

# Financial Code of Conduct - Independent Contractor Procedure

## Section 1 - Summary

(1) The University often engages the services of individuals who are not employees of the University, including independent contractors (ICs), guest lecturers, teachers, tutors, editors, curriculum developers, research assistants, suppliers and others.

(2) This Procedure outlines the process to clearly distinguish between circumstances where it is appropriate and allowable to engage an IC to perform a task rather than an employee to perform that task and ensure that the University meets its obligations in respect of:

- a. Pay As You Go (PAYG) withholding under the [Taxation Administration Act 1953 \(Cth\)](#) (Schedule 1);
- b. Superannuation guarantee contributions under the [Superannuation Guarantee \(Administration\) Act 1992 \(Cth\)](#);
- c. Payroll tax on wages paid to employees and contractors deemed to be employees for payroll tax purposes under the [Payroll Tax Act 2007 \(Vic\)](#) (Victoria);
- d. [Accident Compensation Act 1985 \(Vic\)](#) (Vic) (AC Act);
- e. [Independent Contractors Act 2006 \(Cth\)](#) (Section 7);
- f. [Fair Work Act 2009 \(Cth\)](#);
- g. [Enterprise Bargaining Agreement](#); and
- h. [Single Touch Payroll](#).

(3) The consequences of misclassifying workers as ICs instead of employees may cause the University to fail to meet its legal obligations and give rise to significant liability, including taxes and related penalties. The University has adopted this Procedure to guide organisational units seeking to engage ICs and to establish procedures to ensure that individuals are properly classified as employees unless they meet the criteria of a genuine IC.

## Section 2 - HESF/ASQA/ESOS Alignment

(4) HESF: Standard 6.2 Corporate Monitoring and Accountability.

(5) Standards for RTOs (2015): Standard 7 & 8.

## Section 3 - Scope

(6) This Procedure applies to all staff of the University who have the actual or delegated authority to engage individuals to perform any service for the University including those performing work inside or outside Australia in overseas jurisdictions.

(7) This Procedure will assist staff to avoid the risks associated with entering into an improper arrangement with an IC.

## Section 4 - Definitions

(8) ABN (Australian Business Number)

(9) ACN

(10) Bona Fide: A true and genuine organisation that can provide a valid ABN or ACN, and is registered for GST with the Australian Taxation Office.

(11) Company: Entity that has been incorporated pursuant to the [Corporations Act 2001 \(Cth\)](#) (Cth) and have an ACN and ABN.

(12) Control: The right the University will have to direct the way in which the work is to be performed and includes the exercising of judgement as to how, when and where to perform the specific task or tasks.

(13) Core Business Service Providers:

- a. These service providers are classified as employees and not independent contractors.
- b. These staff deliver the core business services that allow the University to fulfil its mission, with the University exercising control over those staff to ensure that the services are delivered in an appropriate manner.
- c. Core business service providers include, but are not limited to lecturers, teachers, tutors, researchers, editors, curriculum developers etc.
- d. These service providers are usually provided by those organisational units within the University responsible for the delivery and/or support of teaching and learning programs.

(14) Employees: Refers to persons engaged by the University to provide personal services for reward. Employees are paid through the payroll system.

(15) Independent Contractors:

- a. For the purposes of this Procedure, it includes both consultants and contractors.
- b. Independent contractors are not employees of the University.
- c. Consultants are individuals or organisations engaged to:
  - i. provide expert analysis and advice which facilitates decision-making;
  - ii. perform a specific one-off task or set of tasks and
  - iii. perform a task involving skills or perspectives which would not normally be expected to reside within the University.
- d. Contractors are individuals or organisations engaged to:
  - i. provide services which implement a decision;
  - ii. perform all or part of a new or existing ongoing function to assist an organisational unit in undertaking its defined activities, operational functions and information systems and processes to perform a function involving skills or perspectives which would not normally be expected to reside within the organisational unit and which the organisational unit has therefore determined to outsource.

(16) Non-core Business Services Providers: These are, other than employees, independent contractors who are providing services as part of the University's core business.

As a general, but not exclusive, rule, non-core business service providers provide services to organisational units of the University whose primary purpose is to provide administrative, technical and professional support to the

educational and teaching units of the University.

(17) Non-service Provider: Is an individual, partnership or company that supplies the University with goods only, or goods and services where the value for the goods is more than 80% of the total contract value.

(18) Organisational Unit: Includes but not limited to, colleges, schools, departments and branches.

(19) Partnership: Is an arrangement between two or more individuals to carry on a business jointly. A partnership is not a company.

(20) Past Employee: Is a former Victoria University employee whom was terminated or resigned less than 3 months prior to the proposed engagement as an IC.

(21) Remuneration: Is the provision of reward for personal services. It includes, but is not limited to, salaries, wages, allowances, stipends, honorariums and bursaries.

Remuneration is paid through the University's payroll system and is subject to tax and other statutory employment on costs.

(22) Service Provider: Is an individual, partnership or company that supplies to the University services only (non-tangible goods) or goods and services where the value of the services is more than 20% of the total contract value.

## Section 5 - Policy/Regulation

(23) See [Financial Code of Conduct Policy](#).

## Section 6 - Procedures

### Part A - Summary of Roles and Responsibilities

Roles	Responsibilities
Tax Compliance Team	<p>Ensure that this Procedure complies with the current Employment Laws, ATO Rulings and guidelines that relate to the engagement of ICs.</p> <p>Conduct regular assessments and where applicable pay superannuation, payroll tax and workers compensation on behalf of contractors who are deemed to be employees for the purposes of the relevant legislation.</p> <p>Provide regular training to increase the awareness of this Procedure amongst the Finance staff and in particular the Operational Accounting Team, Procurement Hub Officers and the Accounts Payable Team.</p>
All University Staff	Responsible for familiarising themselves with the requirements of this Procedure and responsible for acting in compliance with this Procedure at all times in their conduct as a staff member.

### Part B - Procedures

(24) The decision of engaging an individual worker as an employee, consultant or IC must be determined prior to any engagement undertaking is given and prior to commencing any work.

#### Exceptions

(25) The following service providers are exempted from the application of this Procedure. This means that providers

that fall into the categories listed below may be engaged as ICs without further action.

- a. Non-service providers (goods only or goods comprise more than 80% of the purchase price).
- b. Providers of trades and services, where the people performing the work are not under the control of the University, and who are providing non-core business services, e.g. plumbers, electricians, cleaners, maintenance providers, WorkCover or medical related service providers etc.
- c. Service providers that operate in industries and professions where standard contracts are regularly used and who are providing non-core business services to the University, e.g. engineers, architects, auditors, lawyers, quantity surveyors etc.
- d. When the University is contracting with a third-party entity (e.g. managed services provider, temp agency, payroll services, IT staffing firm etc.) who are classified by those firms as employees or contractors to perform services.
- e. Guest Speakers, presenters, developers of curriculum, facilitators or sessional teachers who are engaged to perform a function involving skills, qualifications or industry experience that does not reside within organisational units provided:
  - i. The University does not exercise control over such professionals;
  - ii. It is for a specific project, one-off or short-term in their field of expertise;
  - iii. They are not engaged for more than 5 University business days (one hour is rounded to one day) per Semester or Term;
  - iv. They are not acting as substitutes for academic lecturers, tutors, or teachers in the delivery of course curriculum;
  - v. There is a written communication (email or letter) regarding their engagement and the services they are providing; and
  - vi. They have a valid ABN and where no ABN is provided the payment will be subject to withholding tax.
  - vii. Non-residents of Australia who are engaged as service providers who are providing services offshore outside Australia OR in Australia. However, as the University has to assess and comply with its taxation obligation in overseas jurisdictions and in Australia, specific tax advice must be sought regarding the tax treatment of honorarium, service fee and reimbursement of out-of-pocket expenses by contacting the Tax Compliance Team at [taxcompliance@vu.edu.au](mailto:taxcompliance@vu.edu.au) prior to an offer being made.
- f. Payment to other Australian education institutions for services provided by one or more of their employees.

## **Core Business Service Providers are Employees**

(26) Core business services are required for the delivery and support of teaching and learning programs that allows the University to fulfill its objectives. Individuals involved in delivering core business services are employees. The following service providers, who are core business service providers, are specifically identified as employees or are required by law to be treated on the same basis as employees and not ICs:

- a. Individuals currently employed as employees of the University (i.e. an individual cannot be an employee and an IC at the same time).
- b. Past employees who provide similar services to those performed whilst an employee.
- c. Individuals that are engaged to deliver core business services, unless the service provider meets the criteria set out under Clause (24)e. of this Procedure.
- d. Individuals who provide administrative support, technical support and professional support to the teaching and research areas of the University.
- e. An arrangement with an individual or an entity that does not conduct a genuine business that offers similar services to those provided to Victoria University (VU) to a number of clients or to the public at large.

## Service Providers that may be engaged as Independent Contractors

(27) Approval to engage an IC is subject to budget availability and that the work to be undertaken is essential and cannot be performed internally by the existing University staff.

(28) Effective management of IC is essential to ensure the objectives of the engagement are met.

(29) All appointments of ICs must comply with the University [Procurement Policies and Procedures](#).

(30) The University officer in charge of engaging the IC or the Operational Accounting Team must complete the [Independent Contractor Questionnaire \(ICQ\)](#). The Tax Compliance Team will use the information provided on the ICQ to assess and determine if any obligations arise in relation to Superannuation contribution, Payroll Tax and Workers Compensation.

(31) The arrangement between the University and the IC must be properly documented by entering into a contract agreement. A copy of the standard contractor agreement can be obtained from the [University Legal Services website](#). These standard agreements are effectively pre-approved by the University Legal Services. Where these templates are used without any amendments no further approval is required from the University Legal Services office.

(32) If amendments are required to the terms and conditions of the University standard contractor agreement, the University Legal Services office must draft the amendments, or if the amendments were requested by the contractor, to review the amendments.

(33) If the contractor is not willing to use the University's form of agreement and has supplied their own, the University officer in charge must refer the agreement to University Legal Services for review.

(34) Where the final form of the contract has been agreed, the contract agreement must be approved and signed by the Officer who has the financial delegation to commit the University to that level of expenditure.

(35) The IC engaged by the University must have been determined to be an IC in accordance with this Procedure and is able to demonstrate that they:

- a. Conduct genuine businesses and have been determined to be an IC in accordance with this Procedure.
- b. Genuinely provide to the public at large similar services to those provided to the University.
- c. Are able to demonstrate that the University is one of a number of clients to whom they provide the services which they are providing to the University.
- d. Are not under the direct control of the University and have not been integrated into the business of the University.
- e. Have a valid ABN, and an ACN if it is a company, and if required, are registered for Goods and Services Tax (GST) with the Australian Taxation Office.

## Payment to Independent Contractors

(36) The Operational Accounting Team must submit:

- a. tax invoices for services as agreed in the contract agreement; and
- b. an electronic copy of the [Independent Contractor Questionnaire \(ICQ\)](#) with the contractor's first tax invoice for payment.

## Prohibited Engagements

(37) Organisational units are prohibited from engaging ICs in the following circumstances:

- a. Where the IC does not have, or does not quote their ABN and/or ACN. In this circumstance the individual should be engaged as an employee.
- b. Where the service provider is currently an employee of the University (i.e. an individual cannot be an employee and an IC at the same time).
- c. Where the services to be provided are for core business services, except where the criteria under Clause (24)e. of this Procedure is met.
- d. Where the proposed IC was, within the three months prior to the provision of services, an employee of VU or is a former employee of VU whose re-engagement after three months of termination falls outside the guidelines for a former employee to become an IC referred to in Clause (25) of this Procedure and/or is an associate of a past or current employee.
- e. An engagement with an entity that is not bona fide.
- f. An engagement with an entity that does not genuinely provide to the public the services that they provide to the University and service a range of clients.
- g. An engagement that is not contracted under a standard IC Agreement approved by the University Legal Services.

## Part C - Difference between Independent Contractor and Employee

(38) The distinction between an employee and an IC lies in the legal responsibilities that attach to the two different contractual situations. If an employment situation exists, then the University is bound by all the usual employer/employee duties and responsibilities, that is leave entitlements, superannuation, withholding of tax, all the implied duties, such as the duty of mutual trust and confidence, and so on. If the relationship is one of principal and IC, then the legal responsibilities are quite different.

(39) A close examination of all the relevant facts and circumstances of a case is necessary to distinguish between a true IC and an employee. Typically, the relationship between an employer and an employee is a contractual one which is referred to as a contract of service. The IC on the other hand is usually hired to do a defined task under a contract referred to as a contract for services. It is usually the case that the relationship between the principal and the contractor is intended to come to an end at the completion of the task. The contract usually describes the parties as being independent of each other, and has no provisions for annual leave, sick leave or other statutory entitlements an employer/employee relationship would include.

(40) The table below outlines six of the factors that, taken together determine whether a worker is an employee or contractor for tax and superannuation purposes.

Feature	Employee	Independent Contractor
Measure of control over the work	The University has the right to direct the way in which the worker does their work.	The worker has the freedom in the way the work is done, subject to the specific terms in any contract or agreement.
Exclusivity	Employee usually works exclusively for the University.	Contractor is free to provide services to multiple clients.
Ability to subcontract/delegate	The worker can't subcontract/delegate the work, they can't pay someone else to do the work.	The worker can subcontract/delegate the work, they can pay someone else to do the work.
Basis of payment	The worker is paid either: <ul style="list-style-type: none"> <li>• for the time worked;</li> <li>• a piece per item or activity;</li> <li>• a commission.</li> </ul>	The worker is paid for a result achieved based on the quote they provided.  A quote can be calculated using hourly rates or price per item to work out the total cost of the work.

Feature	Employee	Independent Contractor
Equipment, tools and other assets	<ul style="list-style-type: none"> <li>The University provides all or most of the equipment, tools and other assets required to complete the work; or</li> <li>The worker provides all or most of the equipment, tools and other assets required to complete the work, but the University provides them with an allowance or reimburses them for the cost of the equipment, tools and other assets.</li> </ul>	<ul style="list-style-type: none"> <li>The worker provides all or most of the equipment, tools and other assets required to complete the work.</li> <li>The worker does not receive an allowance or reimbursement for the cost of this equipment, tools and other assets.</li> </ul>
Commercial risks	The worker takes no commercial risks. The University is legally responsible for the work done by the worker and liable for the cost of rectifying any defect in the work.	The worker takes commercial risks, with the worker being legally responsible for their work and liable for the cost of rectifying any defect in their work.
Independence	The worker is not operating independently of the University business. They work within and are considered part of the University business.	The worker is operating their own business independently of the University business. The worker performs services as specified in their contract or agreement and is free to accept or refuse additional work.

## Legislation that deems Individuals to be “Employees”

(41) Some individuals who appear to be contractors can be caught by legislation which deems them to be employees for the purposes of the relevant legislation.

## Superannuation Guarantee Levy

(42) The University assesses its obligation to remit superannuation contributions to a complying superannuation fund on behalf of contractors who are deemed to be employees based on the tests provided under the [Superannuation Guarantee \(Administration\) Act 1992 \(Cth\)](#). Payments to sole trader contractors are considered employees in the Superannuation Guarantee Charge (SGC) context and subject to the SGC when:

- a. The contractor cannot engage others to perform the work under the contract.
- b. The contract is wholly or principally (at least 50%) for the personal labour of the contractor. For the purposes of the SGC, labour includes mental and artistic effort as well as physical work.
- c. Payments to individual contractors are exempt from SGC in all circumstances when:
  - i. The contractor reserves the right and is completely free to engage others to perform the work under the contract.
  - ii. The contractor is contracted to perform a specific task within a specific time frame for an agreed amount of money and normally invoices the University for their services.
  - iii. Payments are to a part-time (i.e. not more than 30 hours per week) person under 18 years of age.
  - iv. Payments in total are less than \$450 in a particular month.
  - v. Payments are made to non-resident contractors who are paid for work undertaken outside Australia.
  - vi. The contract is with a partnership or company.

(43) The ATO ‘[Am I entitled to super?](#)’ decision tool can be used to determine whether the University has the obligation to make superannuation contribution on behalf of an IC who is deemed to be an employee for superannuation purposes.

## Payroll Tax

(44) The payroll tax contractor provisions are contained in Division 7, of the [Payroll Tax Act 2007 \(Vic\)](#). They are

intended for tax payments to contractors who predominantly provide labour services and work exclusively or primarily for one principal in a financial year. Such arrangements are referred to as “relevant contracts”. Payments under these contracts are deemed to be wages (excluding GST) and the employer is liable for payroll tax on those wages.

The contractor provisions apply regardless of whether the contractor provides services via a company, trust, partnership or as a sole trader.

(45) Payments under a relevant contract will be deemed wages and subject to payroll tax under the contractor provisions, unless the contractor satisfies one of the exclusions listed below.

- a. The contractor provides services to the University for 90 calendarised days or less in a financial year.
- b. The contractor engages others to do all or part of the work pursuant to the contract subject to certain conditions being met.
- c. The provision of labour is ancillary or secondary to the supply of materials or equipment by the contractor.
- d. The services provided under the contract are of a type not ordinarily required in the University’s ongoing business and the contractor usually provides those services to a range of clients.
- e. The services are of a type ordinarily required by the University for less than 180 calendarised days in a financial year.
- f. The Commissioner is satisfied the contractor ordinarily renders services of the type under the contract to the public generally in a financial year.

## **Workers Compensation**

(46) Under the [Accident Compensation Act 1985 \(Vic\)](#) (Vic) (AC Act), the University has the obligation to pay workers compensation for ICs if:

- a. at least 80% of the services provided by the IC are performed by the key person individual; and
- b. at least 80% of the gross income of the IC is earned from the services they perform for the University.



## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	7th August 2020
<b>Review Date</b>	7th August 2023
<b>Approval Authority</b>	Senior Vice-President and Chief Operating Officer
<b>Approval Date</b>	27th July 2020
<b>Expiry Date</b>	Not Applicable
<b>Accountable Officer</b>	Lucy Franzmann Chief Financial Officer
<b>Responsible Officer</b>	Lucy Franzmann Chief Financial Officer
<b>Enquiries Contact</b>	Lisa Chan Associate Director, Corporate Finance Services +61 3 99192819

## Glossary Terms and Definitions

**"ABN (Australian Business Number)"** - A single, unique identifier for dealings with the Australian Taxation Office and for dealings with other government departments and agencies. For the purposes of the Goods and Services Tax (GST) system, the ABN also acts as the University's GST registration number.

**"ACN"** - Australian Company Number