



Contracts and Agreements – getting it right at each step

Sometimes it is good to revisit the basics – some of our recent experiences (together with reading the experiences of others in the reports of recent Court decisions) are a good reminder about the need to protect your school’s position when entering into, performing, and terminating various agreements and contracts.

What sorts of Agreements should you take care with?

In short, any agreement which will involve your school in entering into a relationship with another party is important. Some of the more common ones to be aware of are:

- Building Contracts
- Leases
- Contracts to purchase Land/Buildings
- Employment Agreements
- Agreements for the provision of services (painting, maintenance, landscaping, catering etc)
- Agreements for the provision of goods
- Finance documents

Documenting the Agreement correctly at the beginning of the transaction

We continue to be surprised at the variety of documents which are proffered by businesses as being acceptable for what are often complex transactions, both in relation to schools in particular, but also for business purposes generally. At times, transactions worth potentially millions of dollars are done on the basis of a “back of the envelope” document, or worse still, on a “handshake”. Generally, we see such things when parties are trying to deal with the problems which have occurred as a result of such poor documentation.

Parties sometimes end up spending substantial sums of money trying to sort out issues which ought to have been addressed in an appropriately drafted agreement at the outset of the relationship, and for a relatively modest investment of time and expense. In the worst instances, disputes arising

from poorly drafted documents end up in the Courts, and this inevitably diverts energy and resources away from the core activities of your school.

What to do when things start to go wrong

The simple answer to this question is, “get some advice”!

Even when starting with a reasonable document, there can be legal consequences depending on how a party responds to certain situations which arise under an agreement – issues such as lateness in performing or paying, advising the other party about certain events, and failing to keep track of important “milestones”, can have significant ramifications.

It is better to get some advice about the legal position at an early stage (where that advice is likely to be relatively inexpensive) than to find your school locked into a position that is both unsatisfactory and expensive.

Terminating Agreements

This is another area where getting advice at an early point (and **before** taking any steps) can be critical.

We recently advised a client who intended to terminate an agreement (for very valid reasons) but the manner in which they were intending to do so would have meant that they were liable for a payment of many hundreds of thousands of dollars ... the cost of our advice was an excellent investment!

Conclusion

Protecting your school’s interests means taking the correct approach at the beginning, during, and in ending Contracts – to use an old expression, “An ounce of prevention is worth a pound of cure”.

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