Engagement of Contractors Policy

Responsible Officer
Executive Director, Human Resources

Approved by
Vice-Chancellor

Approved and commenced
July 2019

Review by
July 2022

Relevant Legislation, Ordinance, Rule and/or Governance Level Principle
- Income Tax Assessment Act 1997
- Payroll Tax Act 2008 (Tas)
- Fringe Benefits Tax Assessment Act 1986
- Superannuation Guarantee (Administration) Act 1992
- Fair Work Act 2009
- Workers Rehabilitation and Compensation Act 1988 (Tas)
- Work Health and Safety Act 2012
- Governance Level Principle 11 - Employment

Responsible Organisational Unit
Human Resources

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1 Objective

The objectives of this Policy are to ensure that:

- all persons engaged by the University receive remuneration and entitlements in accordance with the law, including law relating to employment, taxation, superannuation and worker’s compensation, and
- the University engages only suitably qualified and experienced Contractors.

2 Scope

This Policy applies to all members of the University involved in procurement of employees or contractors.

3 Policy Provisions

3.1 Restrictions on Engaging Sole Traders as Contractors

3.1.1 Contract Wholly or Principally for Labour

Sole Traders who:

- will be paid wholly or principally for their personal labour and skills;
- must perform the work personally (can’t delegate); and
- are paid an hourly rate rather than for a particular item, outcome or deliverable

must be engaged as employees under contracts of employment.

3.1.2 Independent and Established Business

Sole Traders who do not have an Independent and Established Business must be engaged as employees under contracts of employment.

Students, honorary or adjunct appointees of the University conducting services from University premises will be presumed not to have an Independent and Established Business unless the contrary can be demonstrated to the reasonable satisfaction of the Executive Director, Human Resources.

3.1.3 Engagements for Teaching, Tutorial and Academic Duties and Other Core University Functions

Sole Traders may not be engaged as contractors to deliver lectures or tutorials, to perform academic duties or to perform other core University functions that form part of the normal academic activity of the University. Sole Traders performing such duties must be engaged under contracts of employment.

3.1.4 Insurance

Sole Traders who do not hold personal accident insurance, or do not hold a policy of worker’s compensation insurance covering that individual, must be engaged as employees under a contract of employment.
3.1.5 Certain Work Involving Exercise of Intellectual, Artistic, Musical, Physical or other Personal Skills

Sole Traders who will be paid to:

- perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills
- provide services in connection with any of the above activities, or
- perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast

must be engaged as employees under a contract of employment.

3.1.6 Current Employees

Current employees must not also be engaged as a Sole Trader by the University.

3.1.7 Former Employees

Former employees who have received a redundancy on the condition that they are not reemployed by the University for a particular period must not be directly engaged by the University, including as a Sole Trader, during that period.

3.1.8 Deemed Employees

In addition to the foregoing circumstances, where the law applicable in the place the work is to be carried out deems a Sole Trader to be an employee of the University (including for the purpose of tax liability or withholding, superannuation guarantees and worker’s compensation insurance), that Sole Trader must be formally engaged as an employee under an employment agreement.

3.1.9 Exceptions

The Executive Director, Human Resources may from time to time approve exceptions to clauses 3.1.1 - 3.1.7 having regard to the particular circumstances of the proposed engagement and the applicable law.

3.2 Engagement Process

Before engaging a service provider as an independent contractor, the Head of Organisational Unit needs to be satisfied that the contract will not give rise to an employment relationship. Advice should be sought from Human Resources if required.

Contractors must be engaged only in accordance with the University’s Procurement Policy

Written agreements which are signed by an authorised delegate of the University and the contractor should be put in place with all contractors. Agreements should clearly set out all material terms of the arrangement and should include at least:

- the name of the contractor, their address and their ABN (if applicable)
- the scope of work
• what is to be delivered and when
• the total amount payable, the payment basis and timing of payment, and
• insurance arrangements.
Legal Services’ template Independent Contractor Agreement must be followed when developing any such agreement. Legal Services can provide advice and assistance with the content of any agreement.

Where a contractor is receiving funds, equipment, materials or information which was received by the University under an agreement with a third party, such as a research or teaching funding agreement (“Head Agreement”) the Organisational Unit engaging the contractor is responsible for ensuring that the terms of the agreement with the contractor are consistent with the Head Agreement.

A representative of the University engaging a contractor must ensure that that contractors hold adequate insurance to cover the risk associated with the contract and work being provided and in any event should hold at least:

• for contractors providing advice: at least $1m per claim of professional indemnity insurance or equivalent
• for contractors providing goods and/or services: at least $10m per claim of product liability insurance
• for all contractors:
  o at least $10m per claim of public liability insurance, and
  o workers compensation insurance in the amount required by law, or if no workers compensation insurance is required to be held by law, a policy personal accident insurance covering the individual providing the goods or services

and evidence of such insurance (such as certificates of currency) should be sighted and kept by the Organisational Unit. The Head of the Organisational Unit engaging the contractor may approve deviations from the minimum insurances stated above taking into account the risk assessment for the relevant contract and work being provided, and following consultation with Financial Services.

A budget commitment should be raised for the total agreement amount. A copy of the agreement is to be attached to the commitment request. The Budget Centre should forward the appropriately authorised invoice(s) to Financial Services for payment.

4 Definitions and Acronyms

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<tr>
<th>Term/Acronym</th>
<th>Definition</th>
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<tr>
<td>ABN</td>
<td>Australian Business Number.</td>
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<tr>
<td>Budget Centre</td>
<td>A unit within the University’s financial management structure that is functionally and financially distinctive. University budget centres include Schools, Institutes, Co-operative Research Centres, administrative sections and University Business Enterprises.</td>
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| Independent and Established Business | • is to be assessed in the circumstances of the services to be provided and against the industry in which the contractor operates, considering matters such as the following:  
  • whether the contractor has a business name; |
• the nature and extent of advertising of the same services by the contractor;
• whether the contractor has other clients and the amount of work undertaken for those clients relative to the proposed services;
• whether the contractor supplies its own plant and equipment;
• whether the contractor engages staff or sub-contractors;
• whether the contractor has its own business premises;
• the method of operation of the business (such as tendering for work);
• the entrepreneurial risk it accepts;
• the nature of contracts entered into (eg formal long term or informal rolled over contracts);
• the history of the formation of the contractor’s business;
• whether the contractor bears the cost and responsibility for faulty materials or workmanship; and
• whether the contractor merely charges for services on an hourly rate and adds on the cost of materials.

Organisational Unit

College, Faculty, School, Centre, University Institute, other University Entity, Division, Section or University Business Enterprise.

Sole Trader

Means either:
• an individual trading in their own name or under a business name; or
• a company which is owned and controlled by one individual.

5 Supporting Documentation

• Conflict of Interest Policy and Procedure
• Procurement Policy
• Contractor Related Policies and Procedures
• Permit to Work Procedure
• Staff Induction and Training – Work Health and Safety Procedure
• Probity in Tendering Guidelines
• Tendering Guidelines
• Visitor Safety Management Procedure
• Work Health and Safety Policies, Procedures and Minimum Standards
• Records Management Policy, Procedures and Guidelines
• Australian Taxation Office website

6 Versioning

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<tr>
<td>Current Version</td>
<td>Version 3 – Engagement of Contractors Policy; approved July 2019</td>
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