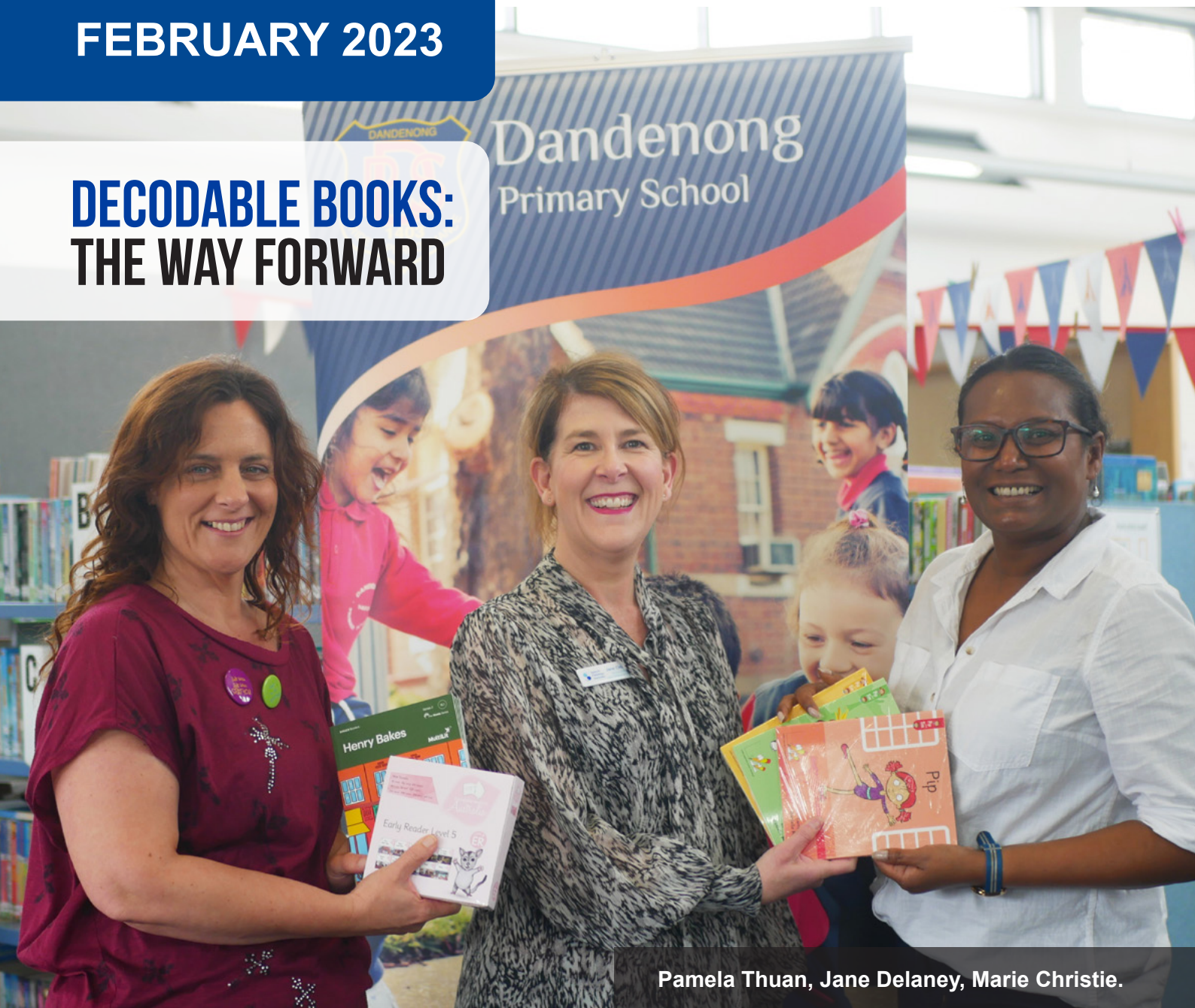


SPEAKOUT

THE MAGAZINE FOR AUSTRALIAN SPEECH PATHOLOGISTS

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**DECODABLE BOOKS:
THE WAY FORWARD**



Pamela Thuan, Jane Delaney, Marie Christie.

Starting your own private practice? Find out tips from experienced practice owners.

Changes to Speechie Library Talks 2023. Don't miss out!



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WORKING ARRANGEMENTS: CONTRACTOR OR EMPLOYEE?

When engaging staff (employees) in your practice, it is important to be up front from the start about a range of employment factors, such as:

- working arrangements and understanding the employment contract
- salary, entitlements and managing pay expectations
- supervision, training and your process for managing performance
- the workplace values, policies and processes that underpin and guide the running of your business.

This article focuses on a common HR hot-spot for practice owners who are engaging staff: working arrangements.

WHAT ARE WORKING ARRANGEMENTS?

'Working arrangements' refers to the approved or agreed upon employer-employee relationship, particularly around the patterns, design of work hours and how work is performed.

It's important to have a clear understanding of the working arrangements in your practice and to be able to clearly communicate (and in some cases negotiate) these with you staff. For example:

- Is this an employee or independent contractor arrangement?
- Is the position casual or permanent? Part-time or full-time?
- What leave and entitlements are provided?
- What flexible working arrangements are available?
- Who supplies tools and equipment?
- Who is responsible for insurance and matters of work, health and safety?

CONTRACTOR OR EMPLOYEE?

If your speech pathology practice engages independent contractors, it is good practice to review the arrangements regularly to ensure compliance.

The Australian Tax Office (ATO) is clamping down on businesses that force workers to be independent contractors with so-called sham contracts as a way of avoiding paying an employee's statutory entitlements. If the courts find that you have classified your staff incorrectly, they may impose a penalty of up to A\$12,600 for individuals and A\$63,000 for corporations per contravention.



[Earnings, Employment and Contracts resources](#) are available on the SPA website [Professional Resources page](#).

WHAT'S THE DIFFERENCE?

An employee works in your business and is part of your business. An employee's minimum entitlements are set out in the [National Employment Standards \(NES\)](#) and awards. Employment contracts can provide further entitlements, but they can't be less than what's in the NES or any applicable award.

An independent contractor (a.k.a. contractor, sub-contractor or 'subbie') effectively runs their own business and operates under their own business name. They are responsible for their own business compliance and commitments such as insurance, PAYG, superannuation, workers compensation, ATO, GST, etc. Contractors do not receive paid leave and can be legally liable for the work performed under their contract.

The distinction between contractors and employees is not always clear-cut. Courts look at the relationship. There is no single indicator to determine if a person is a contractor or an employee, which creates added complexity.

Employees

- Employees perform work under the direction and control of their employer. The employer generally controls working hours, work location and how work is done.
- Employees carry no financial risk in relation to the business.
- Work equipment, tools and supplies are generally provided by the employer, or a tool allowance is paid.
- Employees are required to do the work themselves. For example, they can't ask someone else to go to their workplace and do their work for them.
- Permanent employees have an ongoing expectation of work. However, some employees may be engaged for a specific task, specific period or on a casual basis.
- Employees work standard or set hours (unless they're a casual employee, in which case their hours may vary from week to week).

Independent contractors

- Independent contractors have a high level of control over the work they perform, including their hours, work location and how they do the work. They are free to perform the task at the time of their choosing.
- Independent contractors carry the risk for making a profit or loss on each task or job. They are usually personally responsible and liable for poor work or any injury sustained while performing the task. Independent contractors generally have their own insurance policy.
- Independent contractors use their own equipment and resources, and don't receive an allowance or reimbursement for the cost of the equipment.
- Independent contractors can delegate or subcontract tasks to other people (dependant on contractors' agreement).
- Independent contractors are usually engaged for a specific task.
- Independent contractors have the skill and ability to perform services as specified in their contract.
- Independent contractors are paid via invoice arrangements for the result achieved, based on an hourly rate or price per service.
- Independent contractors usually negotiate their own fees and working arrangements and can work for more than one client at a time.
- Independent contractors can accept or refuse additional work.
- Independent contractors do not necessarily work standard or set hours. Instead, an agreement is made between both parties regarding work hours to complete the specific task.

Changes to workplace laws: FIXED-TERM CONTRACTS

From 7 December 2023, under the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, there will be limits to the use of fixed-term contracts. Instead of employees being on rolling fixed-term contracts, such as for 6 months or a year, employers will only be able to offer a maximum of two consecutive contracts or contracts that span 2 years—whichever of the two is shorter.

If your practice uses fixed term or maximum term contracts, you should consider whether those contracts are necessary, and if so, seek advice on whether long term or back-to-back arrangements will be lawful once the changes take effect.

If you are unsure about how to interpret the working relationship between your speech pathology practice and your staff, you can [check your workers' circumstances against the ATO's online decision tool](#) or seek advice from an HR consultancy that works closely with the allied health sector such as [WorkPlacePLUS](#).

As the preferred national HR and IR provider for SPA, WorkPlacePLUS provides support to SPA members on employment matters affecting your practice. For more information, contact Anna Pannuzzo on (03) 9492 0958 or visit www.WorkPlacePLUS.com.au.

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