

Superannuation Liability - Consultants - Contractors

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Functional Sub group Corporate Administration - Purchasing

Summary Requirement in certain circumstances to pay superannuation contributions for consultants and contractors.

Author Branch Finance and Business Management

Branch contact 9391 9173

Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, NSW Ambulance Service, NSW Dept of Health, Public Hospitals

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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

CIRCULAR**File No****Circular No** 94/13**Issued** 31 January 1994**Contact** G Hawkins 9391 9153**SUPERANNUATION LIABILITY CONSULTANTS - CONTRACTORS**

The attention of all Areas, Districts, Hospitals, and other Units is drawn to the potential liability for superannuation contributions when employing consultants and contractors.

The Superannuation Guarantee (Administration), 1992 Act contains an expanded definition of "employee" under s.12. The meaning of the term has also been subject to interpretation through an ATO ruling on the Superannuation Guarantee Act (No SGR 93/1).

Under s.12(3), a person who has entered a contract for services will be considered an employee for the purposes of the Act if the contract "is wholly or principally for the labour of the person". It is therefore irrelevant whether they are designated as a contractor or consultant; what is relevant is the actual nature of the relationships between the principles of the contract.

SGR 93/1 contains the following guidelines to assist in the interpretation of this provision:

- (a) a contract for labour is to be distinguished from a contract to supply goods or materials;
- (b) a contract will be principally for labour when more than half (50%) of the contract is for labour;
- (c) a contract for labour must be personal. If it is a contract with a company or trust to provide the service, an employment relationship cannot be established with the person actually providing the services;

Distributed in accordance with circular list(s):

A 11	B	C 10	D	E	73 Miller Street North Sydney NSW 2060
F	G	H 8	I	J 10	Locked Mail Bag 961 North Sydney NSW 2059
K	L	M	N	P Q	Telephone (02) 9391 9000 Facsimile (02) 9391 9101

In accordance with the provisions incorporated in the Accounts and Audit Determination, the Board of Directors, Chief Executive Officers and their equivalents, within a public health organisation, shall be held responsible for ensuring the observance of Departmental policy (including circulars and procedure manuals) as issued by the Minister and the Director-General of the Department of Health.

- (d) labour includes mental and artistic effort as well as physical toil;
- (e) if the contract allows the person freedom to have the work of the contract performed by another, then it is not a contract for labour.

Contributions do not have to be paid for consultants/contractors deemed to be employees who are:

- paid less than \$450 in any calendar month;
- under 18 years of age working for not more than 30 hours per week;
- aged 65 or over;
- paid to do work of a domestic or private nature for not more than 30 hours per week.

When formalising arrangements with consultants/contractors deemed to be employees, it should be clearly established whether the SGC liability is to be additional to, or to be deducted from, the agreed fee for the assignment.

The SGC contribution rate was 5% up to 30 June 1995 and has progressed until the rate of 9% has applied from 1 June 2002 onwards.

The superannuation contributions must be paid into a complying fund, such fund being one which meets the standards set by the Commonwealth Government. A check that a fund complies can be made by contacting the Insurance and Superannuation Commission (current telephone 13 1060).

It is suggested that when employing consultants/contractors deemed to be employees the consultant/contractor be requested to provide a letter from the fund which provides an assurance that they are a complying fund, and that the consultant/contractor also be requested to provide the relevant forms for completion.

N.B. THE CONTENTS OF THIS CIRCULAR DO NOT APPLY TO VISITING MEDICAL OFFICERS FOR WHICH SPECIAL COMPREHENSIVE ADVICE TO CONSOLIDATE A NUMBER OF EXISTING INSTRUCTIONS WILL ISSUE IN THE FUTURE.

R Wraight
A/Director-General