

**University of Newcastle – Commercial Activity Decision Tree**

*This document is designed to assist staff and executives determine if an activity they are proposing is a Commercial Activity and is therefore subject to the requirements of the Commercial Activities Policy.*

*To determine if your proposed activity is a Commercial Activity (CA), answer the following questions in sequential order until instructed in the “Next Steps” to cease answering questions.*

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| Commercial Activity Decision Tree |
| **Item** | **Question** | **Response** | **Next Steps** |
| **1.** | Is the proposed activity ***solely*** to provide a course of study or to carry out research at an existing domestic campus of the University of Newcastle for the greater benefit of the community? | Choose an item. | If yes, your activity is NOT a CA. No further questions should be answered. If no, please proceed to Item 2. |
| **2.** | Is the proposed activity ***solely*** to provide facilities, services or equipment for education and research of a University standard having regard to the needs of the Hunter, Central Coast and surrounding areas? | Choose an item. | If yes, your activity is NOT a CA. No further questions should be answered. If no, please proceed to Item 3. |
| **3.** | Is the proposed activity ***solely*** to provide teaching and/or learning to engage with advanced knowledge and inquiry; or to disseminate, advance, or develop knowledge within Australia? | Choose an item. | If yes, your activity is NOT a CA. No further questions should be answered. If no, please proceed to Item 4. |
| **4.** | Is the proposed activity designed ***solely*** as a professional development program for an industry or employer partner (including conferences and tailored programs of study)? | Choose an item. | If yes, your activity is a CA. No further questions should be answered. If no, please proceed to Item 5. |
| **5.** | Will the proposed activity require the establishment, acquisition, or participation through a legal structure such as a partnership, trust, company, or joint venture? | Choose an item. | If yes, your activity is a CA. If no, please proceed to Item 6. |
| **6.** | Will the proposed activity involve the commercial exploitation of University intellectual property?  | Choose an item. | If yes, your activity is a CA, Category A. If no, please proceed to Item 7. |
| **7.** | Is the proposed activity conducted outside of Australia or is the third-party entity incorporated outside of Australia? | Choose an item. | If yes, your activity is a CA, Category B. If no, please proceed to Item 8. |
| **8.** | Does the proposed activity involve the provision of consultancy, project, or professional services to an external third party, that is not ***solely*** for the purpose of community engagement? | Choose an item. | If yes, please proceed to Item 11. If no, please proceed to Item 9.  |
| **9.**  | Does the proposed activity involve the provision of contract research services to an external third party, that is not ***solely*** for the purpose of community engagement? | Choose an item. | If yes, please proceed to item 10. If no, please proceed to Item 12. |
| **10.** | Where Yes has been answered to Item 9, does the proposed activity satisfy any one of the four criteria listed in Table A at A10, A11, A12 or A13? | Choose an item. | If yes, your activity is NOT a CA. No further questions should be answered. If no, your activity is a CA.  |
| **11.** | Is the estimated gross revenue over the life of the activity $1,000,000 or more?  | Choose an item. | If yes, your activity is a CA. If no, your activity is a CA and is subject to the Project & Consultancy Work Procedure. |
| **12.** | Is the activity to purchase, manage, or develop real estate that is not intended to be used primarily for teaching, research, or community engagement by the University?  | Choose an item. | If yes, your activity is a CA, Category B. If no, please proceed to Item 13. |
| **13.** | Is the activity a lease or licensing of land or premises that is owned or controlled by the University to a third party where the arrangement is not in pursuit of the University’s object per the Act? | Choose an item. | If yes, your activity is a CA, Category A. If no, please proceed to Item 14. |
| **14.** | Does the proposed activity involve the retail selling of non-academic goods or services that is not for the sole purpose of community engagement? | Choose an item. | If yes, your activity is a CA, Category B. If no, please proceed to Item 15. |
| **15.** | Is the proposed activity ***solely*** to provide one of the services listed in Table A – Activities That Are Not a Commercial Activity? | Choose an item. | If yes, your activity is NOT a CA. If no, please proceed to Item 16. |
| **16.**  | Have you answered all questions above and do not have a definitive answer to determine if your activity is a commercial activity? | Choose an item. | If yes, please complete the Commercial Activity Impact Assessment. |

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| Table A – Activities that are Not a Commercial Activity |
| A1 Community engagement activities. |
| A2 Investment of University funds.  |
| A3 Acquisition of services, facilities, equipment or other assets on behalf of the University in pursuit of its object under the Act. |
| A4 Management, maintenance, restoration or improvement of lands or buildings owned by the University, or under its control in pursuit of its object under the Act. |
| A5 Management, maintenance, restoration or improvement of or additions to the University’s library, art, heritage items or other collections not intended for re-sale. |
| A6 Charitable fundraising or sponsorship activities conducted by or on behalf of the University. |
| A7 The sale or provision of services, facilities or equipment to academic, administrative or support units within the University |
| A8 Third party arrangements for the primary purpose of providing education in Australia per the Third-Party Arrangements - Education Policy and procedure, and in accordance with the object of the University under the Act |
| A9 Any activity where the primary purpose of that activity is in support of the object and principal functions of the University per s6(1) and (2) of the Act. |
| A10 Contract research conducted under a scheme which is assessed as “Australian competitive grant R&D income” under the Higher Education Research Data Collection (HERDC) guidelines. |
| A11 Contract research that is wholly funded by the Australian government or an Australian government body (Commonwealth, State, Territory or Local). |
| A12 Contract research that is wholly funded by Australian or international philanthropy (donations, bequests, endowments or crowd funding). |
| A13 Research where the contract specifies that the University, or its wholly owned controlled entities, shall own all of the intellectual property rights arising from the contract research and no licence or other mechanism is granted to any other party to commercialise those intellectual property rights. |
| A14 The lease or licensing of University venues or facilities to bodies interconnected with the University for the purpose of those bodies providing facilities or other services to the University community, where the term of the lease or license does not exceed 10 years. |
| A15 Any activity conducted by a Controlled Entity, for example, retail activity for goods and services. The Controlled Entity itself is a commercial activity, but its operations are excluded from the definition of a commercial activity. |