Before engaging an independent contractor it is important to determine whether they would be more appropriately classified as a staff member of the University.

**Employee and/or Independent Contractor**

There are different types of working relationships under the law in Australia. Most people working for the University in a teaching and research capacity will be considered employees at law and are seen to have entered into a *contract of service* with the University.

They have set minimum entitlements that are provided to them under the *University of Adelaide Enterprise Agreement 2010 – 2013* (Enterprise Agreement).

A person who is an employee of the University will usually report to a supervisor who will be responsible for that person's work direction. Work undertaken by an employee needs to be carried out in a particular way in accordance with the University policies, practices and procedures. Ordinarily, the University would control how the work is performed throughout an employee’s engagement.

An independent contractor is usually a person who has established their own business and puts themselves out into the marketplace in a commercial capacity undertaking work for a variety of different clients. An independent contractor will enter into a *contract for services* with the University and is usually paid to achieve agreed results within an agreed timeframe. An independent contractor generally controls how and when the work is performed.

**How do I know if a person is an ‘employee’ or an ‘independent contractor’?**

There are several tests that courts tend to apply when considering the nature of an engagement of an independent contractor. A court will consider the totality of the circumstances as to how the independent contractor arrangement has been structured.

In order to help clarify whether a person is an independent contractor it is worth considering the following. Does the person who will be engaged;

1. control how and when the work needs to be performed?
2. have other clients, or a variety of different clients they provide services to?
3. advertise their services and attempt to attract other clients in the way businesses ordinarily would?
4. provide their own tools and equipment in order to perform the work?
5. have the ability under the arrangement to assign the work to others to perform?
6. bear the risks associated with fixing faulty work (i.e. are they themselves insured against possible acts of negligence)?
If you find yourself answering ‘no’ to a number of the above questions, then you may be dealing with a person who should be engaged as an employee and should be engaged and paid in accordance with the University’s Enterprise Agreement.

Material contained in this Information Sheet is of a general nature only, further information can be found on the Fair Work Ombudsman – Independent Contractors web page: