
CSE PROCEDURES FOR COMMERCIAL ACTIVITY

Reference: *UNSW Guidelines for Commercial Activities (the Guidelines)*
www.legal.unsw.edu.au/compliance.htm

Definition

Under *The University of New South Wales Act 1989*, University Commercial Activities are defined as those activities “comprising the commercial exploitation or development of any facility, resource or property of the University” (s6.3a).

Some examples include:

- establishment of companies, partnerships or joint ventures
- retail activity (including sale of notes and 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

Note: The collection of fees or charges for goods, services or access to facilities is an indicator that an activity is a commercial activity. However, activities that accrue non-financial benefits to the University may also be considered commercial activities. Enquiries should be directed to the Compliance Officer www.legal.unsw.edu.au/compliance.htm.

□ **Key questions to consider:**

- Is the activity carried out by or on behalf of the University?
- Does the activity involve resources, property or facilities in which the University has a right or interest? □
- Is the activity reasonably construed as involving ‘commercial exploitation or development’ of these resources, property or facilities?
- Does the activity involve any of the following:
 - Exchange of goods/services/remuneration
 - Income: E.g. fees, charges, invoices, commission, royalties, sponsorship
 - Use of the University accounting system
 - Marketing and advertising of a product, service, facility or event
 - Contractual arrangements under which the University receives some form of consideration
 - Formation of a business entity such as a company, partnership or joint venture
 - Registration of a business name
- Could the *Trade Practices Act 1974* apply?

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What is not considered a Commercial Activity:

- Internal charges
- HECS-funded student places
- Government-funded Research student places
- Student Activity Fees (those fees levied on behalf of the University Union, Student Guild, Sports Association)

RESPONSIBILITIES AND THE STEPS TO FOLLOW

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1. New Commercial Activities

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Evaluation and Approval

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The *sponsor* (person proposing the commercial activity) should:

1. Determine if the activity is a Commercial Activity. Contact the Compliance Officer if uncertain www.legal.unsw.edu.au/compliance.htm
2. If the activity is a Commercial Activity, proceed to prepare a proposal to be submitted to the Head of School for approval / endorsement.
3. If necessary obtain specialist advice from the relevant Units within the University. Contact the Compliance Office www.legal.unsw.edu.au/compliance.htm.
4. If the activity involves the formation of a business relationship with an external organisation (i.e. joint venture, etc) ensure that you contact UNSW Research Services and the Compliance Office for advice.
6. Prepare an NGFunds form to request a new project be opened in the NewSouth Financial System. This form can be downloaded from www.fsd.unsw.edu.au FORMS. NGFunds.
7. Submit the Proposal Document, NGFunds form and any other supporting documentation to the Head of School for approval.
8. Take the approved proposal (for filing) and NGFunds form to School's Executive Officer who will arrange for the new account to be opened.

Proposal

(www.legal.unsw.edu.au/compliance.htm)

(refer the Guidelines, Section 4.2)

The *proposal document* should at least specify:

- The activity duration (start and finish date)
- Activity summary
- Goals
- Management and Organisation
- Operational Plan (human resources, infrastructure and equipment, financial budget, quality assurance, reporting plan.
- Risk management plan
- Research plan

Registration

If approved, ensure it is registered. Complete the Commercial Activity Registration Form www.legal.unsw.edu.au/compliance.htm and submit to the Compliance Unit. A hard copy should be downloaded and filed with the proposal in the HoS's office.

Records

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Ensure that all information relating to the proposed activity is submitted with the proposal to the Head of School and then to the Executive Officer after approval for recording in an appropriate file kept in the HoS office.

Review

(www.legal.unsw.edu.au/compliance.htm)

Sponsors (persons proposing the commercial activity) are responsible for ensuring all commercial activities are reviewed at least once every three years. The Compliance Unit will provide regular reports detailing those activities due for review.

This review should be conducted by a person or panel appropriate to the nature of the activity, and copies of the findings & recommendations of the review provided to both the approval authority and the Compliance Unit (refer the Guidelines section 6.5).

The object of review (refer the Guidelines, Section 6.5) 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.□

Guidelines for the Head of School

Undertake an evaluation of the proposed activity based on the Proposal Document. The evaluation should be in accordance with the UNSW Guidelines for Commercial Activities, refer to Section 4.

- Refer to Responsibilities of Approval Authorities
- Sign the NG Funds form if satisfied that all requirements have been met
- Refer to the UNSW Guidelines for Commercial Activities, Section 4.4

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If necessary, obtain specialist advice from the Compliance Office: www.legal.unsw.edu.au/compliance.htm□

Submit the endorsed Proposal Document and NGFunds form to the *approval authority* if not the Head of School.

STEPS TO BE FOLLOWED FOR EXISTING COMMERCIAL ACTIVITIES

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The *approval authority* and the *sponsor* should locate all records relating to the activity, and ensure that all relevant documents are kept on an appropriate file for that activity ~ see *UNSW Guidelines section 4.7*. In CSE, appropriate files are kept in the HoS's office.

The *sponsor* ensures that information regarding the activity is provided to the Compliance Unit for entry into the Register of Commercial Activities. Complete the Commercial Activity Registration Form www.legal.unsw.edu.au/compliance.htm and submit to the Compliance Unit. A hard copy should be downloaded and retained in an appropriate file in the HOS's office ~ see *UNSW Guidelines section 4.8*

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The *sponsor* must ensure all commercial activities are reviewed at least once every three years.□ This review should be conducted by a person or panel appropriate to the nature of the activity, and copies of the findings & recommendations of the review provided to the Approval Authority and the Compliance Unit ~ see *UNSW Guidelines section 6.5*

THE UNIVERSITY'S REGISTER OF COMMERCIAL ACTIVITIES

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The *University of New South Wales Act 1989* requires that the University maintain a Register of Commercial Activities.□ At present, this register is held within the Compliance Unit of the Legal Office.

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The Register is a central repository for information on the University's commercial activities.

All records held in the Register are considered Commercial-in-Confidence, and access to these records is only available as stipulated in the *University Of New South Wales Guidelines For Commercial Activities*.

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Approval authorities supply all information held in the Register relating to a commercial activity and heads of organisational units are responsible for ensuring that information held regarding commercial activities of their units is complete and current.

Reports may be generated by the officer responsible for maintaining the Register for the purposes of review of commercial activities.

Sponsors may request a copy of the information held in the Register relating to their commercial activities by contacting the Compliance Unit. Sponsors should also notify the Compliance Unit of any significant changes to the activity so that an accurate record can be maintained.

RISK ASSESSMENT (refer: www.riskman.unsw.edu.au)

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Risk Identification

Identify the types of risk that could arise from the activity, such as:

- Financial loss
- Physical injury (to staff, students, members of the public, etc)
- Loss of / damage to University equipment or facilities
- Inadvertent or deliberate breach of legislation, policy, or ethical standards
- Misuse of public resources, or corruption
- Legal liability
- Damage to the University's reputation or the reputation of individuals
- Other

Risk Quantification

Any risks identified should be quantified in terms of likelihood and possible consequences.

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Qualitative measures of likelihood

Level	Descriptor	Example detail description
1	Rare	May occur only in exceptional circumstances
2	Unlikely	Could occur at some time
3	Possible	Might occur at some time
4	Likely	Will probably occur in most circumstances
5	Almost certain	Is expected to occur in most circumstances

Qualitative measures of consequence/ impact

Level	Descriptor	Example detail description
1	Insignificant	No injuries; low financial loss
2	Minor	First aid treatment; on-site release immediately contained; medium financial loss
3	Moderate	Medical treatment required; on-site release contained with outside assistance; high financial loss
4	Major	Extensive injuries; loss of production capability; off-site release with no detrimental effects; major financial loss
5	Catastrophic	Death; toxic release off-site with detrimental effect; huge financial loss

Qualitative measures of consequence/ Levels of risk (low, medium, high)

	Consequence				
Likelihood	1 Insignificant	2 Minor	3 Moderate	4 Major	Catastrophic

1 Rare	Low	Low	Medium	High	High
2 Possible	Low	Low	Medium	High	Extreme
3 Moderate	Low	Medium	High	Extreme	Extreme
4 Likely	Medium	High	High	Extreme	Extreme
5 Almost Certain	High	High	Extreme	Extreme	Extreme

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