

UNDERSTANDING CONTRACTS

Dealing with contracts can be very complex. The Professional Services Team can assist members with contract reviews and offers template private practice contracts.



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A **CONTRACT** is a legally binding agreement between two or more parties that the law will enforce. There are four main elements of a legally binding contract: offer, acceptance, intention to create legal relations, and consideration.

Contracts can be verbal or written. A contract does not have to be in writing to be enforceable, but a written contract creates certainty between the parties and will be easier to enforce.

The following types of contracts are common in private practice:

- service fee agreement
- independent contractor agreement
- lease agreement
- employment agreement

Aside from employment agreements which are governed by employment law, these contracts are generally commercial agreements and the parties can negotiate on contractual terms within the limits of applicable laws and regulations (e.g. health, commercial and contract laws).

Key contractual terms

- **Parties:** This term properly identifies the contracting parties by their names

or legal entities, ABN (if appropriate) and contact details.

- **Term:** This term specifies whether the engagement is ongoing (unless terminated in accordance with the contract), for a fixed term (ending on a specified end date) or for a maximum term (ending on a specified end date unless terminated earlier in accordance with the contract).
- **Services:** This term details the services provided. The nature of the services will depend on the type of contract and who is providing services, i.e. whether the practitioner is providing services to the practice or the practice is providing services to the practitioner.
- **Fee:** This term specifies payment for services and the method and timing of those payments. Practices usually pay a percentage of gross receipts/billings or a specified hourly/daily rate.
- **Insurance:** This term identifies the insurance obligations of the parties.
- **Indemnity:** This term allocates legal responsibility/liability between parties.
- **Termination:** This term specifies when and how the parties can end the contract. For fixed or maximum term contracts, the contract will automatically terminate on the specified end date. For maximum term and ongoing contracts, this term will state the period of notice that the parties must give to terminate.
- **Restrictive covenants:** An exclusivity clause may seek to prevent the practitioner from practising for a competing practice in a specified area while the contract is in operation. A non-compete clause may seek to prevent a practitioner from practising in a specified area or for a specified period after termination. A non-solicitation clause may seek to prevent

a practitioner from soliciting patients, clients or employees for a specified period after termination of the contract.

- **Confidential information:** This term requires parties to keep information confidential. There may be specific provisions that relate to patient records.
- **Dispute resolution:** This term sets out the processes for resolving any dispute between the parties. The parties may be required to appoint a mediator if the dispute cannot be resolved within a specified period.
- **Entire agreement:** This term makes clear that the contract constitutes the whole agreement between the parties. This ensures contractual certainty and may limit liability for misrepresentation and other potential claims.

Negotiations

The contract should accurately set out the agreement and expectations of the practitioner and practice principal. You should not be pressured or coerced into signing a contract. If you are unsure or uncomfortable with the terms of the contract, don't sign it. Once you enter into the contract, it will become a legal binding agreement. You can't make changes to a contract unilaterally. Changes can only be made with the agreement of both parties.

A dispute is less likely to arise if both parties are happy from the outset. If the contract is not clear or certain or if you can't agree on a term, you should discuss it with the other party to clarify the matter and try and reach agreement. There is often some negotiation that takes place before agreement is reached. You should review any amendments carefully to ensure that any revised contract reflects the terms negotiated and agreed. **dr.**