

# Engagement of Contractors and Consultants Procedure

## Section 1 - Introduction

(1) The University of Newcastle (the University) engages contractors and consultants to undertake certain work as part of its overall staffing strategy. In the engagement of contractors and consultants there are a number of risks that the University needs to mitigate.

(2) This Guideline has been developed to help mitigate these risks.

## Section 2 - Audience

(3) University staff.

## Section 3 - Procedure

### Reasons to Engage a Contractor or Consultant

(4) The University generally engages contractors and consultants to undertake work where it is not possible or desirable to utilise existing staff or to directly employ staff for the particular work. This may occur in a number of situations, including but not limited to, where the:

- a. consultants or contractors provide an overall service or outcome, utilising their own equipment, resources or intellectual property;
- b. specialist skills and capabilities required for the work are not easily attainable other than through consultancy or contracting arrangements;
- c. skills and capabilities are required in small quantities such that developing and maintaining the expertise internal to the University would be difficult or costly; or
- d. nature of work is of short duration, unpredictable or irregular in timing, such that a labour-hire, consultancy or contractor engagement is more appropriate.

### Risks of Engagement

(5) There are a number of risks that the University needs to mitigate in the engagement of contractors and consultants. These include the:

- a. University not meeting Superannuation Guarantee or payroll tax obligations (which is particularly relevant for contractors or consultants engaged "wholly or principally for labour");
- b. contractor or consultant having insufficient insurance, including workers compensation, public liability and professional indemnity insurance, which may create risk for themselves and the University; and
- c. risk that contractors or consultants may be deemed to be employees and hence, entitled to a range of benefits and conditions that were not intended.

## Process for Engagement

(6) To help mitigate these risks, Contractors or Consultants may be engaged through one of the three following options:

- a. As a casual or fixed-term employee of the University of Newcastle where the nature of work can be effectively undertaken as an employee;
- b. Through a company or labour hire firm (indicated by having an ACN (Australian Company Number)); or
- c. Directly, with the approval of the Vice-Chancellor, Chief Operating Officer, Chief Financial Officer or Chief People and Culture Officer, where neither clauses 6(a) or 6(b) apply.

(7) Approval in terms of expenditure limits and engagement of staff will be as per the Delegations of Authority.

(8) The requirements for engaging and managing consultants and contractors will follow usual procurement, tendering and contract agreement processes. These can be accessed from the Procurement Central website.

(9) The Legal & Compliance unit provides precedent for Consultancy Agreements. These precedent can be found from the weblinks under Associated Information.

## Detailed Information on Engagement Options

(10) As outlined above, there are three options for engaging Contractors or Consultants. These are outlined in more detail below.

(11) If the Contractor or Casual is to be engaged as a casual or fixed term employee of the University:

- a. Human Resource Services can advise appropriate arrangements to engage an individual as a casual or fixed-term employee.
- b. If the individual is already a staff member of the University, the additional employment arrangement can only occur provided it is consistent with the staff member meeting the requirements of their existing employment contract with the University.

(12) If the Contractor or Casual is to be engaged through a company or labour hire firm (indicated by having an ACN):

- a. Where consultants or contractors are engaged through a company, the company will be required to provide the following:
  - i. An Australian Business Number (ABN);
  - ii. Professional Indemnity insurance appropriate to the function and Public Liability insurance of not less than \$5,000,000; and
  - iii. Workers compensation insurance.
- b. Where any individual who is engaged through a consultancy, contracting or labour hire company is already an employee of the University, all requirements of the [Outside Work Policy](#) must also be met.

(13) If the Contractor or Casual is to be engaged directly with the approval of the Vice-Chancellor, Chief Operating Officer, Chief Financial Officer or Chief People and Culture Officer:

- a. Where it is proposed to engage a contractor or consultant under an arrangement where a company structure (ACN) does not exist and the engagement will occur under an ABN, it is necessary to ensure that the potential risks are mitigated for the University.
- b. Because of these risks, in general, contractor or consultancy arrangements where it is proposed to engage the individual under a contract that is "wholly or principally for labour" will not be approved.

- c. Where the contractor or consultancy arrangements involve the provision of a service and outcomes where the engagement is not "wholly or principally for labour", this will be assessed by the Chief Financial Officer or Chief People and Culture Officer to ensure that any risks can be effectively mitigated prior to approval being given.
- d. In addition, approval will be contingent upon the individual having Professional Indemnity insurance appropriate to the function and Public Liability insurance of not less than \$5,000,000 and providing an ABN.

## **Section 4 - Roles and Responsibilities**

(14) Human Resource Services is responsible for:

- a. Advising appropriate arrangements to engage contractors or consultants as a casual or fixed-term employee.

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	16th December 2015
<b>Review Date</b>	31st December 2019
<b>Approval Authority</b>	Director, People and Workforce Strategy
<b>Approval Date</b>	16th December 2015
<b>Expiry Date</b>	1st December 2022
<b>Responsible Executive</b>	David Toll Chief Operating Officer
<b>Enquiries Contact</b>	Legal and Compliance

## Glossary Terms and Definitions

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"Intellectual property"** - Intellectual property (IP), as defined by the World Intellectual Property Organisation, refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications; and Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

**"Procurement"** - The overarching activities, processes and systems undertaken to acquire goods and services for the University.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.