



OPTOMETRISTS  
ASSOCIATION AUSTRALIA  
NEW SOUTH WALES

## LOCUM TENENS GUIDE FOR OPTOMETRISTS



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## INTRODUCTION

Setting yourself up as a “locum” is not a magic formula for avoiding the more onerous aspects of the Australian taxation system, workers compensation system, superannuation system etc.

For the purposes of this paper, the term “locum” refers to someone who contracts their professional services to another optometrist for a period of time. Whilst it is possible to be an “employee locum” (i.e. someone who is taken onto the books of the business as a part time employee) this is not what we are concerned with in this document.

A true “locum” is someone who provides professional optometric services, on an irregular basis, to other optometrists. The period of the “locum” might be from a few hours to maybe up to a year (in the case of maternity leave, for example), but the key factor is that the “locum” is not simply an employee dressed in different garb.

Run through these few tests – if you answer YES to any of them, then you are most likely an employee for taxation (and other) purposes, not a true “locum”:

- Is the “locum contract” open-ended i.e. there is no firm start and finish date to the agreement?
- Do you work for the same practitioner on regular days (e.g. every Monday and Wednesday)?
- Do you only have one or two regular practitioners to whom you provide all or the bulk of your “locum” services?

If you did answer YES to any of these questions, we would strongly suggest that you stop here and phone the OAA for further assistance.

All clear?

Having passed the “locum test”, let’s look at what you need to do in order to set up your own genuine locum service.

## STEPS TO TAKE (IN APPROXIMATE ORDER)

### 1. DECIDE IF YOU WILL TRADE AS AN INDIVIDUAL OR AN INCORPORATED PRACTICE

**NB.** In NSW, the new, special incorporated practice model will only be available once the Optometrists Act 2002 is proclaimed. Even then, only specially organised companies which comply with the particular provisions of the Act and the rulings of the Deputy Commissioner of Taxation will qualify. At the time of writing (10/4/03) proclamation of the NSW Act to permit incorporated trading had not occurred. At this time, optometrists are only permitted to practice as an individual.

This situation does not apply in the ACT, nor in most other jurisdictions in Australia. Check with your local Optometrists Registration Board for advice specific to your state/territory.

### 2. OBTAIN AN AUSTRALIAN BUSINESS NUMBER FOR EITHER YOURSELF OR THE COMPANY (IF PERMITTED)

To obtain an application form you can call the Tax Office on 13 2866 or go to [http://www.abr.gov.au/ABR\\_BC/](http://www.abr.gov.au/ABR_BC/). The application process takes about 2-4 weeks.

### 3. REGISTER FOR GST IF NECESSARY OR PREFERRED

GST is chargeable/payable at the rate of 10% on a very wide range of goods and services provided or supplied in Australia, including locum optometric services.

The current rules around registering for GST state that you must register if you expect that your annual turnover from “GST related activities” will exceed \$50,000. You *may* also register if you wish if you expect your annual turnover to be less than this amount. You can register for GST and an ABN together – the contact details above will facilitate this process. Similar application time of 2-4 weeks.

### EXPLANATION

In general terms, the provision of “locum services” is a taxable supply for the purposes of GST.

If your business is solely the provision of locum services, then it is quite likely that in a year, you would earn more than \$50,000 gross turnover from this activity. If this is the case, then you **MUST** register for GST.

However, it may also be the case that you provide locum services on an irregular basis and earn other income as, say, a part-time employee. The important point here is that for the purposes of deciding whether or not to register for GST, any income you earn as an employee does not count towards the \$50,000 threshold.

### VOLUNTARY REGISTRATION

As noted above, it is possible for you to register for GST even if you think that your turnover will not reach \$50,000pa. You might wish to do this if you anticipate buying a substantial quantity of goods or services in the course of your business on which you will pay GST. The advantage of being registered is that you can then claim an input tax credit for all these purchases (provided, of course, that they are genuinely business related). A word of caution – the reporting requirements for GST can be onerous. Unless you really think that you will have a reasonable amount of GST that you can claim back as an offset against the GST that you will charge your clients, then it probably isn’t worth registering unless you have to.

## 4. STATIONERY

If you have registered for GST, you will need to provide your clients with a Tax Invoice for all services you provide. . See Attachment A to this Guide for an example of a complying Tax Invoice. Broadly, a Tax Invoice must show the following things:

- The name and address of the person/firm supplying the good or service (i.e. your contact details).
- Your ABN.
- The words “Tax Invoice” must be included.
- A description of the goods or services supplied.
- The total cost of the supply – unless otherwise indicated, it is assumed that the total cost of supply **INCLUDES** GST.

## 5. OBTAIN A PROVIDER NUMBER FOR YOUR LOCUM SERVICE

Obviously, if you are running a locum service you will have a ‘base’ for your “business” – it will often be your home, for example. At present, the HIC rules are that you can use your ‘business address’ (which can be your home address) for the purposes of obtaining a provider number where you will be using that provider number for the supply of locum services for periods not exceeding 14 days at a particular location.

In instances where you will be providing a locum service for more than 14 days at a particular location, the HIC requires that you obtain a provider number specifically for that location.

**NB.** This rule is currently under review by the HIC and may change in November 2003. Keep an eye on OAA publications for information on any such changes.

## 6. WHAT ELSE DO YOU NEED?

Depending on how your locum service is set up, you may need some or all of the following:

- **Workers Compensation Insurance** – this is relevant if you have set up a company to employ you to offer locum services. Even though it is “your” company, the company itself is a separate legal entity and you are its employee. As such, the company is required to obtain Workers Compensation insurance for you, as its employee.

Where? The Association has established an alliance with Employers Mutual Insurance for Workers Compensation. Their contact phone number is (02) 9229 7900. Compensation insurance premiums are set by law, so it doesn’t matter who you go to, the prices will be the same. However our arrangement with Employers Mutual means that the OAA receives 1% of premiums paid by our members – giving us additional funds to work with on your behalf!

**NB.** Even if you are an employee, you may also wish to consider Income Protection Insurance. Workers Compensation provides only a minimal level of recompense to a person who is unable to work through a work-related injury. If you have a mortgage and/or family commitments, it is extremely unlikely that Workers Compensation benefits would even come close to allowing you to maintain your standard of living if you are forced to stop working through injury or illness.

- **Income Protection Insurance** – this is especially relevant if you are trading on your own account (not through a company). If you are a sole trader, you can't insure yourself for Workers Compensation – because you're not anyone's employee! However if you are injured at work, your income will stop – how will you survive then?

Income protection insurance ensures that your income will continue even if you are unable to work.

Two companies that the Association has dealt with and who would be worth talking to are:

- Guild Financial Services (02) 9493 6644; and
- McBryde Consultants (02) 9983 1977

NB. Income Protection Insurance is a very 'personal' type of insurance product. Its costs and features are very closely tailored to the needs and profile of the individual. For this reason, it is essential that you seek quotes from at least two companies before you decide on a policy which suits your needs.

- **Registration for PAYG** – this is relevant if you are trading through a company or you are employing other staff (either as a company or a sole trader). If you are trading through a company, the company will have to register for PAYG tax – i.e. the company will have to deduct from the salary it pays to you, its employee, PAYG tax at the appropriate rate and remit this tax to the tax office.

Enquiries regarding PAYG registration can be made to the ATO on 13 2866 or go to <http://www.ato.gov.au/>.

- Establish a Superannuation Fund – either for yourself if you are a sole trader or for your employee (i.e. you) if you are trading through a company.

If you are trading as a sole trader, it is not necessary for you to pay the Superannuation Guarantee Charge (SGC). However, it is strongly recommended that you give very serious consideration to setting up some form of superannuation system for yourself as soon as you enter the workforce. Your lifestyle in retirement will depend very much on the income you have available and superannuation is one way to help ensure that you have enough income to live comfortably once you stop working.

If you are trading through a company, you **MUST** pay the SGC charge (currently 9% and not expected to change in the near future) to an approved superannuation fund in your employee's name.

All the big life insurance companies and banks have superannuation schemes set up. However it is important to do your research carefully, as fees and performance can vary very markedly between funds and over time.

- **Get yourself a Qualified (and Good!) Accountant** – If you are providing locum services on a regular basis, you are running your own small business – and a good accountant is vital to your success!

There are many good accountants around – ask your friends for their recommendations. Alternatively, a firm with which the Association deals and which has quite a number of optometry and other professional practices on their books is:

- Behrens Rowley Chartered Accountants (Charles Behrens (02) 9683 7433).
- **A Locum Agreement** – We strongly suggest that for the protection of both the principal and the locum, an agreement to obtain or provide locum services should be witnessed in writing. The advantage of using a document such as that shown in Attachment B is that it will set out, in clear and concise terms, the basic elements of the locum agreement so that both parties have a clear understanding of what is expected to happen and when.

That's about it. If you need any further advice or assistance, contact the OAA (NSW) on (02) 9712 2199 and we'll do whatever we can to assist.

Alternatively, your accountant is (or should be) a great source of information on many of these matters.

## ATTACHMENT A – SAMPLE TAX INVOICE (GST PURPOSES)

(ONLY FOR USE WHERE YOU ARE REGISTERED TO PAY GST.)

Tax Invoice		
Great Locums Pty Ltd ABN: 00 123 456 789		
10 Kent Street RYDE NSW 2112		
Date: 1 September 2002		
To: Fred Smith Optometrist 105 Old Northern Road CASTLE HILL NSW 2154		
<b>Qty</b>	<b>Description of Supply</b>	<b>Price</b>
12	Days Optometry Locum Services	3,000.00
	GST	300.00
	Total including GST	\$3,300.00

## ATTACHMENT B – SAMPLE LOCUM AGREEMENT

AN AGREEMENT FOR THE PROVISION/PROCUREMENT OF LOCUM OPTOMETRIC SERVICES  
BETWEEN THE PARTIES

### SAMPLE LOCUM AGREEMENT

Name of Locum: \_\_\_\_\_  
("the Locum")

Address of Locum: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Practice  
Principal(s): \_\_\_\_\_  
("the Principal")

Assignment  
Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email: \_\_\_\_\_

Address for the Service of Invoices and Other Documents:

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Date of Agreement: \_\_\_\_\_

The parties named above agree as follows.

This document reflects the whole agreement for the provision of/procurement of locum optometric services between the parties noted above. Any changes or amendments must be made in writing and signed by all the parties.

This is a binding agreement and cannot be varied without the express, written consent of both parties.

The period of locum work which is agreed to between the parties is referred to in this agreement as “the assignment”.

## 1. DATES and TIMES OF WORK

The Locum agrees to work as an optometrist in the Principal’s practice located at the above address on the dates and at the times shown in the schedule to this agreement.

## 2. FEES FOR LOCUM SERVICES

The fee(s) payable by the Principal to the Locum for the Locum’s services is/are set out in the schedule. The specified fees are stated exclusive of GST. If appropriate, GST will be added to invoices as they are presented and the Principal must pay the grossed up amount.

### 3. INVOICING

The Locum will invoice the Principal on a weekly basis or at the conclusion of the assignment, whichever occurs first. Payments in full are due on presentation of invoices.

### 4. INTEREST CHARGES ON OUTSTANDING INVOICES

Any invoices outstanding beyond 7 days will accrue interest at the rate of 15%pa, calculated on a daily basis from 1 day after the invoice date.

### 5. TERMINATION

Without limiting the rights of the parties under general law, either party may immediately terminate this agreement in the event of serious and wilful misconduct or breach of an essential condition by the other party. A party terminating the agreement under this provision remains entitled to damages for the loss of the future benefit of the agreement.

### 6. WORK ON PUBLIC HOLIDAYS

Unless specifically agreed to in the schedule, the locum will not be required to work on, nor be paid for, gazetted public holidays.

### 7. RELATIONSHIP BETWEEN THE PARTIES

The relationship of the Locum to the Principal is one of an independent contractor, not an employee, servant or agent. Accordingly, the Locum must not incur or attempt to incur any liabilities on behalf of the Principal (except with the Principal's express written consent) and no employee benefits such as Sick Leave, Long Service Leave, Parental Leave, Superannuation or other statutory entitlements associated with a contract of employment will accrue to the Locum.

## 8. LIMITS ON THE LOCUM'S POWERS

The following things are outside the Locum's powers and the Locum must not do any of them:

- Hire or fire any of the Principal's staff;
- Engage or dismiss any of the Principal's other contractors or consultants or vary any arrangements with those contractors or consultants;
- Bind the Principal to any agreement, or vary or terminate any agreement; or
- Otherwise commit the Principal to any liability.

## 9. THE LOCUM MUST PERFORM DUTIES AS AGREED and IN A PROFESSIONAL MANNER

The Locum must perform the normal duties of an optometrist during the course of the agreement. Also, the Locum must carry out all related administrative tasks which are reasonably required for the efficient operation of the optometric practice.

At all times the Locum must act diligently, professionally and responsibly in discharging their obligations in connection with the assignment. The Locum is also responsible for making sure that anyone who assists them in connection with the assignment also meets the same standards that apply to the Locum.

The Locum must maintain high standards of conduct in all their activities and dealings, and do everything which the law requires and also act ethically.

## 10. COLLECTION OF MONIES OWED TO THE PRINCIPAL

All fees collected in respect of work performed during the course of the assignment belong to the Principal.

The Locum may, on behalf of the Principal collect any monies due to the Principal. Any monies collected must be held in trust for the Principal and the Locum must immediately hand those monies on to the Principal or otherwise deal with them as may be instructed by the Principal from time to time.

## 11. POLICIES OF INSURANCE

The Locum must maintain all necessary policies of workers' compensation and similar insurances for the Locum's employees in accordance with the law.

The Locum must also maintain professional indemnity insurance for a minimum amount of five million dollars in respect of any single claim. Proof of current financial membership of Optometrists Association Australia will meet that requirement.

The Principal must maintain public liability insurance for a minimum amount of ten million dollars in respect of any single claim. This policy must relate specifically to the premises where the Locum will work during the course of the assignment.

## 12. CONFIDENTIAL INFORMATION

During the course of the agreement, the Locum may come into the possession of or become aware of confidential information in relation to the Principal's practice. How the Locum is obliged to deal with the confidential information is detailed below. For the purpose of this clause, "You" means the Locum and the Locum's employees.

In what follows, **confidential information** includes the following, whether or not in material form:

- (a) All confidential information relating to the Practice or any related Practice, person or company; and also
- (b) Other confidential information of which you are or become aware in the course of or by reason of the assignment.

You must not use confidential information except solely for the purpose of performing your duties under this agreement. You must protect the confidentiality of confidential information. You may only disclose confidential information to someone who is aware that it is confidential and agrees to keep it confidential and who has signed any confidentiality agreement required by the firm. Even then you may only disclose confidential information to a person who has a need to know (and only to the extent that he or she has a need to know for the benefit of the firm) or who has been approved by the firm.

Your obligations of confidentiality do not extend to anything that is or becomes public knowledge (otherwise than as a result of a breach of your obligations by you or someone else) or which the law requires you to disclose.

Your obligations of confidentiality continue indefinitely after termination.

Without limiting the general words above, all patient and customer records are confidential information which belongs to the firm, and must be handled and respected according to your obligations set out above.

### 13. RESOLUTION OF DISPUTES

In the event that a dispute arises regarding any aspect of this agreement, the Treatment Review Committee of the Optometrists Association Australia (NSW Division) may be called upon to assist with conciliation and mediation. In the event that matters cannot be resolved by this process, then the parties may seek the normal redress available in commercial matters.

\_\_\_\_\_

(Signature of the Locum)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Signature of the Principal)

\_\_\_\_\_

(Date)

## SCHEDULES

### SCHEDULE A: DATES and TIMES

Including start and finish dates and times, working days and hours and break times.

### SCHEDULE B: FEES FOR LOCUM SERVICES

Fees will be specified exclusive of GST (but GST may be added to invoices).

## SCHEDULES

### SCHEDULE C: BASIS OF FEES

E.g. daily, weekly, hourly, treatment of travel time etc.

### SCHEDULE D: REIMBURSEMENT OF EXPENSES

(If any.)

## SCHEDULES

SCHEDULE E: TREATMENT OF PUBLIC HOLIDAYS

SCHEDULE F: OTHER MATTERS

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