

# Determining Employee or Contractor Status Policy

## Section 1 - Background

(1) 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).

(2) 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 workers compensation obligations.

## Section 2 - Policy Statement

(3) 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.

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

## Section 3 - Policy Purpose

(5) 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.

(6) 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.

## Section 4 - Application of the Policy

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

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

## Section 5 - Policy Provisions

### Definitions

Term	Definition
Checklist	means the <a href="#">Determining Employee Contractor Status Checklist</a> 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 <a href="#">Determining Employee Contractor Status Guidelines</a> 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".

### Policy Principles

(9) 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.

(10) 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 [Delegations of Authority Policy and Register](#).

(11) Subject to the [Determining Employee Contractor Status Guidelines](#) and the [Employee or Contractor Status 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), [Fringe Benefits Tax](#), payroll tax and workers compensation.

(12) 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.

## **Section 6 - Policy Review**

(13) The University may make changes to this Policy from time to time to improve the effectiveness of its operation and ensure the University complies with legislative requirements. In this regard, any staff member who wishes to make any comments about this Policy may forward their suggestions to People and Capability.

## **Section 7 - Further Assistance**

(14) 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 and Planning for contractor payment matters.

## **Section 8 - Associated Information**

(15) For related legislation, policies, procedures and guidelines and any supporting resources please refer to the Associated Information tab.

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	18th December 2023
<b>Review Date</b>	29th April 2024
<b>Approval Authority</b>	Vice-Chancellor and President
<b>Approval Date</b>	18th December 2023
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Angelle Laurence Chief People Officer
<b>Responsible Manager</b>	Angelle Laurence Chief People Officer
<b>Enquiries Contact</b>	Bernardine Lynch ER and Safety Committees and Policy Officer <hr/> People and Capability