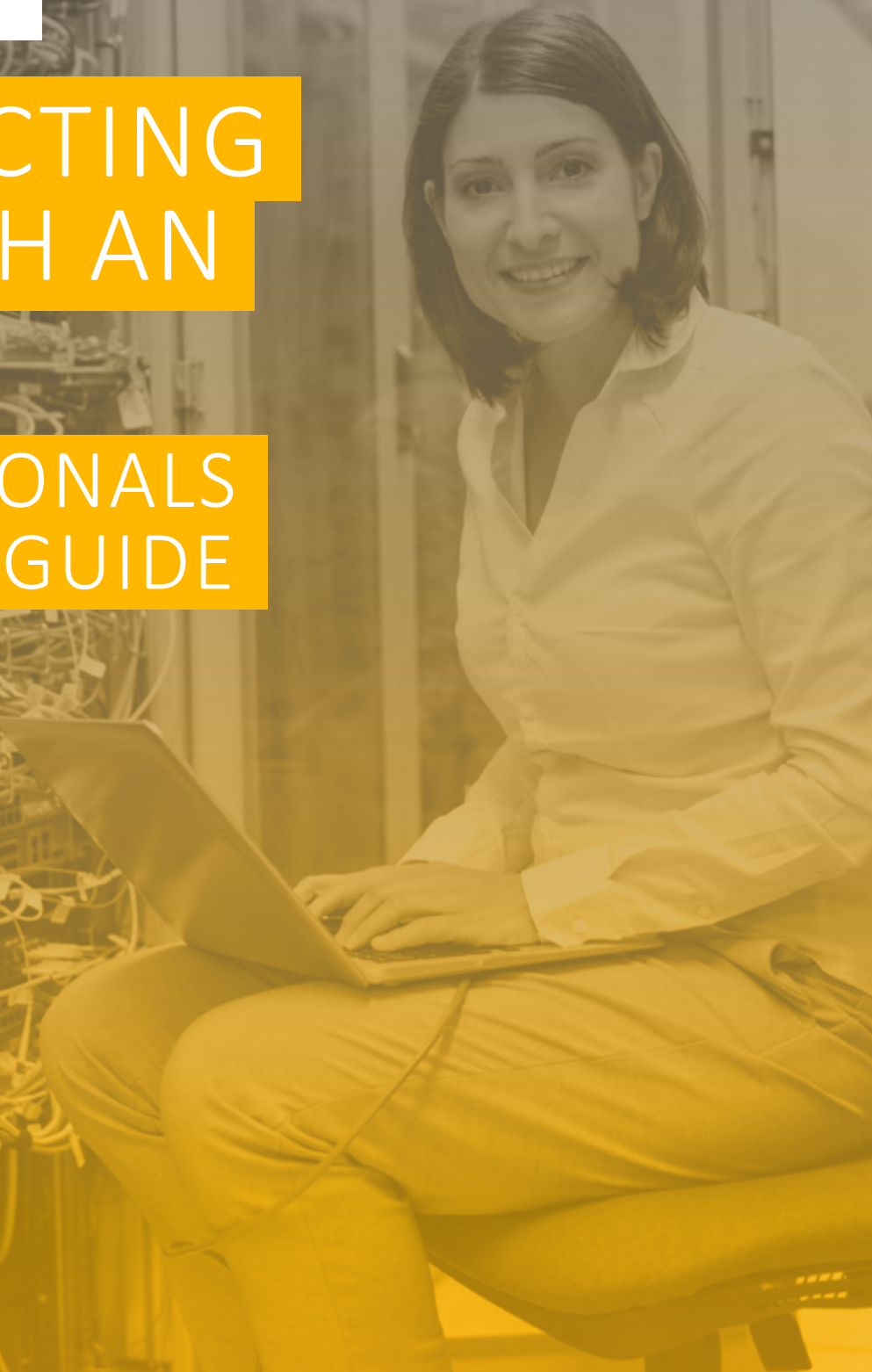




**Professional
Contractors and Consultants
Australia**

CONTRACTING THROUGH AN AGENCY

A PROFESSIONALS AUSTRALIA GUIDE



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TRANSITIONING TO CONTRACTING

Transitioning to contracting

Are you thinking about contracting for the first time?

Do you understand your options, the pros and cons of the different arrangements and what sorts of considerations should inform your choice?

The objective of this Guide is to help you assess whether contracting through an agency is an option that might suit your circumstances, to set out how the arrangements usually work, to explain the different rights and obligations attached to each of the different types of arrangements, to set out your responsibilities when negotiating a contract, and to give you a benchmark for the hourly rates you might expect.

Where to start

The most sensible starting point if you're considering contracting for the first time is understanding your options and preferences in terms of the different types of arrangements set out in Figure 1 below.

There are four main areas to keep in mind when deciding how to structure your work arrangements – control (would you decide how you do the work or does another party have the right to direct you how, when and where to do it), financial impact (rate of pay, who supplies equipment, who's covering on-costs), risk (who's bearing it and paying to cover off the liability if you make a mistake) and entitlements (do you have access to termination and redundancy payment and other legislative and statutory protections?).



Understanding the options

Exactly where contracting through an agency sits in relation to permanent and casual employment, independent contracting and consulting can be confusing. Figure 1 below sets out the different types of engagement and where contracting through an agency fits in relative to other types of engagement.

Figure 1 - Categories for understanding employment and different types of contractor engagement

Employment relationship/method of engagement				
Non-employment-based contracting arrangements		Employment-based contracting arrangements	Employment arrangements	
	Labour hire agencies			
1(a) Independent contractors (“sole traders” or “own account workers” either with or without an ABN) - negotiate their terms and are paid directly by principal on invoice	2. Independent contractors who operate through a labour hire agency using ODCO arrangements	3(a) Contractors are signed up as employees of the labour hire agency (most often casual) and on-hired to a principal client	4. Permanent employee (full or part-time)	5. Casual employee
1(b) Independent contractors operating via a payroll management or contracting services company using non-employee-based arrangements		3(b) Contractors are awarded work through an agency and on-hired to the principal client but the payroll function and liability for “employment” obligations are diverted to the payroll management company		

Figure 1 shows that workers can be divided into those who:

- (i) contract using non-employment arrangements [category 1];
- (ii) are employees of the organisation to whom they supply their labour directly [categories 4 and 5]; or
- (iii) operate via a labour hire agency. These individuals can be engaged via employment-based arrangements [category 3] or non-employment-based arrangements [category 2]. In the case of those in category 3, these workers provide their labour to a third party but the labour hire agency [category 3(a)] or a payroll management company [category 3(b)] accept the obligations arising out of the relevant industrial instruments, effectively becoming the contractor’s employer. In the case of those in category 2, individuals receive work via an agency but the liability for on-costs is diverted back to the contractors themselves and neither the principal nor the agency accept liability for the obligations arising out of industrial instruments.

This Guide is intended to assist Professional Engineers and Information Technology (IT) contractors who are on-hired to a principal client while employed by a labour hire agency or payroll management company - these contractors appear under category 3 in Figure 1, shaded in blue.

NON-EMPLOYMENT ARRANGEMENTS

(a) The consulting option

Consultants who negotiate their terms and are paid directly by the principal on invoice are included in Figure 1 under category 1(a). They cover their own on-costs and don't operate through a third party.

If you're considering consulting for the first time without an agency as an intermediary, your first consideration should be whether or not you have in place some form of business plan and a diverse client base established with a series of confirmed short and longer-term work projects ready to take up. If you do, then it's likely you're in a good position to seriously consider establishing a consulting business - or putting out your own shingle - and working towards making a profit. It's likely that - even if it's over a period of time - you'll be well-placed to offset the costs of business startup such as professional indemnity and public liability insurance (plus seven years run off cover in some cases), salary continuance insurance in lieu of workers compensation, the cost of registering a company (if that's the business structure you choose), covering your own superannuation payments, and the costs attached to providing your own tools and equipment, renting office space or setting up a home office, etc. If you have a set of clients ready to roll, then it's likely you've mitigated your risk by covering these outgoings with incoming earnings. As an independent contractor or consultant, you cover all the costs associated with delivering the results you're contracted to deliver, you provide all the tools necessary to completing the work, and you accept liability for rectifying any defects in the work - you therefore take on the risks of suffering a loss, but also the chance of making a commercial gain.

Another important consideration is that obtaining the relevant insurances will be contingent upon you having the professional expertise and experience required - generally about 10 years' experience in your specialist field depending on the level of risk in the area. Without this cover, it's often simply not feasible to start up a consultancy.

If you're not in a position to activate a network of clients, and obtain the relevant insurances, then you may need to think again. Unless there are other circumstances that mitigate the risk of starting up a consultancy without an established client base and the relevant experience in your field, it may be that you're not making an informed decision about how to structure your work arrangements based on the reality of the work available in the short and longer-term, and that another contracting option might be a better alternative.

It's also worth noting if you have a single client ready to offer you work and are considering consulting on this basis, you should be aware of the PSI rules - if you earn more than 80 per cent of your income from a single source, you may not be considered a business entitled to claim the full range of business deductions - this can mean you just need to declare your earnings as income and this may or may not be an issue depending on your particular circumstances and the deductions you want to claim - but if for example you intend income splitting as a business, the ATO is likely to have some problems with the arrangements.

(b) Independent contractor arrangements via a third party

Independent contractors may choose to operate via a contracting services company or payroll management company using non-employee-type arrangements. They cover their own on-costs but can have access to group arrangements through the contracting services company which support their independent contracting operation such as group professional indemnity insurance cover. Contracting service and payroll management companies can offer contractors a range of non-employment-based business and tax structure options. These contractors are included in Figure 1 under category 1(b).

(c) ODCO arrangements

ODCO arrangements are used in the context of labour hire agencies and are included in Figure 1 as category 2. The agency structures arrangements between client, contractors and themselves to engage the workers as independent contractors rather than as employees, diverting the liability for on-costs back to the contractors themselves. These arrangements were the arrangements contested in the ODCO matter in 1991 [Building Workers' Industrial Union of Australia v ODCO Pty Ltd (1991) 29 FCR 104].

The main features of the arrangements between contractor and labour hire agency under the ODCO system are:

- the contractor signs an agreement with the labour hire agency to the effect that the arrangement between them is not one of employer and employee;
- the contractors and labour hire agency agree on a set hourly rate and the contractor is paid an amount based on the actual number of hours worked and this hourly rate;
- the contractor accepts responsibility and liability for workers' compensation, taxation arrangements, public liability and accident insurance and for supplying their own equipment;
- the contractor agrees to having no rights which might otherwise accrue under relevant industrial instruments such as sick leave, annual leave, long service leave, etc.;
- the contractor agrees that there is no obligation on the part of the labour hire agency to provide an engagement on any given day or at a particular workplace, nor is there an obligation on the part of the contractor to accept an engagement offered by the agency.

The main features of the arrangements between labour hire agency and their client under the ODCO system are:

- the labour hire agency agrees to provide labour to the client;
- the client pays the labour hire agency an agreed amount for the contractors engaged according to the number of hours worked;
- the client pays the labour hire agency a specified amount should the contractor become a direct employee of the client;
- the client can ask the labour hire agency to provide a different contractor where they are dissatisfied with them;
- the client directs the contractor to perform the work required.

For a labour hire agency, ODCO arrangements have the advantage of precluding exposure to claims for entitlements under any relevant industrial instrument such as annual leave, sick leave, long service leave and unfair dismissal, and the on-costs incurred by employers such as superannuation, workers' compensation, etc. For the contractors, ODCO arrangements mean they are left without the protections of relevant industrial instruments while having to cover on-costs themselves.

(ii) Employment arrangements

(a) Permanent employment

At the other end of the scale to the independent contractor arrangements described in section 1(i), permanent employment - set out in category 4 - offers relative security because the Fair Work Act, the National Employment Standards and, where an Award applies, the minimum pay rates and conditions set out in the Award provide basic protections and entitlements. As an employee, you accumulate sick leave, annual leave, can access parental leave, are entitled to public holidays, a working week of 38 hours plus reasonable additional hours, are protected against unfair dismissal (different standards apply to employees of small business depending on the number of employees but there is a level of protection) and have redundancy entitlements. The employer is responsible for professional indemnity and public liability, and must comply with their superannuation, workers' compensation, payroll tax and PAYG tax obligations. The employee performs services as directed by the employer, and they provide the tools and equipment necessary to complete the specified work duties.

(b) Casual employment

Casual employment - set out in category 5 - is an employment arrangement that provides employers with flexibility but does not provide the same level of income security to the casual employee as permanent employment. The casual employee is paid a higher hourly rate to compensate for this income security and the entitlements that normally accrue to permanent employees that are not available to them. For casuals, the employer has a limited level of liability in terms of superannuation, workers' compensation and tax, but there is no entitlement to unfair dismissal provisions (except in some instances where the casual engagements have been regular and over a long period of time). Nothing prevents an employer offering minimal or even no hours on a casual roster.

While casual employment doesn't offer income security, a significant advantage for those considering short-term engagement is that - as is the case with permanent employees - the employer remains vicariously liable for negligent acts committed by their casual employees in the course of their employment. This means that those engaged as casuals don't need to purchase their own professional indemnity or public liability insurance which can be a significant expense for those setting themselves up independently. If, for example, a former employer wants you to undertake a once-off project for them and your intention is to work only for this employer without diversifying your client base down the track, returning as a casual employee may be a preferable option because it means you don't need to take out what can be expensive PI and PL cover. (You can of course still negotiate an appropriate hourly rate, and are bound by the normal duty of care requirements.)

(iii) Contracting through an agency or payroll management company

In addition to the employment and non-employment arrangements set out in sections 1(i) and (ii) above, contracting via a labour hire agency (also known as a recruitment firm or personnel agency) is another option. These arrangements are set out in category 3 in Figure 1 and are the focus of the information set out in this Guide.

In terms of the categories in Figure 1, while contractors under these arrangements provide their labour indirectly (that is they are on hired to the principal via an agency but for most purposes appear to work for the principal), the legal entity which engages them - the agency - is effectively their employer and takes on the obligations arising out of industrial instruments. Contractors who operate through an agency therefore sit at the intersection of employment and non-employment arrangements.

How does it work?

In the current labour hire market, contracting through a labour hire agency can work in two ways. It can involve the contractor effectively obtaining work from and becoming an employee of the labour hire firm - the arrangement set out in Figure 1 as 3(a) - or the contractor obtaining work from the agency but a payroll management company (PMC) that works with the recruiter becomes the legal entity assuming the obligations arising from the relevant industrial instruments - the arrangement set out in Figure 1 as 3(b).

(a) Contractors effectively “employed” by the labour hire agency

In this case, contractors are signed up as employees of the labour hire agency (most often casual) and on-hired to a principal client. The labour hire agency puts in place an arrangement with contractors which involves the agency covering the cost of statutory obligations including superannuation, workers’ compensation, payroll tax and PAYG tax deductions, plus any obligations to the contractors arising from relevant industrial instruments including long service leave, annual leave, sick leave, etc. The agency effectively functions as the employer engaging workers as employees, making payments based on time sheets, and may offer salary packaging, etc. The three parties involved are the agency, the principal client and the contractor and these arrangements are included in Figure 1 under category 3(a).

(b) Contractors effectively “employed” by the payroll management company

In this case, contractors obtain work through a labour hire agency and are on-hired to the principal client but the “employment” obligations arising out of the relevant industrial instruments are diverted to the PMC. In this last instance, there are four parties involved - the principal client, the agency, the payroll and contract management company and the contractor. The PMC works in tandem with the recruiters. This arrangement is set out under category 3(b) in Figure 1.

A note of caution about sham contracting

At this point it’s worth also just sound a basic note of caution - a point we make to all members thinking about moving into contracting - some unscrupulous employers can reclassify employees as contractors, or dismiss employees and re-engage them as contractors to save on employment costs - both of these are in breach of the sham contracting provisions of the Fair Work Act - and if you’re involved in such arrangements and would like to discuss the matter with Professionals Australia, you should contact our Workplace Advice and Support Service on 1300 273 762.

Pros and cons

There are both advantages and disadvantages of working in via an agency arrangement.

Particularly for short term contracts, the agency takes responsibility for many of the more expensive and inconvenient aspects of contractor-style employment, such as recovering unpaid debts from principal employers. If you’re working through an agency, they (or the PMC) will cover your workers’ compensation and superannuation payments and take care of your professional liability obligations. Some agencies will also provide the run-off cover which can be required beyond the actual engagement and completion of the project. Additionally, contracting through an agency can be a good way to get a “foot in the door” with the principal employer for future direct, permanent employment if that’s desired (and allowed under the terms of your engagement), or to add to your professional experience. Operating via an agency also means that generally your personal assets are not at risk which is an issue if you are living on retirement earnings and have assets to protect. Working through a labour hire arrangement can also mean you spend less time on bookkeeping and recordkeeping – the agency’s or PMC’s records can be provided direct to an Accountant.

In terms of risk, your exposure is reduced operating through an agency compared to setting up as an independent contractor because the agency covers what would otherwise be significant business startup and establishment on-costs.

On the negative side, generally speaking the single biggest difficulty attached to contracting through an agency compared with employment is income insecurity. It can be quite easy for the principal employer to “dismiss” agency contractors without a good reason. As there is no direct employment relationship with the principal employer, the unfair dismissal protections afforded employees under the Fair Work Act do not apply. The principal client can terminate your engagement with little or no notice (depending on the termination notice period included in your contract terms).

Bringing your own clients to an agency

When you register with an agency for work, the agency charges the client company a recruitment and/or administration fee together with statutory obligations - they do not charge the contractor a fee. However when you bring clients to an agency and have quoted a price to a client, on-costs will be taken out of that price by the agency - this is when the agency quotes a fee or percentage and the contractor is charged. This percentage can be anything from 3 to 10 per cent. (Professional indemnity insurance may be on top of the percentage charged.)

WHAT MAKES A “GOOD” AGENCY?

Because the needs of contractors and the clients they work for are so varied, there is no short answer to the question of what you should look for in an agency - it depends on your needs and whether or not they can provide the services you require of them.

Generally speaking though, when considering an agency, you should assess whether they will meet your needs in terms of:

- the opportunity to negotiate fair terms which suit both parties;
- where the professional is engaged as an employee of the agency, providing benefits in accordance with the relevant minimum standards;
- providing access to an appropriate level of professional indemnity and public liability insurance coverage including run off cover if required - some agencies provide more cover than others and this can mean the difference between a successful and unsuccessful bid for a contract;
- their administrative efficiency and flexibility - as an example, can the agency provide your paperwork in the format you require for tax purposes such as itemising different clients to streamline your accounting, and do they provide clarity around the receipts you need to keep for reimbursement and taxation purposes;
- their administrative thoroughness and service - for example, keeping you in the loop about delays in payments, and following up on contracts and timesheets as needed;
- providing access to remuneration packaging - can they arrange salary sacrifice arrangements, novated car leasing, etc. if you require it;
- accommodating you finding your own clients if needed;
- whether they have a well-established network of client contacts and job opportunities in your chosen field if you're asking them to locate clients for you;
- including a reasonable notice period if the arrangement is to be terminated (see Section 4);
- having experience handling overseas as well as Australian engagements if that's something you do or may look at in the future;
- reviewing your pay level annually in accordance with an agreed benchmark - this could be the rates set out in the relevant enterprise agreement for the site at which you're working (even though contractors are not formally entitled to enterprise agreements increases), or another reference point such as CPI or WPI; and
- prompt payment- will you be paid regularly whether or not the client has paid the agency? If regular payment is important to you, check with the agency if they pay on receipt of an approved time sheet rather than waiting on payment from the client company.

How are the agency's payment arrangements structured?

It's worth noting that agencies can be divided into two types - those that are paid on commission and those that undertake recruitment on behalf of a company and are paid for the contract as a whole rather than per placement (also referred to as "retained recruiters").

Transparency around rates

Many contractors find it frustrating not knowing the rate the principal client pays for the provision of the contractor's labour - that is, the agency is not transparent about the rate they charge the principal client compared with the rate the contractor receives. If this is important to you, you can ask the agency whether or not they are prepared to be transparent in this way. Some agencies do offer transparency, some don't, and some offer it in certain circumstances.

Training and professional development

Labour hire firms can sometimes also be reluctant to invest in training and professional development for their contract employees so whether or not the agency has developed relationships with education providers and makes professional development available to contractors may be something you want to ask about and take into account when selecting an agency.

AT WHAT POINTS DO YOU HAVE THE MOST LEVERAGE?

There's no doubt that you have the greatest degree of leverage when the client has worked with you before and has a positive regard for your competencies, knows that you suit the culture of the principal client organisation, is aware of the particular services you provide, requires your particular skill set, and those with the required skill set are in short supply.

It is at this point - before the contract terms are in place - that you are most likely to be able to negotiate favourable contract arrangements and a good hourly rate. Where feasible, the inbuilt risk and lack of protection afforded the contractor as set out in the termination clause can be used a basis for negotiating a rate increase with the agency.



WHAT SHOULD BE INCLUDED IN A CONTRACT?

Very often a contractor will be presented with a pro-forma contract by an agency, and the agency may be uncomfortable about changes being made to the contract. But with your terms of engagement document being the most critical piece of documentation you will put in place as a contractor, you should always get Professionals Australia to check it so as a minimum you understand the terms you're agreeing to and what your exposures might be. Contracts can be an important risk management device but also a significant source of exposure if they fail to adequately define the limitations and scope of the services to be provided.

In general terms, most contract documents should include the following terms as a minimum, and depending on your particular circumstances, where they are not included, you should consider having the terms included:

- the contracting parties;
- the nature of the relationship between them;
- the scope of the services to be provided including any limitations or exclusions;
- an agreed hourly rate;
- whether or not the rate includes GST;
- payment terms;
- the terms of termination arrangements;
- IP and copyright arrangements;
- how variation to the agreement will be handled;
- confidentiality arrangements;
- indemnity requirements including the scope of liability;
- a dispute resolution procedure;
- restraint of trade terms if any;
- obligations in relation to supply of necessary tools and equipment;
- a clause which commits the agency to reviewing the rates paid at least annually against an agreed benchmark;
- an escalation clause for increases to relevant payments/expenses if the agreement is long-term; and
- a rollover clause where applicable.

The basics

A written contract should be in place BEFORE you begin the engagement, you should have the opportunity to negotiate terms and have time to consider the document (and get it checked by Professionals Australia), and it should not include any unfair terms or

clauses which do not comply with minimum statutory provisions and relevant legislation. If you go on-site before your terms are agreed and the relationship with the principal client happens to break down, you have written contractual terms on which to rely and there are no obligations or entitlements that Professionals Australia can enforce on your behalf.

Watchpoint - a fixed term contract - or is it?

Even where it is stated that a contract is for a particular term, a client or agency's right to terminate at their discretion or

Hall, R., T. Bretherton, et al. (2000). It's Not my Problem: the growth of non-standard work and its impact on vocational education and training in Australia., National Centre for Vocational Education Research and Australian National Training Authority.

convenience means that the contract is not a fixed term contract but an outer limit contract. This means that if terminated prior to the conclusion of the stated term, you have no entitlement to damages for the unexpired balance of the contract.

Professionals Australia advises contractors to be aware of the effect of termination provisions set out in contract documentation, and to seek clarification on the operation of the terms where needed.

Have your contract checked by Professionals Australia

Once you have been provided with a contract, you can ask Professionals Australia to check it over for any gaps, omissions, points of concern or significant risks or exposures.

A note about the Personal Services Income (PSI) rules and the tax status of contractors

Contractors working through an agency (categories 3(a) and (b) in Figure 1) will generally receive a group certificate stating their personal income and the tax remitted on their behalf as employees. Where contractors claim only those deductions available to employees, the PSI rules are likely to be of limited concern.

The Alienation of Personal Services Income rules are likely to be an issue for those in non-employment-based arrangements where they claim they are a Personal Services Business (PSB). The Australian Taxation Office has an interest in those using alienation arrangements as a means of reducing their tax obligations and actively conduct a range of data-matching and audit programs to investigate tax discrepancies or contrived arrangements so members should ensure that any non-employment-based arrangements they put in place fully comply with the PSI and other tax rules.

Professionals Australia has extensive advice and information available on how the PSI rules work for independent contractors who need to establish their PSB status - in particular our "Guide to Deciding Your PSI Status with Certainty" and "PSI Solutions".

WHAT ARE YOUR RESPONSIBILITIES?

How to proceed when you're offered a contract

As a minimum, you should:

- Arrange for the checking of your contract PRIOR to signing;
- Check your contract against the standard clauses set out in section 4 and ensure that everything that needs to be included is there;
- Benchmark the rate being offered with Professionals Australia rates;
- Re-negotiate aspects of the contract if necessary;
- Check with the agency that the relevant insurances are in place; and
- Ensure you have a checked and signed agreement in place before you go on-site.

A note for young professionals considering contracting

Ideally in the first three to four years after graduation, your professional development should include:

- developing your judgement and increasing your range of professional experiences under the supervision of more senior qualified and experienced professionals;
- gaining and consolidating expertise in your discipline;
- an organisation orientation, with exposure to a range of functions in the organisation;
- mentoring and support;
- training in business processes, client/customer service, sales and finance, team management, communication skills, and leadership and management skills;
- training in health and safety;
- application and understanding of the relevant code of ethics; and
- a focus on career planning.

This type of focus on intensive professional development and development of professional judgement is usually offered in the context of employment arrangements. Because of their limited experience in the field, recent graduates considering contracting can also have difficulty obtaining the relevant insurances. For these reasons, Professionals Australia has some major concerns about recent graduates undertaking contracting for any reason other than getting a foot in the door, or gaining short-term experience in the field to include on their CV.



WHAT RATES SHOULD APPLY?

Ultimately, the hourly rate you're paid depends on the market demand for the services and skills you provide and there is no substitute for specific knowledge of the particular value of the service being offered to a client in the particular context in which it's being provided.

Professionals Australia publishes recommended contractor hourly rates based on remuneration survey information for Professional Engineers and IT Professionals (refer to Surveys information under the Financial Edge section of the website).



FAQS

Q. The client told my labour hire firm that my performance was unsatisfactory and my contract was terminated. Now my labour hire firm refuses to place me in any other positions. What should I do?

A. You should firstly arrange to meet with a consultant from the labour hire firm and try to obtain feedback on the client's grounds for termination of the contract. You should explain that your understanding was that there were no problems with your performance and that you're keen to undertake further placements. If you're not successful in resolving the issue with the firm to the point where they're prepared to place you, you need to consider moving across to another labour hire firm.

Q. I've been in a contracting role for two years coming up to my third without any change in my hourly rate. What can I do to get an increase?

A. You need to arrange to meet with a consultant from the agency to discuss the situation. If there is nothing included in your original contract terms about an annual increase or review, the agency is under no obligation to review your salary, and there's no right or entitlement that Professionals Australia can enforce on your behalf. This makes it imperative that provision for review of your salary and an increase in line with either the relevant collective agreement (even through increases under the collective agreement don't formally apply to contractors) or an alternative reference point such as CPI or WPI is included in your contract when the arrangement is put in place.

Q. I think I may be being paid under the Professionals Australia recommended rates. What should I do?

A. You should meet with your agency to discuss putting in place arrangements which ensure you're paid in line with the relevant market rates and that your rate is reviewed at least annually to ensure your rate is keeping pace with movements in the market.

Q. I have recently applied for a number of positions directly to various companies and I now have a meeting to speak with an agency, should I mention the position I have applied for?

A. Yes you should. When dealing with an agency it is best to keep the lines of communication open, telling the agency which companies and / or positions you have already applied to will avoid a lot of time being wasted. This will also give the agency some insight into the types of positions / companies of interest to you. Most importantly, you want to avoid double representation where your details are sent to a company who has already received them directly from you. Always ensure an agency tells you where they are sending your details and has your permission to do so.

Q. I am currently working through an agency and there is a public holiday coming up, will the agency pay me for the day away from work?

A. No the agency will not. Your regular hourly rate will include any allowances for leave taken and public holidays.

Q. I am currently working in a contract position through an agency and I am finding that the position is not what I expected, should I speak with the client or my contact at the agency?

A. You should discuss this with your contact at the agency as soon as possible. They will be able to provide you with advice on the most appropriate way to handle the situation. If you are being asked to carry out duties outside of the provided position description your agency needs to know.

Q. I'm working through a recruitment agency providing IT services for a third party. My contract includes a clause to the effect that I may not work directly for the third party for a period of six months after terminating. Is this legally enforceable?

A. A restraint clause seeks to impose limitations or restrictions on conduct after a contractual relationship has concluded, and was tested in the labour hire context in the Federal Court in early 2011. The Federal Court found that a labour hire firm can legitimately seek to protect its interest (i) in maintaining its customer connection, (ii) against the risk of contractors or employees placed with clients poaching the client, and (iii) against "opportunistic disintermediation" - or being cut out as the "middle man".

The restraints do however still need to be "reasonable" - the restraint should be justifiable, contractors should be informed upfront if a separate restraint has been negotiated with a client, and the restraint between a contractor/employee and the agency, and the agency and principal client should be consistent. (Case reference *Informax International Pty Ltd -v- Clarius Group Limited* [2011] FCA 183 (4 March 2011)).

About Professionals Australia

Professionals Australia is an organisation registered under the Fair Work Act 2009 representing over 25,000 Professional Engineers, Professional Scientists, Veterinarians, Professional Surveyors, Architects, Pharmacists, Information Technology Professionals, Managers and Transport Industry Professionals throughout Australia. Professionals Australia is the only industrial association representing exclusively the industrial and professional interests of these groups including both independent contractors and contractors working through agencies.



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