



# COMMERCIAL RESEARCH POLICY

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<b>Supporting documents, procedures &amp; forms of this policy:</b>	<a href="#">Commercial Activity Guidelines</a> <a href="#">Commercial Research Approval Form</a> <a href="#">Commercial Research Costing Worksheet Proforma General</a> <a href="#">Conflict of Interest Policy</a> <a href="#">Consultancy Expense Guidelines</a> <a href="#">Corruption Prevention Policy</a> <a href="#">Delegations of Authority Policy</a> <a href="#">Faculty Cost Recovery Waiver Form</a> <a href="#">Intellectual Property (IP) Commercialisation Revenue Guidelines</a> <a href="#">Intellectual Property (IP) Policy</a> <a href="#">Risk Management Policy</a> <a href="#">Secondary Employment Policy</a> <a href="#">University Code of Conduct</a> <a href="#">Use of University Name by Third Parties Policy</a> <a href="#">Use of the University Name in Public Statements Policy</a>		
<b>Relevant Legislation &amp; External Documents:</b>	<a href="#">Australia's Foreign Relations (State and Territory Arrangements) Act 2020</a> <a href="#">Convention Establishing the World Intellectual Property Organisation</a> , July 1976 <a href="#">Foreign Influence Transparency Act Scheme 2018</a> <a href="#">Guidelines to Counter Foreign Interference in the Australian University Sector</a> <a href="#">National Principles of Intellectual Property Management</a> <a href="#">University of Wollongong Act 1989</a>		



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## 1 Purpose of Policy

1. This policy describes the approach taken by UOW in relation to Commercial Research, including how to:
  - 1.1 identify the various types of Commercial Research;
  - 1.2 cost Commercial Research projects; and
  - 1.3 gain UOW's approval to create and commence Commercial Research activities.
2. This policy will ensure that UOW complies with its own [Commercial Activity Guidelines](#) as they apply to Commercial Research. It is also intended that this policy will guide UOW's interactions with external customers with regards to Commercial Research.
3. UOW believes that the specialist experience and skills of its academic Staff should be made available to the wider community. Academic Staff are therefore encouraged to undertake Commercial Research to share their expertise and experience and to transfer knowledge from UOW to the wider community.
4. Benefits to UOW and Staff from undertaking Commercial Research include:
  - 4.1 enhanced relationships with external customers;
  - 4.2 increased professional reputation;
  - 4.3 technology transfer;
  - 4.4 income generation;
  - 4.5 potential new research outcomes and publications; and
  - 4.6 flow of knowledge both into and out of UOW.

## 2 Definitions

1. References to the singular include the plural and references to the plural include the singular.

Word/Term	Definition (with examples if required)
Commercial Activity	The exercise of a commercial function of the University. The commercial functions of the University are those where the University exploits or develops commercially any of its facilities, resources or property (including intellectual property).
Commercial Research	Research activity conducted under a commercial contract that includes, but is not limited to: Consultancy Licensed Consultancy; Contract Research with government, non-government and/or private sector entities, including contract research which is funded through grants awarded to industry; Collaborative research with government, non-government (including other universities) and/or private sector entities; or Cooperative Research Centres (CRCs). This does not include:



	<ul style="list-style-type: none"><li>- research conducted under Australian Research Council competitive grants or other grant schemes</li><li>- Private Consultancy</li></ul>
Consultancy	Any project that involves an external entity buying the skills and expertise (pre-existing know how) of Staff members, and/or use of UOW equipment to work on a specified project. Consultancies generally involve the application of existing knowledge, and do not normally lead to the development of new IP.
Contract Research	Research that is conducted by UOW at the request of and paid for by external organisations. Such research may involve IP ownership negotiations, and confidentiality and publication restrictions. Contract Research generally involves a greater level of originality than a Consultancy and will lead to the development of new IP and generally results in R&D outputs as defined in Appendix 2.
Faculty Cost Recovery	The cost recovery fee applied to Commercial Research to reimburse the relevant faculty or academic unit for associated support costs. Support costs include but are not limited to the costs of <i>maintaining</i> equipment, electricity, computers, IT/network services, laboratories, offices, cleaning, printers, human resources and telephones. Note that the Faculty Cost Recovery is <i>not</i> intended to cover the costs of purchasing items of equipment, computers or refurbishments to accommodate new staff involved in the Commercial Research project. Such additional costs must be charged to the Client as “other” costs in the Commercial Research Costing Pro Forma.
Foreign Arrangement	A foreign arrangement is a written agreement, contract, understanding or undertaking between an Australian State/Territory entity (including the University) and certain foreign entities (primarily foreign governments and agencies, including certain universities), whether or not there are any other parties to the arrangement and whether it is legally binding or not.
Foreign Influence	Foreign Influence occurs when Australian individuals or entities undertake certain registrable activities on behalf of a foreign principal (foreign governments, political parties and associated entities/persons) for the purpose of political or government influence.
Foreign Interference	As described in the Guidelines to Counter Foreign Interference in the Australian University Sector, foreign interference occurs when activities are carried out by, or on behalf of a foreign actor, which are coercive, covert, deceptive or corrupting and are contrary to Australia’s sovereignty, values and national interests.
ICR	The Innovation and Commercial Research Unit located within the Research and Innovation Division at UOW.
IP	The property of the mind or proprietary knowledge, i.e. productive new ideas. This includes know how, registered and unregistered trade marks, copyright, patents, trade/business or company names, registered and registrable design rights, plant breeder’s rights, circuit layouts and trade secrets, and all other intellectual property as defined by <a href="#">Article 2</a> of the <a href="#">Convention Establishing the World Intellectual Property Organisation</a> , July 1967.



Licensed Consultancy	<p>A Consultancy for a specific activity or series of activities, that can be provided by UOW in the same form to a range of clients typically over a one year period with minimal administration. Examples of activities in this category include but are not limited to:</p> <ul style="list-style-type: none"><li>- chemistry mass spectrometry facilities;</li><li>- the drill rig in Geosciences;</li><li>- XRF equipment,</li><li>- training workshops on specific transnational crime prevention issues;</li><li>- provision of scientific reports on functional foods; and</li><li>- concrete testing in Civil and Mining.</li></ul> <p>The administration is reduced as only one Commercial Research Approval Form needs to be completed each year (so long as the activities are the same for all clients) and a standard non-negotiable contract covers these activities, which can be used with multiple clients. License renewals are to be submitted every twelve months or on the relocation of the nominated Project Manager, whichever is the sooner.</p>
Private Consultancy	<p>Private advisory or other services in relation to business, research, commercialisation or start-up activities that are undertaken by academic Staff in a private capacity and not through their employment with UOW.</p>
Project Manager	<p>The Staff member who is the lead investigator and will take overall responsibility for ensuring that the Commercial Research activity complies with this Policy.</p>
RSO	<p>Research Services Office located within the Research and Innovation Division at UOW.</p>
Staff	<p>All persons employed by the University including conjoint appointments, whether on continuing, permanent, fixed term, casual or cadet or traineeship basis.</p>
Student	<p>A person registered for a course at the University of Wollongong.</p>
Tender	<p>A procurement process run by a government department or other organisation for the purpose of obtaining specific Commercial Research or Consultancy services. This includes Requests for Quote (RFQs), Requests for Tender (RFTs), or other approaches to market such as Expressions of Interest (EOIs) and Requests for Proposal (RFPs).</p> <p>Tenders are managed by the commercial contracts team within the RSO, whereas grants are managed by the grants team within the RSO. Sometimes it may be unclear whether a project is a grant or tender project because both involve a competitive application process. In such cases, it may be useful to consider the following:</p> <p>A tender will usually involve a competitive bid to achieve a set of outcomes that have been pre-defined by the organisation calling for tenders (e.g. a call for tenders to undertake research to develop a new material for use in medical prosthetics where the general specifications for the new materials are provided by the organisation calling for tenders). The funding is then usually provided in</p>



	<p>accordance to meeting certain milestones; whereas a grant will involve a competitive application for funding to support a project with activities that are mainly determined by UOW (e.g. a call for applications to undertake health and medical research where UOW decides that it will focus on developing novel materials for medical prosthetics and will determine its own specifications for these new materials). The funding is not usually tied to specific milestone achievements (though there may be obligations to achieve, in a general sense, what was described in the application).</p> <p>The RSO can determine whether a project is a tender for a Commercial Research project or grant on a case by case basis if required.</p>
UOW	The University of Wollongong.



### 3 Project Manager Responsibility

1. It is the responsibility of Project Managers to ensure that all members of a project team, including Students, comply with this policy and supporting policies, documents and processes and to ensure that the members of the project team are aware of, understand and comply with all contractual requirements in undertaking the Commercial Research. The Project Manager is responsible for the planning, execution and delivery of the Project and for keeping the RSO apprised of any risks identified related to the project and its delivery (see section 14.2 and Commercial Research Risk Indicators at Appendix 1).

### 4 The Approval Process to Undertake Commercial Research

1. Before undertaking Commercial Research, Staff must: (1) obtain written approval from the relevant Executive Dean / Executive Director ("ED") or Associate Dean Research ("ADR") in accordance with the process set out in section 5; and (2) ensure UOW has entered into an agreement to undertake the Commercial Research in accordance with the process set out in section 8.

### 5 Conditions of Approval for Commercial Research

1. Staff members seeking to undertake Commercial Research should ensure that their supervisor and Head of School are consulted and are subsequently kept apprised as required. Participation in Commercial Research requires the written approval of the Project Manager's ED or ADR. Approval is subject to consideration of the following:
  - 1.1 the proposed activity meets UOW's evaluation and risk assessment criteria (see section 14.2 and Commercial Research Risk Indicators at Appendix 1) and complies to UOW's Risk Management Policy;
  - 1.2 the availability of personnel and resources required to undertake the work;
  - 1.3 the Staff are qualified to undertake the relevant Commercial Research activities, considering the academic Staff member's field of expertise and experience;
  - 1.4 UOW is safeguarded in relation to and compensated properly for the use of its facilities and reputation;
  - 1.5 Staff terms and conditions of employment, and Faculty directives including any limitations on the amount of time that any Staff member dedicates to Commercial Research. For some Staff members there may be a limit on the weekly time that is normally allowed for Commercial Research. The impact of the Commercial Research on the Staff member's rights, duties, obligations, liabilities and entitlements should be considered and clearly documented before work commences. For example, where the work may result in Staff exceeding their normal hours of working, any resulting entitlements should be clarified with Human Resources and where necessary documented before work commences;
  - 1.6 UOW's guidelines, policies and procedures are followed;
  - 1.7 the fee for service being received by UOW is adequate to enable the work to be done in a diligent and professional manner, or reasons why a lower fee might be acceptable, taking into consideration the principles of competitive neutrality (see section 9);
  - 1.8 the Staff member does not compromise the quality and conduct of Commercial Research for financial or other personal advantage nor undertake any Commercial Research where there is a potential or perceived conflict of interest; and
  - 1.9 payment is not made to a Staff member's private company.



## 6 Negotiations with the Client Prior to Approval by UOW

1. Staff undertaking negotiations with potential Commercial Research clients have a duty to inform the client that they do not have the authority to bind UOW and that any negotiations are subject to obtaining formal approval from UOW. Staff involvement in negotiations with the client must be limited to coming to agreement with the client on the project scope, deliverables and the timing of the project. Staff should advise the RSO of preferred arrangements and the RSO will negotiate commercial and/or legal terms with the client.
2. Sometimes, it may be appropriate for Staff to provide a quote to the client. Before providing a quote to the client, Staff must ensure that they have costed the project using the Commercial Research Costing Pro-Forma in order to comply with UOW's costing procedures and to ensure that UOW is not under-costing the project.
3. Staff must ensure that they do not commit to completing the Commercial Research in a specified timeframe unless that time-frame is adequate to complete the project in a diligent and professional manner. Adequate time must also be provided to prepare and negotiate the contract. UOW's expectation is that a minimum of two weeks' notice will normally be provided to the RSO.
4. Clients may sometimes request Staff to sign a non-disclosure agreement or confidentiality agreement prior to providing confidential details of a proposed project. Commercial Research agreements, including confidentiality agreements, may not be signed by Staff on behalf of UOW, unless they have delegated authority to do so under the Delegations of Authority Policy. Staff must refer these to the RSO to review and negotiate terms, and advise on the appropriate signing delegate.

## 7 Responding to Tenders

1. Sometimes Staff may wish to respond to a tender for Contract Research or Consultancy activities. If UOW is successful in gaining the tender, this work will be considered Commercial Research and this policy and any other usual approval processes will apply.
2. If the tender response requires a quote, the Commercial Research Costing Pro Forma should be used to calculate costs and any intention to waive or reduce fees or provide in-kind support must be approved by the ED or ADR prior to submission.
3. If the tender response requires University to indicate its ability to comply with a set of standard conditions to govern the work under the tender should it be awarded, the Project Manager must provide a copy of the standard contract to the RSO. The RSO may then obtain advice from the Legal Services Unit on UOW's ability to comply with the standard contract. The Project Manager must provide the RSO with a minimum of two weeks' notice for advice on tender documentation.
4. If the RSO has not been able to review a standard contract before tender submission, the Project Manager may be required to include the following statement: "The University of Wollongong retains the right to negotiate the terms of any contracts that may arise as a result of the University being successful in this tender". This could be inserted into a covering letter or elsewhere in the tender documentation.
5. The Project Manager is responsible for submitting the tender response. Tender response documentation may not be signed by the Project Manager on behalf of UOW, unless they have delegated authority to do so under the Delegations of Authority Policy. The RSO can assist to advise on or organise this for the appropriately authorised delegate to sign tender responses on behalf of UOW.



## 8 Agreement Development and Negotiations with the Client Following Approval by UOW

1. Prior to the commencement of any Commercial Research activity, UOW must enter into a legally enforceable and properly executed written agreement with the client to undertake the activity. This agreement must:
  - 1.1 be authorised in accordance with the Delegations of Authority Policy;
  - 1.2 specify the correct legal entities (i.e. UOW and the client(s));
  - 1.3 be signed by properly authorised delegates of those legal entities that are party to the agreement;
  - 1.4 specify a clear and definitive scope of the work or service to be provided; and
  - 1.5 protect the interests of UOW.
2. The RSO and where required Legal Services Unit ("LSU") are responsible for ensuring that the agreement adequately protects the interests of UOW and its Staff. Sufficient time must be allowed to enable the RSO and LSU to prepare, risk assess, evaluate, negotiate and execute the agreement prior to work commencing on the Commercial Research project. A minimum of two weeks' notice to the RSO is normally required.
3. It is the role of the RSO, with the advice of LSU where required, to negotiate the terms of a Commercial Research agreement, such as IP ownership, licences and commercial fees or legal issues such as indemnity, jurisdiction and IP protection.
4. Staff may not sign any form of Commercial Research agreement on behalf of UOW, unless they have delegated authority to do so under the Delegations of Authority Policy. Staff must refer Commercial Research agreements to the RSO to review and negotiate terms, and advise on the appropriate signing delegate.
5. Commercial Research agreements involving foreign governments and agencies, including certain universities, will constitute a Foreign Arrangement which must be notified to the Minister for Foreign Affairs, in accordance with the *Australia's Foreign Affairs (State and Territory Arrangements) Act 2020*. Such notifications are coordinated by the Global Strategy Division, and are required both at the stage of negotiating a Foreign Arrangement and when finalised.
6. Additionally, if the Commercial Research activity involves a Researcher or the University agreeing to act on behalf of a foreign government, political party or related entity / person for the purpose of influencing Australian political or governmental outcomes, then the activity may also need to be registered in accordance with the *Foreign Influence Transparency Scheme Act 2018*. Further information is available on UOW's Foreign Engagements website (<https://www.uow.edu.au/about/governance/legislation/foreign-engagements/>).

## 9 Costing of Commercial Research Projects

1. UOW is committed to a general policy of fully costing all externally funded Commercial Research activities in compliance with competitive neutrality principles as outlined by NSW Treasury from time to time.
2. Prior to reaching agreement with clients, all Commercial Research must be properly costed using the Commercial Research Costing Pro-Forma. EDs and ADRs must not approve projects that are not fully costed. Should a Supervisor and/or Head of Unit consider it necessary or appropriate to charge



less than cost recovery for the total project (ie. separate to waiving the Faculty Cost Recovery), such a request must be approved by the ED or ADR and written justification should be sent to the RSO. These requests will be considered on a case by case basis. If the Faculty Cost Recovery is to be waived, the ED or ADR must sign the Faculty Cost Recovery Waiver Form to approve such a waiver, or otherwise provide approval in writing to the RSO.

3. For high value projects (i.e. above \$50,000), a minimum payment should be requested up front from the client on commencement of the project, followed by progress payments, with a balance payable on completion of the project. For smaller projects it is recommended that a minimum 50% payment be requested up front, with the balance payable on completion.

## 10 Items to be Costed in Commercial Research

1. The Innovation and Commercial Research Costing Pro-Forma should be used when costing commercial research. A separate costing must be prepared for any contractually committed in-kind contributions.

### 2. Salaries

2.1 Salaries of all staff members involved in Commercial Research should be costed. It is also important that salary increases and relevant overheads are costed in for projects performed over a time period where staff pay increases are due. the RSO can provide advice to staff members on how to do this. The Commercial Research Costing Pro-Form provides the following salary figures as separate worksheets:

- a) Cost Recovery Rates – this is the actual salary rate with salary overheads for each level. This is the minimum rate that should be charged; and
- b) Commercial Rates – this is an indicative rate that professionals in the private sector will commonly charge. Some industries will readily accept these rates – for example, these rates should be used for all expert witness Consultancies.

### 3. Non-Salary Costs

3.1 All non-salary costs, such as consumables, equipment, third-party costs (eg. sub-contractors) and travel should be costed and charged to the client. This is standard practice in industry for costing of projects.

3.2 Any equipment purchased for Commercial Research and paid for by UOW remains the property of UOW or vests in the client, as stipulated in the Commercial Research contract. Equipment purchased with funds from a Staff members' UOW account must remain the property of UOW.

### 4. Faculty Cost Recovery

4.1 Faculty Cost Recovery is added to meet UOW's actual costs in undertaking research and assists in providing researchers with adequate infrastructure to undertake their Commercial Research activities.

4.2 The Faculty Cost Recovery can only be waived with the prior approval, in writing (for example, via a Faculty Cost Recovery Waiver Form), of the relevant ED or ADR. It is the responsibility of Faculties and Units to determine and inform their staff members and the RSO of decisions relating to variations from normal Faculty requirements. This information should be provided on the Faculty Cost Recovery Waiver Form and/or Commercial Research Approval Form.

4.3 The pre-GST cost to the client is calculated using a costing form as (Salary Cost + Non-Salary Cost) multiplied by a Faculty Cost Recovery multiplier. The multiplier is established in



consultation with the ED taking into consideration indirect costs of research in the faculty and the costing principles highlighted in section 9. For example, where the multiplier is established as taking a value of 1.5, the formula applied is:

$$(\text{Salary Cost} + \text{Non-salary Cost}) \times 1.5 = \text{Total (pre-GST)}$$

## 5. GST

- 5.1 All domestic Consultancy and Contract Research activities will attract the Goods and Services Tax (GST). This cost must be added to the total fee that is intended to be charged to the client. the RSO can obtain and provide advice regarding GST charged on projects performed offshore.

## 11 Management of Commercial Research Income: Accounts and Invoicing

1. Once the formal agreement with the client has been signed, the Commercial Accountant (or equivalent) within Financial Services will establish a cost centre for the project. Unless otherwise agreed, all fees payable to a Unit and Faculty from Commercial Research will be credited to the new cost centre established specifically for the project.
2. Once a payment milestone has been reached, academic staff members must submit the appropriate invoice request to the Commercial Accountant (or equivalent) within Financial Services using the approved submission system. Financial Services will then generate an invoice to be sent to the client. For projects where the first payment is due upon signing of the Commercial Research agreement, the Commercial Accountant (or equivalent) will raise the invoice automatically and a Commercial Research Invoice Request Form will not be required for that payment.
3. Staff members must send project reports to the Commercial Accountant (or equivalent) within Financial Services if required by the client, at the same time that they send the Commercial Research Invoice Request Form to Financial Services. Financial Services will then send out a copy of the report together with an invoice to the client. Where this is not possible, the staff member must provide written confirmation that payment milestones have been completed to the satisfaction of the client. This confirmation is required before Financial Services can raise an invoice.
4. The nature of expenditure that is permitted to be made from Contract Research and Consultancy accounts is detailed in UOW's Consultancy Expense Guidelines.

### 6. Contract Research

- 6.1 Funds from Contract Research must be placed in individual research accounts or faculty/unit accounts and must not be taken as individual payment without the prior written approval of the ED and Deputy Vice-Chancellor (Research and Innovation). Such approval is not normal practice in UOW and the allocation of funds and any provision of individual payment from Contract Research will be at the absolute discretion of the ED and Deputy Vice-Chancellor (Research and Innovation) after due consideration of individual circumstances.

### 7. Consultancies

- 7.1 For this category of Commercial Research, the total income may remain in UOW Consultancy accounts to be used for Commercial Research purposes, or payment may be made to individual staff members but only in accordance with the Consultancy Expense Guidelines. Should a staff member choose to request personal payment, a Commercial Research Private Payment Form will need to be signed by their ED and sent to the Commercial Accountant (or equivalent) within Financial Services. Appropriate tax and statutory on costs will be deducted. Personal payment is not normal practice in UOW, with funds usually being retained in Consultancy accounts for approved usage in accordance with the [Consultancy Expense Guidelines](#). The



decision whether or not to sign the Commercial Research Private Payment Form will be at the absolute discretion of the ED after due consideration of individual circumstances.

## **8. Licensed Consultancies**

- 8.1 Income from Licensed Consultancies will be entered into nominated unit/faculty accounts for approved usage in accordance with the Consultancy Expense Guidelines. The Faculty Cost Recovery rate for Licensed Consultancies is established at the faculty level in consultation with ED's.

## **12 UOW Reporting on Commercial Research**

1. All Commercial Research that is a Commercial Activity will be registered and reported on in accordance with the Commercial Activities Guidelines.

## **13 Commercial Research Protection and Indemnity**

1. Staff engaged in UOW approved Commercial Research, supply of equipment and minor external work must ensure that:
  - 1.1 the activity is covered by UOW's insurance protections;
  - 1.2 UOW's name is only used in relation to the activity in accordance with the Use of University Name by Third Parties policy and the Use of the University Name in Public Statements policy; and
  - 1.3 they have clear access to and have received approval for the use of all internal and external resources required for the activity and have acted in accordance with the process outlined in section 5.

## **14 Risk Assessment and Management**

1. Prior to signing an agreement with the client, UOW must assess the risk of undertaking the Commercial Research activity. Risks to UOW can fall into the following broad categories:
  - 1.1 legal and contractual risks (eg. IP ownership and use arrangements, indemnity arrangements, risk of litigation, risk of not complying with government guidelines or regulatory requirements, such as those in relation to foreign influence, defence export controls, chemical or medical equipment supply, and consumer law);
  - 1.2 risks to reputation (ie. risk of being associated with projects/clients with a poor public image or inherent risk of deliberate reputational discredit, such as in expert witness Consultancies);
  - 1.3 business risks (eg. risk of under-costing the work or risk of not being paid by the client); and
  - 1.4 WHS risks (ie. risk of injury);
  - 1.5 project operational risks (e.g. required resources become unavailable), and
  - 1.6 in respect of foreign engagements, the risk of Foreign Interference.
2. The risk to UOW is assessed by the RSO and UOW Legal Services. However, the RSO and Legal Services are not always in the best position to identify specific risks for individual projects. Therefore, staff members are required to identify any specific risks that they anticipate will arise from performing their specific project. To assist in this process, a Commercial Research Risk Indicator list (Appendix 1) has been prepared.



3. Approval for the project may not be granted, unless there is an effective and efficient means of managing the risks.

## 15 Intellectual Property Arising from Commercial Research

1. During the course of a Commercial Research activity, Staff may develop intellectual property (IP). ICR can advise Staff on the processes for management of intellectual property and IP Policy. Personnel (such as Staff, Students, affiliates or contractors) engaged in Commercial Research may be required to execute documents, such as IP deed polls, prior to commencing work on a Commercial Research activity, in order to give effect to the contractual arrangements.

## 16 Management of Private Consultancies

1. Before undertaking Private Consultancy, Staff must obtain approval of the authorised delegate per section 16.5.2.
2. Private Consultancy activities of a Staff member are subject to other relevant policies, including the Conflicts of Interest Policy and Secondary Employment Policy. Private Consultancy must not interfere with the duties and responsibilities associated with their regular employment at UOW and Staff must ensure that UOW is expressly and specifically dissociated from their Private Consultancies. Staff undertaking Private Consultancy must ensure that clients understand that UOW is not responsible for Private Consultancy activities undertaken by Staff.
3. Staff members undertaking Private Consultancies should have their own professional indemnity protection covering all liability arising from performing services in relation to the proposed Private Consultancy. UOW reserves the right to obtain evidence of compliance with this provision.
4. Time spent on Private Consultancies must not interfere with the time commitment of duties and responsibilities associated with the staff member's employment with UOW. Staff must ensure that the time they devote to such activities undertaken in a private capacity, is not compromising the quality or outcomes of their normal research, administration and teaching activities and is of strategic benefit to UOW. The time spent must not in any case exceed, without approval, on average, 20% of the weekly time that is allowed for their normal duties. For full-time staff members this equates to a maximum of one day per week. Such time shall not normally be cumulative. In special circumstances, the Vice-Chancellor (subject to the endorsement of the Head of Unit/School, ED and Deputy Vice-Chancellor (Research and Innovation)) may approve concentrated periods spent on Private Consultancy, subject to the proviso that in any reasonable period (ie. six months) that includes the short period of concentrated outside work, the staff member's total involvement has not exceeded the 20% limit. If a significant amount of a staff member's time has the potential to be taken up by Private Consultancy, they should apply for leave without pay or negotiate a fractional appointment.
5. Prior to undertaking any Private Consultancy, staff members must ensure that their Head of Unit/School is advised of the activity and ensure that;
  - 5.1 UOW facilities or resources (including power, space, equipment, intellectual property) will NOT be used for the Consultancy (unless it can be demonstrated that the use of such facilities will be undertaken on the basis of full cost recovery under the terms of a written agreement between the staff member and UOW).
  - 5.2 the relevant ED (or other delegated authority) has approved the staff member carrying out the Private Consultancy (such approval must be in writing and will be provided at the delegate authority's discretion, having given due consideration to the individual circumstances);
  - 5.3 UOW letterhead, stationery, business cards, staff titles (eg. Professor, Lecturer), postal address, phone number, fax number, e-mail address or Web address will NOT be used, nor



any other information which might associate UOW with the Private Consultancy in any manner;

- 5.4 UOW is expressly and specifically dissociated from the Private Consultancy, including a clear disclaimer in all oral and written communication between the academic staff member and the client. UOW reserves the right to obtain evidence of compliance with this provision. A statement such as the following should be considered “This work is wholly unconnected and separate from the University of Wollongong and is provided strictly in my private capacity”;
- 5.5 no administrative or technical area of UOW (including, but not limited to, Financial Services, Human Resources and Legal Services) will provide services for the Private Consultancy;
- 5.6 an annual declaration is completed for all Private Consulting activities undertaken during the course of the past twelve months, including nil returns. This must be submitted to the ED through the Head of Unit/School. Staff who fail to register a Private Consultancy will be considered to have breached this policy and to be acting outside of established UOW rules and regulations.

## 17 Management of Minor External Work

1. There are some outside activities that only involve use of UOW facilities in accordance with normal office use, which may or may not have some modest financial reward to the staff member, and are regarded as a normal part of the staff member’s academic activity. These include occasional lectures and broadcasts, external examining and external assessment committees for other universities or other funding agencies, and journal article review fees. Where the fees for work of this nature do not exceed \$5,000 such fees may be taken as private payment subject to normal tax laws, or put into a UOW consulting account. These payments will not incur a UOW Cost Recovery amount and will not go through the RSO process. They should be managed at the Faculty level if being put into a consulting account. To avoid doubt, low value activities associated with Commercial Research including contracts with community or non-government groups do not constitute minor external work and should be managed as Commercial Research in accordance with this policy. To avoid doubt, minor external work is undertaken by the Staff member on behalf of and in the interests of UOW. Private Consultancy activities do not constitute Minor External Work.
2. Where fees for such work exceed \$5,000, academic staff members must advise their Head of Unit and ED. Depending on the complexity of the arrangements if these are paid into a UOW account, these may incur the UOW Cost Recovery amount. The Deputy Vice-Chancellor (Research and Innovation) must be informed of any such activities that might be of special interest.

## 18 Management of Supply of Services/Equipment/Devices/Material and Receipt of Materials

1. This section applies if Staff are asked to supply external clients with items of equipment/devices or materials or associated services related to UOW research. For example:
  - 1.1 equipment/devices/material for research purposes (eg. dosimeters to be used in non-human research);
  - 1.2 equipment/devices/material for testing or evaluation purposes (eg. knee sleeves that are not classified as medical devices for testing in human training programs); and/or
  - 1.3 equipment/devices/material for commercial purposes (eg. an intelligent polymer material for use in the production of a battery).



- 1.4 standard, non-research services associated with the supply of such items or using standard laboratory equipment for non-research purposes (e.g. 3D printing of jewellery to specification),
2. Staff must ensure that such activities are approved in accordance with the processes detailed in Sections 4 to 11. Where the risks have been clearly identified and do not vary, the University may permit recurrent activities to be managed using an approved template contract to "Approve contracts for the provision of services by UOW" under UOW Delegations of Authority Policy, provided the delegate authority is made aware of the risks. The process for managing this will be assessed on case by case basis and determined in consultation with LSU.
3. Where UOW is to send or receive materials via a Materials Transfer Agreement (MTA), such activities will also be managed as if they were Consultancy activities, and will be managed by ICR. Staff will not have to fill in a Commercial Research Approval Form or Commercial Research Costing Pro Forma in relation to the transaction unless the transaction requires in-kind support, but ICR will manage the legal and commercial negotiations with the client and, where necessary, obtain legal advice on the MTA from the Legal Services Unit.
4. The client's use of UOW equipment, located on UOW premises, will constitute a Consultancy but the supply of equipment to a client does not. The process of developing an item of equipment/device or material may involve Commercial Research activities but once the equipment/device/material has been developed and it is merely being supplied, it no longer involves Commercial Research

## 19 Non-Compliance with this Policy

1. Failure by Staff to follow correct procedures and/or obtain formal approval prior to the commencement of a Commercial Research activity may result in UOW's insurer declining to cover any liability that may arise out of the activity.
2. In such circumstances, UOW may not accept liability for work performed by the relevant Staff member, and the Staff member may be personally liable for any damages claimed in connection with the activity.
3. Breach by Staff of this policy may constitute misconduct pursuant to UOW codes, policies and procedures and may result in disciplinary action

## 20 Fraudulent Practices

1. Staff participating in Commercial Research and their managers and supervisors are responsible for ensuring adequate controls are exercised so that Commercial Research is not undertaken fraudulently or for corrupt purposes. Staff members should refer to the Fraud and Corruption Prevention Policy for further information on their role in relation to fraud and corruption prevention.

## 21 Conflicts of Interest

1. Staff members must refer to the Code of Conduct (Staff), Secondary Employment Policy and Conflict of Interest Policy when undertaking Commercial Research. Staff may not undertake any Commercial Research that creates a conflict of interest (as that term is defined in the Conflict of Interest Policy) for the Staff member, otherwise than in accordance with the requirements of the Conflict of Interest Policy. Conflicts of interest arising from third party funding must also be considered in the context of research reporting (ie. the reporting of research outcomes must be unbiased and objective). The risks conflicts of interest arising must be given due consideration in relation to any Commercial Research. Actions should be taken in accordance with the Conflict of Interests Policy and the Commercial Activity Guidelines to mitigate such risks so that they present an acceptable risk to UOW.



## 22 Unacceptable Consequences

1. Any Commercial Research that involves a staff member placing his or her personal interests above those of UOW is not acceptable under this Policy.
2. Commercial Research activities must not:
  - 2.1 unreasonably divert resources (human or material) from the central research, teaching and administrative functions of UOW;
  - 2.2 contribute to an unreasonable increase in workload or inequitable workload distribution amongst other staff members;
  - 2.3 contribute to increased casualisation of employment (through employment of casual staff for multiple short-term projects);
  - 2.4 disproportionately undermine the intellectual freedom or IP rights of staff members and UOW;
  - 2.5 jeopardise UOW's reputation.

## 23 Roles & Responsibilities

1. It is the responsibility of the RSO to develop and review the communication strategy for this policy.
2. It is the responsibility of the RSO to negotiate the commercial terms of any agreements with UOW's clients and to protect UOW's IP and commercial position in consultation with the Legal Services Unit and ICR. It is also the RSO's responsibility to ensure that this is done in a timely manner and to comply with relevant UOW reporting process where Commercial Research agreements involve foreign governments and agencies.
3. It is the responsibility of ED's and ADR's, prior to signing the Commercial Research Approval Form, to ensure the conditions for approval of Commercial Research set out in section 5 are satisfied.
4. It is the responsibility of Staff participating in Commercial Research to ensure:
  - 4.1 UOW is adequately protected by complying with this policy;
  - 4.2 a reasonable time for preparing and negotiating Commercial Research agreements is factored into the project's timelines - a minimum of two weeks' notice to the RSO is normally required;
  - 4.3 UOW is properly compensated for use of its resources and that any major purchases required to perform the project have been included in the charges to the client (ie. are not expected to be covered by the Faculty or UOW);
  - 4.4 UOW resources are not used for private purposes;
  - 4.5 identification of any potential risks using the Commercial Research-Risk Indicators document; and
  - 4.6 any conflicts of interest are properly declared and managed.

## 24 Version Control and Change History

Version Control	Date Effective	Approved By	Amendment
1	26 November 2004	University Council	New Policy



2	11 September 2007	Administrative Committee	Revised Policy. Incorporation into Policy template.
3	6 May 2009	Vice-Principal (Administration)	Migrated to UOW Policy Template as per Policy Directory Refresh
4	4 February 2010	Deputy Vice-Chancellor (research)	Review by Director of Commercial Research. No changes required and new review date set.
5	18 August 2010	N/A	Policy Custodian position title and email address changed to reflect new role.
6	21 June 2011	Vice-Principal (Administration)	Updated to reflect change of name from Wollongong College Australia to UOW College
7	16 January 2012	Deputy Vice-Chancellor (Research)	Updated to reflect name change from Commercial Research Unit to Innovation and Commercial Research.
8	30 November 2012	Vice-Principal (Administration)	Updated to reflect change from OHS to WHS.
9	6 September 2016	Deputy Vice-Chancellor (Research and Innovation)	Updated policy Custodian and Division responsibility to reflect structural change.
10	22 August 2017	Deputy Vice-Chancellor (Research & Innovation)	Updated to reflect UOW Policy Template, UOW definitions, Division titles and supporting documents with links.
11	1 April 2021	Vice-Chancellor	<p>Major policy review to reflect approvals for commercial research activities to be undertaken by researchers.</p> <p>Making explicit that normal practice that decisions related to staff drawing individual personal payments from research/consultancy accounts is made by the Executive Dean.</p> <p>Making explicit the responsibilities of the principal investigator in initiating and managing the project.</p>
12	15 December 2021	Vice-Chancellor	Updated to include reference to the <i>Australia's Foreign Relations (State and Territory Arrangements) Act 2020</i> , the <i>Foreign Influence Transparency Scheme Act 2018</i> and the Guidelines to Counter Foreign



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			<p>Interference in the Australian University Sector.</p> <p>Updated responsibilities from ICR to RSO to reflect One-UOW structural change.</p>
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## Appendix 1: Commercial Research- Risk Indicators

1. Prior to signing a contract with a client, to undertake Commercial Research or to supply equipment/devices, UOW must assess the risk of undertaking this work. Some of these risks will be assessed by UOW without the researcher's input (e.g. protection issues, indemnities, legal jurisdiction). However, the identification of other risks will require the input of the UOW researchers involved in the proposed project.
2. Some of the situations/activities that will present risk to UOW, for which the UOW researcher is in a good position to identify that they are likely to occur, are listed below. It is important that UOW staff disclose (in the Commercial Research Approval Form) any of these risks that are likely to occur in their proposed project.

**R1:** The work involves undertaking clinical trials\*.

**R2:** UOW is going to use or access intellectual property (IP) that is owned by a third- party.

**R3:** There is an actual conflict of interest or risk of a perceived or potential conflict of interest involved in undertaking the project.

**R4:** Key staff members are likely to leave UOW's employment during the course of the project or the project requires resources that may be unavailable.

**R5:** UOW staff members will be visiting environments or performing activities whilst undertaking the project that may cause harm or injury to people or equipment.

**R6:** The project will involve UOW students or other UOW researchers who are not Staff, such as fellows and honorary academics.

**R7:** There is potential for UOW to breach the confidentiality of the Client.

**R8:** There is potential for the Client to breach UOW's confidentiality.

**R9:** The project involves unlawful or unethical activities or the Client may use the outputs of the project for such activities, such as the oppressive use of surveillance technologies.

**R10:** The project will involve testing or trialling involving human subjects.

**R11:** The project will involve testing or trialling involving non-human animals.

**R12:** The project involves UOW intellectual property (IP) that has been assigned or licensed to a third party.

**R13:** The application of the project results will be have physical consequences on human subjects.

**R14:** Participation in the project may expose the UOW researcher(s) to radiation, radioactive materials, biological hazards, etc.

**R15:** UOW's reputation will possibly be damaged as a result of participating in this project.

**R16:** The project involves a Consultancy where there is potential for a significant negative impact from reliance on the deliverables or where the staff member may be exposed to reputational examination such as expert witness projects.

**R17:** There is potential for non-payment by the Client, for example where the Client is a small, overseas entity with no prior record of working with UOW,

**R18:** The project involves requirements on either party for regulatory compliance or approvals (such as privacy and data management, ethics approvals).

**R19:** The project involves the use of Indigenous Cultural and Intellectual Property (ICIP) as that term is defined in the IP Policy,



**R20:** The project involves the creation, manufacture or use of products or services subject to laws or regulations or UOW insurance limitations (such as consumer law, regulations related to manufacture of chemicals, medical and pharmaceutical goods).

**R21:** The project involves transfer of materials including data to overseas entities subject to Defence Export Controls

**R22:** The project may be subject to or facilitate foreign influence or Foreign Interference

**R23:** Other potential risks as identified by the UOW researcher(s).

3. \*Clinical trial is defined as:

3.1 a study or research involving humans to a) find out whether an intervention, such as treatments or diagnostic procedures, which is believed may improve a person's health, actually does so; or b) to test a drug, a surgical or other therapeutic or preventative procedure or a therapeutic, preventative or diagnostic device or service; where the nature of the study or research is such that it requires the investigator or an assistant to be a registered medical practitioner or other registered qualified health service provider; or

3.2 research involving humans requiring any invasive procedure (other than ingestion of food or drink or taking of blood samples) to be undertaken by a registered medical practitioner or other registered qualified health service provider. For the purpose of this definition, “invasive procedures” means any procedure involving ingestion, application or admission of any substance or material onto or into a human’s body.

4. RISK MANAGEMENT

4.1 Once one or more of the above risks have been disclosed as applying to a project, the RSO will contact the staff member. Together, and with advice from Legal Services and the UOW delegate as required, a strategy will be developed to minimise or mitigate the risk. This may include a technical (e.g. design) solution or a legal (e.g. indemnity requirement in the contract) solution. UOW reserves the right to disallow high risk projects from being undertaken under UOW’s auspices.



## Appendix 2: Definition of research and experimental development (R&D)

In the Higher Education Research and Development Specifications 2020, R&D is defined as:

‘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.’

For an activity to be an R&D activity it must satisfy all five core criteria:

- 1 to be aimed at new findings (novel),
- 2 to be based on original, not obvious, concepts and hypotheses (creative),
- 3 to be uncertain about the final outcomes (uncertain),
- 4 to be planned and budgeted (systematic), and
- 5 to lead to results that could be possibly reproduced (transferable and/or reproducible) .

Activities that meet the definition of R&D include:

- a) professional, technical, administrative or clerical support staff directly engaged in activities essential to the conduct of R&D
- b) the activities of HDR students enrolled at the HEP
- c) the development of HDR training and courses
- d) the supervision of HDR students enrolled at the HEP
- e) R&D into applications software, new programming languages and new operating systems
- f) prototype development and testing
- g) construction and operation of a pilot plant where the primary objective is to make further improvements
- h) trial production where there is full scale testing and subsequent further design and engineering
- i) phases I to III of clinical trials
- j) non-traditional research creative arts including original creative works, live performance of creative works, recorded or rendered works, and curated exhibitions or events.

Activities that do not meet the definition of R&D include:

- a) scientific and technical information services
- b) general purpose or routine data collection
- c) standardisation and routine testing
- d) feasibility studies (except into R&D projects)
- e) specialised, routine medical care
- f) literature reviews that are predominantly a summary of the current knowledge and findings of a particular R&D field or topic and do not include any critical assessment or report any new findings or original experimental work



- g) commercial, legal and administrative aspects of patenting, plant breeders rights, copyright, material transfer agreements or intellectual property licensing, option and assignment activities, and royalties
- h) routine computer programming, systems work or software maintenance
- i) stages of product development that do not meet the five R&D criteria above
- j) pre-production development
- k) market research
- l) construction of fully tested prototypes for marketing purposes
- m) after sales service and trouble-shooting
- n) industrial engineering and design for production purposes
- o) creative activities that do not meet the five core R&D criteria above
- p) R&D financing and support services
- q) consultancies or framework analysis activities that are designed to analyse or evaluate processes at external operators
- r) teaching services based on existing knowledge which do not constitute entirely new advancements in knowledge