



Tax Information for **Support Organisations**

(Live-in Supporters)

FOREWORD

This guide has been created, in collaboration with and advice from KPMG, to provide organisations that assist people to have live-in supporters with the necessary guidance as to whether the individuals are volunteers, contractors or employees, and consequently outlines the various tax requirements and considerations arising from this important distinction.

Also outlined are the various legislative requirements organisations or private households engaging supporters are required to follow dependent on whether they are employing an employee or engaging a contractor.

The manual is based on the application of the Federal and State-based legislative requirements as currently enacted in Western Australia. In addition, it takes into consideration public rulings, decisions, interpretations and guidelines issued by the Australian Taxation Office (“ATO”), relevant State Revenue Authorities and WorkCover Authorities at the time of publication.

This manual should be reviewed annually to ensure it is updated to reflect any legislative changes that occur.

Disclaimer: Please note this information is general in nature and not intended as advice pertaining to individual circumstances.

Effective date of manual: October 2018

Glossary

Summarised here are the different national National Disability Insurance Scheme (NDIS) management options and the different individualised living options that people choose from.

Management options

There are a number of different management options available to people who are eligible for funding from the NDIS. These options are summarised below:

Self-managed

The person or his/her representative has total control and responsibility for managing the funding (money) and supports in the plan. The person receives funding from the NDIS to pay for supports and services.

Plan-managed

Plan management is where the person engages a Plan Manager to request funding from the NDIS and pay for supports and services on their behalf. The Plan Manager must be registered with the NDIS. Where an individual is engaging a Plan Manager, additional funding will be provided through the plan to pay for the Plan Manager's Services.

Agency-managed

Agency managed is where the NDIS pays for services providers on the person's behalf. The service providers are responsible for getting funding from the NDIS to cover the cost of the supports and services they provide to the individual.

Living arrangements

Co-residency is when an individual lives with another person, couple or family (these people are referred to as supporters) and the supporters share their home and aspects of their life together. There are two types of co-residency arrangements:

1. The individual moves into the supporter's home; and
2. The supporter moves into the individual's home.

There are many names associated with these options. In Western Australia, in addition to the term Co-residency, they are also known as Host arrangements, Homesharer and/or Alternative Family Care

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1. Introduction

This manual has been written to provide guidance to support organisations or individuals offering live-in arrangements to better understand the legal standing of the supporter as an employee or contractor, consequent tax implications (if any) arising from specific arrangements and, where tax obligations do exist, to assist them in ensuring the arrangement is compliant.

Whoever is engaging the supporter (whether it is a support organisation or a private household) generally they will assume the responsibility of classifying the supporter as an employee or otherwise and for administering any tax obligations.

- Supporters should speak to the relevant organisation or household to discuss their employment status and once they have a clear understanding of that, chapters 4 or 6 of this manual will help them understand their tax obligations and the availability for certain tax deductions.

This manual does not apply to individuals providing support in a voluntary capacity. This arises where the supporter receives payments to assist them with the day-to-day costs of providing support, such as food, household provisions, utilities, clothing, recreational activities etc, but provide their time voluntarily without pay. Where the payment is intended to be a contribution towards these costs, there is precedent to suggest that these payments do not represent assessable income and no individual income tax should therefore apply.

Crucial to the conclusion that the payments received by such volunteers is not assessable income (and not thereby subject to individual income tax) is:

- The payments are made to meet the costs associated with the support of the individual being supported;
- The supporter is providing their time free of charge;
- The supporter is not employed by an agency; and
- The payments are not received as part of a business of providing support.
- Where these conditions are all satisfied, there would be expected to be no PAYG withholding or Superannuation Guarantee requirements for the private household and no employment laws should apply in respect of the volunteer arrangement.
- As such, this manual will not be required by the private household, or the supporter.
- To help determine whether an arrangement should be considered one of a volunteer receiving amounts that relate exclusively to meeting the costs of supporting the individual being supported, refer to Appendix 1.

This document outlines the factors that should be considered in determining a supporter's status as either an employee or an independent contractor. It then outlines tax and legal obligations depending upon the supporter's status.

Tax and legal compliance obligations increase significantly where a supporter is classified as an employee rather than an independent contractor.

2. Employee or contractor?

2.1 Overview

The main consideration when determining what tax and other related obligations an organisation or individual may have when engaging with a supporter is to identify whether the supporter is an employee or an independent contractor. This is because the tax legislation requires an employer to withhold an amount from 'salary, wages, commission, bonuses or allowances' it pays to an individual as an employee at common law. Where this requirement is not complied with, significant penalties can apply.

A supporter's status will also impact the requirement to:

- Pay Superannuation Guarantee in respect of the supporter;
- Pay Fringe Benefits Tax on certain benefits provided to the supporter;
- Obtain Workers' Compensation cover; and
- Meet various minimum legal obligations in relation to matters such as leave entitlements for certain types of employees.

Whether a supporter is an employee is a question of fact. The starting point for considering a supporter's status is to determine the true nature of the legal relationship between the household and the supporter. That is to say, is the relationship one of employer and employee or principal and contractor?

To identify the true character of the arrangement, careful examination must be undertaken of all the terms of any contract (if it exists) and all the various circumstances of the relationship.

Consideration must also be given to the key indicators that have been established by relevant case law. No one factor by itself determines the relationship. The overall relationship has to be considered for it to be determined whether it is a contract for services (which suggests a contractor relationship) or a contract of service (which suggests an employee relationship).

We have included at Appendix 2 a checklist that may help in determining whether someone is engaging an employee or independent contractor.

As noted, consideration needs to be given to the following key features in distinguishing whether an individual is an employee or independent contractor:

- Who has control over the manner in which the service is performed;
- Can the work be delegated or subcontracted to others;
- Is it a 'Results based' contract;
- Who takes on the risk of performance;
- Who provides any tools and equipment required to perform the tasks at hand;
- Who meets the costs of business expenses; and
- Other indicators that may be relevant to the particular circumstance.

The table below summarises the ATO's view on these and other factors and assists in distinguishing the features of an employment relationship from an independent contractor relationship.

Employee v Independent Contractor		
Features of Relationship	Employee – Contract of service	Independent Contractor – Contract for services
Lawful authority to command	Under a contract of service, the employer usually has the right to direct the manner of performance. Where the nature of the work involves the professional skill or judgment of the worker, the degree of control over the manner of performance is diminished. What is important is the lawful authority to command that rests with the payer.	The hallmark of a contract for services is said to be that the contract is one for a given result. The contractor works to achieve the result in terms of the contract. The contractor works on his/her own account.
How is the work performed?	Tasks are performed at the request of the employer. The worker is said to be working in the business of the employer.	An independent contractor enters into a contract for a specific task or series of tasks. The contractor maintains a high level of discretion and flexibility as to how the work is to be performed.
Risk	An employee bears little or no risk. An employee is not exposed to any commercial risk; this is borne by the employer.	An independent contractor stands to make a profit or loss on the task. They bear the commercial risk. Generally, a contractor would be expected to carry their own insurance policy.
Hours of work	An employee generally works hours set by the employer.	An independent contractor generally sets their own hours of work.

Leave entitlements	The contract generally provides for annual leave, long service leave, sick leave and other benefits or allowances.	Generally, an independent contract does not contain leave provisions.
Payment	An employee is generally paid an hourly rate, piece rates or award rates.	Payment to an independent contractor is based upon performance of the contracts.
Expenses	An employee is generally reimbursed for expenses incurred.	Generally, an independent contractor incurs their own expenses (may be on-charged to the person requiring care).
Appointment	An employee is generally recruited through an advertisement by the employer.	An independent contractor is likely to advertise their services to the public at large.
Termination	An employer reserves the right to dismiss an employee at any time (subject to State or Federal legislation).	An independent contractor is contracted to complete a set task and may be terminated without penalty where the worker has not fulfilled the conditions of the contract.
Delegation	An employee has no inherent right to delegate tasks to another. However, there may be a power to delegate some duties to other employees.	An independent contractor may delegate all or some of the tasks to another person, and may employ other persons.

2.2 Application to Live-In Supporter arrangements

A review of the arrangements with a supporter will help determine whether they are working under a contract of service or a contract for services. No one factor should be considered more important than others, although some will be more relevant when reviewing these types of arrangements. Some of the factors are reviewed in this context below.

How is the work performed?

Were a supporter to be engaged to help implement a specific, outcomes-based support plan with payment contingent largely or wholly on successful implementation of the plan, this may be indicative of an independent contractor working under a contract for services.

However, in practice, if the arrangement looks more like:

- supporters being paid hourly, even where they are working towards identified goals/outcomes
- supporters paid even where the goals are not achieved
- supporter is engaged to assist in achieving goals then this is not indicative of a contractor relationship.

Risk, hours of work and payment

Typically, an independent contractor will not work to fixed shifts and are able to set their own hours. Where the supporter is required to provide certain supports and will often work without compensation beyond the hours they are notionally contracted for to deliver the outcome for which they are engaged, this suggests they take on a level of risk in terms of how much work they will be required to undertake and is more indicative of a contractor engagement. Where an individual's hours are set by the payer, and they arrive and leave at predetermined times for a fixed level of hourly remuneration, this is indicative of an employment relationship.

Leave entitlements

Leave entitlements are indicative of an employment relationship. Where no such provisions are made, this supports the view that the supporter is an independent contractor. It should be noted that where the supporter is considered to be an employee, there may be a legislative requirement to provide various leave entitlements whether they are a casual, part-time, or full-time employee.

Delegation

Where a worker is unable to complete a task or attend work on an allocated day, and the individual is able to arrange for a replacement supporter to care for the person, this is likely to indicate a contractor relationship. This is likely to be the case even where approval from the household is required.

However, in practice these types of arrangements may be undertaken without the individual being considered a true sub-contractor. The issue of delegation is to be considered in conjunction with all of the other factors listed in this section to determine, on balance, whether the individual is acting as a contractor or not. Where a supporter is not able to attend and instead a different person attends in their place and is paid instead, this would not represent true delegation or subcontracting of the work and would not be indicative of a contractor relationship.

3. Being an employer | Organisation or private household's perspective

As noted above, where it is determined that the relationship between the organisation or household and supporter is one of employer/employee, this has a number of implications for the organisation or private household as follows:

3.1 Pay As You Go (“PAYG”) Withholding

The tax legislation requires an employer to calculate whether they need to pay PAYG tax from payments it makes to employees.

PAYG is required to be withheld from payments made such as:

- Wages to employees (wages, salaries, commission, bonuses and allowances etc.);
- Employment termination payments;
- Genuine redundancy payments that exceed the tax free thresholds;
- Unused leave payments; and
- Workers compensation, accident or sickness payments.

Amounts deducted from payments made to employees must be paid to the ATO. The frequency of these and the method used depends on certain factors. In the case of individual households hiring a supporter, we would expect they would be required to pay PAYG to the ATO on a quarterly basis.

In all cases, the employer is required to submit a report to the ATO by 14 August each year containing the payments from which it deducted PAYG.

Amounts the employer must report to the ATO by 14 August include:

- Employee payments;
- Employment termination payments;
- Accrued leave payments;
- Reportable fringe benefits;
- Reportable employer superannuation contributions; and
- Return-to-work payments.

Separately, there is a requirement to provide each employee with a payment summary by 14 July showing payments made and the related amount of tax withheld. The tax legislation also requires the employer to keep records and be able to explain all transactions and other acts engaged in by it that are relevant for PAYG withholding purposes for 5 years (longer in certain circumstances such as suspected fraud).

3.2 Single Touch Payroll – anticipated future rules

In 2018, the Australian Government introduced Single Touch Payroll (STP), an initiative that requires employers to report payment information to the ATO through an STP-enabled payroll solution. Employers will be required to provide details on the salary and wages paid, PAYG withheld and superannuation paid for individual employees each pay cycle.

Employers with 20 or more employees have been required to report through STP since 1 July 2018. Small business employers with fewer than 20 employees have an optional deferred STP start date of 1 July 2019. STP will be mandatory for all employers from these dates subject to legislation passing in parliament.

The ATO has confirmed that at the time of writing, individual households engaging supporters have not been considered separately, but are expected to be able to take advantage of the ‘micro employer solutions’ that the ATO are currently in the process of consulting on and developing. Once details of the tailored micro solutions are released, the ATO will contact registered individual households to advise of their STP obligations (if any) as a micro employer.

Where similar initiatives have been brought in for other taxes, the ATO has made a simplified option available to small employers so they can meet their obligations quickly and without incurring additional costs. We anticipate something similar for STP.

At the time of writing there is an expectation that the micro employer solution will be able to work with WPNs as well as ABNs.

3.3 Superannuation Guarantee (“Super”)

We have included at Appendix 2 – Part 3 a checklist that may support an organisation or private household in determining whether they have a Super obligation.

Most employees working in Australia are required to have employer contributions made to an Australian superannuation fund on their behalf. The legislated compulsory rate of coverage is 9.5% (2018/2019) and is calculated on and capped at the first \$52,760 of ‘ordinary time earnings’ (“OTE”) paid for the relevant quarter (for the tax year ending 30 June 2019).

If the OTE of an employee exceeds the maximum contribution base, then the superannuation guarantee contribution is limited by the maximum contribution base of that employee. For the 2017/2018 year, the threshold for the maximum contributions base is \$54,030 for each quarter or \$216,120 yearly.

The employer is not required to provide superannuation guarantee contributions on the component of an employee's OTE that exceeds the above threshold, although given the amounts typically paid to supporters, this is unlikely to be relevant in most cases.

There are some limited categories of employees for whom SG contributions are not required to be made. These categories include:

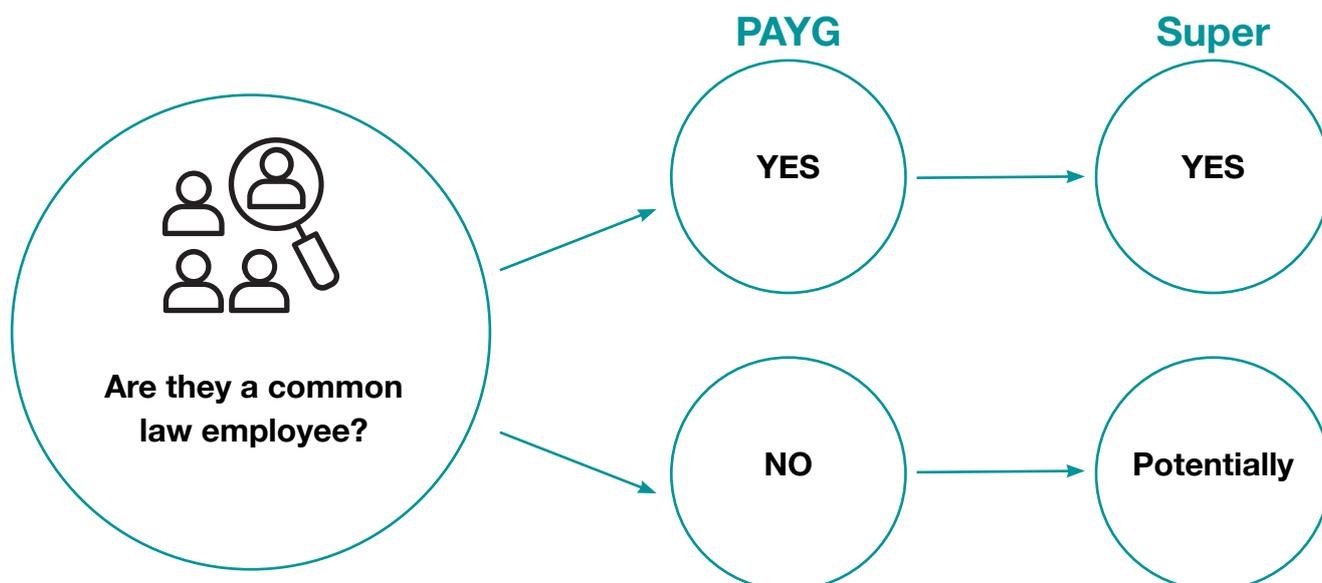
- A private or domestic worker working 30 hours per week or less
- Employees under 18 years of age working 30 hours or less per week.
- Employees paid less than \$450 in a calendar month.

3.3.1 Definition of an employee

When considering Super requirements, it is very important to understand that the term “employee” for Super purposes includes common law employees (i.e. persons who are regarded as employees for PAYG withholding purposes), but is also extended to include contractors hired principally for their labour.

Therefore, the classification of a person as an employee for the purposes of Super is not solely dependent upon the existence of a common law employment relationship.

If a person works under a contract that is ‘wholly or principally’ for the labour of the person, the person is an employee of the other party of the contract for Super purposes and Super may be payable.



Where Super is potentially due in respect of someone that is not a common law employee because they are hired principally for their labour, there is likely to be a Super obligation.

3.3.2 Earnings and Payments

Ordinary time earnings

Where Super is payable in respect of an employee, the minimum notional earnings base for superannuation contributions is ordinary time earnings (“OTE”).

An employer must use OTE to calculate the minimum super guarantee contributions required for its employees. OTE is generally what employees earn for their ordinary hours of work, including:

- Over-award payments;
- Certain allowances;
- Certain bonuses;
- Commissions;
- Shift-loading;
- Director fees; and
- Cashed-in long service leave and annual leave (where able to do so) where continuing to work.

Ordinary hours of work

An employee's ‘ordinary hours of work’ are the hours specified as their ordinary hours of work under their employment contract, relevant award or agreement that governs the employee’s conditions of employment.

In the event the ordinary hours of work are not specified in a relevant contract, award or agreement, the ‘ordinary hours of work’ are the normal, regular, usual or customary hours worked by the employee. This can include weekends and night shifts.

Where it is not possible or practicable to determine the normal, regular, usual or customary hours of work of an employee, the actual hours worked by the employee are taken to be their ordinary hours of work.

Overtime payments

Overtime payments for work performed during hours outside an employee’s ordinary hours of work are not regarded as OTE. Ordinary hours of work may fall outside of usual office hours, and can include night shifts or weekends.

In order for overtime payments not to be considered OTE, they must be distinctly identifiable to overtime hours worked. However, if overtime amounts cannot be distinctly identified, the actual hours worked will be regarded as OTE.

Casual employees

Casual employees generally do not have a guaranteed minimum working hours in any given week, but instead may be given a 'casual loading' and 'shift loading' based on the hours worked. Casual loading is provided to compensate casual employees for not receiving personal leave or sick pay. Shift loading may be provided to employees in order to compensate them for working outside of standard hours (which may differ between industries) e.g. working weekend or night shifts. Casual loading and shift loading are regarded as OTE.

However, agreements may provide that the ordinary hours of work for all employees, including casuals, are no more than 38 hours in any given week. Work beyond those ordinary hours of work will not be regarded as OTE.

Reimbursement and allowances

A reimbursement that compensates an employee for an expense they have incurred on behalf of the employer is not regarded as OTE. A payment is a reimbursement if the employee is compensated exactly for all or an agreed part of an expense already incurred. A requirement that the employee substantiates expenses lends weight to a presumption that a payment is a reimbursement rather than an allowance.

Similarly, expense allowances, that is, those allowances paid to an employee with a reasonable expectation that the employee will fully expend the money in the course of providing services, are also not regarded as OTE.

Where an allowance is not expected to be expended in the course of providing services, it will be regarded as OTE.

Salary sacrificed superannuation (if relevant)

In the case of effective salary sacrifice arrangements, the value of benefits provided in lieu of salary will not form part of OTE.

This is because an effective salary sacrifice arrangement involves employees foregoing future earnings in exchange for other benefits, such as additional superannuation or novated lease arrangements. On this basis employees are foregoing future earnings and the benefits received in exchange do not meet the definition of "earnings" for the purposes of OTE. Therefore, superannuation guarantee obligations should not arise on amounts employees have chosen to effectively salary sacrifice.

However, from an industrial relations point of view, the employer may need to continue to make superannuation contributions on the original pre-sacrifice salary.

Termination payments

Termination payments made upon termination of employment are not a reward for services rendered by an employee, even if part of the payment is calculated by reference to the employee's period of service with the employer. They are payments to compensate the employee for the loss of their job, not a reward for their services and they are not therefore OTE.

Payments in lieu of notice

An employee may be entitled to a period of notice before the employer's termination of employment takes effect. Awards and agreements often provide that, instead of giving this notice, the employer may simply pay an amount equivalent to the ordinary salary or wages that the employee would have earned during the notice period.

An employer should be aware that payments in lieu of notice routinely paid by an employer in a resignation setting as per a contract of employment are OTE.

Conversely, lump sum payments for unused annual leave, long-service leave and sick leave paid on termination of employment are not OTE.

3.3.3 Employee's fund choice

Within 28 days of an employee commencing employment, the employer is required to provide a standard choice form to allow a new employee to elect a superannuation fund of their choice.

Once an employee provides the employer with a completed standard choice form it must comply with that choice within two months.

If an employee does not provide the employer with their nominated fund, the employer is required to open a superannuation fund for the employee using its default fund.

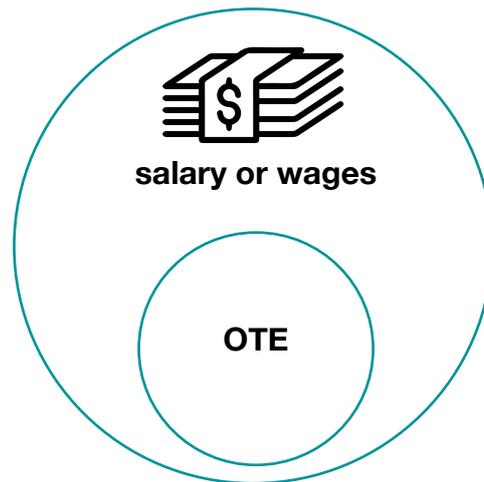
Once Single Touch Payroll is fully operational, employees are expected to be able to lodge their super fund choice electronically.

Employers must pay employees superannuation contributions to their elected super fund through SuperStream. Money and data are sent electronically through the system and the data is linked to the payment by a unique payment reference number. This means that employers are able to make all their contributions in a single transaction, even where contributions are being made to multiple funds.

3.3.4 Additional requirements where Super obligations are not met

Where an employer does not provide superannuation guarantee contributions to an employee's superannuation fund by the quarterly due date, an employer is then required to pay Super on not only OTE but on all salary and wages

Salary and wages include all payments considered as OTE as well as certain other items, i.e. it is a broader base as illustrated below.



Details of items regarded as salary and wages and those that are OTE are summarised in the matrix below. However, to reiterate, this is only relevant where Super obligations are not met. Provided Super is administered on time, it should only be paid by reference to OTE.

Payment Type	Salary & wages	OTE
Overtime		
Simple overtime – employee works additional hours	Yes	No
Unpaid overtime	No	No
Overtime – no ordinary hours of work stipulated	Yes	Yes
Overtime – casual employees	Yes	No
Overtime – casual employees, but – no ordinary hours of work stipulated	Yes	Yes
Allowances		
Car ‘salary’ allowance	Yes	Yes
Car cents per kilometre allowance	No	No
Unconditional allowances	Yes	Yes
Retention allowance	Yes	Yes
On call allowance	Yes	Yes
Shift allowance	Yes	Yes
FBT allowances	No	No
Expenses		
Reimbursements	No	No
Travel costs	Yes	Yes
Workers compensation payments – returned to work	Yes	Yes
Workers compensation payments – not working	No	No
Leave		
Annual leave	Yes	Yes
Jury duty leave	No	No
Maternity leave	No	No
Paternity leave	No	No
Adoption leave	No	No
Defence force leave	No	No
Cashed out long service leave – not termination	Yes	Yes
Cashed out leave – upon termination	Yes	No

Bonuses		
Christmas bonus	Yes	Yes
Ex-gratia bonus in respect of ordinary hours	Yes	Yes
Bonus in respect of overtime	No	No
Salary sacrificed amounts	No	No
Performance bonus	Yes	Yes
Termination payments		
Redundancy payment	Yes	No
Payments in lieu of notice	Yes	Yes
Unused leave entitlements paid	Yes	No

3.4 Other tax obligations associated with being an employer

Where an individual or entity is employing workers, an ABN or Withholding Payer Number (WPN) must be obtained in order to report PAYG Withholding to the ATO.

3.4.1 Australian Business Numbers (“ABN”) & Withholding Payer Numbers (“WPN”)

An Australian business number (ABN) is a unique 11-digit identifier obtained by employers that is used for identification and reporting purposes. If the employer of a supporter already has an ABN (even if it is for an unrelated business activity) this should be used in relation to the employment of the supporter.

A WPN is a unique number that the ATO provides to individuals that do not require an ABN on account of not being in business, but who are employing workers in, for example, a supporter capacity.

To apply for a WPN, the employer must fill out an “Application to register a PAYG withholding account” form. This form can be found on the ATO website, and must be mailed to the ATO at:

Australian Taxation Office
PO Box 3373
PENRITH NSW 2740

The ATO issues WPNs within 28 days of receiving the application.

3.5 Legal obligations of employers

Where an employment relationship exists, in addition to tax compliance, there are also various legal obligations. The most relevant ones are summarised below.

In certain circumstances it is possible to get an exclusion by state rules overriding this. In particular this may apply where the person is engaged in a domestic service in a private home.

3.5.1 National Employment Standards

Individual households that are not considered to be constitutional corporations will be governed by the relevant State Industrial Relations system. Where this applies, it should be noted the State systems aligns closely with the National Employment Standards (NES) and that the NES may be used as a guide for the legal obligations of the employer.

The NES are 10 minimum employment entitlements that employers have to provide to all employees.

The national minimum wage and the NES make up the minimum entitlements for employees in Australia. An award, employment contract, enterprise agreement or other registered agreement can't provide for conditions that are less than the national minimum wage or the NES. They also can't exclude the NES.

The 10 minimum entitlements of the NES are:

- Maximum weekly hours
- Requests for flexible working arrangements
- Parental leave and related entitlements
- Annual leave
- Personal carers leave and compassionate leave
- Community service leave
- Long service leave
- Public holidays
- Notice of termination and redundancy pay
- Fair Work Information Statement

Casual employees and the NES

Casual employees only receive NES entitlements relating to:

- Unpaid carer's leave
- Unpaid compassionate leave
- Community service leave
- The Fair Work Information Statement.

Long-serving casuals may be eligible for long service leave although, in practice, the likelihood of a casual supporter arrangement lasting more than 7 years is low.

Where there is an expectation of ongoing work for a casual and the casual has been employed regularly and systematically for at least 12 months, they have extra entitlements from the NES. These are:

- The right to request flexible working arrangements
- Access to parental leave.

3.5.2 Annual leave

Annual leave (also known as holiday pay) allows an employee to be paid while having time off from work. The entitlement to annual leave comes from the National Employment Standards.

Awards, enterprise agreements and other registered agreements cannot offer less than the National Employment Standards but they can give more annual leave. All employees (except for casual employees) get paid annual leave.

Full-time and part-time employees get 4 weeks of annual leave, based on their ordinary hours of work.

Example: annual leave for part-time employees

Sally is a part-time employee who works 20 hours per week for a year.

During one year, she will accumulate 80 hours of annual leave (the equivalent of 4 weeks work based on her ordinary weekly hours).

3.5.3 Sick leave and carer's leave

Sick and carer's leave (also known as personal leave or personal / carer's leave) lets an employee take time off to help them deal with personal illness, caring responsibilities and family emergencies. Sick leave can be used when an employee is ill or injured.

An employee may have to take time off to care for an immediate family or household member who is sick or injured or to help during a family emergency. This is known as carer's leave, however it comes out of the employee's personal leave balance.

The National Employment Standards includes both paid and unpaid leave entitlements.

3.5.4 Long service leave

An employee gets long service leave after a long period of working for the same employer.

Most employees' entitlement to long service leave comes from long service leave laws in each state or territory. These laws set out:

- How long an employee has to be working to get long service leave (e.g. after 7 years in the case of Western Australia);
- How much long service leave the employee is entitled to.

3.6 Salary sacrifice arrangements (“SSA”)

Certain concessional tax treatment is available to the employees of Not-For-Profit (“NFP”) organisations who are able to access a capped amount of tax-free fringe benefits.

Where an employee raises the possibility of a salary sacrifice arrangement, the intent behind this will typically be to access the concessional FBT cap on the benefits provided under the arrangement, such that expenses like rent, mortgage payments and other regular expenses can be sacrificed in return for ‘tax-free’ fringe benefits, that would therefore provide significant financial advantage to the employee.

Unless a private household registers for NFP status, the concessional treatment will not be available and in most cases we would therefore expect the employee's interest in SSA to fall away once they become aware of this.

For completeness, we have outlined below how the arrangement works.

Effective salary sacrifice

A NFP organisation that offers SSA to its employees may be exempt from paying FBT on the benefits provided if it is:

- a Registered public benevolent institution (“PBI”) (other than hospitals) endorsed by the ATO;
- Registered health promotion charity endorsed by the ATO;
- Public or non-profit hospital; or
- Public ambulance service

If an organisation is an NFP and the eligibility for FBT exemption exists then the benefits provided to its employees under a SSA may be exempt from FBT.

Where the total grossed-up value of the benefits provided to an employee during the FBT year is less than or equal to the capping threshold (currently \$17,000 - \$30,000 per employee depending on the type of organisation) no FBT will arise on the benefits provided to them.

If the total grossed-up value of fringe benefits provided to an employee is more than the capping threshold, the organisation will need to pay FBT on the excess.

Where benefits such as cars are provided under the arrangement, this could result in an arrangement whereby the employee is marginally better off and the employer (the household) is left cost neutral.

However, there would be significant time involved for the employing household in both setting up the SSA and administering it on an ongoing basis, and for this reason, employers do not typically enter into such arrangements on a one-off basis.

3.7 Workers' compensation ("Work Cover")

All employers who employ individuals in Australia are required to have an appropriate Workers' Compensation ("WorkCover") policy in place to mitigate any risk of injury or death by employees during the course of employment.

Each employer's workers compensation premium is based on various things, including:

- The industry in which the employer operates
- The amount of remuneration the employer pays to its workers
- The employers WorkCover claim history

An annual WorkCover Declaration of Rateable remuneration is due to be lodged in each State generally at the end of July (dependent on policy start date, the State or Territory and insurer).

3.8 Insurance – Public Liability

Public Liability is not a mandatory insurance for employers. Public Liability Insurance for incidents that occur within your own home may be included in your Home and/or Contents Insurance Policy. It is therefore advised that you check with your insurer.

Damage to your motor vehicle while it is being driven by a paid support worker may be included in your Comprehensive Car Insurance Policy. Again, it is advised that you check with your insurer.

Public Liability Insurance for incidents caused by your employee outside of your home may not be covered under any pre-existing policy. It is suggested that when employers take out their insurance, they request a package that includes public liability and workers compensation insurance from their insurance broker or insurance company.

4. Being an employee | Supporter's perspective

Note: This section of the booklet applies to supporters and not the organisation or private household for whom they work.

Where it is determined that the relationship between the organisation or private household and supporter is one of employer/employee, this has a number of implications for the supporter as follows:

4.1 Individual income tax return

Payments of salary and wages made to an employee should be reported by the employee on their annual individual income tax return.

The employer should provide the employee with pay slips and a related year-end payment summary. If these are not received, they should be requested and, in any event, the salary and wages received should be reported on the employee's individual income tax return.

4.2 Reimbursements, allowances and subsidies

The distinction between what constitutes a reimbursement, allowance and a subsidy is an important one, with different tax treatment applying to each.

Arrangement	Private household's considerations	Supporter's considerations	Application to supporters
<p><u>Reimbursement</u></p> <p>The employee is paid back for an expense they incurred personally upon the presentation of a receipt</p>	<p>Reimbursements can attract Fringe Benefits Tax (FBT) where they are not the reimbursement of genuine expenses.</p>	<p>FBT is an employer tax, and will only be reported on an individual's payment summary where total Reportable Fringe Benefits for the year are greater than \$2,000.</p>	<p>The types of expenses for which supporters are reimbursed will not typically attract FBT. It is important a supporter does not seek a tax deduction for amounts that have been reimbursed by their employer.</p>
<p><u>Allowance</u></p> <p>The employee is paid an amount designed to cover an anticipated cost but receipts are not typically required</p>	<p>Where it is known that allowances will be fully expended on an eligible expense, they do not need to be reported as assessable income.</p> <p>However where this is not the case, PAYG must be withheld on the allowances paid.</p>	<p>Allowances are reported as assessable income in an individual's payment summary and will be taxed at their marginal rate.</p> <p>To the extent some of the allowance has been expended on something for which a tax deduction is allowed, this deduction can be included in the individual's tax return.</p>	<p>Often the allowances being provided will be fully expended on eligible expenses and will have been set at a level where this is the case.</p> <p>Where this arises, the allowances will not typically be subject to PAYG withholding.</p> <p>Where an allowance is required to be included on the individual's tax return, the underlying expenditure incurred will be deductible where it is in respect of eligible expenditure.</p>

<p><u>Subsidy</u></p> <p>The employee is paid an amount designed to be a contribution towards an anticipated cost but is not expected to cover the entire cost</p>	<p>Subsidies are considered to be assessable income where they are in relation to carrying on a business.</p> <p>Where this is the case, PAYG must be withheld on the amounts and reported on the employee's payment summary.</p>	<p>Where a subsidy is provided in relation to carrying on a business, the amount must be reported as assessable income in an individual's payment summary and will be taxed at their top marginal rate.</p>	<p>Where subsidies are provided to supporters, the costs incurred may be deductible and as such the subsidy should be disclosed as assessable income and, to the extent one is available, a deduction taken for the full expense.</p>
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4.3 Deductibility of expenses

Where an employee's genuine work-related expenses (such as those listed below) are reimbursed by the employer, these will not need to be reported on the individual's tax return and a deduction will not be available.

When completing their tax return, an employee is entitled to claim deductions for some expenses, most of which are directly related to earning their income.

To claim a work-related deduction:

- The employee must have spent the money themselves, not having been reimbursed
- it must directly relate to earning income
- the employee must have a record to prove it.

If the expense was for both work and private purposes, an employee may only claim a deduction for the work-related portion. Work expenses reimbursed by the employer are not deductible.

4.3.1 Vehicle and travel expenses

An employee can claim vehicle and other travel expenses incurred in the course of performing work duties, but generally an employee can't claim for normal trips between home and work – this is considered private travel.

4.3.2 Clothing, laundry and dry-cleaning expenses

An employee can claim a deduction for the cost of buying and cleaning occupation-specific clothing, protective clothing and unique, distinctive uniforms.

To take a deduction an employee needs to have written evidence that they purchased the clothing and diary records or written evidence of the cleaning costs.

4.4 Deductibility of costs incurred by supporters in a domestic setting

Depending on the specifics of the arrangement, supporters can incur different types of expenses. Some of these are listed below.

Occupancy expenses and utilities

- Mortgage payments
- Rent
- Electricity
- Gas
- Water

Consumables

- Food and drink
- Pet food
- Laundry products
- Medication

Transport

- Transport
- Petrol/diesel

Other

- Recreational activities

4.4.1 Co-residency arrangements

Where an individual's home is also their place of employment, they can claim deductions in their income tax return if they carry out income-producing work at home and incur expenses in using their home for that purpose.

A deduction can potentially be claimed for the following:

Occupancy expenses & utilities

Expenditure on mortgage interest, rent, general household insurance, rates and repairs will generally not be allowable as income tax deductions unless a particular area of the home is set aside exclusively for the support of the individual being supported. Where an area is exclusively set aside a portion of the expenditure may be allowed depending upon the extent of income received and the area set aside.

The cost of using a room's utilities, such as gas and electricity, can be claimed, but must be apportioned between business and private use based on actual usage.

Consumables

Expenditure on food, toiletries and other consumable household items incurred in providing support services is deductible. If the food, etc. is taken from normal domestic supplies the supporter may make an estimate of the costs involved and should retain full details of how the estimate was calculated.

Transport

Travel undertaken in the capacity of carrying out income-producing work such as taking someone to the shops, or on an outing should be deductible using either the cents per KM or actual costs incurred method. Where such kilometres exceed 5,000 per year, the actual costs of running the vehicle should be tracked and a logbook kept as evidence of the travel undertaken for income-producing work.

Business phone costs

If a telephone is used exclusively for business (work/employment), you can claim for the rental and calls, but not the installation costs. If the telephone is used for both business and private calls, you can claim a deduction for business calls.

Decline in value (depreciation)

- Plant and equipment - if equipment such as a computer is also used for non-business purposes, your claim must be apportioned between business and private use.
- Curtains, carpets and light fittings used in the space allocated for the business activity.

4.4.2 Home sharer arrangements

Where an individual lives full time and works at the home of the individual being supported, deductions should remain available for costs incurred in relation to consumables, transport and depreciation. By concession, the benefit of housing being provided by the employer should not represent a fringe benefit to the employee.

Where the supporter pays the individual being supported a contribution for their rent and other living costs, this will typically be deductible.

5. Being a contractor | Organisation or private household's perspective

When a genuine contractor is engaged, many of the employment law and employment tax obligations that apply when employing someone fall away (see section 3 for more on this). However, there are other legal obligations that will still need to be considered.

5.1 PAYG withholding

There is not typically a withholding requirement in relation to payments to independent contractors. However, PAYG may need to be withheld on payments to contractors where an Australian Business Number (ABN) is not quoted, or where there is a voluntary agreement in place with the contractor to withhold.

Under the law, suppliers who provide services are generally required to quote an Australian Business Number (ABN) to the payer of consideration for those goods or services. If a supplier does not provide an ABN, the payer may need to withhold and remit an amount of 47% from the payment for that supply to the Australian Taxation Office (ATO).

This requirement only arises to the extent that the supplier is to receive payment for the services to be provided. It should not therefore be relevant for volunteers, who provide services for free, notwithstanding that they may receive a reimbursement of any costs outlaid.

Certain exceptions exist under which a payer does not have to withhold an amount from payments to a supplier.

In some of these cases, the supplier may be able use a Statement by Supplier form. The form is provided by the supplier to the payer to inform them that withholding is not required.

As the Statement by Supplier form cannot be used in employer/employee relationships, it is therefore restricted to contractors.

5.1.1 Eligibility for completing a Statement by Supplier form

An individual or a business that supplies services can only complete a Statement by Supplier form if one or more of the following applies:

- they are not carrying on an enterprise in Australia
- they are an individual under 18 years and the payment does not exceed \$350 per week
- the payment does not exceed \$75, excluding goods and services tax (GST)
- they are an individual, and a written statement is provided to the payer to the effect that the supply is either:
 - made in the course or furtherance of an activity done as a private recreational pursuit or hobby, or
 - wholly of a private or domestic nature
- they are an individual or a partnership without reasonable expectation of profit or gain

A supplier cannot however use this form if any of the following apply:

- they are receiving payments for the supply as an employee
- their activity is not wholly of a private or domestic nature
- they are receiving payments for the supply under a labour hire arrangement or specified payment

Private or domestic in nature

Therefore, one of the first considerations is whether the supplier of the assistance is undertaking the work as part of the carrying on of an enterprise in Australia or whether it is a private arrangement with the recipient. If it is not a private arrangement and relates to the carrying on of an enterprise, then the Statement by Supplier form cannot be used.

Where the supplier is an individual and the supplier has given the payer a written statement to the effect that the supply is made in the course of a private recreational pursuit or hobby, or is wholly of a private or domestic nature for the supplier, no withholding is required. In such a case, the payer must have no reasonable grounds to believe that the statement is false or misleading in a material particular.

The terms 'private recreational pursuit' or 'hobby' are not defined in the Australian Taxation Law and therefore take their ordinary meaning. Typically, such activities are restricted to creative work and therefore would not usually be available for support workers.

The terms 'domestic' or 'private' are also not defined in Australian Taxation Law and are often given their ordinary meaning.

In our view, work of a domestic or private nature ordinarily means work relating personally to the individual making payment for the work or the person's home, household affairs or family organisation. For example, people employed by someone to clean their home, to mind their children, to effect repairs or maintenance of their home, or tend their home garden would be engaged in domestic or private work.

When considering whether a supporter is able to complete a Statement by Supplier form, consideration needs to be given to the eligibility criteria above.

In the case where the supporter who provides services is an individual (and not carrying on an enterprise) and the nature of the service can be considered to be of a wholly private or domestic nature, as the work performed relates to domestic duties provided in the home of the person with a disability e.g. personal care, cleaning, cooking etc. On this basis, the supporter would likely be eligible to complete a Statement by Supplier form.

However, where the supporter is eligible to hold an ABN or is considered to be an employee in respect of their services, they are unable to complete a Statement by Supplier form.

5.1.2 Deciding on appropriateness of Statement by Supplier form

When determining whether a Statement by Supplier form can be provided by the supporter to enable payments to be made to them without withholding tax, the following approach should be adopted:

● Step 1

- Consideration should be given to whether the activities of the supplier are such that they should be held as carrying on an enterprise and hence are eligible for an ABN.
- If the supporter is eligible for an ABN, a Statement by Supplier form will not be appropriate, otherwise you can proceed to step 2.

● Step 2

- The payer needs to consider whether the supporter is an employee. As noted above, this is not always easy to determine, but is a critical step for the payer to consider.
- If the supporter is an employee, a Statement by Supplier form will not be appropriate, otherwise you can proceed to step 3.

● Step 3

- Where an employer/employee relationship does not exist, the final consideration is for the supplier to consider whether the nature of the services falls to be treated as wholly private or domestic in nature such that they fall within one of the eligibility criteria.
- Where this is not the case, then a Statement by Supplier form is unlikely to be able to be used.
- Otherwise, the Statement by Supplier form should be appropriate.

Whilst two of the above points are considered by the supplier, the payer has an obligation to consider whether they have any reasonable grounds for determining whether the use of a Statement by Supplier form is inappropriate.

5.2 Superannuation

The extended definition of Superannuation can mean payment of Super to a contractor is required where the individual is hired principally for their labour. In this case:

- Where the organisation or individual household engages with an entity such as a Pty Ltd company the supporter runs their business through, Super should not apply.
- Where the agreement allows the supporter to pay or hire another person to complete the work rather than them, this could support the view that Super is not payable. However, where the supporter is merely able to arrange for a separate supporter to cover a shift who would then be paid directly by the private household, this would not be indicative of an arrangement that allows sub-contracting and Super would still be expected to apply.
- Where the contract is made with reference to a fixed result and outcome being achieved rather than reference to hours worked and/or hourly payment rates, Super should not apply.

Where none of the conditions above are satisfied, there is likely to be a Super requirement unless the individual is:

- Paid less than \$450 per month; or
- Is under the age of 18 or is principally a private or domestic worker; and
- Working for less than 30 hours per week.

As noted above, where a supporter works through a company structure, any Super obligation falls on the company that is engaged and there is no risk of a Superannuation requirement arising except where the arrangement is considered a sham.

5.3 Workers' Compensation

Where an independent contractor is engaged in Western Australia, the Workers' compensation requirements as set out in part 3.7 may apply and insurance cover taken out. This is due to the definition of 'worker' covering some contractor and sub-contractors.

6. Being a contractor | Supporter's perspective

Note: This section of the booklet applies to supporters and not the organisation or private household for whom they work.

6.1 Australian Business Numbers (ABNs)

Where a worker is considered to be a contractor, the individual is generally required to apply for an ABN. Contractors must provide an ABN to the individual or entity that is engaging them for work.

If they do not, the person or organisation hiring them will have an obligation to withhold tax at a flat 47% (2018/19) unless a Statement by a Supplier form is completed and provided by the contractor.

To be entitled to receive an ABN, certain requirements must be satisfied. Generally, the entity must:

- Be carrying on an enterprise in Australia;
- In the course of carrying on an enterprise to make supplies connected with Australia; or
- Have undertaken sufficient activities to commence an enterprise.

Carrying on an enterprise generally includes activities done in the form of a business. Factors that may indicate the carrying on of a business include, for example:

- A significant commercial activity;
- An intention to make profit from the activity;
- Activities other than a hobby;
- Repetition of the activity;
- Commercial sales of products;
- An existing business plan;
- Activities organised and carried on in a businesslike manner and records are kept; and
- Activities are of a reasonable size and scale.

Where any individual is issued with an ABN, they must continue to meet the entitlement requirements. When they stop satisfying these requirements, they will no longer be entitled to hold an ABN.

6.2 Statement by a supplier form and when this is appropriate

In some cases, an individual or a business that supplies goods or services is not required to quote an ABN to a payer. In these cases, suppliers are able to use the 'Statement by Supplier' form in order to justify the payer not being required to withhold from the payment to the supplier.

This form is only appropriate where one or more of the following apply:

- The individual or business is not carrying on an enterprise in Australia;
- Individuals are under 18 years and the payment does not exceed \$350 per week;
- The payment does not exceed \$75 excluding any goods and services tax;
- The supply which the payment relates to is wholly input taxed;
- They are an individual and a written statement can be provided to the payer, with evidence that the supply was made in the furtherance or course of an activity done as a hobby or recreational pursuit, or that it's fully a domestic or private nature;
- They are a partnership or individual with no reasonable expectation of profit or gain;
- They are not entitled to an ABN; and/or
- The whole of the payment is exempt income.

This form is available for download from the Australian Taxation Office website.

The use of a Statement by Supplier form to remove the need for the payer to withhold tax does not alter the tax treatment of the income in the hands of the supplier. That is, the ability to use the Statement by Supplier form does not mean that the underlying income is tax-free to the supplier. As a result, appropriate records will need to be maintained to support disclosures in the relevant income tax return.

6.3 Individual income tax returns

The contractor should include amounts received from providing services to individual households in their individual income tax return along with any associated expenses.

6.4 Deductibility of expenses

Where a supporter's genuine business expenses are reimbursed by engaging individual or organisation, these will not need to be reported on the individual's tax return and a deduction will not be available.

When completing their tax return, a supporter is entitled to claim deductions for some expenses, most of which are directly related to earning their income.

To claim a work-related deduction:

- The supporter must have spent the money themselves, not having been reimbursed;
- It must directly relate to earning income; and
- The supporter must have a record to prove it.

If the expense was for both work and private purposes, a supporter can only claim a deduction for the work-related portion. Work expenses reimbursed by the engaging individual or organisation are not deductible.

6.4.1 Vehicle and travel expenses

A supporter can claim vehicle and other travel expenses incurred in the course of performing work duties. However, generally a supporter cannot claim for normal trips between home and work as this is considered private travel.

6.4.2 Clothing, laundry and dry-cleaning expenses

A supporter can claim a deduction for the cost of buying and cleaning occupation-specific clothing, protective clothing and unique, distinctive uniforms.

To take a deduction a supporter needs to have written evidence that they purchased the clothing and diary records or written evidence of the cleaning costs.

6.5 Deductibility of costs incurred by supporters in a domestic setting

Depending on the specifics of the arrangement, supporters can incur different types of expenses. Some of these are listed below.

Occupancy expenses and utilities

- Mortgage payments
- Rent
- Electricity
- Gas
- Water

Consumables

- Food and drink
- Pet food
- Laundry products
- Medication

Transport

- Transport
- Petrol/diesel

Other

- Recreational activities

6.5.1 Co-residency arrangements

Where an individual's home is also their place of business, they can claim deductions if they carry out income-producing work at home and incur expenses in using their home for that purpose.

A deduction can potentially be claimed for the following:

Occupancy expenses & utilities

Expenditure on mortgage interest, rent, general household insurance, rates and repairs will generally not be allowable as income tax deductions unless a particular area of the home is set aside exclusively for the support of the individual being supported. Where an area is exclusively set aside a portion of the expenditure may be allowed depending upon the extent of income received and the area set aside.

The cost of using a room's utilities, such as gas and electricity, can be claimed, but must be apportioned between business and private use based on actual usage.

Consumables

Expenditure on food, toiletries and other consumable household items incurred in providing support services. If the food, etc. is taken from normal domestic supplies the supporter may make an estimate of the costs involved and should retain full details of how the estimate was calculated.

Transport

Travel undertaken in the capacity of carrying out income-producing work such as taking someone to the shops, or on an outing should be deductible using either the cents per KM or actual costs incurred method. Where such kilometers exceed 5,000 per year, the actual costs of running the vehicle should be tracked and a logbook kept to be able to identify the travel undertaken for income-producing work.

Business phone costs

If a telephone is used exclusively for business, the supporter can claim for the rental and calls, but not the installation costs. If the telephone is used for both business and private calls, you can claim a deduction for business calls.

Decline in value (depreciation)

- Plant and equipment - if equipment such as a computer is also used for non-business purposes, your claim must be apportioned between business and private use.
- Curtains, carpets and light fittings used in the space allocated for the business activity.

6.5.2 Home sharer arrangements

Where an individual lives full time and works at the home of the individual being supported, deductions should remain available for costs incurred in relation to consumables, transport and depreciation. By concession the benefit of housing being provided by the engaging individual or organisation should not represent a fringe benefit to the supporter.

Where the supporter pays the individual being supported a contribution for their rent and other living costs, this will typically be deductible.

Appendix 1

Volunteer checklist | Are amounts received assessable income?

1. Does the supporter consider themselves to be a volunteer?

Yes → Go to Q2

No → Supporter likely to be an employee or contractor and this manual will be relevant

2. Are the amounts the supporter receives exclusively to meet the costs associated with the support of the individual being supported rather than to pay for the supporter's time/ services?

Yes → Go to Q3

No → Payments other than those to meet the supporter's costs are likely to be assessable income. Supporter is likely to be an employee or contractor and this manual will be relevant.

3. Is the supporter employed by an agency?

Yes → Supporter likely to be an employee or contractor and this manual will be relevant

No → Go to Q4

4. Are the payments received as compensation for providing support?

Yes → Supporter likely to be an employee or contractor and this manual will be relevant

No → Payments received are not assessable income and do not need to be reported on the supporter's individual income tax return. There will be no tax obligations for the private household and this manual will not be required

Appendix 2

Employee / Contractor checklist

This 3-part checklist can be used to help classify supporter status and the related employment tax obligations (e.g. PAYG withholding, Superannuation Guarantee, FBT etc).

Each part has multiple questions. Start with Part 1 and only go to the next section only if one of your responses directs you to that section.

Part 1: Entity you are engaging with

1. Are you entering into a contract with a company, partnership or trust?

- Yes → NO FBT and
NO SUPER – Go to Q2 to determine
PAYG withholding for companies,
partnerships and trusts
- No → Go to Part 2 on the next page for
more on the status of supporters
who do not provide their support
through a company, partnership
or trust

2. Has the company, partnership or trust provided an ABN to the individual household?

- Yes → NO PAYG WITHHOLDING
- No → Go to Q3 to determine PAYG
withholding for

3. Is the supporter a partner in a partnership that has provided a valid Statement By a Supplier form? partnerships

- Yes → NO PAYG WITHHOLDING
- No → PAYG WITHHOLDING REQUIRED

Part 2: Employment taxes (PAYG, Superannuation, FBT) decision tool

[Only required where the supporter is an individual]

	YES	NO
1. Will you have control over (or have the right to control) the manner in which the individual is to perform his duties?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the individual engaged to provide ongoing personal services (as opposed to being engaged to perform a specific task for an agreed amount of money)?	<input type="checkbox"/>	<input type="checkbox"/>
3. Do you expect to have exclusive right to the labour services of the individual?	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the individual obliged to carry out the work personally (i.e. cannot delegate to anyone else to perform the work)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Has the individual failed to provide evidence of carrying his own insurance cover for workers compensation, public liability, and professional indemnity?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will you provide the individual with the necessary tools, equipment, and accessories to enable the individual to carry out the work?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the payment for the labour services of the individual generally be paid at an hourly rate or daily rate?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the individual work standard (or fixed) hours?	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL		

While no one factor determines the status of an individual as a common law employee, if you have ticked at least four 'yes' boxes it is likely that the individual will be an 'employee' for tax purposes.

Four or more
'yes' ticks

→ COMMON LAW EMPLOYEE

→ PAYG WITHHOLDING

→ SUPERANNUATION

→ FRINGE BENEFITS TAX

→ VARIOUS EMPLOYMENT
LAW OBLIGATIONS

Less than
four 'yes' ticks

→ INDEPENDENT CONTRACTOR

Has the individual provided an ABN?

Yes

→

NO FBT and
NO PAYG
WITHHOLDING –
Go to Part 3 to
determine
SUPER

No

→

NO FBT and
PAYG
WITHHOLDING
REQUIRED – NO
ABN (unless a
valid Statement
By a Supplier
form is provided)

Part 3: Superannuation Guarantee

(To be completed only when the contractor is an individual)

1. Is more than 50% of the value of the contract for the individual's labour?

Yes → Likely Super obligation but continue to Q2

No → NO SUPER

2. Is the individual required to perform the work personally (i.e. no right to freely assign their duties to someone else without the private household's consent)?

Yes → Likely Super obligation but continue to Q3

No → NO SUPER

3. Is the individual paid by wholly or in part in reference to hours worked rather than for a specific, realistic and measurable result?

Yes → SUPER REQUIREMENT

No → NO SUPER



Government of **Western Australia**
Department of **Communities**