

## Beware – Exclusive Jurisdiction Clauses

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Jurisdiction clauses are often overlooked when parties are negotiating the terms of a contract. Failing to properly consider a jurisdiction clause can make enforcement of your rights a more difficult and complicated process that it would otherwise be.

A recent matter before the Supreme Court of NSW highlights the importance of closely considering the jurisdiction clause in your contract.

### What is a jurisdiction clause?

The purpose of a jurisdiction clause is to specify where any disputes between the parties will be heard. These clauses can either be exclusive or non exclusive; a non exclusive clause, like the example below, is the most common.

If you have an exclusive jurisdiction clause in your agreement, you are contractually obliged to commence proceedings in the nominated jurisdiction. A non exclusive clause is more flexible - it nominates the preferred jurisdiction agreed by the parties, but you can commence proceedings elsewhere if you wish.

A jurisdiction clause will almost always be tied in with a governing law clause. A governing law clause specifies the law which will apply to the contract, which ordinarily will be consistent with the jurisdiction clause.

An example clause that outlines both the jurisdiction and governing law is:

*This Deed shall be governed by and construed in accordance with the laws of New South Wales and each of the Parties hereby submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.*

### What happened in the recent case?

Qantas and an ex-executive employee, Mr Rohrlach, were involved in a dispute which related to Mr Rohrlach's employment agreement. After Mr Rohrlach resigned from his employment with Qantas, Mr Rohrlach took up a position with its competitor Virgin.

- Qantas commenced proceedings in NSW to enforce a restraint of trade clause to delay Mr Rohrlach commencing his new role with Virgin.
- Mr Rohrlach claimed that the proceedings should be struck out as they were being heard in NSW, which was the wrong jurisdiction.
- Mr Rohrlach relied on the exclusive jurisdiction clause in his employment agreement which specified Singapore as the nominated jurisdiction.

The court ultimately found in favour of Mr Rohrlach and held that any proceedings to enforce a restraint of trade would need to be heard in Singapore. Qantas was required to pay Mr Rohrlach's costs and, should it wish to do so, commence proceedings in Singapore.

### Key takeaway

Jurisdiction clauses are often not examined as closely as they should be. If you are an Australian business and are required to commence proceedings in a foreign country you are likely to face an added layer of uncertainty, expense and complication. Your dispute will be subject to differences and nuances in laws and court processes. You should ensure that your agreements contain a jurisdiction clause.

If you would like to discuss the terms of your agreements, please contact [Chris Kintis](#) on 02 8235 1251.

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