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THE UNIVERSITY OF MELBOURNE

INDIVIDUAL INDEPENDENT CONTRACTORS POLICY

(Last Updated: Nov 03)

Principles

1. For an individual to receive remuneration other than reasonable travel and living expenses from the University of Melbourne, he or she must be engaged as either an employee or an independent contractor. It is the responsibility of the Dean or Head of Department to ensure the appropriate method of engagement is undertaken in each circumstance.
2. University employees are not permitted to provide any service or services to the University other than through their contract of employment, and are accordingly unable to operate as an independent contractor for that purpose. University employees may not contract for services to the University through a partnership, company or other entity.
3. Where an honorary relationship will arise between the individual and the University, this must be established by a means other than an independent contractor arrangement.
4. Independent contractors are obliged to comply with relevant University statutes, regulations and policies whilst undertaking any activity in their capacity as an independent contractor at the University. This requirement should be encapsulated in the contractual agreement between the University and the independent contractor.

Policy

This policy applies only to individuals providing services to the University of Melbourne on a fee for services basis in their own names and to University of Melbourne employees who may otherwise be proposing to provide their services on a fee for services basis through a related entity..

It does not apply to incorporated or other entities providing services to the University on a fee for services basis except for the prohibition on University employees providing services through an incorporated or related entity.

1. Categories of Independent Contractors

Independent contractors may be categorised as:

- 1.1. Academic independent contractors; and
- 1.2. Non-academic independent contractors.

Academic independent contractors are individuals providing teaching and/or research services to the University on a fee for services basis.

Non-academic independent contractors are individuals providing non-teaching or non-research services to the University on a fee for services basis.

2. Engagement of Independent Contractors

An honorary or University visitor relationship will not be established between the University and the individual as a consequence of the engagement of an independent contractor. If an honorary or University visitor relationship is to exist in addition to the engagement of an individual as an independent contractor, this is established by other means.

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The engagement of an independent contractor must be effected through a written contract which is to be signed by an authorised University employee and the individual operating as an independent contractor.

Contracts with individuals operating as independent contractors should define:

- the work to be performed, the payment to be provided and all other parameters of the engagement;
- the rights and obligations of the individual and the University;
- the ownership of any intellectual property that is developed in connection with the services being providing by the independent contractor;
- the obligations of the contractor relating to maintaining appropriate insurances; and
- the parameters and mechanisms relating to early termination of the contract.

The Dean or Head of Department is responsible for ensuring copies of signed contracts with independent contractors are accessible for audit and other purposes.

A copy of the signed contract with an individual providing academic services to the University must be attached to the New Supplier Form sent to Accounts Payable to support the creation of a supplier record in the Accounts Payable system.

Where the fees to be paid to an individual for a service will exceed \$60,000, appropriate Tender Board procedures should be followed.

3. Delegations

Category	Signatory for the University
Contract for individual independent contractor providing non-academic services valued at less than \$60,000	Head of Department
Contract for individual independent contractor providing academic services valued at less than \$60,000	Dean
Contract for individual independent contractor valued at more than \$60,000	As determined by Tender Board processes

4. Independent Contractor or Employee?

It is important that individuals providing services to the University are engaged through an appropriate arrangement. The University faces serious penalties if it fails to meet its obligations in respect of individuals providing services to it.

If in doubt, individuals should be engaged as employees as the University's and the individual's obligations are the greatest in this circumstance thereby providing both with the maximum protection against future claims.

To determine if an individual should be engaged as an independent contractor or an employee, it is critical that the totality of the relationship is taken into account.

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For an individual to be engaged as an independent contractor, he or she should normally be able to demonstrate that they are in business on their own account. In general, this is indicated if an individual:

- has a valid ABN (Australian Business Number);
- is to be engaged on a one-off or ad hoc basis;
- has a substantial number of clients other than the University;
- is not directed how to produce the specified service – that is, has the right to exercise control over the manner in which the work is performed, hours of work etc;
- is not to be fully integrated into the Department – that is, is not given permanent office space or provided with other infrastructure or administrative support;
- is able to sub-contract the service;
- is to be paid a fee for providing specified services;
- operates from a separate place of business; and
- carries the risk of commercial loss through professional indemnity and personal liability insurances.

None of the above items are definitive determinants in their own right and it is the totality of the situation which determines the most appropriate form of relationship.

For example, if an individual does not have a valid ABN but most of the other factors apply, he or she may still be regarded as an independent contractor. Similarly, individuals providing academic services are unlikely to be able to sub-contract their services, yet they may still be regarded as independent contractors in certain circumstances.

Indicative examples of situations in which an independent contractor relationship is appropriate are:

- a piano tuner who has a listing in the yellow pages;
- a course trainer who provides his or her services to a range of clients; and
- a graphic designer operating from his or her own place of business.

Indicative examples of situations in which an independent contractor relationship is NOT appropriate are:

- tutors, demonstrators and sessional lecturers (see item 11.3 below); and
- circumstances in which an individual holds a management position, eg. Deputy Head of Department or course co-ordinator, at the University.

It is the responsibility of the Vice-Principal, Human Resources to provide University staff with access to advice about the appropriate form of engagement.

5. University Employees

University of Melbourne employees must not be engaged as independent contractors in their own name or through a related entity by the University of Melbourne.

6. Activities of Independent Contractors

Independent contractors are not University employees in the performance of services covered by their engagement as independent contractors. Therefore independent contractors may not:

- commit or authorise expenditure of University funds;
(Variations to this item require authorisation of the Deputy Vice-Chancellor (Students and Staff);
or
- unless specific arrangements are in place, carry out performance appraisals for University staff without a co-supervisor who is a University employee.

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7. Privileges, Rights and Obligations of Independent Contractors

At the discretion of the Head of Department, independent contractors may obtain an independent contractor (visitor) card and have access to the University's information facilities, including its electronic communication network.

Independent contractors may be provided with accommodation at the discretion of the Head of Department.

Independent contractors must comply with University statutes, regulations and policies as they relate to their activities.

For academic independent contractors, this is likely to include:

- Statute 14.1 Intellectual Property;
- Use of the University's electronic communication network policy;
- State and federal equal opportunity laws applying to the University of Melbourne and any related University policies;
- State and federal occupational health and safety laws applying to the University of Melbourne and any related University policies;
- Those elements of Regulation 7.1.R8 – Code of Conduct for Research which are relevant to the activities of the independent contractor;
- Those elements of any University academic or student related statutes, regulations and policies which are relevant to the activities of the independent contractor.

8. Payments to Independent Contractors

It is the responsibility of the independent contractor to provide the University with a valid Australian Business Number (ABN) or a declaration to the University that exemptions apply.

Unless double taxation treaties provide otherwise, if an independent contractor does not supply a valid ABN (or declaration), the University will withhold tax at the maximum rate, as per Australian Taxation Office requirements.

Contracts with independent contractors must take into account all payments to the individual or the related entity, including those required by law such as, where appropriate, payroll tax and superannuation payments.

Independent contractors are normally paid on receipt of invoice(s). Independent contractors are not reimbursed on the production of receipts, and the relevant expense needs to form part of an invoice for payment by the University of Melbourne unless such expenses are incurred and borne directly by the University of Melbourne in the first instance as agreed with the contractor. This requirement may include individuals who are providing academic services on a short term basis such as Miegunyah Fellows.

Payments to all independent contractors must be credited to a recognised bank account in the name of the contractor or paid by a non-negotiable cheque made out to the contractor.

In certain circumstances, superannuation and payroll tax in respect of the remuneration to be paid will be applicable.

9. University Obligations

The University will use its best endeavours to ensure a safe working environment free of unlawful discrimination is provided while independent contractors are undertaking activities on a University campus as part of their engagement by the University.

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10. Insurance Provisions

The University will ensure its insurance provisions provide individuals delivering academic services with the same level of cover as academic employees receive when the individuals are undertaking activities related to their engagement by the University.

The insurance coverage provided by the University, and the insurance to be provided by non-academic independent contractors will be determined by the Director, Risk Management Office taking into account, for example, the potential for injury to staff or students, damage to University property and financial loss by the University or a third party.

11. Items Related to Specific Groups of Independent Contractors

11.1. Building Construction and Maintenance

Due to the inherent risks presented and the speciality of required contracts, individuals providing building construction and maintenance services to the University are only to be engaged through Property and Buildings.

The individuals will be required to participate in the University's induction program for building construction and maintenance contractors.

11.2. Testing and Tagging of Electrical Equipment

Whilst the responsibility for ensuring electrical equipment is tested and tagged rests with the Head of Department, individuals providing the service are only to be engaged through Property and Buildings.

Property and Buildings will not impose any surcharge for this activity.

11.3. Tutors, Demonstrators and Sessional Lecturers

Tutors, demonstrators and sessional lecturers who are teaching existing course material or who are under the supervision of a University staff member should normally be engaged as employees. Only in exceptional circumstances should these individuals be engaged as independent contractors.

The Deputy Vice-Chancellor (Students and Staff) must approve any engagement of tutors, demonstrators and sessional lecturers as independent contractors.