

Commercial Activities Policy

Section 1 - Introduction

(1) All New South Wales universities have powers to undertake Commercial Activities. These Commercial Activities are distinct from a university's Principal Activities. Because universities' Commercial Activities involve significant use of public resources and must be for the university's benefit, they are required to be established and undertaken prudently within clear, transparent and systematic arrangements.

(2) Essential elements include requirements for undertaking feasibility, profitability and due diligence assessments, identifying appropriate governance and administrative arrangements, undertaking risk assessment and risk management measures, and monitoring and reporting on Commercial Activities.

(3) This Policy seeks to provide a set of principles and processes for the development and conduct of Commercial Activities, in order to achieve optimal benefits and minimisation of Risks to the University. They are supported by and are to be read in conjunction with other University policies and procedures.

(4) This Policy comprises the University's Guidelines as contemplated in Section 21A of the [Act](#).

(5) This Policy has been approved by Council.

Scope

(6) This Policy applies to all staff participating in the development or review of any Commercial Activities and is to be implemented by all staff if a Commercial Activity is being carried out by the University.

Section 2 - Definitions

(7) For the purpose of this Policy, the following definitions apply:

- a. Act means the [Southern Cross University Act 1993 \(NSW\)](#) .
- b. Award Course means a qualification achieved following successful completion of an accredited course.
- c. Commercial Activity, as defined in section 21A of the [Act](#), means:
 - i. any activity engaged in by or on behalf of the University in the exercise of Commercial Functions of the University; and
- d. any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by this Policy to be a University commercial activity.
- e. Commercial Functions, as defined in Section 6(3)(a) of the [Act](#), means the commercial functions 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 (including, for example, study, research, knowledge and intellectual property and the practical application of study, research, knowledge and intellectual property), whether alone or with others.
- f. Controlled Entity, as defined in Section 16A(6) of [the Act](#), means an entity controlled by the University or Council

has control (with control being determined in accordance with the Australian Accounting Standards).

- g. Delegate is a person, committee or other entity to which the Council delegates authority and responsibility for a function pursuant to Section 17 of the [Act](#).
- h. Principal Activities, as defined in Section 6 of the [Act](#), means the following principal functions for the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence:
 - i. the provision of facilities for education and research of university standard, having particular regard to the needs of the north coast region of the State;
 - ii. the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry;
 - iii. the provision of Award Courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community;
 - iv. the participation in public discourse;
 - v. the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards;
 - vi. the provision of teaching and learning services that engage with advanced knowledge and inquiry; and
 - vii. the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.
- i. Proposal means any proposal for the University to participate in a Commercial Activity.
- j. Proposer means the officer of the University who is advocating a particular Commercial Activity.
- k. Register means the register of University Commercial Activities required by section 21C of the [Act](#).
- l. Risk is a possibility, chance or likelihood of something happening which will have an impact upon the University's objectives, such as harm, hazardous loss, actual or contingent, including without limitation:
 - i. adverse financial, tax or duty consequences to the University;
 - ii. risk of incurring a legal liability;
 - iii. risk of loss or damage to the University's reputation;
 - iv. impairment to the University in conducting its Principal Activities;
 - v. risk of corruption or malpractice;
 - vi. any other type of risk determined by the Council or the Vice Chancellor to be risk for the purposes of this Policy.

Section 3 - What is a Commercial Activity?

(8) Subject to clause 9 below, the term Commercial Activity is used in this Policy as having the same meaning as University commercial activity which is defined in the [Act](#) (see clause 7(c) above).

(9) For the purpose of this Policy, the following activities are not Commercial Activities:

- a. the Principal Activities of the University (see clause 7(h) above); and
- b. activities which have a monetary value whether received or expended by the University of less than \$100,000 per annum.

(10) In considering whether an activity is a Commercial Activity for the purposes of this Policy, the following indicators should be used:

- a. the principal purpose of the activity is to make a financial surplus, either in the short or long term;

- b. the activity involves third parties for the provision of teaching a University award in part or in full;
- c. the activity involves the development, promotion or exploitation of University educational services through or jointly with another education provider;
- d. the activity involves inherently high or significant Risk;
- e. the activity involves the provision of University awards in an offshore setting;
- f. the activity involves the commercial exploitation of University intellectual property;
- g. the activity involves user-charges for goods and services, and managers of the activity have a degree of independence in relation to production and supply of the good or service and the price at which it is provided;
- h. the University establishing or acquiring a Controlled Entity except for the purpose of investing University funds as contemplated by Schedule 2 of the [Act](#); and
- i. any other activity which is determined from time to time by the Council to be a Commercial Activity for the purpose of this Policy, including a direction that a particular class or classes of activities are Commercial Activities.

Section 4 - Preliminary Evaluation

(11) Management will conduct a preliminary evaluation of a Proposal to determine the merits of the concept and the expected returns and Risk to the University prior to proceeding to full evaluation. Proposals that extend beyond the Principal Activities of the University and have the potential to expose the University to abnormal Risk may be submitted to Council for conceptual approval prior to proceeding to a full evaluation.

Section 5 - Evaluation

(12) Where the preliminary evaluation finds a Proposal is a Commercial Activity, the Commercial Activity will then be assessed by Council, or relevant Delegate, for its overall feasibility. The Proposal will be evaluated in accordance with the following factors to the extent they are appropriate to the nature and level of Risk of the activity and to the type of activity:

- a. whether the Proposal is for the overall benefit of the University, taking into account:
 - i. Risk;
 - ii. Size, materiality and profitability of the venture proposed;
 - iii. Fit with the University's documented strategic or operating plans;
 - iv. Financial or non-financial opportunity costs that may arise as a result of engaging in the Proposal, or failing to engage in the Proposal; non-financial and intangible benefits to the University as a result of engaging in the Proposal;
- b. financial analysis, including but not limited to:
 - i. inclusion of fee for services and other sources of revenue including but not limited to intellectual property, consultancy and professional services/advisory charges;
 - ii. modelling of an annual profit margin to the University in dollar terms on a five year projection basis inclusive of all known direct and indirect costs for the venture;
 - iii. identification of working capital required to launch the venture either alone or in collaboration with third parties;
 - iv. analysis of projected cash flow models, expected internal rates of return and a net present value to the University (where applicable); and
 - v. recommendations for an appropriate level of funding to be contributed by the University to implement the proposal or carry on the Proposal;

- c. analysis of Risks and recommended Risk management procedures required for the Proposal;
- d. financial accounting and legal due diligence of the Proposal including due diligence of each Proposal participant;
- e. appropriate legal, tax and accounting structure for the Proposal;
- f. effect of the Proposal on intellectual property ownership, and to recommend a strategy for protecting the University's legal and equitable interests in the intellectual property;
- g. documentation required so the University's legal rights and interests are protected; and
- h. insurance coverage requirements, its cost and limitations, and to make recommendations as to appropriate insurance levels.

Section 6 - Governance and Documentation

(13) If Council, or relevant Delegate, has completed the evaluation of the Commercial Activity in accordance with paragraph (12), and if Council, or relevant Delegate, considers it appropriate to proceed, the transaction documents to implement the Proposal for the proposed Commercial Activity should be prepared and must be reviewed by the University's Legal Office.

(14) Depending on the type of activity involved, transaction documents will vary in length and complexity. The following matters shall be addressed as appropriate:

- a. names and status of the parties (including ABN numbers);
- b. description or specification of the activity to be undertaken;
- c. when the activity starts and ends (including any option periods for renewal);
- d. what each party is required to do in relation to that activity, including any milestones or deadlines;
- e. the rights of each party (including default obligations and rights);
- f. liability limits of parties - actual or contingent;
- g. ownership, use or exploitation of any assets created out of that activity (including intellectual property rights);
- h. accounting, auditing, reporting and record-keeping procedures (including those required under the [Act](#), this [Police](#) and the [State Records Act 1998](#));
- i. appropriate procedures for and on termination of the commercial activity (whether by notice or breach);
- j. insurance of Risk;
- k. confidentiality requirements, including obtaining any third party consents to the inclusion of such information as may be considered necessary on the Register; and
- l. any other matters that the University's Legal Office or Finance or other professional or legal advisers recommend should be dealt with in the transaction documents.

(15) The Proposer of the Commercial Activity must obtain advice from the University's Legal Office and, where considered appropriate by the University's Legal Office, external legal advice. If a Proposer is not a member of the Executive, the Proposer must seek direction from their relevant line Executive prior to obtaining advice from the University's Legal Office. Where considered appropriate by the relevant line Executive member, the Commercial Activity may require external accounting or other professional or business advice.

(16) Council may delegate to a sub-committee to consider the merits of a Proposal including its governance arrangements and documentation and provide recommendations to approve the Commercial Activity to Council or relevant Delegate.

Section 7 - Final Approval

(17) Transactions involving Commercial Activities may only be approved by Council, or by the relevant Delegate of Council, properly appointed in accordance with and subject to the principles and limits of the University's Delegations Register.

(18) The Council or its Delegate shall review the approval and recommendations made under Section 5 - Evaluation and the documentation prepared in accordance with Section 6 - Governance and Documentation, and any legal and accounting advice obtained in relation to the Proposal, before giving final approval for the Proposal to be implemented.

Section 8 - Controlled Entities

(19) Section 16A(1) of the [Act](#) provides that the Council must ensure that a Controlled Entity does not exercise any function or engage in any activity that the University is not authorised by or under the [Act](#) to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under section 16A of the [Act](#).

Section 9 - Conflict of Interest

(20) Requirements for the disclosure of material interests by members of Council and its committees, detailed in Schedule 2A, section 5 of the [Act](#), are applicable for Commercial Activities.

(21) University staff shall be regularly made aware of their responsibilities under the University's [Code of Conduct](#) in relation to declaring conflicts of interest. The Council may direct from time to time the development of particular codes and protocols relating to the management of conflicts of interest in specific circumstances.

Section 10 - Register of Commercial Activities

(22) The Council shall establish and maintain, pursuant to section 21C of the [the Act](#), a Register of University Commercial Activities, in which the following details must be entered and kept:

- a. a description of the Commercial Activity including commencement, termination and review dates;
- b. details of all the parties to that Commercial Activity;
- c. any conflicts of interest notified in relation to the particular Commercial Activity;
- d. who approved that Commercial Activity, (for example, Council, Vice Chancellor or other authorised Delegate).

(23) The Register shall be open to inspection by any member of the Council.

(24) The Council may from time to time determine that specified activities may be treated as a single activity for the purposes of the Register. A record of such determination shall be included in the Register.

(25) The Council, or relevant Delegate, will be responsible for maintenance of the Register, and in particular, ensuring that the Register is reviewed annually.

(26) All details entered in the Register are regarded by the Council as being commercial-in-confidence and must be treated as confidential information.

Section 11 - Council Delegations

(27) Section 17 of the [Act](#) provides that Council may by resolution delegate any or all of its functions in relation to the Commercial Activities of the University (except this power of delegation) to any member of the Council, a committee of the Council or to any authority or officer of the University or to any other person or body prescribed by the University's By-laws. These delegations of authority will be listed in the Delegations Register.

(28) A delegation by the Council may limit the delegated authority by reference to the type of Commercial Activity, financial limits or any other criteria determined by Council.

(29) The person approving a Proposal for a Commercial Activity under delegated authority must not also be the sponsor of the Commercial Activity.

Section 12 - Review

(30) Each Commercial Activity listed on the Register will be fully reviewed (including but not limited to; financial, quality and legal compliance matters) as defined within the contractual agreement between the parties, but not less than once every five years, or at the time of a proposal for renewal. Such a review must identify any significant changes in the Commercial Activity and justify the Commercial Activity continuing for a further period, should that be the outcome.

Section 13 - University's Policies and Procedures

(31) In applying this Policy, reference should be made as appropriate to any applicable University policies and procedures which may be in place from time to time in relation to any one or more of the following:

- a. [Delegations Rule](#);
- b. [Code of Conduct](#);
- c. [Whistleblower Policy](#);
- d. [Risk Management Policy](#);
- e. [Outside Work Policy](#);
- f. [Fraud and Corruption](#);
- g. [Procurement Policy](#);
- h. [Purchasing Procedures](#);
- i. [Tendering Procedures](#).

Status and Details

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Head of Work Unit	Belinda Atkinson Director, Governance Services +61 2 66203186
Enquiries Contact	Governance Services