

**PEOPLE, CULTURE & EMPLOYMENT GOVERNANCE**

Employment Contracts: A Signature Doesn't Make an Unlawful Term Lawful

Every discipline this quarter covered rests on this one document. Most associations reuse it without review

Every discipline this quarter has covered, CEO performance, remuneration, psychosocial safety, redundancy, secondment, professional development, ultimately rests on one foundational document most associations reuse without review: the employment contract itself. A single, critical principle deserves to sit at the centre of how a board thinks about these documents, and it is one many employers miss.

Which rules apply to your association?

The law depends on how your association is set up. A **company limited by guarantee** follows the Corporations Act 2001 (Cth) and its constitution. An **incorporated association** follows its state or territory associations Act and its rules. A **registered charity** also follows the ACNC Act and the ACNC Governance Standards, and some Corporations Act rules are replaced for charities that are companies. Check your own governing documents, and get advice before decisions with legal consequences.

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A Signature Does Not Make An Unlawful Term Lawful

For national system employers, a contract term providing less than the National Employment Standards or an applicable modern award has no effect to the extent of that shortfall, even where the employee signed and agreed to it. This is a specific, frequently misunderstood point. An association cannot negotiate its way out of minimum entitlements through mutual agreement, and a signed document containing such a term does not protect the organisation from an employee later claiming the actual legal entitlement, potentially including back pay for the shortfall. Intentional underpayment has also been a criminal offence since 1 January 2025. Associations in Western Australia that are not trading or financial corporations may be in the WA state system and should check WA minimum conditions.

The Specific, Common Trap Worth Naming Precisely

A particularly common and specific version of this problem is the broad salary set-off clause, language stating that an all-inclusive salary covers all award entitlements without specifying which entitlements are being set off against it. This kind of clause is frequently unenforceable specifically because it is too vague to demonstrate the employee is no worse off than the award requires. In *Fair Work Ombudsman v Woolworths Group Limited* [2025] FCA 1092, the Federal Court also held that, where an award requires payment each pay period, a set-off can only cover entitlements arising in that same pay period, not averaged across a longer period. A generous-looking salary package can still fail legally if the set-off wording itself does not do the specific work the employer assumed it was doing. A contract treated as a formality signed once at the start of employment and never revisited is precisely the document most likely to be quietly wrong by the time it actually matters, when the relationship changes, ends, or is tested by a dispute.

Why A Reused Template Is A Real Risk, Not Just An Efficiency

Associations that grow and hire quickly frequently reuse the same contract template across different roles without proper review, a junior administrative position, a specialist professional role, and a senior manager should not automatically share identical terms, given how differently award coverage, incentive structures, confidentiality needs, and restraint provisions apply to each. Employment law itself also continues to evolve, fixed-term contract limits have applied since 6 December 2023, and a new casual employment definition and employee choice pathway since 26 August 2024, so a template drafted before these changes may no longer be fully compliant regardless of how well it served the organisation previously.

- Review employment contract templates specifically for terms that may fall below NES or award minimums, understanding that employee agreement does not cure this defect.
- Scrutinise any broad salary set-off or all-inclusive remuneration clause specifically, ensuring it identifies which entitlements are being offset rather than relying on vague, all-encompassing wording.
- Maintain role-specific contract terms rather than a single generic template applied uniformly, since different roles carry different award, incentive, and protection needs.
- Review contract templates periodically against current employment law, including the 2023 and 2024 changes to fixed-term contracts and casual employment.
- Remove any pay secrecy clause. These terms have no effect, and employers must not include them in new contracts.
- Document any variation to contract terms in writing at the time it occurs, rather than relying on verbal understanding that will not hold up if the relationship later changes or ends.

This closes the people, culture, and employment governance quarter this series has worked through in detail, CEO review, remuneration, psychosocial safety, bargaining, volunteers, diversity, board culture, whistleblower trust, performance management, redundancy, secondment, and professional development. Every one of these disciplines ultimately depends on the foundational employment relationship being built on sound, current, and specific contractual terms, not a template reused because it has always been the one on file.

This is one of the practical governance topics built into our Board Director course, alongside the papers, tools and frameworks that turn the principle into your board's actual practice. [Explore the course](#)

Annie Gibbins

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BOARDROOM ACTION WORKSHEET

Employment Contracts: A Signature Doesn't Make an Unlawful Term Lawful

Turn the resource into evidence, a decision and an accountable next step. Keep the completed record in your association's approved board records system.

1 What is the issue or decision?

State the governance question in one clear sentence.

2 What evidence do we already have?

Record the facts, source documents and stakeholder evidence available now.

3 What evidence is still needed?

Identify the legal, regulatory, financial, member or operational information still required.

4 What is the agreed next action?

Capture the owner, timeframe and how the matter will return to the board.

Action owner	Review date	Board decision or resolution

General education, not legal, financial, tax, clinical or governance advice. Confirm specifics at the relevant primary source or with your own qualified adviser. Nexus Leadership is operated by Lipstick Consulting Pty Ltd · ABN 15 619 120 482.

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