

CONTRACTOR AGREEMENTS WHAT MOST PEOPLE MISS



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What Most People Miss About Contractor Agreements

5 Overlooked Provisions That Cause Disputes Later

Questions while reviewing? Email hello@lexalia.com.au or book a 15-min chat

Contractor agreements seem straightforward. You agree on scope and rates, exchange a few emails, and work begins. Many business owners assume informal arrangements will suffice for project-based work.

The reality is more complex. Legal considerations don't become apparent until something goes wrong—when a contractor claims ownership of work you paid for, when the Australian Taxation Office questions whether your "contractor" is actually an employee, or when confidential information is shared inappropriately.

This guide identifies five provisions that business owners frequently overlook. These are practical protections that determine who owns your business assets and whether your arrangements will hold up if questioned.

OVERLOOKED CONSIDERATION 1

Intellectual Property Doesn't Transfer Just Because You Paid for It

Most business owners assume that when they pay a contractor to create something—a logo, website, software code, or marketing content—they automatically own it. This assumption feels reasonable. You commissioned the work, paid for it, and intend to use it in your business.

Under Australian copyright law, the creator of original work owns the copyright unless there's a written agreement that transfers ownership. This means your contractor owns the work they created for you, even though you paid for it. The contractor could potentially restrict your use of it, licence it to others, or use similar work for your competitors.

This matters particularly for work that creates business value—proprietary systems, custom software, or brand elements. If you later want to sell your business, buyers will want to know you own your core assets.

The consequence: Without explicit IP transfer provisions, you may discover years later that you don't own work that's become integral to your business operations. The contractor could demand additional payment to transfer ownership, refuse to transfer it entirely, or you might find they've used the same work for competitors.

The reality: IP ownership must be explicitly addressed in writing before work begins. Your agreement needs to state clearly that all IP created during the engagement transfers to your business, specify when that transfer occurs (on creation, on payment, or at completion), and distinguish between new IP and any background IP the contractor brings to the engagement.

OVERLOOKED CONSIDERATION 2

How You Actually Manage the Relationship Matters More Than What the Contract Says

Since August 2024, Australian law examines the "real substance, practical reality and true nature" of working relationships when determining if someone is genuinely a contractor or should be treated as an employee. This means the actual working arrangement can override what your written contract says.

If you're setting working hours, requiring them to use your equipment, providing training on task completion, preventing them from working for others, or integrating them into your team structure, the relationship may be employment regardless of how it's labelled.

This issue often develops gradually. A contractor relationship might start appropriately, with the contractor working independently. Over time, as they become familiar with your business, you start directing how work should be done or requiring specific availability. These changes can shift a genuine contractor arrangement into something that resembles employment.

The consequence: If your "contractor" is deemed an employee, your business faces liability for unpaid superannuation, PAYG withholding, annual leave entitlements, and Fair Work protections from when the relationship began. Penalties for sham contracting can reach hundreds of thousands of dollars. The Australian Taxation Office can pursue these amounts with interest and penalties added.

The reality: Classification depends on how the relationship operates in practice, not just contract wording. If you need to direct how work is completed, provide equipment, or require exclusive availability, you may need an employment relationship rather than a contractor arrangement. The way you actually work together determines the legal status of the relationship.

OVERLOOKED CONSIDERATION 3

Confidentiality Obligations Aren't Implied—They Must Be Documented

When you bring a contractor into your business systems, give them access to client information, or share pricing strategies and business processes, it's easy to assume they understand this information is confidential. Many business owners believe there's an implied duty of confidentiality simply because the contractor is working for them.

Australian law doesn't create automatic confidentiality obligations for contractor relationships. Without explicit confidentiality provisions, you have limited ability to prevent contractors from using or sharing the information they accessed while working for you.

This becomes particularly problematic when contractors work for multiple businesses in the same industry. Without confidentiality obligations, they can apply whatever they learn from working with you to their work with your competitors. That might not be malicious—they might simply see it as using their accumulated knowledge—but it can significantly damage your competitive position.

The consequence: Without documented confidentiality obligations, you have limited recourse if contractors share your client information, business processes, or strategic plans. Your competitive advantages—client relationships, proprietary methods, pricing strategies—can be undermined without breach of any legal duty.

The reality: Confidentiality provisions need to define what information is confidential, specify how it must be handled during and after the engagement, address data security requirements, and clarify obligations around client information and privacy law compliance. This is particularly important when contractors access systems containing client data or represent your business externally.

OVERLOOKED CONSIDERATION 5

Termination Provisions Matter When Circumstances Change, Not Just at the Start

When engaging a contractor, most business owners focus on getting work started—defining scope, agreeing on rates, setting timelines. Thinking about how the relationship might end feels premature. The assumption is that if everyone is reasonable, endings will be handled reasonably when needed.

Circumstances change in ways that make "being reasonable" difficult. Your business priorities shift and you need to end the engagement early. The contractor's performance doesn't meet expectations. The contractor takes on other commitments that affect availability. Someone becomes unwell or faces unexpected circumstances.

Without clear termination provisions, these situations become contentious. Questions arise about payment for partial work, who owns partially completed deliverables, and what obligations continue after the engagement ends. When there's no agreed framework, both parties negotiate these terms while already in conflict.

The consequence: Without termination provisions, ending contractor relationships becomes complicated. Work in progress has unclear ownership and value. Payment disputes arise about what's owed for partial completion. Transition of work to someone else is hindered by uncertainty about handover obligations.

The reality: Termination provisions help both parties manage change professionally by specifying notice periods for termination without cause, immediate termination rights for serious breaches, valuation methods for partial work completion, procedures for transitioning work and documentation, and any post-termination obligations around confidentiality or cooperation. These provisions make ending relationships less contentious when circumstances require it.

IMPORTANT NOTE

This guide highlights common oversights in contractor agreements. Every contractor relationship has unique elements depending on the type of work, the industry, and how integrated the contractor is with your business. These provisions require tailoring to your specific circumstances.

READY TO GET YOUR CONTRACTOR AGREEMENTS RIGHT?

Understanding what's commonly missed in contractor agreements helps you make better decisions about how to structure these relationships. The difference between informal arrangements and properly documented contractor relationships is clarity about expectations, ownership, and responsibilities.

I work with business owners to create contractor agreements that reflect how they actually operate while protecting intellectual property, managing classification risks, and establishing clear terms around confidentiality and responsibilities.

Ready to discuss your contractor arrangements? Contact Jackie Atchison at LexAlia Property & Commercial Law to explore how your specific contractor relationships can be structured effectively.

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