



Australian Government
Department of Industry,
Innovation and Science

Business



Independent Contractors

*Preventing and
Managing Disputes*

FEBRUARY 2016





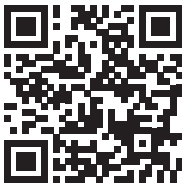
Copyright

Except for the Commonwealth Coat of Arms, business.gov.au logo, any material protected by a trade mark, and where otherwise noted, this copyright work is licensed under a Creative Commons Attribution 3.0 Australia licence. To view a copy of this licence, visit: Website [creative commons](http://creativecommons.org)

In essence, you are free to copy, communicate and adapt the work, as long as you attribute the work to the Commonwealth of Australia (Department of Industry and Science) and abide by the other licence terms. For terms of use of Coat of Arms (if permitted) contact the licensor/agency.

ISBN 978 1 921916 91 5

This guide was first published in June 2012



This guide is regularly updated and can be downloaded from business.gov.au - [Independent Contractors](http://business.gov.au) If you have a QR code scanning app on your smartphone, scan the code above to visit this website..

Disclaimer

Please note that every effort has been made to ensure that information provided in this guide is accurate. You should note however, that the information is intended as a guide only, providing an overview of general information available to independent contractors. This guide is not intended to be an exhaustive source of information and does not constitute legal advice. You should, where necessary, seek your own legal advice for any legal issues raised in your business affairs.

Introduction

Welcome to Independent contractors: a guide to preventing and managing disputes.

If you are one of Australia's one million independent contractors, this guide can help to save you time, money and headaches by showing you how to prevent and resolve disputes that can happen in business. If you are a hirer of independent contractors, this guide can give you an insight into the perspectives of independent contractors.

Whatever the problem, this guide uses plain English and lots of examples to show you what to do when things go wrong. It also shows you how to improve your business practices so you can prevent disputes. And it shows you how to maintain business relationships when they look like breaking down. It is also a reference guide with links to important websites and telephone numbers to make sure you have easy access to more information.

This guide is part of the independent contracting resource series, which is available at business.gov.au - [Independent Contractors](#). Other publications in this series include:

- *Independent contractors: the essential handbook*
- *Independent contractors: contracts made simple*.

The following resources are also available from the website:

- online *Contractor decision* tool
- general online information for independent contractors.

Seven national principles for resolving disputes

To help raise awareness of **alternative dispute resolution (ADR)** in the Australian community, the National Alternative Dispute Resolution Council has prepared seven national principles for resolving disputes. These are summarised below.

1. Taking responsibility is the first step

To resolve your dispute, each person needs to take responsibility for:

- being clear about what is in dispute
- genuinely trying to resolve the dispute
- seeking support when needed.

2. Early resolution is good resolution

Resolve your dispute in the simplest and most cost-effective way as early as you can. You can still use ADR processes if you go to court.

3. Listen and participate

Show your commitment to the dispute resolution process by listening to other views and by putting forward and considering options to resolve your dispute.

4. Good information leads to good decisions

Seek out and use information that helps you to:

- understand what is expected from different processes and service providers
- choose an appropriate dispute resolution process.

5. Use ADR, then the courts

Aim to try to reach an agreement through ADR processes first. If you are unable to resolve your dispute through ADR, then use courts or tribunals.

6. Ask questions about ADR

Ask about and expect effective, affordable and professional ADR services that meet acceptable standards.

7. Know about ADR

Always describe dispute resolution processes consistently to assist you and other people to understand and be confident about using ADR.

To download the complete list of national principles, visit [Attorney-General's Department](#).

Contents

Introduction	3	Section 2 Getting help to resolve a dispute	35
Seven national principles for resolving disputes	4	• Alternative dispute resolution (ADR)	35
Key words used in this guide	8	• Choosing a method of alternative dispute resolution (ADR)	42
Short guide to dispute resolution	9	• Consulting an expert	48
About this guide	10	• Letters of demand	49
• Who is this guide for?	10	• Debt collection services	53
• Are you an independent contractor or an employee?	11	• Small business commissioners and ombudsmen	56
Section 1 What to do when things go wrong	12	Section 3 Going to court	60
• Identify the problem	12	• When is it worth going to court?	61
• What type of problem is it?	14	• Which court or tribunal?	63
• What outcomes will work for you and the hirer?	16	• Steps in the court process	69
• How to approach the hirer	18	• Enforcing a court order	74
• Complaints about your work	20	• What to do next	75
• Follow up	21	Section 4 Preventing disputes	76
• Late payment reminder letters	21	• Negotiating a good contract	76
• Tips for successful negotiation	26	• Dispute resolution clauses	78
• Sham contracting disputes	30	• Contract checklist	80
• What to do next	32	• What to do next	82

Section 5 Case studies	83	• Further information about independent contracting and small business matters	91
• Case study 1: When the hirer is unhappy with your work	83	• Table 1: Alternative dispute resolution providers*	92
• Case study 2: When the work is not completed on time	85	• Table 2: Free or low-cost mediation services	95
• Case study 3: When you invoice for extra work and the hirer won't pay	87	• Table 3: Free or low-cost legal advisory services	97
• Case study 4: When the nature of the work changes	88	• Table 4: Australian courts and tribunals*	99
Need help with communication?	90	Glossary - key words used in this guide and their meanings	102
• Find an interpreter	90	Index	110
• Find a translator	91	My notes	115
• Assistance for the hearing and speech impaired	91		

Key words used in this guide

For a full list of key words used in this guide and their meanings, see the *Glossary* on page 102-109.

hirer - a business or organisation that engages an independent contractor under a services contract. A hirer in this context is not an employer. Sometimes a hirer is referred to as a 'principal'.

contract - a legally enforceable agreement made between two or more parties (written or verbal or part written and part verbal). In this guide, a contract is a commercial contract made between an independent contractor and a hirer - not with consumers or employees. Commercial contracts may include:

- a contract for an independent contractor's labour or skills for hourly or daily payment rates
- a contract for an independent contractor to achieve a result for a fixed fee.

independent contractor - a person who provides labour or skills or works to achieve a result for a hirer under a commercial services contract. An 'independent contractor' is not an employee. 'Independent contractors' often describe themselves as 'self-employed', a 'consultant', a 'freelancer', 'sole trader' or a 'subcontractor'. If you provide services to a consumer, the contract is covered by the Australian Consumer Law.

ADR or alternative dispute resolution - an approach to conflict resolution where an independent person, for example a mediator, conciliator or arbitrator (ADR practitioner), assists people in dispute to sort out the issues between them and to try to reach a resolution.

Short guide to dispute resolution

- Take a deep breath. Check your paperwork, make sure that your concerns are valid, organise your thoughts and prepare to explain your point of view (see page 18).
- Think about what the hirer's point of view might be.
- Get advice (see page 32).
- Make a polite call and/or have a face-to-face discussion at an agreed time with the hirer about your concerns. Use the paperwork to support your point of view (see pages 12, 18 and 26).
- Write a polite letter to the hirer setting out all the facts, stating what is important to you and your timeline. Attach copies of any relevant paperwork (see pages 12 and 21-25).
- Consider ADR if you want to maintain your business relationship with the hirer (see pages 35-36). The practitioner will start by listening to each of you and deciding whether ADR is suitable in your case.
- Make a diary note of all conversations. Always stay polite and professional.
- If ADR does not get started and the dispute is about money, consider sending a letter of demand (see page 49) or engaging a debt collection service (see page 53).
- Consult a lawyer about legal action (see page 32 and 69).
- Keep copies of any correspondence you send to the hirer - you may need it as evidence if the dispute ends up in court.
- Remember that at each stage of dispute resolution there are two points of view to be considered: yours and the hirer's.

About this guide

Who is this guide for?

This guide is intended to help independent contractors and hirers. While it speaks directly to independent contractors, it contains important information about resolving disputes for hirers and small business operators generally.

Independent contractors are people who provide services to businesses, governments or organisations under commercial service contracts. This may include people who describe themselves as 'self-employed', a 'consultant', a 'freelancer', a 'sole trader' or a 'subcontractor'. However, if you describe yourself this way it does not necessarily mean you are an independent contractor (see pages 8 and 30).

While this guide includes valuable information about resolving disputes that may apply to many situations, the contracts described in this guide are commercial contracts, not consumer contracts or employment contracts.

Visit [ACCC](#) for more information about consumer contracts and [Fair Work Ombudsman](#) for more information about employment contracts.

Are you an independent contractor or an employee?

Before using this guide to help you resolve your dispute, you need to understand whether you are an independent contractor or an employee (see pages 8 and 30). The information in this guide is for genuine independent contractors who are covered by commercial law, not employees, who are covered by workplace relations law. If you think you may be working under a sham contracting arrangement, see page 30. If you are an employee in dispute with your employer, contact the Fair Work Ombudsman about your rights (see page 34) or contact your union, industry association or a lawyer.

How to use this guide

- Use the Contents page to find your way through the guide and use the Glossary on pages 102-109 to better understand some of the key words used.
- Use the tables at the back of the guide to find web addresses and phone numbers for organisations, services and people who can help you (see pages 92-101).
- Use the Index on pages 110-114 to find specific areas of interest.
- Look at the What to do next boxes at the end of each section for further sources of information.
- Keep in mind that both independent contractors and hirers:
 - generally intend to do things well
 - can make mistakes
 - can be under pressure
 - benefit from disputes being resolved as effectively as possible.

The information provided in this guide is general, so it is useful to talk to professionals, industry representatives or your union about your own particular situation.

Section 1

What to do when things go wrong

Most of the time contracting work goes smoothly but sometimes things go wrong. Many of the problems you have as an independent contractor can be solved simply and quickly by considering the hirer's point of view and giving the hirer time to consider your point of view.

But sometimes things get more complicated and a problem can turn into a dispute. Often disputes are about things that affect your business bottom line, such as unpaid invoices, disagreements about the quality of the work or a clause in the contract.

This section shows you how to approach different types of problems. It also shows you how discussion and negotiation can help prevent a problem from turning into a dispute. Depending on your concerns, your options may include:

- having an informal discussion
- negotiating
- sending a late payment reminder letter.

Identify the problem

If you think that something is unfair or not right with your contracting arrangement, it is important to understand what the problem is and how it affects your relationship with the hirer.

Check your facts first

If you have a written contract, the first thing for each of you to do is to read it carefully. This may help you understand the problem more clearly and get your facts right before you take any action. There may also be a dispute resolution clause in the contract that needs to be followed.

Many independent contracting arrangements use verbal contracts, or part verbal/part written contracts. While risky, these contracts are just as valid as a written contract if there is proof of what was agreed. For example, you may have supporting paperwork that forms part of the contract. If the dispute becomes serious, this paperwork may be used as evidence in court. Examples of supporting paperwork for verbal contracts include:

- an email that confirms what was agreed
- a list of specifications
- a quote with relevant details about materials, timeframes etc.
- any notes about your discussion—for example, the basics of your contract might be written on the back of an envelope (whether signed by both of you or not).

Written contracts help reduce the risk of a problem turning into a dispute. See pages 76-82 for more information.

Could there be a misunderstanding?

There may be some facts, background or current circumstances that you don't know about so it often pays to give the hirer the benefit of the doubt before you take any action. In the same way, it often pays for the hirer to give you the benefit of the doubt before taking action.

Example: how a problem can arise from a misunderstanding

Lachlan signed a contract with Maria to clean the offices of ReKall Ltd for seven hours each Saturday. Maria came into the office on Monday and was upset to find that her office had not been vacuumed. Maria assumed that Lachlan hadn't cleaned any of the ReKall offices and so did not pay the next invoice he submitted.

Lachlan hadn't cleaned Maria's office on that Saturday because he had spent extra time cleaning up another room in ReKall's offices where there had been a company party on Friday night. He didn't tell Maria what had happened; he assumed she knew about the party. He was therefore surprised when Maria did not pay his next invoice.

The problem clearly arose from a misunderstanding. If Lachlan and Maria sit down and discuss the situation they will be able to resolve their problem without having it escalate into a dispute.

What type of problem is it?

Unpaid invoices

The problem might be to do with the ability, or willingness of the hirer to pay your invoice.

- Have you checked your bank statements?
- Have you submitted a correct invoice with the payment terms agreed in the contract?
- Has the date payable on the invoice passed?
- Has the hirer definitely received your invoice?
- Is the hirer unhappy with your work and therefore refusing to pay?
- Is the hirer having financial difficulties?

Breach of contract/agreement

Ideally contracts should identify the working relationship, rights and responsibilities, and expected outcomes of the work. A problem can arise if either you or the hirer thinks that part of the contract was not properly fulfilled. These types of problems may lead to unpaid invoices.

- Have you performed all the work you agreed to do?
- Have you performed it to the expected standard?
- Are there any problems with your work that need to be fixed or completed?

Relationship

Sometimes business relationships don't run smoothly because of a personality clash or personal conflict with the other person.

Deceptive or misleading conduct

A person might be acting in way that is dishonest. This may involve a failure to disclose information (see page 34).

Unconscionable conduct

Unconscionable conduct involves the abuse of power in a business relationship by the dominant party who deliberately takes advantage of the weaker party for commercial gain (see page 34).

Sham contracts

Sham contracting is where an employer tries to disguise an employment relationship as an independent contracting relationship. See page 30 and the What to do next box on pages 32-34 for further information.

Unfair contracts

Under the Independent Contractors Act 2006 (Cth), an unfair contract is one where a person performs work under terms that are 'unfair' or 'harsh'. See pages 65 and 73 for more information.

If a problem exists for you, it is also a problem for the hirer. Cooperating with each other may help to bring a solution more quickly.

What outcomes will work for you and the hirer?

Think about what you want to achieve and what you can realistically expect to achieve in the particular situation. What is important to you about the contract: getting paid, getting more work from the hirer or finishing the job and moving on? Try to resolve your dispute in the most efficient and cost-effective way, keeping in mind what is important to you. Consider what would be an acceptable outcome for each of you in the short and the long term.

WHAT IS IMPORTANT	ACTION
Resolve the problem in a way that preserves the business relationship and leaves the door open for future work opportunities.	Be professional and polite at all times. Discuss the problem and try to negotiate a solution that works for each of you. If this doesn't work, consider ADR (see pages 35-47). ADR is a cooperative approach whereas going to court is more confrontational.
Resolve the problem without necessarily maintaining a business relationship.	Discussion and negotiation are cheaper options than court action so try them first. If these don't work, you can engage a debt collector or take the matter to court.

WHAT IS IMPORTANT	ACTION
Avoid conflict and move on. Sometimes it is not worth pursuing a dispute.	<p>Take no action to resolve the dispute and accept the situation. This may mean that you:</p> <ul style="list-style-type: none">• walk away from the job and put it down to experience• finish the job and move on, or• put up with the problem so you can continue the business relationship with the hirer. <p>Your decision will depend on the time and costs associated with dispute resolution and the importance of the contract to your business and reputation.</p>

Example: options when the hirer can't pay

Michelle owes Ming \$10,000 for a job he did a few months ago. Michelle has recently lost her business and home and has no source of income and no assets. If Michelle goes bankrupt, she may not be legally required to pay Ming anything.

1. Try to negotiate

Try to negotiate small repayments over a long term. At least Ming will be getting some of the money owed. Business might pick up for Michelle down the track and payments may increase. Note that each state and territory has a law that sets a time limit for recovering debts.

2. Write off the debt

There is a possibility that Michelle will not be able to repay the money even if mediation or court action is successful. The time and cost involved in taking the matter any further and the poor likelihood of recovering the money may not be worth it.

How to approach the hirer

When you have collected all your facts and identified what is important to you, the next step is to approach the hirer in a calm, professional manner to discuss the problem. You may need to negotiate, so it's best to be prepared. Make an appointment at a time that suits each of you. A negotiation should be conducted in good faith, which means each of you should show that you genuinely want to find a resolution.

If the hirer approaches you first, it might be a good idea not to discuss the issues at that time. If you make an appointment time that suits each of you, both you and the hirer will have time to think about your approach.

Problems are often caused by misunderstandings so clearing up any misunderstanding might be enough to resolve the problem. Consider starting the conversation with an informal chat or a polite discussion at a time and a place that suits both of you.

Be prepared to be creative and to negotiate. Set an agreed amount of time for each meeting. If the problem is still unresolved, you may wish to arrange a more formal meeting to talk about the problem and try to work out a solution.

Make clear, written notes about any discussions you have with the hirer and the outcome of those discussions. If possible, prepare an agreed record of what was discussed at the end of the meeting. These notes may form part of your evidence if the dispute goes to arbitration or court.

Disputes about money

Disputes over money can sometimes be fixed with a simple phone call to the person who pays the accounts. But other times they can be tricky. If the hirer hasn't paid your last invoice by the due date, an informal discussion or a phone call could help you find out why. For example, when approaching the hirer, you could ask:

"I'd like to make a time to talk with you about my last invoice, when is a good time for you?"

"What did you think of my standard of work?"

"Do you want to discuss my payment terms?"

Discuss these matters with the hirer before deciding on what action to take. The action you take could depend on the reason why the hirer has not paid.

The important thing is to act swiftly. Once the date payable on your invoice has passed, ask yourself the questions listed on page 14. If necessary, you may have to get help to recover the money (see section 2, *Getting help to resolve a dispute* and section 3, *Going to court*).

Make a written record of any relevant conversations you have with the hirer. Keep copies of any paperwork in case they are needed as evidence later.

Put your concerns in writing

In some circumstances, writing a polite, businesslike letter to the hirer can be a better way of communicating your point of view. This will depend on your communication skills, your relationship with the hirer and the time you have to resolve the issues. You may prefer to have someone write it for you.

It is important to attach copies of any relevant paperwork to your letter. This may include your contract, an email, a list of specifications, a quote, an invoice, a record of a telephone conversation or any other document that supports your statement of concerns. See pages 21-25 for more information about sending late payment reminder letters.

Complaints about your work

When a hirer complains about your work, it's not the end of the world. A complaint can be an opportunity to strengthen your business relationship with the hirer and improve your business practices.

Ignoring a complaint or being too defensive about your work could have serious consequences for your business and your reputation. If you want to maintain the business relationship with the hirer and preserve your reputation, it's a good idea to consider the following steps.

Understand the hirer's concerns

- Listen carefully to what the hirer has to say and respond to their concerns with empathy.
- Ask the hirer questions to clarify their concerns.
- Try not to argue or be defensive - take ownership of your work and don't blame anyone else.
- Check with the hirer that you have understood correctly.

Work towards a solution

- Keep in touch with the hirer about the steps you are taking to investigate or fix the problem.
- Where possible, consider multiple options for fixing the work or putting things right.
- Depending on the problem, you may wish to get an expert appraisal or determination (see pages 48).
- Tell the hirer what you intend to do to fix the problem.

Follow up

- When you have fixed the problem, check if the hirer is happy with the solution.
- If the hirer is not happy, try to understand why and ask what they want done to fix the problem.
- If the problem remains unresolved, you may wish to consider alternative dispute resolution (ADR).

For information about who can help when a hirer complains about your work, see the What to do next box on page 32-34.

Late payment reminder letters

If your invoice doesn't get paid, it can help to send a reminder letter. Start by sending a friendly reminder letter first. If this isn't successful, you may have to try a few different approaches. Follow-up phone calls in between letters may also help.

If you decide to go to court later, you may have to show a magistrate or tribunal member evidence that you have tried to resolve the dispute. If you can present copies of late payment reminder letters that you have sent to the hirer, this may help your case.

1. **First late payment reminder letter:** this is an assertive but friendly letter that gently reminds the hirer that the payment for your invoice is overdue and should be paid immediately. See our sample letter on page 23.
2. **Second late payment reminder letter:** this is an assertive but more serious letter that explains how non-payment affects you. The letter may include a request to meet and discuss the late payment, the contract or your workmanship. See our sample letter on page 25.
3. **Final late payment reminder or 'letter of demand':** this is an assertive but firm letter, which may include a warning that you will consider legal action if the debt is not paid by a particular date. This is a very serious approach and is sometimes written on a lawyer's letterhead. You may wish to try alternative dispute resolution (ADR) before sending a letter of demand. For more information about writing a letter of demand and a sample letter, see pages 49-52.

Sample first late payment reminder letter

Late payment reminder

[your business name, address and contact details]

[hirer's name and business address]

Dear *[name of hirer]*

According to my records, my invoice *[invoice number]* dated *[date]* for the amount of *[amount owed]* for *[describe the job or the services you provided and include location if necessary]* is now overdue.

As my payment terms are strictly *[number of days]* days, I would be grateful if you could pay the outstanding amount of \$*[amount]* without further delay.

Please pay by *[explain how you would like to receive payment, i.e. bank account for deposit or address for cheque to be posted]*.

I look forward to receiving your payment. If you have recently settled this account, please ignore this letter.

Yours sincerely

[signature]

[your name and title]

[date]

Example: getting paid without damaging the business relationship

Gwen wants to recover money owed to her by Harrie, one of her regular hirers. After receiving Gwen's first late payment reminder letter, Harrie paid some of the debt but said it might take a while to pay the full amount. Times are tough for many businesses at the moment and some other contractors Gwen knows in her industry have been told that certain projects are not going ahead.

After considering the matter and weighing up the risks, Gwen decided it was more important to maintain a good business relationship with Harrie than to risk a dispute that might prevent future work opportunities when the economy improves. So she approached Harrie about arranging regular staged payments for the amount owed. Gwen will eventually get paid and Harrie may be able to stay in business and potentially offer her work in the future.

Sample second late payment reminder letter

Second late payment reminder

[your business name, address and contact details]

[hirer's name and business address]

Dear [name of hirer]

Further to my reminder letter of [date] my records indicate that this account remains unpaid. Please see my payment details below.

[Explain here how late payments affect your business, for example: 'When I am not paid for my work, I worry that I won't be able to pay my bills for materials to continue working.']

[Note: it is important that you don't blame the hirer in your letter. Don't make a demand but rather state your preference].

I would like to make a time during the next seven days to discuss your outstanding account with you. I will call you soon to make an appointment at a time that suits us both. If there are other issues you wish to discuss please advise me at least 24 hours before we meet.

I have attached [list the documents such as a copy of your first invoice, contract, a quotation, an email or some other document that supports your request for payment.]

1. [name of document]

2. [name of document]

I will be very willing to discuss any concerns that you have with our contract or my workmanship. [Read Disputes about money on page 19].

I look forward to meeting with you to discuss this letter or receiving your payment. If you have recently settled this account, please ignore this letter.

Yours sincerely

[signature]

[your name and title]

[date]

Payment details

[Explain manner in which you would like to receive payment i.e. bank account for deposit or address for cheque to be posted].

Tips for successful negotiation

1. Prepare well

Good preparation is essential for successful negotiation. It will make you more confident and improve your chances of getting an outcome that works for you and the hirer. Carefully consider all aspects of the problem until you have a clear idea of what outcome is important to you and what you can realistically expect. Read your contract and, if necessary, get advice on any clauses you don't understand. If your contract is not in writing, check any paperwork relating to your agreement such as emails and notes of discussions.

2. Understand the hirer's point of view

By understanding the problem from the hirer's point of view, you may be able to negotiate an outcome that satisfies both of you. Discuss the problem with someone you know who runs a business, your accountant or a business adviser. They may help you to understand the hirer's perspective.

3. Write it down

Make a list of your concerns. This will help you better organise your thoughts and focus your discussion on the particular problems. You can refer to the list during the negotiation.

4. Organise a meeting or a time to talk

Organise a time and place to meet. Limit the meeting to one hour maximum. Decide who will attend, for example, an interpreter may be necessary to assist with communication. If you wish to have a support person with you, tell the hirer in advance and invite the hirer to have a support person too.

You may also want to suggest that the meeting be confidential. It is important to consider how emotions might affect the outcome. Consider leaving the meeting if you notice emotions taking over from clear thinking, but be sure to make another meeting time before you leave.

5. Act professionally

Be mindful of the way you present yourself and your business during negotiations. Act respectfully towards the hirer at all times, even when you disagree or get upset. Acting professionally can help you get a positive outcome, especially if the job is not yet completed or you want to work for the hirer in the future. Hostile behaviour towards the hirer could also damage your reputation. In a genuine negotiation, be prepared to work creatively with the hirer and, if necessary, compromise.

6. Record any agreement you make in writing

Make a written record of any discussions with the hirer and agreed outcomes. These may be used as evidence if the dispute goes to arbitration or court. If you make any changes to your existing agreement you should both sign it. This change is called a 'variation'. If you don't accurately record the variation there might be further problems in the future. Take time to ensure that you are satisfied with the new arrangements because you can't change your mind later or take legal action to alter them.

You may need more than one attempt at negotiation. Often when you take a break and go back to the negotiating table with a fresh mind, you are more likely to reach a solution.

Example: resolving the problem by renegotiating the contract

Rolando hired Fiona to deliver advertising brochures in the local area. Their three-month contract was in writing.

One month into the contract, Rolando became aware that Fiona was also delivering brochures from one of his competitors at the same time. When approached, Fiona said the contract didn't prevent her doing this but that she was happy to discuss it further because she wanted to keep her clients happy.

Fiona didn't want to lose the contract as she needed the work. A friend suggested that she negotiate a new contract that gave both Rolando and Fiona what they wanted. Rolando agreed to meet with her. Fiona prepared for her meeting with Rolando by jotting down

her ideas for compromises. This made her confident about negotiating with Rolando. She also wrote down what she thought Rolando might want to get out of the negotiation.

Rolando explained to Fiona that he was offended by the lack of loyalty her actions showed and the impact they might have on his business. Fiona said she understood, but she also explained that she needed the extra money. Fiona suggested that, if Rolando were to agree to extend the contract to one year, thereby securing her a regular income for that period, she would not deliver any brochures for businesses that competed with Rolando's business.

Rolando was happy with this arrangement and agreed to change the contract accordingly. This was a win-win situation for both of them.

Contract variation: Rolando wrote and printed a new page (the variation) to the contract, which recorded all the new arrangements. Fiona read it, agreed and they both signed and dated it. They attached the variation to each copy of the original agreement. The new arrangements became part of the contract.

Questions to consider before you start to negotiate

1. What are the issues behind the problem?
2. What type of problem is it? See page 14.
3. How do you know whether you are being fair? What evidence do you have to support your point of view?
4. What are you prepared to accept, and what is most important to you:
 - getting a formal apology
 - having your bill paid
 - getting a quick resolution, or
 - preserving the relationship and also getting what is important to you?

5. What is the hirer likely to be thinking? What are their concerns likely to be? What result do they want?
6. Do you really want to negotiate? If you want to prove a point or principle or cause harm, negotiation is not for you.

Comments to avoid during negotiation

When trying to negotiate an outcome that preserves your relationship with the hirer, it is important to avoid judging, blaming, exaggerating or criticising. Try to keep your emotions out of the dispute. Avoid saying things like:

“Oh, that’s nothing. It’s normal.”

“No, I didn’t have anything to do with that.”

“I had to do it that way because...”

“It would have been all right if you hadn’t interfered.”

“I know you’re wrong.”

“I call that dishonest.”

“You’ve been aware of the situation all year.”

“I think you’ve done this on purpose.”

“You should get your act into gear before you tell me what to do.”

Comments like these can make the dispute worse.

Sham contracting disputes

Most contracts are made in good faith. A sham arrangement is where an employer attempts to disguise an employment relationship as an independent contracting arrangement. This may be done to avoid paying employee entitlements such as superannuation, workers compensation, leave and certain taxes.

Sham contracting arrangements are illegal

- An employer cannot tell an employee that they must be treated as 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 get the employee to perform the same (or mostly the same) work as an independent contractor.

An employer who behaves in this way can be fined up to \$33,000.

See the What to do next box on page 34 for details on how to complain about a sham contracting arrangement.

What is the difference between an employee and an independent contractor?

While a worker can be an independent contractor or an employee, a worker's status is not always clear cut. To determine whether a person is an independent contractor or an employee, a court considers a number of factors that look at the entire working relationship.

Who is an employee?

An employee is a worker who:

- is usually supervised by an employer
- is usually required to work in a particular way, and comply with directions to perform work differently from time to time

- is usually entitled to paid holidays and sick leave (unless engaged as a casual)
- is usually obliged to work set hours agreed with an employer (unless engaged as a casual)
- usually earns a regular salary or wage (although sometimes casual hours vary from week to week).

Who is an independent contractor?

An independent contractor is a worker who:

- provides services under a service contract to other businesses or organisations
- has established their own business
- is usually paid to achieve an agreed result
- generally controls how those services are provided
- usually bears the risk and cost of fixing their own faulty work
- often supplies the material or special tools to complete the job
- usually has no right to employee entitlements such as paid leave.

Some industries have specific regulations that apply to them and affect the status of workers in that industry - for example, the textile, clothing and footwear industry.

It is possible to be an employee for one job and a contractor for another.



What to do next

Get advice

- Consult your business adviser, industry association, union or lawyer.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. For contact details, check your local telephone directory.
- To find out about free or low-cost legal advisory services in your state or territory, see Table 3 on page 97.
- Contact your state Small Business Commissioner for assistance. See page 57 for contact details.
- Visit a business enterprise centre. Find out the address of your nearest centre from [BEC Australia](#).
- Hire a conflict coach. This is a new role in which a trained and accredited person assists people to become more competent and confident in managing disputes. Look in your local business directory or search the internet for ‘conflict management’ or ‘conflict coaching’.
- Talk to a psychologist who specialises in conflict resolution to discuss a strategy for approaching a dispute and reacting to possible responses.
 - Contact the Australian Psychological Society on 1800 333 497 or do an online search at [Australian Psychological Society](#).
 - Look in your local business pages under ‘counsellor’ or ‘psychologist’.
- Unions can represent independent contractors and help with disputes. To find out which union covers you, call Unions Australia on 1300 486 466 or visit [Australian Unions](#).

Get advice when a hirer complains about your work

- Contact your industry association for advice about handling complaints in your industry. It may also be able to recommend an expert to help investigate the problem.
- If the dispute is about a technical matter, you can suggest to the hirer that you agree to:
 - engage an expert in the subject area to do an appraisal or determination (see page 48), or
 - try an ADR process such as conciliation or arbitration where the practitioner can offer independent advice on technical matters (see pages 38-41).

Understand your status as a worker

Use the Contractor decision tool at business.gov.au - Independent Contractors or call business.gov.au 13 28 46 to help you understand whether a court is likely to consider you to be an employee or an independent contractor.

Note that some industries, such as the textile, clothing and footwear industry, have specific regulations that affect the status, rights and responsibilities of workers in that industry. Contact your union or industry association for more information. See the *Get advice section* on page 32.

Improve your negotiation skills

- Contact your local business enterprise centre to find out about workshops in your area. Visit BEC Australia to find a centre near you or call 0403 465 050.
- Contact your local TAFE college to see what training they offer in negotiation skills or small business management.
- Research books and websites about negotiating in business.

Complain about a sham contracting arrangement

- Contact the Fair Work Information Line on 13 13 94 to discuss your complaint or visit [Fair Work Ombudsman](#). The Fair Work Ombudsman is a Commonwealth Government official whose office works with employees, employers, independent contractors, hirers and the community to promote harmonious, productive and cooperative workplaces.
- If you work in the building and construction industry, you may wish to call Fair Work Building and Construction on 1800 003 338 or visit its website at [Fairwork Building and Construction](#).
- Contact your union or call Unions Australia on 1300 486 466 or visit [Australian Unions](#).

Complain about deceptive, misleading or unconscionable conduct

Call the Australian Competition and Consumer Commission on 1300 302 502 or visit [ACCC](#).

Get help with anxiety or depression

Sometimes having a dispute with the hirer can make you anxious or depressed. If you think you are suffering from anxiety or depression, it may help to talk with a professional:

- Visit your doctor (GP), who can refer you to a counsellor if necessary.
- Call Lifeline Crisis Support on 13 11 14 to speak with someone by telephone.

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 [business.gov.au - Independent Contractors](#) or scan the QR code on the back of this guide.

Get help with language or communication

See our *Need help with communication?* information on page 90.

Section 2 Getting help to resolve a dispute

If negotiation doesn't work and a problem turns into a dispute, you may decide to get help or take action to resolve it. This section looks at what you can do to take action and who can help you. This may be either an organisation or a person who is not directly involved in the dispute.

Depending on the outcome you want, your options may include:

- ADR (alternative dispute resolution)
- consulting an expert
- sending a letter of demand
- hiring a debt collector
- going to court.

An important thing to remember is to choose a dispute resolution method based on the outcome you want. If you want to preserve your business relationship and secure future work with the hirer, it is worth considering ADR. If you just want to get your money or finish the contract and move on, it may be better to use a debt collection service, a lawyer or, if necessary, take the matter to court. Often ADR is a wise approach because you may find that, in the long term, you will want to do business with that hirer again.

Alternative dispute resolution (ADR)

ADR is a term that describes a range of ways to settle disputes without going to court. It usually involves an impartial person, such as a mediator, who will help you and the hirer to discuss and resolve the issues between you. ADR may help you resolve your dispute before it becomes so big that a court or tribunal becomes involved. ADR can be used before, during and even after a court process. It can also help you and the hirer to maintain a working relationship

so you can contract again in the future. Courts and tribunals also provide more formal ADR with qualified practitioners.

In most cases, you and the hirer will be able to bring a support person or an adviser to your ADR session.

The most common types of ADR are:

- **mediation:** a qualified person designs and manages a fair process and you and the hirer are the experts on the dispute
- **conciliation:** a qualified person designs and manages a fair process and they, you and the hirer are the experts on the dispute - the conciliator may play an advisory role
- **arbitration:** a qualified person designs and manages a fair process and the arbitrator is the expert on the dispute - the arbitrator makes a decision (which can be binding) on the information presented by you and the hirer.

ADR is for people who are ready to accept that they have different points of view and that it is worthwhile overcoming their differences so that they can keep their working relationship.

Benefits of ADR

- Can save time and money
- Can be flexible and informal
- Gives you and the hirer more control
- Is confidential
- Lets you and the hirer deal with emotions
- Can narrow the scope of a dispute to the issues that matter to you and the hirer
- Offers broader and more creative solutions
- Helps you and the hirer preserve your business relationship

Mediation

Mediation is the most common form of ADR. It is a confidential, informal process in which you and the hirer, with the assistance of an independent mediator:

- listen to each other and are heard by each other
- identify the disputed issues
- develop options
- consider alternatives
- aim to reach an agreement if an agreement is appropriate.

It begins with the mediator listening to each person separately to decide whether mediation will be suitable. Throughout the mediation you, the hirer and the mediator continue to check for suitability. During mediation, the aim is for you and the hirer to work together to reach an agreement or a solution to the problem that you can each live with.

A mediator should be nationally accredited. The Mediator Standards Board has a list of the standards of mediation practice on its website at [Mediator Standards Board](#). The mediator decides on the mediation process; you and the hirer decide what is discussed. The mediator may not necessarily have any particular experience or expertise in your industry or the specific issues of the dispute. See the table on pages 42-43 for more information about mediation.

Franchising disputes and mediation

If you own a franchise you are subject to the Franchising Code of Conduct. The code provides that any party to a franchise agreement may refer their dispute to a mediator of their choice. If the participants cannot agree on a mediator, a mediation adviser will be appointed by the Office of the Franchising Mediation Adviser, which has trained mediators with commercial experience located across Australia. See the What to do next box on page 58.

What happens at mediation?

- Separate sessions - the mediator listens to your point of view without the hirer there. They will also listen to the hirer separately. You can each have a support person with you.
- Introduction - the mediator welcomes the participants, including support people, and explains how the session will be conducted.
- Statements - each party speaks as if they are the first speaker about their understanding of the dispute.
- Issues set out - the mediator then works with the participants to summarise the issues in dispute.
- Discussion - the participants fully discuss the issues and their concerns.
- One-on-one - the participants can each speak with the mediator privately if they choose. This may happen at different stages during the process.
- Negotiation - options and possible options for resolution are discussed.
- Agreement - if the participants reach an agreement they record it in writing. If no agreement is reached at the session and the dispute continues, the mediation will often have made it clear what the issues in dispute are. Further mediation may be necessary or one person may choose to take the matter to arbitration or to court for a binding decision.

Example: using mediation to resolve a dispute

Caryl and Serge are in dispute about the payment of Caryl's invoice. Caryl is an interior designer and independent contractor and Serge is the owner of a boutique hotel. Caryl does not want to damage her working relationship with Serge as there is potential for future work on other hotels Serge owns. Caryl's invoice is greater than the amount she originally quoted. Serge is very happy with the work Caryl has done and would like to hire her again if this dispute can be resolved.

Serge has used mediation before. Caryl is willing to try it, so they agree to attend a mediation session.

At the mediation session both Caryl and Serge have the opportunity to explain their side of the dispute. Caryl explains that the job was much more involved than she had initially thought and that is why the invoice exceeds the quote. Caryl acknowledges that she should have sought approval from Serge before continuing with the work. To ensure that the communication between Caryl and Serge is effective, the mediator has to remind them several times to listen to what the other has to say and stop interrupting each other.

Serge offers to pay Caryl's account if she reduces it by 10 per cent. Caryl agrees, so they make a written record of their agreement. The dispute is resolved and the participants say they hope to work together again soon.

Conciliation

Conciliation is similar to mediation except that the conciliator has an *advisory role*. The conciliator may be legally qualified or have experience with, or professional or technical qualifications in, the subject area of the dispute. The participants in conciliation will often be accompanied by lawyers or other advisors. See the table on pages 44-45 for more information about conciliation.

Arbitration

In arbitration, you and the hirer present your arguments and evidence to an arbitrator, who may have a legal background or qualifications or expertise in the subject of your dispute. Arbitration is a more formal type of ADR and the arbitrator's decision can be binding.

Arbitration can be particularly useful where the subject matter of the dispute is highly technical. It can also help when a more formal, court-like procedure with greater confidentiality is required. In such cases, a person with expertise in the subject field may act as arbitrator. See the table on pages 46-47 for more information about arbitration.

Weighing up the options

When you and the hirer have decided that you would like to try to resolve your dispute using ADR, you will both need to agree which method is most suitable.

- How formal do you want the process to be? Would you be more satisfied by reaching a decision in good faith or by someone else making a binding decision that you each had to follow? What do you want to achieve? Which form of ADR will best help you to achieve it? Compare the information on pages 35-41 to help you make this decision.
- How comfortable are you communicating openly with just the hirer? Would you be able to communicate more openly in a situation managed by an even-handed, independent person?
- Do you need advice, input or expertise from someone else to resolve the dispute? If you do, would you rather have the advice in the ADR session or before and after each session?
- Will you be able to negotiate a resolution or agreement on your own? Or do you need an independent person to facilitate the process or someone to make a determination for you?
- How much time, energy and money are you willing to spend to resolve the dispute?

Cost considerations

The costs of ADR vary depending on the circumstances of the dispute. Factors that may influence costs include the experience and expertise of the practitioner; the complexity of your dispute or the subject of the contract; the state or territory you live in; and whether you live in a capital city or a regional area.

The costs of ADR may include:

- practitioner's fees - conciliation may cost more than mediation because the advice provided in a conciliation process may take longer. Arbitration fees are likely to be even higher because an arbitrator will need to spend time going through all the evidence relating to the dispute and consider the decision to be made
- travel expenses (including accommodation and meals) - if you or the practitioner need to travel to the session
- room hire fees - a room may need to be hired for the dispute resolution session. The fee is usually shared between the participants unless otherwise agreed
- other expenses may include long-distance phone calls, videoconferencing, postage/freight charges, photocopying and other miscellaneous expenses. These fees are usually shared between the participants unless otherwise agreed.

Choosing a method of alternative dispute resolution (ADR)

Mediation

ROLE OF THE MEDIATOR*	WHEN SUITABLE
<p>A mediator should:</p> <ul style="list-style-type: none">• advise the participants on how to prepare for the mediation• help the participants to clarify the issues in dispute• conduct the meeting and help the participants to communicate effectively• ensure equal and fair negotiations• assist participants to develop options for an appropriate agreement based on the participants' own negotiations• keep all aspects of the mediation confidential unless they are concerned for the safety or wellbeing of a person.	<p>When one person is in a more powerful position than the other. In this situation, participants can attend with support people or advisers.</p> <p>In addition, mediation is suitable when the participants:</p> <ul style="list-style-type: none">• need help and advice to understand the issues in dispute• are prepared to cooperate to negotiate in a positive way and compromise• are motivated to resolve the dispute by non-monetary factors• want to resolve the dispute and maintain a business/working relationship• need help and advice to fully identify the issues• have their emotions invested in the dispute.

* This table provides general information and might not reflect the individual practices of different practitioners.

WHEN UNSUITABLE	WHERE TO FIND A MEDIATOR	COSTS
<p>When:</p> <ul style="list-style-type: none"> the participants are not prepared to consider compromise ongoing relationships and other non-monetary factors like reputation are not important the participants may be at risk for their safety if they attend. 	<ul style="list-style-type: none"> Look under 'mediation' or 'mediators' in the business pages of your local telephone directory. See Table 1 on pages 92-95 for a list of organisations that can put you in touch with mediators. See Table 2 on page 95-96 for a list of free or low-cost mediation services in your state or territory. 	<p>If you use a free or low-cost mediation service (see page 95-96), and do not hire a lawyer, then mediation can be inexpensive.</p> <p>Most private and accredited mediators charge between \$250 and \$400 per hour.</p> <p>Costs are commonly shared between the hirer and the independent contractor. This should be agreed to before the mediation takes place.</p> <p>See Cost considerations on page 41 for further information.</p>

Conciliation

ROLE OF THE CONCILIATOR*

See the Role of the mediator on page 42. In addition, a conciliator may:

- advise the participants on the issues in dispute
- provide expert advice to the participants on the issues and how to resolve them
- advise the participants about options for resolution and appropriate settlement terms.

WHEN SUITABLE

When one participant is in a more powerful position than the other. Like mediation, in this situation, participants can attend with support people or advisers.

Conciliation is also suitable when the participants:

- are unsure or confused about the issues in dispute
- are willing to cooperate to reach an agreement but need advice on what is a suitable and fair agreement
- have their emotions invested in the dispute
- need help and advice to fully identify the issues.

* This table provides general information and might not reflect the individual practices of different practitioners.

WHEN UNSUITABLE	WHERE TO FIND A CONCILIATOR	COSTS
<p>When:</p> <ul style="list-style-type: none"> the participants are not prepared to consider compromise ongoing relationships and other non-monetary factors like reputation are not important the participants may be at risk for their safety if they attend. 	<ul style="list-style-type: none"> See Table 1 on pages 92-95 for a list of organisations that can put you in touch with conciliators. Organisations that provide free or low-cost mediation services may also be able to assist with conciliation services. See Table 2 on page 95. Look under 'conciliation' or 'mediation' in the business pages of your local telephone directory. 	<p>Like mediators, private conciliators usually charge between \$250 and \$400 per hour.</p> <p>However, a conciliator may take more time to consider the issues in dispute due to their advisory role. It can therefore be more expensive than mediation.</p> <p>See <i>Cost considerations</i> on page 41 for further information.</p>

Arbitration

ROLE OF THE ARBITRATOR*

WHEN SUITABLE

An arbitrator usually:

- considers the arguments and supporting evidence from the participants
- makes a determination about the dispute (usually in favour of one of the participants) - the determination is usually binding
- keeps all aspects of the arbitration confidential unless they are concerned for the safety or wellbeing of a person.

When the subject of the dispute is technical, complex or there are multiple parties involved, or when the participants:

- want a more formal environment to resolve their dispute and want to avoid the time and expense of going to court
- have extreme difficulty communicating effectively with one another
- want a binding determination to resolve the dispute and are prepared to go by the decision of the arbitrator.

* This table provides general information and might not reflect the individual practices of different practitioners.

WHEN UNSUITABLE	WHERE TO FIND AN ARBITRATOR	COSTS
<p>When the participants:</p> <ul style="list-style-type: none"> • want to make their own decision • are prepared to take court action if resolution is not reached through any other process. 	<ul style="list-style-type: none"> • Contact your industry association, which may be able to provide you with details of qualified arbitrators. • Contact one of the alternative dispute resolution providers listed in Table 1 on pages 92-95. • Look under 'arbitrators' in the business pages of your local telephone directory. 	<p>Generally, arbitration costs more than mediation or conciliation because the arbitrator will need expertise and special skills to conduct the arbitration in a formal way.</p> <p>The cost will vary depending on the arbitrator's experience and expertise and whether or not you choose to engage a lawyer.</p> <p>See Cost considerations on page 41 for further information.</p>

Consulting an expert

Sometimes your negotiations or attempts at alternative dispute resolution (ADR) may stall because a particular technical issue cannot be resolved. When this happens, you and the hirer may decide to engage an expert to give a professional opinion or make a determination about an issue in dispute. Sometimes the expert is a qualified ADR practitioner. You and the hirer can decide whether the expert's advice is binding or non-binding.

Expert appraisal

This is an ADR process where an expert with specialist knowledge in the area of the dispute provides independent advice about the disputed facts. The expert may suggest possible solutions and how to achieve them.

Expert determination

This is an ADR process where you and the hirer present arguments and evidence to an expert in the subject matter of the dispute. The expert makes a determination, which you can both choose to be binding. An expert determination is different to arbitration because the expert expresses an opinion on defined issues. If necessary, your contract can specify details about how an expert determination will be undertaken if a dispute occurs.

You and the hirer will need to agree on who the expert will be and decide if the advice will be binding or not.

Choosing an expert

To find an expert, approach the relevant industry or professional association or an association for ADR professionals. For example, if you need an expert in building design, contact the Royal Australian Institute of Architects or the Association of Consulting Architects. If you need an expert on computer software, contact the Australian Computer Society or Software Engineering Australia.

Get the names of three experts, ask for their resumes and find out their availability. Then negotiate with the hirer to choose the most

appropriate expert for your dispute - see page 26, Tips for successful negotiation. For more information about finding an expert, see the What to do next box on page 82.

Letters of demand

A letter of demand is usually sent when you have tried unsuccessfully to get your invoice paid and it is the right time to take more serious action. Often this is the final reminder letter before taking legal action. You can send it yourself or ask a lawyer to write it on their letterhead (see page 53).

Before writing a letter of demand, it is important to send first and second reminder letters. These can be friendlier and help you maintain your business relationship with the hirer if this is important to you. See pages 23-25 for details about first and second reminder letters.

A letter of demand states how much is owed, what for and when the invoice needs to be paid. It may also include a warning that you will consider legal action if the debt is not paid by a particular date. The title 'Letter of demand' at the top of the page lets the hirer know you are serious about getting your money.

It is important to understand the consequences of sending a letter of demand. While ADR is an assertive approach, which can reduce damage to and even improve business relationships, sending a letter of demand could inflame a dispute. Even so, this action may be necessary to recover a debt.

Before sending your letter of demand, it may help to get some advice from someone who has had experience with debt recovery before. See page 32 for ideas of who to approach. It is also important to find out who owns the business that owes you money, as it may not be the person with whom you made the original agreement. The best approach is to send your letter of demand to the person who owns the business. See the What to do next box on page 57 for more information.

Sample letter of demand

Letter of demand

[your business name, address and contact details]

[hirer's name and business address]

Dear *[name of hirer]*

I am writing in relation to the amount of \$*[amount 'including GST']*. According to my records this was due to be paid by you on *[date]* and remains outstanding. My requests for payment are listed below.

The amount relates to *[description of services]* provided to you at your request, on *[date]*.

Please find enclosed a dated copy of the invoice and note that it specifies *[describe payment terms and instructions]*. I have also enclosed the following documents:

1. *[name of document]*
2. *[name of document]*

[Documents may include previous requests for payment and list and enclose any other relevant documents that support your claim for the amount owing].

Please be advised that I demand payment of the invoiced amount [plus an amount of \$*{amount}*] for late payment interest as agreed in our contract dated *{date}*] within seven days of the date of this letter.

Payment should be made by *[describe manner in which you would like to receive payment i.e. bank account for deposit or address for cheque to be posted]*.

If payment is not received within seven days of the date of this letter I reserve the right to take legal action to recover the monies without further notice to you.

Yours sincerely

[signature]

[your name and title]

[date]

Late payment interest

The total amount owed may include late payment interest only if your written contract contains a late payment interest clause (see page 81).

Example: when to send a letter of demand

Abdul, an independent contractor, fixes computers for a living.

One day, Troy, a small distribution business owner, called Abdul in a panic - his computer system had crashed and he was unable to process any transactions manually. Abdul understood Troy's situation and postponed two other jobs to help Troy with his problem. He was on site repairing Troy's computer within 30 minutes.

Abdul explained that he charged an hourly rate of \$150 (plus GST) in addition to any required hardware. Troy agreed to pay 'whatever it took' to get his computer working again because his business depended on it.

It was a big job that involved replacing the hard drive. Abdul worked for six hours and installed a hard drive that cost \$1,200. Abdul invoiced Troy for the cost of labour and parts - \$2,100 plus GST. Abdul sent Troy an invoice with 14-day payment terms and details of the payment methods available.

Three weeks later, Troy had not paid the bill. Abdul phoned Troy, who said he would pay the invoice the next day. A further two weeks went by without the payment being made. Abdul tried to call Troy again, without success. Abdul decided to send a late payment reminder letter (see pages 21-25) but Troy still did not pay the account.

After two weeks and more promises from Troy to pay, Abdul sent a second reminder letter explaining that if Troy didn't pay, Abdul would have difficulty paying his suppliers for the hard drive, which he had bought on credit.

Abdul decided that he didn't want to do any more jobs for Troy. He was upset that Troy hadn't paid him after he had gone to so much trouble to help him at the risk of disappointing his other customers.

Abdul decided to give Troy one last opportunity to pay the invoice by sending a letter of demand. If Troy doesn't pay the invoice soon, Abdul intends to apply to the Small Claims Court.

Letter of demand checklist

- Have you already tried friendlier means to recover the debt, such as a polite phone call or late payment reminder letters?
- Does it include precisely accurate information? Could anyone say that something in the letter is false or misleading?
- Does it include a late payment interest rate? (This should only be included if it was specified in the contract.)
- Does it inform the hirer of any action you are not willing to take? (You should only mention action that you are prepared to take.)
- Is it polite and respectful? (It shouldn't harass the hirer.)
- Have you signed and dated it?
- Have you attached copies of all relevant supporting documentation? (For example, a contract, invoice, first and second late payment reminder letters and any relevant emails, faxes or letters.)
- Have you kept a copy of the original documents and the signed letter of demand?

Important: Make sure you send the letter by registered post and that you request a 'signed proof of delivery' card (keep this card in case you need it as evidence in court later).

Getting a lawyer to write a letter of demand

A lawyer can write a letter of demand for you on the law firm's letterhead. This can sometimes encourage the hirer to pay the debt promptly. Most law firms charge a set fee to write a letter of demand on your behalf. This can be a relatively inexpensive and effective way of recovering your debt. Make it clear to the lawyer that the letter of demand is all you are asking for. Getting advice from a lawyer will usually cost you more.

Debt collection services

If the debt is not recovered after friendly reminders, informal negotiations and a letter of demand, you might decide to engage a debt collection service. This is a business that tries to recover the money for you for a fee. Using a debt collection service goes one step further than sending a letter of demand because it signals to the hirer that you have decided to hand the matter over to professionals. This could further strain your business relationship with the hirer, however sometimes it may be more important to get the money you are owed.

Traditional debt recovery methods

Traditionally, a debt collection service will send a 'letter of demand' to the debtor on its letterhead, demanding that the debt is paid by a particular date or legal action may be taken. If necessary, the service will issue a second, 'final' letter of demand or follow up with a 'phone demand'. If unsuccessful, you can engage the service to take legal action on your behalf. The fee you will pay is referred to as a commission. Most commission rates for debt collection services vary between 5 and 30 per cent of the value of the debt.

Debt purchasing or debt buying

In some cases, you can sell the debt to a debt collection service for a small percentage of the debt amount. The service will then pursue the debtor to recover part or all of the money owed but you will not be entitled to any of the money if recovered. You may wish to consider this option when you have written off a debt.

Online debt recovery

Some debt collection services or lawyers provide online debt recovery services. Usually, these services require you to type in the information about the debt you want to recover (such as the hirer's business name, address, amount of debt, what the debt was for). The service then generates a letter of demand for a fee that you pay online. The letter is usually sent to the hirer for you.

Advantages

- It's fast and easy.
- It's relatively cheap (often a fixed fee paid by credit card online).
- The letter is usually on the letterhead of a lawyer or debt collection service so it may have more of an impact than an ordinary letter.

Disadvantages

- You have little control over what is written.
- You probably won't get advice as part of the service.
- There are the usual dangers of using internet services, such as fraud and insecure payments.
- It could damage your future business relationship with the hirer.

See the *What to do next box* on page 59 for details about finding a debt collection service, including online options.

Example: engaging a debt collection service on an annual basis

Simon is an independent contractor who provides computer services to small businesses. After losing \$7,000 in one year from several unpaid bills from customers, he decided to engage a debt collection service on an ongoing basis. He paid an annual fee of \$2,000 for this service. On all his contracts, quotations and invoices, Simon included terms and conditions of payment provided by the service. They state that any costs associated with recovering the debt will be charged to the hirer.

In some cases, if a bill is not paid on time, Simon asks the debt collection agency to chase the payment. They do this until the debt is paid and the agency's costs are recovered. Simon doesn't use the agency for all his unpaid bills because sometimes he wants to maintain the business relationship so he can get more work from that hirer in the future. He uses negotiation, first and second reminder letters (see pages 21-25) and, if necessary, mediation to come to an arrangement with valuable hirers that he knows are worth the effort.

Simon sees the annual fee as a form of insurance and a way to reduce worry and stress about money.

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 payment laws. These laws usually provide a dispute resolution mechanism for building and construction contractors who are owed progress payments for work performed for a hirer.

You can use the security of payments law 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 and territories, security of payment laws 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 may be forced to pay immediately. Security of payment laws are different in each state and territory. You should check to see how the laws operate where you do your work. See the What to do next box on page 57.

Small business commissioners and ombudsmen

Small business commissioners and ombudsmen are generally government appointed advocates who represent the interests of small business. A small business owner in New South Wales, Victoria, South Australia and Western Australia who has a dispute with another business or organisation may apply to the small business commissioner in their state for advice, advocacy and low-cost or subsidised mediation.

State small business commissioners

Small business commissioners can investigate complaints about unfair market practices affecting small business. They also provide low-cost or subsidised ADR services for small businesses, that aim to mediate disputes. Most offices deal with disputes about retail leases. The Victorian Small Business Commissioner also deals with owner-driver, forestry contractor, farm debt and general business/commercial disputes.

Most state small business commissioners are recent appointments, so keep in touch with your state office for the latest information about their services. See the *What to do next* box on page 57 for contact details.

Australian Small Business and Family Enterprise Ombudsman

The role of the Australian Small Business and Family Enterprise Ombudsman is to:

- provide information and assistance to small businesses, including referral to dispute resolution services;
- represent small business interests and concerns to the Australian Government; and
- work with industry and government to promote a consistent and coordinated approach to small business matters.

What to do next

Understand who controls the hirer's business

Make sure you are dealing with the right person when trying to resolve a dispute. Do a general web search for the hirer's name or use these services to get the hirer's business name and company details:

- ABN Lookup Service: search for details of Australian business numbers at [Australian Business Register](#).
- Organisations and Business Names Search: search for business names and company name details on the Australian Securities and Investments Commission website at [ASIC](#).

Get advice

- Consult your business adviser, industry association, union or lawyer.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. For contact details, check your local telephone directory.
- To find out about free or low-cost legal advisory services in your state or territory, see Table 3 on page 97.
- Unions can represent independent contractors and help with disputes. To find out which union covers you, call Unions Australia on 1300 486 466 or visit [Australian Unions](#).
- Visit a business enterprise centre. Find out the address of your nearest centre from [BEC Australia](#).

STATE	PHONE	WEBSITE
Australian Small Business and Family Enterprise Ombudman	1300 650 460	Australian Small Business and Family Enterprise Ombudsman
NSW	1300 795 534	NSW Small Business Commissioner

STATE	PHONE	WEBSITE
South Australia	08 8303 2179	Small Business Commissioner - South Australia
Victoria	03 9651 9316	Victorian Small Business Commissioner
Western Australia	131 249	Small Business Development Corporation

Find a private mediator, conciliator or arbitrator

- See Table 1 on pages 92-95 for a list of the main alternative dispute resolution providers.
- Contact one of the recognised mediator accreditation bodies listed on the Mediator Standards Board website at [Mediator Standards Board](#). These organisations can provide you with the names of accredited mediators.
- Look under 'mediation', 'conciliation' or 'arbitration' in your local business telephone directory for both individual practitioners and organisations that can coordinate the details of your dispute resolution process for you.

Find an expert

- Contact the relevant industry or professional association by searching the Directory of government and business associations at [business.gov.au - Directory](#).
- Contact one of the ADR providers listed in Table 1 on pages 92-95 to find an expert who is also an ADR practitioner.
- Contact one of the recognised mediator accreditation bodies listed on the Mediator Standards Board website at [Mediator Standards Board](#). These organisations can provide you with the names of accredited mediators with specialist qualifications.

Find a free or low-cost mediation service

Many state and territory governments or non-profit organisations offer free or low-cost mediation services to independent contractors.

This includes small business commissioners in some states. For a list of these services, see Table 2 on page 95.

Get help with a franchising dispute

Find a mediator who is acceptable to both participants. If you cannot agree on a mediator, contact the Office of the Franchising Mediation Adviser by calling 1800 150 667 (toll-free within Australia) or 02 9267 0167. You can also email the office at office@franchisingmediationadviser.com.au, or visit its website at [Office of the Franchising Mediation Adviser](#).

Learn more about ADR

- Read the seven national principles for resolving disputes on page 4.
- Download the publication, Your guide to dispute resolution from [Attorney-General's Department](#).

Find a debt collection service

- Look under 'debt collection services' in your local business directory or do a web search for 'debt collect'.
- Find an online debt collection service or lawyer by doing a general web search for 'online debt collect'.

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

- Visit www.business.gov.au/contractors and search for 'Security of payment laws' in your state or territory.
- Contact your industry association or the government building authority in your state or territory.
- Unions can provide advice about security of payments. To find out which union covers you, call Unions Australia on 1300 486 466 or visit [Australian Unions](#).

Get help with language or communication

See our Need help with communication? information on page 90.

Section 3 Going to court

For most people, going to court over a dispute is the least preferred way to resolve a dispute. The court experience can be costly, stressful and time-consuming for you and the hirer, so it's often best to try other dispute resolution options first. However, if ADR does not work or is inappropriate for your circumstances, a court or tribunal decision may provide you and the hirer with a definite outcome.

Some states and territories have civil and administrative tribunals, which are similar to local or magistrates courts. Most courts and tribunals will encourage you and the hirer to try to reach an agreement yourselves. In the Federal Court, this can be a requirement. After you apply or file a claim in a court or civil and administrative tribunal, you and the hirer may be expected to participate in mediation or a pre-trial conference as part of the process.

A court or tribunal will need to see evidence. Before going to court, you should make a record of your efforts to resolve the problem. Make notes of conversations and copies of emails, faxes and letters. It is best if you make the record on the same day that the action occurs. These documents will form part of your evidence in court.

When is it worth going to court?

Before you file a claim in court or apply to a civil and administrative tribunal, it's worth weighing up the cost and effort involved in taking this action and the effect it may have on your business. Consider the questions in our Going to court checklist before making your decision.

How much will it cost?

The total cost of going to court will depend on:

- the size of the debt (determines which court you and the hirer go to)
- the complexity of the situation
- the fees charged by the court
- whether you and the hirer are represented by lawyers
- the cost of taking time away from your business to prepare and attend court
- any travel and accommodation costs to get to court or to meet with lawyers.

Going to court checklist

- Is the hirer able to pay?
- Is there a genuine dispute or is the court process an opportunity for the hirer to delay paying?
- Does a time limit apply to your claim?
- Can you afford it? (Costs will include court fees, legal fees, your time, and possibly the hirer's legal costs.)
- Will the time, money and stress be worth the outcome?
- What will happen if the decision goes against you?
- How will a court case affect your business or reputation? (Whatever is said in court will be on the public record.)

Example: legal fees associated with going to court

Carmen is an independent contractor who provides human resources advice to small businesses. Daniel, the owner of an accounting firm, hired Carmen to work for a six-week period to assist with staff moves and settling new employees. At the end of the six-week period, three employees had resigned. Daniel blamed Carmen and said she had done more harm than good. He refused to pay her invoice of \$5,200 (including GST). Daniel and Carmen met twice to discuss the issue and Carmen defended her work, but Daniel still refused to pay.

Carmen's lawyer advised that she could send Daniel a letter of demand for Carmen. The lawyer asked Carmen whether she was prepared to take court action against Daniel if the letter of demand did not result in payment. Carmen asked how much it would cost. She advised that her hourly rate was \$300 and estimated as follows:

- legal fee to take detailed instructions and prepare the court documents \$1,200 (4 hours)
- a court filing fee of \$197
- if the claim is not defended: legal fee of \$600 (2 hours) to prepare court documents for default judgment
- if the claim is defended: legal fee of \$1,200 (4 hours) to read the defence and advise on whether the firm is likely to be successful
- legal fee for attending initial court appearance \$900 (3 hours).

Carmen's lawyer explained that those were the fees 'just to get things started' because this particular case could turn out to be complex. Carmen decided that it was not worth the cost. She instructed her lawyer to write to Daniel to try to negotiate a settlement instead.

Which court or tribunal?

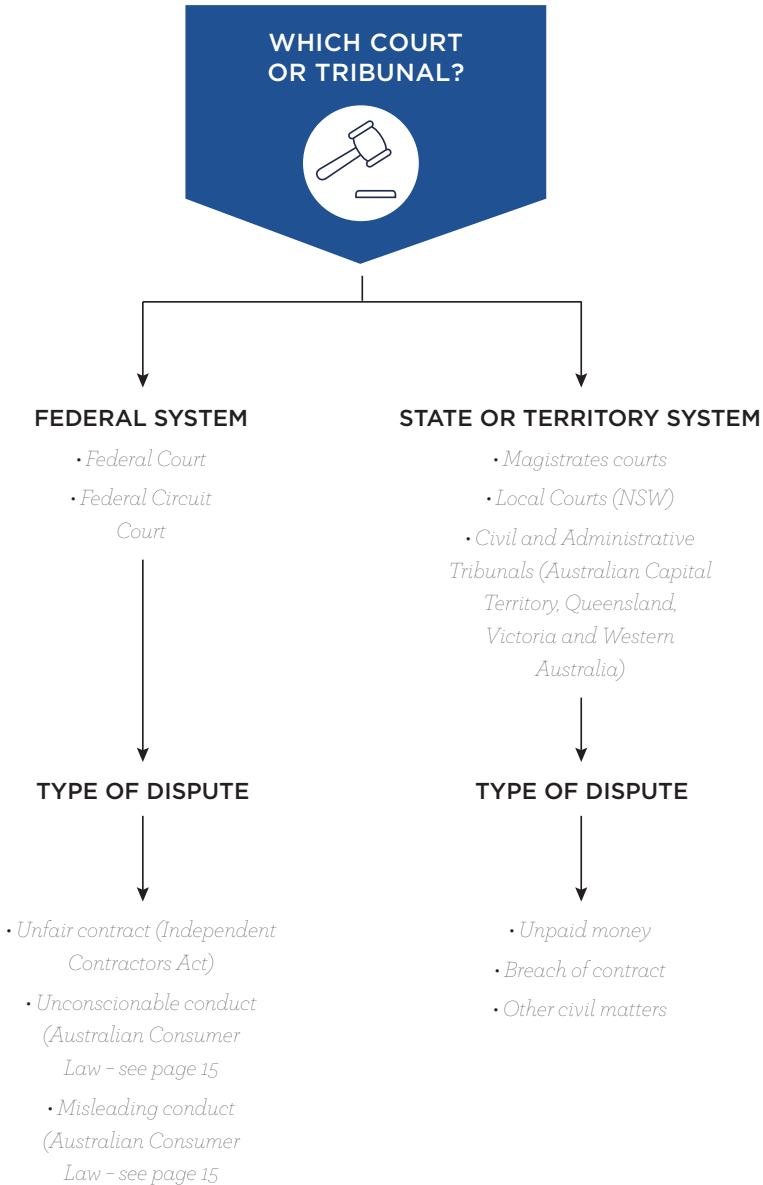
Deciding on the right court or tribunal to hear your dispute will depend on:

- the state or territory where the contract was undertaken
- the reasons for your claim
- the amount of money in dispute.

Australia has two separate sets of courts:

- federal courts
- state and territory courts.

The courts in each state and territory, however, are separate from each other. Some states and territories, such as the Australian Capital Territory, Queensland, Victoria and Western Australia, have civil and administrative tribunals where small claims can be heard more cheaply and informally than the magistrates courts. The other states and the Northern Territory have small (or minor) claims divisions in the magistrates courts that hear small claims in a similar manner. For a list of courts and tribunals in Australia, see Table 4 on pages 99-101.



Federal courts

You and the hirer must use the federal court system if you are making an unfair contract claim *under the Independent Contractors Act 2006* (Cth). You can choose to make a claim in either the Federal Court or the Federal Circuit Court. The Federal Circuit Court handles less complex matters, is less formal and is less expensive than the Federal Court. The complexity of the matter or the amount of the claim will determine which federal court should hear the matter. See page 73 for more information about unfair contract claims under the Independent Contractors Act.

If you file a claim in the Federal Court or the Federal Circuit Court, you will usually have to show the court that you have made a sincere and genuine attempt to resolve the dispute. This involves lodging a ‘genuine steps statement’ when you file the claim.

The *Civil Dispute Resolution Act 2011* (Cth) provides examples of the types of ‘genuine steps’ that may be taken. The steps you take to resolve a dispute will depend on the nature of the dispute, the people involved and whether there is a threat to a person’s safety or property. Download an ‘Applicants genuine steps statement’ form from the Federal Circuit Court website at [Federal Circuit Court of Australia](#).

Preparing a ‘genuine steps statement’

Your genuine steps statement must show the steps you have taken to try to resolve the dispute outside the court process. It must show that you have made a sincere and genuine effort to resolve the dispute. It may help to include details such as dates, mode of communication (for example, email, letter, telephone conversation etc.) and the time period before receiving responses.

The court will give your genuine steps statement to the hirer, who will also have the opportunity to file a statement before a hearing is set. If the hirer disagrees with your statement, they will have to explain why.

A court proceeding will not necessarily stop if you or the hirer don’t provide the court with a genuine steps statement. Failure to provide it will not help your case or the hirer’s case.

Examples of genuine steps you can take to resolve a dispute

- Propose a meeting to discuss the issues in the dispute.
- Provide a response to the hirer if you are notified about a dispute.
- Provide relevant information and documents to the hirer explaining the issues.
- Suggest what action could be taken to resolve the dispute.
- Try to negotiate with the hirer (directly or through a representative) to resolve some or all of the issues in dispute.
- Suggest to the hirer that you try an alternative dispute resolution process such as mediation (see pages 42-43 and 37-38), conciliation (see pages 39 and 44-45) or arbitration (see pages 39 and 46-47).
- Agree on the ADR practitioner who will facilitate the process.
- Attend the process.
- Consider a different process or different ADR practitioner if the dispute remains unresolved.
- Engage an expert to give their opinion on the issues in dispute.

State and territory magistrates court or local court

If you believe a hirer owes you money or has breached your contract, and you have tried the less formal approaches to dispute resolution, you may decide to approach the relevant court/tribunal in your state or territory. Each court has a limit on the matters it can decide based on the amount of money involved. Limits vary between states and territories. See Table 4 on pages 99-101 for a list of contact details for courts and tribunals.

It's usually best to make your claim in the lowest level court that has a high enough limit to decide on your case. The costs and complexity often increase in higher courts, for example, if the hirer owes you \$5,000, you can apply to a court that can hear claims up to that amount. It would usually be a small claims court or tribunal. If the

hirer owes you \$120,000 you may have to make your claim in a higher court, such as a district or county court, which can hear larger claims. In Victoria, however, the complexity of the case and the rules of evidence determine which court is appropriate to hear your case, not the value of the claim.

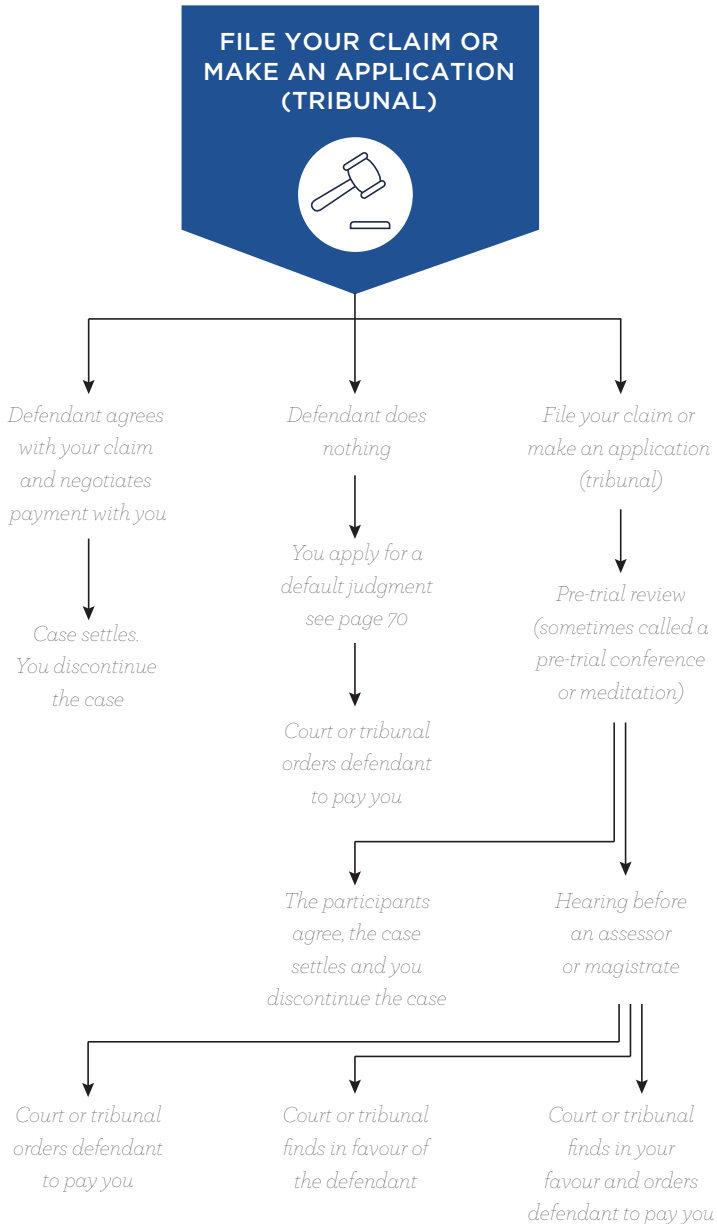
In a district or county court, your legal costs will be higher and the rules of evidence are likely to be more formal. If you commence action in a court that is above the lowest court or tribunal, you should get legal advice.

Small claims courts and tribunals

Small claims courts (or civil and administrative tribunals) in each state or territory are usually cheaper and have less formal processes than higher courts. This makes it easier to speak for yourself without a lawyer and without specialised legal knowledge. The maximum value of a claim in these courts and tribunals varies between states and territories but is usually between \$5,000 and \$25,000 (except in Victoria, where there is no limit to the value of a claim).

If the hirer chooses to ignore your claim, some small claims courts or tribunals will order the hirer to pay the amount you claim is owed, without the hirer attending a hearing. This is called a 'default judgment' and can be enforced (see page 70). See page 74 for information about enforcing a court order. See Table 4 on pages 99-101 for contact details of the courts and tribunals in your state or territory.

On the opposite page is a summary of the small claims or civil and administrative tribunal processes. The processes differ between the Commonwealth, states and territories so you should check the website of the relevant court before proceeding (see Table 4 on pages 99-101).



Steps in the court process

1. Seek legal advice

In many cases, it pays to get legal advice before you lodge a claim in a court so you know if you have a chance of succeeding. A lawyer can also help you to prepare your evidence and arguments. However, you may not want a lawyer to represent you in a court. See the What to do next box on page 75 for further information about finding a lawyer. If you are making an unfair contract claim under the Independent Contractors Act, getting legal advice is essential (see page 75).

2. Lodge your claim

If you are speaking for yourself in court, you need to file or lodge a claim and pay a filing fee to the court or tribunal that will hear your claim. Check the website or call the court or tribunal registry to find out if there is a specific form you need to complete and what documents you need.

Some courts and tribunals also have information available to people who want to represent themselves in court - self represented litigants. See Table 4 on pages 99-101 for contact details.

Different claim documents are used in different courts and tribunals. For example, a statement of claim is used in the District Court of NSW - this sets out the facts upon which your case is based. In the Federal Court, an application and affidavit may be used to start the court process.

What is an affidavit?

An affidavit is your written version of the facts that you swear to be true in front of an authorised person such as a justice of the peace or a lawyer. It is a crime to write false things in an affidavit (perjury). Some courts ask for an affidavit when you file your case and others require it later.

If you are lodging a claim in the Federal Court or Federal Circuit Court, you may have to provide a genuine steps statement together with your application (see page 65).

A lawyer can lodge your claim and prepare the genuine steps statement for you, for a fee.

3. Court papers given to the hirer

The documents you file in court will then be 'served on' (given to) the hirer who, for the court proceedings, is now called the 'defendant'. Each court and tribunal will have its own procedures for serving documents. You may have to do it yourself or hire someone to do it for you, or the court may arrange it. If the defendant does not respond, you may have to prove that the papers were actually served. Visit the court or tribunal's website or contact its registrar for more information.

The defendant has a number of options:

- defend the claim by 'filing' a defence
- admit the claim is correct
- do nothing, or
- take other legal options like delaying or seeking to dismiss the action, bring in another party to the claim (this is called 'joining') or make a 'cross-claim' against you.

4. If the defendant does nothing (default judgment)

If your claim is for payment of a debt and the defendant does nothing, you may be entitled to a 'default judgment', where the court decides in your favour without conducting a hearing. The defendant may have to pay your court costs and other expenses related to your claim (called 'disbursements'). The court will need proof that the originating documents have been served and that the debt is still owed, plus all receipts for the disbursements. If the court issues a default judgment this can usually be enforced by the sheriff or bailiff. The registry or website of the court or tribunal can explain how a judgment can be enforced.

5. If the defendant wants to oppose the claim

Mediation conference or pre-trial review: Most courts and tribunals will require you and the hirer to attend a mediation, conference or pre-trial review before allowing your case to go to a hearing. This is an opportunity for you both to settle the matter in an informal context before going to the expense and effort of a hearing (see pages 35-36 and 42 for more information).

If you and the hirer are unable to agree at mediation or a pre-trial conference, the registrar will help ensure the case is ready for a hearing. This may include instructing you to change your statement of claim if an error has been made.

Attend a hearing: If mediation or pre-trial conference is unsuccessful, a hearing date will be set. At the hearing, you will both be given the opportunity to present evidence to the court. A decision may be made in favour of either you or the hirer. You may need to attend on more than one day.

The formality of the documents and processes will vary with the type of case and the court or tribunal involved. You may need to seek legal advice more than once.

6. The court provides a judgment

The court may provide you and the hirer with a decision at the conclusion of your case. If necessary, the court, through the sheriff or bailiff, has the power to enforce a judgment to pay money.

Example: possible outcomes of going to court

Keiko, a cleaner and independent contractor, took court action against Patrick, a function centre owner, for breaching their contract for cleaning services.

The contract stated that Keiko would be hired to clean the function centre every Sunday for six hours for a period of six months. Keiko agreed to clean the premises at a discounted rate because it was reliable and regular work. After two months, Patrick had not paid any of Keiko's invoices. When she approached him about it, he told

her he had ‘found someone cheaper’ and ended the contract. A month later, he had still not paid the invoices.

After many requests to Patrick to pay the invoices, Keiko decided to take the matter to the Magistrates Court. She also claimed damages for loss of future earnings as a result of Patrick ending the contract early without good reason. Keiko did most of the preparation and initial legal work herself but decided she needed a lawyer to help her prepare for the court hearing. Keiko’s lawyer did not represent her in court. Three possible outcomes of this case are outlined below.

Outcome 1

There is a judgment in Keiko’s favour. The magistrate orders that Patrick pays the money owed and an additional amount to cover Keiko’s lost earnings as a result of the breach of contract. The magistrate also orders Patrick to pay the court filing fee, service fees and other legal costs that Keiko paid out.

Outcome 2

The magistrate orders that Patrick pay Keiko the money owed for services already provided but does not award any damages for the loss of future earnings. The magistrate also orders Patrick to pay Keiko’s court filing fee and service fees. The sum of money awarded is therefore very low and does not cover Keiko’s legal costs.

Outcome 3

Keiko loses the case. The magistrate does not award Keiko any money. She must pay her legal fees and her other expenses. Keiko spent a lot of time preparing for and attending the court hearing, instead of working and earning money. In addition, the magistrate orders that Keiko pay Patrick’s legal fees. Patrick had instructed a lawyer and so this is quite a lot of money - Keiko may also have to pay interest on this debt. The magistrate can make an order to get the money from Keiko by taking her car and furniture. She may have to declare bankruptcy.

Unfair contract claims

Sometimes you may consider part of your contract with the hirer to be unfair or harsh. If you have not been able to get that part changed or removed from your contract through negotiation or ADR, you may be able to make an unfair contracts claim in either the Federal Court or the Federal Circuit Court.

First, you will need to find out whether you are covered by the Independent Contractors Act and whether your contract or a particular part in the contract is likely to be considered 'unfair' or 'harsh' by the courts. You should get legal advice before making an unfair contract claim in court. This will save you time, money and stress.

Seek legal advice

You should get legal advice before taking an unfair contract case to the Federal Court or the Federal Circuit Court. See page 75 for information about finding a lawyer.

The court will ask you to try alternative dispute resolution (ADR) as a first step.

When determining whether a contract is unfair or harsh, a court may consider:

- the relative strengths of the bargaining position of the parties
- whether any undue influence or unfair tactics were used against a party
- whether the contract provides total remuneration that is, or is likely to be, less than that for an employee performing similar work
- any other matter the court thinks is relevant.

Where a court finds that a contract is unfair or harsh, it may order that:

- the terms of the contract be rewritten - for example, to add or remove clauses

- parts of the contract will have no effect
- the contract be set aside - that is, that the contract ceases to operate.

For Federal Court and Federal Circuit Court contact details, see Table 4 on pages 99-101.

Enforcing a court order

A court order is legally binding and can be enforced in a number of ways.

1. Writ for levy of property

The order can be referred to a sheriff or bailiff who can go to the hirer's home and take assets including cars and furniture. These goods can be sold and the proceeds used to pay the debt. In some states and territories, the sheriff can seize and sell land and houses if the debt cannot be paid from just selling personal possessions.

2. Garnishee order

The magistrate or judge can order that money be seized from the hirer to pay you. Money can be taken from sources such as bank accounts, wages and from the bank accounts of people who owe the hirer money.

3. Examination summons

If the hirer's assets are not known, you can apply to the court for an 'examination summons' to be issued and served on the hirer. This is a summons that requires the hirer to appear in court to have their financial circumstances examined. This may enable the court to make a garnishee order or a writ for levy of property.

However, if the hirer goes bankrupt, you may get nothing.

For further information, see the courts listed in Table 4 on pages 99-101.



What to do next

Get help with anxiety or depression

Sometimes having a dispute with the hirer can make you anxious or depressed. If you think you are suffering from anxiety or depression, it may help to talk with a professional:

- Visit your doctor (GP), who can refer you to a counsellor if necessary.
- Call Lifeline Crisis Support on 13 11 14 to speak with someone by telephone.

Invite the hirer to participate in alternative dispute resolution (ADR)

See pages 35-47 for more information about ADR .

Get advice

- Consult your business adviser, industry association, union or lawyer.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. For contact details, check your local telephone directory.
- To find out about free or low-cost legal advisory services in your state or territory, see Table 3 on page 97.
- Visit a business enterprise centre. Find out the address of your nearest centre from [BEC Australia](#).

Find a court or tribunal in your state or territory

See the list of courts and tribunals in Table 4 on pages 99-101.

Get help with language or communication

See our Need help with communication? information on page 90.

Section 4 Preventing disputes

Contracting doesn't always go smoothly but getting the contract right at the start of your business relationships will mean fewer problems down the track. A written contract is a better way to achieve this than a verbal contract.

Prevention is better and much cheaper than cure.

Whether your contract is verbal or written, 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. But unless you have proof to show what was agreed at the beginning of the business relationship, you may not be able to challenge it successfully later on. A written contract will give you and the hirer much greater certainty and clarity than a verbal contract. This is because a verbal contract depends on understandings and recollections about what was agreed.

Negotiating a good contract

While many contracts are verbal or sealed with a 'handshake', it's much safer to have something in writing than to rely on memory. A written contract will give you and the hirer more certainty and minimise your business risks by making the agreement clear from the outset. A written contract can clearly set out the details of what was agreed between you and the hirer. It can include details about materials, timeframes, payments and a procedure to follow if there is a disagreement.

If you prefer to have a verbal contract, you should keep any paperwork that confirms your verbal agreement, such as quotes, emails and lists of specifications. These documents will help you and the hirer know what was agreed if a problem occurs.

Negotiating a good contract and putting it in writing can help prevent a dispute. While a verbal contract can be enforceable

by law, if there is a dispute, you and the hirer may have different recollections about what was agreed. A written contract gives you something concrete to fall back on if a dispute occurs. It can also help you work out which particular right or entitlement has been breached. Your contract can be used as evidence in court if the dispute becomes serious.

Make yourself clear

A contract should clearly and accurately reflect what you and the hirer have agreed. It should set out exactly what you expect from each other. If you cannot agree about something, discuss it in more detail so you can understand each other's point of view. If you are not comfortable with a part or a word in the contract, then don't sign it. The contract will be legally binding, so always get advice first. You and the hirer are more likely to have a productive working relationship if you are both satisfied with the contract from the start.

A well-drafted contract is an important risk management tool for your business.

Write it down

It is good practice to take notes of all the negotiations and discussions you have with the hirer and note the dates they occurred. This should be done both before and after you and the hirer sign the contract. If the contract has commenced, any discussions that change the terms of the agreement become a 'variation' to the contract. You and the hirer 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.

Get advice

Get advice before you sign a contract if you are unsure about the meaning of any part of the contract or how it will work. It may be too late to fix or change a contract once it is signed. Never sign a contract until you and the hirer fully agree to its terms. If necessary, get advice from your business adviser, union, professional association or lawyer before signing. A lawyer can also review your contract to make sure it is legally enforceable.

Do you need an interpreter?

You might be in a better position to negotiate your contract with the hirer if you can communicate with them in your own language and understand the clauses in the contract. Consider speaking to the hirer through an interpreter or paying for the contract to be translated by an accredited translator into your language. See What to do next at the end of this section for more details about how to find an interpreter or translator.

Dispute resolution clauses

It is good practice to outline a dispute resolution procedure in your contracts with hirers. This is usually referred to as a 'dispute resolution clause'.

A dispute resolution procedure may require you to take the following steps before legal proceedings can begin:

- give the other party a 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 ADR practitioner (for mediation, conciliation or arbitration).

The dispute resolution clause should also name an organisation that will appoint an ADR practitioner if you and the hirer cannot agree on one. It is important to insist that the ADR practitioner is qualified and currently registered as an ADR practitioner (see the What to do next box on page 82 for more information).

Similarly, if you work in an industry where the opinion of an expert is required from time to time to help resolve a dispute, you may decide to include an expert determination clause. This may include similar information to the dispute resolution clause (see page 48 for more information).

These processes allow you and the hirer to try to resolve a dispute quickly and cheaply in a manner that ensures that you can continue to do business with each other. To reduce the cost of resolving a dispute, the contract should state that any costs associated with

the dispute resolution process will be split evenly between you and the hirer. Include specific timeframes in a dispute resolution or expert determination clause to avoid the process dragging on.

Example: using the dispute resolution clause in your contract

Effie has a contract with ReCALL Ltd 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. She tells Effie that she will get her payment 'when they 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 such as a mediator. 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 next step is for both Effie and the finance manager to choose a mediator. The contract provides that if they cannot agree on the choice of mediator then an agreed recognised mediator accreditation body will appoint a mediator. See [Mediator Standards Board](#) for a list of these bodies.

Once a mediator is appointed, Effie and ReCALL Ltd can try to resolve the dispute with the mediator's assistance.

Contract checklist

Before you sign a contract...

Do you know your status?

Find out if you are considered to be an 'employee' or an 'independent contractor' for a particular job and whether this is consistent with the nature of the job. Knowing your status is important for tax, superannuation and insurance purposes. Use the Contractor decision tool at business.gov.au - Independent Contractors or call business.gov.au 13 28 46 to help you understand whether a court is likely to consider you an employee or an independent contractor (see pages 30-31 for more information).

Is the contract in writing?

Verbal contracts can be risky because they rely on memory. It's always best to get your contract in writing but if a written contract isn't possible, make sure you have some documentation to help you identify what was agreed: emails, quotes, lists of specifications and even notes about your discussion.

Do you understand the language used in the contract?

If possible, make sure the contract terms are written in plain English. Get advice before you sign a contract that 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 or get someone who is skilled and experienced to read the whole contract with you.

Does the contract include important basic information?

The contract should identify each party to the contract (including Australian Business Numbers) and be signed and dated by both you and the hirer.

Is the description of services as detailed as possible?

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.

Does the contract state clearly how and when payments will be made?

The contract should set out whether payment will be by fixed fee, or an hourly or daily rate. Be careful of provisions that provide for payment only on full completion of the contract; consider payments for completion of each stage, often called progress payments.

Does the contract contain a clause about late payment interest?

You may wish to include a clause that requires the hirer to pay you interest if your bill is not paid on time. It is advisable to get help from a professional to write this clause. The clause should state how the interest rate will be calculated and when it applies to an unpaid bill. If both you and the hirer agree, the rate of interest can be charged at the 'General Interest Charge Rate' set by the Australian Taxation Office. Search for 'general interest charge' at [ATO](https://www.ato.gov.au).

Is there an arrangement for settling disputes?

The contract should outline a process to help resolve a dispute quickly without going to court. The process might require informal discussion and negotiation first, followed by ADR if necessary (see pages 35-47).



What to do next

Understand your status as a worker

- Use the Contractor decision tool at business.gov.au - Independent Contractors or call business.gov.au 13 28 46 to help you understand whether a court is more likely to consider you an employee or an independent contractor.
- Read pages 30-31 to understand some of the factors a court uses to decide whether a person is an independent contractor or employee.

Learn how to negotiate a contract that works for you

Download our publication, Independent contractors: contracts made simple from business.gov.au - Independent Contractors.

Learn about being an independent contractor

Download our publication Independent contractors: the essential handbook from business.gov.au - Independent Contractors.

Get advice

- Consult your business adviser, industry association, union or lawyer.
- To find a lawyer, contact the Law Society or the Law Institute in your state or territory. For contact details, check your local telephone directory.
- To find out about free or low-cost legal advisory services in your state or territory, see Table 3 on page 97.
- Visit a business enterprise centre. Find out the address of your nearest centre from www.becaustralia.org.au.
- For more advice options, see page 32-34.

Get help with language or communication

See our Need help with communication? information on page 90.

Section 5 Case studies

These four case studies have been developed from real disputes with assistance from Independent Contractors Australia, Housing Industry Association and Master Builders Australia. They contain advice for all independent contractors and hirers who want to prevent disputes and build better business relationships; they cover these situations:

1. when the hirer is unhappy with your work
2. when the work is not completed on time
3. when you invoice for extra work and the hirer won't pay
4. when the nature of the work changes.

Case study 1: When the hirer is unhappy with your work

The dispute

Andrew is a painter who was contracted by Theo, a hirer, to do a job. Three years after the job was completed, Andrew received a phone call from Theo because the paint was now peeling and cracking. Theo claimed that the problem with the paintwork was due to Andrew's faulty workmanship and he was asked to fix it.

In Andrew's case, the problem could have been caused by:

- Andrew's poor workmanship
- a defect with the paint
- a maintenance problem.

While Andrew had followed the Building Code of Australia, he could still be accused of poor workmanship.

What should Andrew do?

Andrew should work through sections 1 and 2 of this guide to decide which steps are suitable in his circumstances. He should also consider the following:

1. Respond with concern and take immediate action -good communication can help to avoid legal action.
2. Visit the premises and inspect the problem.
3. Ask the paint supplier/manufacturer to test the paint to see if it is defective.
4. Arrange for an independent consultant or paint expert to test the paint and provide a written report about the source of the problem and who is responsible (see pages 48 and 82 for information about finding an expert).
5. Keep in touch with Theo to let him know what he is doing to resolve the problem - this way, Theo is less likely to take action against Andrew and his reputation is less likely to suffer.

If it turns out there is no problem with the paint or maintenance of the building, Andrew may have to redo the painting.

Tips to prevent these types of disputes

- Provide the hirer with written maintenance instructions when you complete a job.
- Ask the hirer to inspect your work before you provide your invoice.

Case study 2: When the work is not completed on time

The dispute

Ingrid, the owner of TLC Bathrooms, hired Joon, a cabinetmaker and independent contractor, to build some cabinets. The deal was done over the phone. Ingrid told Joon that the cabinets had to be delivered by the beginning of March. She paid Joon a deposit and agreed to make the final payment on delivery.

In the first week of March, Ingrid called Joon to find out what day the cabinets would be delivered. Joon told her the cabinets would not be ready until the end of March because he had commitments to his other customers. Ingrid was angry and decided to terminate the contract. She claimed Joon was in breach of the contract by not completing the work by the agreed time. She refused to make any further payments. Joon argued that Ingrid had verbally agreed to a March delivery and that no formal date had been set. There was nothing in writing to confirm the expected date of delivery.

What should Joon do?

Joon should work through sections 1 and 2 of this guide to decide which steps are suitable in the circumstances. He should also consider the following:

1. Write a polite letter to Ingrid, outlining the facts and offering to complete the work and deliver the cabinets by a specific date - he should attach an invoice for the work done to date and copies of any paperwork such as quotes, receipts for materials.
2. Send the letter by registered post and follow up with a phone call to see if Ingrid has decided to continue with the contract or pay the invoice.
3. If Ingrid takes no action, Joon can make a payment claim under the relevant 'security of payment' law in his state or territory (see pages 55 and 59 for more information) - this is only available for the building and construction industry. Under these laws,

Ingrid will be required to respond in writing to Joon's claim and set out her reasons for non-payment.

Tips to prevent these types of disputes

- If work needs to be done by a certain date, make sure there is a written record so there is no misunderstanding. This may be in the form of a formal contract, a confirmation email, an invoice and quote or through some other written confirmation. A written contract is not required by law, but it is the best way to prevent a dispute. This is because the contract terms, including price and expected completion date, are clearly understood by both you and the hirer.
- A detailed quote or a work order (common in the building and construction industry) is a simple way to get your agreement in writing. It can include the contract price and detail any variations for additional work that will affect the price.

Note that:

- even where there is no agreed date for completion, there is usually an implied term that you will complete the job within a reasonable timeframe
- if the hirer claims you have breached the contract, the hirer should put it in writing and give you a chance to fix the problem.

Case study 3: When you invoice for extra work and the hirer won't pay

The dispute

Lance is a business owner who hired Deborah, an independent contractor, to provide customer service training to his staff. They agreed on a price for the job. It was a fixed quote and they both signed a contract. After Deborah started the job, Lance decided he also wanted Deborah to deliver time management training the same week. Lance mentioned an estimated price over the phone but they did not make a variation to the contract.

Deborah completed the training and gave Lance his invoice. Lance refused to pay the full invoice because he said the price charged for the additional work was more than his estimated price. Deborah said she had charged Lance at the correct rate, which was similar to rates she had charged him for previous training she had delivered to his staff.

What should Deborah do?

Deborah should work through sections 1 and 2 of this guide to decide which steps are suitable in the circumstances. She should also consider the following:

1. Write a polite letter to Lance, outlining how the price was calculated and showing how it was similar to previous jobs - she should include copies of any receipts for training materials and itemise her invoice with as much detail as possible. The letter could ask Lance for a meeting to discuss the invoice at a time that suited each of them.
2. If Deborah wants to get more work from Lance in the future, she could try to negotiate an amount that satisfies each of them - she may have to take a lower price to maintain her business relationship with Lance.

3. Alternatively, Deborah can suggest to Lance that they find an independent mediator or conciliator to help them resolve the dispute (see Table 1 on pages 92-95).

Tips to prevent these types of disputes

- It is a good idea to put all agreements, including variations, in writing, so the contract terms are clearly understood by both you and the hirer. If one or both of you don't want to sign a contract, it is important to write down your agreement in a confirmation email, on a quote or in some other written form that can be referred to later.
- The sorts of things that need to be put in writing include:
 - the agreed price (or how the price will be calculated)
 - the delivery or completion date
 - the number and type of materials used
 - where the work will be done
 - any variations to the contract
 - anything else that was agreed verbally or could cause a dispute later.

Case study 4: When the nature of the work changes

The dispute

For the past 18 months, Ken has been working on contract for Pia, the owner of an inbound tourism company. He has been supplying web and internet services and invoicing Pia for his work on a monthly basis. Ken relies on this contract for the bulk of his income so it is important to maintain a good relationship with Pia.

One day, Pia asked Ken to do some extra work upgrading their software. To achieve this, Ken had to work from the company's office. Within a short period, Pia also asked Ken to help out with invoicing and payment processing because there were problems with the invoicing system. Ken felt the problems were probably

caused by sloppy administrative practices. He ended up working 50 hours a week to fit in all the work Pia was asking him to do. That month, Ken was so busy he forgot to submit his invoice.

Ken and Pia had not discussed Ken's hourly rate for doing a different type of work from what was originally agreed. When Ken submitted his invoice for two months work, he charged Pia the usual hourly rate for all the work. The total bill was for \$22,000.

Pia was outraged and refused to pay. She claimed that a fault with Ken's software upgrades had caused the invoicing and payment problems. She threatened to sue Ken for damages.

What should Ken do?

Ken should work through sections 1 and 2 of this guide to decide which steps are suitable in these circumstances. He should also consider the following:

1. Advise Pia that he will contact her by a certain date to arrange a time to meet and discuss Pia's concerns with his work and the invoice.
2. Meet with Pia and be prepared to negotiate a lower rate for the extra work.
3. Acknowledge that he should have invoiced Pia every month and provided a new invoice before commencing the new work.
4. Reassure Pia that the software upgrades did not cause the problems and suggest how they could be addressed (see pages 20 and 48-49).
5. Provide a new invoice based on their discussions.

Tips to prevent these types of disputes

- Provide a new quote for any requested changes and get the hirer's agreement in writing before the work commences. Do this every time the work changes. If the client is unhappy with your work, at least you will find this out before the new work begins.
- Send regular invoices to prevent conflict.

Need help with communication?

business.gov.au 13 28 46 is a government service that provides information about independent contracting matters by telephone in English.

business.gov.au 13 28 46

This telephone service provides information to callers about independent contracting matters.

Phone **13 28 46**

Open Monday - Friday 8am - 8pm

If you want to contact business.gov.au 13 28 46 in a language other than English, or you have a visual, hearing or speech impairment, help is available.

Find an interpreter

- To speak to an agent on business.gov.au 13 28 46 through an interpreter, call the Translating and Interpreting Service (TIS) National on 13 14 50. TIS National provides interpreting services in around 170 languages. Note that you will not be charged to use TIS National to call business.gov.au 13 28 46.
- To speak with your hirer through an interpreter, you can either arrange a private interpreter or contact TIS National. If you use the TIS service you will be responsible for any interpreting fees unless the hirer has agreed to pay. For more information about TIS National, visit [Department of Immigration and Border Protection](#) 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.
- Indigenous languages:
 - Aboriginal Interpreter Service (Northern Territory) [Aboriginal Interpreter Service](#)

Find a translator

If you are not fluent in English but your contract is in English, you may wish to get it translated. You can use a private translator to do this. You can:

- 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 [NAATI](#)
 - Australian Institute of Interpreters and Translators Incorporated at [AUSIT](#).

Assistance for the hearing and speech impaired

If you are deaf or have a hearing or speech impairment, use the National Relay Service to contact business.gov.au on 13 28 46.

- TTY users: Call 13 36 77 for the cost of a local call.
- Speak and Listen (speech-to-speech relay) users: Call 1300 555 727 for the cost of a local call or 1800 555 727 (toll-free number).
- Internet relay users: Visit the National Relay Service website at [National Relay Service](#) and enter the number you wish to contact.

Further information about independent contracting and small business matters

- business.gov.au: [business.gov.au - Independent Contractors](#)
- Business enterprise centres: [BEC Australia](#)

Table 1: Alternative dispute resolution providers*

STATE	ORGANISATION	PHONE	WEBSITE
Federal/ National	Arts Law Centre of Australia - mediation service	1800 221 457	Arts Law Centre of Australia
Federal/ National	Australian Mediation Association	1300 633 428	Australian Mediation Association
Federal/ National	Financial Ombudsman Service	1300 780 808	Financial Ombudsman Service Australia
Federal/ National	Institute of Arbitrators and Mediators Australia (IAMA)	See website for your local contact	Resolution Institute
Federal/ National	Office of the Franchising Mediation Adviser	1800 150 667	Office of the Australian Information Commissioner – Busines
ACT	ACT Civil and Administrative Tribunal	02 6207 1740	ACT Civil and Administrative Tribunal
ACT	Conflict Resolution Service	02 6162 4050	Confilct Resolution Service

STATE	ORGANISATION	PHONE	WEBSITE
NSW	Australian Dispute Centre	02 9239 0700	Australian Disputes Centre
NSW	Community Justice Centres	1800 990 777	Community Justice Centres
NSW	NSW Bar Association	02 9232 4055	NSW Bar Association
NSW	NSW Law Society	02 9926 0333	NSW Law Society
NSW	NSW Ombudsman Complaints/ disputes with government agencies	02 9286 1000 or 1800 451 524	NSW Ombudsman
NSW	Small Business Commissioner (includes retail tenancy disputes)	02 8222 4800 or 1300 795 534	NSW Small Business Commissioner
NT	Department of Business	08 8999 5511	Department of Business
NT	Department of the Attorney-General and Justice	1800 000 473	Department of the Attorney-General and Justice
NT	Consumer Affairs	08 8999 1999 or 1800 019 319	Consumer Affairs
QLD	Dispute Resolution Centres	See website for your local contact	Dispute Resolution Centres
QLD	Queensland Bar Association	07 3238 5100	Queensland Bar Association
QLD	Queensland Civil and Administrative Tribunal	1300 753 228	Queensland Civil and Administrative Tribunal

STATE	ORGANISATION	PHONE	WEBSITE
WA	Law Society of Western Australia	08 9324 8600	Law Society of Western Australia
WA	Small Business Commissioner, Small Business Development Corporation	13 12 49	Small Business Development Corporation

* Disclaimer: The Commonwealth does not accept any liability arising from the use of any organisation listed in this table. It should be noted that any references to any organisation in this publication are provided for your information only and do not represent an endorsement of those organisations, nor any warrant of, or representation as to, performance.

Table 2: Free or low-cost mediation services

STATE	ORGANISATION	PHONE	WEBSITE
ACT	Conflict Resolution Service	02 6162 4050	Conflict Resolution Service
NSW	Small Business Commissioner (for more complex, high level disputes)	1300 795 534 or 02 8222 4800	NSW Small Business Commissioner
NSW	Community Justice Centres	1800 990 777	Community Justice Centres

STATE	ORGANISATION	PHONE	WEBSITE
NT	Community Justice Centre	1800 000 473	<u>Community Justice Centre</u>
QLD	Queensland Civil and Administrative Tribunal	1300 753 228	<u>Queensland Civil and Administrative Tribunal</u>
SA	Small Business Commissioner	1800 072 722 or 08 8303 2026	<u>Small Business Commissioner</u>
TAS	Department of Justice - Consumer Affairs and Trading	1300 65 44 99	<u>Department of Justice - Consumer Affairs and Trading</u>
VIC	Small Business Commissioner	13 87 22	<u>Victorian Small Business Commissioner</u>
VIC	Dispute Settlement Centre of Victoria	1800 658 528	<u>Dispute Settlement Centre of Victoria</u>
WA	Small Business Commissioner, Small Business Development Corporation	13 12 49	<u>Small Business Development Corporation</u>
WA	Citizens Advice Bureau of WA	08 9221 5711	<u>Citizens Advice Bureau</u>

Table 3: Free or low-cost legal advisory services

STATE	ORGANISATION	PHONE	WEBSITE
ACT	Legal Aid Commission (ACT)	1300 654 314	Legal Aid ACT
ACT	ACT Law Society's Legal Advice Bureau	02 6247 5700	ACT Law Society's Legal Advice Bureau
NSW	Law Access NSW	1300 888 529	Law Access NSW
NT	Law Society Northern Territory - First Interview Scheme	08 8981 5104	Law Society Northern Territory - First Interview Scheme
QLD	Legal Aid Queensland	1300 651 188	Legal Aid Queensland
SA	Legal Services Commission South Australia	1300 366 424	Legal Services Commission South Australia

STATE	ORGANISATION	PHONE	WEBSITE
SA	Student legal clinics in metropolitan magistrates courts: Christies Beach, Holden Hill and Port Adelaide.	Call the relevant court to find out clinic times	<u>Student Legal Clinics in Metropolitan Magistrates Courts</u>
TAS	Legal Aid Commission of Tasmania	1300 366 611	<u>Legal Aid Commission of Tasmania</u>
VIC	Legal Aid Victoria	1300 792 387	<u>Legal Aid Victoria</u>
VIC	Law Institute Victoria	03 9607 9311	<u>Law Institute of Victoria</u>
VIC	Victorian Aboriginal Legal Service	1800 064 865	<u>Victorian Aboriginal Legal Service</u>
WA	Citizens Advice Bureau of WA	08 9221 5711	<u>Citizens Advice Bureau</u>

Table 4: Australian courts and tribunals*

STATE/ FED	COURT	PHONE	WEBSITE
Federal	Federal Circuit Court of Australia	Check website or telephone directory for individual court locations	Federal Circuit Court of Australia
Federal	High Court	02 6270 6811	High Court of Australia
ACT	ACT Civil and Administrative Tribunal ACT Magistrates Court ACT Supreme Court	02 6207 1740	ACT Law Courts & Tribunal
NSW	Law Access NSW – Attorney General & Justice	1300 888 529	Law Access NSW
NSW	NSW Civil & Administrative Tribunal	1300 006 228	NSW Civil & Administrative Tribunal

STATE/ FED	COURT	PHONE	WEBSITE
NT	Local Court (includes small claims) Northern Territory Magistrates Court The Community Court The Court of Summary Jurisdiction	Check website or telephone directory for individual court locations	<u>Northern Territory Magistrates Courts</u>
NT	Northern Territory Supreme Court	Check website or telephone directory for individual court locations	<u>Northern Territory Supreme Court</u>
QLD	Queensland Civil and Administrative Tribunal	1300 753 228	<u>Queensland Civil and Administrative Tribunal</u>
QLD	Queensland Magistrates Court Queensland District Court Queensland Supreme Court	Check website or telephone directory for individual court locations	<u>Queensland Courts</u>
SA	Magistrates Court (includes small claims) District Court Supreme Court	Check website or telephone directory for individual court locations	<u>Courts Administration Authority of South Australia</u>

STATE/ FED	COURT	PHONE	WEBSITE
TAS	Magistrates Court (includes small claims)	03 6434 6322	Magistrates Court
TAS	Supreme Court	03 6233 6385	Supreme Court
VIC	Victorian Civil and Administrative Tribunal	03 9628 9755	Victorian Civil and Administration Tribunal
VIC	Magistrates Court of Victoria	Check website or telephone directory for individual court locations	Magistrates' Court of Victoria
VIC	County Court of Victoria	03 8636 6510	County Court of Victoria
VIC	Supreme Court of Victoria	03 9603 9300	Supreme Court of Victoria
WA	Magistrates Court (includes small claims)	08 9425 2222	Magistrates Court of Western Australia
WA	District Court	08 9425 2128	District Court of Western Australia
WA	Supreme Court	08 9421 5333	Supreme Court of Western Australia

* This list includes the courts and tribunals most likely to be used by independent contractors. However, it is not an exhaustive list. For a full list of courts and tribunals near you, please contact the Department of Justice or Attorney General's Department in your state or territory. Alternatively, visit www.accesstojustice.gov.au and search for 'court' or 'tribunal' near your postcode.

Glossary - key words used in this guide and their meanings

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

TERM	DEFINITION
affidavit	A written version of the facts that you swear to be true in front of an authorised person, such as a justice of the peace or a lawyer.
ADR (alternative dispute resolution)	A number of methods in which an impartial person assists people involved in a dispute to resolve the issues between them. See arbitration, mediation and conciliation .
ADR practitioner	A person who is a mediator, conciliator or arbitrator.
ABN	Australian Business Number. This is a single identifying number used when dealing with other businesses and the Australian Taxation Office.
agreement	An arrangement between people.
arbitration	A form of ADR (alternative dispute resolution) in which the participants to a dispute agree to present arguments and evidence to a dispute resolution practitioner (an arbitrator) who makes a binding determination.
bailliff	An officer of the Queensland court responsible for enforcing a writ or other actions required by the court. In other states and territories this role is performed by a sheriff .

TERM	DEFINITION
breach of contract	A failure by one party to a contract to do what is required of them under that contract . This includes an anticipatory breach .
clause	A section of a contract .
conciliation	A form of ADR (alternative dispute resolution) that is similar to mediation except that there is always an independent third party present (the conciliator) who attempts to get the participants to agree on a resolution of the dispute based on relevant legal principles.
contract	<p>A legally enforceable agreement made between two or more parties (written or verbal). In this guide, a contract is a commercial contract made between an independent contractor and a hirer - not with consumers or employees. Commercial contracts may include:</p> <ul style="list-style-type: none"> • a contract for an independent contractor's labour or skills where payment is made on the basis of hourly or daily rates • a contract for an independent contractor to achieve a result where payment is made on the basis of a fixed fee.
County Court	See District Court .
debt	An amount of money owed by an individual, business or organisation.
debtor	An individual, business or organisation that owes money.

TERM	DEFINITION
defendant	An individual, business or organisation that you take action against in a court of law. For an independent contractor , this is usually the hirer .
default judgment	A decision made by a court or tribunal without conducting a hearing. This usually happens when one party ignores your claim.
disbursements	Legal costs and other expenses related to your court claim.
District Court	A state court that hears higher value civil claims than a Magistrates Court and appeals from Magistrates Court decisions. In Victoria, it is called a County Court.
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.

TERM	DEFINITION
expert appraisal	An advisory process in which a person with expert knowledge in the relevant subject area, investigates a dispute. The expert then provides advice on the facts and possible and desirable outcomes and how these may be achieved. Sometimes the expert is an ADR practitioner .
expert determination	A process where the parties to a dispute present arguments and evidence to an expert in the subject matter of the dispute. The expert makes a determination, which can be binding if the parties choose. Sometimes the expert is an ADR practitioner .
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> (Cth).
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> (Cth).
Federal Circuit Court	A lower-level court established by the Commonwealth Parliament with similar powers to the higher-level Federal Court . The Federal Circuit Court has less formal rules of evidence than the Federal Court and has lower filing fees.

TERM	DEFINITION
franchising	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.
garnishee order	A type of court order directing that money is paid to a certain person.
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 business or organisation that engages an independent contractor 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 (through breach of contract or negligence while performing the contract).
independent contractor	A person who provides labour or skills or works to achieve a result for a hirer under a commercial services contract . An independent contractor is not an employee .
Independent contracting 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 .

TERM	DEFINITION
judgment	The decision made by a judge or magistrate in court proceedings.
jurisdiction	The authority given by law to a court to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases.
legally enforceable	Able to be enforced by a court.
mediation	A form of alternative dispute resolution in which the participants identify the issues in dispute, develop options, consider alternatives and try to reach an agreement (sometimes assisted by an independent mediator).
misleading or deceptive conduct	Acting dishonestly. Such conduct is illegal under the federal Australian Consumer Law.
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 .
Ombudsman	See Fair Work Ombudsman .
party or parties	A person, business or organisation who has 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 .
security of payment	State and territory laws that provide a dispute resolution mechanism for construction contractors who are owed progress payments for work performed for a hirer .

TERM	DEFINITION
services contract	a commercial contract made between an independent contractor and a hirer for the provision of services by the contractor.
sham contracting arrangement	Occurs when a hirer deliberately disguises an employment relationship as an independent contracting arrangement to avoid paying employment entitlements including superannuation and workers compensation .
sheriff	An officer of the court responsible for enforcing a writ or other actions required by the court. In Queensland this role is performed by a bailiff .
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	Occurs when an independent contractor enters into a services contract with another person (the subcontractor) under which the subcontractor performs work for the hirer.
summons	A direction of the court requiring a person to appear in court either to give evidence or produce documents.
Supreme Court	The highest court in each state or territory. Hears appeals and very high-value claims.
third party	A person who is not a party to a contract .
tribunal	A government agency that employs decision makers for particular types of disputes. It is less formal than a court and more formal than mediation .

TERM	DEFINITION
unfair contract	A contract that is unfair or harsh under the <i>Independent Contractors Act 2006</i> (Cth) 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 federal Australian Consumer Law.
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’).
worker	A person who provides services to another person or organisation as either an employee or an independent contractor .
workers compensation	A system of compensation for work-related injuries that is set out in state and Commonwealth laws.
writ	A written order issued by a court directing a person to do or refrain from doing something.
written contract	A contract in which all the agreed terms are set out in writing.

Index

Need to find information in this book? In addition to the Index, check the following:

SECTION	DESCRIPTION	PAGE
Contents	lists the headings and sections in this book	6
What to do next	contacts at the end of each section	32, 57, 75, 82
Glossary	key words used in this guide and their meanings	102
Tables	important services and their contact details	92-101

A

- alternative dispute resolution 4
 - arbitration 19, 27, 33, 36, 39-41
 - conciliation 33, 36, 39-41
 - cost considerations 41
 - expert appraisal 21, 48
 - expert determination 21, 48
 - mediation 55-59
 - providers 58, 92-95
 - security of payment in building and construction industry 55
 - small business commissioners 56
 - weighing up the options 40
- arbitration 41, 46-47
 - find an arbitrator 47
 - summary table 47
- Australian Business Number (ABN) ABN Lookup Service 57

Australian Consumer Law 8, 64

B

building and construction industry

case studies 83-89

Fair Work Building and Construction 34

security of payment legislation 55

C

civil and administrative tribunals 60-67

conciliation 33, 36, 39, 66, 78

find a conciliator 45, 92-95

summary table 92-95

contract

breach of contract 14, 64, 72

sham 30

supporting paperwork 13

unfair or harsh 15, 65, 73

use of the term 'contract' in this publication 8

variation 27-28, 77, 86-88

verbal 8, 13, 55, 76, 80, 85, 88

written 8, 12-13, 18, 22, 27, 29, 51, 53-55, 76

Contractor decision tool, online 33, 80, 82

contractor or employee? 82

County Court of Victoria 101

courts and tribunals 99-101

affidavit 69

costs 41

enforcing an order 60, 63-65

Federal Court 60, 63-65

Federal Circuit Court 65, 70, 73-74

- going to court checklist 61
- hearing 71
- judgements 71
- Local/magistrates courts (states & territories) 99-101
- lodging a claim 70
- list of Australian courts and tribunals 99-101
- self represented litigants 69
- small claims courts 52, 66-68

D

- debt collection services 53-55
 - find a service 59
 - online services 54
- disputes
 - about money 9, 19
 - case studies 83-89
 - deceptive or misleading conduct 15
 - franchising 37, 59
 - identifying a problem 12
 - misunderstandings 13, 18, 86
 - preventing 76-78
 - types of 14-15
 - unconscionable conduct 15, 34, 64
- dispute resolution
 - alternative dispute resolution 35-41
 - arbitration 41, 46-47
 - clauses in contract 78
 - conciliation 36, 39, 41, 44
 - court, going to 60-75
 - debt collection services 53-55
 - expert appraisal or determination 21, 48-49
 - franchising disputes 37, 59

- free or low-cost mediation 95-96
- letter of demand 9, 22, 35, 49-53
- mediation 36-41
- small business commissioners 56-58
- District Court 69, 99-101

E

- expert appraisal 21, 48-49
- expert determination 21, 48-49

F

- Fair Work Building and Construction 34
- Fair Work Ombudsman 11, 34
- Federal Court 60, 63-65
- Federal Circuit Court 65, 70, 73-74
- franchising disputes and mediation 37, 59

H

- hirer
 - approaching the hirer 19
 - negotiating with 26-27
 - use of the term 'hirer' in this publication 8

I

- Independent Contractors Act 15, 64-65, 69, 73
- Indigenous languages interpreter services 90

L

- language and communication assistance 91
- late payment interest 50-52, 81
- lawyer
 - find a lawyer 32, 57, 75, 81
 - letter of demand on lawyer's letterhead 22

legal services

free or low-cost 97-98

letters of demand 49

Local court (NSW) 64, 99

M

magistrates courts (states and territories) 99-101

mediation 55-59

alternative dispute resolution providers 58, 92-95

franchising 37, 59

find a mediator 43, 59, 95-96

free or low-cost 95-96

N

negotiation 26

contracts 76

improve your skills 33

questions to consider before negotiating 28

tips for successful 26-27

O

organisations and business names search 57

S

security of payment legislation 55

self represented litigants 69

sham contracting 30

small business commissioners 56

small claims court 52, 66-68

U

unfair contracts 15, 65, 73

W

worker 30-31, 82

My notes



Also available from [business.gov.au - Independent Contractors](https://www.business.gov.au)

Resources are regularly updated and can be downloaded from [business.gov.au - Independent Contractors](https://www.business.gov.au). If you have a QR code scanning app on your smartphone, scan this code to visit the website.

something for every business **business.gov.au**

Essential business information:
[business.gov.au](https://www.business.gov.au)

ABN Lookup

The simple way to find ABN information:
[Australian Business Register](https://www.business.gov.au)

Business checklists

Start and grow your business the easy way:
[business.gov.au - Checklists](https://www.business.gov.au)

Business consultation

Consult with government on issues affecting your business:
[business.gov.au - Business Consultation](https://www.business.gov.au)

Business planning

Free guide and business plan template:
[business.gov.au - Business Planning](https://www.business.gov.au)

Grant Finder

Find business-related government grants & assistance:
[business.gov.au - Grant Finder](https://www.business.gov.au)