



# GOOD DRINKS, GOOD GAMING ... BAD FOOD?

Discover the key to maintaining a successful arrangement with an external caterer.

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GOOD QUALITY FOOD is a must-have in any successful club. As a specialised skill, many clubs outsource their catering to an external caterer. One of the key ingredients to any successful arrangement with an external caterer is a comprehensive agreement that deals with the rights and obligations of both the club and the caterer.

It is not unusual for the club and caterer to think at the beginning of negotiations that everything will work out fine. However, one serious risk is if a club lets a caterer in to start operating from the club before the agreement is finalised. This is because once a caterer is using the premises, both parties may have very different views as to what the final terms of the agreement should be. If not resolved, the situation may ultimately require a court or tribunal to determine what those terms actually are.

A comprehensive agreement should expressly deal with the club's right of termination.

Unfortunately, a caterer breaching its obligations under a catering agreement is not uncommon. The consequences of a breach can be harmful to the club's business, especially when the breach involves poor customer service or unsatisfactory food — patrons are unlikely to distinguish between the club and its caterer and can be prone to spreading word of a bad experience through social media.

If your club is dissatisfied with your caterer's performance or believes the caterer is in breach of its obligations, we recommend seeking legal advice early. Sometimes a frank and open discussion will resolve the issues. However, often the appropriate course of action is for the club to issue the caterer with a formal "breach notice" (assuming the caterer's conduct does not amount to a fundamental breach of the agreement).

A valid breach notice will require the caterer to remedy the breach. Usually, the club will need to give the caterer a period of 14 or 30 days to remedy the breach. If the caterer fails to remedy the breach as set out in the notice, the club may be entitled to terminate the catering agreement.

However, if a club wants to terminate a catering agreement following the caterer's failure to comply with the notice, it is crucial that the club is certain that it has in fact issued a valid breach notice. If the club has not issued a valid breach notice, there is a risk that the caterer will claim that the club has wrongfully terminated the agreement and could sue the club for damages.

It is often worth remembering that any breach notice is likely to be read not only by the caterer but also the caterer's solicitor and ultimately a judge or tribunal

member. Seeking advice too late may mean that the club can no longer rely on the caterer's earlier breaches as a ground for termination and must start the entire breach notice process all over again. ■



**i** If you have any further questions, please call Bruce Gotterson at Pigott Stinson on 8251 7777.

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