

CMSWeb.dot v5.0.3

Superannuation guarantee - Status of worker objection guide (SPR IA)

Background

Superannuation guarantee (SG) status of the worker objections are objections to SG assessments issued to taxpayers after the completion of an audit case. SG audits are performed by two different audit areas:

- Superannuation active compliance (SPR AC) audits are usually prompted as a result of an employee notifier (EN) advising that their superannuation entitlements have not been paid. Generally these audits involve only one employee and, where possible, evidence is obtained in the form of the Principal and Worker questionnaires, and supporting documentation (invoices etc) supplied by both parties.
- SBIT Compliance with Contractor Arrangements (CCA) audits are targeted at particular industries and these audits cover a variety of topics including PAYG, FBT, CGT and SG. Evidence obtained in these audits is a response to the *Principal questionnaire* (completed at the audit interview with the principal or their representative), supporting documentation such as invoices, contracts etc, and completion of the *Employee/Contractor decision tool*. Generally, the objections arising from these audits may involve multiple employees and different categories of employees, and may include the taxpayer's objections to both status of worker and unpaid contributions issues.

x



Further information on how SPR AC and EO action an SG audit are located at:
[SG Contractor-Employee method \(SPR AC\)](#)
[Employer Obligations failure to withhold risk method](#)

Policy and procedure

In order to effectively action status of worker cases, it is important to have an understanding of the ATO policies and rulings, and general case law that relate to this work type.

ATO policies and rulings related to Status of the Worker cases:

[SGR 2005/1 Superannuation guarantee: who is an employee?](#)

[SGR 2005/2 Superannuation guarantee: work arranged by intermediaries](#)

[TR 2005/16 Income tax: Pay As You Go - withholding from payments to employees](#)

[PS LA 2006/14 Procedures for Tax Officers engaged in superannuation guarantee compliance activities where the review identifies one or more individuals engaged under a contract that is wholly or principally for their labour](#)

[PS LA 2007/10 Making default assessments: section 36 of the Superannuation Guarantee \(Administration\) Act 1992](#)

[SPR PN 2007/09 Superannuation guarantee audit period](#)

[SPR PN 2009/03 Superannuation guarantee charge \(SGC\) - Settlement of disputed SGC liability](#)

Other relevant references:

[Independent Contractors Act 2006](#)

file:///\\Cbr08a001ppn\transfer\SPRIA TL Procedures & Processes\Status of the worker\Case law and other Legal References for SG objections.rtf [Case law and other Legal References for SG objections](#)
ato.gov.au content - [Employee or contractor](#)

Profiling

Profiling is an important part of all casework, but is particularly relevant for status of worker cases. The below information on profiling is not prescriptive and has been developed as a guide for the many indicators you might consider in a status of worker case. During your early intervention discussion with your STO, you should identify which profiling aspects will be important to your case.

After reviewing the information in the audit case, you should have a good understanding of the basic information for the profile, such as the number of workers, the categories of workers, their industry, and information about the principal etc. Profiling should assist you to gain a good understanding of the context for the objection. However, it is important to only gather profile information that was not gathered in the audit – we should not be duplicating effort.

The *Status of worker profiling spreadsheet* (SDD > Superannuation guarantee > Forms & worksheets - Doc ID 10100566) allows you to document the profiling information to attach to your case. You should also attach any relevant documents (for example, MASCOT records, positive Google search results etc) to your case, naming them appropriately under the Siebel attachment naming conventions.

How to profile the case

Step 1: Consider whether the correct principal has been identified.

This is a common area where mistakes can occur, particularly where the principal has multiple related entities. It is important to check whether the worker was engaged with the relevant entity for the entire period of their relationship, or whether they worked some of the time under one entity and another part under a related entity. This is generally picked up when checking how income was accounted for, payment summaries, voluntary agreements, TFN declaration or by simply asking the relevant parties.

Step 2: Identify and review any previous case work, as well as adding any audit cases as **Related Cases**.

Review any audit work cases and be on the lookout for any information which could apply to your case. Discuss the relevance of this information to your current case with your STO.

How to profile the principal

When commencing a case, it is important to examine the principal to gain a general understanding of how they interact with the ATO.

Step 1: Check whether the principal is a large entity or related to a large entity. Contact the **Key Client Manager** if relevant.

Step 2: Look for any relationships between the principal and other individuals or entities:

- Are there related entities with which the worker may have been engaged?

- Is the principal related to the worker?
- Did the worker start with one entity, and was then transferred to another entity?
- Did the principal and/or related entities have previous audit activity (with any areas of the ATO)? Has the principal got a good compliance history (Income tax returns and BAS been lodged on time)? Is there a history of interactions with Debt?

Step 3: Review the principal's income tax returns and consider the following:

- Have they declared contractor expenses?
- Do their returns suggest large outlays for assets which may be used by the workers?
- Do they have salary and wage and superannuation expenses?
- Have they engaged employees and paid them super?
- Are all workers engaged by the principal are considered contractors?

x

! For guidance on locating this information refer to [Verifying details for completing SG objections \(SPR IA\)](#).

Att
en
tio
n
ico
n

Step 4: Check to see if the principal has workers engaged under a voluntary withholding agreement.

- Use the following to assist your search:
[Risk Assessment Profiling Tool \(RAPT\)](#)
[Employer Obligations profiling guide to systems and tools](#)
[file:///C:/Users/ppn/transfer/SPRIA TL Procedures & Processes/SDD/1.Procedures_New SDD/SPR Guarantee \(SG\)/20090276.htm](file:///C:/Users/ppn/transfer/SPRIA%20TL%20Procedures%20&%20Processes/SDD/1.Procedures_New%20SDD/SPR%20Guarantee%20(SG)/20090276.htm)
[Locating superannuation guarantee information on RAPT](#)

Step 5: Consider any third parties which may be involved, such as labour-hire firms. Was the worker engaged by the principal or an intermediary? Refer to [SGR 2005/2](#) for further information on this issue.

Step 6: Could the arrangement be considered bailment? Bailment is increasingly being used as an argument by the principals in a number of industries beyond traditional taxi drivers. Further information on bailment can be found in the SG: *Status of the worker* iLearn package.

How to profile the worker

By looking at how the worker interacts with the ATO you can often gain an initial 'feel' for how the worker thinks they were engaged.

Step 1: Check [Australian Business Register \(ABR\)](#):

Does the worker have an ABN/business name?

If so, when did they register it?

Was it around the time they commenced working for the principal? This may indicate their intention to operate under a business arrangement with the principal

and/or suggest they understood at commencement that they would be required to work under an ABN/invoicing arrangement.

Step 2: Review the worker's income tax returns using [RAPT](#) (Select ITR Lodgement and view the available data)

- At which labels did they declare their income? (salary and wages, or business income?)
- Did they declare income from multiple sources?
- Where did they declare deductions/expenses?
- Did they claim the entrepreneur's tax offset?
- Did they claim a deduction for personal superannuation contributions?
- Did they work as a personal services income (PSI) entity? This is reported at Question 9 on an income tax return.

Note: Personal services income is income that is mainly a reward for an individual's personal efforts or skills. In this context 'mainly' means more than 50%. It does not include income from materials supplied or tools and equipment used. PSI entities don't have to be employees to earn personal services income, but may, for instance, be a sole trader, or receive their income through a company, trust or partnership. Personal services income earned by a personal services business is not considered to be income from a business structure.

— If you see expenses at a high level compared to income, this indicates the worker was not engaged primarily for labour and this becomes a relevant fact for your case. Conversely, if expenses are quite low compared to income, this is a good indicator that the worker was engaged primarily for labour. It should be noted that this is not a definitive indicator, but may help tip your final decision one way or another. A worker can be entitled to declare income and expenses under business labels and still be considered an employee for *Superannuation Guarantee (Administration) Act 1992* (SGAA) purposes.

Step 3: If a worker has not lodged income tax returns for several years, consider forwarding [intelligence](#) about non-lodgement.

Step 4: Review the worker's BAS statements (located on ATOMS via Corporate Applications/ATOMS/Enquiry and **Amendment System – Payer**. If you don't have access, please see your manager.)

- Has the worker completed any?
- Have they been completed correctly?
- Have they only completed the PAYG section?
- Did they lodge BAS for the entire period of their relationship with the principal?

Step 5: Check (via ATOMS) whether a TFN declaration was completed for the principal or any other entities during the period of review. If there are TFN declarations for other entities, this confirms the worker was able to work for others, and was not contracted exclusively to the principal in question.

Step 6: Consider whether the worker had more than one role with the principal. For example, in the construction industry, some workers are initially engaged as a general carpenter, but later end up as site foremen or leading hands. Where you find that a worker has filled more than one role, you may consider issuing a different questionnaire for each role and/or contacting the parties to obtain further information.

! For workers in the building industry, you may wish to consider doing license searches. For example, BSA (Qld) allows you to search by personal or business name and provides a history of the date of application, any breaches and the number and value of jobs listed by year (This can also be done with the principal). Other states have equivalent search capability for their state regulating body.

Att
en
tio
n
ico
n

How to profile the industry

Some industries commonly engage workers as contractors and there are often industry norms and case law you can draw on to help make your case.

Common contractor industries include:

- building and construction
- interpreters
- media
- hairdressers
- carers
- professionals (doctors, dentists, physiotherapists)
- book keepers
- drivers
- cleaners

Currently there are limited resources to obtain information about these industries. IBIS may provide some relevant background information.

Reference: [IBISWorld Australia - Industry, Company and Business Research Reports and Information](#)

The file://\Cbr08a001ppn\transfer\SPRIA TL Procedures & Processes\SDD\1.Procedures_New SDD\SPR Guarantee (SG)\20090281.htm [Status of the Worker industry evidence examples](#) may also be of assistance.

Evidence Gathering

In most SPR AC audits, the principal and worker questionnaires will already have been supplied. In more recent SBIT CCA audits, the audit officer will be obtaining responses similar to the principal questionnaire during the audit interview. Where the questionnaires have been completed they will be a primary source of information for you in completing your objection. We need to ensure that we do not request additional information that has already been provided in the audit. As such, SPR IA needs to be creative and think critically about what further information is required, and how to request this information.

Requesting information from the principal

A list of file://\Cbr08a001ppn\transfer\SPRIA TL Procedures & Processes\Status of the worker\SAMPLE OF PRINCIPAL QUESTIONS.rtf [sample principal questions](#) has been developed for use when requesting further information and this list will continue to be revised.

Each case will differ as to the level of evidence you will need to gather (or is available) prior to making a decision. Where a case is reasonably clear, a copy of the

contract may be sufficient. However in cases involving contradictory statements by both parties, you may need to think 'outside the box' in order to gather the evidence necessary to make a sustainable decision.

Listed below are other types of documents that may be available to assist you complete your case:

- copies of contracts of engagement
- copies of invoices
- copies of bank statements showing credits from the principal
- copies of timesheets
- letters or emails between the parties
- trade contracts
- procedural manuals/guidelines
- copies of meeting minutes
- website searches – for example, BSA license search, ABR search
- review of principal and/or workers website
- copies of workers compensation claims
- copies of insurance claims
- copies/details of any industrial action or union action with respect to other aspects of the relationship
- copies of advertisements – for engagement
- copies of advertisements – for the principal or worker's business
- library searches for old newspaper advertisements.

Requesting information from the worker

In some cases you may need to contact the worker/s to obtain more information. This may be the case where there are gaps in the evidence provided by the principal or if there is contradictory evidence. You will not need to contact the worker/s in all cases. If you do need to contact a worker, it is best to do it by phone in the first instance. The worker's phone numbers should be attached to the audit in the Conmatch document.

When talking to a worker, you need to ensure that you comply with the information contained in the [Privacy issues for SG contractor - employee cases](#). It is best to contact workers who have provided information to the principal such as statutory declarations to the principal during the course of the audit. In these cases we can advise the worker that we are asking more questions in relation to the statement that they supplied to the employer.

Where you need to contact a worker who has not provided information to the principal during the course of the audit, you can advise the worker that you are reviewing the working arrangement between them and the principal.

You will need to prepare your questions prior to making a phone call and have your STO check them to make sure that all issues can be addressed in the one phone call.

Questions can be based around those contained in the [file:///C:/Users/001ppn/transfer/SPRIA TL Procedures & Processes/Status of the worker/SAMPLE OF PRINCIPAL QUESTIONS.rtf](file:///C:/Users/001ppn/transfer/SPRIA%20TL%20Procedures%20&%20Processes/Status%20of%20the%20worker/SAMPLE%20OF%20PRINCIPAL%20QUESTIONS.rtf)[sample principal questions](#). Please

ensure your questions are phrased in plain English and that you use open questions so you do not lead the worker to an answer.

The workers are not obliged to answer our questions. If they are not willing to discuss their working arrangements you will have to make a decision based on the information that is available to us.

Applying SGR 2005/1 to the evidence

Once you have performed the profiling and gathered all evidence you now apply SGR2005/1 to the evidence. Before going into subsection 12(1) and 12(3) tests, consider the following:

Are we looking at the right principal, and is that principal relevant for the entire period under review? (Was there a service company? Was there a change in ownership?)

Do the workers fit into any other sub categories of subsection 12(8) or 12(11) rather than 12(3)?

- 12(8):
 - artists
 - radio/broadcast
 - sportspersons (including leisure sports – parachuting, diving)
 - entertainers
- 12(11):
 - Domestic/private
 - Were the workers engaged through a labour hire firm? Were the workers engaged as subcontractors and hired out by labour firms?

x



Where the workers are under 12(8) or 12(11) then this case may need to be escalated to complex advice to action. Discuss this with a STO.

Da
ng
er
ico
n

REFER: SDD > Superannuation Guarantee > Spiels & LRDs > Doc ID 10100723 SG
Status of the worker legal reasoning document.

Subsection 12(1) discussion

When applying the facts to the law for subsection 12(1), you should include discussion of the following relevant factors to your case. This discussion should always refer to the evidence, and may include reference to case law where appropriate.



For further information see <file:///C:/Users/Cbr08a001ppn/transfer/SPRIA TL Procedures & Processes/Status of the worker/Case law and other Legal References for SG objections.rtf> [Case law and other Legal References](#) for case inclusions and also [tips for writing your LRD](#) about when reference to case law is appropriate.

Dir
ect
ion
ino

n

Terms and circumstances around formation of the contract

If verbal contract:

- What were the terms verbally agreed to? (invoice required, hourly rate etc)
- What evidence is there that these conditions were understood by both parties? (was the invoice for hourly rate agreed to?)
- Obtain as many details as you can about the terms and conditions of the engagement as they were understood and applied in practice.

If written contract:

- Were the terms adhered to in practice?
- Is there any indication the contract or any of the terms are a sham?
Note: There is currently little information on Sham contracts and you should seek guidance from an experienced STO. Extra care is required to not breach our Taxpayers' Charter obligation (ie. treating everyone as being honest) particularly when writing an LRD. Some further information on Sham contracts can be found in the *SG: Status of the worker* iLearn package.
- What type of verbiage is used in the contract? (that is, Do they refer to 'employment' or 'employee' or 'independent contractor'?)
- Was it signed by both parties? Was it legally binding? (For example, a worker could not sign a BSA trade contract if they were not BSA licensed)
- Did a procedural manual or similar document exist that contradicted the terms of the contract?
- Was the contract signed at the start of the relationship, or at a later time?
- Were there a number of contracts over the period of the relationship?
- Were the terms altered?

If the worker was required to obtain an ABN or insurances, confirm whether this occurred:

- Did the worker already have an ABN?
- Did they register for an ABN and/or trading name around the time of commencing?
- Did they register for GST?
- Did they obtain the required insurances?

Where the workers have supplied statements indicating the nature of the contract, do the other factors contradict or support their statements? Identify factors supporting and/or contradicting.

Length of relationship – a longer relationship, together with other factors, may indicate an employment relationship.

How did the relationship come about? If there was any advertising by the principal, this may be an indicator of an employment relationship. If possible, obtain a copy of the advertisement.

Was the worker able to renegotiate their rate of pay or terms and conditions?

If possible, obtain evidence in the form of copies of invoices showing the different hourly rates, or a letter confirming the negotiations.

Was the worker a member of any professional associations? If so, was this membership compulsory? Who paid the membership fees? For example, Mortgage

brokers are required to hold certain accreditations if they operate as independent contractors, but the accreditations are not required if they are employees. Qld builders can be licensed with BSA – unlicensed builders can only do work up to a certain value. Counsellors are generally required to maintain membership with their state associations.

Control

The following questions will assist you to apply the control test:

- Who sourced the work?
- Was the worker told where to work, or was this dictated by the principal's contract with someone else? (for example, construction industry – work must be performed at the client's premises/building site)? How was this communicated to the worker, and how much notice were they given?
- Was there any expectation of particular working hours? Check the invoices provided to see if they provide any information about this, such as reporting of daily working hours or dates worked.
- Did the principal schedule the order of tasks? If so, how was this communicated to the worker?
- Was the worker supervised? Consider if the worker's job would allow supervision of individual performance? (that is, did they work as part of a team?)
- Who checked the work performed?

Standard questions:

1. Who set the hours worked? (when)
2. Who set where work was done? (where)
3. Who decided how work was done? (how)
4. Of greater weighting, who had ultimate authority to control?
5. Could principal tell worker to stop one task and start another?
6. Could worker accept or refuse work?
7. Were there worker manuals/procedures which set out expectations?
8. Did the worker complete any training with the principal? If so, was the worker paid to attend? Check for evidence in the form of training materials, procedural manuals, or letters/emails requesting attendance.
9. Was the worker required to attend meetings within the principal's business itself, or with clients of the principal? If so, was the worker paid to attend? Check for evidence in the form of emails/letters confirming attendance or a request to attend, and copies of meeting minutes.
10. Was the worker required to seek permission to take time off?
11. Was the worker entitled to paid breaks? Note that this question only has value where written evidence is provided.

Integration

The following questions will assist you to apply the integration test:

12. Were any meetings required?
13. How long was the working relationship?
14. What type of communication was there between the parties?
15. Were the workers required to wear uniforms identifying them as part of the principal's business?

How critical the worker was to the employer's business. If they were involved in supervising staff for example, that may mean the business wouldn't have worked as well without them, indicating an employment relationship.

Were there any indications the worker was operating their own business? Indicators of this might be:

- Trading name (ABR may show trading name, or it may be on the worker's tax return).
- Advertising (consider Google search for the worker and/or their trading name).
- Promoting business on vehicle, clothing etc.
- Working for others/doing own private jobs (evidence may include payment summaries or invoices issued to another party).
- Have they got the relevant licenses to operate independently?
- Ability to generate goodwill for the work they did for the principal.
- Ability to quote for work and/or negotiate rates.
- Was payment made to a business account?
- Did they complete their returns as a business? (cannot divulge to principal but could contribute to decision making)
- Was the worker required to work exclusively for the principal? (evidence may include a notice directing them not to work for others)

Were there any indicators the worker was integrated into the principal's business?

These indicators might include:

- Long term relationship/regular hours.
- Paid similar amount on regular basis.
- Supervising other staff (eg leading hand, foreman, project manager).
- Worked as part of a team.
- Required to liaise with customer on behalf of principal.
- Role was critical to principal's business – eg interviewers in Roy Morgan, tiler in tiling business.

Results

Information recorded in invoices can reveal a great deal about the working arrangement. However, it must always be considered in conjunction with all other information.

For example, an invoice may indicate that a worker was paid for a specific result, as evidenced by the description of completion of certain jobs. However, it may also be that case that the worker was paid a cancellation fee if a job was cancelled - this would not be consistent with a true results-based contract.

Another example is where a worker's pay is calculated on an hourly rate (which is usually an indication of an employee), simply because it is a natural means of negotiating the appropriate fee to complete a task. (See *Hollis v. Vabu*)

Were any invoices supplied by entities other than the worker? For example, a company or partnership associated with the worker. If payment was made to such an entity, this indicates that the contract is between that entity and the principal, and not the worker in their individual capacity.

Did the worker and the principal agree to a set sum as payment? For example, through quotes or negotiated a results-based contract/agreement.

- What did the parties state was the 'result' of the contract?
- How did they calculate the amount and determine how the payment would be made?
- How often did they invoice?
- Were the invoices consecutive?
- If the worker supplied invoices, did each state a result, or did they invoice per hour?
- Were progress payments made? If the worker was paid hourly, was there a final inspection before the last payment was made?
- Do the invoices look the same every time?
- Could the worker produce a result on their own or could it only be done as part of a team?
- Was the worker paid as an individual or as a business entity?
- If the audit only gathered one invoice per worker, consider obtaining additional invoices for specific periods as additional evidence of their relationship.
- Did the principal supply the invoices, and if so, why?
- If the worker supplied the invoices, did they complete them themselves, or did they receive direction from the principal? (some workers are told they must invoice for 'labour and materials' when in fact they are engaged for labour only.)
- How did the principal measure achievement of the contracted result?
- If the principal's client did not make payment for a job or cancelled a job, did the worker still get paid?
- Who was responsible for collecting payment from the client?
- If the worker didn't complete the job for any reason (could be due to illness, or any other reason) would they get any payment? How was this worked out?

With respect to invoices, think about:

- Have enough invoices been provided to establish norms for hours worked, hourly rates of pay etc? (having a three-month history is recommended)
- Are the invoices issued to the same principal/ABN as the principal under review?
- Are the invoices issued under the worker's personal name, or a business name?
- Has the worker invoiced for reimbursements, allowances, materials, travel, petrol etc?
- Can you determine whether the documents were submitted regularly (for example, weekly) or sporadically? If you find gaps, can this be explained? (sick, holidays, not offered work during this time)
- Ask the worker whether they completed the document themselves, or whether they received direction from the Principal. For example, some workers are told they must invoice for 'labour and materials' when in fact they are engaged for labour only.
 - Note whether the document is a valid [tax invoice](#).
 - If GST is being collected, check whether the worker is lodging BAS. Refer the risk to GST if relevant.

x



Att
en

Your findings in relation to the 'Delegation' test (see below) may also be relevant to the results test. For example, an arrangement where the worker has the ability to delegate their duties could indicate that the worker is free to employ their own means to achieve a

tio contractually specified outcome. Conversely, in an arrangement where the worker has no
n power to delegate, this can indicate that the worker is being paid for their personal labour,
ico not a specific result.
n

Delegation

The following questions will assist you to apply the delegation test:

- What did the parties state about delegation?
- Was approval required?
- Was the delegation unlimited?
- Who would have paid/did pay a substitute worker?
- Is there evidence that other workers engaged on a similar basis have delegated?
- Were any security clearances/licences required that might restrict the worker from delegating?
- When the person commenced work for the principal, did the principal make the process for obtaining such clearances/licences clear to the contractor?
- Do the invoices provide any support to the notion of delegation?
- Do the number of jobs/hours indicated on the invoices support delegation? (that is, cleaner invoicing for 18 hours in one day, at three different sites).
- Did the nature of the job negate the option to delegate? (ie doctors)

Your findings in relation to the 'Results' test are also highly relevant to the delegation test. An ability to delegate tasks is fundamentally inconsistent with an arrangement where a person is engaged for their personal labour. Accordingly, it follows that a worker who is engaged for provision of labour (and not a specific result), cannot be said to have the capacity to delegate tasks in a true sense.

Conversely, where it has been established that the worker was remunerated for a result, rather than their labour generally, this can imply that the worker had the power to delegate tasks to others.

! The 'Results' and 'Delegation' tests can often be tied together.

Risk

The following questions will assist you to apply the risk test:

- In reality, who bore the most commercial risk?
- If work had to be rectified, was the entirety of the cost of rectification passed on to the worker?
- Whose reputation was most at risk?
- If there were customer complaints, would these be made to the principal or directly with the worker?
- Could the workers negotiate their rates to influence profit and loss?
- Did the workers get paid on hourly or fixed rate? Hourly rate indicates they are paid for all hours worked, which leads to less risk of variation in reward.
- Was the worker under contract for a set period of time? If so, and the contract finished early, was the worker still entitled to the full agreed amount?

- Did the workers have to pay for materials and could they choose the materials? Extra cost incurred and having choice of cheap or expensive materials will influence profit.
- Who was responsible for insurances? Is there evidence that these were actually held?
- Workcover claims – did the workers get their claim approved – were they deemed employees for that claim? Workers compensation can apply to both workers and principals in some states? (Check WA, SA, VIC).
- If the worker was involved in setting their rate of pay, what did they take into account when negotiating? (For example, award rates/rates of other workers/enough to cover labour and expenses).
- Was the worker still paid if they could not work? (For example, bad weather, client did not show, short notice/ cancellation).
- Was the worker still paid by the principal if the client did not pay?

Tools and equipment

This may become contentious where both parties supply equipment.

Who provided the most equipment? If the materials were supplied under a separate contract (for example, construction industry or carpet layers), then this might not assist in terms of evidence.

Major capital items such as large machinery or commercial vehicles are more indicative of a contract relationship. However, were they integral to the performance of the work? (A delivery truck supplied by a worker, and used to make deliveries, may be more an indicator of a contract relationship than a ute driven by a builder/cleaner).

Subsection 12(1) summary

Summarise your conclusion in the last paragraph (two paragraphs at the most).

Provide a summary of the key points that support your overall decision – in particular talk about the indicia in isolation, and whether any work together (in totality), and then state your decision.

Reinforce which factors you gave more weight to than others and why (you should already have discussed the major details of this above, but you need to summarise this in the conclusion).

Subsection 12(3) discussion

When applying the facts to the law for subsection 12(3), you should include discussion of all three aspects of subsection 12(3).

- Was the person remunerated (either wholly or principally) for their personal labour and skills?
- Labour has a different focus in subsection 12(3) and therefore your discussion should focus on 'labour'. For example:
 - Do the invoices use the word 'labour' in conjunction with an hourly rate? It is difficult to have a true results-based contract where the person is only paid for their labour.

Examine matters such as:

- was the contract partly for labour and partly for something else? If so, it will only qualify if it is 'principally' for labour. 'Principally' takes on its common meaning in this context and means 50% of the value of the contract.
- Examine the income tax returns of the worker and see if the expenses they've claimed that could be considered in respect of their work for the principal constitute more than 50% of the amount received from the principal
- was the person required to perform the contractual work personally?

Refer to the points above about delegation. Your discussion here should refer to whether you found delegation existed under subsection 12(1).

You should briefly restate your analysis and reasons for finding delegation existed or didn't exist.

Was the person paid to achieve a result?

Refer to the points above about results. Your discussion here should refer to whether you found the person was or was not paid for a result under subsection 12(1).

You should briefly restate your analysis and reasons for your findings.

Subsection 12(3) summary

Summarise your conclusion in the last paragraph (two paragraphs at the most).

Your overall findings for subsection 12(3) will be that the person was under a contract for labour if you were able to demonstrate they met all three indicia (that is, wholly or principally for labour; could not delegate; was not paid for a result).

If they did not meet all three indicia, you cannot state they were under a contract for their labour.


Tips for writing your legal reasoning document

The following tips have been developed by case officers and STOs based on feedback from Legal Services, CTU and other important stakeholders. Case officers should keep these points in mind when writing the legal reasoning document (LRD) for SG status of worker objections:

- Focus on the issues in contention.
- If the objection only raises issues with a couple of tests, focus on these when writing your objection decision.
- Acknowledge the issues not in dispute without going into the background legal explanation.
- Restrict the background legal explanation to the issues in dispute and focus on analysing the evidence on only these issues.
- Analyse the evidence as you go.
- Where various items of evidence contradict each other, state this, and say which evidence can be relied upon.
- Where you think it leads to a neutral result, explain why.
- If you think a particular item of evidence, or a combination of items of evidence, are indicative of a relationship one way or the other, explain this, and make sure you explain why it's indicative.
- Avoid talking about evidence that doesn't add any value. This is not only irrelevant to our overall decision, but it is confusing for the taxpayer.

- Avoid using the term 'inconclusive' in decisions – 'neutral' is the preferred term.
- In contentious cases, consider issuing a position paper to advise the taxpayer of our preliminary view, and in particular, where you think it might elicit new evidence that we have been unsuccessful in obtaining during the audit or objection.
- Don't copy contentions/grounds for objection word for word.
- You should either refer to their correspondence which details their contentions (beware, there could be several items covering all contentions), or summarise their main contentions in your own words.

x

-  If the taxpayer includes multiple references to case law within their grounds or contentions, and you are disallowing their objection, you **must** include case law within your analysis of the facts.
- If the case is high risk to litigation, you **must** provide more detail of the evidence you used to make your decision than you would in a straight forward allowed objection.
- For allowed in part objections, you need to discuss the workers you are allowing and the workers you are disallowing. You can either do this as a compare/contrast type situation, or by separating the discussion for each group.

Version control

Version	Date	Description of Change	Contact Officer	Approving Officer
1.0	04/10/12	New document to SDD.	Gale Portelli	Emma Smallacombe
1.1	03/01/13	Update to links and minor content updates.	Eugenia Gray	Emma Smallacombe
1.2	19/02/13	Two broken links updated.	Eugenia Gray	Emma Smallacombe
2.0	25/11/13	Review of the content and updated format to allow for intranet publishing.	Amy Crosby	Narelle Monk
2.1	30/05/14	Removed two broken hyperlinks and updated MEI to SB/IT.	Amy Crosby	Narelle Monk
2.2	07/10/14	Updated share drive links, added reference to RAPT, revision of content.	Narelle Monk	Shannon Grubb
2.3	02/12/14	Correct broken links	Narelle Monk	Shannon Grubb