Contractor or Employee Status Policy

Section 1 - Purpose

(1) Charles Sturt University (the University) regularly engages people and entities to provide a range of services on a temporary basis when those services are not generally available within the University. In some circumstances it may not be clear whether the arrangement should be one of employer/employee, or whether the person/s may be engaged as a consultant or an independent contractor.

(2) The distinction between employees, consultants and contractors is extremely important in the determination of the University's liabilities under a range of legislation, including Pay-as-you-go (PAYG) tax withholding instalments, workers compensation insurance, payroll tax and superannuation obligations.

(3) This Policy outlines the process to determine the nature of the engagement. It is designed to assist in determining whether a proposed engagement and subsequent payments made to external parties should be paid as employees through the University's payroll system, or whether they can be paid through accounts payable under normal purchasing processes.

(4) The objectives of this Policy are to:

a. assist Budget Centre Managers in making decisions as to the correct status between contractor, consultant or employee;
b. ensure the University complies with relevant applicable legislation; and
c. limit the University's exposure to penalties for misrepresentation, breach and non-compliance with legal requirements.

Scope

(5) This Policy applies to the engagement of individuals who perform a range of specialised services, which may include but not be limited to casual lecturing, guest lecturers, guest speakers, presenters, workshop coordinators and others, which by their very nature are difficult to categorise.

(6) The issue of whether the engagement is an employee, consultant or independent contractor must be clearly specified before any engagement undertaking is given.

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

Section 2 - Glossary

(8) In this Policy:

a. Consultant - means a particular type of contractor, including an individual, partnership, trust or company, who is engaged under contract on a temporary or fixed term basis:
    i. to provide expert analysis or high level specialist or professional advice or services to assist or influence

University decision making;

ii. to perform a specific one-off task or set of tasks independently involving skills or perspectives not normally available within the University;

iii. where the nature of the output is not necessarily predictable, but tends to be open ended and is more complex; and

iv. to develop new concepts or processes which require critical judgement by the University to consider the recommended course of action.

b. Employee - means an individual who meets the following requirements:

i. is contracted wholly or principally for the supply of their labour, and will have their work controlled by the assigned supervisor;

ii. is unable to delegate their responsibilities to another entity for completion of the contract;

iii. is paid for time worked, commonly on an hourly basis;

iv. receives paid leave, unless employed on a casual basis;

v. is not responsible for providing the materials or equipment needed to perform their work responsibilities;

vi. must perform the duties of their position;

vii. agrees to provide their personal services;

viii. has work hours set by an agreement or award or individual contract; and

ix. is recognised as part of the University's business.

c. Independent Contractor - means an entity (including an individual, partnership, trust or company) engaged under a contract (other than an employee or consultant) to produce a designated result for an agreed price. In most cases an independent contractor will meet the following requirements:

i. is contracted to perform work to deliver a known outcome or product or function. This will include non-professional services such as trade service providers and cleaning services;

ii. provides all or most of the necessary materials and equipment to complete the work;

iii. is free to delegate work to other entities;

iv. subject to the conditions of the contract or arrangement, has freedom in the way the work is done;

v. requires minimal input or supervision from the University;

vi. provides services to the general public and other businesses;

vii. is free to accept or refuse work; and

viii. is in a position to make a profit or loss.

(9) The key distinction between a consultant and an independent contractor is that:

a. a consultant produces recommendations to which the University may then apply critical judgement to determine a course of action; and

b. a contractor is engaged to undertake work or a defined function.

(10) Just because a service provider refers to themselves as a 'consultant' does not mean they will be categorised as a consultant for the purposes of this Policy.

(11) Having an Australian Business Number (ABN) does not affect the decision of whether a person is an employee, consultant or independent contractor.

Section 3 - Policy

Part A - Determining Employment Status

(12) There are a number of factors to consider in determining whether a worker is an employee or an independent contractor, with no one factor necessarily conclusive.

(13) It is important for all Budget Centre Managers to ascertain the appropriate details before commencement of the relationship so that both parties are fully aware of their legal obligations.

(14) The primary key factor in deciding if a worker is an employee is the degree of control that can be exercised over the worker. If the University has the right to direct how, when, where and who is to perform the work, the worker is likely to be an employee.

(15) The second key factor is whether the worker is being paid for the time they work or for a result. Workers being paid by the hour are more likely to be employees.

(16) Workers engaged directly by the University to provide casual academic duties in courses leading to academic qualification must be regarded as an employee of the University. The agreement in this situation must only be made to a person and not to a partnership, company or corporation.

(17) Where a specialist professional is invited to present a session/s to students in an award course by an academic who retains responsibility for the quality of the content for the course/subject concerned, the visiting professional may be paid as a contractor of the University.

Part B - Engagement of Consultant/Contractor

(18) Approval to engage a consultant or independent contractor is subject to budget availability and should only be given where the Budget Centre Manager is satisfied that the work is essential and cannot be performed internally by an employee of the University.

(19) Effective management of consultants/contractors and scrutiny and evaluation of their work is essential to ensure that the objectives of the engagement are met.

(20) A cost and time estimate should be prepared and the availability of funds confirmed before seeking approval to invite bids from consultants/contractors.

(21) Normal University procurement policies and procedures must be followed in sourcing and choosing an appropriate consultant or contractor.

(22) Specific delegations in the Delegations and Authorisations Policyapply to the engagement of consultants and contractors.

(23) A formal letter of engagement signed by both parties should generally be used where the consultancy/contract is large or complex or required to produce a specific output for the University. (Refer to Appendix 4 - Letter of Engagement for details.)

(24) An independent contractor/consultant engaged to provide services to Charles Sturt University must:

a. hold current professional indemnity and public liability insurance policies;
b. provide the University with their ABN (not required if the contractor/consultant is a foreign entity);
c. be undertaking duties other than teaching;
d. offer similar services to the public or other clients;
e. provide their own materials, equipment and infrastructure to complete the work;

f. provide in the cost of the engagement for their own superannuation liability and equivalence to workers' compensation insurance; and
g. meet the criteria for an independent contractor as set out in Appendix 1 - Indicative Factors to Consider.

(25) All consultancies must be reported as part of the University's Annual Report. Budget Centre Managers must ensure that the correct account code is used for all costs associated with a consultancy to facilitate the annual reporting requirement. (Note that a separate account code is used to distinguish contractors from consultants).

Part C - Engagement of Employee

(26) Only the Division of People and Culture has the authority to issue formal contracts of employment, except in the case of casual academic engagements which may be approved by the Head of School.

(27) If the circumstances indicate an employee relationship, refer to Division of People and Culture's policies and procedures for the engagement.

(28) The employment relationship gives rise to rights and obligations both at common law and from legislation. As a minimum the University needs to be fully aware of its obligations in respect to:

a. employment law;
b. injury to third parties;
c. workplace injuries;
d. PAYG taxation and withholding obligations;
e. superannuation; and
f. vicarious liability (the University is liable for acts of its employees).

Part D - Australian Taxation Office Decision Tool

(29) The Australian Taxation Office (ATO) provides an Employee or Contractor Decision Tool to provide an answer whether the worker is an employee or an independent contractor, depending on the circumstances of each case. Please refer to this before an arrangement is finalised, and save a copy of any relevant ATO decision tool completed by you on the ATO site.

(30) The courts and the ATO will not hesitate to declare an engagement as an employee if the facts of the case clearly indicate it, irrespective of the decision of the University, so each case must be investigated carefully based on the specific circumstances of each case.

(31) If, after applying the information in this Policy to the circumstances of an individual case, you are still unable to clearly determine whether the worker is an employee or independent contractor, use the ATO decision tool to assist you with the determination.

Section 4 - Procedures

Process for Engaging Contractor

(32) The University's procurement policies apply to all engagements. Either a purchase requisition or a contract will need to be completed prior to the engagement of an independent contractor or consultant.

(33) All contracts for procurement are to be administered through the Director, Strategic Procurement and, unless they are in the form of a standard form agreement (precedent) previously approved by Legal Services, referred to Legal Services for review.

(34) If it is determined that the worker is an independent contractor, a print out of the results of the ATO checklist supporting that decision must be attached to the purchase requisition or contract.

(35) Approval to engage a consultant or contractor is subject to the delegations limits specified in the Delegations and Authorisations Policy — refer to Schedule 3, EXP5 of that Policy for consultants, or EXP6 for contractors.

(36) The standard form of agreement for an independent contractor or consultant can be used for the engagement contract.

Section 5 - Guidelines

(37) Nil.

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