

# Commercial Activities Statutory Guidelines

## Section 1 - Introduction and Definitions

### Part A - Introduction

(1) These Guidelines are prepared in accordance with Part 4, Division 3 of the [Charles Sturt University Act 1989](#). The information below sets out processes and procedures to be followed for the initiation, approval, management and review of Charles Sturt University (the University) commercial activities.

### Part B - Purpose

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

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

(3) 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.

### Part C - Interpretation

(4) In these Guidelines, the following words have the corresponding meanings unless the context indicates otherwise:

- a. Act means the [Charles Sturt University Act 1989](#) as amended.
- b. By-law means the [Charles Sturt University By-law 2005](#).
- c. Budget Centre means an organisational unit approved by the Council or Vice-Chancellor and for the purpose of this Guideline includes a controlled entity.
- d. Council means the governing authority of the University and includes an officer, body or person delegated by the Council under the Act to exercise a function for and on behalf of the Council under this Guideline.
- e. controlled entity has the same meaning as provided for under section 19A of the Act.
- f. commercial activity has the same meaning as section 24A of the Act which states a commercial activity means:
  - i. any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University, and
  - ii. 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.
- g. delegate means a person, committee or entity to whom the Council delegates a function in accordance with the [Act](#).
- h. Guideline means this Statutory Guideline for Commercial Activities.

- i. proposal means a Commercial Activity Proposal.
- j. Registrar means the officer appointed under clause (63) to be Registrar of Commercial Activities.
- k. risk means:
  - i. risk of financial loss;
  - ii. risk of incurring a legal liability;
  - iii. risk of loss of or damage to the reputation of the University;
  - iv. risk of impairment of the conduct for the University's principal functions under the Act;
  - v. risk of adverse tax or duty consequences to the University;
  - vi. risk of corruption or fraud;
  - vii. any other type of risk determined by the Council to be a risk for the purposes of these Guidelines.
- l. Senior Executive Committee means the committee of senior executives constituted by the Vice-Chancellor including the Deputy Vice-Chancellors and other senior executives.
- m. University Secretary means the Secretary to the Council appointed by the Council under the By-law.

## **Part D - Scope of Commercial Activities within Guidelines**

(5) Without limiting the Council's right to determine other criteria, any commercial activity that involves the receipt or expenditure (including funding) or uninsured risk by the University in excess of \$100,000 per annum must be evaluated in accordance with these Guidelines.

(6) The Council may approve criteria to assist in the evaluation of whether a proposal involves a commercial activity under these Guidelines.

(7) For the purpose of calculating whether a proposal exceeds the threshold in clause (5), the full cost of the proposal including resource inputs, whether cash or in kind, must be considered.

(8) A proposal must be considered in its entirety and must not be segmented in order to circumvent the threshold figure.

(9) 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.

(10) For example, University commercial activities may include: retail activity (including sale of products such as foodstuff or publications); lease of campus space to external entities; commercial land developments; continuing education (including conferences, off-shore programs, non-award and tailored professional programs); overseas course delivery; contract research; projects and consultancies.

(11) A commercial activity would not include, for example:

- a. an activity that is wholly funded by the Government for core higher education teaching and research activities;
- b. charitable fundraising or sponsorship activities conducted by or on behalf of the University.

(12) A commercial activity is distinguished in some cases by the University (including the manager of the activity or a controlled entity) having a degree of independence in controlling the production or supply of the goods or services, and the price at which they are provided. An activity may be commercial even where there is no expectation of profit.

(13) There is significant intersection between "commercial functions", and teaching and research 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.

(14) A commercial activity may involve the production and sale of a range of individual goods and services (for example, the retail sale of a range of merchandise by an organisational unit). This Guideline is intended to govern the approval and management of commercial activities, not individual goods or services.

## **Part E - Purpose**

(15) Charles Sturt University engages in commercial activities in order to:

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

## **Part F - Commercial Activity Manager and Managing Unit**

(16) The Commercial Activity Manager is the person responsible for proposing, managing and/or controlling an individual commercial activity of the University on a day-to-day basis. This may be an officer appointed solely for this purpose or who holds responsibility in addition to other duties held by that officer. The Budget Centre is the budget centre responsible (through the head of the Budget Centre) for the operation of the commercial activity.

(17) The method of appointment of the Commercial Activity Manager will be set out in the Commercial Activity Proposal and approved by the Delegate.

## **Part G - Delegate**

(18) The Delegate is an officer, committee, panel or board to whom Council has delegated authority to approve commercial activities in accordance with the [Act](#) and the Council's [Delegations and Authorisations Policy](#). A Delegate must not also be a Commercial Activity Manager or the head of the Budget Centre for the commercial activity.

## **Part H - Council Delegations**

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

## **Part I - Register of Interests**

(20) Members of Council, Senior Executive Committee members, Delegates and heads of Budget Centres will ensure that they avoid conflicts of interest in relation to University commercial activities.

(21) Each person listed in clause (20) will be required to enter into a Register of Interests maintained by the University Secretary any interest in any company, institution or other entity which is involved in a commercial activity of which that officer is aware with the University or its controlled entities. Notifications may be made generally or with respect to a particular proposal and officers are responsible for updating them.

(22) Any such officer 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 officer shall be required to:

- a. declare the nature and extent of the interest, whether or not it has been previously disclosed;
- b. 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;
- c. not participate in any decision by Council or other University decision-making body concerning the activity or

proposal;

- d. not vote or exercise delegated authority in respect of the activity or proposal.

(23) 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.

## **Section 2 - Evaluation and Approval Process**

### **Part J - Overview**

(24) The following processes apply to the approval of all University commercial activities. The Council or Vice-Chancellor may approve activity-specific policies and procedures that may be additional to these Guidelines and these must also be followed. Activity-specific policies and procedures approved by the Council or Vice-Chancellor will be published in the Administration Manual. Commercial Activity Managers and Delegates should refer to the information below, and refer to specific University policy or procedure for additional information.

### **Part K - Scoping Study**

(25) This preliminary stage varies for different types of commercial activity, but should in all cases include the preparation of a Scoping Study which provides sufficient information for the head of the Budget Centres to adequately assess the costs, benefits, risks and feasibility of the proposed activity.

(26) The Scoping Study must identify:

- a. the source of University funding for the proposed activity, and include full details of any non-Charles Sturt University parties to be involved in the conduct of the activity; and
- b. a preliminary assessment of risks associated with the activity, along with proposed means of managing identified risks.

(27) Where appropriate, Commercial Activity Managers should consult with relevant units of the University, such as the Legal, Division of Facilities Management, Division of Human Resources, Division of Finance and/or Insurance in the preparation of the proposal.

(28) 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.

### **Part L - Authority to Develop Commercial Activity Proposal**

(29) Unless otherwise specified by the Council, the head of the Budget Centre can approve the development of a Commercial Activity Proposal if they are satisfied that the proposal:

- a. promotes the best interests of the University;
- b. is a permissible function of the University under the Act;
- c. is viable and/or does not adversely affect the University's overall financial position;
- d. preliminary risks (including corruption risks) have been reasonably assessed in accordance with University policies and appear capable of being managed through the implementation of effective mitigation strategies.

(30) The proposal shall not proceed to a Commercial Activity Proposal or Delegate until after the approval of the head of the Budget Centre (or other officer or body specified by the Council).

## Part M - Commercial Activity Proposal

(31) A Commercial Activity Proposal will provide sufficient detail for the Delegate to make an informed business judgment on the appropriateness of approving the new commercial activity.

(32) A Commercial Activity Proposal will consist of 2 parts:

- a. [a Business Definition Form](#);
- b. a Business Case.

(33) The [Business Definition Form](#) will be submitted in the form determined by the University Secretary and will include:

- a. the name by which the commercial activity will be known;
- b. the principal address from which the commercial activity will be conducted;
- c. the details of the Commercial Activity Manager and the head of the Budget Centre;
- d. a description of the commercial activity;
- e. the specific functions to be performed by the commercial activity;
- f. a description of the governance and management of the commercial activity;
- g. the Registered File Number for the document required to be kept under Part O.

(34) Where the commercial activity is to have a governing board, the [Business Definition Form](#) will include:

- a. the terms of reference for the governing board (which may be in the form of a Constitution, Articles of Association, Joint Venture contract or similar document);
- b. the method of appointment to the governing board;
- c. the criteria as to skills, qualifications and experience that will be used to determine the appointment of the members to the governing board and how this will be determined from time to time; and
- d. the names and contact details of each proposed member of the governing board.

(35) Subject to the particular requirements of the commercial activity, a Business Case should include:

- a. an outline of the commercial activity and the appropriateness of the commercial activity for the University, including whether the activity falls within the object and functions of the University as defined under the [Act](#);
- b. how the commercial activity aligns to the University Strategy and plans approved by the Council;
- c. a 5 year Business Plan including the objects and measurable performance indicators;
- d. a detailed budget and financial analysis including projected cash flow models for the life of the activity or foreseeable future, expected rates of return (where applicable) covering a range of scenarios and assumptions underlying the analysis;
- e. a risk assessment and management plan prepared in accordance with the University's requirements under the [Risk Management Policy](#) and [Compliance Management Procedures](#);
- f. a detailed description of the governance, legal and management structures for the activity including taxation, foreign exchange and accounting arrangements;
- g. where non-University parties are involved, a due diligence assessment on the parties' financial, governance, management and (where relevant) academic processes, capacity, capability and reputation;
- h. how the commercial activity will comply with the principles of competitive neutrality;
- i. the benefits of the activity to the University taking into account the risks, opportunity costs, effect on the University's activities and non-financial benefits.

(36) The content and level of detail required in the Business Case will vary depending on the type of commercial activity and the previous experience of the University in the management of the type of activity.

(37) The Council may, from time to time, approve policies or procedures imposing specific requirements, or varying the requirements, for the content of a Commercial Activity Proposal for a particular class or group of commercial activities.

## **Part N - Conflict of Interest**

(38) 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 proposal by the proposer, Budget Centre head and Delegate. The University Auditor can provide advice on the management of conflicts.

## **Part O - Records to be Kept**

(39) Commercial Activity Managers and the Delegate must ensure that all information relating to the proposed commercial activity is recorded on a Registered File for that activity. The Registered File must hold a copy of the Commercial Activity Proposal documents.

(40) Where the Delegate is an individual (e.g. Dean, Head of School, Executive Director) 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.

(41) Where the Delegate 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.

## **Part P - Approval and Registration**

(42) Upon approval, the Delegate must ensure that the activity is entered into the University's Register of Commercial Activities by submission of the [Business Definition Form](#) and any supporting documents as required by the University Secretary.

# **Section 3 - Risk**

## **Part Q - Managing Risk**

(43) There is risk inherent in all commercial activities. In engaging in commercial activities, the Budget Centre assumes risk on behalf of the University. Failure to identify and manage risks effectively can have potentially serious results for the Budget Centre, the University, and the individuals involved.

(44) 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.

(45) Where no procedures are specified, the heads of Budget Centre are required to ensure the management of risk associated with commercial activities of their units by complying with the University's [Risk Management Policy](#) (which include requirements for the assessment of corruption risks) and [Compliance Management Procedure](#).

## **Part R - Insurance of Risk**

(46) Some of the risks arising from commercial activity can be insured, for example through worker's compensation, professional indemnity, or public liability insurance policies. Commercial Activity Managers and the Delegate must

ensure that coverage is obtained for insurable risk. This coverage should be sought through the Insurance section of the Division of Finance who can advise whether the activity is or can be insured under the University's existing policies.

(47) 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.

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

## **Section 4 - Operating Requirements**

### **Part S - Operation**

(49) 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.

### **Part T - Prevention of Corruption, Fraud, Maladministration and Waste**

(50) 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.

(51) 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 Fraud, Corruption and Maladministration Policy .

### **Part U - Pricing and Competitive Neutrality**

(52) 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.

(53) 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.

(54) 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.

### **Part V - Finance**

(55) The University will separately account for each approved commercial activity within the University's accounts so that the financial position and performance of the activity can be separately identified, but will not be required to establish a separate bank account for this purpose.

(56) All financial contributions made to a commercial activity by the University must be recognised in the accounts as University contributions.

## Part W - Reporting

(57) Budget Centres will report annually to the Council 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.

(58) The Report shall include details of insured and uninsured risk.

## Part X - Review of Commercial Activities

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

- a. assess the continuing viability of the activity;
- b. identify any significant changes in the activity;
- c. ascertain appropriate risk management processes are in place (including corruption risk assessments);
- d. explore opportunities for leveraging of the activity; and
- e. ensure compliance with relevant law, policy and standards.

(60) The review will be conducted by a person or panel appropriate to the nature of the commercial activity appointed by the Vice-Chancellor. Findings and recommendations of the review shall be provided to the Delegate, and a copy forwarded to the officer responsible for maintaining the University's Register of Commercial Activities and the Council.

(61) 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 Commercial Activity Proposal.

## Section 5 - Register of Commercial Activities

### Part Y - Register of Commercial Activities

(62) The [Act](#) requires that the University maintain a Register of Commercial Activities.

(63) The University Secretary shall be responsible for maintaining the Register. The University Secretary may appoint an officer to be the Registrar of Commercial Activities who is responsible under this Guideline for the establishment and management of the Register.

(64) The Register will be constituted by the [Business Definition Forms](#) submitted and maintained by Commercial Activity Managers and Delegate, and other supporting documents.

(65) The head of the Budget Centre is accountable for ensuring that the details held on commercial activities of their unit are complete and current at all times.

### Part Z - Grouping of Activities and Exemption from Registration

(66) Under the [Act](#), 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:

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

(67) Activities exempted from registration are not necessarily exempt from other requirements of the Act and these



Guidelines.

## Part AA - Access

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

- a. members of Council;
- b. members of the Senior Executive Committee;
- c. the NSW Minister for Education;
- d. the University Council;
- e. the NSW Audit Office;
- f. the University Auditor; and
- g. other parties as required under law or by authority of Registrar or University Secretary.

(69) Restricted access allows review only of entries in the Register specific to the area of accountability. Restricted access is available to the following:

- a. those officers responsible for ensuring details of activities in their area of accountability are complete and correct;
- b. Commercial Activity Managers, Delegate and heads of Budget Centres;
- c. persons named within the Register entry, such as members of governing boards; and
- d. other University parties with the written approval of the Registrar or University Secretary.

## Part BB - Annual Review of Register

(70) The Registrar will require the Commercial Activity Managers to review records in the Register of Commercial Activities annually to ensure records are complete and accurate.

# Section 6 - Specific Procedures for Controlled Entities

## Part CC - Controlled Entities

(71) Council is obliged under the Act 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 the [Act](#) to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister. 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 a Commercial Activity Proposal to Council for endorsement. If endorsed, Council will seek authorisation of the activity from the Minister.

(72) 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 controlled entity does not engage in the exercise of any function or engage in any activity that the

University is not authorised by or under the Act to exercise of engage in;

- 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 Registrar of any new or altered activity or any new or altered details of existing activities which should be entered in the Register.

(73) Despite clause (72), the Council is ultimately responsible for the activities of controlled entities.

(74) The commercial activities of controlled entities must be included in the Register of Commercial Activities established under Part Y.

## **Part DD - Application**

(75) This Guideline applies to all commercial activities approved before or after the commencement of this Guideline as though the activity has been approved under this Guideline.

## Status and Details

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|---------------------------|--|
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