

Editing Legal Documents

from template to execution

A reference guide for completing
any legal document



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Introduction to this guide

This guide is to help you with many aspects of editing a legal document. It complements the document-specific drafting guidance that we include with the majority of our products.

If you have not edited a legal document before then we recommend that you look through this guide before you start to edit the document.

Feedback on this guide

We would be delighted to hear from you if you would like to give us feedback on this guide

- whether questions, comments or criticism.

You can leave comments by visiting www.netlawman.com.au/contact

Editing your document

Drafting notes – specific guidance on how to complete our documents

Nearly all Net Lawman documents come with drafting notes to give a background to the document and to comment on what you may want to consider when editing a particular paragraph.

You can find them after the end of the document. We've placed them here to keep them close to the legal text, but not too close so that they might be confused as part of the document itself.

We intend that you delete the notes once you have finished editing the document.

You may want to keep a copy of the original unedited document so that you keep a copy of the notes.

We aim to balance the tone and the level of technical detail so as to suit the majority of our customers for any particular document. We do get the balance wrong sometimes. If you think a note isn't clear, or that we can improve it or how we say something, we'd be very happy to hear your suggestions.

Formatting your document

We provide the document in Microsoft Word format (Doc or DocX).

We try to keep formatting as simple as possible to ensure maximum backwards compatibility with word processors of different types and to accommodate users with different levels of word processing skills.

Generally, you may reformat the document as you like. If you do, we recommend using a font type that is easily read, such as Arial or Times, and a font size of at least 10 point.

Legal documents do not require any particular format or layout to be valid. Paragraph numbers, indentations, tables and headings may aid readability, but are not required for the document to be legally binding.

If you want to use a decorative front cover or company logo on every

page, doing so is unlikely to affect the legal validity of the document. If you do, we would advise you to make sure no text that could be interpreted as part of an agreement.

Editing

Our approach is, as far as possible, to give you a choice of the words you might want to use, and let you delete what you do not need.

Doing this often leads to us including material that you don't need, and sometimes even near duplications.

However, we believe that the approach of editing by deletion is far easier for you than writing new text in your own legal terminology.

Blue font and square brackets

In the text of the document, square brackets indicate an insertion point. If they contain text, that is merely to illustrate what you could insert.

In many documents we also mark some text in blue font. Blue font is used simply to draw you attention to a place where a choice or an insertion is required.

Whole paragraphs in blue font indicate where you need to choose whether to include the paragraph at all, or make a choice between two or more alternatives.

Once you have edited the document, check that you have deleted all square brackets and changed the blue font colour to black.

Note that we can only give you options in the document when there are a limited number of possibilities. For example, where a paragraph deals with something unique to your situation

(such as how something is apportioned between parties) we can only suggest ideas.

Editing other paragraphs

Anywhere in the document, the wording we use may not suit you exactly. Generally, any paragraph can be changed or deleted.

If you should definitely leave a paragraph as we have written it, we will tell you in the notes.

There may be a legal reason why we have included certain words. If the reason for inclusion is not clear, we recommend that you leave it as is.

If you have any questions about why we have included a paragraph, or the meaning of one, please contact us and ask.

Use of plain language

We are fervent believers in the use of plain English, following the precepts of www.plainenglish.org.

However, we are by no means perfect, so you may find places where we could improve.

One problem we face is that in technical areas of law, like wills and leases, particular words have been defined either by legislators or by long usage, to have specific meaning. In such circumstances, a change by us would complicate, not simplify, what any other lawyer would understand.

Our use of plain language in no way detracts from the legal validity of any document. Our aim is to protect you and give you the meaning you want. Clear communication of any agreement depends on all parties understanding that what is written is also what has been agreed. You do not need archaic terms to make a document “more” valid. We explain in more detail at www.netlawman.com.au/why-plain-english-is-important-in-law.

On the rare occasions when you decide to add text to a document, you should use one sentence for one idea, in plain words.

Common characteristics of all legal documents

Definitions

Defined terms are the words that have capital initial letters. The idea behind defining terms is that as you read and come across the capitalised words, it is clear that the meaning of the word or phrase is “special” to that document, and perhaps different to usual usage.

Terms are usually defined at the start of the document, for three reasons:

- so that you know what technical or obscure phrases mean, and

- to give a limited meaning to words or phrases which may otherwise have broad meanings, and
- to enable a necessarily long definition to be given only once, so that when you come the word in the document, you are spared reading many more words, maybe several times.

If one of our defined terms fails to describe exactly what you want, by all means change it. If you do, then check every occurrence of it in the document.

If you do change defined terms, we encourage you to use the “search and replace” function in Microsoft Word rather than just the “replace” function so as to avoid accidentally giving a capital initial letter to words that should be lower case.

You may come across a word within the document that is one of the defined terms but which is not capitalised. That is because in its context within that sentence, the meaning is not the defined meaning.

For example, “Product” might be defined as a specific model of machine you sell, but the sentence “You may return a product within two months of purchase.” would refer to any product, not the specific model. If you want a stricter definition, capitalising the word would change the meaning to the specific model only. If there could be no confusion as to what the product could be (perhaps the document only relates to a single product or your returns policy applies to all products you sell), then there is no need for a capital.

Naming the parties and places

Defining the parties to a contract

You can either use generic terms like “landlord” and “tenant” or you can insert names like “Mr Brown” or his initials.

To make sure there is no room for doubt, we suggest as follows:

Names of individuals and organisations should be written in full, with the abbreviated version following in inverted commas and brackets, like this:

Neil Andrew Smith (“Smith”), or Smith & Jones (“S&J”);

After the name of a company or registered partnership it is a good idea to add any relevant registration particulars and make sure the address includes the country where the company was registered.

Trading names should be accompanied by real names, e.g.

“Neil Andrew Smith trading as NAS Plumbers”

Addresses and property should be described very precisely, for example as:

Apartment 7, 30 Beach Rd, Melbourne, VIC 3193 Australia

or

The land to the rear of Camerons Road, Healesville, VIC 3777

or

The car park behind Camerons Road, Healesville, VIC 3777, as marked with a red line on the attached plan.

Signing your document

Making your document legally binding

Apart from wills and deeds where pedantic legal echnicalities must be followed, a contract is made and becomes valid at the point when parties the parties to it have signed and dated it.

There is no requirement for a solicitor or any other witness, or for any registration.

If there are any special rules, we tell you in the document's specific guidance notes.

Who signs?

Most legal documents must be signed by all the parties who are to be bound. Usually that is two or more people.

If your document must be signed as a deed, we make that clear at the signature point. If you want to know all about deeds, read our article on our UK site (applicable to Australia as well):

www.netlawman.co.uk/ia/clearing-the-confusion-on-deeds

A document that is presented to the other party on the basis of take-it-or-leave-it is usually referred to as a set of “terms and conditions”. Such a document does not require a signature from either party.

However, it is most important that your counter-party does give clear, irrefutable acceptance of the terms, for example, by ticking a box on your website to confirm that he has read and understood them.

Exchange of documents signed by the other party

When there are only two parties, documents can be exchanged so that each has the one signed by the other. If there are more than two parties each party may have a copy signed by every other party. If that happens, you will need to create multiple originals, and have all parties sign all “parts”. Everyone can then be sure that they are agreed exactly and that all copies of the documents are identical in text.

When the number of signatures makes that impractical, there are two alternatives. First, parties may each sign any one of several copies which are then all kept in one place. This sometimes happens in a private company where one of more shareholders is too far away to sit round a table with the others.

Second, there may be a master version signed by a few. When others join in, they each sign a “deed of adherence”. It will then be left to the company secretary or partnership manager to circularise copies.

Ensure that the signatory has authority to sign

Make sure that the person signing has the authority of his organisation to commit it to your contract. In most cases you would know if you were dealing with a junior manager, rather than a senior one.

If someone is signing on behalf of someone else (for example, an elderly relative), make sure that the signatory has appropriate power of attorney. Take a copy of the power of attorney document.

Dating the document

Your document is not valid unless dated. If you have multiple copies, they are valid only if they bear the same date. If you are exchanging contracts, use a date in the future and not in the past.

You don't need a formal space for the date. The date can be hand written next to a signature.

Witnessing the signatures

In law there is no requirement for a contract signature to be witnessed by a third party.

If your counter-party is unknown to you, or abroad, you may feel more comfortable if you ask for a witness to add his name and address.

If you are signing a deed, you must have at least one witness. Wills require two witnesses.

Further security

Another light level of security can be added by having your counter-party initial each page in the margin.

Electronic signatures

The law on whether electronic signatures can create a binding contract varies from one country to another. The issues are as to whether a document sent by email can be binding and whether an email message is binding. In most countries both are binding if the correspondence clearly shows that the parties intended to be bound and the terms are clearly agreed.

Digital encryption and document control processes are available on the Internet. They do provide an additional level of security. That is most important when you are dealing with a counter-party in a country with a weak legal system.

We recommend that you make quite clear that you expect both sides to be bound by electronic communication and that your counter-party agrees.

Wherever you are in the world, it is most safe if your document is signed in print and received by post or courier. Mere sending is not enough. You must prove you sent it and that the means of sending must have resulted in receipt by your counter-party.

Post editing checklist

1. Delete the drafting notes (for Net Lawman documents: from the end of the legal text).
2. Format the document in the same font colour, in at least 10 point, and in a font type that is easily legible such as Times or Arial.
3. Spell check your document with a correct dictionary (Microsoft Word often defaults to an American dictionary).
4. Check paragraph numbering (if any) is correct.
5. Read the document again carefully to check that the text runs correctly. We find printing to paper and reading aloud makes spotting errors easier than reading on screen.
6. Make sure the document is signed and dated by all parties.

Registering charges

Any contract that creates a financial obligation for payment by a company (such as a loan agreement where the borrower is a limited company) should be registered at the Registrar of

Companies after completion.

Doing so may give you priority if the company is liquidated, over lenders who have made loans to the company after you have done so.

Keeping copies of documents

It is important that you retain contracts and legal agreements after they have been completed. The document is a record of exactly what was agreed or done. Without it, proving the details later is far more difficult, especially in the long term. Where the document is only in soft copy (such as website terms and conditions), keep a printed copy of the page before you edit or update it. The paper copy should also be dated.

You should keep an original signed paper document carefully. It is a good idea also to keep electronic copies of supporting documents, for example, emails between you and the other party negotiating terms or scans of hard copy letters.

How long you should keep documents

The time period in which a claim for breach of contract must be brought is six years.

Business documents (the original, signed copy) should be kept for at least for this length of time, and electronic copies could be kept indefinitely. If the document deals with something that takes place over time (such as a lease or regular sale of goods) then the original documents should be kept for six years after the period ends.

Other hints and suggestions

Be specific

Common sense as this point may be, you should be as specific as possible in the document so as not to leave room for either party to misunderstand the scope. Usually, we point out and give examples of where being specific is advantageous.

Consider using schedules

Where the commercial deal is of some length, for example because it is a specification of work to be done, you can keep your document 'clean' by placing the specification in a schedule.

Conversely, if we have provided for a schedule but your words are few, by all means bring them into the body of your document at the point where the schedule is mentioned.

Review of your document by a lawyer

If you would like a lawyer to double check the changes you've made, Net Lawman offers a document review service.

The service aims to give you confidence that your document sets down the terms you want, and that your changes are worded as they would be if a solicitor had written them.

Our team will conduct a detailed assessment of your document and will:

- Make sure your document does what you tell us you want it to do and complies with the law

- Report on the legal implications of additions or changes by you
- Edit your text if necessary
- Check that your use of defined terms is correct and consistent
- Check that required insertions have been made correctly
- Correct spelling mistakes, grammatical errors, typos and errors in formatting

For more information, including about prices, please contact our support team at support@netlawman.com.au

Invitation for feedback on our documents

Finally, let us say how we welcome you as a customer and hope you find the document you have bought to be as satisfactory as you could have wished.

We shall shortly send an email message asking you to comment on the document and our service. Do please help us with this feedback.

If you have any other questions or queries, please send us a message through our contact page on the website at www.netlawman.com.au/contact

Please note that the information in this guide

- does not provide a complete or authoritative statement of the law;
- does not constitute legal advice by Net Lawman;
- does not create a contractual relationship;
- does not form part of any other advice, whether paid or free.

