

## Contents

Legal Standing of the NTCER .....	1
Legal References .....	1
Leave Entitlements.....	2
Restriction on Trade.....	3
In Practice Teaching .....	3
Educational Release .....	3
Payroll Tax.....	4
Full time Vs Part time.....	5
Admin Time .....	5
Payment Intervals .....	6
Percentage Payments .....	7
Further Assistance.....	9

## Legal Standing of the NTCER

### **Q: What legal standing does the NTCER have?**

A: The National Terms and Conditions for the Employment of registrars is a goodwill document that is negotiated between GPSA and GPRA every two years. It is not a legal document. The NTCER sets out agreeable terms between the negotiating parties.

### **Q: Do I have to follow it?**

A: Yes.

### **Q: How is my compliance with the NTCER enforced?**

A: The Commonwealth contracts between the Department of Health and your RTO require that they ensure employment contracts are consistent with the NTCER. You will note that your Training Practice Agreement or equivalent between you and your RTO will similarly have a requirement in it that stipulates you must employ your registrar in accordance with the NTCER. Failure to comply with conditions set out in the NTCER could see you lose training practice status with your training provider.

## Legal References

### **Q: There is a difference between a contractor and a tenant GP. Is there a legal precedent or ruling that states that GPT3 or 4 need to be employed?**

A: A general answer cannot be given to this question. The fundamental issue in this context is where a particular arrangement is, as a matter of law, an employment relationship or some other kind of relationship. The answer depends on the circumstances of each case, including the terms of the written contract and the commercial reality of the situation.

**Q: Can you please provide legal references to support this position?**

**A:** There is a very large body of case law on this subject. A general reader would probably find it more informative to read an authoritative text book such as *"Independent Contractors: A Practical Guide"* by Piper Alderman, published by CCH.

## Leave Entitlements

**Q: Is the percentage included in the annual leave accrual?**

**A:** No. The percentage is calculated separately and attracts no leave accrual.

**Q: How is the percentage payment treated for the purpose of calculating leave entitlements?**

**A:** Under the NTCER a registrar at any level can receive the higher of the base salary and percentage of billings or receipts. Under the National Employment Standards, payment for annual leave and personal/carer's leave is at the "base rate of pay" which is defined to exclude any "incentive based payment or bonus". The percentage payment is an incentive based payment or bonus and is therefore excluded from the registrar's base rate of pay. The registrar is therefore paid at their base salary rate during periods of annual or personal/carer's leave.

**Q: What is the leave loading payable for registrars?**

**A:** There is no leave loading payable under the NTCER. Registrars should be paid (for the leave they have accrued) as if they were receiving their base salary normally.

**Q: If a registrar has accrued 2 weeks leave in GPT 1 (over 6 months) but they don't take any leave during that term and they continue in my practice for GPT2 and opt to take the leave accrued in GPT 1 during GPT2 do I pay them their GPT 1 leave accrual at the GPT 1 rate or the GPT 2 base rate?**

**A:** Leave must be paid at the base rate applicable to when it is taken. So in this scenario the registrar is entitled to be paid the two weeks leave accrued during GPT1 at the GPT2 rate. For this reason, it is recommended that you stipulate during your early interviews that all leave must be taken during the term in which it is accrued.

**Q: I understand that the registrars are entitled to 2 weeks of leave per 6 months -is this correct?**

**A:** Under the NTCER and the National Employment Standards registrars are entitled to four weeks leave annually. Leave is accrued at this rate, so if you have a registrar for six months, at the end of six months they will have accrued 2 weeks leave, less any leave already taken.

**Q: What if my registrar does not take leave during the six months they are employed at our clinic?**

**A:** In this situation, when the employment ends, the registrar will be entitled to payment for any untaken accrued leave, calculated at the base rate.

**Q: Can I make my registrar take leave during their six month contract?**

**A:** The National Employment Standards govern the taking of annual leave. Accrued annual leave may be taken for a period agreed between the employer and the employee. The employer must not unreasonably refuse a request by the employee to take annual leave. The employer can require that leave be taken during the employment rather than having to pay it out, provided that the requirement is reasonable. This should be established up front during the negotiations and potentially included in the employment contract if you intend for this to happen.

Paying out leave at the end of the contract will cost the practice more than paid leave taken during the term.

**Q: Can I refuse my registrars request to take leave during certain periods?**

**A:** Yes, as long as you do not unreasonably refuse. So if you have periods where a number of other staff have booked leave and it would be detrimental to the practice to allow the registrar to take leave at the same time, this would be considered reasonable grounds to not approve their leave.

## Restriction on Trade

**Q: What obligations should a practice seek to have a registrar agree to, in regard to patients of a clinic at which they receive training, if the registrar leaves and patients follow the registrar to their new clinic (often their long term career post)?**

**A:** The NTCER allows for the inclusion of ‘restrictive covenant’ clauses in employment contracts for Registrars with the caveat that the restrictions:

- Do not unreasonably interfere with the completion of the registrars training; or;
- Should not be wider than is reasonable necessary to protect the employer’s interests in terms of the restricted activities, the duration and the geographical area of its coverage.

GPSA have developed an employment contract template, which articulates recommended clauses relating to post employment restrictions. However, one size does not necessarily fit all, and therefore it is recommended that practices consider obtaining specific legal advice about their own circumstances if they wish to include post-employment restrictions in their contracts with registrars.

## In Practice Teaching

**Q: How much in practice teaching must our supervisors provide to our registrars and is this paid?**

**A:** In practice teaching is mandated and must be paid for GPT 1 and 2 at the following rates:

GP Term	In practice teaching time required	Paid?
<b>GPT 1</b>	3 Hrs per week	Yes at the GPT 1 base rate
<b>GPT 2</b>	1.5 Hrs per week	Yes at the GPT 2 base rate
<b>GPT 3&amp;4</b>	0 Hrs per week	No

## Educational Release

**Q: Is educational release for GPT3 and GPT4 paid?**

**A:** No. GPT 3 and GPT4 are not paid for educational release time.

**Q: Do we have to pay for educational release if it falls on a weekday they are rostered to work?**

**A:** Yes. Educational release for GPT 1 and GPT 2 Registrars is payable where it falls on a day they are normally rostered to work.

**Q: Do we have to pay for educational release if it falls on a weekday they are NOT rostered to work?**

**A:** No. Educational release for GPT 1 and GPT 2 Registrars is not payable where it falls on a day they are not normally rostered to work.

**Q: Do we have to pay for educational release if it falls on a weekend or afterhours?**

**A:** No. Educational release is not payable for GPT 1 and GPT2 registrars where it falls on a weekend or afterhours.

**Q: How much educational release time must I release them for?**

**A:** Each RTO manages educational release differently. You should confirm with the RTO on what days they will be required to attend educational release throughout the term of their employment.

**Q: If my registrar works 38 hours, over four days and the fifth day is an educational release day can the registrar take time off in lieu?**

**A:** The registrar may take equivalent time off in lieu in the day immediately preceding or following the educational release day. This time is for the purposes of fatigue management and may not be accrued and used at any other time.

## Payroll Tax

**Q: At what level of wages does payroll tax start to apply?**

**A:** The Payroll Tax Threshold is a state tax and therefore it varies from state to state. You can find more information about the payroll tax threshold in your state by simply searching 'payroll tax threshold Victoria' or the equivalent for your State or Territory.

**Q: Currently registrar wages are part of our Worksafe declaration and payroll tax reporting. Under the new T&C's are Registrars exempt from our payroll tax requirements?**

**A:** Payroll tax obligations for clinics are not determined by the NTCER. Payroll tax is a state tax that varies between jurisdictions. For this reason, GPSA is not able to give a definitive answer to this question. You should seek advice from your accountant or lawyer about payroll tax implications for your business.

## Full time Vs Part time

**Q: What is the difference between full time training hours and full time payroll hours?**

**A:** Full time training hours is what is used by the RTO to determine how many hours have been completed to fulfil a registrars training hours requirement. It has nothing to do with payroll hours. Payroll hours is the time for which the registrar must be paid, such as the hours they are contracted to be present in the training practice, which includes in practice teaching time, consulting time, admin time, paid leave, educational release.

**Q: What is the definition of part time?**

A registrar is considered part time if they work less than a 38 hour week on average over a four week period.

**Q: My registrar works the same as my other doctors; 2 sessions per day, 5 days per week. Is this full time?**

**A:** If your registrar is working 2 x 3.5 hour sessions each day (i.e. 7 hours with 30mins to an hour for lunch in between (unpaid)) they will not be technically working full time.

e.g. 5 days x 7 hours = 35 hours/ week.

38 hours is considered full time. Therefore, if they are only working 2 sessions per day, but being paid full time, your registrar is actually being overpaid.

At 35 hours/ week your registrar is actually working 0.92 FTE

$35/38 = 0.92$  Full Time Equivalent.

Of course a registrar in GPT 1 and 2 will need to stay for some additional in practice teaching time which will increase the hours accordingly and this may then bring them up to full time.

## Admin Time

**Q: What is the intention of admin time?**

**A:** The intention of admin time is to allow sufficient time for a registrar to keep their patient records up to date and allow for patient follow up time.

**Q: How much admin time must I allow for my registrar?**

**A:** Registrars are allowed approximately 2.5 hours per week, or prorata for part time registrars.

**Q: My registrar wants to finish up 2.5 hours early each Friday, but receive pay per their admin allowance. Is this allowed?**

**A:** Admin time is not time off. It is dedicated in-practice 'catch up' time. Most practices allow 15 minutes at the end of each session for registrar admin time. This needs to be genuine admin time where there is not a patient booked during this time. It is not provided as a form of leave to be accrued.

## Payment Intervals

**Q: If you pay the % at 13 weeks doesn't the registrar get 'smashed' with tax?**

**A:** The amount payable is only the difference between the base salary earned during the period and the percentage of receipts if the percentage of receipts is higher than the salary paid over the 13 weeks. The payment is a component of wages and therefore attracts income tax.

**Q: What is the disadvantage of paying the agreed percentage fortnightly?**

**A:** Practices can choose to offer contracts that require paying percentages at any interval they find most beneficial to their circumstances so long as it is not greater than 13 week intervals. Some prefer monthly from a cashflow perspective, some calculate fortnightly. There is some benefit to quarterly payments from an administrative time perspective as making percentage calculations takes the same amount of time whether calculating for a period of three months or 2 weeks. If this process takes you 15 minutes each time you do it and there are 6 or more fortnights in a 13 week period, the percentage calculations are costing you 1.5hrs in wages per quarter compared with just 15 minutes per quarter if they are paid every 13 weeks.

In addition to this, as it is only the difference between the registrars gross base salary and gross receipts during the period that is payable (eg. If the registrars gross salary for the quarter is 1832.60 x 13 = \$23, 823, but the registrar earns the practice only \$15,000 in receipts, the registrar is not entitled to a percentage of billings by a long margin. You may find the registrar bills well during one fortnight and not cover their own costs by a significant margin during a couple of the fortnights. This could be due to illness, leave, a reduction in patients presenting to the clinic or the registrar just finding their 'billing feet'. Whatever the reason for fluctuations in billing/ receipts by the registrar, over 13 weeks the peaks and troughs can be made equitable for both the practice and the registrar. In contrast, if you are paying fortnightly and a registrar has a few good weeks and you pay out the percentage and this is followed by consecutive weeks of poor (less than their salary) billings/ receipts the practice won't have to pay the percentage, but they will have already paid a percentage when if calculated over 13 weeks they may not have had to at all.

## Percentage Payments

**Q: Can you please provide an example of how the percentage is calculated, including annual leave, super and tax?**

Registrars Practice Receipts over 13 weeks	Registrar %	Gross Registrar Base Salary over 13 weeks (FTE)	Difference between receipts and base salary	Super payable on percentage payment	Income Tax payable on percentage payment	Registrar Take Home percentage at 13 weeks
\$60,000	44.79	Annual base for GPT 3 & 4 is 95,295 or (1832.60/wk) Gross FTE		9.5%		
<b>Calculation</b>	= Total Practice Receipts for the period x 0.4479	(Base salary/ 52 weeks) x 13 weeks = Gross Registrar Base Salary (FTE) for 13 weeks	Registrar Percentage of Registrar Receipts – Gross Registrar salary payments over the same period = % payable	Percentage Payable x 0.095 = Super payable on the percentage	Use a <a href="#">tax calculator</a> to calculate the PAYG tax you need to withhold  Or the appropriate tax tables available from the ATO.	Percentage payable – tax = registrar take home percentage
<b>Worked Example</b>	\$60,000 x 0.4479 = \$26,874	(\$95,295/ 52) x 13 = \$23,823.75 (Gross FTE)	\$26, 874.00 - \$23, 823.75 = \$ 3, 050.25	\$3,050.25 x 0.095 = \$289.77	According to pay calculator, tax on \$3050.25 is \$728.00	\$3,050.25 - \$ 728.00 = \$2,322.25

**A:** It is recommended that you manage base salary, leave, tax and super as you would a regular employee and just adjust for additional super and tax (if a percentage amount is payable) every 13 weeks. Remember that there is no leave loading required under the NTCER and no additional leave calculation for additional percentage payments.

**REMEMBER:** In the above scenario we have shown you an example where a percentage was payable. This is in addition to the base salary you will have been paying fortnightly to your registrar as an employee. It is also important to note these calculations are for a full time GP registrar (38 hours) and therefore you would need to adjust for part time.

**Q: Can you please provide an example where a percentage would not be payable?**

Registrars Practice Receipts over 13 weeks	Registrar %	Gross Registrar Base Salary over 13 weeks (FTE)	Difference between receipts and base salary
\$53,000	44.79	Annual base for GPT 3 & 4 is 95,295 or (1832.60/wk) Gross FTE	
<b>Calculation</b>	= Total Practice Receipts for the period x 0.4479	(Base salary/ 52 weeks) x 13 weeks = Gross Registrar Base Salary (FTE) for 13 weeks	Registrar Percentage of Registrar Receipts – Gross Registrar salary payments over the same period = % payable
<b>Worked Example</b>	\$53,000 x 0.4479 = \$23,738.70	(95,295/ 52) x 13 = \$23,823.75 (Gross FTE)	\$23,738.70 – Earned Percentage -\$23,823.75 – Base Salary = <b>-\$ 85.05 – Nothing Payable</b>

In the above scenario the full time GPT 3 or 4 registrar has not generated enough receipts in the 13 week period to receive a percentage.

**REMEMBER:** The registrar is eligible for the **base salary and the fixed percentage** of billings or receipts earned (44.79% + Super) **LESS** the salary earnings already paid.

**Q: If my registrar generates less in billings or receipts than their base salary in one 13 week period, can I deduct this from a subsequent 13 week period?**

**A:** No. Percentages are payable not less than every 13 weeks. Losses may reflect that a registrar took leave during the pay period and are not recoverable. If your registrar is consistently operating at a loss and they are not in their GPT1 term. This indicates a need for some training and or potentially some performance management.

### Further Assistance

**Any other questions? Please email [enquiries@gpsupervisorsaustralia.org.au](mailto:enquiries@gpsupervisorsaustralia.org.au).**