

Model Contracts for Dietitians in the Private Sector

Prepared by the Dietitians Association of Australia's Solicitors
for the Dietitians Association of Australia
on behalf of the Dietitians in the Private Sector Committee

Revised June 2002

Dated 20

**SAMPLE CONSULTANCY
AGREEMENT**

[DIETITIAN]
("[ADDRESS"])
[HOSPITAL/HOME]
("[ADDRESS"])

WARNING: This is a sample contract only. It provides an example of a consultancy agreement between a dietitian and a hospital or home.

If you use this sample contract as the basis for any of your consultancy arrangements you should

- (i) seek legal advice;
- (ii) modify the sample contract to suit your particular circumstances;
- (iii) ensure that you have complied with all applicable laws in your particular state or territory; and
- (iv) provide any criticisms or suggestions for improvement to the [Dietitians Association of Australia] for consideration.

If you intend to employ a dietitian, please see the sample employment agreements.

CONSULTANCY AGREEMENT

Date:

Parties: [NAME] of [ADDRESS] (“Dietitian”)
[HOSPITAL/HOME] having its registered office at [ADDRESS]
 (“[Hospital/Home]”)

Recitals:

- A. The Dietitian is a qualified dietitian eligible for membership of the Dietitians Association of Australia.
- B. The [Hospital\Home] requires the services of a consulting qualified dietitian and has agreed to retain the services of the Dietitian on the following terms.

Operative provisions:

1. Term of contract

- 1.1 This contract commences on _____ and, subject to clause 1.2, will continue for a period of [PERIOD] unless the parties agree in writing to extend the term.
- 1.2 This contract may be terminated by either party giving [3] months written notice to the other party.

2. Services to be provided

- 2.1 The Dietitian is to provide those services listed in the Schedule at the locations listed in the Schedule (“Services”).
- 2.2 In the provision of the Services, the Dietitian is to:
 - (a) promote the nutritional welfare of the [Hospital/Home]’s patients/residents; and
 - (b) comply with any general requirements of the [Hospital/Home] as notified by the Director of the [Hospital/Home].
- 2.3 The Dietitian is to exhibit high standards of service provision and conduct including high standards of personal behaviour and the proper observance of confidentiality, security and all other rules in effect at the [Hospital/Home].

3. Accountability

- 3.1 The Dietitian must report to and is accountable to the [Director of the [Hospital/Home]] for the provision of the Services.
- 3.2 The Dietitian is an independent professional and in making professional judgements will act on their own judgement and not be subject to direction by the [Hospital/Home].

4. Referrals

- 4.1 The [Hospital/Home] will refer to the Dietitian [all] patients/residents of the [Hospital/Home] which require any of the Services by promptly notifying the Dietitian. The [Hospital/Home] may not commit the services of the Dietitian to the patient/resident without the consent of the Dietitian.
- 4.2 If the scheduled time for a patient/resident visit is changed by the [Hospital/Home], the [Hospital/Home] must notify the Dietitian of the change at least [24] hours before the original scheduled time. If such notification does not occur and the Dietitian makes the scheduled visit, the [Hospital/Home] will pay the Dietitian the fee for the visit.

5. No alteration of guidelines

The [Hospital/Home] may not alter the dietary or nutrition guidelines provided by the Dietitian for any patient/resident without the prior written consent of the Dietitian or the patient/resident's attending medical officer, or other dietitians working for the [Hospital/Home].

6. Consultancy fees

- 6.1 In consideration of the Dietitian providing the Services, [Hospital/Home] will pay the Dietitian a fee based on:
 - (a) an hourly rate of \$ _____ per hour (+ \$ _____ GST) for and;
 - (b) a rate of \$ _____ (+\$ _____ GST) per patient visited by the Dietitian.
- 6.2 The Dietitian will invoice the [Hospital/Home] [monthly]. Tax invoices must state the nature of the Services provided and the dates and times at which the Services were provided.
- 6.3 The [Hospital/Home] will pay the Dietitian within [30] days of receipt of each invoice.

7. Illness or injury

- 7.1 In the event that the Dietitian is unable to attend a scheduled visit because of illness or injury, the Dietitian must notify the [Hospital/Home] as soon as possible so that alternative arrangements can be made.
- 7.2 The Dietitian may appoint a qualified locum to attend any scheduled visit that the Dietitian is unable to attend because of illness or injury.

8. Use of Dietitian's name

- 8.1 The [Hospital/Home] may not use the Dietitian's name for accreditation or any other purpose without the prior written approval of the Dietitian.

9. Expenses

The Dietitian will not incur any expense on behalf of the [Hospital/Home] without the prior written consent of the [Hospital/Home].

10. Insurance

The Dietitian must, during the period of this Agreement, effect and maintain:

- (a) professional indemnity insurance, to a minimum amount of [\$5,000,000] for any claim made; and,
- (b) public liability insurance to a minimum amount of [\$5,000,000] for any single occurrence,

covering the Dietitian against any liability arising out of or in connection with the provision of the Services.

11. Confidentiality

11.1 The Dietitian must not divulge or use, either for the Dietitian's benefit or that of others, any Confidential Information (written or verbal) about the [Hospital/Home], its affairs or its patients/residents acquired in the provision of the Services.

11.2 Confidential Information means:

- (a) all patient/resident medical records or information;
- (b) any trade secrets or information concerning the business or affairs of the [Hospital/Home]; and
- (c) any other confidential information.

12. Intellectual property

In providing the Services, the Dietitian may use, adapt or modify documents, forms or programs which the Dietitian has developed. The Dietitian retains intellectual property in all documents, forms or programs provided to the [Hospital/Home] in connection with the Services.

13. Access to facilities

- 13.1 The Dietitian will have access to such [Hospital/Home] premises and facilities at such times as may be agreed with the Director of the [Hospital/Home] to be necessary for the provision of the Services.
- 13.2 Provision of [Hospital/Home] office space and facilities for use by the Dietitian will be subject to the discretion of the Director of the [Hospital/Home] but such provision will not be unreasonably withheld.

14. Negation of employment and agency

- 14.1 The Dietitian is an independent contractor and not an employee of the [Hospital/Home] for any purpose. The Dietitian may provide consultancy services to other participants to the extent that that does not conflict with the terms of this agreement.
- 14.2 Any attempt by the Dietitian to represent that the Dietitian is an employee of the [Hospital/Home] for any purpose is a breach of this Agreement enabling the [Hospital/Home], by written notice signed by the Director, to terminate this Agreement.

15. Miscellaneous

Assignment

- 15.1 A party may not assign its rights under this agreement without the consent of the other party.

Exercise of rights

- 15.2 A party may exercise a right, power or remedy at its discretion, or separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver and variation

- 15.3 A provision or a right created under this agreement may not be:
- (a) waived except in writing signed by the party granting the waiver; or
 - (b) varied except writing signed by the parties.

Approvals and consents

- 15.4 A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

Remedies Cumulative

- 15.5 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

No merger

- 15.6 The warranties in this agreement do not merge on termination or expiry of the agreement.

Enforcement of Indemnities

- 15.7 It is not necessary for a party to incur expense or make payment before enforcing the right of indemnity conferred by this agreement.

Further assurances

- 15.8 Each party agrees, at its own expense, on request of the other party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it (including the execution of documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

Entire Agreement

- 15.9 This agreement constitutes the entire agreement of the parties about its subject matter and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

EXECUTED as an agreement

16. Schedule

[DESCRIPTION OF SERVICES TO BE PROVIDED BY THE DIETITIAN]

17. Execution page

SIGNED by [DIETITIAN] in the)
presence of:)

.....)

Signature of witness)

.....)

Name of witness (block letters))

.....)

Address of witness)

.....)

Occupation of witness)

.....)

Date)

.....
Signature of [DIETITIAN]

.....
Date

THE COMMON SEAL of)
[HOSPITAL/HOME] Is affixed in)
accordance with its articles of association)
in the presence of)

.....)

Signature of authorised person)

.....)

Office held)

.....)

Name of authorised person (block letters)
letters))

.....)

Date)

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (block

letters)
Date

SAMPLE EMPLOYMENT AGREEMENT

Probationary and Non-Probationary Employee Versions

WARNING:

These are sample contracts only. They provide two examples of plain English letter form employment agreements for employing dietitians (one for probationary and one for non-probationary employees).

If you use these sample contracts as the basis for any of your employment arrangements you should:

- (i) seek legal advice;
- (ii) modify them to suit your particular circumstances;
- (iii) ensure that you have complied with all applicable laws and awards (if any) in your particular state or territory; and
- (iv) provide any criticisms or suggestions for improvement to the [Dietitians Association of Australia] for consideration.

If you intend to retain a dietitian as a consultant, please see the sample consultancy agreement

NON-PROBATIONARY EMPLOYEE VERSION

[[EMPLOYER] LETTERHEAD]

[EMPLOYEE]
[ADDRESS]

Dear [EMPLOYEE]

I am pleased to confirm your appointment, effective _____, to the position of Dietitian with [EMPLOYER] (“[EMPLOYER]”) on the following terms and conditions:

1. Period of employment

Subject to earlier termination, your period of employment with [EMPLOYER] will be from _____ to _____. [EMPLOYER] will give you at least [1] months notice of its intention not to renew this contract.

2. Duties

Your main duties will be:

[INSERT DUTIES]

- such other duties as directed by [EMPLOYER].

3. Place of work

Your place of work is [ADDRESS], [although in the performance of your duties, travel to visit patients may be necessary].

4. Hours of work

[ALTERNATIVE 1]

Ordinary hours of work will be a minimum of [35] hours per week. You are required to work between the hours of 9.00am and 5.00pm Monday to Friday. However, variations in your start and finish times and hours of work may be required to satisfy the demands of the position from time to time.

Overtime or other penalties are not payable and time in lieu of additional hours worked is not available. An allowance for this has been made in setting the level of remuneration for your position.

[ALTERNATIVE 2]

Consultations with patients

You are to provide your services for [_____] number [_____] hour sessions per [week/fortnight/month]. You will not be required to provide your services at more than [_____] sessions in any one day.

Additional duties

[EMPLOYER] may require you to commit a further [_____] hours per [week/fortnight/month] performing those duties listed above which are additional to consultations with patients.

5. Remuneration

[ALTERNATIVE 1 - SALARIED DIETITIAN]

You are entitled to a remuneration package of [\$_____] per annum (less applicable tax) (“Remuneration Package”) consisting of the following components:

- (i) a base salary of [\$_____] per annum payable fortnightly in arrears;
- (ii) [ANY OTHER NON-SALARY BENEFITS] (“Benefits”),
- (iii) any fringe benefits tax payable with respect to the Benefits; and
- (iv) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 2 - HOURLY RATE]

- (i) [\$_____] per hour for performing your consultative duties;
- (ii) [\$_____] per hour for performing your additional duties;
- (iii) [ANY OTHER NON-SALARY BENEFITS] (“Benefits”);
- (iv) any fringe benefits tax payable with respect to the Benefits; and
- (v) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 3 - SESSION RATE]

- (i) [\$_____] per hour [session/consultation] performed;
- (ii) [\$_____] per hour for performing your additional duties;
- (iii) [ANY OTHER NON-SALARY BENEFITS - PROFESSIONAL FEES, CONTINUING EDUCATION EXPENSES, PROFESSIONAL INDEMNITY AND MALPRACTICE INSURANCE] (“Benefits”),
- (iv) any fringe benefits tax payable with respect to the Benefits; and
- (v) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 4- PERCENTAGE OF GROSS TAKINGS]

- (i) [_____] % of the fees you have rendered to clients of the [EMPLOYER] in performing your duties under this agreement;
- (ii) [ANY OTHER NON-SALARY BENEFITS] (“Benefits”);
- (iii) any fringe benefits tax payable with respect to the Benefits; and
- (iv) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

6. Reimbursement of expenses

[EMPLOYER] will reimburse you for those [out of pocket/travel] expenses necessarily incurred by you in the performance of your duties provided that you provide [EMPLOYER] with such evidence of the incurring of the expenses as [EMPLOYER] may reasonably require.

7. Annual review

Your Remuneration Package will be reviewed annually from _____. Factors which [EMPLOYER] will take into account in reviewing your Remuneration Package include your performance in the position and changes in the cost of living.

8. Annual leave

You will accrue annual leave at the rate of [4] weeks per annum. [NOTE: 4 WEEKS PER ANNUM IS MINIMUM STATUTORY ENTITLEMENT].

Prior written notice of the intention to take annual leave must be given to the [Director] as follows:

Period of leave	Notice required
1 day	1 week
More than 1 day	1 month

The time and duration of annual leave is to be agreed between you and the [Director].

9. Sick leave

You are entitled to [70] hours paid sick leave per annum. You may accumulate a Maximum of [608] hours sick leave

10. Confidential Information

You must not divulge or use, either for your own benefit or that of others, any confidential information (written or verbal) about [EMPLOYER], its affairs or its clients acquired during your employment.

11. Intellectual property

All diet sheets, stationary and resource material of the [EMPLOYER] remain the intellectual property of the [EMPLOYER] and may not be reproduced, adapted or used in any form other than in the performance of your duties or with the prior written consent of the [EMPLOYER].

In accordance with the position of employees at law, the ownership of intellectual property developed by employees of [EMPLOYER] in the course of their employment by [EMPLOYER] vest in [EMPLOYER] on its creation. This includes intellectual property developed during working hours or using [EMPLOYER] resources.

12. Property of [EMPLOYER]

On termination of your employment you agree to deliver to [EMPLOYER] without further demand:

- (i) all information in your possession or control relating in any way to any confidential information, intellectual property or trade secrets of the business or affairs of [EMPLOYER]; and
- (ii) any property of [EMPLOYER] or thing which [EMPLOYER] is entitled to possess.

13. Use of [EMPLOYER'S] name

You must not use the [EMPLOYER'S] name without the written permission of the [EMPLOYER] except in accordance with the performance of your duties under this agreement.

14. Exclusivity

You agree that you are an employee of the [EMPLOYER] you will not accept any other employment or remunerative engagement without the prior written approval of the [EMPLOYER].

15. Clean Air Policy

The premises of [EMPLOYER] is a non-smoking workplace.

16. Termination

This agreement may be terminated..

- (i) by either party giving [4] weeks' written notice; or
- (ii) by [EMPLOYER] paying [4] weeks' salary lieu of notice.

17. Acceptance

Please sign and date the attached copy of this letter to signify your acceptance of this position on the terms and conditions outlined above.

Yours sincerely

[Director]

I accept this offer of employment on the terms and conditions set out in this letter

.....
[EMPLOYEE] / /20

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PROBATIONARY EMPLOYEE VERSION

[[EMPLOYER] LETTERHEAD]

[EMPLOYEE]
[ADDRESS]

Dear [EMPLOYEE]

I am pleased to offer you the position of Dietitian on a probationary basis with [EMPLOYER] (“Employer”) on the following terms and conditions:

1. Probation

Your employment will be for an initial probationary period of 3 months from [_____] to [_____] (“Probationary Period”).

Your performance will be assessed continuously during the Probationary Period. During the Probationary Period you will be required to obtain and/or demonstrate the following skills and attributes:

- [LIST ESSENTIAL SKILLS AND ATTRIBUTES FOR THE POSITION]

[Two] weeks prior to the end of the Probationary Period the [EMPLOYER] will either confirm that your employment is to continue or advise that your employment will cease on expiry of the Probationary Period.

2. Duties

Your main duties will be:

[INSERT DUTIES]

- such other duties as directed by [EMPLOYER].

3. Place of work

Your place of work is [ADDRESS], [although in the performance of your duties, travel to visit patients may be necessary].

4. Hours of work

[ALTERNATIVE 1]

Ordinary hours of work will be a minimum of [35] hours per week. You are required to work between the hours of 9.00am and 5.00pm Monday to Friday. However, variations in your start and finish times and hours of work may be required to satisfy the demands of the position from time to time.

Overtime or other penalties are not payable and time in lieu of additional hours worked is not available. An allowance for this has been made in setting the level of remuneration for your position.

[ALTERNATIVE 2]

Consultations with patients

You are to provide your services for [_____] number [_____] hour sessions per [week/fortnight/month]. You will not be required to provide your services at more than [_____] sessions in any one day.

Additional duties

[EMPLOYER] may require you to commit a further [_____] hours per [week/fortnight/month] performing those duties listed above which are additional to consultations with patients.

5. Remuneration

[ALTERNATIVE 1 - SALARIED DIETITIAN]

You are entitled to a remuneration package of [\$ _____] per annum (less applicable tax) ("Remuneration Package") consisting of the following components:

- (i) a base salary of [\$ _____] per annum payable fortnightly in arrears;
- (ii) [ANY OTHER NON-SALARY BENEFITS] ("Benefits");
- (iii) any fringe benefits tax payable with respect to the Benefits; and
- (iv) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 2- HOURLY RATE]

- (i) [\$ _____] per hour for performing your consultative duties;
- (ii) [\$ _____] per hour for performing your additional duties;
- (iii) [ANY OTHER NON-SALARY BENEFITS] ("Benefits");
- (iv) any fringe benefits tax payable with respect to the Benefits; and
- (v) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 3- SESSION RATE]

- (i) [\$ _____] per hour [session/consultation] performed;
- (ii) [\$ _____] per hour for performing your additional duties;
- (iii) [ANY OTHER NON-SALARY BENEFITS - PROFESSIONAL FEES, CONTINUING EDUCATION EXPENSES, PROFESSIONAL INDEMNITY AND MALPRACTICE INSURANCE] ("Benefits");
- (iv) any fringe benefits tax payable with respect to the Benefits; and
- (v) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

[ALTERNATIVE 4- PERCENTAGE OF GROSS TAKINGS]

- (i) [____]% of the fees you have rendered to clients of the Employer in performing your duties under this agreement;
- (ii) [ANY OTHER NON-SALARY BENEFITS] (“Benefits”).
- (iii) any fringe benefits tax payable with respect to the Benefits; and
- (iv) superannuation contributions of an amount to avoid any Individual Superannuation Guarantee Shortfall by [EMPLOYER] in respect of you under the *Superannuation Guarantee (Administration) Act 1992*.

6. Reimbursement of expenses

[EMPLOYER] will reimburse you for those [out of pocket/travel] expenses necessarily incurred by you in the performance of your duties provided that you provide [EMPLOYER] with such evidence of the incurring of the expenses as [EMPLOYER] may reasonably require.

7. Annual review

Your Remuneration Package will be reviewed annually from ____ . Factors which [EMPLOYER] will take into account in reviewing your Remuneration Package include your performance in the position and changes in the cost of living.

8. Annual leave

You will accrue annual leave at the rate of [4] weeks per annum. [NOTE: 4 WEEKS PER ANNUM IS MINIMUM STATUTORY ENTITLEMENT].

Prior written notice of the intention to take annual leave must be given to the [Director] as follows:

Period of leave	Notice required
1 day	1 week
More than 1 day	1 month

The time and duration of annual leave is to be agreed between you and the [Director].

9. Sick leave

You are entitled to [70] hours paid sick leave period of leave per annum. You may accumulate a maximum of [608] hours sick leave.

10. Confidential Information

You must not divulge or use, either for your own benefit or that of others, any confidential information (written or verbal) about [EMPLOYER], its affairs or its clients acquired during your employment.

11. Intellectual property

All diet sheets, stationary and resource material of the [EMPLOYER] remain the intellectual property of the [EMPLOYER] and may not be reproduced, adapted or used in any form other than in the performance of your duties or with the prior written consent of the [EMPLOYER].

In accordance with the position of employees at law, the ownership of intellectual property developed by employees of [EMPLOYER] in the course of their employment by [EMPLOYER] vest in [EMPLOYER] on its creation. This includes intellectual property developed during working hours or using [EMPLOYER] resources.

12. Property of [EMPLOYER]

On termination of your employment you agree to deliver to [EMPLOYER] without further demand:

- (i) all information in your possession or control relating in any way to any confidential information, intellectual property or trade secrets of the business or affairs of [EMPLOYER]; and
- (ii) any property of [EMPLOYER] or thing which [EMPLOYER] is entitled to possess.

13. Use of [EMPLOYER'S] name

You must not use the [EMPLOYER'S] name without the written permission of the [EMPLOYER], except in accordance with the performance of your duties under this agreement.

14. Exclusivity

You agree that you are an employee of the [EMPLOYER], you will not accept any other employment or remunerative engagement without the prior written approval of the [EMPLOYER].

15. Clean Air Policy

The premises of [EMPLOYER] is a non-smoking workplace.

16. Termination

This agreement may be terminated:

- (i) by either party giving [1] weeks' written notice; or
- (ii) by [EMPLOYER] paying [1] weeks' salary in lieu of notice.

17. Acceptance

Please sign and date the attached copy of this letter to signify your acceptance of this position on the terms and conditions outlined above.

Yours sincerely

[Director]

I accept this offer of employment on the terms
and conditions set out in this letter

.....
[EMPLOYEE] / /20