# EMPLOYEE OR CONTRACTOR CHECKLIST

Please complete the questions contained in the Checklist below. Once you have completed the Checklist, it must be authorised by the Member of the Executive (as defined in the University’s Delegations of Authority Policy and Register.

**Section A**

Please complete this section to determine whether the individual is a common law employee.

|  |  |  |  |
| --- | --- | --- | --- |
| Name of individual |  | | |
| Nature of Work | 1a. | Will the individual be engaged directly, i.e. not through an entity such as a company, partnership or trust (Note an ABN alone does not qualify as one of these entities)? | Yes  No |
| 1b. | Will the individual perform tasks that are deemed core functions of the University including:   * Teaching * Research * Other Academic activities described in the Academic Workload Policy * Administrative, technical and/or maintenance support services * Other work that is similar to work performed by existing staff and/or an integral part of/essential to the business of the University | Yes  No |
| If you have answered **“yes”** to Question 1b above, the individual is **deemed an employee of the University and you are not required to proceed further in the Checklist.** The following obligations/payments will apply:   * Pay As You Go (**PAYG**) Withholding tax; * Superannuation Guarantee Charge (**SGC**); * Fringe Benefits Tax (**FBT**); * Workers’ compensation; and * Payroll tax.   Please complete the declaration at the end of this Checklist and obtain authorisation by the Member of the Executive in accordance with the University’s Delegations of Authority Policy and Register.  Payment for the provision of services will be paid through the **PAYROLL** into a nominated bank account based on the submission of the appropriate employment documentation to Human Resources. As an employee, the individual will be subject to the deduction of **PAYG tax withholding** following normal employment processes.  If you have answered **“no”** to Question 1b continue answering the questions below. | | | |
| Control | 2. | Does the University exercise control of (or have the right to control) how, when and where an individual performs their work?  E.g. The University is responsible for scheduling the work and/or related activities are published in an ACU timetable/timeline. | Yes  No |
| Right to delegate | 3. | Is the individual obliged to personally carry out the work, and has no inherent right to delegate the performance of the work to anyone else, unless authorised by the University? | Yes  No |
| Risk | 4. | Will the University bear responsibility and financial liability for any negligence or substandard work during the individual’s engagement with the University? | Yes  No |
| Tools and equipment | 5. | Will the University provide the individual with relevant tools, equipment, office/work space and accessories to allow the individual to carry out the work?  E.g. Course Outline, Research Questionnaire, teaching/research space, Learning Management System (LMS) | Yes  No |
| Exclusivity/economic dependence | 6. | Will the individual work exclusively or primarily for the University during the period committed to the University’s contract and/or be exclusively or primarily economically dependent on the business of the University? | Yes  No |
| Basis of payment | 7. | Will the individual be paid for their time, rather than to produce a particular result, with calculation and payment of the labour services to the individual generally paid on: a time basis; a fixed salary; or wages paid at regular intervals?  E.g. rate x hours worked; weekly; fortnightly; annual salary. | Yes  No |

If you have answered **“yes”** to a majority of the questions above it is likely the individual is **deemed an employee of the University and you are not required to proceed further in the Checklist**. The following obligations/payments will apply:

* Pay As You Go (**PAYG**) Withholding tax;
* Superannuation Guarantee Charge (**SGC**);
* Fringe Benefits Tax (**FBT**);
* Workers’ compensation; and
* Payroll tax.

Please complete the declaration at the end of this Checklist and obtain authorisation by the Member of the Executive in accordance with the University’s Delegations of Authority Policy and Register.

Payment for the provision of services will be paid through the **PAYROLL** into a nominated bank account based on the submission of the appropriate employment documentation to Human Resources. As an employee, the individual will be subject to the deduction of **PAYG tax withholding** following normal employment processes.

If you have answered “**no**” to a majority of the questions, the individual *may* meet the definition of independent contractor for tax purposes. You will need to complete **Sections B to E** to consider further obligations that may arise.

**Section B**

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| --- | --- | --- |
| 8 | Will the University be entering into a contract with an entity such as a company partnership or trust? | Yes  No |
| 8A. | Have you sighted or taken a copy of the company’s Certificate of Incorporation or current Company extract, the partnership agreement or trust deed? | Yes  No |

If you answered “**yes**” to Question 8 and Question 8A, there should be no PAYG withholding, FBT or SGC implications for the University and the individual may be engaged as a contractor subject to approval by the Member of the Executive. The contractor must provide an Australian Business Number (**ABN**). Any payments for services in this relationship will be paid through Finance (Accounts Payable) based on the submission of valid Tax Invoices.

You do not need to complete Section C, please go to **Section D** to determine whether a payroll tax liability exists.

If you answered “no” to Question 8 or Question 8A, please complete Section C to determine whether the University has any obligations to SGC contributions.

**Section C**

|  |  |  |
| --- | --- | --- |
| 9. | Is less than 50% of the value of the contract for the person’s labour? | Yes  No |
| 9A. | Is the individual paid to produce a result? (e.g. A lump sum payment following completion of the contracted service)? | Yes  No |
| 9B. | Is the individual contracted to receive a payment of less than $450? | Yes  No |
| 9C. | Is the individual able to delegate the contractual work to another individual? | Yes  No |

If you answered “**yes**” to any of the questions 9, 9A, 9B or 9C no employer SGC contributions are payable on behalf of the individual.

If SGC contributions are payable, the person engaging the contractor needs to ensure that details of the individuals’ superannuation fund are forwarded to Finance. Unless an individual nominates an alternative Fund, UniSuper will be the default Fund. (The Choice of Superannuation Fund Form is obtainable from the UniSuper Web site [**http://www.unisuper.com.au/resources/forms.cfm**](http://www.unisuper.com.au/resources/forms.cfm)). If an individual nominates an alternative Fund, similar details to that required for UniSuper will need to be provided.

If superannuation is payable, the person engaging the contractor is advised to do so on a gross basis. The contractor should be advised that the total contract fee includes the University’s contribution to a superannuation fund.

You must now **complete Section D**.

**Section D**

|  |  |  |
| --- | --- | --- |
| 10. | Is the individual or entity being contracted principally to provide labour? That is, are they engaged under a contract for service? | Yes  No |

If the answer to Question 10 is “**yes**”, the contract will be a contract for service. Payments under the contract will be subject to payroll tax UNLESS an exemption applies to the contract.

If the answer to Question 10 is “**no**”, the contract will not be a contract for service and will not be subject to payroll tax.

Please complete Questions 11 to 16 below to determine if an exemption applies to the contract.

|  |  |  |
| --- | --- | --- |
| 11. | Is the supply of services by the person merely ancillary to the supply of goods by that person? | Yes  No |
| 12. | Are the services of a kind that are ordinarily required by the University for less than 180 days in the financial year (by the individual AND any other employee/contractors performing similar services)?  For example, if the University contracted with an air-conditioning mechanic for 5 months to fix the air-conditioning, that contract would be exempt. | Yes  No |
| 13. | Are the services provided to the University by the contractor on no more than 90 days in aggregate in the financial year? | Yes  No |
| 14. | Is the payment made under the contract of an amount of $800,000 or more per annum? | Yes  No |
| 15. | Are the services rendered by a person who ordinarily renders services of that kind to the public generally? | Yes  No |
| 16. | Are the services provided by the contracting entity performed by 2 or more persons? | Yes  No |

If the answer to any one of the questions 11 to 16 is **“yes”**, then the contract for service is exempt and payments under the contract will not be subject to payroll tax.

Go to Section E.

You must now complete **Section E**.

|  |  |  |
| --- | --- | --- |
| 17. | Does the provision of labour by the individual to the University represent a significant proportion of the individual’s work (i.e. a major part of the individual’s total work) and not merely incidental (that is, a small part of the individual’s total work)? | Yes  No |

If the answer to Question 17 is **“yes,”** the individual will be a deemed worker for the purposes of workers compensation.

By completing and signing this checklist I acknowledge that:

* All responses are true and correct;
* I have taken all necessary and reasonable steps to satisfy myself that the information I provide is true and correct; and
* I have not deliberately failed to disclose any matter which may have materially influenced the determination of employee or contractor status

Checklist completed by: .................................................... Date ……/……/……

(signature manager/National Head of School)

Print name............................……………………………………….

(tick one only)

Employment of staff member  Engagement of Contractor

*For work that is performed in a Faculty*

Checklist reviewed by: .................................................... Date ……/……/……

(signature Faculty Finance Manager)

Print name............................……………………………………….

By signing this checklist I acknowledge that:

* All responses are true and correct;
* I have taken all necessary and reasonable steps to satisfy myself that the information I provide is true and correct; and
* I have not deliberately failed to disclose any matter which may have materially influenced the determination of employee or contractor status

Approved by: ......................................................................... Date ……/……/……

(signature Member of the Executive as defined in the University’s Delegations of Authority Policy and Register)

Print name............................……………………………………….

*Please attach this completed Checklist to the relevant employment approval documentation or contract for services documentation as appropriate based on employee/contractor determination.*