



The importance of getting an agreement in writing

Despite the commonly held view that the world is becoming more litigious, the reality is that a significant number of agreements and contracts between people are still only reached verbally.

Often, such verbal agreements are related to very important matters or involve large sums of money.

The unwillingness to formally document an agreement in writing seems to stem from people feeling that having an agreement in writing demonstrates a mistrust in the other person or that it will lead to an awkward conversation. This is particularly true amongst family members or close friends.

Why should you formalise an agreement in writing?

Verbal or handshake agreements generally work well until they don't. The first question you will usually be asked by a lawyer in relation to an agreement or "contract" dispute is, "is the agreement in writing?"

The reason for this is that it becomes much more difficult to protect your interests or enforce your

rights if there is no written agreement in place setting out the terms of the agreement.

Formalising an agreement in writing is sometimes also a legal necessity. For instance, it is not possible to sell land without a written contract. Consumer protection law also sets out that some contracts, such as building contracts and insurance contracts, must be in writing.

But all too often, people still rely on a handshake or a promise. If there is no dispute later, then a verbal agreement will suffice. However, not having a written agreement means that if a dispute does arise, you will need to prove not only what the terms of the agreement were but also that they have been breached.

That is sometimes extremely difficult to do, and all the Court will have to rely on is the history of what the parties have already done under the agreement and what both parties have to say about what still needs to be done or should have been done instead. Of course, agreement between the parties at this point of the dispute is rare.

What should I consider when preparing a written agreement?

In order for a written contract or agreement to serve its purpose and avoid a dispute in future, it must be as detailed as possible. It should set out all rights and duties of the parties, and should cover issues including, among other things, performance, payment terms, rights of termination, and action to be taken if a party defaults.

The importance of a well-drafted and clear written agreement or contract cannot be understated. When entering into an agreement, ensure that agreement is in writing and seek a lawyer's advice on the terms before signing.

How can Andersons help?

If you're entering into an agreement with another party, contact our [commercial litigation](#) team for advice. You can contact us on 8238 6676 or email enquiry@andersons.com.au