

### Boat Owners and Contractors: 3 Steps for Smooth Sailing

#### For Boat Owners:

As a boat owner, employing the right contractor to undertake work on your vessel is an important decision. You are not only entrusting this person with your boat while the work is being done, but you will likely also be paying large sums of money.

#### 1. Expectations and Budget

There's no use in pretending otherwise; owning a boat requires consistent investment of time and money. From time to time it also means bringing in professional maintenance services, such as for anti-fouling, painting, or engine maintenance. It is important that you are able to trust that the work will be performed to industry and legal standards, and be provided at a cost you can afford. The key is communication.



It is important that you:

- Outline the scope of work that you want completed on your boat;
- Provide any important information to the contractor that may affect the works;
- Obtain a quote for the entirety of the works;
- Agree on the cost of any variations to the scope of work;
- Understand any terms and conditions of the contractor;
- Record all of the above in writing.

Naturally a contract is the usual form for recording the above. One cannot understate the importance of a written contract between a boat-owner and service provider.

Many businesses will have standard terms and conditions (Ts & Cs). These are almost always incorporated into the contract for works and it is important that you read these Ts & Cs. If there are any terms that you are not comfortable with, then talk about these with the service provider, and seek legal advice.

#### 2. Legislative protections

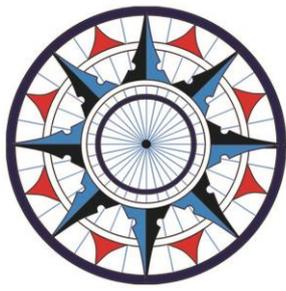
Australian Consumer Law guarantees apply to the supply of services, and apply whether there is a contract or not. These laws are intended to

#### Australian Consumer Law Guarantees

These guarantees mean that services must:

- Be provided with acceptable care, skill, and technical knowledge;
- Take all necessary steps to avoid loss or damage;
- Be fit for purpose or give the results that you agree to;
- If there is no agreed end date, then be delivered within a reasonable





protect the consumer, and a breach of any of these guarantees provides for a legal claim to be made. These protections apply to services that cost less than \$40,000, or cost more than \$40,000 but are normally bought for personal or household use.

### 3. Unsatisfactory work

You return to the boat yard, get a final look at your boat, and discover that the work is ... well it's not what you expected. What can you do?

The first step should always be to put your concerns in writing to the business. Perhaps there has been a misunderstanding, or complications that simply need to be discussed. Where it becomes apparent that the chances of conciliation are minimal, more formal steps might need to be taken.

If the disputed work is valued at less than \$25,000 then you can pursue the claim, at minimal costs, through the Queensland Civil and Administrative Tribunal (QCAT). QCAT is designed to be accessed by anyone, and legal representation is not required. Thus costs are can be kept to a minimum. If the disputed work is valued at more than \$25,000 then the claim must be instead referred to the court. It is a good idea to seek legal advice before commencing a claim in court.

### For Service Providers:

No matter how large or small your business is; it is important that you protect yourself.

#### 1. Standard Terms and Conditions

The first and simplest step you can take to protect yourself and your business is to begin using standard terms and conditions (Ts & Cs). The Ts & Cs will apply to every future contract and form the rules by which you do business.

It is valuable to consult a lawyer when drafting the Ts & Cs. Every business is different, and so is it important that the Ts & Cs are drafted specifically for your business. Additionally, the Ts & Cs must properly protect your business, comply with the federal and state laws, and industry regulations.

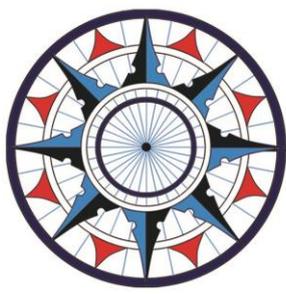
For example, the Australian Consumer Law legislation provides that a term that is determined to be unfair will be treated as though it doesn't exist. An unfair term is one that:

- Causes a significant imbalance in the parties' rights under the contract,
- Is not reasonably necessary to protect the party, and
- Would cause detriment to a party if it were applied or relied on.

If a court finds that your exclusion liability term is an unfair term, it will be ignored and all intended exclusions of liability in that term of the contract will not apply. Thus, it is important to understand the Ts & Cs and their effects.

The Ts & Cs will be incorporated in all transactions, and this may take place through a reference to where they are located on your website, or perhaps by printing them





on the back of quotes, contracts and invoices. By properly incorporating the Ts & Cs, you can rely on them to protect your business in case of any dispute.

### 2. Legislative obligations

Businesses are able to enforce their own Ts & Cs and contracts, however the Australian Consumer Law provides certain protections for consumers, in this case, the boat-owner. These protections translate to obligations on businesses providing services. If a service does not abide by these obligations, then the boat-owner will have a legal claim. Such legal claims may provide a right to repair, replacement, refund, cancellation, or compensation. Importantly, the obligations imposed by the Australian Consumer Law cannot be excluded by contract or standard Ts & Cs.

Additionally, there is specific legislation that applies to certain boats, for example DCVs, and work conduct must be in accordance with all legislation, regulations, codes, and standards. This means that the legislative obligations on business are extensive, and to disregard, naively or knowingly, any of these obligations could land you with a legal claim.

### 3. What about the unpaid invoice?



You have completed the work as agreed, you return the boat to the smiling owner and email an invoice for payment... but the payment is not forthcoming. What are your options?

Always start with a conversation. There might be an innocent reason that the invoice remains outstanding (the invoice might be in their junk email folder.)

However, if there is no good reason, next put your demand in writing, provide a date for payment and invite a discussion on how the repayment can take place.

Where it becomes clear that a formal approach is required, the same as for the boat-owner you can pursue an invoice for up to \$25,000 with the QCAT. Further, where the invoiced sum is greater, it is recommended that a lawyer is consulted. While court may appear to be an attractive option, it is often better to negotiate terms rather than pursuing a legal claim through court for smaller amounts.



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