

Name of Policy	Determining Employee/Contractor Status Policy
Description of Policy	This Policy outlines legislative obligations associated with the engagement of individuals and entities that provide services to the University on a temporary basis and the importance of proper characterisation of their status to ensure legal compliance.
Policy applies to	<input checked="" type="checkbox"/> University-wide <input type="checkbox"/> Specific (<i>outline location, campus, organisational unit etc.</i>)
	<input checked="" type="checkbox"/> Staff Only <input type="checkbox"/> Students Only <input type="checkbox"/> Staff and Students
Policy Status	<input type="checkbox"/> New Policy <input checked="" type="checkbox"/> Revision of Existing Policy
Description of Revision	Policy simplified and amended to provide greater clarity around employee/contractor determination and status for taxation purposes.

Approval Authority	Vice-Chancellor and President
Governing Authority	Chief Operating Officer
Responsible Officer	Director, Human Resources

Approval Date	7 April 2008
Effective Date	7 April 2008
Date of Last Revision	19 December 2016
Date of Policy Review*	19 December 2021

* Unless otherwise indicated, this policy will still apply beyond the review date.

Related Policies, Procedures, Guidelines and Local Protocols	Determining Employee/Contractor Status Guidelines Employee or Contractor Checklist
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1. Background

The University regularly engages individuals and entities (such as companies and trusts) to provide a range of services on a temporary basis. In some circumstances, it may not be clear whether the arrangement should be one of employer/employee or whether the person(s) or entity should be engaged as an independent contractor(s).

The distinction between employees and independent contractors is important in determining the University's obligations under a range of legislation relating to income tax, payroll tax, workers' compensation insurance and superannuation. The Australian Taxation Office and the respective Offices of State Revenue place the responsibility on the University to correctly process payments to 'employees' and 'contractors' and to remit the correct amount of Pay As You Go ("PAYG") withholding tax and payroll tax, as well as meeting superannuation, fringe benefits tax ("FBT") and worker compensation obligations.

2. Policy Statement

The University is committed to meeting its obligations in respect of:

- a. Pay As You Go (**PAYG**) withholding tax;
- b. payroll tax;
- c. workers compensation;
- d. Superannuation Guarantee Contributions (**SGC**)
- e. fringe benefits tax
- f. *Independent Contractors Act 2006* (Cth)
- g. Australian Taxation Office Taxation Ruling

Wherever possible the University will engage individuals as employees to ensure they are adequately covered for insurance and workers compensation purposes.

3. Policy Purpose

This Policy outlines the principles for determining the nature of engagements with individuals and entities (such as companies and trusts), and the specific obligations placed upon the University as a result of that engagement.

The policy has been developed to ensure the University meets its legal obligations and limits its exposure to penalties for misrepresentation, breach or non-compliance.

4. Application of Policy

This Policy applies to all individuals engaged or appointed by the University to perform a range of services.

This Policy does not apply to engagements entered into with service or labour hire organisations.

5. Policy Provisions

5.1 DEFINITIONS

"Checklist": means the Employee or Contractor Checklist that accompanies this Policy.

"Contract of Employment": means a contract under which a person (the employee) is employed in return for some benefit or remuneration from the employer. As a general rule, if the contract gives the employer a right of control over the employee's manner of doing the work, it is an employment contract, rather than a contract for services.

"Contract of Service": means a contract under which a person is engaged in the service of an employer to do such work as is contracted for and where the employer directs what is to be done. This is also known as a "Contract of Employment".

"Contract for Services": means a contractual arrangement by which one person or entity agrees to provide workplace services to another. The contract is between two principals (which can either be a person or entity) and neither is the employer of the other. The person or entity providing the services is an independent contractor. This is also known as a "contract by performance".

"Deemed Employee": means a person who the University contracts wholly or principally for the supply of their labour and who is unable to delegate responsibility to another person for the completion of the contract. Labour includes intellectual and artistic effort as well as physical effort.

"Guidelines" means the Determining Employee/Contractor Status Guidelines that accompany this Policy.

"Independent Contractor": means a person or entity who contracts to perform work for another person or organisation, but is not employed by that person or organisation. An independent contractor undertakes to produce a given result and the agreed payment becoming payable when the contractual conditions have been fulfilled. In principle, an independent contractor may decide how to perform a task, although in practice, the extent of control exercised by the party for whom work is being done may be substantial. An Australian Business Number (ABN) is not sufficient to determine independent contractor status. An independent contractor may also be referred to as a "Consultant".

5.2 POLICY PRINCIPLES

- 5.2.1 The University must ensure that the actions and decisions of individual organisational units do not breach its obligations under the relevant Federal and State legislation.
- 5.2.2 The characterisation of an employee or independent contractor must be clearly determined before any engagement undertaking is given. The determination of employee or contractor status will be made by the delegated officer authorised to approve staff appointments in accordance with the University's Delegations of Authority Policy and Register.
- 5.2.3 Subject to the Guidelines and the Checklist, the University will treat persons performing core University functions such as teaching, research, administration and other classes of work similar to those performed by existing University staff as employees for the purpose of income tax, Superannuation Guarantee Charge (SGC), FBT, payroll tax and workers compensation.
- 5.2.4 The onus is on any individual or entity who considers that they are exempt from a particular categorisation made by the University to present evidence of their exemption from the requirements in relation to PAYG withholding and SGC contributions to the University's satisfaction.

6. Policy Review

The University may make changes to this policy from time to time to improve the effectiveness of its operation. In this regard, any staff member who wishes to make any comments about this policy may forward their suggestions to Human Resources.

7. Further Assistance

Any staff member who requires assistance in understanding this policy should first consult their nominated supervisor who is responsible for the implementation and operation of these arrangements in their work area. Should further information or advice be required for employment matters, staff should visit [Service Central](#). Staff should contact the Office of General Counsel for contractual documentation matters or Finance for contractor payment matters.