Purpose

To define University procedural requirements for the undertaking of consultancy activities.

Scope

This procedure covers four distinct types of consultancy activities:

• General Consultancy;
• University Consultancy;
• Community Service Consultancy; and
• Private Consultancy.

This procedure applies to full-time and part-time staff of the University except casual staff or where other arrangements are made for staff specifically employed in a consulting role.

While academic staff usually undertake consultancy activity, TAFE teachers and general staff may also undertake consultancy activity. However TAFE teachers are required to perform any task within the range of professional duties for a minimum of 38 hours per week. For general staff, consultancy work may be specified in their employment contract and standard weekly work responsibilities.
### Definitions

| **Community Service Consultancy:** | Refers to a Consultancy that is undertaken for charity, community or public purpose, or as corporate citizenship by staff members in their capacity as University employees or using University resources where such activities involve low risk of litigation. Examples: strategic planning for community groups; design of a community attitudes survey for, example, a local Rotary Club, commissioned creative work or performances rendered to a community group or agency. Activities such as staff members serving on the Board of a Government Agency, professional body etc are also considered as Community Service Consultancy. |
| **Consultancy:** | The provision of professional services to an external party for a fee or other consideration. Consultancy is generally based on the application of an existing body of knowledge. Within this definition consultancy does not include:  
- Matters relating to publicly-available University courses;  
- Work predominantly relating to Research and Development;  
- Professional services provided for a fee or consideration by one employee or part of the University to another part of the University (an ‘Internal Consultancy’);  
- Writing any book, chapter of a book, journal or other publication where the subject matter is within the staff member’s academic discipline and attribution of the author’s affiliation with the University is set out with the publication;  
- Moderation activities conducted for “Third Party Providers”. Such responsibilities and work will be regarded as part of the required duties of academic and teaching staff with such responsibilities being part of the allocated work load;  
- Examining a thesis for an award of a University or setting and marking examinations for another institution;  
- Occasional broadcasts, lectures and/or appearances (but excluding a contracted series of such lectures, appearances, etc). |
| **Full Cost Recovery:** | Refers to full cost recovery as specified in the National Competition Policy, Trade Services Act and University Finance Procedures and specifically refers to the recovery of all direct and indirect costs associated with the consultancy activity including but not limited to overheads of central administration, School/Section administration, salaries and GST. |
| **General Consultancy:** | The provision of a professional service requiring the use of the University’s name, services, space, facilities, equipment and paid work-time, or other resources. A staff member, with the approval of the University, initiates the consultancy, takes the role as a Principal Consultant and provides professional services, through the University, to an external party for a fee or other consideration. |
| **Principal Consultant:** | The staff member acting as the initiator of the consultancy or, where more than one staff member is involved, the staff member designated as the principal or consultant undertaking the major part of the work involved. The Principal Consultant has the overall responsibility for the performance of the consultancy including financial management and reporting requirements. |
Private Consultancy: Consultancy undertaken for remuneration or other consideration by a staff member in his or her personal capacity as an individual or through a partnership, private company, trust, or any similar entity, as opposed to in his or her capacity as an employee of the University. Directorships and Partnerships are included in this category.

University Consultancy: Includes provision of all professional services requiring the use of the University’s name, services, space, facilities, equipment and paid work time, or other resources. It involves the provision of professional services and products to external parties for remuneration or other consideration. In a University Consultancy, the University adopts the role of Principal Consultant through the appointment of a Project Leader. Staff members involved in this type of consultancy will not normally receive a proportion of this profit, as they will undertake this activity as part of their normal duties. Examples include, but are not limited to, laboratory testing, data analysis, surveys, and field trials.

Actions

Actions Overview

1. Formal approval is required for all consultancies and such approval must be obtained prior to the consultancy commencing. Once a consultancy is approved staff will be provided with appropriate professional indemnity insurance cover, except in the case where a Private Consultancy is involved.
2. General and University Consultancies require a contract to be drawn up between the University and the entity receiving the service except where the Consultancy is under the value of $2,000. Where the value is less than $2,000 a formal exchange of letters between the parties may suffice.
3. Full cost recovery will be required for General and University Consultancies and budgets must be developed using the relevant University costing proforma which can be located via http://www.ballarat.edu.au/fdp/planning_strategy/forms.shtml. Budgets are to include all direct costs attributable to the consultancy; the appropriate uplift factor required under the Competition Code Compliance Manual (also known as the National Competition Policy) and a profit margin.
4. Disbursement of consultancies will be in accord with the type of consultancy entered into and will be disbursed as specified in this Procedure. A staff member may not always be entitled to a share of the profit as this is only possible when the Consultancy is outside the staff member’s individual workload allocation.
5. Each Head of School / Director is responsible for managing and monitoring consultancy activity within their School/Section and providing guidance to staff regarding consultancy classification.
6. Each Head/Director shall maintain a register of consultancies undertaken in their respective areas. Basic details of consultancies under the value of $2000 shall also be recorded. An annual report on consultancies will be required for presentation to the respective Head of Portfolio who then forwards the report to the Vice-President, Finance.
7. The Head/Director shall negotiate with a staff member an agreed allocation of time to be spent on any General, University or Community Service Consultancy. The negotiation shall take into consideration the staff member’s other responsibilities and the accepted employment hours of the staff member concerned. Any staff member who wishes to make variations to this allocation may only do so with the agreement of the relevant Head/Director, and approval of the activity through the normal approval process.
8. A consultancy activity must be conducted in such a way that it does not conflict with the staff member’s normal duties within the University nor the interests of the University. On average, no more than one day per week should be allocated to such activities. Only staff that are performing to their Heads/Directors satisfaction in their current roles will be permitted to undertake Consultancy. Heads of School will need to carefully consider if
it is appropriate to ask staff who are currently completing their PhD or post-graduate qualifications (e.g. Master of Business) to undertake Consultancy, as it is expected that completion of these studies would take priority.

9. No staff member may undertake Consultancy work if they have excessive leave, as defined in the Union Collective Agreement or AWA.

Approval Process

1. Consultation must take place with the Legal Office and where necessary a consultancy contract must be entered into prior to the commencement of the Consultancy (Refer to Actions Overview - Item 2).

2. Staff must complete the Application for Staff Consultancy Approval Form and obtain the required approval prior to the commencement of the Consultancy.

3. The following approval will be required:
   a. Consultancies < $15,000 will require the approval of Head of School/Director of Section.
   b. Consultancies > $15,000 but < $50,000 will require the approval of the relevant Deputy Vice Chancellor or Vice President.
   c. Consultancies of $50,000 or more will require a recommendation from the relevant Head of School or Director and corresponding Deputy Vice Chancellor or Vice President to the Vice Chancellor for approval.

4. Heads of Schools, Directors, Vice Presidents or Deputy Vice Chancellors engaging in consultancy activity will require the approval of the Vice Chancellor, upon submission of the appropriate approval form.

General Consultancies

1. Full cost recovery is required.

2. General Consultancies shall be deemed to be approved only when a formal application has been completed, fully costed and priced, all benefits and risks identified and assessed, and the correct approval obtained.

3. General Consultancies at or over the value of $2,000 shall be deemed to be approved only when a formal agreement (contract) has been completed and signed with the external party following submission of the completed application. Such contracts will include provisions with respect to performance, management, quality control, cost and payments.

4. Provided that infrastructure and associated costs of General Consultancies have been deducted, and appropriate proportions of the consultancy value (gross income), as set out in this policy, have been disbursed to the University and the relevant School/Section/Unit, any resultant net profit will be allocated to the Principal Consultant.

5. Progress and final reports will be required if the value of the Consultancy exceeds $5,000.

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3. The formal application must contain details of all costs and pricing with all benefits and risks to the University identified and assessed.

4. University Consultancies are expected to make a net profit that will be disbursed to the University and the relevant School/Section/Unit in accordance with proportions set out in this policy.

5. Progress and final reports will be required if the value of the Consultancy exceeds $5,000.
Community Services Consultancies

1. An Application for Consultancy Approval Form must be completed and contain relevant financial information including costing and pricing details with benefits and risks identified and assessed. An application need not be completed for the following activities:
   a. Examination of thesis or other external examination activities;
   b. Assessment of promotion application and external promotion panels;
   c. Writing or publicising conventional scholarly works in the staff member’s field of expertise (books, chapters, articles);
   d. Occasional newspaper articles, speaking engagements, exhibitions or performances.
In these cases notification to the Head/Director in writing will suffice. Exemption of other activities may be approved from time to time by the Vice Chancellor.

2. A Community Services Consultancy will be contracted with the external party through the University, except where the value of the consultancy is less than $2,000.

3. A Community Service Consultancy will normally be budgeted as full cost, but is not necessarily required to achieve Full Cost Recovery. Any proposal to undertake the consultancy at less than Full Cost Recovery must be identified clearly together with a statement of the public good or corporate citizenship benefits which justify less than Full Cost Recovery.

4. A Community Service Consultancy will not normally be expected to provide a commercial return to the University nor will provide for any direct or indirect payment to the staff member principally concerned with the Consultancy.

Private Consultancies (Private Paid Outside Work)

1. Private paid outside work is paid work undertaken by the employee in a private capacity which is outside of the employee’s full individual workload allocation and does not form part of the employee’s work at the University. Private paid outside work is not covered by any University indemnity or any University insurance policy relating to public risk and professional indemnity.

2. A current employee of the University cannot be engaged by the University as an independent contractor. Private paid outside work does not include work performed for the University commercial entities, offshore activities or any other major or minor commercial projects in which the University is engaged. This work becomes part of the employee’s normal work allocation and may form part of a General, University or Community Service Consultancy.

3. While private paid outside work falls outside of the employee’s workload allocation, employees must disclose and seek approval from their respective Head/Director for private paid outside work activities in the following circumstances:
   a. Where the private paid outside work is proposed to be undertaken during an employee’s required days and hours of work; or
   b. Where full-time staff are engaged in private paid outside work and that work directly or indirectly involves the employee’s professional expertise and they are employed for that professional expertise at the University (regardless of when the work is undertaken).

4. For the purposes of disclosure private paid outside work includes work where a benefit flows to a business enterprise with which the employees, their immediate family or relatives are associated. This includes directorships and co-directorships of companies but not those relating to family affairs and not-for-profit charitable companies. Activities such as employees serving on the Board of a Government or Local Government Agency or Community Board are considered as a Community Service Consultancy.

5. It is the employee’s obligation to disclose private paid outside work as defined under this policy. Failure to disclose constitutes a breach of University policy, and may result in disciplinary action.

6. A Head/Director may approve of the employee undertaking private paid outside work provided that:
a. there is no actual or potential conflict of interest between the proposed activity and the University’s educational and commercial activities, and
b. the employee is able to meet all of his or her employment duties, which includes access to students, and
c. the proposed activity will not, in the delegation of authority’s opinion, adversely affect the reputation of the University, and
d. the employee undertakes not to use the University’s name or, by his or her conduct, imply the University involvement in or association with the activity, and is aware that the activity is not covered by University insurance policies, and
e. the proposed consultancy is not competing with services otherwise provided by the University nor within an area that would normally be offered by the University on a commercial basis, and
f. the employee has professional indemnity insurance covering all potential damage or loss sustained as the result of negligence carried out in the course of performing services in relation to the proposed Private Consultancy.

7. Where an employee wishes to undertake private paid outside work and the time involved in undertaking the work will, in the Head’s/Director’s opinion, interfere with the employee’s full workload allocation, leave without pay or a reduced time fraction should be considered.

8. No University facilities or services are to be used by staff members involved in Private Consultancies unless it is specifically agreed to in writing by the relevant Head/Director with Full Cost Recovery undertaken.

9. Staff members are prohibited from charging for academic teaching / tutoring services provided to students enrolled at the University.

Disbursement of Consultancy Income

1. Disbursement of Consultancy Income will vary with the type of Consultancy entered into:
   a. For General Consultancies, the University and the School/Section/Unit shall receive proportions of gross income, as provided in this procedure. Infrastructure and associated costs shall also be taken from gross income. The Principal Consultant will receive any resultant net profit;
   b. For University Consultancies, income will be disbursed normally between the University and the School/Section/Unit;
   c. For Community Service Consultancies there may be a range of outcomes to be determined on a case-by-case basis;
   d. For Private Consultancies, the University will receive no share of any profit from that activity, unless covered by a specific contractual arrangement.

2. Income from Consultancies other than Private Consultancies will be placed into School/Section Consultancy Accounts, from which the University and School/Section/Unit will be reimbursed for their costs and proportions associated with the consultancy activity. These accounts are not regarded as personal accounts.

3. Regarding General Consultancies, proportions that the University and School/Centre/Institute/Directorate are entitled to, and all infrastructure and associated costs, must be debited from the Consultancy Account before a NET PROFIT is declared and any subsequent disbursement takes place. Payment of net profits from General Consultancies may occur twice yearly subject to Head of School or Director approval. Associated costs include, but are not limited to, overheads, services and equipment, materials, legal expenses, IT and word processing equipment, and GST. Salaries must be debited for all staff used in the Consultancy, including the actual salary cost of the Principal Consultant involved in the Consultancy. For General Consultancies the University and the School/Centre/Institute/Directorate shall be entitled to proportions of 25% (inclusive of Infrastructure and Associated costs which may vary) and 5% respectively, of gross income.

4. Consultancies will be disbursed in accordance with the following scales:
   a. Disbursement – General Consultancy
      Gross income amount
      less 25% (University proportion and Infrastructure and Associated costs, which may vary, will be deposited into the central University Account)
less 5% (School/Centre/Institute/Directorate proportion which shall be payable at the end of the year) 
less actual salary and salary on costs including superannuation = Net Profit (Principal Consultant proportion)

b. Disbursement - University Consultancy (or Community Services Consultancy if there is a profit)

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<tr>
<th>Net Profit</th>
<th>School/Section/Unit</th>
<th>University</th>
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<tbody>
<tr>
<td>Gross income less Infrastructure and Associated costs</td>
<td>70%</td>
<td>30%</td>
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5. A staff member will not be paid both a University salary and a salary that is charged to the Consultancy. If a payment is made to a staff member for a Consultancy then the actual University salary incurred over the period of the Consultancy must be recovered from the Consultancy Account first.

6. Principal Consultant(s) may elect to have profits of General Consultancies, that is funds remaining after all costs and proportions have been deducted, paid in either of the following ways:
   a. Principal Consultant(s) may elect to receive direct payment through the University Payroll system with normal marginal taxation rates applying. Salary sacrificing such amounts will not be possible; or
   b. Subject to approval from the relevant Head of School or Director, Principal Consultant(s) may also elect to have their proportion of the Consultancy profit remain in the School/Section/Unit Consultancy Account to use in ways that benefit themselves, other staff members and the University, e.g. conference attendance, travel (excluding airline club/lounge membership) and equipment. Once this decision has been made, the consultancy funds cannot be paid (in cash, cheque or via the Payroll system) to a staff member at any stage. If the staff member leaves the University employment the monies in the Consultancy Account remain with the School/Section/Unit, and will not be paid out to an individual.

7. Funds shall not be expended to support a Consultancy activity in advance of their receipt by the University.

Non-Compliance

In the event of non-compliance with the requirements of this Policy, staff members will be subject to the misconduct rules set out in the relevant University disciplinary provisions and Principal Consultants may not be covered by the University’s professional indemnity insurance. In cases where there has been under funding to central University accounts, amounts may be deducted from the School’s/Section’s/Unit’s operating budget.

Determination of Disputes

Any dispute between the University and a Staff Member relating to any Consultancy will be handled under the University’s Staff Grievance Procedure.

Employment Contracts

In the context of new employment contracts, an employee may negotiate release from specified requirements of this policy, subject to the Vice-Chancellor’s approval.

Responsibilities

Heads of School/Directors are responsible for ensuring staff comply with this policy and for ensuring appropriate approval, financial, record keeping and legal procedures are in place where relevant.

Specific responsibilities for action are included under Actions.
Policy Base

- Staff Consultancy Policy.
- Competition Code Compliance Manual (also known as the National Competition Policy).
- Conflict of Interest Policy.
- Costing and Distribution of Earned Income (Higher Education) Policy.
- Fraud & Corrupt Conduct Control Policy.
- University Statute 8.2 Intellectual Property.
- University Regulation 8.2 Intellectual Property.

Associated Documents

- Costing Proforma - Consultancies and Contract Research over $5000 to be completed within the Current Year.
- Budget Proforma - Research and Consultancies Extending over Two Calendar Years (over $5000).
- Costing and Distribution of Earned Income (Higher Education) Policy.

Forms.

- Application for Staff Consultancy Approval (DOCX 188.0kb)

Forms/Record Keeping

<table>
<thead>
<tr>
<th>Title</th>
<th>Location</th>
<th>Responsible Officer</th>
<th>Minimum Retention Period</th>
</tr>
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<tbody>
<tr>
<td>Consultancy Agreement</td>
<td>Legal Office</td>
<td>University Solicitor</td>
<td>7 years after contract has expired</td>
</tr>
</tbody>
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Implementation

The Staff Consultancy Procedure is to be implemented throughout the University community. This implementation will be via an Announcement Notice under ‘the UniversityCommunicate’ on the ‘FedNews’ website and on the ‘UB Policy – RecentlyApproved Documents’ website to alert the University-wide community of the approved Policy. The Staff Consultancy Procedure applies from the date of Council approval (24/3/09) as stated in ‘FedNews’.