

Consulting Activities

In order to undertake any sort of consulting activities University staff must first obtain approval of the Deputy Vice-Chancellor (Research) (as delegated by the Vice-Chancellor). This will also require the certification of approval by the respective Dean of Division. In undertaking consultancies staff must ensure that there is full cost recovery for the university of any use of University resources and/or facilities.

In formulating these policies, the University has had to address the following three major issues.

First, so-called 'private consultancies' by University staff members carry considerable risk for the University because of the principle of apparent authority, where the university may be held vicariously liable for damage incurred by a claimant as the result of a negligent act by a private consultant through the principle of apparent authority or agency by estoppel. This principle is not concerned with the actual relationship between the private consultant and the University but how the relationship appears to a third party. One consequence of this opinion is that the University's insurer will not indemnify the University against any damages claimed.

Secondly, the Government has confirmed the higher education sector's commitment to the federal competitive neutrality policy, in which universities and their staff have to recognise and comply with the law whereby no competitive advantage is gained by publicly-owned or funded organisations simply as a result of public sector ownership. As a consequence, all activities involving consulting must be charged at **market rates** rather than being marginally costed and therefore effectively subsidised by the University (the AVCC is developing pricing policies).

And **thirdly**, with the introduction of the Goods and Services Tax in 2000, universities may be vicariously liable for GST on consultancies undertaken by their staff, again under the principle of apparent authority. That is, where a staff member represents him/herself as a member of the University such that, to a third party, she/he appears to be acting as an agent of the University, then the University is liable for any GST collectable on the consultancy, in a similar way that it is liable for damages in the case of the staff member's negligence (point 1).

University Policy on Consulting Activities

The net effect of these three considerations is that the University would be at considerable financial and legal risk if it did not formalise its policy on consulting. Accordingly, the policy on consulting in the Enterprise Agreement has been made more explicit. The relevant section is Clause 13.07, "Outside Earnings, Consultancies and Directorships", which can be found on the University's website at:

<http://www.pers.mq.edu.au/enterprise/ea0306/html/1307.html>

Private consulting is limited to certain established areas where there are professional associations with Codes of conduct, and the University is satisfied that suitable liability insurance is held by the consultant. Staff engaged in private consultancies require the formal approval of the Deputy Vice Chancellor (Research), and are required to sign a disclaimer indemnifying the University.

The University's Enterprise Agreement (2003-2006), *inter alia* states:

"The staff members and respective Deans of Divisions/Heads of Department must ensure that:

- o *the work will not impinge upon the satisfactory performance of the normal responsibilities of a member of staff;*
- o *University resources are not used without prior approval and without full compensation to the University;*
- o *relevant activities are included in the research data collection and thus earn research quantum (or its equivalent) for the University;*
- o *the activity is not injurious to the reputation of the University;*
- o *the University is protected from vicarious liability in any legal action arising from the activity;*
- o *the activity does not create a conflict of interest for the staff member."*

Other Mechanisms Available for Undertaking Consulting and Commissioned Research

Staff may undertake consulting activities in three ways:

- a) Private Activities.
- b) Via the University (Research Office).
- c) Via a University Company or Controlled entity (e.g. its research company, Access Macquarie Limited).

Private Consulting has been dealt with above – Staff must get formal permission to undertake the consulting under the conditions outlined. They must have personal; professional indemnity insurance, and they must pay full costs for use of University equipment and facilities.

Consultancies undertaken through the University must still be properly costed with full cost recovery for use of infrastructure, etc. In such cases the financial management of the project is undertaken by the Finance Office, and the costs and purchasing for all consumables, maintenance and capital equipment are all dealt with through the usual administrative offices of the University. All staff employed on such projects are appointed under the relevant prevailing industrial awards and conditions. On-costs and overheads are as determined by current University Policy. Professional and other indemnity for the staff involved in projects undertaken in this way is provided by the University, with the caveat that it may require professional indemnity limits to be declared in individual agreements. Charges agreed under these circumstances over and above budgeted expenses, on-costs and overheads remain within the control of the University, although they may be utilised by the permanent academic staff overseeing or undertaking the project for University approved purposes (such as equipment purchase, professional development, conferences and related travel etc.). Intellectual property rights under such contracts are vested in the University, unless otherwise stated in the contract concerned.

Consultancies undertaken through Access Macquarie Limited distances the University from projects in several ways. Financial management is entirely undertaken by Access Macquarie Limited, as is the recruitment and appointment of staff employed for specific projects (who become employees of Access Macquarie). This has the advantage of flexibility, particularly in the recruitment of staff for specialist assignments. Responsibility to meet all costs incurred as a consequence of utilising University resources or infrastructure in the course of projects undertaken through Access Macquarie remains absolute. Professional and other indemnity for the staff involved in projects undertaken in this way is provided by Macquarie Research Limited, with the caveat that it may require professional indemnity limits to be declared in individual agreements. Intellectual property ownership in externally funded research is normally vested in the University, but may be assigned to Access Macquarie.