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/dispenser 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 or casual 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 (eg 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 Association for further assistance – it is very likely that you are an employee and not a true “locum”.

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.

The steps you need to take are (in approximate order):
1. **Decide if you will trade as an individual or an incorporated practice**
   Your options for a trading structure are, basically, as a sole trader or a Pty Ltd company. Some people trade through trusts or partnerships, but that is beyond the scope of this paper to consider. Note that if you wish to provide locum services for any of the major corporate groups you will need to operate through a Pty Ltd company. This is due to the superannuation issues noted at 7 below.
   **IMPORTANT:** There are superannuation and PAYG considerations for locums trading as an individual. See 7 below for more information.

2. **Obtain an Australian Business Number for either yourself or the company (if permitted).**

3. **If trading as a company, set up a Pty Ltd entity**
   If you wish to trade as a company, you will need to set one up. This is done with ASIC but we strongly recommend contacting your accountant for assistance with this process.

4. **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 $75,000. 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. Expect a 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 $75,000 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 $75,000 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 $75,000pa. 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.
5. **STATIONERY**
   If you have registered for GST, you will need to provide your clients with a Tax Invoice for all services you provide. See the attachment 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 business name and address)
   - Your ABN/ACN
   - 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.

6. **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 Medicare 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, Medicare requires that you obtain a provider number specifically for that location. *Medicare prohibits providers from using another practitioner’s provider number under any circumstances.*

   Note if you do this be aware that you will be paid directly by Medicare and you MUST forward these Medicare payments to the practice for whom you are providing services (unless your locum arrangement specifies otherwise). Where you are using a system such as Sunix you can allocate the benefit to the practice in the course of processing the claim.

7. **Superannuation & PAYG Tax**
   In 2005, the Federal Government introduced rules which mean that a locum who provides services as an individual (ie. not through a Pty Ltd company or trust) must have compulsory superannuation contributions paid into a complying superannuation fund by their ‘employer’.
   This means that at the time of negotiating a pay rate for a locum assignment, both ‘employer’ and locum need to take into account that, on top of the negotiated rate, the ‘employer’ must add a further 9.5% (as at 1/7/14 or as legislated from time to time).
   Additionally, if a locum provides their services as an individual without an ABN, it is highly likely that they will be regarded as an ‘employee’ for taxation purposes and thus the principal will be required to deduct PAYG tax.
   The most robust work-around for this is that the locum provides services through a company or trust and that company or trust invoices for the locum’s services.
   The superannuation obligation then exists between the company and it’s employee (the locum) and PAYG considerations no longer exist for the practice retaining the locum.
   As noted above, most of the large corporate groups require their locums to trade through a Pty Ltd company or trust for this very reason.
8. **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. The current rate is about 3% of the value of the payroll.

**Where?**

The firms offering worker’s compensation insurance in NSW are:

**Allianz Australia Workers’ Compensation (NSW) Limited**
Telephone: 1300 130 664

**CGU Workers Compensation (NSW) Limited**
Telephone: 1300 666 506
Facsimile: (02) 8905 9050
Email: WCNSWEnquiries@cgu.com.au

**Employers Mutual NSW Limited**
Telephone: (02) 8251 9000 or 1800 469 931 (toll free)
Facsimile: (02) 8251 9495 Claims and Injury Management

**GIO General Limited**
Telephone: 13 10 10

**QBE Workers Compensation (NSW) Limited**
Telephone: (02) 9375 4444
Facsimile: (02) 9375 4666
Email: enquiries@qbe.com

The Workers Compensation insurers in the ACT are:

**Allianz Australia Insurance Ltd**
132 664

**CGU Workers Compensation**
(02) 6240 4790

**Catholic Church Insurances Ltd**
(02) 6201 9884
• **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. It is also very important to note that if you are a locum trading only with an ABN you most likely won’t have any Worker’s Compensation coverage as you are self-employed. Worker’s Compensation insurance only applies to employees (see next).

• **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.

  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.

  The Association has a relationship with Guild Financial Services, who can assist with a quote on insurances of this type - (02) 9493 6644.

  However we would strongly recommend that you obtain at least one other quote before making any decision to purchase an income protection product.

• **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. Inquiries regarding PAYG registration can be made to the ATO on 13 2866 or go to [http://www.ato.gov.au/](http://www.ato.gov.au/)

• **Establish a superannuation fund (see also 7 above)** – 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 9.5% as at 1/7/2014) 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 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 (Dom Pitronaci or Grant Behrens (02) 9634 6107)

9. **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.

The End

That's about it – if you need any further advice or assistance, contact Optometry NSW/ACT 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.
**Great Locums Pty Ltd**  
ABN: 00 123 456 789  
10 Kent Street  
Ryde NSW 2112

Date: 1 September 2008

To: Fred Smith Optometrist  
105 Old Northern Road  
Castle Hill NSW 2154

<table>
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<th>Qty</th>
<th>Description of supply</th>
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<td>$3,000</td>
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<tr>
<td></td>
<td>GST</td>
<td>$ 300</td>
</tr>
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Total Price including GST $3,300
ATTACHMENT B – Sample Locum Agreement

An Agreement for the Provision/Procurement of Locum Optometric Services between the Parties.

Name of Locum: ...................................................................................................................
("the Locum")

Address of Locum: ..............................................................................................................

Contact Telephone Number: ............................................................................................

Contact Fax Number: ...........................................................................................................

Email: .................................................................................................................................

Name of Practice Principal(s): ..........................................................................................
("the Principal")

Contact Telephone Number: ............................................................................................

Contact Fax Number: ...........................................................................................................

Email: .................................................................................................................................

Address of the assignment: ................................................................................................
........................................................................................................................................

Address for the Service of Invoices and Other Documents: .......................................... 
........................................................................................................................................
........................................................................................................................................

Date of this 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 & 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. **Superannuation (**delete whichever clause is not applicable**)
   **Locum services to be provided by Sole Trader** – these locum services will be provided by NAME, acting as a Sole Trader. Accordingly, the Principal will, in addition to the Fees set out in the Schedule, pay into a complying superannuation fund the amount required by the Superannuation Guarantee Act.

   **Locum services to be provided by a Pty Ltd company or trust** – these services will be provided through COMPANY/TRUST NAME, ACN 999 999 999. Accordingly, the Fees set out in the Schedule represent the entirety of the fee payable for the Assignment and no additional fees for superannuation are payable by the Principal.

4. **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.

5. **Interest Charges on Outstanding Invoices**
   Any invoices outstanding beyond 7 days will accrue interest at the rate of 12%pa, calculated on a daily basis from 1 day after the invoice date.

6. **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.

7. **Cancellation of Agreement**
   Once signed by both parties, this agreement may only be terminated by one party giving to the other a minimum four (4) weeks’ written notice of such termination. The date of notice is four (4) weeks prior to the commencement date specified in the schedule to this agreement.
   In the event that such notice is not given, the defaulting party agrees to pay to the other an amount equivalent to one week’s pay at the agreed Fee for this locum assignment.
   Additionally, if the agreement is terminated by the Principal within the 4 week notice period, the Principal agrees to reimburse, at cost, any bona-fide expenses incurred by the locum (for example airfares, accommodation) which have been pre-paid and are not otherwise recoverable.

8. **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.
9. **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 Personal/Carers Leave, Long Service Leave, Parental Leave, or other statutory entitlements associated with a contract of employment will accrue to the Locum.

10. **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
   - otherwise commit the Principal to any liability.

11. **The Locum Must Perform Duties as Agreed & 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.

12. **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.

13. **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 ten million dollars in respect of any single claim. Proof of current financial membership of Optometry NSW/ACT 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.
   Note that it is also highly advisable for the locum to maintain their own policy of Public Liability insurance.

14. **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.

15. **Resolution of Disputes**

In the event that a dispute arises regarding any aspect of this agreement, the Treatment Review Committee of Optometry NSW/ACT 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 & times
(including start and finish dates & 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))
Schedule C: Basis of Fees
(eg. daily, weekly, hourly, treatment of travel time etc)

Schedule D: Reimbursement of Expenses (if any)
Schedule E: Treatment of Public Holidays

Schedule F: Other Matters