Finance Procedure - Contractors and Consultants

Section 1 - Purpose

(1) This procedure supports the Finance Management Policy and the Finance Procedure - Procurement by outlining the processes to determine the nature of the engagement of a contractor or a consultant and 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

(2) This procedure 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.

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

Section 2 - Policy

(4) Refer to the Finance Management Policy.

Section 3 - Procedures

(5) 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.

(6) The distinction between employees, contractors and consultants 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. All staff involved in the procurement of services from contractors and consultants must ensure that the status of the engagement is determined and specified before any engagement undertaking is given.

Determining engagement status

Internal assessment

(7) A staff member planning to procure services from a contractor or consultant must assess the nature of the engagement to ensure it is not that of an employee by considering:

a. the descriptions (table 1) and indicative factors to consider (table 2) provided in Finance Schedule - Consultants and contractors internal assessment
b. the typical examples provided in Finance Schedule - Typical Examples, and
c. the following key factors:
    i. 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.
    ii. If the worker is being paid for the time they work, rather than a result, they are more likely to be employees.
    iii. 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.
    iv. 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.

(8) Where an internal assessment determines that:

a. an engagement is more likely to be that of an employee, the engagement must be undertaken in accordance with Division of People and Culture's Appointments Policy and processes or processes for casual appointments, or
b. the engagement meets the criteria for a contractor or consultant, an external assessment must be completed using the Fair Work Ombudsman whole of relationship test.

External assessment - whole of relationship test

(9) The Fair Work Ombudsman provides a whole of relationship test to provide an answer whether the worker is an employee or an independent contractor, depending on the circumstances of each case.

(10) Before engaging a contractor or consultant, the whole of relationship test must be completed, and:

a. where the results indicate that an engagement is more likely to be that of an employee, the engagement must be undertaken in accordance with Division of People and Culture's Appointment Policy and processes, or processes for casual appointments, or
b. where the results indicate that the engagement meets the criteria for a contractor or consultant, a copy of any test results must be submitted with the purchase requisition and/or contract, as set out in the Finance Procedure - Procurement.

(11) The courts and the Fair Work Ombudsman 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.

Engagement approvals and contracts

(12) 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.

(13) The Finance Management Policy and Finance Procedure - Procurement must be followed in sourcing and choosing an appropriate contractor or consultant.

(14) A standard University agreement (downloaded from Legal Services) signed by both parties should generally be

used where the consultancy/contract is any independent contractor arrangement with the University.

(15) Variations to the standard University agreement must be submitted to Legal Services, prior to procurement and engagement, for review and endorsement.

(16) A signed copy of the final agreement is to be emailed to Legal Services at legal@csu.edu.au.

(17) 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 (other than in the circumstances described under clause (7) c.iv of this procedure)
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 assessment criteria for an independent contractor or consultant as set out at clauses 7-10.

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

(19) 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).

Engagement processes

(20) The Finance Procedure - Procurement must be followed for engaging a contractor or consultant. Either a purchase requisition or a contract will need to be completed prior to the engagement of an independent contractor or consultant.

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

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

(23) If it is determined that the worker is an independent contractor, a copy of the results of the Fair Work Ombudsman test supporting that decision must be attached to the purchase requisition or contract.

(24) Approval to engage a consultant or contractor is subject to the delegation limits specified in Delegation Schedule C - Finance.

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

Section 4 - Guidelines

(26) Nil.

Section 5 - Glossary

(27) Refer to Finance Schedule - Consultants and contractors internal assessment table 1 for definitions of consultant, contractor and employee as used in this procedure.

Section 6 - Document context

Compliance drivers	N/A
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