

Unilink

Legal & Risk Newsletter

Would you like a drink with that? Alcohol Management and the University

The University has a new [Alcohol Management and Use Policy](#). The Policy encourages moderation of, and responsible attitudes towards, the consumption of alcohol at University events, and outlines expectations for the responsible management of service and consumption of alcohol on and off University premises.

The legislation

Policy obligations are based on the requirements of the [Liquor Licensing Act 1997 \(SA\)](#), which regulates and controls the sale, supply and consumption of liquor in SA.

The Act promotes a competitive liquor supply market, but importantly, also encourages responsible attitudes towards the service, promotion and advertising of alcohol, by imposing strict penalties to encourage licence holders to take their responsibilities seriously.

The University's Liquor Licences

The University has a Special Circumstances Licence (SCL) that allows for catering and responsible service of alcohol within a 'defined area' on North Terrace campus (predominantly the Union Building, Cloisters, Pfitzner Court and the Barr Smith Lawns). In certain circumstances, the licence also allows service of alcohol outside the defined area, such as on the University sports grounds.

The University has a number of other liquor licences too, that allow for the operation of licensed eateries at Roseworthy and Waite campuses, and production of wine as part of wine-making courses.

The Alcohol Management and Use Policy [Flowchart](#) and [Defined Area Map](#) can help you determine whether a limited licence is needed for your event. If you are still unsure as to whether a licence is required, contact Legal & Risk on 83134539.

Not all University events fall within the scope of the SCL. A **Limited Licence** must be obtained for one-off 'special events' hosted outside the defined area, where alcohol is provided for purchase, or where guests are charged an attendance fee and alcohol is supplied. For example;

- Concert with a cover charge;
- Wine tasting night; or
- Fundraising event with a donation provided at the door.



In the event of a breach of licence, individuals may be exposed to a \$35,000 fine or 2 years in jail. The University risks having its licence suspended, revoked or having further conditions imposed on it, which could lead to licensed events on campus being cancelled or compromised.

Licence Conditions

The University's licences impose conditions on managers of licenced areas (such as the Staff Club and Uni Bar), including to:

- Not allow minors to serve or be served alcohol;
- Keep relevant and adequate records of all transactions involving the sale or purchase of liquor;
- Adequately display a copy of the licence and appropriate notices relating to under-age drinking in the various licensed premises; and
- Ensure an appropriate number of Responsible Persons, toilet facilities and security guards at events.

There are also strict conditions relating to noise restrictions, the type of liquor sold, hours of operation and measures to protect the safety and welfare of customers or staff.

Take Home Message

Implementing an Alcohol Management and Use Policy is crucial to the task of meeting the University's obligations under the Liquor Licensing Act.

All staff involved in the planning and management of University events where alcohol will be provided, should familiarise themselves with the Policy and understand that it has been prepared with the safety of staff and students in mind, together with our legal obligations and the expectations of the broader community.

For more information on the University's obligations under the Act, refer to the Liquor Licensing 101 on the [Resources](#) page of the Legal and Risk website.

For more information on procedures around consumption of alcohol on campus or the hosting of University events where alcohol will be provided, refer to the [Alcohol Management and Use Policy](#).





Employees v. Independent Contractors (an important distinction)

The distinction between a genuine employment relationship, and the relationship between an employee and a contractor or consultant, is important in the workplace. Managers should revisit the following information and understand the differences.

More detailed information can be found on the Human Resources website using the links provided below.

Understanding the employee/ employer relationship

There are different types of working relationships. Most people who work for the University are **employees**.

The relationship between the University and employee is a contractual one, and is often referred to as a **contract of service**, whereby the employee contracts to provide his or her labour, to enable the University to achieve a result.

The employee Terms of Employment are set out in an Enterprise Agreement, and the University is responsible for certain costs, such as the employees' superannuation, insurance, taxation and leave entitlements.

People also work for the University as **independent contractors**.

This relationship is referred to as a **contract for services**, as the contractor will typically contract to achieve a result. Independent contractors are not covered by the University's Enterprise Agreement, and are generally responsible for paying their own superannuation, taxes and providing their own insurances.

What makes someone an employee?

The main factors to consider when determining whether a person is an **employee** include:

- the person is paid for time worked
- the person receives paid leave (eg. annual leave, personal/carer's leave, long service leave)
- the person is not responsible for providing materials or equipment required to do their job
- the person must perform the duties of their position
- the person works set hours under an industrial instrument or contract of employment
- the person is recognised as part of the employer's business
- the person takes no commercial risks and cannot make a profit or loss from the work performed

This article was first published in September 2012.

Requests from internal stakeholders and evidence within the University warrant that the information be republished.

What makes someone an independent contractor?

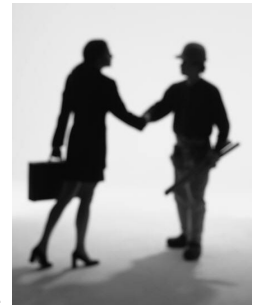
In order to help clarify whether a person is an **independent contractor**, considering the following;

Does the person who will be engaged:

- Control how and when the work needs to be performed?
- Have other clients they provide services to?
- Advertise their services and attempt to attract other clients?
- Provide their own tools and equipment?
- Have the ability to assign the work to others to perform?
- Bear risks associated with fixing faulty work?

If you find yourself answering 'no' to a number of these questions, then you may be dealing with a person who should be engaged and paid as an employee.

The Human Resources Branch has developed a [Contractor Vs Employee Guide](#) to help determine whether a person should be treated as an employee or an independent contractor.



Why it's important to know the difference between an employee and an independent contractor

Where either the employee or employer falsely treat an employment relationship as that of an independent contractor, this type of arrangement is known as **sham contracting** under the [Fair Work Act 2009 \(Cth\)](#). While such arrangements may not be deliberate, they usually mean that a worker foregoes a range of entitlements that would be available to them under an Enterprise Agreement, such as the right to parental leave or a flexible work arrangement. It may also mean that other legal obligations are being avoided, such as proper payment of taxation or superannuation.

If an employer is found to have contravened the sham arrangement provisions of the Fair Work Act or to have deliberately misrepresented to a person an independent contractor arrangement, a court may impose significant civil penalties, including a fine on the organisation of up to \$51,000 per instance, or a fine on an individual of up to \$10,200 per instance.

For more information, refer to the HR website— [Engaging Independent Contractors and Sham Contracting](#). For further assistance contact your HR Advisor or Jane Welch (Manager, Workplace Relations) at jane.welch@adelaide.edu.au or on 8313 0257.

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Employees v. Independent Contractors (an important distinction) article continued. . .

Insurance for contractors

Aside from independent **teaching** contractors, the University's insurance program **does not** cover Independent Contractors, so the majority of contractors must prove that they have their own insurances in place. The type of insurance (Professional Indemnity, or Public and Product Liability) and the minimum amount required by the University (or the people or parties we contract with) will vary depending on the contractor, the work to be undertaken and the risks associated with the work.

Schools have the option of having their independent teaching contractors covered by the University's program. Twice yearly, the insurance team will contact all schools and request that they notify the names and details of contractors to be insured.

For more information contact Tom Pontt (Insurance Officer) on 8313 3878 or at thomas.pontt@adelaide.edu.au.

Documenting the contractor relationship

Where there is a genuine independent contractor arrangement, it is important that it be recorded in an appropriate consultancy services contract.

The Legal and Risk Branch has a number of Standard Form Contracts ([contract templates](#)), including a short-form Consultancy Services Agreement (CSA), that can be down-loaded from the Contract section of the Legal and Risk website. Each template has accompanying guidelines that provide you with direction as to when the template should be used, and will assist you in completing the document.



When to use a CSA

- To engage a consultant to provide services to the University
- Bona fide independent contractor relationship, not employment
- Straightforward and low-risk services (e.g. undertake a review, website development or event management)
- The value of contract is generally up to \$30,000

When **NOT** to use a CSA

- Person providing the services is, or should be classified as an employee
- The services are required to satisfy the University's obligations under a head contract
- Services are complex or high-risk (e.g. large IT project or a project that involves multiple components)
- Services will involve creation of intellectual property
- Services involve maintenance or physical works to University property

For more information on contracting, refer to the [Contract Management Handbook](#) or email helpdesklegal@adelaide.edu.au.

Got travel insurance?

The USA offers some of the finest health care in the world. The problem is that, unless you have good insurance, it can be unbelievably expensive—for a resident, and even more so, for a visiting foreigner.

It is estimated that around 25% of Australians head overseas without travel insurance. In 2013, AdelaideNOW reported that travellers without insurance have had to fork out more than \$7,000 for a few stitches, \$75,000 for a two night hospital stay and \$300,000 for intensive care treatment while in the US.

Luckily, University of Adelaide staff and students are provided with travel insurance for **approved University travel**, at no cost to the individual (subject to conditions). Among numerous benefits, the policy provides comprehensive medical cover, including GP visits and emergency dental. This should be welcome news to people looking to visit the United States, given the number of Australians who fall ill or are injured in the US each year.



Key Policy Points

- Travel must be approved by your Head of School or Branch.
- The duration of cover is generally 180 days, with PhD students provided with up to 360 days of cover.
- Cover includes incidental private travel, up to a maximum of 4 weeks or 50% of the total trip period, (whichever is greater).
- Top-Up or private cover (beyond the allocated days) may be purchased at additional personal cost and must be organised prior to departure.
- Cover may be available for travellers who are pregnant and/or have a pre-existing medical condition, and can only be approved if a treating medical practitioner certifies you as fit to travel.

If you are unsure about whether your travel insurance is sufficient for the activities you are undertaking or the countries you are visiting while abroad, please contact Tom Pontt (Insurance Officer) on 8313 3878

For more information, refer to the [Staff and Student Travel Guide](#) on the [Resources](#) page of the Legal and Risk website.