

Commercial Activities Guidelines

Section 1 - Purpose and Context

(1) These Guidelines are made by the Board of Trustees pursuant to Part 4, Division 4 (sections 32A-32E) of the [Western Sydney University Act 1997](#).

(2) The University has power under the Act to carry on commercial activities as part of its functions.

(3) These Guidelines establish a framework of principles and processes for the evaluation, approval and conduct of commercial activities that support achieving optimal benefits and minimise the risks to the University.

(4) Core elements include requirements for undertaking feasibility and due diligence assessments, identifying appropriate governance and administrative arrangements, undertaking risk assessment and risk management measures, and monitoring and reporting.

(5) The Vice-President, Operations and Commercial has the responsibility for providing advice in relation to interpretation of and compliance with these Guidelines.

Section 2 - Definitions

(6) For the purpose of these Guidelines, the following definitions apply:

Act	means the Western Sydney University Act 1997 as amended
BIDC	means the Business and Infrastructure Development Committee which is a committee of the University's executive
conducted outside Australia	means the activity or service is supplied and/or delivered from outside of Australia
controlled entity	means a controlled entity of the University within the meaning of section 22A of the Act and the University's Controlled and Associated Entities Governance Framework
commercial activity	means an activity defined in Clause 9 of these Guidelines
commercial activity procedures	means the procedures set out in Section 4 of these Guidelines.
community engagement activity	means an activity to develop and provide cultural, sporting, professional, technical and vocational services to the community that contribute to the social, economic and/or intellectual life of the University and of the Greater Western Sydney region, regardless of whether that activity generates a commercial return
conflict of interest	means an actual or potential conflict of interest, and includes any material interest referred to in Schedule 2A of the Act
contract research	means a Research or other project that is conducted by the University in return for a fee or other consideration, except grant-funded research
Contracts Register	means the register of contracts referred to in clauses 43 - 44 and required to be maintained under the Government Information (Public Access) Act 2009
Corporations Act	means the Corporations Act 2001 (Cth)

costs	means the total costs inclusive of related direct and indirect costs
delegate	means the person, committee, authority or officer to whom the Board delegates a function under s.23 of the Act, including under the Delegations of Authority Policy or these Guidelines
financial contribution	means the actual cost to Western Sydney University ('The University') of undertaking the activity excluding in-kind costs. [Note: if in-kind costs are more than four times the value of the incremental cost, then they must also be included for the purposes of calculating the value of the financial contribution
GIPA	means the Government Information (Public Access) Act 2009 (NSW) as amended from time to time.
grant funded research	means a Research project: <ol style="list-style-type: none"> 1. that is listed on the Australian Competitive Grants Register; 2. that is wholly funded by an Australian government or Australian government body; and 3. where the contract or subcontract for that research project provides for the University or a controlled entity to own all intellectual property rights arising from that research project and any licence of intellectual property rights is limited to the funding body only or, where applicable, the named lead institution for that research project.
gross income	means the total revenue (including any in-kind contribution) payable to the University before deduction of any expenses or other amounts, including any sharing of profits with another organisation
ITDS	means Western Sydney University's Information Technology and Digital Services team
intellectual property	means the definition within the Intellectual Property Policy
material interest	has the meaning given to that term in paragraph 5(9) of Schedule 2A of the Act
managing unit	means the person or the academic or administrative unit with responsibility for the conduct of a commercial activity throughout its life
proposal	means any proposal for the University to undertake a commercial activity
risk	means an actual or contingent risk, including any one or more of the following: <ol style="list-style-type: none"> 1. risk of financial loss, including any adverse duty, taxation or other financial consequences; 2. probity or compliance risk; 3. legal or regulatory risk; 4. reputational risk; 5. risk to the ability of the University to carry out its functions under the Act, including risk to its business, systems and operations; 6. risk relating to corruption, maladministration, foreign interference or fraud; 7. any other type of risk determined by the Board of Trustees to be a risk for the purposes of these Guidelines generally or for any particular type of commercial activity
Register of Commercial Activities	means the register referred to in clauses 41 - 42
Register of Commercial Interests	means the register referred to in clauses 38 - 40
research	means creative and systematic work undertaken in order to increase the stock of knowledge - including knowledge of humankind, culture and society and to devise new applications of available knowledge
sponsor	means the person or academic or administrative unit that proposes a commercial activity for approval under these Guidelines
total activity life	means the total length of time for the conduct of a commercial activity, including any extension or renewal

Section 3 - Policy Statement

(7) All commercial activities are guided by the following principles:

- a. all commercial activities must fall within the objects and functions (including commercial functions) of the University;
 - b. these should align with and support the University's functions and strategic goals and provide optimal benefits (both financial and non-financial) while minimising risks;
 - c. all funds and resources should be allocated and managed appropriately throughout the total activity life;
 - d. where appropriate, these should comply with competitive neutrality principles (see clauses 15 – 19);
 - e. robust systems should be in place to ensure transparency and accountability, and to appropriately identify and manage risks.
- (8) Leases or licences of land owned or controlled by the University are guided by the following additional principles:
- a. consistency with the University's strategic approach to planning and development of its campuses;
 - b. contribution to the University's financial and organisational strength;
 - c. suitability of tenants, from a strategic, financial and reputational perspective, and taking into account the University's need to ensure a good mix of tenants;
 - d. any other principles specified by the University Infrastructure Committee of the Board.

Definition of a Commercial Activity

(9) Section 32A of the Act defines a commercial activity as:

- a. any activity engaged in by or on behalf of the University in the exercise of its commercial functions; 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.

(10) Section 8(3)(a) of the Act defines “commercial functions” as:

... 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, with particular regard to the need to contribute to the development of Greater Western Sydney

(11) The Board has prescribed the following activities as commercial activities for the purposes of these Guidelines:

- a. establishment and operation of any controlled entity or acquisition of any interest in any partnership, trust, company or joint venture whether in the exercise of a commercial function of the University or a non-commercial (including community engagement) function, and except for investments referred to in clause 12;
- b. participation in any cooperative research centre or other research and development structure, whether incorporated or unincorporated, including as part of any grant funded research where annual Western Sydney University financial contribution or costs exceed \$150,000;
- c. establishment of a campus or similar presence (such as a learning centre) anywhere within or outside Australia;
- d. any activity, including a teaching or research activity, conducted outside Australia, including as part of any arrangement with another organisation (refer to clause 14);
- e. commercial exploitation of intellectual property rights;
- f. any activity where the University is required to give a financial or other performance undertaking (including a letter of comfort) or guarantee on commercial terms in respect of a controlled entity;

- g. supply of project, contract research, consultancy or other services (unless this involves a community engagement activity) to third parties where annual University financial contribution or costs exceed \$150,000;
- h. purchase, management or development of real estate not used primarily for any teaching, research or community engagement activity;
- i. any lease or licence of land owned or controlled by the University to a third person for any purpose (including any casual venue hire arrangements);
- j. an arrangement of any description where the University contributes funds, or contributions where the value exceeds \$150,000, unless this involves a community engagement activity.

(12) The following activities are not commercial activities for the purposes of these Guidelines but may in some cases be subject to evaluation, risk assessment and approval processes described in the [Procurement Policy](#).

- a. community engagement activities;
- b. investment activities carried out under Schedule 2 of the Act;
- c. grant funded research, except as these relate to activities described in clause 11;
- d. acquisition of services, facilities, equipment or other assets by or on behalf of the University for its normal business or operational requirements;
- e. management, maintenance, restoration or improvement of lands or buildings owned by the University or under its control;
- f. management, maintenance, restoration, improvement of or additions to library, art, heritage items or other collections;
- g. charitable fundraising activities conducted by or on behalf of the University;
- h. core business activities that have a very low - moderate risk rating. Refer to the [Western Risk Assessment Guide](#) Appendix 3 - Western Sydney University Risk Rating Scale; and
- i. award courses, short forms of learning, education and training activities and non-award courses delivered inside or outside of Australia that are supplied from and managed on shore by the University. For the sake of clarity, this would not include delivery by third parties off shore.

(13) Notwithstanding clause 12, an activity may still have to be evaluated and assessed for risk and approved in the same way as a commercial activity if the University's financial contribution is likely to exceed \$150,000. This requirement applies even if the primary purpose of that activity is not commercial or there is no expectation of profit. Advice should be sought from the Vice-President, Operations and Commercial before preparing a proposal.

(14) Activities conducted outside Australia - for any proposed commercial activity conducted outside Australia, additional independent expert legal, tax, foreign exchange restrictions and other regulatory compliance advice must be obtained before a proposal can be submitted for approval.

Competitive Neutrality Principles

(15) Refer to the Council of Australian Governments Competition Principles Agreement, April 2007 for the policy of competitive neutrality in relation to commercial activities carried out by State and Federal Governments and all publicly funded institutions, including universities.

(16) The principles of competitive neutrality require that the University should charge a competitive amount for all services conducted as commercial activities, rather than an amount based on cost advantages that the University has as a government-funded institution, including its tax-exempt status and shared infrastructure and resources that often subsidise indirect costs of a particular activity.

(17) Direct costs are those that are directly attributable to an activity, such as:

- a. salaries and on-costs (superannuation, payroll tax, worker's compensation insurance, leave entitlements and loading, long service leave);
- b. other amounts payable for contracted labour (such as research assistance stipends, subcontractor fees, and so on);
- c. amounts payable for the acquisition of goods or services specific to the activity (including equipment, technology, consulting or scientific services).

(18) Indirect costs are overheads or infrastructure costs that the University cannot easily allocate to a single activity, such as:

- a. provision and maintenance of physical infrastructure, such as offices, laboratory facilities, technology and communications;
- b. access to in-house resources and services, such as legal services, financial management and insurance services, security and other administrative services.

(19) All proposals must be costed, and will be evaluated, on the basis of total estimated direct and indirect costs, unless the University decides that there are strategic, competitive or other community benefit grounds for not doing so.

Proposal

(20) Proposals must be submitted and evaluated in the format required in accordance with Commercial Activity Procedure.

(21) All impacted areas of the University should be consulted when preparing a proposal.

(22) If the Commercial Activity involves procurement of goods and/or services, the requirements of the [Procurement Policy](#) must be met.

(23) A commercial activity must be approved in accordance with the Commercial Activity Procedures before it can be submitted to the relevant avenue for approval. Refer to the Commercial Activities Procedures for threshold details.

Proposal Threshold

(24) All commercial activity proposals will be evaluated in accordance with the relevant threshold:

- a. if the annual University financial contribution is less than or equal to \$150,000 (and the risk rating is very low - moderate) the Due Diligence Process as set out in the Commercial Activity Procedures is to be followed;
- b. if the annual University financial contribution is greater than \$150,000 (and the risk rating is considered high - critical) the Business Case Process as set out in the Commercial Activity Procedures is to be followed.

Governance and Documentation

(25) All commercial activities must be properly structured and documented and must incorporate contractual provisions dealing with:

- a. an appropriate structure for the proposal from a legal, tax, regulatory or other perspective in line with any recommendations given by the Office of General Counsel, legal or other professional advisers;
- b. appropriate exit arrangements including termination and asset distribution and liability payment obligations to protect the interests of the University;
- c. insurance and other risk minimisation strategies (such as indemnity and limitation of liability clause) as appropriate and consistent with the University's risk appetite;

- d. an appropriate governance structure that contains provisions dealing with:
- i. identification and appointment of suitably qualified and experienced directors and shareholder representatives to represent the University's interests where an incorporated entity is established;
 - ii. establishment and maintenance of appropriate control mechanisms including, in the case of controlled entities, compliance with s.22A of the Act and these Guidelines;
 - iii. management of information, including security and confidentiality of records, compliance with privacy laws for handling of personal or health information, public right of access to information;
 - iv. appropriate accounting and auditing procedures and requirements for regular reporting to the Board of Trustees or its delegate, as appropriate;
 - v. appropriate provisions concerning the source, allocation and accounting of income or expenditure for that activity.

(26) All contracts must be prepared or reviewed by the Office of General Counsel or delegated representative.

(27) Any appointments of directors or other office holders to a company or other vehicle (whether incorporated or unincorporated) must be first approved by the Board Executive Committee.

Final Approval

(28) Final approval of any proposal shall be in accordance with the University's [Delegations of Authority Policy](#) in accordance with the Commercial Activity Procedures.

(29) A sponsor of a commercial activity must not approve that activity, even if they have delegated authority to do so. The activity must be referred for approval to a delegate who is more senior than the sponsor or BIDC, in accordance with the University's [Delegations of Authority Policy](#).

(30) Any proposal requiring Board approval must first be endorsed by:

- a. BIDC and, if applicable, the University's Executive Committee; and
- b. as applicable, the Board's Finance and Investment Committee, Board Executive Committee or University Infrastructure Committee.

(31) Refer to the Commercial Activity Procedures for the approval and endorsement process.

Ongoing Operational Requirements

(32) The relevant managing unit is responsible for managing and regularly monitoring the commercial activity throughout the total activity life to ensure the ongoing viability of the commercial activity, including ensuring compliance with:

- a. the University's obligations as a public body;
- b. any conditions of approval for that commercial activity;
- c. any internal or external reporting obligations (including any changes to details entered in the Register of Commercial Interests, Register of Commercial Activities or Contracts Register);
- d. all contractual obligations;
- e. provision of all necessary information to ensure that the Register of Commercial Activities and the Contract Register are kept accurate and up to date;
- f. prompt notification of any changes that materially impact commercial or financial viability;
- g. conducting commercial reviews as required; and
- h. all relevant University policies and procedures.

(33) All commercial activities will be reviewed, at a minimum, every three years to:

- a. assess ongoing viability, including achievement of objects or purpose;
- b. identify or assess the effectiveness of any systems of control, including risk management strategies;
- c. identify any significant changes, including changes in risks;
- d. any other matter considered appropriate in the circumstances.

(34) The Vice-Chancellor and President or the Vice-President, Operations and Commercial can at any time direct an unscheduled review or audit of a commercial activity, if considered appropriate.

Conflicts of Interest

(35) Anyone involved in preparing, evaluating or approving a proposal must:

- a. avoid an actual or potential conflict of interest or, if it cannot be avoided, ensure there are appropriate strategies in place to manage that conflict; and
- b. disclose full details of that conflict of interest (including notifying any changes to those details) and any other details as required in accordance with the Western Sydney University [Conflict of Interest Policy](#), considering the University's:
 - i. [Code of Conduct](#), and
 - ii. [Fraud and Corruption Risk Management Framework](#).

(36) The following requirements apply:

- a. a sponsor or head of the managing unit must not be involved in any approval process for that activity;
- b. any person with a conflict of interest must not participate in any discussion or decision for evaluating or approving the proposal to which the conflict of interest relates;
- c. a conflict of interest involving a member of the Board of any of its committees must be disclosed and managed in accordance with clause 5 of Schedule 2A of the Act.
- d. a conflict of interest involving University staff, students or other officers or representatives must be disclosed and managed in accordance with the University's [Conflict of Interest Policy](#).

(37) All conflicts of interests are to be recorded in accordance with the [Conflict of Interest Policy](#).

Register of Commercial Interests

(38) All Conflict of Interests declared will be kept on a Register of Commercial Interests. This may be inspected by:

- a. any member of the Board's Audit and Risk Committee;
- b. the Vice-Chancellor and President;
- c. the Vice-President, Operations and Commercial, the Vice-President and Chief Financial Officer, the General Counsel, the University Secretary, the Chief Audit and Assurance Officer;
- d. the NSW Auditor-General, or their authorised representative;
- e. the NSW Minister for Education, or their authorised representative;
- f. the NSW Treasurer, or their authorised representative.

(39) All requests to inspect the Register of Commercial Interests shall be directed to and managed through the Vice-President, Operations and Commercial.

(40) Any information recorded on the Register of Commercial Interests that consists of personal information will be

collected, stored, used and disclosed in accordance with the University's [Privacy Policy](#) and [Privacy Management Plan](#).

Register of Commercial Activities

(41) The Board of Trustees has established and maintains a Register of Commercial Activities of the University and its controlled entities in accordance with section 32C of the Act.

(42) The Vice-President, Operations and Commercial is responsible for maintaining the Register of Commercial Activities and ensuring that details of all approved commercial activities are entered and kept up to date, including the following details:

- a. a description of the commercial activity;
- b. when the commercial activity begins and ends (including any options to extend or renew);
- c. parties involved in the commercial activity;
- d. the managing unit and sponsor;
- e. any appointments of any directors or other representatives of the University;
- f. any meetings at which relevant matters were considered and approved for the purpose of compliance with these Guidelines;
- g. any reports submitted as part of any reporting requirements;
- h. any review or audit conducted under clauses 15 - 19; and
- i. any other details that the Board or the Vice-President and Chief Financial Officer considers appropriate to include.

Contracts Register [Government Information (Public Access) Act 2009]

(43) The [Government Information \(Public Access\) Act 2009 \(GIPA\)](#) Contracts register is a separate publicly available register to the Register of Commercial Interests and is maintained by Procurement Services and overseen by the Vice-President and Chief Financial Officer.

(44) The managing unit is responsible for compliance with [GIPA](#) and ensuring that all details are properly entered into and uploaded to the Contracts Register.

Delegations of Authority

(45) All commercial activities must be approved in accordance with the University's [Delegations of Authority Policy](#).

Controlled Entities

(46) Controlled entities are defined under section 22A of the Act. The Board of Trustees in reviewing and approving any proposal to establish a controlled entity must ensure that any controlled entity does not propose to exercise any function or engage in any activity that the University itself is not authorised to undertake by the Act unless specific permission has been obtained from the Minister. The Board of Trustees thereafter will be responsible for monitoring the controlled entity.

(47) 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. In considering the appointment of directors to the boards of controlled entities, the Board of Trustees should ensure that the appointees possess an appropriate level of skill, knowledge and experience to discharge their duties as a director. Where a University commercial activity is an activity managed by a controlled entity that has a board of directors and is subject to the [Corporations Act 2001](#), then the activity will be managed in accordance with the constitution of that entity provided that:

- a. the board of directors shall be responsible for ensuring that appropriate evaluation and risk processes are followed by the management of the entity;
- b. 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; and
- c. the Board of Trustees shall be responsible for informing the registrar of the Register of Commercial Activities of any new or altered activity or any new or altered details of existing activities that should be entered in the Register.

(48) Nothing in these Guidelines diminishes the responsibilities that directors have under the [Corporations Act 2001](#).

Prevention of Corruption, Fraud, Maladministration and Waste

(49) 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 comply with the [Code of Conduct](#) and all other policies of the University including those relating to the management of the University's finances and resources.

(50) Members of the University community who identify possible instances of corruption, fraud, maladministration or waste have an obligation to report these in accordance with the University's [Fraud and Corruption Risk Management Framework](#).

(51) Any reports of fraud, maladministration or waste may also be treated as public interest disclosures under the University's [Whistleblowing \(Reporting Corruption and Other Serious Wrongdoing\) Policy](#).

Section 4 - Procedures

Purpose

(52) The Commercial Activities Guidelines are managed by the Office of the Vice-President, Operations and Commercial and are designed to ensure commercial activities receive sufficient rigour and due diligence before progressing.

Approval Process

(53) The process of obtaining approval will be determined by risk level and value threshold having regard to the:

- a. value threshold is detailed within paragraph 9
- b. whether the risk Level is:
 - i. Low - moderate risk activities will undergo an 'Due Diligence Process';
 - ii. High - critical risk activities will undergo a 'Business Case Process'; or
 - iii. Risk is determined by Western Sydney University [Western Risk Assessment Guide](#) - Appendix 3: Western Sydney University Risk Rating Scale
- c. below table as a guide;
- d. whether the activity is conducted outside of Australia in which case the Proposal/Business Case process is required to be followed.

Consequences	Likelihood				
	1 Rare	2 Unlikely	3 Possible	4 Likely	5 Almost Certain

5 Catastrophic	Moderate	Moderate	High	Critical	Critical
4 Major	Low	Moderate	High	High	Critical
3 Moderate	Low	Moderate	Moderate	Moderate	High
2 Minor	Very Low	Low	Moderate	Moderate	Moderate
1 Insignificant	Very Low	Very Low	Low	Low	Low

Due Diligence Process

(54) Commercial activities considered very low – moderate in risk (in accordance with the Western Sydney University [Western Risk Assessment Guide](#)) are required to follow the Due Diligence Process.

(55) For Research related activities:

- a. follow the Research Services or Business Services processes; and
- b. gain endorsement from the appropriate delegate, as specified in the [Delegations of Authority Policy](#), Schedule EE, prior to commencing the activity.

(56) For activities related to the purchase of Goods and/or Services:

- a. follow the Procurement Process, and
- b. gain approval in accordance with the [Delegations of Authority Policy](#) prior to commencing the activity.

Proposal/Business Case Process

(57) Commercial activities considered high - critical in risk (in accordance with the Western Sydney University Risk Management Guidelines) are required to follow the Proposal/Business Case Process.

(58) All activities are required to undergo:

- a. approving financial review (via the Vice-President, Finance and Chief Financial Officer)
- b. area owner review (e.g. if there are technology impacts – Chief Information and Digital Officer, if there are facility impacts – Vice-President, Operations and Commercial)
- c. endorsement by:
 - i. If Research – Senior Deputy Vice-Chancellor and Vice-President, Research, Enterprise and Global; or
 - ii. All other - Vice-President, Operations and Commercial
- d. Approval from the applicable Board Committee.

Evaluation Proposals

(59) Proposals must be submitted in the format required in accordance with the Commercial Activity Procedures.

(60) All proposals must be costed, and will be evaluated, based on the total estimated costs and financial contribution.

(61) All relevant commercial activity proposals will be evaluated according to the following criteria:

- a. compliance with the principles outlined in Clause 7;

- b. are compliant with the additional principles relating to Leases or Licences of Land outlined in Clause 8
- c. are financial viable, as outlined in Clause 62;
- d. have a structure and governance framework that is appropriate from a legal, taxation and accounting perspective;
- e. have appropriate systems and processes to eliminate, minimise or manage risks, including during any transition-in or transition-out stages of the activity;
- f. have adequate and appropriate accounting, auditing, reporting and other mechanisms and systems;
- g. the activity will be properly project-managed throughout the total activity life; and
- h. addresses any other criteria identified by the Vice-President, Operations and Commercial necessary or appropriate for that type of commercial activity.

Financial Viability

(62) In evaluating financial viability, the following will be taken into account:

- a. the strategic fit of the commercial activity;
- b. the viability of the proposed activity; and
- c. any other criteria the Vice-President and Chief Financial Officer considers necessary or appropriate, taking risks into account.

Section 5 - Guidelines

(63) N/A.

Status and Details

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Effective Date	16th August 2024
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