

Contract of Employment Explanation Summary

We are often asked ‘what should be included in a Contract of Employment?’, or ‘Why are Contracts of Employment so long?’

The below explanation of the sections of a reliable Contract of Employment are designed to assist employers understand what should be included and why each element is important.

The tick box is designed for a self-assessment of any existing Contracts the check that they are robust in protecting the employer and clarifying expectations and entitlements for employees.

Core Elements

Section	Overview and Importance	
The Schedule	The schedule is a summary table that provides key information regarding the employee’s terms and conditions. It provides clarity and comfort to the employee about what they are being offered, even when the rest of the document looks detailed and complex.	<input type="checkbox"/>
Position	Lays the groundwork for what is expected of the employee and clarifies that all important point that Position Descriptions are not an exhaustive list and can be changed over time.	<input type="checkbox"/>
Duty of Care	<p>Informs the employee of their obligation to:</p> <ul style="list-style-type: none"> ✓ Perform their role to the best of their ability ✓ Act in the best interest of the business while working for you ✓ Follow lawful, reasonable management directions ✓ Be a team player and observe the company values <p>This clause is often relied on during disciplinary processes when an employee is refusing to perform their role or acting outside the best interests of the employer.</p>	<input type="checkbox"/>
Policies and Procedures	Lets the employee know there are policies and procedures in place which they are expected to follow and importantly, that they don’t form part of the contract (this should be avoided to give the flexibility to change policies and procedures).	<input type="checkbox"/>
Licenses	By specifying licenses required, this clause enables the business to seek confirmation of licenses held and to review employment in the instance that a license is lost, resulting in the employee not being able to fulfil the requirements of the role.	<input type="checkbox"/>
Remuneration	<p>The remuneration section of the Schedule should clarify:</p> <ul style="list-style-type: none"> ✓ The remuneration structure (e.g. hourly rate plus overtime; all up hourly rate; or salary) ✓ The Award classification level ✓ How overtime and penalty rates will be treated <p>The contract reassures the employee of the business’s obligation to make sure that they continue to pay in line with or better than the national minimum wage or the minimum terms set out in the relevant industrial instrument (i.e. a modern award or enterprise agreement).</p>	<input type="checkbox"/>

Allowances	Clarifies which allowances may apply and whether they are paid in addition to or included in the remuneration rate.	<input type="checkbox"/>
Superannuation	Clarifies superannuation obligations and processes.	<input type="checkbox"/>
Hours of Work and Overtime/Penalty Rates	<p>The hours of work section of the Schedule should clarify:</p> <ul style="list-style-type: none"> ✓ Ordinary hours of work ✓ Expected hours of work/availability ✓ Expectations of reasonable overtime ✓ How overtime and penalty rates are paid <p>This is an important element together with the Remuneration section to clarify what is covered by an employee's pay.</p> <p>Guidelines may also be set on approval of overtime.</p>	<input type="checkbox"/>
Breaks and Records	Puts the onus on the employee to take breaks as required by their applicable industrial instrument or as directed and to seek permission from management if this is not practical. It also sets time recording obligations and expectations and consequences of failure.	<input type="checkbox"/>
Leave	A brief outline of leave entitlements. It can also be useful to note any shut down periods in which employees may be asked to take leave. This section only needs to be brief – anything detailed in relation to notice periods etc should be contained in a policy.	<input type="checkbox"/>
Offset	Includes an offset clause where the business can try and offset amounts paid against amounts owed under an applicable industrial instrument or legislation. This is a crucial (but often missed) element combined with the Remuneration and Hours of Work section.	<input type="checkbox"/>
Overpayment, Incorrect Payments and Deductions	Outlines what may happen if there are incorrect payments made to the employee. This clause lays the groundwork for recovery of overpayment of wages as well as incorrect use of company funds, or in the circumstance that an employee does the wrong thing (for example not returning property or IP or incurring costs on a company account for personal purposes). The employee acknowledges that they are liable for those costs and agrees to repay them (it lays the groundwork for the business to take action to recover).	<input type="checkbox"/>
Probation Period	Stipulates the probation period and introduces the right to extend within the legislated qualifying period (which is 6 months for businesses with more than 15 employees, 12 months for business with fewer than 15 employees).	<input type="checkbox"/>
Termination of Employment	<p>Clarifies:</p> <ul style="list-style-type: none"> ✓ Notice required to be given on resignation ✓ What happens if insufficient notice is provided ✓ That the employer can pay in lieu of the employee working the notice period ✓ When summary dismissal (without notice) may occur 	<input type="checkbox"/>

	This is an important element and often comes into play when an employee provides insufficient notice of termination or when an employer is seeking to dismiss on serious misconduct grounds.	
Actions on termination	Sets the obligations on the employee for actions required when they leave your employment.	<input type="checkbox"/>
Restrictions	<p>Restrictions is an important, yet fickle part of employee engagement. 'Fickle' because it can be particularly difficult to uphold (legal action is required) with favour often being given to the employee being able to earn a living over protecting the business's rights.</p> <p>Despite this, having a carefully considered Restriction clause (and potentially an additional Deed) that is fair and reasonable is important as it is the foundation for being able to successfully enforce the restriction should the circumstances warrant it.</p> <p>Restriction arrangements cover:</p> <ul style="list-style-type: none"> ✓ What the restraint is for ✓ The period of time that it applies ✓ The geographic region that it covers ✓ The consequences of breaches 	<input type="checkbox"/>
Truth of Application and Further warranties	Asks the employee to verify the truthfulness of their application and lets them know what types of changes they may have to advise the business of (e.g., changes to visa status, physical ability to perform the role, or relevant accreditations/licenses).	<input type="checkbox"/>
Conflict of Interest	This section protects the business by requiring employees to let you know if they engage in other activities outside of the business that might be a conflict of interest. It further sets out what happens if a genuine conflict of interest exists.	<input type="checkbox"/>
Direction not to attend work	Allows the employer to direct an employee not to attend work. This is used most often during investigations into grievances, suspected misconduct, fraud etc. It clarifies that the employee is still obligated to be available and comply with reasonable directions.	<input type="checkbox"/>
WHS	Sets out the core workplace health and safety (WHS) obligations and entitlements. It also covers medical assessments. NOTE: It is important that this is complemented by solid WHS policies and practices.	<input type="checkbox"/>
Fitness for Work and Drugs and Alcohol	<p>Clarifies the employee's responsibilities in making sure they are fit for work. Safety is a joint responsibility, and employees need to be clear on what is expected of them and what they are required to advise management of.</p> <p>May include drug and alcohol guidelines such as:</p> <ul style="list-style-type: none"> ✓ Requirements to disclose use of prescription medications that may impact how they perform their role ✓ Guidelines for drug and alcohol use and limits ✓ Drug and alcohol testing ✓ Consequences of breaches 	<input type="checkbox"/>

Use of Vehicles	This section sets the expectations of employees if they use a business owned vehicle in the course of their duties and sets the terms of use as well as who is liable for what in the case of an accident or fines.	<input type="checkbox"/>
Equipment	Clarifies the requirements around when equipment may be provided to the employee, or what they are expected to provide, and the terms around this (including what happens if they don't return your equipment!).	<input type="checkbox"/>
Presentation and Clothing	Clarifies the standard of presentation expected which is often overlooked in contracts and very difficult to enforce without it being included in a contract or policy.	<input type="checkbox"/>
Confidentiality	<p>This is a particularly important as it provides protection for the business. Confidential information is highly valuable and hence worth protecting.</p> <p>The clause covers:</p> <ul style="list-style-type: none"> ✓ What is Confidential Information ✓ Who owns the information ✓ The obligations on employees to protect (and not misuse) this information ✓ What happens when employment ends ✓ The consequences of breaches 	<input type="checkbox"/>
General Legal Clauses	<p>There are a number of general legal clauses to close the Contract including:</p> <ul style="list-style-type: none"> ✓ Governing Law (references the relevant legislation without making it part of the contract [this should be avoided as the legislation may change]) ✓ Continuing Obligations (advises which clauses continue to apply after employment ends) ✓ Waiver (applies if clauses are not consistently applied) ✓ Severability (allows single clauses to be struck out rather than voiding the whole contract) ✓ Entire contract (confirms this is the full T&Cs of employment – no other verbal agreements apply) ✓ Confirmation (that the employee has had an opportunity to seek independent advice on the contract) 	<input type="checkbox"/>

Additional Elements

Confidentiality and Intellectual Property Deed	<p>This deed is a particularly important document and is a protection for the business. Confidential information and IP are highly valuable and hence worth protecting.</p> <p>The deed covers:</p> <ul style="list-style-type: none"> ✓ What is Confidential Information ✓ What is Intellectual Property ✓ Who owns these ✓ The obligations on employees to protect (and not misuse) these ✓ What happens when employment ends
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	✓ The consequences of breaches
Tax Costs and Other Charges	This clause is applied selectively if an employee’s benefits may attract Fringe Benefits Tax (FBT) to ensure the business is not inadvertently out of pocket due to an FBT obligation.

Please note that this is not legal advice, rather a general explanation of the possible clauses.

If you would like assistance in drafting thorough Contracts of Employment, please talk with your Focus HR Consultant or email info@focushr.com.au.