

## CONTRACT MANAGEMENT POLICY

<b>Section</b>	Risk and Assurance
<b>Contact</b>	Director Risk and Assurance
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### Purpose

To ensure Massey University manages the risk associated with legal agreements by providing clear direction to staff responsible for establishing and managing Contracts with third parties.

No staff member or manager can sign a legal agreement (contract) unless they have the required authority (as set out in this policy, see Section C1) and in the University Delegations of Authority) and subject to the consultative and/or approval requirements set out in this Policy and related Procedure.

**Excludes** employment contracts (contracts of service) made in relation to Massey University staff. Managers should be aware that contracts for services should not be used to avoid obligations under the Employment Relations Act 2000 and that there is a legal risk in engaging a person under a contract for services when they should more appropriately be an employee. To assist managers in determining whether or not the person should be engaged as an employee or as a contractor a short question and answer test is provided as part of the [Contractors Procedures](#). If the manager is still unclear, they should contact People & Organisational Development.

### Definitions

**Confidentiality Agreement:** means an agreement designed to prevent disclosure of commercially sensitive information to a third party, or into the public domain;

**Contract:** means an agreement that commits Massey University in legal or financial terms and for the purposes of this policy includes **Pre-contractual Agreements** not intended to be legally binding;

**Contract Manager:** The Massey University staff member with responsibility for ensuring that the rights and obligations under the Contract are met;

**Contract Register:** The centralised online, digital repository holding all Massey University Contracts.

**Pre-contractual Agreements;** written agreements not intended to be legally binding which may include letters of intent, memorandums of understanding (MOU), or other similar documents;

**Responsible Area** means the applicable area set out in Table 1 below, and includes as required, the internal contracts or procurement team that provides support to that area;

## Policy

### A. Negotiating the Contract

1. A contract file must be established for holding all Contract drafts, related correspondence and a copy of the signed original in the relevant Department/Institute/School/Section.

Staff negotiating Contracts must first seek guidance and assistance from the appropriate Responsible Area section listed in Table 1 below.

**Table 1: Responsibility for Contract Areas**

<b>Contract area</b>	<b>Responsible Area</b>
Construction/Buildings and Leases of Land and Buildings)	Office of AVC Operations, International and University Registrar - Facilities Management
Procurement of Equipment, Consumables and Services (including but not limited to IT Services, and leases relating to Equipment including those pertaining to installation, supply or fabrication of equipment), non-research consulting, commercial contracts	Office of AVC Strategy, Finance, IT and Commercial Operations - Procurement Group
Teaching Agreements (including sub-contracting of teaching, domestic articulation and pathway agreements, licensing and franchising agreements (for Teaching) and MOU's with Schools)	Office of AVC Research, Academic and Enterprise
Internships	Office of AVC Research, Academic and Enterprise
Research and Consultancy (and Commercialisation of IP)	Office of AVC Research, Academic and Enterprise, Research and Enterprise
International (including Offshore)	Office of AVC Operations, International and University Registrar, - International Office
Venue and Sponsorship Agreements	Office of External Relations and Development

*Note:* If it is unclear which is the Responsible Area for the proposed contract, staff must contact the Risk and Assurance for clarification and advice.

### B. Preparing the Contract

1. All Massey University Contracts must be in writing.
2. Every Contract must include the position title of the Massey University staff member accountable for the management of the Contract. This person will be known as the "Contract Manager" and will be responsible for ensuring Massey University's rights and obligations under the Contract are met.
3. Staff involved in negotiating or preparing Contracts must have an appropriate knowledge of contract, consumer and competition law, good practice contract management in the State Sector, and must comply with Massey University policy and procedure in respect of the contracting process.

4. Where Contracts involve a tender, the *University Tender Process* and the *Tenders Board Process* contained in the [Procurement Procedures](#) must be followed.
5. Massey University's standard terms and conditions as provided in the contract templates should be used for all Contracts.

Legally approved contract templates are available via the Policy Guide, or from the relevant Responsible Area

All legally approved contract templates must be reviewed at least every three years by the relevant section to ensure they remain current and fit for purpose.

6. The Contract Manager must seek advice if Massey University's standard terms and conditions require variation, or if the use of a non-standard contract developed by a third party is proposed. In such circumstances, advice must first be sought from the applicable Responsible Area supported as necessary by internal contracts or procurement advisors, or where applicable from external legal advisors.

A schedule of approved external Massey University Legal Advisors is maintained, by the AVC People and Organisational Development. Alternative external providers of legal services must not be used without prior written approval of the AVC People and Organisational Development. Delegated authorities to engage external legal advisors are confirmed in the [Delegations of Authority Document](#).

7. Systems of effective monitoring and review of the Contract should be documented and maintained in accordance with the Contract Management Procedures (as applicable).
8. Agreement on terms and conditions of any Contract, remain subject to approval by the Vice-Chancellor (or delegate).

### **C. Signing and Storing the Contract**

1. Only those staff members identified in the *Contract Signing Delegations - Section 2: Delegations of Authority Document*, have authority to review, and sign Contracts on behalf of Massey University.
2. All Contracts must be entered into the Massey University Contract Register. The responsibility for ensuring the contract information is entered into the Contract Document Management System rests with the Contract Manager (or nominee where provided for in the Contract Management Procedures).
3. All Contracts are deemed 'Vital Records' and original documents must be securely stored in accordance with the [Vital Records Procedure](#).

### **D. Related Policy and Procedures Compliance**

1. All Contracts must be managed in accordance with the [Contract Management Procedure](#).
2. Contracts for research and consultancy must comply with the [Research and Consultancy Contracts Policy](#).

3. Contracts for teaching activity must comply with the [Subcontracting of Teaching Activity Policy](#).
4. Contracts for procurement must comply with the *Procurement Policy*.
5. Conflicts of Interest arising in the contracting process will be managed in accordance with the [Conflict of Commitment and Interest Policy](#).
6. Contracts and MOU's with international institutions must follow the [Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement](#).
7. [Contractors Procedures](#) are to be followed in respect to making the Contractor vs. Employee assessment and for establishing contracts with contractors to University.
8. Contracts for sponsorship must comply with the *Sponsorship Policy*.

## **E. Audit**

1. The Contract Management process may be periodically audited to ensure compliance with Massey University policies and procedures.

## **Audience**

All Staff

## **Relevant Legislation**

Public Records Act 2005  
Contracts (Privity) Act 1982  
Contract Enforcement Act 1956  
Illegal Contracts Act 1970  
Minors' Contracts Act 1969  
Contractual Mistake Act 1977  
Employment Relations Act 2000

## **Legal compliance**

Public Records Act 2005 – provides for the selection of public records and archives for creation, maintenance and retention. The Act directs that public records and archives can only be destroyed and disposed of with the authority of the Chief Archivist. Contracts are deemed Vital Records under the Act.

Contracts (Privity) Act 1982 – Enables a non-party to a contract to enforce a provision of that contract under certain conditions. This may apply to some classes of procurement, and other benefits negotiated for the sector.

Contract Enforcement Act 1956 – provides that certain types of contracts must be recorded in writing and signed. This applies to contracts pertaining to Massey University land and any guarantees provided by Massey University.

Illegal Contracts Act 1970 – provides that illegal contracts are not enforceable.

Minors' Contracts Act 1969 - A minor is deemed to be any person under 20 years who is unmarried, or has never been married. Some contracts against a minor under 18 years are not enforceable. The minor may however be able to enforce the contract in whole or in part.

Contractual Mistakes Act 1977 – provides for a remedy should a mistake in the contract be known to the other party

Employment Relations Act 2000 – defines “employee” and “employment contract”. Should a contractor be deemed to be an employee then the employer will be liable to provide and pay for any benefits associated with being an employee e.g. sick leave, holiday pay, redundancy payments for unjustifiable dismissals or disadvantage.

### **Related documents and procedures**

[Contractors Procedures](#)

[Contract Management Procedure](#)

[Contract Templates](#)

[Delegations Document](#)

[Procurement Policy](#)

[Procurement Procedure \(including the University Tender Process\)](#)

[Subcontracting of Teaching Activity Policy](#)

[Research and Consultancy Activity Policy](#)

[Records Management Policy](#)

[Records Management Procedure](#)

[Procedures for Establishing a Memorandum of Understanding and/or International Partnership Agreement](#)

### **Document management control**

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