

Legal Guide to Setting Up a Private Practice



Reading time:

Chris Melin

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Structures for private practice

There are five structures you may consider when setting up a practice.

Sole trader

You practice by yourself as the only professional.

- **Pros:** independence, less cost to run and easier to manage.
- **Cons:** potentially ineffective for tax purposes due to the high tax rates (45%) that kick in as soon as you reach the tax earning threshold.

Trust

- **Pros:** flexible, you can practice as a sole practitioner or to engage with others. It gives the ability to distribute income and if set up properly, it could be highly efficient for tax purposes.
- **Cons:** the structure is complex, can be expensive to establish and administer, difficult to dismantle or make changes once it has been established. The power of the trustees is restricted by the trust deed.

Company

- **Pros:** limited liability to the assets of the company, fixed tax rate at 30%.
- **Cons:** compliance obligations (Corporations Act 2001) make it more complex and expensive to set up and maintain

Partnership

- **Pros:** you practice with other colleagues, so its relatively cheap to set up and maintain.
- **Cons:** no significant tax incentives, partners are liable for each other's actions.

Associateship

Practitioners operate the practice together, however, each doctor operates a different practice for tax and legal purposes. For example, groups of doctors may share rooms or expenses but they are acting independently.

Registration obligations

- You must:
 - be registered with the Australian Health regulation Agency (AHPRA)

- have a Medicare provider number to work in private practice. You will need it to claim, bill and refer or request Medicare services.
- Register for the Pharmaceutical Benefits Scheme to obtain a prescriber number and prescribe PBS medications.
- obtain professional (medical) indemnity insurance, according to the Health Practitioner Regulation National Law (2009) section 129 (1).
- You may also need insurance for other aspects of your practice. For example, if you have a corporate structure or use a service company in your practice, you should think about insurance for the corporate entities as well as the need for cyber risk insurance.

Telehealth

- Extending until 31 December 2021, temporary MBS telehealth items have been made available to help reduce the risk of community transmission of COVID-19 and provide protection for patients and health care providers.
- Always follow Medicare and AHPRA guidelines and requirements in respect of all telehealth consults.
- A service may only be provided by telehealth where it is safe and clinically appropriate to do so.
- All providers are expected to obtain informed financial consent from patients prior to charging private fees for COVID-19 telehealth services.
- Main risks associated with telehealth are:
 - **Misdiagnosis:** due to inability to perform a hands-on diagnosis. A practitioner will have discharged their duty to take reasonable care if they take into account the limitations of the technology when making the diagnosis or recommending treatment.
 - **Inferior equipment technology:** there are no prescriptive laws in Australia as to the type and standard of equipment that must be used when providing services via telehealth. Nonetheless, it is established law that when services are provided, they must be provided to a standard that the person receiving them is reasonably entitled to expect.
- Make sure your indemnity insurance covers you for telehealth

Rise of Professional Services Reviews(PSR)

- Medicare compliance efforts are increasing.
- Some of the main issues observed:
 - MBS item requirements not always met, including minimum time requirements
 - Not all services are clinically indicated
 - Practitioner's clinical input and/or health records are inadequate
 - Informed consent had not been properly documented
 - No evidence of the patients having been in attendance on the date of service
 - Service was provided by a nurse rather than by the practitioner themselves
 - Services were billed prior to each service being completed.
- Be aware that repayments to Medicare are not covered by professional indemnity insurance.
- **Prevention strategies:**
 - Ensure your billings are always correct. It won't be a defence to say that "your colleagues do it that way".
 - Avoid the temptation to avoid to bill higher value items simply because you are dealing with a cohort of patients who might be particularly difficult and time consuming
 - If you are audited, contact your MDO immediately. Whilst the repayments aren't cover by your professional indemnity policy, the costs of legal representation are.
 - Keep adequate health records. Findings of poor record keeping have featured predominantly in findings of:
 - Negligence claims against doctors
 - Unprofessional conduct by the Medical Board
 - Inappropriate conduct at a PSR hearing, likely resulting in repayment of fees and/or suspension of the right to charge or claim for Medicare rebates.

Advertising and testimonials

- Section 133 (1) of the Health Practitioner Regulation National Law Act 2009 provides that a person must not advertise a health service in a way that:
 - Is false, misleading, deceptive, or likely to be.
 - Offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer.

- Uses testimonials or purported testimonials about the service or business
- Creates an unreasonable expectation of beneficial treatment
- Directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.
- The Act protects the public by ensuring that only registered health practitioners who are suitably trained and qualified use titles protected under sections 113-119 of the Act.

Defamation

- Social media and online doctor sites are increasingly being sued
- What immediate steps should you take?
 - Write or email the patient requesting they remove the online comment.
 - If the patient is anonymous, request the website administrator to remove the comment.
 - If not successful, consult a lawyer to take urgent steps:
 - “specific performance” – removal of the offending comment
 - “injunction” – an order to prohibit republication
 - You may consider defamation proceedings.

Workplace laws

When setting up a practice, there a plethora of laws that you are faced with, both State and Federal, including:

- Australian Human Rights Commission Act 1986
- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Fair Work Act 2009
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Work Health and Safety Act 2011
- Workplace Gender Equality Act 2012
- Privacy Act 1988

Practitioners may need to obtain legal advice to be across these various issues.

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