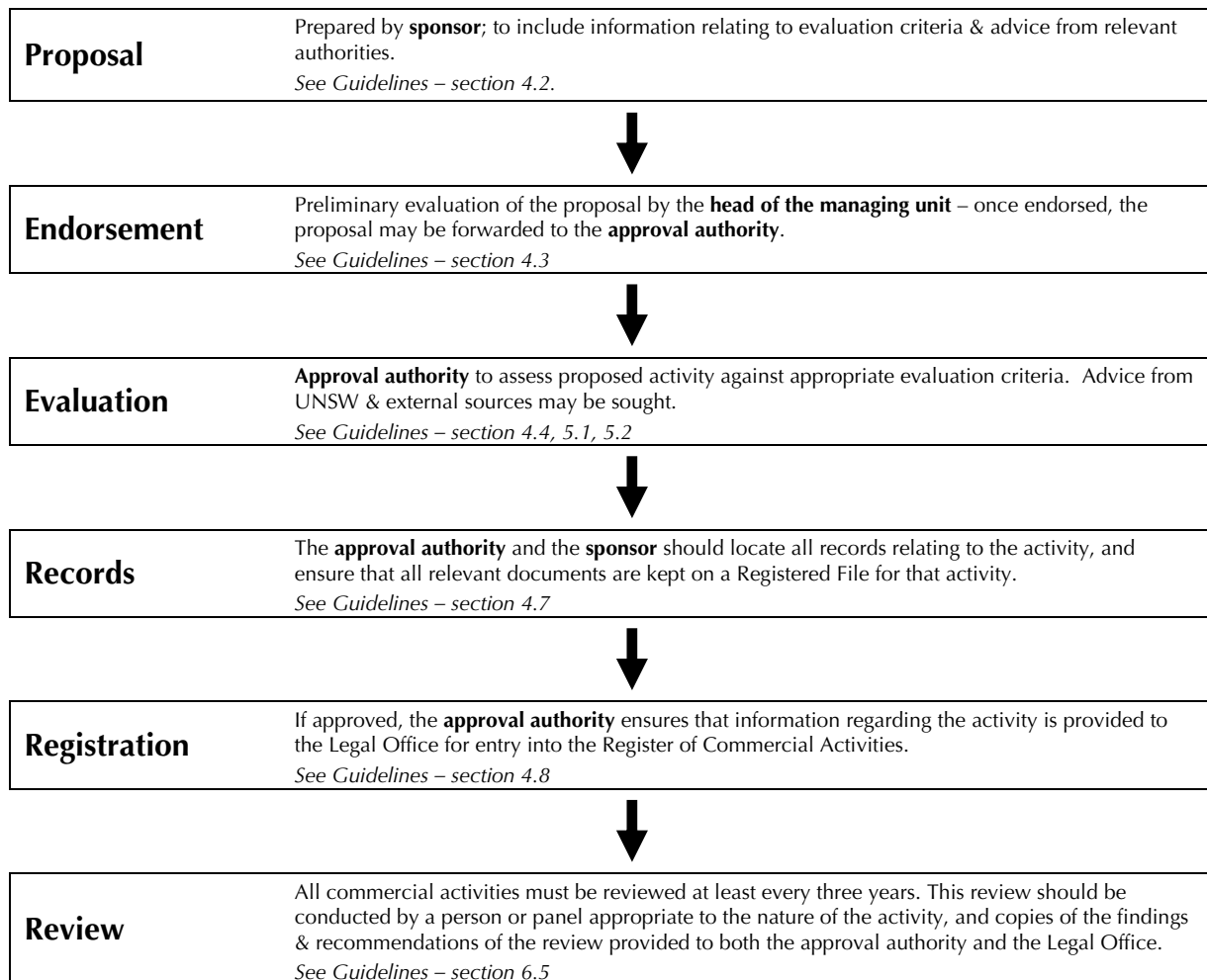




UNSW Guideline	
Associated Policy & Procedures	Guidelines for Commercial Activities
Contact Officer	Administrator, Register of Commercial Activities
Effective Date	January 2004 (Last update June 2009)
File Number	

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1. Stages for Establishing a Commercial Activity



For **new commercial activities**, follow all stages listed above.
For **existing commercial activities**, complete the records, registration & review stages.

2. Information for Sponsors

A sponsor is responsible for proposing, managing and/or controlling a commercial activity of the University on a day-to-day basis. A sponsor of a particular commercial activity cannot also act as an approval authority for that same activity.

1. Proposal

The sponsor must prepare a proposal, including a business plan. The proposal must include sufficient information for the approval authority to adequately assess the costs, benefits, risks and feasibility of the proposed activity.

The proposal must include an assessment of all risk associated with the activity, along with proposed means of managing the identified risks.

The sponsor should consult with relevant units of the University (i.e. Legal Office, Human Resources, etc) as well as external sources in preparation of the proposal, and details of any advice received should be included in the proposal (see 2.3, 4.2)

2. Endorsement

The sponsor submits the proposal to the head of their managing unit (the organisational unit responsible for the operation of the commercial activity) for endorsement. This is a preliminary evaluation of the proposed activity, and the proposal cannot be submitted to an approval authority without the endorsement of the head of the managing unit.

Endorsement is only required where the head of the managing unit is not the approval authority (see 4.3).

A sponsor must:

- Include in their proposal a business plan detailing costs, benefits, risks and feasibility of the proposed activity.
- Identify any sources of funding for the proposed activity, including University funding and full details of any non-UNSW parties to be involved in the conduct of the activity.
- Refer to the evaluation criteria when preparing a proposal and ensure that all relevant and required information is provided.
- Retain all information relating to the proposed commercial activity (including the original activity proposal document and completed evaluation checklists) in a Registered File for that activity.

3. Information for Approval Authorities

An approval authority is an officer, committee, panel or board to whom Council has delegated authority to approve University commercial activities. An approval authority of a particular commercial activity cannot also be a sponsor or manager of that same activity.

1. Evaluation

The purpose of evaluation is to ensure that the proposed activity is appropriate for the budget unit and the University, and that the activity falls within the object and functions of the University (as defined under the Act). The evaluation process is also used to determine the feasibility and potential benefits and risks of the activity.

Approval authorities must ensure that all proposed commercial activities are evaluated against the common criteria outlined in the Guidelines as a minimum standard, as well as any activity specific criteria specified in related policy.

Approval authorities should complete an evaluation checklist appropriate to the managing unit and activity-type, and include the completed checklist in a Registered File for the activity (see 2.4, 4.4, 4.7)

2. Advice

The approval authority should seek advice relating to commercial activities from administrative units of the University as needed. Specialist advice may also be sought from relevant controlled entities such as UNSW Global and New South Innovations, or external organisations (see 4.5)

3. Registration

Once the activity has been approved, the approval authority is responsible for ensuring that the activity is entered into the Register of Commercial Activities – a completed registration form and all relevant documentation should be forwarded to the officer responsible for maintaining the Register (see 4.8)

An approval authority must:

- Ensure all information relating to the evaluation and approval of the proposed commercial activity (including the original activity proposal document & completed evaluation checklists) is included in the Registered File for that activity.
- Where the approval authority is a panel, committee, or board, minutes of all meetings at which evaluation and approval of the activity were discussed must be included on the related Registered File, along with all relevant papers.
- Ensure that copies of all findings and recommendations of reviews of commercial activities have been provided to the officer responsible for maintaining the University's Register of Commercial Activities.

4. **The University's Register of Commercial Activities**

The University must maintain a Register of Commercial Activities. This Register is held within the Legal Office. 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 *UNSW Guidelines for Commercial Activities*.

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.

5. **University Commercial Activity – A Definition**

A "University commercial activity" is:¹

- (a) Any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
- (b) 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 the Guidelines to be a University commercial activity."

The two elements of this definition are explored below.

(a) Activity engaged in by or on behalf of the University in the exercise of commercial functions

The commercial functions of the University are articulated in the Act:²

"the University may exercise 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"

Such activities may be initiated and managed by University controlled entities, research centres, schools, faculties, divisions, institutes, and individuals. There is significant intersection between "commercial functions" and "other functions" of the University.

¹ *University of New South Wales Act 1989* (NSW) s20A.

² *University of New South Wales Act 1989* (NSW) s6(3)(a).

(b) Activity declared by the Guidelines to be a commercial activity

The *UNSW Guidelines for Commercial Activities* do not specifically identify particular additional activities as commercial. The definition is discussed in section 2.1 of the Guidelines.

In plain English, a “University Commercial Activity” is **the commercial exploitation or development of any property, facility, resource or interest of the University.**

The View of the ‘Reasonable Person’

The basic features of compliance with the Act in respect of commercial activities are consistent with good management practice: risk management, documented approval procedures and central recording of revenue-generating activities.

It is helpful to consider the application of the definition of “University commercial activity” from the perspective of a “reasonable person” from outside the campus community who is concerned with the management of public monies. The benefits of ensuring that the approval of revenue-generating activities is consistent with principles of accountability, risk management, transparency and good business practice are undeniable.

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* (Cth) apply?

What is not considered a Commercial Activity:

- Internal charges,
- HECS-funded student places,
- Government-funded Research student places
- Student Activity Fees (that is, those fees levied on behalf of a recognised student body)

6. Forms and Templates

The following forms and templates are available from the Legal & Compliance website.

1. [Commercial Activities Registration Form](#) [DOC]
To register a commercial activity, download and complete this form and send to the Legal Office.
2. [Commercial Activity Business Plan/Activity Proposal Template](#) [DOC]
This template is to be used when proposing any new commercial activity.
3. [Evaluation Checklist for Commercial Activity Approval Authorities](#) [DOC]
This checklist must be completed each time an activity is endorsed or approved.
4. [Commercial Activity Risk Assessment Template](#) [DOC]
5. [Review Template for Continuing Commercial Activities](#) [DOC]
All UNSW commercial activities must be reviewed at least once every three years.

6. [Winding Up Commercial Activity Review Template](#) [DOC]
This template is to be used only for one-off activities or those which are now ending

7. Policy Links

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:

- [Accounting Manual](#)
- [Centres Procedure: Establishment, Management and Review of Centres and Institutes](#)
- [Code of Conduct - Members of Council](#)
- [Code of Conduct - Research](#)
- [Code of Conduct - Staff](#)
- [Competitive Neutrality and Pricing, Policy on](#)
- [Conflict of Interest Policy](#)
- [Establishment of Business Relationships with Outside Organisations, Guidelines for](#)
- [Intellectual Property Policy](#)
- [Named Academic Positions Policy](#)
- [Occupational Health and Safety Policies](#)
- [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](#)
- [Recordkeeping Policy](#)
- [Register of Delegations](#)
- [Responsibilities of Deans](#)
- [Standing Orders for Faculty Boards and Committees of Faculties](#)
- [Submission of Program & Course Proposals, Guide for](#)

8. Advice & Training Contacts

Legal Office - www.legal.unsw.edu.au

General Enquiries	9385 2701	legaloffice@unsw.edu.au
Register of Commercial Activities	9385 2497	legaloffice@unsw.edu.au

Human Resources - www.hr.unsw.edu.au

General Enquiries	9385 2711	hr@unsw.edu.au
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Facilities Management - www.facilities.unsw.edu.au

General Enquiries	9385 5111	fmassist@unsw.edu.au
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Grants Management Office - www.gmo.unsw.edu.au

General Enquiries	9385 7230	mygrants.gmo@unsw.edu.au
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Finance - www.fin.unsw.edu.au

Financial Control	9385 1667
Financial Operations	9385 3356
Risk Management	9385 1414

Records & Archives - www.recordkeeping.unsw.edu.au

General Enquiries	9385 2858	records.admin@unsw.edu.au
Registered Files	9385 2858	records.admin@unsw.edu.au

UNSW Global - www.nsg.unsw.edu.au

General Enquiries	9385 3666	unswglobal@unsw.edu.au
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NewSouth Innovations (NSi) - www.nsinnovations.com.au

General Enquiries	9385 6511	info@nsinnovations.com.au
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