



**BIRMAN & RIDE**  
l a w y e r s

## Employment contract

Dated:

Jeremy Robert Birman

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**[www.birmanride.com.au](http://www.birmanride.com.au)**

Level 3 Irwin Chambers  
16 Irwin Street Perth Australia

**T** (08) 9220 4444

**F** (08) 9220 4492

**E** [mail@birmanride.com.au](mailto:mail@birmanride.com.au)

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## Employment contract

### Parties

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<b>We / us / the firm</b>	Name	Jeremy Robert Birman trading as Birman & Ride, Lawyers
	ABN	47 198 850 835
	Address	Level 3, 16 Irwin Street Perth WA 6000
	Telephone	(08) 9220 4444
	Facsimile	(08) 9220 4492

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<b>You</b>	Name	~
	Address	~
	Telephone	~

### Operative provisions

#### 1 Interpretation

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##### 1.1 Definitions

In this agreement the following terms have the following meanings:

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<b>Intellectual Property</b>	any right including copyright in any <b>work</b> or <b>work of joint authorship</b> as defined by section 10 of the <i>Copyright Act 1968 (Cth)</i> including a document, computer code, source code, computer program, software or copy thereof
<b>Salary</b>	~calculated a the rate of ~\$~ per annum
<b>Start Date</b>	~ 200

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## 1.2 References to certain general terms

In this agreement:

- (a) an obligation:
  - (i) undertaken by two or more persons is undertaken by them jointly and severally; and
  - (ii) in favour of two or more persons is for their benefit jointly and severally;
- (b) a reference to:
  - (i) a person includes that person's executors, administrators, successors and assigns;
  - (ii) a company includes its successors and assigns;
  - (iii) a document means that document as amended or replaced;
  - (iv) a statute or other law means that statute or other law as amended or replaced, whether before or after the date of this agreement and includes regulations and other instruments made under it;
  - (v) a schedule, clause, sub-clause, paragraph or sub-paragraph is a reference to a clause, sub-clause, paragraph or sub-paragraph in this agreement;
  - (vi) a thing or an amount includes the whole and each part of it;
  - (vii) a group of persons includes all of them collectively, any two or more collectively and each of them individually; and
  - (viii) a professional body includes a successor to or substitute for that body;
- (c) where the word "including" or "includes" is used, it is to be taken to be followed by the words "but not limited to" or "but is not limited to", as the case requires; and
- (d) where a period of time is expressed to be calculated from or after a specified day, that day is included in the period.

## 1.3 Headings

Headings in this agreement are for convenience and identification of clauses only and do not otherwise affect their interpretation.

## 2 Commencement and duration

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### 2.1 Term

This agreement commences on the **Start Date** and ends on the first anniversary of the **Start Date**.

### 2.2 Agreement to continue to apply

The terms of this agreement will continue to apply mutatis mutandis to all separate contracts of employment between you and us that may come into existence during the operation of this agreement.

### 2.3 Extension of the term

We will advise you in writing at least two months prior to the termination of this agreement on the terms (if any) upon which we are prepared to renew the agreement. If we do not write to you in accordance with this sub-clause the agreement shall be taken to be automatically renewed for a further term of 12 months calculated from the termination date.

## 3 Employment terms

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### 3.1 Payment of salary

We will pay you the **Salary** monthly in arrears (at our option) by cheque or electronic transfer before the close of business on the 21<sup>st</sup> day of each month. If the 21<sup>st</sup> day of the month is a non-working day we will pay you before the close of business on the first working day thereafter.

### 3.2 Bonus

In addition to your **Salary** we will pay you such bonuses as may from time to time be agreed in writing.

### 3.3 Hours of employment

You must work a minimum of 7.5 hours per day (excluding lunch breaks) starting not later than 8.30am and finishing not earlier than 5pm.

### 3.4 Duties

During the term of your employment you must:

- (a) devote your whole time and attention to your employment by the firm and shall not engage either directly or indirectly or be

concerned in any other business, profession or employment without our prior written consent;

- (b) carry out any duties and use any equipment that is reasonably within your skill, competence and training and which we direct.

Your duties at the **Start Date** include the duties set out in the attached description of duties (if any). These duties may be varied by us at any time.

### **3.5 Smoking and eating**

Smoking is not permitted during working hours or at any other time in our offices. Eating (including chewing gum and sucking sweets) and drinking is not permitted in our reception areas or other public spaces.

### **3.6 Notice of inability to attend**

If you are unable to attend work for any reason, you must give us as much notice as possible and at least notify your supervisor no later than the time you would normally commence travelling to work. When notifying us of your inability to attend work, you must explain the reason and the estimated duration of the absence

## **4 Termination**

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### **4.1 Probation**

You will be employed on probation for three months computed from the **Start Date**. Either party may terminate your employment without notice and without reason at any time during the probationary period. Thereafter, you may terminate this agreement upon one month's notice in writing to us.

### **4.2 Termination procedure**

After the probation period we may terminate this agreement upon one month's notice in writing to you if:

- (a) for operational reasons we believe it is necessary to terminate this agreement and we have first explained our position to you and offered you the opportunity to renegotiate the agreement or to propose alternative operational arrangements within the firm; or
- (b) you fail to perform your duties to a reasonable standard and in accordance with your obligations under this agreement provided that we first:
- verbally counsel you at least once as to the aspects of your performance which dissatisfy us and warn you that failure to improve could result in termination; and

- give you written warning of our intention to terminate unless within a minimum period of one month your performance reaches a satisfactory standard.

#### **4.3 Summary dismissal**

Without prejudice to our rights at common law we may terminate this agreement without notice (summarily) if you:

- (a) wilfully mislead us about any matter associated with your management of any file;
- (b) engage in any illegal or unprofessional conduct;
- (c) cease to be entitled to practice as a barrister and solicitor in Western Australia;
- (d) cease to be an Australian citizen, Australian permanent resident or the holder of a visa entitling you to work in Australia;
- (e) wilfully incur expense (including work-in-progress) or extend credit on behalf of the firm or a customer except in accordance with the firm's policies or with the authority of your supervisor; or
- (f) engage in serious misconduct which justifies instant dismissal;

in which case you shall only be entitled to be paid for the time worked up to the time of dismissal.

#### **4.4 Return of our property and money owed at termination**

Upon termination of employment you must return to us all of our property under your possession or control including all Intellectual Property, keys, security passes, computers, computer disks, files, documents and any copies of such property.

You must not retain copies of any item of our property or Intellectual Property without our written consent.

You agree that any money owed by you at the date of termination of your employment will become due and payable on that date, notwithstanding any prior agreements. You authorise us, on termination, to deduct any money owed by you from any payments due to you

#### **4.5 Post employment restrictions**

For a period of one year following the termination of your employment you must not in any practice as a barrister or solicitor, either directly or indirectly:

- (a) perform any work for any company, entity or person who or which was a client or customer of ours in the 12 months prior to your termination; or

- (b) approach or cause to be approached any client, customer, employee or partner of ours with the intention of persuading them to leave their association with us

without our prior written consent.

In this clause the term **client** does not include any person personally introduced by you to the firm

## **5 Annual leave**

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### **5.1 Entitlement and accrual**

For each year of service you are entitled to 4 weeks annual leave with pay. Your annual leave entitlement will accrue pro rata on a weekly basis but shall not accrue whilst you are absent on any period of unpaid leave. Your unused annual leave in any one year may be carried forward to the next year.

### **5.2 Payment of annual leave**

We will pay you annual leave at the hourly rate of pay that you would have received at the time the annual leave is accrued. Bonuses are not included in any calculation of payment of annual leave.

### **5.3 Taking annual leave**

You must give us as much notice as possible of your wish to take annual leave. Your annual leave must be taken at a time mutually convenient to both you and us and must first be approved in writing by us in advance. You must take part of your annual leave over the period between Christmas and New Year if we so direct.

### **5.4 Annual leave on termination of employment**

If your employment terminates and you have an accrued annual leave entitlement, we will pay you for that annual leave upon termination.

## **6 Sick leave**

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### **6.1 Entitlement**

If you are unable to work as a result of personal illness or injury we will pay you sick leave up to 10 working days for each year of service. Unused sick leave entitlements may be accrued from year to year.

You are not entitled to paid sick leave where your illness or injury is attributable to your own serious and wilful misconduct or gross and wilful neglect in the course of your employment.

You shall not be entitled to paid sick leave for any period of absence for which you are entitled to Workers' Compensation.

## **6.2 Payment of sick leave**

We will pay sick leave at your ordinary hours rate of pay. Bonuses are not included in any calculation of payment for sick leave.

## **6.3 Proof**

Your entitlement to paid sick leave will depend on you providing us with reasonable proof of illness or injury immediately upon your return to work.

## **6.4 Notifying us**

The provisions of clause 3.6 (**Notice of Inability to Attend**) in this agreement also apply when you are sick.

# **7 Other leave**

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You are entitled to bereavement leave of up to 2 days paid leave on the death of your spouse or de facto spouse, child or step-child, parent or step-parent, or any other person who immediately before that person's death, lived with you as a member of your family. Payment for such leave shall be subject to you providing reasonable proof of the death and the relationship of the deceased to you.

You are entitled to Parental Leave in accordance with the terms of the *Minimum Conditions of Employment Act 1993*.

You are entitled to Long Service Leave in accordance with the terms of the *Long Service Leave Act 1958*.

# **8 Superannuation**

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We will make superannuation contributions in accordance with the *Superannuation Guarantee (Administration) Act 1992*. If we elect to contribute to a fund of your choice you indemnify us for any liability we may incur by reason of such fund not complying with the requirements of the Act.

## 9 Dispute resolution

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The following provisions shall apply to questions of disputes arising about the meaning or effect of this Agreement and employment conditions implied into this agreement by the *Minimum Conditions of Employment Act 1993*.

Where a question or dispute arises:

- (a) in the first instance, you and your supervisor shall make every endeavour to resolve the question or dispute;
- (b) if the matter is not resolved, it shall be referred to the firm's principal who shall make every endeavour to resolve the question or dispute;
- (c) if the matter is not resolved, the aggrieved party shall give the other party a written statement of the question or dispute and the other party shall give a written response;
- (d) if the matter remains unresolved, either party may refer the matter to an agreed mediator to assist in resolving the question or dispute;
- (e) reasonable time limits shall be allowed for each stage of the above procedure;
- (f) if the question or dispute is not resolved at the completion of the above process either party may refer all or any of the matter for arbitration;
- (g) the arbitrator shall be a person agreed between the parties;
- (h) if the parties are unable to agree on an arbitrator, the arbitrator shall be a Commissioner of the Western Australian Industrial Relations Commission (the "WAIRC") as nominated by the Chief Commissioner of the WAIRC;
- (i) if the arbitrator disqualifies himself/herself, another arbitrator shall be nominated by the Chief Commissioner of the WAIRC.

At all times whilst any question, dispute or grievance is being resolved, normal work will continue.

## 10 Confidentiality

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You must perform and observe the provisions of all statutes orders regulations rules and by-laws relating to the practice of barristers and solicitors and all rules of professional conduct and etiquette applying thereto.

You must not use for your own benefit or gain nor divulge to any persons, firm, company or other organisation whatsoever, any confidential

information belonging to us or our clients or relating to our affairs or dealings which may come to your knowledge during your employment with us.

For the purpose of this clause, confidential information includes:

- (a) precedents;
- (b) Intellectual Property;
- (c) all information that has been specifically designated as confidential by us; and
- (d) any information which relates to our commercial and financial activities.

This clause 10 will continue to apply after the termination of this agreement.

## **11 Budget management**

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In consultation with you we will set a fees budget for you. If you are managing a product or department we will also set a budget for the relevant product or department. We aim to set budgets that are realistic and attainable. We expect you to achieve your budget and we employ you primarily for this purpose. If you experience difficulty in attaining your budget or do not believe that your budget is realistic you should raise your concerns with your supervisor as soon as possible.

We will review your proposed budget with you at the beginning of each financial year. You must prepare a personal business plan before the beginning of each financial year detailing how you propose to achieve your business objectives. We expect you to review your budget management regularly. We will give you access to the relevant financial information (by on-line enquiry) at any time and you must monitor budget progress in respect of your fees and the products with which you are associated.

## **12 File management**

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All of the firm's files are allocated to a specific fee earner. You must take responsibility for the management of all files opened in your name or allocated to you. Your responsibilities as a file manager include ensuring that:

- (a) the file is opened correctly and all relevant data (eg the customer's name, address, telephone numbers etc) is recorded and updated on the firm's database;

- (b) there is a written quotation, costs agreement and credit arrangements in accordance with the firm's policy for the product concerned;
- (c) no expense (including work-in-progress) is incurred by the firm or on behalf of the customer except in accordance with the firm's policies and the written arrangement with the customer;
- (d) the file is properly maintained in accordance with the firm's policies. In particular, all work-in-progress must be properly recorded; correspondence and documents must be neatly filed in accordance with the firm's systems; notes of advice, meetings, court appearances and telephone conversations must be recorded either physically on the file or electronically in the work-in-progress ledger;
- (e) the agreed work is performed timeously;
- (f) the customer is kept properly informed of developments;
- (g) trust transactions are properly recorded; bills are rendered when appropriate and any overdue accounts are followed up and paid;
- (h) the file is closed and archived when it is completed; and
- (i) any complaints or difficulties you experience are referred to your supervisor.

## **13 Record keeping**

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### **13.1 Money**

You must account for all monies received and disbursed by you in the course of your employment and keep proper records and accounts of all such monies.

### **13.2 Records and time**

You must:

- (a) keep proper records of all acts, deeds and things performed by you in the course of your employment; and
- (b) account for your time at work to enable us to:
  - ensure our services sold on a time basis are properly charged;
  - measure the time involved in providing services to our customers; and
  - assist you to manage your time as efficiently as possible.

## **14 Supervisor**

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You must report to a supervisor or supervisors nominated by us. If you do not understand any of our procedures (particularly your obligations under this Agreement), or require professional guidance on any matter, you must advise your supervisor as soon as possible

## **15 Performance appraisal**

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We will appraise your performance of your duties at least annually.

## **16 Professional fees**

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You must pay all professional fees levied on legal practitioners by the Legal Practice Board, particularly the cost of obtaining an annual practice certificate.

## **17 Professional indemnity insurance**

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You acknowledge that under the professional indemnity insurance arrangements in force at the time of this agreement all law firm employers are obliged to pay an annual sum each financial year for every professional employee ("the employee component"). We will provide you with details of the employee component upon request. If you commence employment during the financial year we are obliged to pay a pro rata amount.

After the probationary period:

- (a) if you terminate this agreement; or
- (b) if we lawfully terminate this agreement summarily

you agree to pay to us the unexpired proportion of the employee component for the remainder of the financial year and hereby authorise us to deduct this amount from any monies owed by us to you. You acknowledge that the employee component may vary each financial year and that it is your responsibility to ascertain the quantum of the employee component from year to year.

## 18 Telephone legal advice

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You must be committed to expanding the firm's customer base and introducing new business wherever possible.

We provide 24-hour telephone legal advice to Nationwide Helpline Services as well as to our own customers in some circumstances. If requested to do so you must share this obligation with our other professional team members both during working hours and after hours. We will provide you with a mobile telephone for this purpose. Our objectives are to:

- (a) give callers initial advice in any area of law or to refer them to an appropriate source of information;
- (b) expand our database of prospective customers by adding callers' names and addresses where possible;
- (c) sell prospects our services in appropriate circumstances.

In order to discharge this obligation effectively you will need:

- (a) other skills to offer at least initial advice in a broad range of law – particularly matters likely to be of interest to consumers;
- (b) an understanding of our database including the ability to correctly enter new records;
- (c) a good understanding of the firm's range of legal products, relevant policies in relation to the pricing and conditions of sale.

## 19 Intellectual property

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You agree that during and after the term of your employment we are the legal owner of all Intellectual Property created or modified by you during the term of your employment.

By accepting this employment offer you consent to acts or omissions by us (both before and after the term of your employment), which would otherwise be an infringement of your moral rights in all Intellectual Property created or modified by you in the course of your employment.

## Executed as a deed

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This agreement is executed by all parties as a deed

Dated this

day of

200

Signed by )  
**Jeremy Robert Birman** )  
in the presence of: )

---

**Jeremy Robert Birman**

---

Witness signature

---

Witness full name

---

Witness address

---

Witness occupation

Signed by )  
~ )  
in the presence of: )

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~

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Witness signature

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Witness full name

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Witness address

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Witness occupation