

icare™ lifetime care



employing support workers handbook for participants

To be used with the Self-Management
handbook for participants

Dec 2016

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about this handbook

We've written two handbooks that will help you with decisions you make about self-management. They are the **Self-management handbook for participants** and the **Employing support workers handbook for participants**.

There are eight chapters in the Self-management handbook for participants and three chapters in the Employing support workers handbook for participants. At the end of each handbook is a 'Resources' list with useful information such as website addresses and phone numbers.

If you're thinking about managing your care or some of the supports in your plan, please consider the information in both handbooks carefully and talk to the people who support you about the benefits, and responsibilities, involved.

If you need some help with either handbook, please speak to your **icare lifetime care** coordinator.

icare™ lifetime care



Level of control and responsibility for my supports

Managed Support

Self-Managed Support



Option 1: icare lifetime care / case manager

My treatment and rehabilitation services are coordinated by my Case Manager or my **icare lifetime care** Coordinator.

My care supports at home are managed by a service provider. I choose my service provider from the panel approved by **icare lifetime care**. **icare lifetime care** pays my service providers. I don't need to worry about this.

All of my care support services are managed by my service provider. They talk to me about my roster and which staff will come to assist me with my personal care and help around the house.

Option 2: Purchasing Services

I manage my funding and purchase my supports from the service providers or businesses that I choose.

I do not want to directly engage or employ individual care workers.

I have my **icare lifetime care** funding in a separate bank account. I tell the gardening service when I need them to come and I pay them after they have completed the work I have asked them to do. I also pay for my own services.

Option 3: Engagement and control

I manage my funding and directly engage my care workers and train them so that they know how best to assist me, but I don't want to be responsible for paying their wages, tax, superannuation and managing all of the responsibilities of being an employer so an agency does this.

I have my **icare lifetime care** funding in a separate bank account to pay for my care services. I book individual care workers through an agency which pays all of the wages and looks after tax and super. They send me an invoice for the hours of support I use.

Option 4: Direct employment

I manage all of my care supports and I directly employ the people who provide my personal care and help at home.

I am responsible for paying their wages, taxation and superannuation.

I have my **icare lifetime care** funding in a separate bank account. I have directly employed four workers from my local area. I quite like organising my own rosters and having full control. I use a book keeper to help me manage my payroll so my staff are paid the right amount and tax and super are paid.

The Employing support workers handbook for participants has chapters numbered from 9 to 11. It also has numbered sub-chapters. This is so you and your icare lifetime care coordinator can easily refer to specific information by chapter or sub-chapter and discuss details.

9. Direct employment of staff

Directly employing support workers will give you the greatest level of choice and control over your supports. It will give you full control over who supports you and how these supports are arranged and delivered. Direct employment is more complex, however, and you'll be responsible for a number of legal and administrative requirements involved. It's important for you to understand those requirements and prepare if you want to directly employ staff.

This chapter outlines the things you need to consider if you directly employ staff. We are not the experts on employment-related laws and regulations so this handbook also gives you contact details on where to get this expert information to make sure you meet your obligations. These are listed in 'Resources' at the end of this handbook.

Let your coordinator know if you're considering direct employment and if you'd like access to training to help you learn the skills you need to directly employ your support workers - we can arrange for this to be provided.

9.1 What is direct employment?

Direct employment is when you use your funding to recruit, engage, train and pay your own support workers.

Employing people directly means you can:

- Recruit the support workers that will best meet your needs.
- Negotiate employment conditions directly with your support workers.
- Agree with your support workers about the tasks you want them to do and how that work should be done.
- Negotiate directly with your support workers about any changes to the hours they work, or the work they do.
- Address and manage any concerns you have about the quality of their work directly with them.

If you choose to employ people directly, you'll have the legal responsibilities of an employer.

These responsibilities include (but are not limited to):

- Making sure that you comply with all legal, financial and industrial obligations associated with being an employer.
- Meeting the costs associated with being an employer, including things like paying wages, tax, superannuation and leave entitlements, advertising for staff and providing on-the-job training — all of these costs need to be managed within your approved funding budget.
- Keeping records about anyone you employ. This will include things like their conditions of employment, days and hours worked, salary and superannuation paid, tax withheld from salaries and the amount of leave owed (such as holiday or sick leave).

9.2 Can I employ my family or friends to deliver my supports?

No, under the Participant Funding Agreement you're specifically prohibited from spending any of the funding to pay any of your friends, acquaintances, family members, guardians, or other persons who you have a personal relationship with, regardless of whether they provide assistance or services to you in an unpaid or voluntary capacity.

This policy aims to support family and friends to maintain their personal relationships.

Evidence has shown us that complex, unhealthy and often unmanageable or unresolvable issues arise if family members or friends are employed to provide formal care. This is why you aren't permitted to employ family or friends to deliver your supports.

9.3 Engaging contractors

Contractors are different to employees. You need to know the difference between a contractor and an employee as your legal obligations are different for each. Contractors, or self-employed people, work for themselves instead of for an employer. They draw income from a business that they operate. Someone who is self-employed will have an Australian Business Number (ABN); however, this does not automatically make the person an independent contractor.

Some of the conditions that make someone a contractor are:

- A contractor is paid fees instead of a wage or salary.
- A contractor will submit invoices to you for the services they provide.
- A contractor is usually permitted to substitute another person to perform the services, but an employee is not.
- A contractor usually has more scope to determine how services will be provided, but an employee is usually directed as to both what work needs to be done and how to do that work.

When you engage a contractor, you don't need to deduct tax, provide superannuation or workers compensation insurance. A contractor also won't accrue leave for holidays, sick leave or long service. However, the difference between an employee and an independent contractor is not always clear, and care needs to be taken when working with a self-employed person to ensure that they are not, in fact, your employee. If a contractor is deemed to be an employee, you may find that you have additional obligations, such as paying their tax and superannuation.

The Australian Government website for small business (www.business.gov.au) provides information about these issues and has an 'Independent contractor decision tool' you can use to identify whether a self-employed person should be considered a contractor when you purchase services from them. The Australian Taxation Office (ATO) website at www.ato.gov.au also provides information on these issues.

It's also good idea to make sure that a contractor has the right insurance. Sometimes, you might want to work with a contractor for one project, or a specific job.

Here are some examples of working with contractors:

- You hire someone to help you with chores in the garden, like mowing and weeding, and they come to work for you every two weeks.
- You need some help setting up accounting software on your computer, so you hire a bookkeeper for a few sessions to get you started.
- You need to have some minor maintenance work completed on your house so that it's more accessible, so you hire a handyman contractor to do the work.

9.4 How do I recruit a worker?

As a direct employer, hiring staff will be your responsibility. When you're hiring staff, you need to think about a range of things, including:

- What you want them to do (this needs to be written down in a position description or duty statement).
- Essential criteria, for example, a current first aid certificate and a police check.
- The skills and experience required to do the job.
- How you'll find them, noting that you may need to advertise, conduct interviews and check references.
- What information you need to give or receive from them.

When you're writing an advertisement it's important to remember that it's against the law to discriminate between people on the basis of:

- race or ethnic origin
- religion or religious beliefs
- gender, marital status, family responsibilities or sexual preference
- pregnancy or potential pregnancy
- physical, intellectual or psychiatric disability or disfigurement
- trade union activity or political opinion
- age.

However, if you need your support worker to assist you with personal tasks such as showering and dressing, then it can be appropriate to state whether you want a male or female employee.

There are a number of places you can advertise for staff. Some of them are free (or low cost) including:

- **Newspapers**

Advertising in major newspapers can be quite expensive and can result in applications from people from distant suburbs. Local community newspapers sometimes have a free advertisement section. Some employment agencies will advertise at no cost or for a very low fee.

- **Online job advertisements**

If you're paying for an advertisement in your local newspaper, the cost may mean it will also appear on an online job site. Advertisements on mainstream job websites can also be expensive. Remember, you might be able to post an online job advertisement for free but there may be costs for looking at responses or resumes.

If you want to post a job online for low cost, consider asking family or friends if they have an online noticeboard at work – they may be able to put up advertisement for you.

Be careful with Facebook or other social media sites, unless your site only allows access to family and friends. Your privacy is important.

- **Noticeboards**

Local libraries, shopping centres and community centres often have noticeboards where you can place free advertisements. These have the advantage of usually attracting people who live locally.

- **Education and training organisations**

Universities, TAFEs and other training organisations often have students looking for part-time or casual work. Institutions that provide training in healthcare (such as nursing, physiotherapy and occupational therapy) have students who might have knowledge and skills that could be useful for you.

- **Family and friends**

You should also consider if your family or friends know of anyone who might be suitable to work with you. Many people tell their friends that they are looking for work. The advantage of talking to your family and friends is that they know you well and are likely to suggest people who would be right for you.

9.5 On what basis should I hire someone?

You can employ a support worker on either a full-time, part-time or casual basis, depending on what suits your needs and preferences. Here is a brief description of the different types of employment:

- A full-time employee generally works a minimum of 38 hours per week over five days (usually weekdays).
- A part-time employee generally works regular set hours that are less than a full-time week.
- A casual employee usually works on an irregular basis. A casual employee may or may not be offered work from day to day, depending on what you've available.
- In turn, a casual employee has the right to refuse a shift of work if it does not suit them.

As set out in 9.3 above, you may also like to consider engaging a contractor or self-employed person to provide some of your support.

9.6 How many workers do I need?

While you may have a particular worker in mind who you trust to turn up every time at the right time, it's a good idea to think about what would happen if that person gets sick and can't support you. It's also worth thinking about the support you might need outside normal working hours.

Back-up options are a good idea, so you may consider it a better option to employ a few people on a casual basis instead of only one full-time person. You may also want to think about having a service provider agency to use in case of an emergency or backups for part of your support.

9.7 Things to check before I employ someone

During the recruitment process, it's wise to tell the applicant that before you employ them, they will need to provide you with:

- A current 'Working with Children Check' if the person with disability is a child (or relevant check in other States or Territories if you don't live in NSW)
- A 'National Police Check' that has been done within the last six months.

- **Working with Children Check**

A 'Working with Children Check' is required for child-related work in NSW and anyone who works or volunteers with your child must hold a clearance number. We also recommend having a 'Working with Children Check' for any staff if your child will be in the home when the worker is providing supports to you.

For further information about the 'Working with Children Check', contact the Office of the Children's Guardian (NSW).

The cost of the 'Working with Children Check' is covered by the potential employee.

- **National Police Check**

Obtaining a criminal record check of any employee is an important safeguard for you.

For the 'National Police Check', you need to contact the Criminal Records Section of the NSW Police Force on (02) 8835 7888. The NSW Police Force website at www.police.nsw.gov.au has forms you can use for the 'National Police Check'. Go to NSW Police Force > About us > Structure > Specialist Operations > Forensic Services > Criminal Records Section.

It's up to you whether you ask the employee to arrange to provide you with the results of a 'National Police Check', or whether you ask the employee to give you consent to do this check for them.

9.8 Making sure I am able to provide a safe workplace

You have a legal duty to ensure the health and safety of anyone carrying out work for you.

This includes:

- staff you employ directly
- self-employed people or contractors
- employees of service providers while they are working for you
- volunteers.

You have to make sure that your home, which is their workplace, is safe and free from risks. If you don't comply with this obligation, you could be prosecuted and given a significant penalty.

If you're thinking about using a service provider or a contractor using your funding, you must ask them about how they will manage risks to the health and safety of their workers and to you.

There are some excellent resources available to help you manage the safety of your support workers, including codes of practice from SafeWork NSW, and a website specifically designed to assist you assess and manage any risks to your workers. Details are provided in the 'Resources' section at the end of this handbook.

10. Managing staff

Once you've decided who to employ, you can offer them the job. It's a good idea to provide your preferred candidate with written terms of employment. These can be set out in a letter or a formal contract.

When you hire someone new, you might decide to have a probation period for the first few weeks or months on the job. During the probation period, you should closely supervise, train and assess your new employee to see if they are suitable for the job. For further information about employee probation periods, contact the Fair Work Infoline on 13 13 94.

Your staff should be provided with a copy of the Fair Work Information Statement. Copies of the statement, as well as template letters on employing staff, can be found at the Fair Work Ombudsman website at www.fairwork.gov.au.

10.1 Insurances

If you're planning to directly employ staff, the necessary insurances will be arranged and paid for by **icare lifetime care**. This will include:

- workers compensation insurance
- personal accident insurance and public liability insurance.

You'll need to let your coordinator know how many staff you plan to have on your roster at any one time.

10.2 House rules and code of conduct

As part of the position description or duty statement, you can develop house rules and a code of conduct. This can form part of the arrangements between an employer and employee working in your home. For example, house rules can explain how your workers can address you and which parts of your home they can and can't go into.

If you decide to develop house rules and a code of conduct, it's important to know that these can't override any of the rules set out in the National Employment Standards or any modern awards that might apply. The Fair Work Infoline can provide further advice on 13 13 94.

10.3 Training staff

You'll need to consider the skills of the support worker and the duties of the position when deciding if staff training needs to be provided.

It's important that you're able to provide on the job training and direction to your support workers so they know what is expected of them and can meet your support needs.

If specialised training of your support workers has been recommended by your care needs reviewer, funding will be included in your budget so you can pay for this. Details of approved funding for training will be included in the certificate for your support services.

Specialised training may include the use of professionals such as your occupational therapist, physiotherapist, dietician or speech pathologist to teach your support workers about aspects of your care requirements.

10.4 Keeping records about my staff

As an employer, the *Fair Work Act 2009* requires you to keep and maintain records, including:

- dates and hours your employees work for you
- how much they are paid.

You're also required to give employees a regular pay slip that includes these details. These can be provided in hard copy or by email.

10.5 Treating my staff fairly

In NSW, discrimination during employment is generally illegal under both Commonwealth and NSW legislation.

The legislation includes:

- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Anti-Discrimination Act 1977 (NSW).
- The Anti-Discrimination Act 1977 (NSW) covers discrimination on a number of grounds such as disability, sex, age, sexual orientation and a person's responsibilities as a carer.

Anti-discrimination legislation applies to all employees. Job applicants and probationary employees are also covered by the law. In short, all workers have the right to be treated fairly in the workplace. You need to take reasonable steps to make sure your employees' workplace is free from discrimination and harassment.

You can seek advice about any discrimination matters from the Australian Human Rights Commission or the Anti-Discrimination Board of NSW.

Contact details are listed in Resources, at the end of this handbook.

10.6 How to dismiss staff

An employment contract may be brought to an end either because you want your employee to leave, or they decide to leave.

There are three basic reasons that a person's employment may come to an end:

1. The employee resigns and ends their employment.
2. The employer (you) ends the employment because the person has had an unsatisfactory work performance, a poor attitude towards the job or a similar problem.
3. The employment ends as a result of other events, for example, because the task for which the employee was specifically hired is completed, a fixed term contract has come to an end or you've stopped using direct employment and/or direct payments.

Broadly speaking, there are two ways that you can end a person's employment with you:

• **Dismissal with notice**

In this situation, you must give the employee written notice of your intention to end their employment. Notice periods generally range from one to four weeks, depending on your employee's period of continuous service. However, notice periods don't apply to some categories of employees, such as casuals and those who have done something seriously wrong, like breaking the law.

• **Summary dismissal**

This type of dismissal occurs when an employee is immediately dismissed as a result of serious misconduct. An act of serious misconduct may include assault, theft, fraud and being under the influence of drugs or alcohol at work.

• **Unfair dismissal**

If you unfairly dismiss or unlawfully end someone's employment, they may have rights under the law. You need to carefully consider the way you end a person's employment with you. Information about unfair dismissal and unlawful termination can be found at the Fair Work Ombudsman's website www.fairwork.gov.au

11. Paying staff

11.1 Managing payroll and your tax obligations

As an employer, payroll and taxation obligations can be complicated.

We have provided a brief summary here, but we recommend that you ask an accountant or other taxation specialist about this.

Bookkeeper

Bookkeeping support is worth considering to assist you manage your payroll, taxation, superannuation, leave entitlement requirements and reporting. Bookkeeping services are generally available in the local community. Quotes will allow you to select a bookkeeper who will be good value for money.

Accountant

Accountant support is worth considering to assist you manage your end-of-year reporting to the ATO and **icare lifetime care**. Accountant services are generally available in the local community. Asking for a quote will also allow you to select an accountant who will be good value for money.

Training support

You may wish to take part in some training support to help you set up your program. We can fund the reasonable and necessary costs associated with developing skills to help you manage your supports. This training can be provided before you start managing your own supports, or can be provided to support you for a period of time after you've commenced. Please speak with your coordinator if you'd like this help.

Accounting software

Accounting software may help you record and process your transactions, and help you manage your budget and reconcile your accounts.

11.2 Employment pay and conditions

The Fair Work Ombudsman and the Fair Work Commission provide information on employment matters for employers and employees.

The main piece of law regulating employment in Australia is the *Fair Work Act 2009* (Cth). This Act sets out minimum terms and conditions of employment, known as the National Employment Standards (NES), and provides guidance on a range of issues.

It's important to note that a modern award may apply to your employees. A modern award is a document that explains the rules about working in a particular type of employment or job. In many cases, direct employment will involve the employment of 'home carers'.

Usually, home carers will fall under the Social, Community, Home Care and Disability Services Industry Award 2010, a modern award that sets out terms and conditions that are additional to the National Employment Standards (NES).

If you're unsure whether a modern award applies to your staff, contact the Fair Work Ombudsman for more information phone 13 13 94 or go to www.fairwork.gov.au.

11.3 Pay rates

As an employer, you must make sure that your employees are paid what they are entitled to. They must also receive all of the minimum standards of employment that they are entitled to under the law. The Fair Work Ombudsman's Pay Rates Calculator can help you work out the pay rates for your employees, and is available at their website at www.fairwork.gov.au.

11.4 Salary on-costs

Salary on-costs are the additional costs (above the annual salary) you'll have to pay when you employ someone to do a job. These costs might include:

- paid leave, such as annual leave and sick leave
- annual leave loading
- superannuation
- long service leave
- workers compensation insurance.

You need to make sure that you set aside enough funding to cover these costs. You should also consider how you'll cover the cost of replacement staff when one of your regular workers is on paid leave. The Fair Work Ombudsman has a range of tools to help you work out the leave entitlements for your employees. (Go to www.fairwork.gov.au) You can also ask an accountant or bookkeeper to help you with this.

11.5 Superannuation

As an employer, you'll need to pay superannuation for your employees. From 1 July 2014, all employers must pay 9.5% of an employee's earnings into a superannuation fund or retirement savings account. These payments are based on what an employee earns on a day to day basis and does not include overtime. The payment has to be made at least every three months.

Detailed information about the superannuation you must pay can be found on the ATO website at www.ato.gov.au. You should always seek professional advice when dealing with superannuation entitlements and your obligations.

11.6 Register for a PAYG withholding account

Pay As You Go (PAYG) withholding tax is the amount you set aside from your employees' wages for tax. You need to pay this to the Australian Commonwealth Government, usually on a quarterly basis.

If you're planning to directly employ support workers, you'll need to apply to the ATO to register a PAYG withholding account. If you're planning to use a bookkeeper or accountant to help you manage your payroll, you can discuss the requirements directly with either of them. The form you need to complete is located on the ATO website at www.ato.gov.au.

The ATO website has examples and detailed instructions about PAYG withholding and Personal Income Tax, for employers. Also, the ATO site has a Tax Withheld Calculator to help you work out how much tax to withhold.

11.7 Tax file numbers

A tax file number (TFN) is a number that the government uses to keep track of the amount of tax people have paid. You may need to declare your own TFN to the government. You may also need to pass on your employees' TFNs to their superannuation fund or retirement savings account. You can get TFN declaration forms by ordering them online from the ATO. Go to ATO > Click on Download the TFN declaration form > Tax file number declaration

11.8 Goods and Services Tax (GST)

There is no need for you to register with the ATO for GST purposes. Your payments from **icare lifetime care** can't be considered a business for GST or other tax purposes. If you've paid GST for service using your **icare lifetime care** funding, it can't be recovered from the Australian Taxation Office.

Resources for engaging workers are on the next page.

If you have any questions about self-management of your funding,
please speak to your **icare lifetime care** coordinator.

resources

Contractors

The 'Independent contractors decision tool' will help you work out if a person is an employee or an independent contractor. It's at the business.gov.au online government resource.

Website - www.business.gov.au

Online publication address

www.business.gov.au/Info/Plan-and-Start/Start-your-business/Independent-contractors/Independent-contractors-decision-tool

Print publication address

www.business.gov.au/info/plan-and-start/start-your-business/independent-contractors/independent-contractors-decision-tool

icare lifetime care Attendant Care Panel Providers

Website - www.lifetimecare.nsw.gov.au

Online publication address

www.lifetimecare.nsw.gov.au/participants-and-carers/attendant-care/attendant-care-providers

Print publication address

www.lifetimecare.nsw.gov.au/participants-and-carers/attendant-care/attendant-care-providers

Legal advice

There may be a need for you to talk to a lawyer about self-management. You can choose to use your own legal representative or use the agencies below to help you select an appropriate legal provider.

LawAccess NSW

LawAccess NSW is a free government telephone service that provides legal information, referrals and, in some cases, advice for people who have a legal problem in NSW.

Phone - 1300 888 529

Website - www.lawaccess.nsw.gov.au

Online publication address

www.lawaccess.nsw.gov.au/Pages/lawassist_index.aspx

Print publication address

www.lawaccess.nsw.gov.au

Solicitor Referral Service, Law Society of NSW

If you need legal help and are looking for a law firm, the Solicitor Referral Service at the Law Society of NSW can provide free, personalised assistance. The Law Society of NSW also operates a service that helps people find solicitors who specialise in a particular area of law.

Website - www.lawsociety.com.au

Online publication address

www.lawsociety.com.au/community/findingalawyer/index.htm

Print publication address

www.lawsociety.com.au/community/findingalawyer/index.htm

Phone - (02) 9926 0300

National Police Check'

For information about national criminal records checks, contact the Criminal Records Section of the NSW Police Force.

Website - www.police.nsw.gov.au

www.police.nsw.gov.au/about_us/structure/specialist_operations/forensic_services/criminal_records_section

Phone - (02) 8835 7888

Planning for emergencies

The Physical Disability Council of NSW has developed some very good information and resources to help you think about and plan for an emergency. The resources are available online.

Website - www.imokay.org.au

Online and Print publication address

<http://imokay.org.au/tools-and-resources/>

Superannuation

Find out about paying superannuation at this Australian Taxation Office (ATO) site.

Website - www.ato.gov.au

Online publication address

www.ato.gov.au/Business/Super-for-employers/

Print publication address

<https://www.ato.gov.au/Business/Super-for-employers/>

Phone - 13 10 20

Tax - PAYG withholding

The Australian Taxation Office (ATO) website has information about PAYG withholding rules. The information will help you meet your PAYG withholding obligations.

Website - www.ato.gov.au

Online publication address

www.ato.gov.au/Business/PAYG-withholding/

Print publication address

<https://www.ato.gov.au/Business/PAYG-withholding/>

Phone - 13 2865 (individuals)

- 13 7226 (businesses)

Working with Children Checks'

Information about NSW working with children checks can be found at the NSW Office of the Children's Guardian.

Website - www.kidsguardian.nsw.gov.au

Online and Print publication address

www.kidsguardian.nsw.gov.au/working-with-children/working-with-children-check

Phone - (02) 9286 7219

Note: The cost of a 'Working with children check' is covered by the potential employee.