

# Staff Consultancy Procedure

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## Purpose

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

## Scope

This procedure covers three distinct types of consultancy activities:

- General Consultancy;
- University Consultancy;
- 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. TAFE teachers are required to perform tasks 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

Term	Definition
<b>Academic Freedom</b>	<ul style="list-style-type: none"> <li>• The freedom of academic staff to teach, discuss, exhibit artistic works or public performances ,research, as well as disseminate and publish the results of their research</li> <li>• The freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research</li> <li>• The freedom of academic staff and students to express their opinions in relation to the higher education provider in which they work or are enrolled</li> <li>• The freedom of academic staff, without constraint imposed by reason of their employment by the university, to make lawful public comment on any issues in their personal capacities</li> <li>• The freedom of academic staff to participate in professional or representative academic bodies</li> <li>• The freedom of students to participate in student societies and associations.</li> </ul>
<b>Associated Costs</b>	<p>Include, but are not limited to, services and equipment, materials, legal expenses, IT and word processing equipment. Salaries must be debited for all staff used in the Consultancy, including the actual salary cost of the Principal Consultant involved in the Consultancy.</p>
<b>Consultancy:</b>	<p>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</p> <ul style="list-style-type: none"> <li>• Matters relating to publicly-available University courses;</li> <li>• Work predominantly relating to Research and Development;</li> <li>• 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');</li> <li>• Writing any book, chapter of a book, journal or other publication where the subject matter is within the employee's academic discipline and attribution of the author's affiliation with the University is set out with the publication;</li> <li>• Examining a thesis for an award of a University or setting and marking examinations for another institution;</li> <li>• Occasional broadcasts, lectures and/or appearances (but excluding a contracted series of such lectures, appearances, etc.).</li> <li>• Work that is undertaken for charity, community or public purpose, or as corporate citizenship by employees in their capacity as University</li> </ul>

	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 employees serving on the Board of a Government Agency, professional body etc. are also not considered as consultancy activities.
<b>Freedom of speech</b>	The freedom of staff, students, and invited visitors to the University to express lawful opinions publicly, without undue restriction.
<b>Full Cost Recovery:</b>	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/Directorate administration, salaries and GST.
<b>General Consultancy:</b>	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. An employee, 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. General Consultancy activities must only occur outside of full-time workload unless the Principal Consultant's salary is deducted from gross profit before any Net Profit is declared.
<b>Principal Consultant:</b>	The employee acting as the initiator of the consultancy or, where more than one employee is involved, the employee 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.
<b>Private Consultancy:</b>	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 their capacity as an employee of the University. Directorships and Partnerships are included in this category.
<b>University Consultancy:</b>	<p>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</p> <p>via the appointment of a Project Leader. Employees 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.</p>

## 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 for Consultancies. Budgets are to include all direct costs attributable to the consultancy; the appropriate uplift factor required under the Competition Code Compliance Manual available via [http://policy.federation.edu.au/university/general/competition\\_code\\_compliance/ch01.php](http://policy.federation.edu.au/university/general/competition_code_compliance/ch01.php) (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. An employee may not always be entitled to a share of the profit as this is only possible when a General Consultancy is outside the employee's individual workload allocation.
5. Each Dean/Director is responsible for managing and monitoring consultancy activity within their School/Directorate and providing guidance to staff regarding consultancy classification.
6. Each Dean/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 Associate Director, Financial Planning, Budget and Procurement.
7. The Dean/Director may negotiate with an employee an agreed allocation of time to be spent on any General or University Consultancy. The negotiation shall take into consideration the employee's other responsibilities and the accepted employment hours of the employee concerned. Any employee who wishes to make variations to this allocation may only do so with the agreement of the relevant Executive/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 employee's normal duties within the University nor the interests of the University; nor the intent of the University's Academic Freedom Policy. On average, no more than one day per week should be allocated to such activities. Only staff who are performing to their Dean's/Director's satisfaction in their current roles will be permitted to undertake Consultancy. Deans 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 employee may undertake Consultancy work if they have excessive leave, as defined in the industrial instrument their employment is bound by.
10. Funds shall not be expended to support a Consultancy activity in advance of their receipt by the University.

## 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. A Costing Proforma for Consultancies must be completed and provided to Finance for approval by the Associate Director, Financial Planning, Budget and Procurement.

3. Staff must complete the Application for Staff Consultancy Approval Form and obtain the required approval prior to the commencement of the Consultancy.
4. The following approval will be required:
  - a. Consultancies < **\$5,000** will require the approval of Dean/Director of Section.
  - b. Consultancies > **\$5,000** will require the approval of the relevant Deputy Vice Chancellor.
5. Deans, Directors, Pro-Vice Chancellors or Deputy Vice Chancellors engaging in consultancy activity will require the approval of the Chief Operating Officer and Chief Financial Officer, upon submission of the appropriate approval form.
6. Appropriately authorised Staff Application for Consultancy Approval forms should be retained by the involved employee's School or Directorate which shall also be provided to People and Culture for placement on the employee's file.

## 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 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.

## University Consultancies

1. Full cost recovery is required.
2. University 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.
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.

## 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 or University Consultancy.
3. While private paid outside work falls outside of the employee's workload allocation, employees must disclose and seek approval from their respective Dean/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 community engagement and may form part of normal workload.
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 Dean/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 their 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 their 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 Dean'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 employees involved in Private Consultancies unless it is specifically agreed to in writing by the relevant Dean/Director with Full Cost Recovery undertaken.



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

## Disbursement of Consultancy Income

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

An employee will not be paid both a University salary and a salary that is charged to the Consultancy. If a payment is made to an employee for a Consultancy then the actual University salary incurred over the period of the Consultancy must be recovered from the Consultancy Account first.

Disbursement of Consultancy Income will vary with the type of Consultancy entered into:

### 1. General Consultancy

a. The University and the School/Directorate shall receive proportions of gross income, as provided in this Procedure. The Principal Consultant will receive any resultant Net Profit. The University and the School/Directorate shall be entitled to proportions to cover infrastructure costs of 25% and 5% respectively, of gross income as detailed immediately below:

#### General Consultancy gross income amount

less 25% (University proportion, which must be deposited into the central University Account)

less 5% (School/Directorate proportion)

less actual salary and salary on costs including superannuation

less associated costs

= Net Profit (Principal Consultant proportion)

b. Proportions that the University and School/Directorate are entitled to must be taken when the consultancy income is received. All other associated costs must be debited from the Consultancy Account **before** a Net Profit is declared and any subsequent disbursement takes place.

### Process for Disbursement of Net Profits

c. Principal Consultant(s) may seek to receive Net Profits of General Consultancies in either of the two following ways:

i) Principal Consultant(s) may seek to receive direct payment of Net Profits through the University Payroll system with normal marginal taxation rates applying. Salary sacrificing such amounts will not be possible.

The School/Directorate must provide an approved General Consultancy Disbursement Approval Form to University Payroll to effect processing of payment; or

ii) Subject to approval from the relevant Dean or Director, Principal Consultant(s) may also seek to have any Net Profit remain in the School/Directorate Consultancy Account, to be used exclusively by the Principal Consultant for conference attendance by no later than 31 December of the year following the year in which performance of the above-load offshore teaching occurs. The School/Directorate must retain the approved General Consultancy Disbursement Approval Form and also forward a copy to People and Culture for placement on the employee's file.

e. Expenditure of Net Profits approved to be retained within School/Directorate Consultancy Accounts must occur by 31 December in the year following completion of the consultancy work. Any Net Profits remaining after such time will no longer be accessible.

f. An election must be made at the time of application, and if approved to retain Net Profit(s) within a School/Directorate Consultancy Account, the funds cannot be paid (in cash, cheque or via the Payroll system) to an employee at any stage including upon cessation of employment for any reason whether initiated by the employee or the University.

## **2. University Consultancy**

a. For University Consultancies, income will be disbursed normally between the University and the School/Directorate.

b. Disbursement - University Consultancy will occur according to the following table:

Net Profit	School/Directorate	University
Net Profit = Gross income less Infrastructure and Associated costs	70%	30%

## **3. Private Consultancy**

For Private Consultancies, the University will receive no share of any profit from that activity, unless covered by a specific contractual arrangement.

## **Non-Compliance**

In the event of non-compliance with the requirements of this Policy, employees may be subject to disciplinary action pursuant to the misconduct/serious misconduct provisions in the relevant University industrial instrument, 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/Directorate's operating budget.

## **Employment Contracts**

In the context of new employment contracts, an employee may negotiate release from specified requirements of this policy, subject to the Director, People and Culture' approval.

## **Responsibilities**

The Director, People and Culture is responsible for the implementation and monitoring of this procedure.

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

The Management Accounting and Budget Section has responsibility to update and provide advice on the use of University Costing Proforma.



## Legislative Context

- Code of Conduct for Staff and Other Members of the University
- *Competition and Consumer Act 2010* (Cth)
- [Managing Conflicts of Interest Procedure](#).
- Intellectual Property Policy
- Travel Policy
- Fraud and Corruption Control Procedure.
- Academic Freedom and Freedom of Speech Policy 2021
- Federation University Australia Statute 2021

## Records Management

Title	Location	Responsible Officer	Minimum Retention Period
Consultancy Agreement	Legal Office	University Solicitor	7 years after contract has expired

## Implementation

The [Staff Consultancy Procedure](#) is to be implemented throughout the University community. This implementation will be via an Announcement Notice under '*the University Communicate*' on the '*FedNews*' website and on the PAMS – *Recently Approved Documents*' website to alert the University-wide community of the approved Policy. The [Staff Consultancy Procedure](#) applies from the date of Council approval (XX/XX/XX) as stated in '*FedNews*'