Commercial Activities Policy

Section 1 - Purpose

(1) Charles Sturt University (the University) has powers to undertake commercial activities under Part 4, Division 3 of the Charles Sturt University Act 1989 (the Act).

(2) This policy provides a set of principles and processes for the evaluation, approval, operation, review and registration of University commercial activities.

Scope

(3) This policy applies to:

a. all University staff and controlled entities of the University, including the commercial activities of controlled entities
b. commercial activities as stated at clause 4.

Section 2 - Policy

Part A - Scope of commercial activities within policy

(4) This policy applies to University activities involving the exchange of goods or services, where the primary purpose of the activity is commercial.

(5) Commercial activities may be undertaken within Australia or internationally, subject to compliance with all applicable laws and University policies.

(6) General indicators of commercial activity may include one or more of the following:

a. The primary purpose of the activity is profit and involves charging users for goods or services. However, activities that deliver non-financial benefits to the University can be commercial activities and an activity need not generate a financial profit in order to meet the definition of a commercial activity.
b. The activity involves association with one or more third parties and requires or is likely to require University resources exceeding $250,000 per annum. This threshold includes the full cost of the entire activity and must not be artificially separated into component parts to avoid the threshold. This includes monetary, in-kind and other forms of resources/contributions.
c. The activity involves operational independence, where the manager of the activity has discretion over the production or supply of goods and services and the pricing of those goods or services.

(7) Activities that do not meet the dollar value threshold at clause 6(b) but otherwise meet the indicators or criteria for commercial activity under this part will be administered by the delegated budget centre manager and:

a. financials for these activities must be reported periodically through established line-management structures and processes, and

b. materiality for addition to the register of commercial activities will be assessed during annual budget planning processes.

(8) The following specific activities are commercial activities under this policy, subject to clause 9:

a. Any joint venture with a third party that involves a total contribution exceeding $250,000 per annum.
b. Any activity involving the University establishing or acquiring an interest in a company, or an incorporated association, except for the purpose of investing University funds as per Schedule 2 of the Act.
c. Any activity involving the University establishing or acquiring a controlled entity, except for the purpose of investing University funds as per Schedule 2 of the Act.
d. The exploitation of intellectual property rights in which the University claims an interest, except where this occurs through research activities that are funded through the National Competitive Grants Program.
e. Commercialisation of research.
f. Consultancy services provided by the University (through its employees) to external parties for a fee.
g. Continuing education (including conferences, off-shore programs, non-award and tailored professional programs).
h. Any agreement with a third party for the provision of teaching services for a fee, where the teaching program is a non-award program of the University, whether:
    i. the fee is paid by the third party or students, or
    ii. students are enrolled with the third party or with the University.
i. The acquisition, sale, development or management of real estate not used primarily for teaching purposes.
j. The leasing or licensing of University real estate to third parties, including specific commercial precincts.

(9) The following are not commercial activities under this policy:

a. Activities wholly funded by government operating grants or special purpose grants for core higher education teaching, research and associated support activities.
b. Activities undertaken as part of the principal functions of the University that do not involve significant commercial or other risk.
c. Fee-paying award accredited programs.
d. Agreements with third parties for the provision of teaching services for a fee, where the teaching program is an accredited award program of the University, whether:
    i. the fee is paid by the third party or students, or
    ii. students are enrolled with the third party or with the University.
e. Research activities that do not involve commercialisation or exploitation of intellectual property rights.
f. Charitable fundraising activities conducted by or on behalf of the University.
g. The procurement of university services and assets for university use.
h. Activities of the Student Senate or Student Representative Committees funded through the Student Services Amenities Fee or the Student Special Funds Account.
i. Internal activities within the University and internal charges.

Part B - Delegate

(10) The delegate is the officer or body with the delegated authority to approve commercial activities under Delegation Schedule C - Finance.

Part C - Evaluation and approval process

(11) Proposals for commercial activities must be evaluated and assessed to ensure the activity fits with the University's strategic plans and objectives.

(12) A business case must be prepared by the person or organisational unit proposing the activity and presented in a format determined by the Chief Financial Officer as appropriate for the circumstances. Templates are available on Division of Finance website.

(13) The business case for commercial activities must include information required to adequately assess the costs, benefits, risks and feasibility of the proposed commercial activity. The level of detail required in the business case will vary depending on the type of commercial activity, but will typically include the following:

a. An outline of the commercial activity and explanation of why it is appropriate for the University.
b. How the commercial activity aligns with the University's strategic plans.
c. The objectives and measurable performance indicators of the commercial activity.
d. A detailed budget and financial analysis including projected cash flow and, where applicable, expected rates of return (this should cover a range of possible scenarios and set out underlying assumptions).
e. A risk assessment and management plan prepared in accordance with the Risk Management Policy and Risk Appetite Statement, and assessment of insurance appropriate to the activity.
f. A detailed description of the governance, legal and management structure for the activity including taxation, foreign exchange and accounting arrangements (including audit requirements).
g. A program of review and reporting against milestones to the appropriate authority within the University, which must include at minimum:
    i. a one year review of achievements against the goals and projections contained in the proposal
    ii. the reports and reviews stated at parts D and E of this policy.
h. Where non-University parties are involved, identification of these parties and a due diligence assessment of the parties' financial, governance, management and (where relevant) academic processes, capacity, capability and reputation.
i. An explanation of how the commercial activity will comply with the principles of competitive neutrality.
j. A list of the benefits of the activity to the University taking into account the risk, opportunity costs, effect on the University's activities and non-financial benefits.
k. Identification of stakeholders.
l. Impacts on other areas of the University where applicable.
m. Any actual, potential or perceived conflicts of interest.

(14) In considering a business case:

a. each business case must be considered in its entirety without being segmented
b. the full cost (including resource inputs, whether cash or in-kind) must be considered
c. any actual or perceived conflict of interest related to the proposed commercial activity must be declared and managed in accordance with the Conflict of Interest Procedure.
d. advice from the Chief Financial Officer or their nominee, must be obtained before the proposal is approved by the delegate.

(15) Upon approval, the delegate must ensure that the activity is entered into the University's register of commercial activities, held by the Division of Finance, and any supporting documents including business plans are appropriately filed on the University records management system.

Part D - Operation of commercial activities

(16) The conduct and operation of University commercial activities must be consistent with the object and functions of the University as set out in the Charles Sturt University Act.

(17) All persons involved in the commercial activity must declare and manage any apparent or real conflicts of interest as agreed with the delegate. This applies to conflicts of interest identified during the business proposal and any that may emerge through operation of the commercial activity. Refer to Conflict of Interest Procedure.

(18) To assess the financial position and performance of each commercial activity, the University will account for each commercial activity separately within the University's accounts.

(19) The person or business unit responsible for the commercial activity will report bi-annually to the Finance and Strategy Committee (FSC) on their commercial activities, including financial performance, risk and performance against business plans.

Part E - Review of commercial activities

(20) Commercial activities will be reviewed at least every five years but may be reviewed more often. The object of review is to:

a. assess the continuing viability of the commercial activity
b. identify any significant changes in the commercial activity
c. confirm the commercial activity has appropriate risk management processes in place (including corruption risk assessments)
d. ensure the commercial activity is compliant with applicable law and University policy
e. formally assess performance of the commercial activity and recommend continuation, variation or termination of the activity.

Part F - Register of commercial activities

(21) The Chief Financial Officer is responsible for maintaining the register of commercial activities which complies with the content requirements specified in the Act.

(22) Full access to the register of commercial activities is available to the following:

a. University Council
b. Executive Leadership Team
c. NSW Minister responsible for education
d. University Secretary
e. NSW Audit Office
f. Internal Auditor
g. Other parties as required by law or with the authority of a party referred to in subclauses a–f.

Part G - Controlled entities

(23) Where a University commercial activity is managed by a controlled entity that has a board of directors and is subject to the Corporations Act, the commercial activity will be approved and managed in accordance with the constitution of the controlled entity provided that:

a. the controlled entity must not engage in the exercise of any function or engage in any activity that the University is not authorised to exercise or engage in under the Charles Sturt University Act, except with permission of the minister in accordance with the Act
b. the board must ensure that appropriate evaluation and risk processes are followed by the controlled entity in managing a commercial activity
c. the board shall include in its annual report to the University any significant change in the activities undertaken by a commercial activity and the associated risks
d. the board must promptly inform the Chief Financial Officer of any change to a commercial activity, who will update the register of commercial activities.

Section 3 - Procedures

(24) Nil.

Section 4 - Guidelines

(25) Nil.

Section 5 - Glossary

(26) In this policy:

a. Commercial activity – has the same meaning as section 24A of the Act which is:
    i. any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University
    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 this policy to be a University commercial activity.
b. Principal functions – has the same meaning as section 7(2) of the Act which is:
    i. the provision of facilities for education and research of university standard, having particular regard to the needs and aspirations of the residents of western and south-western New South Wales
    ii. the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry
    iii. the provision of 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 that engage with advanced knowledge and inquiry
    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.

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Section 6 - Document context

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Document class	Governance

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