



<b>Policy Hierarchy link</b>	These Guidelines are prepared under the University of New South Wales Act 1989 (the Act).		
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## 1. Introduction

### 1.1 Legislative Framework

These Guidelines are prepared under the University of New South Wales Act 1989 (the Act). The information below sets out processes and procedures to be followed for the initiation, approval, management and review of University commercial activities.

### 1.2 Purpose

The purpose of these Guidelines is to manage commercial activities of the University so as to:

- maximise benefits to the University and the community,
- manage and minimise the risks arising from commercial activity,
- ensure the appropriate allocation and stewardship of public resources,
- prevent corruption and fraud through transparency and accountability,
- facilitate management of information on commercial activities.

The Guidelines are intended to support the commercial activities of the University, by ensuring that they are conducted within the legislative framework and on a risk management basis. The University's Compliance Officer will assist with any difficulty or uncertainty about the application or use of the Guidelines.

## 2. Commercial Activities

### 2.1 Definition

University Commercial Activities are defined under the University of New South Wales Act 1989, as amended in 2001, as those activities “comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest” (s6.3a). This definition includes the exploitation of intangible property and resources including knowledge, research, and intellectual property.

Some examples of University commercial activities may include: the establishment of companies, partnerships or joint ventures; retail activity (including sale of notes & publications); lease of campus space to external entities; continuing education (including conferences, off-shore programs, non-award and tailored professional programs); overseas projects and joint ventures; contract research; projects and consultancies. Commercial activities take place across the range of UNSW organisational units, and may be initiated and managed through University controlled entities, research centres, schools, faculties, institutes and administrative units.

A commercial activity is distinguished in some cases by the sponsors of the activity having a degree of independence in controlling the production or supply of the goods or services, and the price at which they are provided. This may be contrasted with activities such as core higher education teaching and research.

The collection of fees or charges for goods, services or access to facilities is an indicator that an activity is commercial. However, activities which accrue non-financial benefits to the University may also be considered commercial activities.

An activity may be commercial even where there is no expectation of profit.

There is significant intersection between “commercial functions” and “other functions” of the University. The fact that a commercial activity may also fulfil non-commercial functions of the University does not exempt the activity from the requirements of these Guidelines, unless otherwise stated.

## 2.2 Purpose

The University of New South Wales engages in commercial activities in order to:

- provide services and facilities for students and staff,
- meet the needs of the community through teaching and research,
- generate resources for the promotion of the object and functions of the University.

## 2.3 Sponsors / Managers / Managing Unit

The sponsors or managers of a commercial activity are those persons responsible for proposing, managing and/or controlling a commercial activity of the University on a day-to-day basis. The managing unit is the organisational unit responsible for the operation of the commercial activity.

## 2.4 Approval Authorities

Approval authorities are those officers, committees, panels or boards to whom Council has delegated authority to approve University activities of a commercial nature. An approval authority must not also be a sponsor or manager of the activity.

# 3. Council and Senior Management Group

## 3.1 Council Delegations

Where Council delegates any of its functions in respect of commercial activities, including approval authority, the person to whom the functions are delegated must have appropriate commercial experience and/or have access to advice from a suitably qualified person.

## 3.2 Register of Interests

Members of Council and Senior Management Group shall ensure that they avoid conflicts of interest in relation to University commercial activities.

To this end, the Council shall establish procedures to maintain a Register of Interests in accordance with procedures determined by the Council.

Under such procedures, each member of the Council and of the Senior Management Group will be required to enter into the Register any interest in any company, institution or other entity which is involved in a commercial activity of which that member is aware with the University or its controlled entities. Notifications may be made generally or with respect to a particular proposal and members are responsible for updating them.

Under the procedures, any member of the Council or a member of the Senior Management Group who has an interest in any company, institution or other entity which is or is proposed to be involved in any commercial activity of the University which is known to that member shall be required to:

- (i) declare the nature and extent of the interest, whether or not it has been previously disclosed,
- (ii) participate in discussion of the commercial activity or proposal only at the invitation of the Chancellor or of the Presiding Member of Council or University committee, panel or board,
- (iii) not participate in any decision by Council or other University decision-making body concerning the activity or proposal,
- (iv) not vote or exercise delegated authority in respect of the activity or proposal.

The Register of Interests shall be open to inspection by any member of the Council, the Auditor-General of New South Wales and any representative of the Minister of Education and Training or the Treasurer.

## **4. Evaluation and Approval Process**

### **4.1 Overview**

The following processes and principles apply to the approval of all University commercial activities. In some cases, activity-specific policy and procedures must also be followed. Sponsors and approval authorities should refer to the information below, and refer to specific University policy for additional information.

### **4.2 Proposal**

This preliminary stage varies for different types of commercial activity, but should in all cases include the preparation of a proposal document such as a business plan which provides sufficient information for the approval authority to adequately assess the costs, benefits, risks and feasibility of the proposed activity.

The proposal must identify the source of University funding for the proposed activity, and include full details of any non-UNSW parties to be involved in the conduct of the activity.

The proposal must also include a preliminary assessment of risk associated with the activity, along with proposed means of managing identified risks. Sponsors are advised to refer to the evaluation criteria below to assist with preparation of their proposal.

Where appropriate, sponsors of a proposed activity should consult with relevant units of the University, such as the Legal Office, Facilities, Human Resources, Risk Management and Insurance, Treasury and Investment Services and/or Financial Services in the preparation of the proposal. Advice may also be sought outside the University.

Where internal or external sources have been consulted in the preparation of a proposal for a commercial activity, details of the advice obtained should be included in the proposal.

### **4.3 Endorsement**

Preliminary evaluation of the proposal in accordance with these Guidelines should be conducted by the head of the managing unit to whom the Activity Sponsor reports. The proposal shall not proceed to a further approval stage or approval authority without the endorsement of the head of the managing unit.

### **4.4 Evaluation**

In addition to any activity-specific evaluation and approval criteria set down in related policy, sponsors and approval authorities must ensure the following requirements are met in evaluating and approving commercial activities.

As a minimum standard, all proposals for commercial activities are subject to evaluation against the following common criteria:

- appropriateness of the activity for the budget unit and for the University, including whether the activity falls within the object and functions of the University as defined under the Act,
- cost to the budget unit and the University generally in terms of financial and non-financial resources,
- availability and sustainability of funding source,

- benefits to flow to the budget unit and the University generally from the activity (financial and otherwise),
- benefits to flow to the community and/or to third parties from the activity,
- risks arising from the activity, and the cost, practicality and availability of means to manage these risks,
- compliance with applicable laws, regulations and policies,
- compliance with principles of competitive neutrality.

In assessing proposed activities for approval, approval authorities should complete an evaluation checklist appropriate to the managing unit and activity-type.

#### **4.5 Advice**

Advice relating to commercial activities is available from administrative units of the University such as the Legal Office, the Research Office, Risk Management Unit, Facilities Department, the Internal Audit Office, the Human Resources Department, and the Business Development Office (ADFA). Specialist advice may also be sought from relevant controlled entities such as New South Global and Unisearch.

#### **4.6 Conflict of Interest**

At all stages of the evaluation and approval process, parties must take care to avoid actual or potential conflicts of interest. Actual or possible conflicts of interest should be identified in the activity proposal, and by any person involved in the approval process. The University's Legal Office should be contacted where advice is required on management of a conflict of interest.

#### **4.7 Records to be Kept**

Sponsors and approval authorities must ensure that all information relating to the proposed commercial activity is recorded on a Registered File for that activity. Registered Files may be requested from the University's Records Management Unit. The Registered File must hold a copy of the activity proposal document, along with completed evaluation checklists.

Where the approval authority is an individual (eg Dean, Head of School, Head of Unit) records are to be kept of all information considered in approving or not approving the activity. These records must be included on the related Registered File.

Where approval authority is a panel, committee, or board, relevant papers and minutes of all meetings at which evaluation and approval of the activity were discussed must also be included on the Registered File.

#### **4.8 Approval and Registration**

Upon approval, the approval authority must ensure that the activity is entered into the University's Register of Commercial Activities .

### **5. Risk**

#### **5.1 Managing Risk**

There is risk inherent in all commercial activity. In engaging in commercial activities, the managing unit assumes risk on behalf of the University. Failure to identify and manage risks effectively can have potentially disastrous results for the managing unit, the University, and the individuals involved.

Some risks which may arise from commercial activity are:

- financial loss;
- physical injury to staff, students, members of the public;
- loss of, or damage to, University equipment or facilities;
- inadvertent or deliberate breach of legislation, policy, or ethical standards;

- misuse of public resources, corruption;
- legal liability; and
- damage to the University's reputation or the reputation of individuals.

The University from time to time may specify risk assessment and risk management procedures or criteria to be followed generally or in the case of particular commercial activities or classes of activity.

Where no procedures are specified, the heads of managing units are required to ensure the management of risk associated with commercial activities of their units. As a guide, Australian Standard AS/NZS 4360:1999 Risk Management may be followed. Where assistance in development of risk management processes is required, referral or advice should be sought from the office responsible for management of these Guidelines.

## **5.2 Insurance of Risk**

Some of the risks arising from commercial activity can be insured, for example through worker's compensation, professional indemnity, or public liability insurance policies. Managers of commercial activities and delegated approval authorities must ensure that coverage is obtained for insurable risk. This coverage should be sought through the Insurance section of the University's Risk Management Unit, who can advise whether the activity is or can be insured under the University's existing policies.

Where a controlled entity of the University manages its own insurance policies, the insurance of commercial activities of the entity is the responsibility of the management and board of the entity.

An activity should not commence or continue where an insurable risk with a financial value in excess of \$100,000 is uninsured.

Details of insured and uninsured risk are to be included in reporting to Council or to the delegated approval authority.

## **6. Operating Requirements**

### **6.1 Operation**

The conduct and operation of University commercial activities must be consistent with the object and functions of the University, and with all applicable laws, policies and regulations.

### **6.2 Prevention of Corruption, Fraud, Maladministration and Waste**

Commercial activities must be managed in such a way as to comply with the University's obligations as a public authority, and to minimise the risk of corruption, fraud, maladministration or waste. Staff involved in the activity must adhere to the University's Code of Conduct and to all relevant policies, including those relating to the management of University resources as outlined in the University's Accounting Manual and elsewhere.

Members of the University community who identify possible instances of fraud, corruption, maladministration or serious waste have an obligation to report these in accordance with the University's Protected Disclosures policy.

### **6.3 Pricing and Competitive Neutrality**

Commercial activities of the University must comply with the principles set out in the NSW Government Policy Statement on the Application of Competitive Neutrality and related University policies as determined from time to time.

A contestable market is one in which private sector or government business competitors are potentially involved. University commercial activities taking place in a contestable market must be conducted in a competitively neutral way, that is, any competitive advantages gained through public sector ownership (such as tax concessions) should be eliminated by adjusting the pricing of the activity in order to avoid market distortion.

The pricing of commercial activities must include the full cost of provision of the goods, service or facility, unless provision is on an ad hoc basis such as surplus capacity.

#### **6.4 Reporting**

Faculties, Centres, Controlled Entities and Divisional Units will report annually on their commercial activities including notification of significant changes including risk and insurance coverage so as to allow updating of the Register of Commercial Activities.

#### **6.5 Review of Commercial Activities**

Registered commercial activities will be reviewed at least every three years. The object of review is to:

- assess the continuing viability of the activity,
- identify any significant changes in the activity,
- ascertain appropriate risk management processes are in place,
- explore opportunities for leveraging of the activity,
- ensure compliance with relevant law, policy and standards.

The review will be conducted by a person or panel appropriate to the nature of the commercial activity. Findings and recommendations of the review shall be provided to the approval authority, and a copy forwarded to the officer responsible for maintaining the University's Register of Commercial Activities.

Review of one-off activities or activities winding up prior to their review date shall take the form of a report assessing the extent to which the activity achieved the objects set out in the approved proposal.

### **7. Register of Commercial Activities**

#### **7.1 Register of Commercial Activities**

The University of New South Wales Act 1989 requires that the University maintain a Register of Commercial Activities (s20C).

The Register of Commercial Activities is a central repository for information on the various commercial activities of the University. The Register is held by an officer of the University designated by Council. Records held in the Register are considered Commercial-in-Confidence. The Register is divided into component parts reflecting the major organisational units of the University.

The heads of organisational units are accountable for ensuring that the details held on commercial activities of their unit are complete and current.

#### **7.2 Details to be held**

The Register of Commercial Activities shall hold the following information on University commercial activities:

- Type of activity and brief description,
- Whether the activity is a 'one-off' event or is ongoing,
- Contact details for managing unit and sponsor of the activity,
- Details of participating parties,
- Appointments to boards or governing bodies,

- If the activity is a company, relevant company information,
- Details of Registered Files associated with the activity,
- Details of meetings at which matters were considered relating to the evaluation or approval of commencement or continuation of the activity,
- Details of any review of the activity including findings and recommendations.

### 7.3 Grouping of Activities and Exemption from Registration

Under the University of New South Wales Act 1989 s20C(2), Council may alter the details to be held in the Register in relation to specific activities or types of activity. Likewise, Council may from time to time specify individual activities, types of activities or related activities which:

- may be grouped as a single activity for the purposes of registration; or
- are not required to be included in the Register of Commercial Activities.

Activities exempted from registration are not necessarily exempt from other requirements of the Act and these Guidelines.

### 7.4 Access

Full access to the Register of Commercial Activities is available to the following:

- Members of Council,
- Members of the UNSW Senior Management Group,
- NSW Minister for Education,
- NSW Audit Office,
- UNSW Internal Audit Office,
- UNSW Legal Office, and
- Other parties as required under law or by authority of Council.
- Restricted access allows review only of entries in the Register specific to the area of accountability. Restricted access is available to the following:
  - those officers responsible for ensuring details of activities in their area of accountability are complete and correct,
  - Activity Sponsors, approval authorities and Heads of managing units,
  - Persons named within the Register entry, such as members of governing boards,
  - Other University parties with the written approval of the activity sponsor.

### 7.5 Annual Review of Register

The Register of Commercial Activities will be reviewed annually to ensure records are complete and accurate.

## 8. Specific Procedures for Entities and Types of Activity

### 8.1 Controlled Entities

Under s15A of the University of New South Wales Act 1989 (the Act), a controlled entity is defined as “a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in section 39(1A) or 45A (1A) of the Public Finance and Audit Act 1983”. These entities are included in the University's Annual Report, and their finances form part of the University's Consolidated Accounts.

Council is obliged under s15A (1) of the University of New South Wales Act 1989 to “ensure that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under this Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under this section”. Council may seek authorisation from the Minister for controlled entities to operate outside the restrictions on the University. Where a commercial activity of a controlled entity falls outside the scope of the functions and activities allowed under the Act, the controlled entity's Board of Directors will refer the activity proposal to



Council for endorsement. If endorsed, Council will seek authorisation of the activity from the Minister.

The boards of controlled entities are responsible for ensuring that evaluation, risk management and accountability processes are in place and are consistent with the requirements of applicable legislation and policy, including these Guidelines. Where a University commercial activity is an activity managed by a controlled entity which has a Board of Directors and is subject to the Corporations Act, then the activity will be managed in accordance with the Constitution of that entity provided that:

- (a) the Constitution shall limit the powers and function of the controlled entity to conform with the requirements of the University of New South Wales Act 1989,
- (b) the Board of Directors shall be responsible for ensuring that appropriate evaluation and risk processes are followed by the management of the entity, and
- (c) the Board of Directors shall include in an Annual Report to the University any significant change in the range of commercial activities and the risks entailed,
- (d) the Board shall be responsible for informing the keeper of the Register of Commercial Activities of any new or altered activity or any new or altered details of existing activities which should be entered in the Register.

## **8.2 Building and Capital Works Projects**

Where a University commercial activity is a building project or other capital expenditure project which is included in the Capital Projects Forecast and has been approved by Council in the University Budget, the activity will be managed by the Facilities Department in accordance with the policies and procedures applicable and under the supervision of a senior officer assigned responsibility by the Vice-Chancellor provided that:

- (a) if the building facility or capital expenditure would substantially support a commercial activity of the University or of a controlled entity or any third party engaged in a commercial activity, the project must be specifically approved by Council and the responsibility of negotiating lease and other commercial terms shall be assigned to the Division of Finance, and
- (b) the senior officer of the University to whom the Facilities Department reports shall be responsible for ensuring that the project, together with any consequential agreement or lease, is entered and maintained in the Register of Commercial Activities.

## **8.3 Research Office Activities**

Where a University commercial activity is managed by the Research Office, then the activity will be managed in accordance with the policies and procedures applicable and under the supervision of a senior officer assigned responsibility by the Vice-Chancellor.

The Director of the Research Office is responsible for ensuring that the activity has been entered into and is maintained in the Council's Register of Commercial Activities.

## **8.4 Business Relationships with Outside Organisations**

Where a commercial activity involves the formation of a business relationship with an organisation outside the University, the University's Guidelines for Establishment of Business Relationships with Outside Organisations are to be followed.

## **8.5 Companies and Registered Businesses**

The establishment and registration of companies and business names by the University is subject to these Guidelines and details should be notified to the keeper of the Register of Commercial Activities on approval.

Where parties outside the University are involved, the activity may be assessed in accordance with the criteria set down in the Guidelines for Establishment of Business Relationships with Outside Organisations.

## 9. Related Policy

There are a number of University policies which relate to the conduct of commercial activities. These policies may be amended from time to time and include but are not limited to the following:

- The University of New South Wales Act 1989
- Accounting Manual
- Code of Conduct
- Code of Conduct - Members of Council
- Delegations - Financial
- Council Delegations to Faculty Standing Committees
- Guide for Submission of Program & Course Proposals
- Guidelines for Establishment of Business Relationships with Outside Organisations
- Paid Outside Work by Academic Staff
- Policy for Making a Complaint or Reporting Incidents of Criminal, Corrupt Conduct or Maladministration or Protected Disclosure at UNSW
- Principles and Procedures for the Establishment, Management and Review of Centres in the University of New South Wales
- Standing Orders for Faculty Boards and Committees of Faculties
- Intellectual Property Policy
- Named Academic Positions Policy
- Occupational Health and Safety Policies
- Recordkeeping Policy, UNSW
- Research Office - Research Policy and Procedures
- Responsibilities of Deans policy
- Responsibilities of Heads of Schools

## 10. Further Information

Questions regarding the content of these Guidelines should be directed to the University of New South Wales Legal Office in the first instance.

## Appendix A: History

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