hirer for money, you have entered into a contract. You are promising to do a job for the hirer and the hirer is promising to pay you for it.

A contract is a verbal or written agreement to do work in exchange for some benefit, usually a payment. The agreement is able to be enforced in the courts.

Written contracts

Written contracts provide more certainty for both parties than verbal contracts. They clearly set out the details of what was agreed. Matters such as materials, timeframes, payments and a procedure to follow in the event of a dispute, can all be set out in a contract.

A written contract helps to minimise risks

It is much safer to have something in writing than to rely on someone's word. A written contract will give you more certainty and minimise your business risks by making the agreement clear from the outset.

Benefits of a written contract

A written contract can:

- provide proof of what was agreed between you and the hirer
- help to prevent misunderstandings or disputes by making the agreement clear from the outset
- give you security and peace of mind by knowing you have work, for how long and what you will be paid
- clarify your status as an independent contractor by stating that the contract is a 'services contract' and not an 'employment contract'. This will not override a 'sham' contract, but a court will take the statement into account if there is any uncertainty about the nature of the relationship
- reduce the risk of a dispute by detailing payments, timeframes and work to be performed under the contract
- set out how a dispute over payments or performance will be resolved
- set out how the contract can be varied
- serve as a record of what was agreed
- specify how either party can end the contract before the work is completed.

Risks of not having a written contract

When a contract is not in writing, you are exposing yourself and your business to a number of risks:

- the risk that you or the hirer misunderstood an important part of the agreement, such as how much was to be paid for the job or what work was to be carried out
- the risk that you will have a dispute with the hirer over what was agreed because you are both relying on memory
- the risk that a court won't enforce the contract because you may not be able to prove the existence of the contract or its terms.

Get advice before you sign

Before you sign a contract, it is a good idea to seek advice from your industry association, lawyer, business adviser or union. See *What to do* at the end of this Section for more information.

When a written contract is essential

It is always better to have your contract in writing, no matter how small the job is. Any contract with a hirer that involves a significant risk to your business should always be carefully considered and put in writing. This is advisable even if it means delaying the start of the work. A written contract is essential:

- when the contract price is large enough to make or break your business if you don't get paid
- where there are quality requirements, specifications or specific materials that must be used
- where there is some doubt that the hirer has enough money to pay you
- when you must have certain types of insurance for the type of work you are doing
- where the contract contains essential terms, such as a critical date for the completion of the work before payment can be made
- where you or the hirer need to keep certain information confidential
- when it is required by your insurance company for professional indemnity purposes
- where there is a legal obligation to have a written contract (eg. trade contracts for building work in Queensland).

Verbal contracts

Many independent contracting arrangements use verbal contracts, which only work well if there are no disputes. A handshake agreement may still be a contract and may (though often with difficulty) be enforced by a court. However, verbal contracts can lead to uncertainty about each party's rights and obligations. A dispute may arise if you have nothing in writing explaining what you both agreed to do.

Part verbal, part written contracts

Some agreements may be only partly verbal. For example, there may be supporting paperwork such as a quote or a list of specifications that also forms part of the contract. At the very least, you should write down the main points that you agreed with the hirer to avoid relying on memory. Keep any paperwork associated with the contract. The paperwork can later be used in discussions with the hirer to try to resolve a problem. If the dispute becomes serious, it may be used as evidence in court.

The most important thing is that each party clearly understands what work will be done, when it will be completed and how much will be paid for the work.

Examples of paperwork that may support a verbal contract

- E-mails
- Quotes with relevant details
- Lists of specifications and materials
- Notes about your discussion—for example, the basics of your contract written on the back of an envelope (whether signed by both of you or not).

If the contract is only partly written or the terms of the work are set out in a number of separate documents (e-mail, quote etc.), it is to your benefit to make sure that any formal agreement you are being asked to sign refers to or incorporates those documents. At the very least, make sure the contract does not contain a term to the effect that the formal document is the 'entire agreement'.

Standard form contracts

A 'standard form' contract is a pre-prepared contract where most of the terms are set in advance and little or no negotiation between the parties occurs. Often, these are printed with only a few blank spaces for filling in information such as names, dates and signatures.

Standard form contracts often include a lot of legal 'fine print' and terms that you may not understand. They tend to be one-sided documents that mostly benefit the person who prepared the contract (for example, by shifting as much risk as possible to the contractor). If you don't understand the fine print or any other part of the contract, you should get advice. If you sign the contract, you will be required to comply with the fine print even if you didn't actually read it.

Tips for standard form contracts

Read every word before you sign

Read the fine print carefully and get advice about any terms you don't understand before you sign. Once you sign a contract you are bound by all of its terms. If there is an indemnity clause, don't sign until you understand the risks you are agreeing to accept if something goes wrong (see page 36).

Cross out any blank spaces

Don't leave any spaces blank. If you don't need to fill in a blank space, always cross it out so the contract can't be changed after you sign it.

Negotiate

You have the right to negotiate any contract before signing, including a standard form contract. But remember that both parties must agree to any changes and record them in the contract you sign. Your union or industry association or a lawyer can help you prepare for negotiations.

Keep a copy

You should always have a copy of any contract you sign. It is best if you and the hirer sign two copies of the contract, so that you can both keep an original. If this isn't possible, ask for a photocopy and check that it is an exact copy. Remember to keep your copy somewhere safe for future reference.

A lawyer, your union or industry association might be able to provide you with information about some common standard terms used in contracts in your industry. They may also be able to provide you with a standard form contract for you to use.

Period contracts

Some independent contractors and hirers use a 'period contract', which is a contract template that sets out the terms for a business relationship where the contractor is engaged to perform work from time to time. In the building and construction industry, these contracts are called 'period trade contracts'.

The contract template will apply each time the hirer offers work to the contractor and the contractor accepts it. This can occur when the contractor provides a quote and receives a work order from the hirer, or the parties might sign an addendum (an addition to the contract) that sets out the specific work to be done or result to be achieved. Once the work starts, the contract template and the work order or addendum will form the total contract for the specific work.

Period contracts can work well for both parties. They allow for the flexibility of performing intermittent work over an agreed period. However, you should check the terms of the agreement to do each new job. Are they the same as those set out in the original contract template? Any term or condition that is different for a particular job, may change the terms of the original contract template.

If you are unsure about anything related to a period contract, get advice before you sign or agree to new work, even if you have performed work for that hirer previously.

Tip: Before you agree to start a new job under the contract template, check whether the terms and conditions are the same as those set out in the original contract template. If not, don't take on the work until you are happy with the changes to the contract.



What to do

Learn what to include in a written contract

- Read Section 4 of this guide: *What should be in a contract?*

Get advice

- Consult your union or industry association. For contact details, search the *Directory of government and business associations* at www.business.gov.au/directory.
- Call the Small Business Support Line on 1800 777 275.
- Talk to your business adviser/mentor.
- Visit your local Business Enterprise Centre. Call 1300 363 551 or visit www.becaustalia.org.au.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory.
- To find out about free or low-cost legal advisory services in your state or territory, visit www.business.gov.au/contractors.
- Indigenous Australians can contact the Aboriginal and Torres Strait Legal Service in your state or territory. Contact details can be found on the Attorney General's website at www.ag.gov.au under *Legal Aid for Indigenous Australians Programs*.
- Indigenous Australians can also contact the Australian Indigenous Chamber of Commerce. The Chamber may be able to assist you to find a business mentor or a business network to help you get started as a contractor. Visit www.indigeneschamber.org.au or call 0428 247 913.

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SECTION 3

How to negotiate a contract



Negotiating a contract

Negotiating doesn't come naturally to most people but with careful preparation and a basic understanding of what makes a workable contract, you will be better placed to negotiate a contract that works for you.

Contract negotiation is not something that should be seen as an 'aggressive' exercise. If you approach a negotiation with your eye on a good outcome for you and the hirer, you will have a better chance of success.

Tip: Clear contracts make good business relationships because they help both parties understand their rights and obligations.

Prepare

Good preparation is essential for successful negotiation. It will give you more confidence to negotiate and improve your chances of getting an outcome that works for you. Learn about the hirer's business before you begin negotiations. Their website, if they have one, is a good place to start. What does the hirer produce? Who is their market? What are their strengths and weaknesses? But most of all, make sure you have a clear idea of what you want from the contract.

Be professional

Be mindful of the way you present yourself and your business during negotiations and be respectful towards the hirer. Being business-like in your approach helps to build and maintain good business relationships. It will also help you and the hirer address potential problems before they arise.

Understand your rights

Independent contracting arrangements are governed by commercial and contract law, not by employment law. This means that you and the hirer are free to choose the terms of your contract within the limits of the law. However, a court may be able to set aside a contract if it is considered to be 'harsh' or 'unfair'. See Sections 5 and 7 of this guide for more information.

Make yourself clear

A contract should clearly and accurately reflect what you and the hirer have agreed and set out exactly what you expect from each other. If you cannot agree about a matter, you may need to discuss it in more detail so you better understand each other's point of view. Do not enter into a contract hoping to sort it out later, because once it is signed the terms will be legally binding. A dispute is less likely if you and the hirer are happy with the terms of a contract from the start.

Write it down

It is good practice to take notes of all the negotiations and discussions you have with the hirer and record the dates they occurred. This should be done both before and after you sign the contract. If the contract has commenced, any discussions that change the terms of the agreement become a 'variation' to the contract or a new, separate contract depending on the content and the way it is agreed. You should attach a copy of the agreed changes (or, for example, an email that confirms you both agree to the changes) to the original contract. Variations are discussed further on pages 41-42.

Get advice

Get advice **before** you sign a contract if you are unsure about the meaning of any terms or what you're agreeing to. If necessary, get advice from your business adviser, union, professional association or lawyer before negotiating or signing. A lawyer can also review your contract to make sure it is legally enforceable.

Tip: Get advice before you sign a contract. It can be too late to fix or change a contract once it is signed.

Get language assistance if necessary

You may be in a better position to negotiate the terms of your contract if you can communicate with the hirer in your own language and understand the language used in the contract. Consider speaking to the hirer through an interpreter or paying for the contract to be translated by an accredited translator in your language. See our *Language and communication assistance* Section on page ii for more details about how to find an interpreter or translator.



What to do

Improve your negotiation skills

- Contact your local Business Enterprise Centre to find out about workshops in your area. Visit www.becaustalia.org.au to find a centre near you or call 1300 363 551.
- Contact your local TAFE college to see what they offer in negotiation skills or small business management training.
- Read books about negotiating in business.

Get advice

- Consult your union or industry association. For contact details, search the *Directory of government and business associations* at www.business.gov.au/directory.
- Call the Small Business Support Line on 1800 777 275 to get information, assistance and referrals.
- Talk to your business adviser/mentor.
- Visit your local Business Enterprise Centre. Call 1300 363 551 or visit www.becaustalia.org.au to find a centre near you.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. Contact details are listed in the *Directory of government and business associations* at www.business.gov.au/directory.
- To find out about free or low-cost legal advisory services in your state or territory, visit www.business.gov.au/contractors.



What to do (continued)

- If you are an Indigenous Australian, contact the Aboriginal and Torres Strait Legal Service in your state or territory. Contact details can be found on the Attorney General's website at www.ag.gov.au under *Legal Aid for Indigenous Australians Programs*.
- Indigenous Australians can also contact the Australian Indigenous Chamber of Commerce. The Chamber may be able to assist you to find a business mentor or a business network to help you get started as a contractor. Visit www.indigenouchamber.org.au or call 0428 247 913.

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SECTION 4

What to include in a contract



What should be in a contract?

As discussed in Section 2 of this guide, a contract may be enforced by a court whether it is verbal or in writing. However, a written contract is more reliable and less risky because it doesn't depend on one person's word against another. This Section aims to help you draft your own contract or negotiate a better deal in a contract that is provided to you by the hirer.

Contract checklist

See the *Contract checklist* at the front of this guide for a list of important things to consider before you sign a contract.

Drafting a contract—where to begin

Where possible, it is best to use a contract that is customised to your profession or industry as this will include terms that are relevant to the work you do or the industry you work in. An industry association is a good place to start. Some industry associations sell industry specific standard form contracts to non-members.

Alternatively, you can use this guide to consider all the aspects of a contract. It may assist you to draft your own or negotiate a better deal in a contract that is provided to you by the hirer. You could also ask a lawyer to draft a contract for you.

Some hirers that engage a number of independent contractors may use a standard form contract for their business. In this instance, you can either accept the contract as it is or negotiate to change the provisions. See pages 13-14 for more information about standard form contracts.

Contract language

Contract language does not need to be complicated or legalistic. In fact the simpler and plainer the language, the more easily the contract can be understood.

Misunderstandings will also be less likely. If you use a lawyer to draft a contract, ask them to use simple, plain English and ask them to explain anything that you don't understand.

Tip: Contracts often use language such as 'the principal' and 'the contractor'. This is often done for convenience in writing standard form contracts. However, you might find it simpler to use your name and the hirer's name. You might also consider using computer software to make it easier to draft contracts yourself. This will allow you to personalise your contract.

Summary of what could be included in a contract

Don't be put off by the following list, it's quite long. Everything has been included in case you need it, but a short, simple contract may work just as well for your needs. It depends on the job. At the very least, a contract should include the basics: the description of services, the payment and completion terms and a dispute resolution procedure. However, you should consider all the topics discussed in this Section, and listed on the next page, before you negotiate each contract. It's better to be safe than sorry.

Summary of what could be included in a contract

Term	Purpose	See page
The parties	Sets out the names, signatures and other business information of the parties to the contract (you and the hirer).	27-28
Description of services or results	Provides detail about the work to be done or the result that is expected.	28-30
Payment	Sets out the method, manner and timing of payments and who pays for expenses.	30-34
Intellectual property	Clarifies rights to intellectual property. Note that the intellectual property (for example, copyright) for work you create belongs to you unless the contract says otherwise.	34-35
Confidential information	Protects information such as your profit margins, the hirer's client lists or trade secrets.	36
Indemnity	Sets out when and how the hirer can be compensated for any loss as a result of your work.	36-37
Insurance	Clearly identifies the insurance obligations of each party.	37-38
Subcontracting	Clarifies whether you can subcontract the work and if there are restrictions on choosing a subcontractor.	38
Exclusivity arrangement	Restricts the contractor from working for other clients during the contract period.	39
Restraint of trade	Restricts you from trading with the hirer's clients for a specified period of time.	40

Responsibility for fixing faulty or incomplete work	Sets out who has responsibility for fixing defective or incomplete work. It is common for a subcontractor to have this responsibility in the building and construction industry.	40-41
Procedure for settling disputes	Sets out how the parties will handle a dispute if it arises.	41
Variations	Sets out how or when the parties can vary the contract by mutual agreement.	41-42
Contract termination	Specifies when and how each party can end the contract and what the consequences can be in certain circumstances.	60-66

The parties

All written contracts with independent contractors should include some basic information about you and the hirer (the parties to the contract).

- **Names and business addresses:** Know who you are contracting with—is it a company, trustee, partnership or individual? This will be important if there is a dispute during the contract period and you need to go to court. Understanding exactly who you are contracting with will also better allow you to assess the risks of entering into the contract and to locate relevant information about the other party.
- **ABNs:** If you are required to register for Goods and Services Tax (GST), the contract should include the Australian Business Numbers (ABNs) of both parties. Note that some groups such as labour hire workers are not entitled to have an ABN. Use the Australian Taxation Office's *ABN entitlement tool* to see if you need to register for an ABN. See the *What to do* box at the end of this Section for more information.

- **ACNs:** Companies incorporated under the Commonwealth *Corporations Act 2001* are assigned an Australian Company Number (ACN). If a company's ACN is different from the last nine digits of the company's ABN, the ACN should also be included in the contract.
- **Statement about your status as an independent contractor:** If the contract is for a genuine independent contracting relationship, it should state that the contractor is an independent contractor, not an employee. This may be considered relevant by a court if your status is in question because it shows what was intended when the contract was signed. However, sham contracting is illegal and a statement that says you are an independent contractor will not override a sham contracting arrangement. See page 4-5 for more information about sham contracting.
- **Signatures (and the signatures of any witnesses):** Both you and the hirer must sign the contract for it to be valid.

Description of services or results

Every contract should include a description of the agreed work to be done or the result to be achieved. This should be as detailed as necessary to make it clear.

It should state:

- what work will be done or what result will be achieved
- when the work will start and when it will be completed (specific dates)
- where the work will be done (the hirer's business premises, your home office or another location).

Good example

Lee will deliver training sessions in Biz-Fast software (Version 3) to 15 staff from Recall Ltd. Sessions will be held on 10 and 11 May, starting at 9 am, with each session lasting 3 hours. Training will be conducted at Recall Ltd, head office in Bigtown. The training services will include providing a Biz-Fast software user manual and a one-page help sheet for each trainee.

Bad example

Lee will train Recall Ltd employees in Biz-Fast software.

In some cases, you may have already discussed the work with the hirer or done similar work for them in the past. However, it is still important that the contract sets out all the relevant information about the work to be done. Otherwise there might be confusion later about who said what to whom. If the contract contains a complete description of the tasks, you will be able to refer to it and check what must be done.

Generally speaking, the contract should state what the required service or expected result is, but not outline in detail how it will be done. This is because giving directions on how to perform work is more characteristic of an employment relationship than of a contracting relationship.

Example

The required result should be stated:

Mary will clean the offices of ReCALL Ltd each Saturday by 6 pm.

But in most cases the contract should not say how to achieve that result:

Mary will clean the offices of ReCALL Ltd each Saturday by 6 pm. Mary must only use cleaning equipment and products approved by the CEO of ReCALL Ltd, and must clean each level in the order specified in writing by the CEO each Friday.

However, despite this general rule, the type of service or expected result may make it necessary to provide some directions. For example, a builder is not simply asked to build a house but is asked to build it according to drawings and specifications. But the hirer does not tell the builder how to mix cement. The independent contractor still retains a high degree of control over the work.

Payments

The contract should set out the amount, method and timing of payments and how expenses will be handled. These are discussed in more detail below.

Method

The two most widely used methods of payment are fixed fees and hourly or daily rates. Details about how these fees are calculated should be clearly set out in the contract.

- **Fixed fee:** Sometimes you will be paid a single, fixed fee to perform an entire job. If the contract is long term, it may be worth including a clause in the contract that enables your fees to be reviewed if business costs increase (see *Variations* on pages 41-42).

Example of how a fee review clause works

Effie has a contract with ReCall Ltd for one year to deliver catalogues to residential homes for a fixed fee of \$500 a week including GST. Effie must cover long distances to make these deliveries. Two months into the contract, petrol prices increase sharply, and the fixed fee no longer covers Effie's fuel costs each week. Effie's contract with ReCall has a clause that enables her fee to be reviewed during the contract period. At their review meeting, Effie and ReCall agree to vary the contract to increase Effie's fee to \$600 per week including GST to cover the increased cost of fuel.

- **Hourly or daily rate:** If you are getting paid according to the number of hours or days you work, the contract should state how many hours make up a standard working day (you may also wish to specify how many days a week you will work). It should also set out the fees that are payable for one hour's work and/or one day's work. The contract should always state whether GST is included in the fee (if GST is payable). Contracts that specify hourly or daily rates often require monthly payments.

Is GST included?

Regardless of the payment method you choose, the contract should always clearly state whether GST is included or not. It is best practice to include GST in the contract price (if GST is payable). If there is no mention of GST in the fee, the law says that GST is included.

Timing

You can set up the timing of payment under fixed-fee contracts in a number of ways:

- **Full payment when the work is completed:** Before you agree to this, you should carefully consider whether this is appropriate for your situation. Is the contract for a long-term job (meaning you might be without payment for some time)? Will you have to pay for supplies and materials in the meantime?
- **Progress payments (payments by milestones, results and/or instalments):** This means you are entitled to payment either at certain intervals throughout the contract period (for example, on certain dates) or when you have completed a particular task or achieved a particular result. The contract should clearly describe all milestones so there are no disputes about when a task is considered to be completed.

Staging payments in the building and construction industry

If you work in the building and construction industry, check with your state or territory industry association or government building authority to understand the rules about staging payments.

- **Part payment up front, the rest paid on completion:** This arrangement can be used to cover start-up or one-off costs for the contract such as the purchase of materials.

Example of a progress payment clause

The total fee for the services is \$9350.00 (GST included) payable in the following instalments:

- \$4400 (GST inclusive) upon delivery of training sessions 1 and 2*
- \$4400 (GST inclusive) upon delivery of training sessions 3 and 4*
- \$550 (GST inclusive) upon attendance at final feedback meeting.*

The hirer will make payments within seven working days of receiving a correct invoice from the contractor.

Manner of payment

The contract should set out:

- whether an invoice is required in order for payment to be made
- what each invoice must contain—for example, date of invoice, your business or company name and contact details, the hirer's business or company name, your ABN, your invoice number, description of services or milestone achieved, expenses, payment amount and terms of payment
- the agreed timing for payment or 'terms of payment'—for example, within 30 days of receipt of a correct invoice (standard terms are usually 7, 14, 21 or 30 days, but this can be negotiated)
- how payment is to be made—for example, by specifying your bank account details for direct deposit.

Expenses

Expenses dealt with in a contract may include items such as meals, travel and photocopying. The contract should specify whether the hirer:

- will pay for your expenses while you are performing the contract
- will provide you with supplies that are necessary for the work to be performed.

Intellectual property

A contract may require you to create something, like a software program, a document or a plan for a house. However, the **creator** of intellectual property is not always the owner. The **owner** will have certain rights (called ‘intellectual property rights’) that will allow them to license or sell the creation. The owner may also be able to stop other people from making money out of those creations, even the creator.

As an independent contractor, you will automatically own any intellectual property in the works, articles or inventions you produce, such as copyright. If the hirer wants to own the intellectual property you create, this must be specifically outlined in the contract. It is advisable to first seek legal advice about clauses that give intellectual property rights to the hirer.

Examples of intellectual property clauses

There are two different clauses you might come across.

1. Where **you** own the intellectual property you create:

The intellectual property rights in any materials prepared by the hirer reside with the hirer. The hirer acknowledges that the intellectual property rights in any materials prepared by the independent contractor reside with the independent contractor.

2. Where the **hirer** owns the intellectual property you create:

The independent contractor acknowledges that intellectual property rights in all material vests or will vest with the hirer. The hirer gives the independent contractor a revocable, non-assignable and royalty-free licence to use such material.

Example

Lee is contracted to develop a software program to manage ReCALL Ltd's inventory for \$5000. The contract states that the intellectual property rights in any material developed by Lee under the contract will belong to ReCALL Ltd. It states that Lee is provided with a licence to use the software only for the purposes of the contract.

Lee completes the task, and is very pleased with the software. If he tries to sell the software to another company, he will be in breach of the intellectual property clause in his contract with ReCALL Ltd. This is because the company owns the software, not Lee.

Confidential information

If you want to retain control over your confidential information (for example, client lists, pricing information or other ‘trade secrets’), the contract should include a clause to protect that information. It can also specify the type of information that is confidential so that both parties understand exactly what needs to be protected (for example, ‘information regarding the contractor’s profit margins’).

Example of a confidentiality clause

The hirer will not, without written consent from the contractor, disclose any confidential information of the contractor to a third party. Confidential information includes profit margins and pricing information disclosed in this contract.

Indemnity

A contract may include an ‘indemnity’ clause. In an independent contracting arrangement, this is usually a promise you make to the hirer to accept the risk of loss or damage that the hirer may suffer as a result of your work. Indemnity clauses are usually about shifting risk from the hirer to the contractor. However, it may also state that you are not liable for risks or losses that the hirer has control over.

While risk is an essential consideration in all commercial contracts, you should carefully consider whether the risk you are taking on by agreeing to an indemnity clause is within your control. If it is outside your control, (for example, if the indemnity also applies to work performed by your subcontractors), you may need to get professional advice before you sign.

For people working in certain professions (such as accountants, architects, lawyers or builders), where advice and expertise are central to the performance of the contract, indemnities and indemnity insurance can be a normal part of

doing business. It is important that you understand exactly what responsibility an indemnity clause imposes on you. Professional indemnity insurance is strongly advised for a contract that contains an indemnity clause. For information about professional indemnity insurance, see page 38.

Example

Lee develops a software program to assist ReCall Ltd's inventory management. However, the software is faulty and ReCall Ltd loses money when it fails to maintain correct inventories. The contract contained an indemnity clause so ReCall Ltd may be able to recover those losses from Lee. If Lee has professional indemnity insurance (see below), he may be covered for those losses.

Insurance

Many contracts will require you to be responsible for maintaining your own insurance. The insurance might be for professional indemnity, loss of or damage to property, public liability and workers' compensation. The insurance obligations of each party should be clearly identified in the contract.

Even if a contract does not require you to have these insurances, it is important that you are protected in the event something goes wrong (for example, if someone is injured due to your negligence). You should make sure that any potential liabilities under a contract are covered by your insurance.

Professional indemnity insurance

Professional indemnity insurance is most often used by independent contractors who have expertise in a particular service. For example, engineers may take out this type of insurance to cover against their work becoming unsafe. Medical practitioners may take out cover for protection from being sued if they injure a patient.

Subcontracting

Sometimes you may need to engage a subcontractor to do a job for you or help you do a job. Be sure that you discuss the possibility of subcontracting work with the hirer and include it in the contract. Some hirers will allow you to subcontract part, but not all, of the services. The hirer may wish to specify what work may be subcontracted or place other restrictions in the contract. Alternatively, some hirers will insist that you personally do the work and not allow you to subcontract. If you do use a subcontractor, you will still be responsible for any work performed by the subcontractor. The hirer may want to specify what work may be subcontracted or place other restrictions in the contract.

Remember that if you subcontract the work, you will enter into a contract with the subcontractor as their hirer, even if it is not a written agreement. It is best to have written contracts with subcontractors for the same reasons that you have one with your hirer.

As a hirer, you will need to be aware of your obligations to the subcontractor. Depending on the particular circumstances of your relationship with the subcontractor, you may have obligations in relation to superannuation and workers' compensation among other things. Read *Independent contractors: the essential handbook* for more information (see *What to do* at the end of this Section for details).

Exclusivity arrangement

One of the benefits of being an independent contractor is the ability to work on any number of projects for any number of clients. An 'exclusivity' clause restricts you from entering into contracts with other clients. You should carefully consider whether you want to agree to a clause like this. Make sure you are fairly compensated for being prevented from taking work elsewhere.

A court may not enforce an exclusivity clause that is too restrictive or unreasonable. To determine this, the court will consider factors such as whether the clause protects only the genuine interest of the hirer, the period of exclusivity and the geographic area to which the clause applies. But it's best to have the contract clear so you don't need a court to interpret it.

If you are offered a contract with an exclusivity clause and you can't negotiate its removal, ensure that there is a 'break free' clause included in the contract. This allows you to recover some or all of your costs if the project does not go ahead or is cancelled before the work is complete. However, this requires evidence of your losses. It may be easier to agree on a payment (noting the amount) in the contract clause.

Examples of 'break free' clauses

Cost recovery:

Where the contractor is engaged by the hirer on an exclusive basis, and the hirer decides that the contractor's services are no longer necessary, the contractor will be entitled to be compensated by the hirer for all reasonable costs incurred by the contractor in relation to those services until that time.

Lump-sum payment:

Where the contractor is engaged by the hirer on an exclusive basis, and the hirer decides that the contractor's services are no longer necessary, the hirer will compensate the contractor with a lump-sum payment of \$1000 to cover costs incurred by the contractor in relation to those services until that time.

Restraint of trade

A 'restraint of trade' or 'no poaching' clause may be included if the hirer is concerned that you might take their clients or compete with their business during the contract period or for a period of time after the contract ends. Usually a period is specified during which you cannot trade with the hirer's clients.

As with exclusivity clauses, a court will not enforce a restraint of trade clause that is unreasonable.

Responsibility for faulty or incomplete work

A 'responsibility for faulty or incomplete work' clause may be included to make clear who is responsible for fixing any faulty or incomplete work and the time frame for that responsibility. This time frame may be referred to as the 'defects liability period'.

This type of clause is particularly common in the building and construction industry where independent contractors

may use many subcontractors to complete a task or project. The clause may also provide that the hirer has to provide the contractor with a 'notice to remedy a breach' to give the contractor the opportunity to fix the fault or complete the work before they could seek remedies for a breach of the contract.

Example of a clause about a notice to remedy a breach

If the hirer considers that the contractor has breached this term due to the work being faulty or incomplete, the hirer must first issue the contractor with a notice to remedy a breach. This should include:

- details of the breach
- a reasonable time to remedy the breach
- the consequences of a failure to remedy the breach.

Procedure for settling disputes

Business dealings don't always run smoothly. It is therefore good practice for contracts to include a procedure for settling any disputes that may occur. Disputes could be over matters such as money, work performance or unfairness. See Section 6 of this guide for more information.

Variations

A 'variation' is simply a change to a contract that is already in place. This is common in contracts that cover a long period. For example, the price of materials may increase or the result to be achieved may change. If both parties agree to a variation, a court can enforce it. It is common for contract changes to occur verbally, but it is important that you keep written records of any changes.

If you and the hirer agree to vary a term of the contract, the variation should be put in writing and signed by both parties. The best way of documenting a variation may depend on the nature and detail of the variation—for example:

- A separate document detailing the agreed variation. This document should refer to the date of the original contract, the parties names and any other important details that will identify the original contract. It should clearly set out the agreed changes to the contract. It should be signed and dated by both you and the hirer. Copies of the variation should be attached to both copies of the original contract.
- A handwritten variation to the relevant section of your copy and the hirer's copy of the contract. Changes should be signed or initialled and dated by both parties. This type of variation may be used if the change involves an amount or the inclusion or deletion of a few words.
- A confirmation email or letter and a response from the hirer that shows that you both agreed to the variation. This should be attached to your copy of the contract. If you work in the building and construction industry, you should first check whether there are rules about making and signing variations in your state or territory.

Variation clauses

Contracts often contain a clause for the parties to vary the contract by mutual agreement. You should not agree to a term that allows only one party to decide to change the description of the work. Think carefully about the conditions you place on agreeing to a variation term because it can affect your costs or your ability to complete the work on time.

Ending the contract early

A contract can state when one party can end, or 'terminate', the contract, even if the contract has not been completed. See Section 6 of this guide for further information.



What to do

Learn more about ABNs, ACNs and GST

- For ABN and GST information, contact the Australian Taxation Office's (ATO) Business Infoline on 13 28 66 or visit www.ato.gov.au/business. Search for 'ABN' or 'GST'.
- To find out if you are required to register for an ABN, use the *ABN entitlement tool* on the ATO website (search for 'ABN entitlement tool').
- For information about ACNs, visit the Australian Securities and Investments Commission (ASIC) website at www.asic.gov.au or call ASIC on 1300 300 630.
- Talk to your accountant or tax adviser.

Learn more about insurance

- Read the insurance chapter in *Independent contractors: the essential handbook*. Download a copy from www.business.gov.au/contractors or order a hard copy by calling the Independent Contractors Hotline.
- Read more about workers' compensation on page 52 or visit www.business.gov.au where you will find links to workers' compensation authorities in your state or territory. Or call the Small Business Support line on 1800 777 275 for contact details.



What to do (continued)

Learn more about intellectual property

- Visit Intellectual Property Australia's website at www.ipaustralia.gov.au or call its Customer Service Centre on 1300 651 010.
- If you are a performer, visual artist or musician, contact the Arts Law Centre of Australia on 1800 221 457 or visit www.artslaw.com.au.

Learn more about engaging subcontractors

- Read *Independent contractors: the essential handbook* to understand your obligations as a hirer. Download a copy from www.business.gov.au/contractors or order a copy by calling the Independent Contractors Hotline.

Get advice

- See page 16.

INDEPENDENT CONTRACTORS HOTLINE 1300 667 850

SECTION 5

Laws affecting a contract



Laws affecting a contract

This Section outlines the main laws that will affect most contracts. However, there are many other laws that could apply to an independent contracting arrangement in your particular profession or industry. For example, in the building industry there are laws that affect contractual terms such as licensing and staging payments. If you work for a franchise, franchising laws may also be relevant. Therefore, it is important to check with your industry association, union or a lawyer to ensure that your contracts take into account the relevant laws.

The difference between employment and independent contracting arrangements (see Section 1 of this guide) is important when working out which Commonwealth, state and territory laws apply to you:

- Employment relationships are regulated by specific labour protection laws which provide minimum terms and conditions of employment.
- Independent contracting arrangements are usually treated as ordinary commercial contracts regulated by general commercial laws that apply to business dealings.

Independent contractor arrangements are subject to commercial laws that apply to business dealings.

Independent contractor laws

Generally speaking, the Commonwealth *Independent Contractors Act 2006* (the Act) overrides state and territory legislation that would otherwise apply to independent contractors. For example, laws which 'deem' an independent contractor to be an employee, or which provide remedies in relation to independent contracting arrangements. The Act does not override owner-driver laws in Victoria and Western

Australia, some owner-driver laws in New South Wales and national outworker laws.

Under the Act, an independent contractor can apply to the Federal Court or the Federal Magistrates Court for a remedy in relation to an ‘unfair contract’—a contract that is ‘harsh’ or ‘unfair’.

Although the *Fair Work Act 2009* applies to employers and employees, parts of the Act also provide general protections for independent contractors. These could include protections from a hirer who refuses to engage you because you are a union member or because you have previously made an unfair contract claim. The Act also provides for penalties to be imposed on employers who engage in ‘sham’ arrangements (see pages 4-5 for more information about sham contracting).

Trade practices and consumer laws

Your contract with the hirer will be subject to the Commonwealth *Trade Practices Act 1974* (TPA) and the Australian Consumer Law (ACL). For example:

- ‘Misleading or deceptive conduct’ is prohibited under the ACL. This means that parties must act honestly. For example, a person must not:
 - encourage someone to enter into a services contract by deceiving them about what their true entitlements would be under that contract, or
 - mislead or deceive the other party by encouraging them to enter into a contract on the promise that certain work will be provided.
- ‘Unconscionable conduct’ is also prohibited under the ACL. This means that a person must not behave in a way that is not just or reasonable in the circumstances, to the point of being highly unethical (for example, by encouraging a person with limited knowledge of English to sign a contract when they clearly don’t understand it). In deciding whether

conduct was unconscionable, a court may look at

- the relative bargaining strength of each party
- whether any undue influence or pressure was applied or unfair tactics used
- whether the conditions of the contract were reasonably necessary for the protection of legitimate interests
- whether the affected party was able to understand any documents relating to the supply of the services
- whether a single party had the sole right to change a term or condition of the contract
- whether a single party was willing to negotiate the terms and conditions of the contract, and
- the extent to which the parties acted in good faith.

Collective bargaining

Collective bargaining describes competing independent contractors coming together to negotiate terms and conditions (including price) with a hirer. It has been recognised that small businesses are often more likely to be heard on terms and conditions if they join with other small businesses to collectively negotiate with a larger business, rather than one-on-one. This type of collective bargaining is different from collective negotiations between an employer and its employees for an enterprise agreement.

If you decide to join with other independent contractors to collectively bargain, you need to be mindful not to engage in anti-competitive behaviour as this may result in serious penalties.

You may apply to the Australian Competition and Consumer Commission (ACCC) for permission to collectively bargain with a hirer. The ACCC will only approve the arrangement if it is satisfied that the arrangement is in the public interest. The ACCC has allowed collective bargaining by a range of independent contractors.

Anti-discrimination

Discrimination occurs when an individual or group is treated less favourably than others on the grounds of race, colour, sex, age, disability, religion or a number of other characteristics outlined in anti-discrimination legislation.

A hirer cannot refuse to hire you or change the terms of your contract on the basis of any characteristic considered discriminatory under Commonwealth, state and territory legislation. Similarly, you should not be subjected to bullying, harassment or discrimination while carrying out your contract.

You also have obligations and responsibilities under anti-discrimination laws. You should not bully, harass or discriminate against anyone while carrying out your contract.

Tax

Tax rules do not directly affect the contract you have with your hirer. Where you must charge GST, the tax rules may indirectly affect the potential profitability of your work with a hirer and influence what you think you should charge for your services. In this respect, it is important to understand your tax obligations. Here is some general information.

Australian Business Number (ABN)

As an independent contractor you have tax obligations. The Australian Taxation Office (ATO) provides you an ABN for tax administration purposes. Generally, the rules are:

- if you don't have an ABN, your hirer is required to withhold the top rate of tax plus the Medicare levy and send it to the ATO

- if you have an ABN, you must organise your own tax
- if you have an ABN and your total receipts are more than \$75,000 in a year, you must:
 - register for GST
 - charge GST on your invoices (+10 per cent) and
 - send GST payments to the ATO.

Business activity statements

If you have an ABN you will be required to fill out a regular Business Activity Statement (BAS). This requires you to declare how much GST and income tax you owe. It must be sent to the ATO. Your regular income tax payments are an estimate of how much income tax you owe. At the end of the financial year you will still need to complete your tax return and will receive a refund or owe more tax depending on the result of your annual income tax assessment.

Personal Services Income (PSI) tax laws

There are also special tax rules to ensure that you do not use business structures to avoid your income tax obligations.

- *If you operate as an individual* (not a partnership, company or trust) you are entitled to claim certain expenses as tax deductions necessary to earn your income. The PSI rules may affect the deductions you can claim.
- *If you operate as a partnership*, your partnership is entitled to claim as tax deductions certain expenses necessary to earn partnership revenue. The partnership income is then distributed to each partner. Each partner must pay tax based on net income. The PSI rules may alter the allocation of income and expenses between partners.

- *If you operate as a company or trust*, the PSI rules may particularly affect you. The rules cover such issues as retaining income in the company, splitting income and some deductions.

Voluntary withholding tax arrangements with your hirer

You may also be eligible to enter into a voluntary agreement with the hirer that will enable the hirer to withhold tax for you. This may simplify the administration of your taxation. Further information on this option is available from the ATO. See *What to do* at the end of this Section for contact details.

To check if PSI and other income tax avoidance rules affect you, see *What to do* at the end of this Section and check with your tax adviser.

Superannuation

Even if you have an ABN your hirer may still have to pay the Superannuation Guarantee. This needs to be checked before you agree to the contract.

Under some circumstances, the hirer may have to pay your Superannuation Guarantee contribution in addition to what they pay you for the work you do. Your business structure is an important factor in determining whether the hirer must pay.

Individuals and sole traders

If your contract is for the hours you work rather than to achieve a specific result and you do the work yourself, then the hirer may have to pay the Superannuation Guarantee for you.

Partnerships, trusts and companies

Partners are responsible for paying their own superannuation regardless of whether the contract is for the hours you work or to achieve a result. But if you are an employee or a director of your own company or trust, then the company/trust must pay the Superannuation Guarantee for you. This is because a company is a separate legal entity and as such you are an employee of that entity. If you don't pay enough, or if you miss the payment cut-off dates, you will have to pay the Superannuation Guarantee charge which is a tax penalty.

Superannuation and your contract

If the hirer is required to pay your Superannuation Guarantee contribution, your contract price may change to reflect the extra expense to the hirer.

State and territory laws

Under some state and territory laws you may be covered by their workers' compensation laws even though you are an independent contractor. Under all state, territory and Commonwealth occupational health and safety (OH&S) laws, you will also have other obligations.

- Workers' compensation insurance ensures that benefits are paid to a worker (or the worker's family) if the worker suffers a job-related injury, death or disease.
- OH&S laws tend to apply to workplaces and premises rather than specific contractual relationships. Generally, the hirer must provide a safe workplace for you and you must ensure that your actions don't put yourself or others at risk. You must also alert the appropriate people to hazardous workplace situations and report all accidents and injuries.

If you are not covered by the *Independent Contractors Act 2006*, then some state industrial relations laws may still apply to you, but only where both you and the hirer enter into a contract as individuals (for example, when neither you or the hirer is a company).

OH&S and workers' compensation laws vary between the states and territories, so it is important to check the rules in your state or territory. If you perform work for the Commonwealth Government, the Commonwealth's laws may apply.

Security of payments in the building and construction industry

Independent contractors in the building and construction industry can get help to recover payments from a hirer under state and territory security of payments laws. In most states, these laws provide a dispute resolution mechanism for building and construction contractors who are owed progress payments for work performed for a hirer.

If you work in the building and construction industry, you can use this payment dispute resolution system regardless of whether your contract is verbal or written. You will be covered by the law of the state or territory in which the work is done.

In most states, security of payments laws can allow you to issue the hirer with a payment claim, which gives the hirer a strict timeframe in which to respond with either payment or a payment schedule. If the hirer does not respond, you may be able to take your dispute to adjudication where the hirer can be forced to pay immediately. However, security of payment laws are slightly different in each state and territory. You should check with the appropriate authority to see how the laws operate where you do your work. See *What to do* at the end of this Section.

Remember that it is always best to try to resolve the dispute in the first instance through discussion and negotiation. This can help you maintain a good business relationship with the hirer, which is important if you want to secure future work.

Laws affecting international contracts

If your contract is with a hirer based in another country or some of the work will be done in another country, you may be required to comply with the laws of that country. Some international contracts specify which country's law will apply in deciding future disputes. It is a good idea to consider including a clause like this so you don't waste time and money deciding which court in which country will hear the dispute. You should bear in mind that should a dispute arise in relation to a contract that applies the law of another country, any claim you make in that country is likely to be very expensive for you.

Australia may also be a party to a free trade agreement with the country, which may impact on the contract.

The laws of other countries may be different from Australian law in areas such as import procedures, taxation, employment practices, currency dealings, property rights, the protection of intellectual property and agency/distributorship arrangements. It is strongly recommended that you get advice from a lawyer in the relevant country. Austrade, the Australian Government's trade and investment development agency, has a number of overseas offices that can help you find a legal representative.



What to do

Find out if you are covered by the Commonwealth independent contractor laws

- See pages 46-47. For more details, visit www.business.gov.au/contractors or call the Independent Contractors Hotline.
- If you are not covered and you live in New South Wales or Queensland, contact the Department of Industrial Relations in your state for more information about your state's unfair contracts remedy.
- Consult a lawyer. See page 16.

Learn more about unfair contracts under Australian Consumer Law

- Visit the Australian Competition and Consumer Commission (ACCC) website at www.accc.gov.au or call the ACCC Small Business Helpline on 1300 302 021.
- Contact a fair trading or consumer affairs office in your state or territory. For web links to these authorities, visit www.business.gov.au and search for *fair trading laws*.

Report misleading or deceptive conduct to the ACCC

- Download a complaint form from www.accc.gov.au or contact the ACCC on 1300 302 502.

Learn more about collective bargaining

- Read the ACCC's *Guide to collective bargaining* at www.accc.gov.au or contact the ACCC on 1300 302 502.



What to do (continued)

Find out more or make a complaint about discrimination or workplace bullying

- Contact the Australian Human Rights Commission on 1300 656 419 or visit www.humanrights.gov.au.

Find out about tax and superannuation rules for independent contractors

- Visit the ATO website at www.ato.gov.au/businesses. If you have a question about your tax obligations or a debt, it may help to speak to an ATO officer—call the ATO's small business tax help service on 13 28 66.
- To determine whether you are an independent contractor for tax purposes, use the ATO's online 'Employee/contractor decision tool' at www.ato.gov.au/businesses.
- To find out if the hirer must make superannuation contributions for you, use the ATO's online 'Superannuation guarantee eligibility decision tool' at www.ato.gov.au/businesses or call 13 10 20.

Learn how state and territory OH&S and workers' compensation laws apply to you

- Visit www.business.gov.au and search for 'workers compensation' or 'OH&S', where you will find links to authorities in your state or territory.
- Call the Small Business Support Line on 1800 777 275 for the contact details of the appropriate authority.



What to do (continued)

Find out about security of payments in the building and construction industry

- Visit www.business.gov.au/contractors. Go to the *Dispute resolution for independent contractors* page, and look for payment disputes in the building and construction industry.
- Contact your industry association or the government building authority in your state or territory.

Get advice about other laws affecting a contract

- See page 16.

Get advice about an international contract

- To find a lawyer overseas, contact the Austrade office in that country. For contact details of Austrade's overseas offices, visit www.austrade.gov.au or call 13 28 78.
- For more information about Australia's free trade agreements, visit www.dfat.gov.au and search for 'free trade agreements' or call 13 28 78.

INDEPENDENT CONTRACTORS HOTLINE 1300 667 850

SECTION 6

When a contract ends



When a contract ends

In a perfect world, a contract will end when the work is complete and you have been paid. But not every contract ends as planned.

There are a number of ways in which a contract can end.

- **By performance:** Where the parties have performed all that is required of them under the contract. This is the most common way for a contract to end.

Example

Effie contracts with Recall Ltd to deliver catalogues to Recall Ltd's customers on a one-off basis for a fee of \$1000. The contract ends when Effie delivers the catalogues and Recall Ltd pays Effie for the work.

Some obligations may continue after the end of the contract. For example, the contract may continue to require you to keep some information confidential.

- **By agreement:** Where both parties agree to end the contract before the work is complete.
- **By frustration:** Where the contract cannot continue for some reason beyond the control of you or the hirer and where neither party is at fault. For example, a contract may be 'frustrated' if a party dies or a new law has made the performance of the contract illegal. It is important to understand that a contract cannot be deliberately frustrated by either you or the hirer.
- **For convenience:** Where a term of the contract allows a party to terminate a contract at any time by notice (where there is no fault by the other party). These clauses are common in government contracts and will usually state

that the government will be liable only for direct costs up to the date of termination incurred by the independent contractor as a result of the termination. This would not include the loss of future profits.

- **Due to a breach:** Where one party has breached an essential term of the contract and the other party decides to end the contract because of that breach. This is discussed more fully below. ‘Essential terms’ are those that reflect the core of what the contract is intended to deliver.

Breach of contract

What is a ‘breach of contract’?

If a person:

- fails to do what is required of them under the contract, or
- makes it clear, before the work is due, that he or she is unwilling or unable to do what was promised that person will have breached the contract.

Examples of breaches of contract

- Effie’s contract with ReCALL Ltd requires that Effie deliver all of her catalogues by 4 pm on Friday. If Effie fails to do this, she is in breach of her contract. If Effie only delivers 90 per cent of the catalogues by 4 pm on Friday, she is still in breach because she did not complete the job. This is called ‘part performance’.
- Effie’s truck breaks down and she tells ReCALL Ltd on Monday that the catalogues will not be delivered by Friday. Effie is in ‘anticipatory’ breach of the contract.

When can a contract be terminated for breach of contract?

A breach of a contract will not bring a contract automatically to an end (unless the contract expressly states that is what should occur). Normally a breach just gives a right to 'damages' (that is, the right to sue for any loss caused by the breach of contract) and the obligations under the contract continue to be binding.

But when the breach of contract is a serious breach or a breach of an essential term, the other party will have a right to choose to terminate the contract or keep the contract going. However, your contract may require the hirer to provide you with a 'notice to remedy a breach' before it can be terminated. See Section 4 for an example of this type of clause.

Example of a breach of an essential term

Lee has a contract with ReCall Ltd to develop new software by 30 June. ReCall Ltd requires the software by this time because it has promised clients that from 1 July the software will be available for sale. If Lee fails to develop the software by 30 June, this will be a breach of an essential term because it is essential to ReCall Ltd that the software be ready in time.

It is not always easy to know whether a particular breach by the other party is serious enough to allow you to end the contract. If you try to terminate a contract for breach where you have no right to, the termination will have no effect, and you will still be required to comply with the rest of the contract.

One way to reduce the risk is to include in your contract a provision which expressly states that if a particular term is breached, the other party has the right to terminate the contract. Always seek advice before you try to end a contract in this way. Having a good dispute resolution clause in the contract will help manage these issues.

What else can happen if you breach your contract?

If you breach a contract and the matter goes to court, you may be ordered:

- to pay damages to the other party, or
- to perform your obligations under the contract (also called ‘specific performance’).

Some contracts may specify what payments will be payable if there is a breach by one party of a particular contractual obligation—this is often called ‘liquidated damages’. As long as this agreed sum is a genuine pre-estimate of the damage likely to be caused by the relevant breach, a court can enforce it. However, a court will not enforce it if the agreed sum is significantly greater than the cost of the damage and considered unconscionable.

Settling disputes

Including a dispute resolution procedure in your contract is a sensible precaution. For example, this might require you to take the following steps before legal proceedings can commence:

- give the other party written notice setting out the nature of the dispute
- hold discussions with the other party (directly or through representatives) within five days of receiving written notice
- refer the dispute to an independent third party (for mediation, arbitration or expert determination).

This process allows the parties to try to resolve a dispute quickly and cheaply in a manner that ensures that the parties can continue to do business with each other.

To reduce the cost of resolving a dispute, ensure the contract requires that each party pay its own costs in the dispute resolution process.

Tip: Timeframes and deadlines should be included in a dispute resolution clause to avoid it dragging on.

There are several ways you can resolve a dispute.

- **Negotiation:** In many cases, it is best to try to resolve a dispute by negotiation rather than involving outside parties, or resorting to the courts.
- **Alternative dispute resolution:** You could ask the other party to agree to seek help to resolve the dispute—for example, through conciliation, mediation or arbitration. These are all forms of alternative dispute resolution, or ADR. ADR involves an impartial third person who assists the parties with resolving the issue for themselves. In conciliation and mediation, the third person is there to help you communicate and negotiate an outcome (not come to a decision about who is right or wrong). In arbitration, the third party can come to a decision to resolve the dispute. It is best to set out in the contract what person or organisation will act as a mediator or arbitrator if there is a dispute. This avoids a dispute over who will mediate a dispute!
- **Taking the matter to court:** The court process can be time consuming and costly and in most situations should be the last resort. But if you feel that the other party is not doing what they are supposed to under the contract and they are not prepared to negotiate or participate in ADR, you could go to court to seek damages or specific performance for breach of contract.

Example using a dispute resolution clause

Effie has a contract with ReCALL Ltd under which she is required to deliver catalogues each week to residential homes. In return ReCALL Ltd is required to pay Effie \$500 a week. Effie is upset because ReCALL Ltd is two months behind on payment.

As a first step Effie talks to the Human Resources Manager of ReCALL Ltd about the payment. He tells Effie that she will get her payment 'when we are good and ready'.

Effie is upset by this and considers taking the matter to court. Luckily she first looks at her contract to see what it says about disputes. It says that she must first discuss the issue with the Finance Manager and then if the issue is not resolved it will be dealt with by an independent third party.

Effie talks to the Finance Manager, who says he is not happy with some aspects of Effie's work. They are unable to reach agreement. The contract states that the second stage of resolving the dispute is to attend alternative dispute resolution. Both Effie and the Finance Manager agree to mediation with an independent mediator as the next step to resolve their dispute.



What to do

Get advice

- Consult your union or industry association. For contact details, search the directory at www.business.gov.au/directory.
- Talk to your business adviser/mentor.
- To find out about free or low-cost legal advisory services in your state or territory, visit www.business.gov.au/contractors and go to the *Dispute resolution for independent contractors* link or call the Independent Contractors Hotline.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. Contact details are listed in the *Directory of government and business associations* at www.business.gov.au/directory.

Find out more about your dispute resolution options

- To find out about free or low-cost mediation services in your state or territory, visit www.business.gov.au/contractors. Go to the *Dispute resolution for independent contractors* link and click on *Alternative dispute resolution*.
- If you work in the building and construction industry and your dispute is about payments, you may be able to get help to recover payments from a hirer under security of payment laws. See page 53.

INDEPENDENT CONTRACTORS HOTLINE 1300 667 850

SECTION 7

Unfair contracts

Under the Independent
Contractors Act



Unfair contracts and the Independent Contractors Act

If you believe your contract with a hirer is unfair or harsh, you may be able to do something about it. The first thing you should do is talk to the hirer to see if the matter can be resolved through discussion and negotiation. If this is not possible, you and the hirer may agree to use an alternative dispute resolution process such as mediation. A mediator may be able to assist you and the hirer to reach a settlement. If mediation is not suitable for your particular dispute, and the problem cannot be resolved, you may be able to take action through one of the courts.

First, you should get legal advice to determine whether the contract might be considered 'unfair' or 'harsh' by a court. If your lawyer believes you have a case and you are covered by the *Independent Contractors Act 2006*, you can apply to a federal court to have your contract reviewed.

Unfair contract terms and the Australian Consumer Law

The Australian Consumer Law (ACL) contains provisions for unfair contract terms, which should not be confused with the unfair contract provisions in the Independent Contractors Act that apply to service contracts (discussed in this Section). From 1 July 2010 under the ACL, unfair contract terms in **standard form consumer contracts** may be declared void by a court.

Do you also provide services to consumers?

If you also provide services to consumers and use standard form consumer contracts, you should be aware of this new law. Under the ACL, a 'consumer contract' is defined as a contract entered into 'wholly or predominantly for personal, domestic or household use or consumption'. This law does not apply to contracts you enter into with a hirer.

For more information about the ACL, contact the Australian Competition and Consumer Commission (ACCC). See *What to do* at the end of this Section for contact details.

Independent Contractors Act

The *Independent Contractors Act 2006* contains an ‘unfair contracts’ remedy for contracts that are ‘unfair’ or ‘harsh’.

If you have tried to resolve the problem without success and you are covered by the Act, you can apply to a court to have your contract reviewed on the grounds that it is unfair or harsh. To do this you will need to lodge an application form and pay a filing fee. However, it is best to get professional advice before you take legal action.

If the Act does not apply to you, and you live in Queensland or New South Wales, you may be able to seek a remedy under the industrial relations laws in those states. If you live in Victoria, the Victorian Small Business Commissioner can help with mediation.

Who is covered by the Independent Contractors Act?

The Act applies where one party to a services contract is either a constitutional corporation, the Commonwealth, or a resident of the Australian Capital Territory or the Northern Territory, or where the services contract was either made or performed in a territory. You may need legal advice to determine whether the Act applies to you.

Examples of clauses that may be considered unfair

The hirer may vary the rate of the contractor's fee at any time during the term of the contract.

or

This contract may be terminated at any time by the hirer with or without prior notice to the contractor.

These terms are too one-sided and give the hirer an unfair advantage.

The contractor will receive \$5 per hour for work performed.

This term provides for a fee that is substantially less than the federal minimum wage for employees.

How does a court decide if a contract is 'unfair' or 'harsh'?

A court may consider:

- the terms of the contract when it was made
- the terms of a variation to the contract at the time that variation is made
- the relative bargaining strengths of the parties to the contract
- whether any undue influence or pressure was exerted upon, or any unfair tactics were used against, a party to the contract
- whether the contract provides total remuneration that is, or is likely to be, less than that of an employee performing similar work.

Example of an ‘unfair’ contract

Mary is an elderly cleaner with limited English skills who contracts with ReCALL Ltd to clean office buildings. She has never previously been a party to a services contract. In these circumstances, a court may take account of Mary’s limited understanding of her contractual obligations when compared with ReCALL Ltd’s when considering whether the contract is unfair.

What can a court do if it decides a contract is ‘unfair’ or ‘harsh’?

A court may order that:

- the terms of the contract be changed (for example, terms may be added or removed)
- parts of the contract will have no effect
- the contract will be ‘set aside’ (which means the entire contract will no longer have any effect).

In most cases you will not be required to pay the court costs of the other party even if you lose.

No double-dipping

You can’t make an unfair contract claim in a federal court if you are also making an unfair contract-like claim under another law such as the Trade Practices Act or a fair trading law (see Section 5).



What to do

Find out if you are covered by the Independent Contractors Act

- Call the Independent Contractors Hotline. You may also need to get legal advice if it is unclear whether you are covered.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. Contact details are listed in the *Directory of government and business associations* at www.business.gov.au/directory.

Try mediation

- To find out about free or low-cost mediation and legal advisory services in your state or territory, visit www.business.gov.au/contractors.
- If you live in Victoria, contact the Office of the Victorian Small Business Commissioner about mediation. Visit www.sbc.vic.gov.au or call (03) 9651 9967.

Take your unfair contract case to court

- As a first step, it is advisable to get legal advice to make sure you have a case under the provisions of the Independent Contractors Act (see above).
- Lodge a claim in the Federal Magistrates Court. Visit www.fmc.gov.au for more information or call your local Federal Magistrates Court registry.
- Lodge a claim in the Federal Court which has higher fees than the Federal Magistrates Court. Visit www.fedcourt.gov.au or call your local Federal Court registry.



What to do (continued)

Learn more about unfair contracts under Australian Consumer Law

- Visit the Australian Competition and Consumer Commission (ACCC) website at www.accc.gov.au or call the ACCC Small Business Helpline on 1300 302 021.
- Contact a fair trading or consumer affairs office in your state or territory. For web links to these authorities, visit www.business.gov.au and search for *fair trading laws*.

INDEPENDENT CONTRACTORS HOTLINE 1300 667 850

Glossary

Note: Words in a definition that appear elsewhere in the glossary are in bold font.

alternative dispute resolution (ADR)	Where an impartial person assists those involved in a dispute to resolve the issues between them. See arbitration , mediation and conciliation .
ABN	Australian Business Number, which is a single identifying number used when dealing with other businesses and the Australian Taxation Office.
addendum	An addition to a contract that must be signed by both parties to be binding.
anticipatory breach	Where a party makes it clear, before performance of a contract is due, that he or she is unwilling or unable to perform his or her obligations as promised (that he or she will in the future breach the contract).
arbitration	A form of alternative dispute resolution where the participants to a dispute present arguments and evidence to an arbitrator who makes a binding determination.
breach of contract	A failure by one party to a contract to do what is required of him or her under that contract. This includes an anticipatory breach .
clause	A term of a contract .
collective bargaining	An arrangement under which two or more competitors in an industry come together to negotiate terms and conditions (which can include price) with a supplier or a customer.
conciliation	A form of alternative dispute resolution that is similar to mediation except that the conciliator attempts to get the parties to agree on a resolution of the dispute based on relevant legal principles.

confidential information	Information a party to a contract may wish to protect (for example, client lists, pricing information or other trade secrets).
contract	A legally enforceable agreement made between two or more parties . A contract may be a verbal contract or a written contract (or may be partly verbal and partly written).
damages	Money that a court orders must be paid to compensate for any loss suffered by one party because of a breach of contract by the other party.
deemed employee	An independent contractor who is treated as an employee for the purposes of particular laws.
description of services	A term of a services contract which states the work that the hirer expects the independent contractor to perform.
employee	A person who performs work under an employment contract . An employee is not an independent contractor .
employer	A person who employs an employee under an employment contract . An employer is not a hirer .
employment contract	A contract under which a person (the employee) agrees to perform work for another person (the employer) in an employment relationship . An employment contract is not a services contract .
employment relationship	An arrangement in which work is performed under an employment contract . An employment relationship is not an independent contractor arrangement .
exclusivity	A restriction on an independent contractor to perform work for other hirers during the life of the contract.
essential term	A term in a contract that is so important that a failure to abide by the term can allow termination for breach by the other party (for example, the terms relating to payment).

Fair Work Ombudsman	A Commonwealth official who, supported by staff, works with employees, employers, independent contractors and the community to promote harmonious, productive and cooperative workplaces. The Fair Work Ombudsman's office investigates workplace complaints and enforces compliance with the <i>Fair Work Act 2009</i> .
Federal Court	A court established by the Commonwealth Parliament which has the power to decide on disputes arising under Commonwealth laws, including unfair contract disputes brought under the <i>Independent Contractors Act 2006</i> .
Federal Magistrates Court	A lower level court established by the Commonwealth Parliament with similar powers to the higher level Federal Court . The Federal Magistrates Court has less formal rules of evidence than the Federal Court and has lower filing fees.
franchising	Broadly, franchising describes an ongoing business relationship in which one party (the franchisor) authorises another (the franchisee) to use their business model, including trademarks and marketing strategy, in return for an agreed fee and/or proportion of sales.
frustration	The termination of a contract because the contract cannot be performed for some reason and neither party is at fault.
Goods and Services Tax (GST)	A broad-based tax of 10 per cent on the sale of most goods and services in Australia.
hirer	A person who engages an independent contractor and receives the benefit of work under a services contract . A hirer in this context is not an employer . Sometimes a hirer is referred to as a 'principal'.
indemnity	A term of a contract which, in this context, requires an independent contractor to compensate the hirer for any loss caused to the hirer (by breaching the contract or acting negligently while performing the contract).

independent contractor	A person who provides labour or skills or works to achieve a result for a hirer under a services contract . An independent contractor is not an employee .
independent contractor arrangement	An arrangement in which work is performed under a services contract . An independent contractor arrangement is not an employment relationship .
insurance	An indemnity made with a third party against specified loss, including professional indemnity insurance, public liability insurance and workers' compensation .
intellectual property	Intangible property such as copyright, designs, patents, trademarks and trade secrets .
intellectual property right	A right to use or sell (or otherwise make money from) intellectual property .
labour hire worker	A worker who is engaged by a labour hire agency as either an independent contractor or an employee to perform work for a third party. The worker's contract is usually with the agency and not the organisation they perform work for.
legally enforceable	Able to be enforced by a court.
liquidated damages	A term of a contract which specifies what damages will be payable in the case of a breach of contract .
mediation	A form of alternative dispute resolution in which the participants work with a mediator to identify the issues in dispute, develop options, consider alternatives and try to reach an agreement (sometimes assisted by a mediator).
misleading or deceptive conduct	Acting dishonestly. Such conduct is illegal under the Commonwealth <i>Trade Practices Act 1974</i> and similar state and territory laws.
negligence	A failure to exercise the degree of care considered reasonable under the circumstances.
negotiation	A process of bargaining leading up to the making of a contract .

occupational health and safety (OH&S)	Obligations on the owners and occupiers of premises to provide a safe workplace to employees and independent contractors .
Ombudsman	See Fair Work Ombudsman .
party or parties	A person or persons who have entered into a contract . For example, the hirer and the independent contractor are parties to a contract.
performance	The carrying out of obligations under a contract .
professional indemnity insurance	Insurance that protects a person against claims of negligence made against them, to cover costs and expenses of defending legal claims and damages . This type of insurance is common for independent contractors that provide advice or expertise (such as accountants, lawyers, architects or engineers).
progress payments	Payments made by instalment or after certain milestones are reached.
public liability insurance	Insurance that protects a person against claims for property damage and bodily injury.
Personal Services Income (PSI)	A reward for, or the result of, your personal efforts or skills which can affect tax obligations for independent contractors.
remedies	Types of orders that may be made by a court, which include damages and specific performance .
restraint of trade	A clause that restricts the independent contractor from taking the hirer's clients or competing with the hirer's business for a specified period of time during or after the contract ends. This is sometimes known as a 'no poaching' clause.
security of payments laws	State and territory laws that provide a dispute resolution mechanism for construction contractors who are owed progress payments for work performed for a hirer .

services contract	A contract under which a person (the independent contractor) agrees to perform work for another person (the hirer) in an independent contractor arrangement . A services contract is not an employment contract .
sham contracting arrangement	When a hirer deliberately disguises an employment relationship as an independent contracting arrangement so they do not have to pay employment entitlements including superannuation and workers' compensation .
specific performance	A court order requiring one party to perform obligations under a contract .
standard form contract	A pre-prepared contract where most of the terms are set in advance and little or no negotiation occurs. Normally these are printed with only a few blank spaces left to fill in, such as names, dates and signatures.
subcontracting	Where an independent contractor enters into a services contract with another person (the subcontractor) under which the subcontractor performs work for the hirer .
superannuation	An investment made for a person's retirement.
Superannuation Guarantee (SG)	An Australian Government scheme that requires employers to make superannuation contributions for employees . In some circumstances, a hirer may be required to make contributions for an independent contractor who is considered an 'employee' under SG laws.
termination	The bringing to an end of a contract . A contract may be ended by performance , by agreement , by frustration or by termination for breach .

termination for breach	The termination of a contract by one party in response to a breach of contract by the other party.
third party	A person who is not a party to a contract .
trade secret	Any formula, pattern, machine or process of manufacturing used in a business that may give the business a competitive advantage.
written contract	A contract in which all the agreed terms are set out in writing.
workers' compensation	A type of insurance that ensures that benefits are paid to a worker (or the worker's family) if the worker suffers a job-related injury, death or disease.
unfair contract	A contract which is unfair or harsh under the <i>Independent Contractors Act 2006</i> and similar state and territory laws.
unconscionable conduct	Exploiting a special weakness of another party to a contract (both during negotiations and during performance of the contract). Such conduct is illegal under the Commonwealth Trade Practices Act 1974 and similar state and territory laws.
variation	A change to a contract that is already in place (often requiring agreement).
verbal contract	A contract in which not all the agreed terms are set out in writing (for example, a handshake agreement).
withholding tax	The system whereby a hirer withholds an amount (equal to the top tax rate plus the Medicare levy) from your payment and sends it to the ATO.

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My notes

Independent Contractors
contracts
made simple

INDEPENDENT
CONTRACTORS
HOTLINE
1300 667 850

Also available in PDF
and audio recording from
business.gov.au/contractors



something for every business

business.gov.au

Essential business information

ABN Lookup

The simple way to find ABN information

Business checklists

Start and grow your business the easy way

Business consultation

Consult with government on issues affecting your business

Business planning

Free guide and business plan template

Content syndication

Publish business.gov.au on your site

GovForms

Government forms for your business

Grants & Assistance Finder

Find business-related government grants & assistance

More ways to connect with
business.gov.au

