

Commercial Activities Rule

Section 1 - Overview

(1) The University engages in Commercial Activities from time to time to support the University's object. The University's object is the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

(2) This Rule and any procedures made under it constitute the University's commercial activities guidelines for the purposes of Section 21B of the [University of New England Act 1993 \(NSW\)](#).

Section 2 - Scope

(3) This Rule applies to all Commercial Activities by the University and must be observed by UNE Representatives involved in such Commercial Activities.

Section 3 - Rule

Definition of Commercial Activity

(4) Commercial Activity means:

- 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 this Rule to be a Commercial Activity.

(5) Without limiting clause (4), Commercial Activity includes any of the following:

- a. being a member or holding securities of another legal entity;
- b. academic partnerships and collaborations with other organisations;
- c. articulation and pathway arrangements with other organisations;
- d. research commercialisation (but note clause (6)c below);
- e. leases and other occupancy agreements, except study centre premises; and
- f. legal agreements with another party, excluding Students, under which the University agrees to provide goods or services.

(6) Notwithstanding clauses (4) and (5), the following activities are not Commercial Activities for the purposes of this Rule:

- a. the delivery by University staff of the University's academic programs to its Students;
- b. the Joint Medical Program by the School of Rural Medicine and University of Newcastle;

- c. research conducted for the University by a member of the University's academic staff (but note clause (5)d above);
- d. contracts with suppliers for good and services used in the University's normal business operations; and
- e. the agricultural activities on the University's rural properties.

Business case for a Commercial Activity

(7) The Senior Manager with operational responsibility for a Commercial Activity must ensure that:

- a. there is an up-to-date and approved business case and project/operational plan for the Commercial Activity; and
- b. the business case and plan are held in the University's records management system.

Resourcing of Commercial Activity

(8) The Senior Manager with operational responsibility for a Commercial Activity is responsible for ensuring that the Commercial Activity is resourced through the University's business plan and budget.

(9) The University's business plan and budget is approved separately, and approval of a business case or project/operational plan does not constitute approval to allocate the resources required for the Commercial Activity.

Management and Governance of a Commercial Activity

(10) The Senior Executive with portfolio responsibility for a Commercial Activity must ensure that it is properly managed, reviewed and reported to the Vice-Chancellor and Chief Executive Officer.

Approval of Commercial Activity

(11) A Commercial Activity must not be carried out unless the business case and project/operational plan has been approved in accordance with this Rule.

(12) Each Commercial Activity must have an approved business case and project or operational plan. The steps for approval of the business case and the project or operational plan (as the case may be) for a Commercial Activity is set out below. The business case and the project/operational plan may be approved together or consecutively. The steps are:

- a. the Senior Manager with operational responsibility for the Commercial Activity is responsible for developing the business case and the project/operational plan, including all necessary consultation with relevant parts of the University;
- b. the Senior Manager is responsible for obtaining the endorsement of the Senior Executive with portfolio responsibility;
- c. the relevant Senior Executive is responsible for obtaining the endorsement of the Vice-Chancellor's Advisory Committee;
- d. if the Vice-Chancellor's Advisory Committee endorses it, then the relevant Senior Executive is responsible for obtaining the Vice-Chancellor and Chief Executive Officer's final approval;
- e. in relation to a business case for a Commercial Activity, if the Vice-Chancellor and Chief Executive Officer approves the business case but it exceeds the Vice-Chancellor and Chief Executive Officer's delegation from the UNE Council's, then the Vice-Chancellor and Chief Executive Officer's approval will be deemed to be subject to UNE Council approval and the relevant Senior Executive must, in consultation with the Vice-Chancellor and Chief Executive Officer, submit the business case to the UNE Council's for consideration/approval. This step applies only to business cases and not project/operational plans because UNE Council approval is generally only necessary for a business case but not a plan. From time to time the UNE Council may direct otherwise in

relation to a particular Commercial Activity.

Review of Commercial Activity

(13) The Senior Manager with operational responsibility for a Commercial Activity must ensure that it is reviewed in accordance with this Rule.

(14) A Commercial Activity must be reviewed annually. The review must take place during the second quarter of each year (or such other timeframe as approved by the Vice-Chancellor and Chief Executive Officer).

(15) The purpose of the annual review must be to:

- a. review and update (if necessary) the business case and project/operational plan for the Commercial Activity;
- b. review and update (if necessary) the information contained in the Commercial Activities Register (see clause (21) below);
- c. provide an accurate and informed report to the Vice-Chancellor and Chief Executive Officer answering the following questions:
 - i. Are the business case and project/operational plan for the Commercial Activity up-to-date?
 - ii. Have there been any substantial changes to the business case or project/operational plan that warrant re-submitting it to the Vice-Chancellor and Chief Executive Officer for a new approval?
 - iii. Is the Commercial Activity aligned to the University's strategic and operational plans?
 - iv. Is the Commercial Activity properly resourced through the University's business plan and budget?
 - v. How has the Commercial Activity performed against its original business case and plan?
 - vi. Is the Commercial Activity delivering benefits to the University? Are the benefits above or below expectations?
 - vii. Are the risks in relation to the Commercial Activity acceptable and properly managed?
 - viii. Is the Commercial Activity being effectively managed by the University? and
 - ix. Should the University continue with the Commercial Activity?

Controlled Entity responsibilities

(16) Under the [University of New England Act 1993 \(NSW\)](#), the Council has responsibility for a Controlled Entity. The financial statements of a Controlled Entity are consolidated with the financial statements of the University. The Vice-Chancellor and Chief Executive Officer's role is to provide regular advice to the Council about whether a Controlled Entity and its activities are aligned to the University's strategic plan, and whether the risks and benefits of the Controlled Entity are acceptable to the University's management team.

(17) For each Controlled Entity the Vice-Chancellor and Chief Executive Officer will nominate:

- a. a University staff member who will have the responsibilities of a Senior Manager under this Rule; and
- b. a University staff member who will have the responsibilities of a Senior Executive under this Rule.

(18) The boards of directors of Controlled Entities are to be advised by the Rule Administrator of the requirement to comply with Section 21 B of the UNE Act - Guidelines for Commercial Activities and are to maintain a register of Commercial Activities in line with Section 21C of the [UNE Act](#). Each board of directors of a Controlled Entity is to be responsible for ensuring that evaluation, risk management and accountability processes are in place and that these are consistent with the requirements of the UNE Act in relation to Commercial Activities and with this Commercial Activities Rule.

(19) The Council is responsible for approving, monitoring and overseeing controlled entities. As such the board of

directors of each Controlled Entity will be required to report annually to the Council on the Controlled Entity's guidelines and its register of Commercial Activities.

Commercial Activities Register

(20) The University is required under the [UNE Act](#) to maintain the Commercial Activities Register.

(21) The Register will be maintained by the Director Governance and University Secretary.

(22) For each Commercial Activity the Register must contain the following information:

- a. a description of the activity;
- b. details of all parties who participate in the activity;
- c. details of any appointment by or on behalf of the University to relevant boards or other governing bodies;
- d. the Senior Manager with operational responsibility for the Commercial Activity;
- e. the Senior Executive with portfolio responsibility for the Commercial Activity; and
- f. the reference for the file(s) under which the records relating to the Commercial Activity are held in the University's record management system.

(23) The Senior Manager with operational responsibility for a Commercial Activity must provide the Director Governance and University Secretary with the information required for the Register, and any necessary changes from time to time.

(24) The Vice-Chancellor and Chief Executive Officer may from time to time determine that it is in the University's best interests to do any of the following, and may authorise the necessary actions:

- a. exempting specified activities or activities of a specified class from the Register;
- b. altering the details to be included in the Register in respect of a specified activity or activities of a specified class; and
- c. enabling related activities to be treated as a single activity for the purposes of the Register.

Transitional arrangements

(25) If a Commercial Activity is not compliant when this Rule takes effect (for example, it does not have an approved business case and plan), the Senior Manager must within 12 months arrange for the Commercial Activity to become compliant, or obtain the Vice-Chancellor and Chief Executive Officer's approval to phase out the Commercial Activity.

Authority and Compliance

(26) The Vice-Chancellor and Chief Executive Officer, pursuant to Section 29 of the [University of New England Act 1993 \(NSW\)](#), makes this University Rule.

(27) UNE Representatives and Students must observe it in relation to University matters.

(28) The Rule Administrator (Director Governance and University Secretary) is authorised to make policies and associated information for the operation of this University Rule. The policies and associated information must be compatible with the provisions of this Rule.

(29) This Rule operates as and from the Effective Date.

(30) The University's existing Commercial Activity Rule and related documents are replaced and have no further operation from the Effective Date of this new Rule.

(31) Notwithstanding the other provisions of this University Rule, the Vice-Chancellor and Chief Executive Officer may approve an exception to this Rule where the Vice-Chancellor and Chief Executive Officer determines the application of the Rule would otherwise lead to an unfair, unreasonable or absurd outcome. Approvals by the Vice-Chancellor and Chief Executive Officer under this clause must be documented in writing and must state the reason for the exception.

Section 4 - Definitions

(32) Commercial Activity Register means the register referred to in clause (18).

(33) Senior Management means staff at Dean of Faculty/Director level and above, and Senior Manager has a corresponding meaning.

(34) Register means the Commercial Activities Register.

(35) UNE Act means the [University of New England Act 1993 \(NSW\)](#).

Status and Details

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Glossary Terms and Definitions

"UNE Representative" - Means a University employee (casual, fixed term and permanent), contractor, agent, appointee, UNE Council member, adjunct, visiting academic and any other person engaged by the University to undertake some activity for or on behalf of the University. It includes corporations and other bodies falling into one or more of these categories.

"Student" - Is an admitted student or an enrolled student, at the relevant time: 1. an admitted student is a student who has been admitted to a UNE course of study and who is entitled to enrol in a unit of study or who has completed all of the units in the UNE course of study; 2. an enrolled student is a student who is enrolled in a unit of study at UNE.

"UNE Act" - Is the University of New England Act 1993 (NSW).

"Senior Executive" - Means the Vice-Chancellor, Deputy Vice-Chancellor, Deputy Vice-Chancellor Research, Chief Financial Officer, and Chief Operating Officer.

"Controlled Entity" - Means a person, group of persons or body of which the University or Council has control within the meaning of a standard referred to in Section 39(1A) or 45A(1A) of the Public Finance and Audit Act 1983.

"Council" - Means the Council of the University of New England, being the governing body of the University.

"Vice-Chancellor and Chief Executive Officer" - Means the Vice-Chancellor and Chief Executive Officer of the University, with functions conferred or imposed upon him/her by or under Section 12 of the UNE Act.

"Commercial Activity" - A commercial activity is any activity engaged in, by, or on behalf of the University in the exercise of commercial functions of the University; and any other activity comprising the promotion of, establishment of, or participation in any partnership, trust, company, or other incorporated bodies, or joint venture, by or on behalf of the University, that is for the time being declared to be a commercial activity. Examples of a commercial activity include: being a member or holding securities of another legal entity; holding academic partnerships and collaborations with other organisations; articulation and pathway arrangements with other organisations; research commercialisation (with the exception of research conducted for the University by a member of the University's academic staff); leases and other occupancy agreements (with the exception of study centre premises); and, legal agreements with another party, excluding Students, under which the University agrees to provide goods or services. The following activities are not considered to be commercial activities: the delivery by University staff of the University's academic programs to its Students; and, the Joint Medical Program delivered by the School of Rural

Medicine and the University of Newcastle.

"Effective Date" - means the Rule/Policy takes effect on the day on which it is published, or such later day as may be specified in the policy document.