

# Risks of engaging contractors in your practice: Implications for new graduates and early career speech pathologists

The legal test for distinguishing a contractor from an employee can be complex and will depend on a range of factors, as well as the particular circumstances of each case. If you are hiring a contractor, you need to be very sure that your contractor is legally a contractor. If there is a dispute and a court finds that your contractor is really an employee, then penalties are steep. You could be liable for any unpaid employment entitlements and tax penalties as well as penalties for hiring an individual in the wrong way.

A true contractor is not under the direction or control of the business owner. They:

- are free to perform the task at time of their choosing,
- use their own equipment and resources,
- can delegate or sub contract tasks to other people,
- are usually engaged for a specific task,
- can choose to take leave for a period, at time of their choosing.

A contractor runs their own business which means they operate under their own business name, pay their own tax and superannuation, do not receive paid leave and can be legally liable for the work performed under the contract. A contractor generally has a higher level of independence in the way the work is performed and who they work for. As they are running their own business they should also have appropriate experience and competency to carry out the contract work.

While it is important to have regular contact with all contractors in your business, the expectation is that because of the experience they bring to the role this means they will not require as much supervision and support as those speech pathologists who are employees. Therefore, it is particularly important to be aware of the responsibilities of a contractor who might be a new graduate or early career speech pathologist and consider if they have the experience to work independently and see clients in your practice. In addition to your legal responsibilities, you should also be aware of your ethical responsibilities when taking on a contractor.

Speech Pathology Australia's Code of Ethics outlines the principles and values speech pathologists aspire to in ethical decision making. Section 3.3.4 refers to Supervision and states:

We provide appropriate supervision.

We accept responsibility for clinical and support staff, students and volunteers who are assigned to us.

We take reasonable steps to ensure that those clinical staff and students under our supervision:

- understand and apply our Code of Ethics;
- operate within their level of competence.

We demonstrate and discuss ethical practice with those we supervise to facilitate their ethical reasoning skills.

As contractors generally have more autonomy and usually do not receive regular supervision, it is important to consider the risks to your business, your professional reputation, your clients and the people working in your practice when you take on a new graduate or early career speech pathologist as a contractor. You need to consider your obligations to provide supervision to a new graduate or early career speech pathologist. Arranging for these speech pathologists to be employees instead of contractors is one way to alleviate this risk. This type of employment arrangement will ensure you are providing a quality, efficient and effective service to clients and the community, and at the same time an appropriate level of supervision and support to less experienced professionals, as per your ethical obligations.

Employing an early career speech pathologist has some real positive benefits for your business. They will bring up-to-date knowledge and evidence as well as the latest techniques and methods to your practice. They are also very motivated and enthusiastic employees! It is an opportunity for you, as a practice owner, to share your clinical and professional knowledge so they can represent your business in a positive and skilled manner. It is also a great chance to demonstrate to someone new to the profession that a private practice can be run ethically and be a really positive environment in which to gain knowledge and experience.

It is a busy time of year for private practices and a time when practice owners are taking on new staff. If you are thinking about taking on contractor be aware of the risks particularly when taking on new graduates or early career speech pathologists who will need supervision and support. Legal and ethical risks are a reality and we encourage members to consider these when determining or reviewing current employment relationships with their staff.

National Office staff are always happy to answer any questions you may have in relation to professional and ethical responsibilities around different employment relationships.

To better understand the employment law or contractual obligations of using a contractor, members can contact Anna Pannuzzo from WorkPlacePLUS on 0419 533 434.

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**WorkPlacePLUS is the preferred national HR and Industrial Relations provider for Speech Pathology Australia and all of their members.** We specialise in providing flexible, cost-effective solutions for managing employment contracts and AWARDS, as well as appropriately addressing complex people issues.

**Your SPA Member Benefits include access to free initial advice from WorkPlacePLUS on employment and HR issues affecting your practice.** Additional advice is also available from our range of services:

## **Full HR Reviews & Risk Management**

Employers must comply with a myriad of legal regulations or risk costly penalties. Our Full HR Reviews take the headache out of employment contracts, policies and procedures, WorkCover management and ensuring that your workplace follows legal and best practice requirements.

## **Training & Development**

Our private practice seminars for SPA members address the specific employment and HR issues faced by speech pathologists. We also offer a range of professional programs on performance management, legal compliance, communication strategies and empowering your staff towards leadership.

## **Independent Workplace Investigations**

Our HR consultants are certified private investigators. We specialise in conducting independent workplace investigations into claims such as bullying, harassment, grievances, misconduct and non-performance of legislation and/or policies.

## **Mediation & Conflict Resolution**

To help you strengthen your teams and resolve complex workplace issues, a formal mediation process may be required. Our skilled mediators are certified to perform court-mandated mediation under the National Mediation Accreditation System.

## **Organisational Change & Performance Management**

Cultural and structural change in the workplace can be challenging for employers. We provide training, coaching and expert assistance with performance management, restructuring, goal-setting and having difficult conversations with your staff.