

INDUSTRY WHITE PAPER

Allied Health Care

August 2020

SCOPE:

The purpose of this white paper is to explore opportunities to use the ContractRight System to compliantly engage contracted physiotherapists and other professional service providers within the Allied Health Care industry.

This white paper compares ContractRight to several contracting models in common use today, and also considers the business risk inherent in the continued use of those models.

Research has been predominantly carried out in the physiotherapy, podiatry, osteopathy and chiropractic segments with anecdotal discussion taking place with several medical, dental and psychology professional service providers.

BACKGROUND:

Following the report to Treasury by the black Economy Taskforce, the Australian Taxation Office (ATO) and Fair Work Australia (FWA) are investigating the abuse of the ABN system. They are also investigating the deployment of individuals who are incorrectly classified as independent contractors when providing their personal services. While it is perfectly legitimate to engage labour based contractors it must be lawful and in a manner which complies with a number of regulations.

Our extensive research reveals there are a range of contracting models used for the purposes of engaging service based contractors within the Allied Health Care industry. We are aware the following Types 1 and 2 are the most prevalent engagement model, they are also widely used in other industries to establish contracting relationships.

The difference between the two engagement types are:

Type 1, the practice contracts with an entity owned by the contractor.

Type 2, the practice contracts with an individual who holds an ABN.

In conducting our research we found many Allied Health Care practices would actually prefer to utilise contractors believing it is a "norm" within the industry. Some have been advised against engaging contractors, this is due to the issues involved in validating the independent contractor relationship in terms of the prescriptive and difficult to pass tests required under the Personal Services Income (PSI) legislation.

Not one of the practises, or their advisors we talked to were aware that an alternative common law based and lawful contractor engagement model actually existed.

Many of the practices using contractors knew these arrangements fall foul of the PSI alienation rules in spite of the individuals invoicing their services via interposed entities such as ABN's, Companies or Trusts.

There was a perception of mutual financial value to the participants, there was little appreciation of the risks involved, in many cases contrived agreements were being utilised in an effort to "contract out" of the regulations. Case law along with actions by the ATO, Fair Work Ombudsman and State Revenue Offices have subjected many of these agreements to their "look through" provisions. The reality is that saying an individual is a contractor does not remove the obligation for the contractor to be running a business enterprise under various regulations.

Part IV A of the Tax Act can also be an issue here. It could be claimed the parties have agreed to enter into the arrangement to void the provisions of the Tax Act via alienation of Personal Services Income.

ISSUES LIKELY TO AFFECT COMPLIANCE:

DISCLAIMER: This information is not to be interpreted as legal advice, our commentary is based on our experience along with reference to checklists prepared in conjunction with our legal advisors.

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While many contracting arrangements are not illegal, the differences in how the agreements are structured and how they *actually operate* on a day to day basis means in many cases they do not protect the parties involved.

There is also some disagreement about how statutory arrangements apply to the contracts which affects the overall and real cost of the service.

Some practices pay payroll tax on the service provision based on the fact it is a labour only contract - and some do not.

Some practices pay superannuation and some do not.

Some practices pay workers compensation premiums on the earnings - and some do not. In some cases there is a risk of employment being formed giving rise to additional costs, this outcome is highly probable, even more so in the following Type 2 model.

OPPORTUNITIES:

The ContractRight system provides a framework whereby companies can lawfully engage individuals to provide services as independent contractors without the need to set up an interposed company and/or have an ABN, as outlined in the Type 1 and 2 models.

Our research clearly indicates many practices and professional service providers would like to entertain a contracting model, but legal and accounting advice has suggested this is not possible. Some have been given conflicting advice and thus we believe the industry needs some clear guidance on what is, and what is not possible.

The ContractRight model is highlighted as Type 3.

ADVANTAGES OF CONTRACTRIGHT FOR ALLIED HEALTH CARE PRACTICES:

ContractRight (CR) is a legally tested, lawful, precedent based third party common law contracting system. This is a flexible framework ideal for the engagement of full time professionals or an ideal alternative for part time professionals – e.g. those with children. The ATO have provided a written Section 15 variation outlining how contractors engaged via the ContractRight framework are treated for taxation purposes.

There is a zero barrier of entry for those talented people who do not wish to set up a company or other entity and CR engagement is simple and cost efficient to use. Productive and focused professionals are fully engaged in growing the practice without having to deal with the issues associated with the Personal Services Income (PSI) legislation or completion of BAS statements, ATO instalment statements etc. There is no risk associated with statutory on-costs, employment deeming or tax avoidance issues under Part Iva of the Tax Act.

ADVANTAGES FOR THE INDIVIDUAL ARE:

- No ABN or company required – less cost, better cash flow, fully insured for Public Liability and Workers Compensation.
- Self-employed for taxation purposes.
- Tax deducted at 20%, 25% or variations at contractor's choice (*conditions apply*).
- No PSI, BAS, GST or other cash flow or compliance issues.
- No invoicing or business administration required.

CURRENT SITUATION FOR ABN OR PTY LTD CONTRACTORS:

For established contractors, the ContractRight System allows practices and contractors to provide services without the risk of income alienation (PSI rules) or the costs associated with using ABNs or companies.



While many contracting arrangements start out on the right basis, as time passes the vast majority end up looking like employment, and as such can create compliance issues with state statutes (Workers Compensation and Payroll Tax) and also federal regulators (the ATO and Fair Work Commission).

These compliance issues can include but are not limited to the following outcomes:

- ABN and Pty Ltd contractors deemed employees for the purposes of Workers Compensation premiums and Payroll Tax payments.
- Liability for a practice to pay for PAYG deductions and Superannuation contributions for ABN holders.
- Pty Ltd contractors (and ABN holders) when receiving income from one source, can fail the PSI tests creating significant compliance and co-employment problems.
- Pty Ltd structures are expensive to run and under tighter regulations may not be worth the time, effort and potential risk involved.

Both ABN and Pty Ltd models may not deliver the intended outcomes they were originally designed to achieve and in many cases represent both a present and future liability with regard to statutory obligations.

In addition, due to tighter regulations via the ATO and other government authorities, the ability to financially gain from these and other structures is becoming harder, more expensive or in other words "not worth the risk".

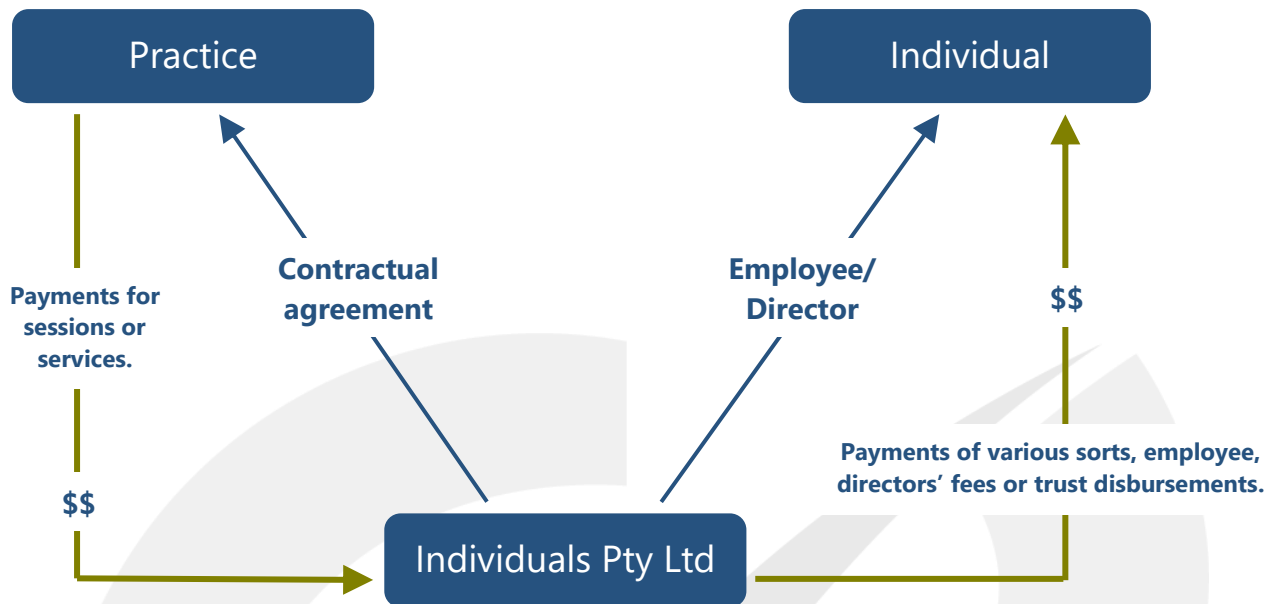
THE CONTRACTRIGHT ALTERNATIVE:

ContractRight offers an alternative to the ABN/interposed entity system of engaging contractors. Scrutiny is welcomed as this provides an opportunity to discuss the framework with industry leaders, accountants and advisors who specialise in this field.

The ContractRight offering is an effective alternative for contractors to reduce the costs of compliance, risk and business administration. For Health Care practices, ContractRight offers an alternative that removes barriers of entry and exit to the business, provides a lawful and compliant model that reduces the risks associated with direct engagement of contractors.



TYPE 1: Allied Health Care industry engagement using a Pty Ltd entity



BACKGROUND:

The practice and the individual's company enter into an agreement for the provision of the service/s to the patients of the practice.

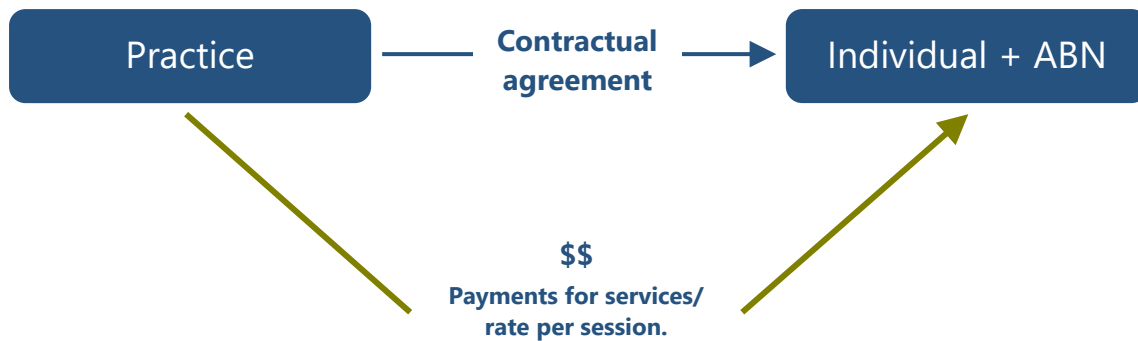
The patient remains the client of the practice and not of the contractor/service provider.

The practice pays the company for its individual's services. (We assume the individual then takes earnings from their company in some form.)

ISSUES:

- The contract may be deemed for Payroll Tax purposes as a labour only contract. It seems that some practices pay this and some do not.
- Is Workers Compensation being paid in these arrangements, either by the practice or the individual's company? Some practices are paying, some are not; sometimes both the practice and the contractor are paying.
- Is this arrangement compliant within the PSI rules, and what affect does it have?
- Is there an employment or Part IVa risk here?

TYPE 2: Allied Health Care industry engagement using an ABN only



BACKGROUND:

The practice and the individuals enter into an agreement for the provision of the service to patients of the practice.

The patient remains a client of the practice and not of the contractor/service provider.

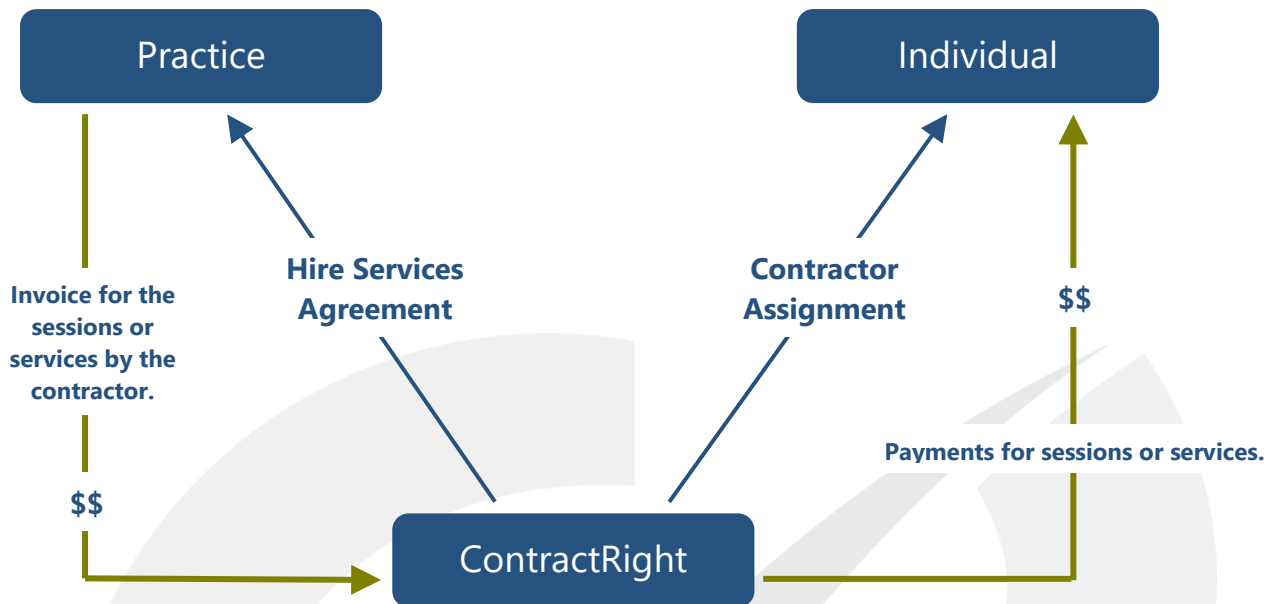
A direct contracting relationship between a business and a natural person (particularly when it is largely or wholly for the provision of labour services) is commonly considered to be an employment relationship notwithstanding the ABN.

The practice pays the contractor/service provider for the services.

ISSUES:

- This contract is deemed for Payroll Tax purposes as a labour only contract.
- This contract is deemed for the purposes of Workers Compensation cover.
- In spite of various payment methods being utilised i.e. hourly rate or fee percentage rates, these do not pass the Results Test and Superannuation is payable.
- Is this arrangement compliant within the PSI rules, and what affect does it have?
- Is there an employment or Part IVa risk here?

TYPE 3: Allied Health Care industry ContractRight engagement model



THE CONTRACTRIGHT MODEL:

- A practice enters an agreement with ContractRight to provide an individual to deliver specified services for the benefit of the business on agreed terms. NOTE: This is not a recruitment function.
- The Individual service provider enters into an agreement with ContractRight to supply service to the practice for agreed terms as an independent contractor.
- The practice receives an invoice from ContractRight for the services of the individual as agreed and ContractRight remits funds to the individual as agreed.
- ContractRight remits Payroll Tax, Workers Compensation and other statutory payments and other payments as requested by the individual.
- Fully compliant and fully insured system.
- No ABN, no interposed entity, no PSI regulations, no ATO instalments.

ContractRight is a legally tested, lawful, agile and intelligent approach to independent contracting for individuals to provide personal services to an Allied Health Care practice or to the end patient/client of a practice.

Contractor Compliance Solutions Australia Pty Ltd markets the ContractRight product under licence and provides the compliance framework for independent contractor engagement within the Allied Health Care industry.

