



## AFTRS Contractors (Contracts for Services) Policy

<b>Responsible Officer</b>	Director, Corporate Services
<b>Contact Officer</b>	Head of Business Affairs
<b>Authorisation</b>	Chief Executive Officer
<b>Effective Date</b>	August 2011
<b>Associated Documents</b>	<i>AFTRS Administrative Orders</i> <i>AFTRS Code of Conduct</i> <i>AFTRS Fraud Control Policy</i> <i>AFTRS Engaging Independent Contractors (Contracts for Services) Procedure</i>

### 1. Policy Name

#### ***AFTRS Contractors (Contracts for Services) Policy***

### 2. Overview and objective

In order to conduct its business, AFTRS relies on its employees. AFTRS also requires the ability to engage people and organisations as independent contractors, for instance, when AFTRS needs additional or specialist services.

This policy aims to ensure that the most appropriate means of contracting the delivery of services to AFTRS occurs.

### 3. Definitions

#### **Independent contractor**

There is no simple, legal definition of an independent contractor. However, the term is generally understood in business to mean a worker who runs their own business and who is generally free to negotiate their own fees and working arrangements.

#### **Sole Trader**

A business that is owned, controlled and managed by an individual.

#### **Sham Contract**

When someone engages a worker and deliberately disguises an employment relationship with the worker as an independent contracting arrangement so they do not have to give employment entitlements, including superannuation and workers' compensation, to the worker.

### 4 Policy Statement

4.1 AFTRS may engage people or organisations as independent contractors in these circumstances, if:

- a) the business being engaged is either a company; a partnership; a trust; a sole trader; or, subject to the advice of the Head of Business Affairs, another business structure such as a cooperative or an association; and
- b) the person or organisation is actively engaged in a business; and
- c) it is determined by applying the principles of the multi-factor test determined by the courts that the relationship between AFTRS and the person or organisation is that of

independent contractors (rather than of employer and employee), and further that the engagement is not a Sham Contract.

- 4.2 In relation to paragraph 4.1 c), there are some instances where it is not appropriate for work to be performed by an independent contractor.
- 4.3 Specifically, AFTRS has determined that the following work may only be performed by employees:
- a) work that involves the exercise of delegations under *AFTRS Administrative Orders and Financial Delegations*; and
  - b) formal assessment or the formal marking (or both) of students' award course work.
- 4.4 Work that is considered to be AFTRS' core business, rather than peripheral to it, may also be more appropriately performed by employees. Some lecturing work may fall into this core business category, particularly where it involves:
- a) working as a substitute for AFTRS' staff; or
  - b) using AFTRS' own syllabus/course documents.

However, the Divisional Director responsible for the lecturing work may, on an occasion by occasion basis, determine that it is appropriate for a person to be engaged as contractor rather than an employee to carry out this work if, and only if:

- the engagement is for no more than **a total of three days**, with no more than **two** other engagements as a contractor **in the same AFTRS' Division during the last 12 months**, unless otherwise reviewed with the Director, Corporate Services and approved by the CEO.

- 4.5 Where it is determined to engage an individual as an independent contractor rather than as an employee, the Australian Taxation Office's (ATO's) superannuation guarantee eligibility decision tool must be completed. AFTRS will always pay the individual superannuation where:
- a) the individual is to provide lecturing services;
  - b) the individual is to be paid to perform or present any music, play, dance, entertainment or similar activity involving intellectual, artistic, musical, or physical skills, or is to be paid to provide services in connection with these activities. Examples include paid musicians, recording technicians, dancers;
  - c) the individual is to be paid to perform services in or in connection with the making of a film, tape, disc or of any television or radio broadcast. Examples include paid radio presenters, film and radio technicians, stunt coordinators/advisors;
  - d) the individual will be paid in instalments before the work is complete or will be paid a lump sum on completion of the work that relates to the time worked; or
  - e) the ATO's superannuation guarantee eligibility decision tool says that superannuation is payable.

# AFTRS Contractors (Contracts for Services) Procedure

<b>Linked Policy</b>	This procedure details the processes that implement AFTRS Contractors (Contracts for Services) Policy August 2011
<b>Responsible Officer</b>	Director, Corporate Services
<b>Contact Officer</b>	Head of Business Affairs
<b>Authorisation</b>	Chief Executive Officer
<b>Effective Date</b>	August 2011
<b>Associated Documents</b>	<i>AFTRS Contractors (Contracts for Services) Policy</i> <i>AFTRS Administrative Orders</i> <i>AFTRS Code of Conduct</i> <i>AFTRS Fraud Control Policy</i> <i>Guidance Note Employee/contractor</i> <i>IC1 form</i>

## These processes are to be followed to engage an independent contractor:

No	For companies, partnerships and trusts (Organisations)	For sole traders (who are always individuals)
1.	<b><i>IC 1 Coversheet</i></b> The same as Step 1 for sole traders	<b><i>IC 1 Coversheet</i></b> Prepare IC 1 Coversheet and complete as you follow the procedures.
2.	<b><i>Worker is actively engaged in business</i></b> The same as Step 2 for sole traders. However, generally it is safe to assume that an existing, validly established organisation is actively engaged in business.	<b><i>Worker is actively engaged in business</i></b> <b><i>Consider</i></b> the information in the <i>Practical Tips</i> , and decide whether the worker actively carries on a business. <b>If the worker does, go to step 3.</b> <b>If the worker does not, engage the worker as an employee</b> and stop following this procedure.
3.	<b><i>ABN and business structure check</i></b> The same as Step 3 for sole traders.	<b><i>ABN and business structure check</i></b> <b>Check</b> the Australian Business Register at <a href="http://www.abr.business.gov.au/%28wt3c5fmfv1xqmh55tprey55%29/main.aspx">http://www.abr.business.gov.au/%28wt3c5fmfv1xqmh55tprey55%29/main.aspx</a> for the worker's ABN and to confirm the business entity type. <b>Print</b> these details and attach to IC 1 Coversheet.
4.	<b><i>Multi-factor test</i></b> <b>Consider and determine</b> that the relationship between AFTRS and the person or organisation is that of independent contractors (rather than of employer and employee) using your own judgement based on your knowledge of the multi-factor test determined by the courts. If unsure, proceed with the ATO's employee/contractor decision tool at: <a href="http://www.ato.gov.au/businesses/content.asp?doc=/content/00095062.htm&amp;headline=Unsureifyourworkersareemployeesorcontractors&amp;segment=businesses">http://www.ato.gov.au/businesses/content.asp?doc=/content/00095062.htm&amp;headline=Unsureifyourworkersareemployeesorcontractors&amp;segment=businesses</a> . <b>Print</b> the results and attach to IC 1 Coversheet.	<b><i>Multi-factor test</i></b> <b>Complete</b> the ATO's employee/contractor decision tool at: <a href="http://www.ato.gov.au/businesses/content.asp?doc=/content/00095062.htm&amp;headline=Unsureifyourworkersareemployeesorcontractors&amp;segment=businesses">http://www.ato.gov.au/businesses/content.asp?doc=/content/00095062.htm&amp;headline=Unsureifyourworkersareemployeesorcontractors&amp;segment=businesses</a> . <b>Print</b> the results and attach to IC 1 Coversheet.
5.	<b><i>Core work decision</i></b> The same as Step 5 for sole traders.	<b><i>Core work decision</i></b> Decide whether the work involves the exercise of delegations under <i>AFTRS' Administrative Orders and Financial Delegations</i> , or assessing/marketing student work. <b>If it does not, go to step 6.</b> If it does, stop following this procedure and <b>engage the person as an employee.</b>

No	For companies, partnerships and trusts (Organisations)	For sole traders (who are always individuals)
6.	<p><b>Lecturing core work decision</b></p> <p>The same as Step 6 for sole traders.</p>	<p><b>Lecturing core work decision</b></p> <p><b>Does the work involve lecturing either:</b></p> <ul style="list-style-type: none"> <li>• as a substitute for AFTRS' staff; or</li> <li>• using AFTRS' own syllabus/course documents.</li> </ul> <p><b>If it does</b>, in general engage the person as an <b>employee unless</b> the Divisional Director determines <b>that on this occasion</b> it is appropriate for the person to be engaged as a contractor rather than an employee, that this engagement is for no more than <b>a total of three days</b>, and that the worker has had no more than <b>two</b> other engagements as a contractor <b>in the same AFTRS' Division during the last 12 months</b>. If a greater number of days or engagements or both is required this must be reviewed with the Director, Corporate Services and approved by the CEO. The Divisional Director's decision, with reasons, must be recorded.</p> <p><b>Go to Step 7</b> is containing contractor engagement.</p>
7.	<p><b>ATO eligibility tool - superannuation</b></p> <p><b>Not applicable for organisations.</b></p> <p>Go to step 8</p>	<p><b>ATO eligibility tool - superannuation</b></p> <p><b>Complete</b> the ATO's superannuation guarantee eligibility decision tool at:  <a href="http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&amp;KBS=SGEligibility.xr4&amp;go=ok">http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&amp;KBS=SGEligibility.xr4&amp;go=ok</a> You can also find the tool by typing "superannuation eligibility decision tool" in the search field at the top of the ATO website's home page. You need to leave the fields next to the statement "You have entered into an agreement with a company, partnership or trust for the services of the worker" <b>blank</b>. <b>Print</b> the results and attach to the IC 1 Coversheet.</p> <p><b>More often than not AFTRS will be required to pay superannuation to sole traders</b></p> <p><b>AFTRS must pay</b> sole traders superannuation at the minimum rate which is currently 9% of ordinary time earnings, where:</p> <ul style="list-style-type: none"> <li>• the individual is to provide lecturing services;</li> <li>• the individual is to be paid to perform or present any music, play, dance, entertainment or similar activity involving intellectual, artistic, musical, or physical skills, or is to be paid to provide services in connection with these activities. Examples include paid musicians, recording technicians, dancers;</li> <li>• the individual is to be paid to perform services in or in connection with the making of a film, tape, disc or of any television or radio broadcast. Examples include paid radio presenters, film and radio technicians, stunt coordinators/advisors;</li> <li>• the individual will be paid in instalments before the work is complete or will be paid a lump sum on completion of the work that relates to the time worked; or</li> <li>• the ATO's superannuation guarantee eligibility decision tool says that superannuation is payable.</li> </ul>
8.	<p><b>Check insurances</b></p> <p>The same as step 8 for sole traders</p>	<p><b>Check insurances</b></p> <p><b>Ask</b> the contractor what insurance they hold. If, for production engagements, the worker holds public liability insurance, proceed to Step 9.</p> <p>If the worker does not hold appropriate insurance the best course of action will most likely be to engage the worker as an employee. However, you may seek approval to engage the worker as a contractor following a risk assessment by the Divisional Director in conjunction with the CFO.</p>
9.	<p><b>Contract preparation</b></p> <p><b>Prepare</b> a draft contract for the contractor using the <i>Contract for Services (companies/partnerships/trusts)</i></p>	<p><b>Contract preparation</b></p> <p><b>Prepare</b> a draft contract for the contractor using one of the two <i>Contracts for Services (individuals)</i> templates, depending</p>

No	For companies, partnerships and trusts (Organisations)	For sole traders (who are always individuals)
	template. If the proposed contractor does not carry on business as a company, partnership, trust or sole trader (for example they may be a <b>cooperative</b> or <b>association</b> ), you must first <b>discuss</b> the proposal to engage the contractor with the Head of Business Affairs. If changes to the template are required, <b>discuss</b> these changes with the Head of Business Affairs	on whether or not the sole trader has insurance.
10.	<b>CEO approval</b> If an engagement is intended for longer than 6 months, <b>obtain</b> the CEO's approval in writing.	<b>CEO approval</b> If an engagement is intended for longer than 6 months, <b>obtain</b> the CEO's approval in writing.  All engagements of sole traders <b>also</b> require the CEO's written approval. <b>Send</b> a copy of the draft template to the Head of Business Affairs or Director, Corporate Services for review. Once reviewed, <b>submit</b> to the CEO for one or both approvals.
11.	<b>Documents for Financial Services</b> Same as Step 11 for sole traders	<b>Documents for Financial Services</b> <b>Lodge</b> the following documents with Financial Services: <ul style="list-style-type: none"> <li>• Copy of the <i>IC 1 Coversheet</i> signed by the staff member who completed it, with all necessary attachments and signatures.</li> </ul>
12.	<b>Documents for Payroll</b> <b>Not applicable. Procedure complete.</b>	<b>Documents for Payroll</b> If the contractor is a sole trader for whom AFTRS will pay superannuation, <b>lodge</b> the following documents with Payroll: <ul style="list-style-type: none"> <li>• Copy of the <i>IC 1 Coversheet</i> signed by the staff member who completed it, with all necessary attachments and signatures.</li> </ul> Then <b>procedure complete.</b>

**Refer** non-superannuation questions relating to payment to Financial Services. **Refer** superannuation questions to Payroll.

## Coversheet AFTRS Independent Contractor s(IC 1) (Contracts for Services)

1.	<b>GENERAL INFORMATION</b> Name of Contractor:  Reason for contract:	
	<b>AFTRS account code info</b>	<b>Account /Division/Activity / Dept/Course/ Project code</b>
2.	<b>BUSINESS CHECKS</b> <b>Australian Business Register check completed and copy attached; and determination worker actively in business</b>  <b>See Steps 2 and 3 in Procedures</b>	Tick and attach Aust Bus check <input type="checkbox"/>  I have determined worker is/is not actively engaged in business (if not engage as EMPLOYEE)
3.	<b>CERTIFICATION – INDEPENDENT CONTRACTOR</b> <b>Consider and determine the following:</b>  Is the relationship between AFTRS and the person or organisation that of independent contractors (rather than of employer and employee)? For organisations you may use your own judgement based on your knowledge of the multi-factor test determined by the courts. For all sole traders (or for organisations if unsure), complete the ATO employee/contractor decision tool and print and attach the results. As part of certification, you must consider core work issues. Attach results of ATO decision tool  <b>See Steps 4, 5 and 6 in Procedures</b>	<b>EITHER</b> <div style="border: 1px solid black; padding: 5px;"> Yes   I have determined that the relationship between AFTRS and the person or organisation is one of independent contractors   Signed by </div> <b>OR</b> <div style="border: 1px solid black; padding: 5px;"> No   I have determined the worker is to be engaged as an employee (if no, sign this process off and engage as employee)   Signed by </div>
4.	<b>SUPERANNUATION REQUIREMENTS CHECK (SOLE TRADER only)</b> <b>State and attach results of ATO's superannuation guarantee eligibility tool.</b>  <b>See Step 7 in Procedures</b>	Yes/No/Not applicable
5.	<b>INFORMATION REVIEW PROCESS</b>  a) Checks prepared by	INTIAL <span style="float: right;">Date</span>
	b) Checks reviewed /authorisation requested by ((a) & b) may be the same person)	INTIAL <span style="float: right;">Date</span>
	Comments: (Any notes you want the approval officer to be aware of. (e.g. reviewed in consultation with Head Business Affairs etc))	
6.	<b>AUTHORISATION REQUIREMENTS</b> <b>1) CEO approval required for engagement over 6 months.</b> <b>2) CEO approval required for all sole trader contracts.</b> <b>3) Where 1or 2 do not apply, Authorisation required according to Delegations Schedule. Generally, this will be Divisional Director.</b> <b>See Step 10 in Procedures</b>	Authorisation requested      1                      2                      3 ( To be completed by signatory at 5b, circle as appropriate)
7.	<b>APPROVAL</b>	Approved <i>OR</i> Not Approved (circle as appropriate. If not approved, engage as employee)  Signed
8.	<b>CONTRACT</b> <b>Contract prepared using appropriate AFTRS' template and copy attached.</b>	Tick and attach copy <input type="checkbox"/>

## PRACTICAL TIPS

### TIP 1: General

If you are considering whether to engage a person or organisation as a contractor or as an employee:

#### DO

- Think about *what* work you are asking someone to do, and *how* the work is to be done.
- Some examples are:
  - If a person is to deliver a course module from an AFTRS' syllabus using lesson plans or other AFTRS documents associated with the module, then this is generally considered to be part of AFTRS' core business and the person should generally be engaged as an employee.
  - If the person has to assess student work and enter marks into the student management system PEPI, then the person should be engaged as an employee.
  - If a person is a guest lecturer and providing their own intellectual property and is not assessing any student work, then the person may be engaged as contractor.
  - If a person is simply creating a course for AFTRS, with AFTRS owning the final product, then the person may be engaged as contractor.
  - If a person is working on a specialised project for AFTRS and milestones have to be met and the fee is paid on delivery of the project, then the person may be engaged as contractor.
  - The ATO employee/contractor decision tool must be used for individuals with an ABN (sole traders) as not all individuals with an ABN are automatically contractors.
- If unsure how to proceed, contact the Head of Business Affairs or the Head of Human Resources for assistance.

#### DO NOT

- Ask someone which they would like to be: an employee or a contractor.
- Engage someone as a contractor simply because they have an ABN.
- Engage someone as a contractor simply because they have a company.
- Engage someone as an employee simply because they carry on business as an individual.

### TIP 2: Lecturing work that may be done by contractors

(See Step 6 of *AFTRS Contractor Procedure*)

If AFTRS asks an organisation which owns and operates its own business to deliver the organisation's own courses to AFTRS' students, and is not assessing student work, the organisation may be engaged as a contractor. If AFTRS asks an industry expert, who owns and operates their own business, to deliver a guest lecture to AFTRS' students about their own experiences and the expert uses their own materials and does not assess student work, the expert may be engaged as a contractor.

### TIP 3: To determine if the person you are about to engage actually is running a business

(See Step 2 of *AFTRS Contractor Procedure*)

These criteria point to a person being engaged in running a business:

- Risks are taken to pursue profits.
- The business engages in a repetitive and continuous manner with purchasers of its services.
- The business is promoted as a business to the public through advertising or other promotional means, e.g. through the *Yellow Pages*.
- The business has tangible assets like buildings and equipment.
- The business has basic transactional systems like invoicing systems; standard rates and terms and conditions of trade; insurance coverage; payment and debt collection systems; appropriate financial records; budgeting or forecasting systems; and business based arrangements with a bank or other financial institution.
- The regulatory requirements of a business (including business name registration, taxation, GST and ABN registration and compliance) are being met.