

## **Registrars as employees versus contractors**

*This position statement was prepared by a joint working group formed by the National GP Supervisors Association (NGPSA), General Practice Registrars Australia (GPRA) and the Association of Chief Executives of the Regional Training Providers (ACE). NGPSA, GPRA and ACE have formally endorsed the following statement.*

Legal advice obtained clearly indicates that under law the relationship between a training practice and a GP registrar is that of an employer and employee. Under both industrial relations law and taxation law, the relationship would not be recognised as that of a principal and independent contractor. Even if payment arrangements are set up on the basis of contracting, if the matter came before a court of law, this arrangement would be considered invalid and would be deemed to be that of an employer and employee. This applies to all terms undertaken by GP registrars.

There may be exceptional circumstance where the legal position is different. We would recommend that anyone who considers their circumstances to be exceptional to obtain clear legal advice supporting that position before entering into a contracting arrangement.

The risk of setting up a contractor arrangement lies mostly with the practice. If a dispute arose and the matter came before a court of law, the practice could be liable for employee entitlements, superannuation entitlements and associated penalties, PAYG taxation and associated penalties, unfair dismissal proceedings and penalties under the Fair Work Act.

Practices sometimes choose to engage a registrar as a contractor as they perceive that this will avoid payroll tax. The financial effect of this is often small. If the arrangement came to the attention of the payroll tax authorities, the practice could be held liable for the outstanding tax.

Practices sometimes choose to engage a registrar as a contractor as they perceive that this will avoid having to take out additional practice professional indemnity to cover the employer's vicarious liability. If a claim was made against a registrar, the contracting arrangement would be likely to come under scrutiny and be deemed to be an employment arrangement. The practice would then be exposed to the vicarious liability without an appropriate policy.

A GP registrar entering into a contractor arrangement also exposes themselves to some risk. There is a risk that the contracting arrangement could call into question the cover of their own professional indemnity insurance if their category was that of a GP registrar rather than an independent GP. If the registrar does not have an adequate understanding of their legal obligations under a contracting arrangement there are also risks associated with failure to comply with, or adequately plan for, taxation and GST liabilities. If the registrar does not take out appropriate insurance in the absence of employer workers compensation insurance cover there are risks associated with injury, illness and loss of income.

The National GP Supervisors Association, General Practice Registrars Australia and the Regional Training Providers have all considered this matter and strongly recommend that practices should engage GP registrars as employees and not as independent contractors.