



Contracts



TOWNSENDS BUSINESS
& CORPORATE **LAWYERS**



What I need to know about...

Contracts

No business can operate for very long without becoming involved in a contract. Doing business is all about engaging in a series of different contracts with all the parties the business deals with – the landlord, employees, the bank, customers, suppliers, the phone company, you name it. So if you are going to run a business, you need to understand the basic rules relating to contracts.

FAQs

Here are the answers to some Frequently Asked Questions about contracts.

What is a contract?

A contract is an agreement between two legal entities that can be enforced at law. There are three basic types of legal entities – individuals (real people), companies (virtual people) and government.

Does it have to be in writing?

Most contracts can be either oral, or in writing. Only a few contracts must be in writing to be enforced, the most common being contracts which involve interests in land.

How is a contract formed?

There are only three requirements for a contract to be created:

- an offer by one party to the other;
- acceptance of the offer by that other party; and
- what the law calls 'consideration', namely one party giving to the other something of value (the most common form of consideration is money, but there are other forms of consideration such as assets or even the exchange of promises ('I'll do this for you, if you do that for me')).

Does it have to be signed?

Since most contracts don't have to be in writing, signatures are not relevant. Contracts which do need to be in writing must be signed.

If contracts don't need to be in writing, why do we bother to have written contracts drawn up?

There are a number of reasons.

- Certainty: Considerable time is spent ensuring that the written document sets out very clearly what the parties believe is going to happen. This avoids any misunderstandings later on.
- Clarity: Written agreements also make it easier to ensure that every possible eventuality is considered and covered so that the parties are not taken by surprise by unforeseen events.
- Recollection: Written contracts jog our memory about what we agreed.
- Evidence: Written contracts provide clear evidence of what the parties agreed to. Oral agreements are always open to argument about precisely what the parties said at the time.

What is a deed?

A deed is a particular type of document with a very long legal history which can establish a contract without some of the usual requirements. It is necessary, however, for the document to be clearly identified as a deed and to be properly executed.

Who can form a contract?

Throughout Australia, anyone over 18 years of age can form a contract. People under 18 are called minors and their legal rights and obligations are more limited than those of adults. For a minor to form a contract it must be agreed to by their guardian (in which case the guardian may also be liable under the agreement).

For companies, a contract can be formed by any officer of the company with the appropriate authority. The more substantial the contract, the fewer the officers of the company who have the necessary authority. Major contracts can only be approved by the Board of Directors of the company and are evidenced by a written contract signed by at least two company officers.

Can contracts ever be changed once they are finalised?

Because contracts are agreements between the parties, those parties can change the agreement at any time as long as all the parties agree to the change. Legislation in some States (eg. The Contracts Review Act 1980 in NSW) allows the courts to change unfair contracts in certain circumstances.

Are some contracts illegal?

You can't be thrown into gaol for entering a contract – even a contract to do something illegal. The existence of the contract could, however, be used as evidence that you are conspiring to commit a crime. If a contract has an illegal purpose it may be unenforceable and virtually worthless. Legislation exists which forbids the inclusion of certain things in a contract – for example, the Competition and Consumer Act 2010 (Cth) forbids consumer contracts which fail to include certain minimum protections and requirements under the Act. Even though such clauses are unenforceable, the rest of the contract may be unaffected.

Disclaimer: The information in this document is general information only and cannot be relied upon as a substitute for professional advice. No action should be taken until (and we will not be liable to anyone unless) we have provided specific advice relevant to the particular circumstances