



Governance Requirements - Interests in Entities Procedures

1. LEGISLATION/ENTERPRISE AGREEMENT/POLICY SUPPORTED

[Voluntary Code of Best Practice for the Governance of Australian Universities](#) ('the Voluntary Code')

2. PROCEDURAL DETAILS

2.1 In considering whether the University should acquire an interest (in part or whole) or establish an Entity, staff should seek guidance from both Financial Services and Legal and Compliance Services. The Toolkit may provide guidance to staff as to the matters they need to consider.

2.2.1 For each entity (or proposed entity), from the earliest feasible time, the relevant Executive Manager will designate a Responsible Senior Officer (RSO). The RSO will be a staff member of the University and is not a director of the entity. The Council Secretary will be provided with the name of the RSO and be advised in a timely manner of any changes of the RSO.

2.2.2 Responsibilities of the RSO include:

- i. Managing the University's relationship with and interest in the entity;
- ii. Negotiating details of proposed arrangements and having regard to the approval requirements (sections 2.4.1 and 2.4.2)
- iii. Preparing proposals relating to the University's establishment, acquisition, membership, or partnership in the entity;
- iv. Developing and managing relevant contracts or other legal instruments;
- v. Monitoring performance, risk management and audit, and alerting the University to noteworthy positive outcomes and, at the earliest possible time, to any matters of concern;
- vi. Informing the University of and developing proposals relating to any subsequent significant changes to the University's level of control or interest;
- vii. Informing the Council Secretary of any changes in the RSO and matters that would materially affect the University's ownership and risk exposure in the entity; and
- viii. Providing (to specified deadlines) University compliance certifications and reports.

Proposals for establishment or acquisition

2.3.1 Proposals for the establishment or acquisition of an interest in an entity will:

- i. have a business plan which meets the information requirements necessary for a justifiable decision to be made on the proposal;
- ii. include a rationale for the decision on the appropriate legal form;
- iii. be confirmed by the Chief Financial Officer and General Counsel Commercial as being appropriately designated as a controlled entity or otherwise; and
- iv. make clear how the arrangements will allow the University to comply with Clause 12 or Clause 13 of the Voluntary Code.

2.3.2 Where an acquisition is proposed, transition arrangements may be necessary. The reasons for, nature of and likely duration of the transition arrangements will be outlined in the proposal.

Approval

2.4.1 Proposals for establishing or acquiring a controlled entity will be submitted by the relevant Deputy Vice-Chancellor/Vice-President via the Vice-Chancellor to the Finance Committee of Council. Approval of the establishment or acquisition of a University controlled entity resides with the Council.

- 2.4.2 Approval for establishing, acquiring or increasing an interest in other entities resides with the officer delegated in the Delegations Register. The seniority of that officer will depend on the nature and risk profile of the arrangement and, at the high end of the risk continuum, approval by the Vice-Chancellor may be required.

Development and formalising of legal instruments

- 2.5.1 Appropriate legal instruments will be developed to formalise the establishment or acquisition of an interest in an entity. The RSO will consult with the General Counsel Commercial in relation to developing the legal instruments, and will provide all appropriate supporting documentation, including the business plan.
- 2.5.2 The relevant legal instruments will make provision, through the entity's constitution or otherwise, such that:
- i. the University will, in regard to the entity, be able to comply with Clauses 12 or 13 of the Voluntary Code as applicable;
 - ii. appropriate provisions are specified to enable the University to exit on terms appropriate to the circumstances, minimising any negative impact to the University's interests; and
 - ii. the entity is required to operate in the best interests of the University and be accountable to the University, in addition to meeting its own stated objectives and operational requirements.
- 2.5.3 It is recognised that the transition arrangements referred to in 2.3.2 may be required before the conditions in 2.5.2 can be met fully.

Nomination and Appointment of Office holders

- 2.6.1 Any nominations or appointment of University staff members to hold office in an entity on behalf of the University will be considered and may be approved by the relevant Executive Manager.
- 2.6.2 Council shall appoint directors to the boards of controlled entities. In order to ensure appropriate breadth of representation as well as retention of corporate memory, terms of office should be staggered and overlap.
- 2.6.3 Schedule 1 specifies the selection criteria for the appointment of directors and the chairman of a board, and the procedure for the renewal of the appointment of directors and the chairman to the board of a controlled entity.

Performance monitoring and reporting

- 2.7.1 The RSO for an entity will ensure that the risk to the University in relation to the arrangement is assessed on a regular basis, consistent with the University's Risk Management Framework.
- 2.7.2 The RSO of a controlled entity will also monitor the performance of the entity with particular reference to benefits or issues for the University including Clause 12 of the Voluntary Code. The RSO will also ensure that external audit reports on the entity are available to the University.
- 2.7.3 Where an entity has an assessed medium to high level of risk, the RSO will escalate matters to assist the University to take steps to control the risk and report the risks to the Council Secretary.
- 2.7.4 The RSO will provide reports to specified deadlines to the Council Secretary which will enable the Council to assess whether, in regard to the arrangement, the University is compliant with Clause 12 (controlled entities) and Clause 13 (other entities) of the Voluntary Code. Prior to submission to the Council Secretary, the compliance reports will be considered and will be endorsed by the relevant Executive Manager.
- 2.7.5 Relevant reports on controlled and other entities will be provided as applicable by the Council Secretary to Council on key aspects of the reports, including on the degree of compliance with Clauses 12 and 13 of the Voluntary Code. This will enable Council to:
- i. confirm compliance with Clauses 12 and 13 of the Voluntary Code or provide reasons for any non-compliance; and

- ii. consider and resolve any actions needed to strengthen its oversight of an entity, or to address any other areas of concern.

2.7.6 The relevant Executive Manager will complete regular strategic reviews of University controlled entities. Reasons for the review include to ascertain whether it remains desirable or necessary for their functions to be undertaken through a University controlled entity, and whether they expose the University to inappropriate levels of risk.

2.7.7 The RSO will review each controlled entity annually, in a format specified by the Council Secretary. The results of that review should be reported to the Council Secretary;

If there are adverse review findings, a proposal that addresses the relevant issues will be submitted through the Council Secretary to Council. Options may include the sale or wind up, or exit by the University from the controlled entity.

Other procedures

2.8.1 Significant changes to the University's level of control or interest in an entity may occur. Where such changes are instigated by the University, they will first be the subject of proposals and approvals consistent with the delegations for the establishment or acquisition of interests (refer 2.4).

2.8.2 Where such changes occur due to other reasons, they should be reported to the Council Secretary by the RSO at the earliest possible time, along with comments on any major implications for the University. The Chief Financial Officer and General Counsel Commercial will confirm, or otherwise, the redesignation of the entity.

Significant changes may include:

- i. Increasing the University's level of control or interest in a uncontrolled entity, such that it would constitute a University controlled entity; or
- ii. Reducing the University's control or interest in a controlled entity, such that it would no longer be controlled by the University; or
- iii. Dis-establishing a University controlled entity by selling it or winding it up; or
- iv. Disengaging from, or significantly reducing engagement with, an uncontrolled entity.

2.8.3 Divestment and disestablishment of entities may only be approved consistent with the delegations for the establishment or acquisition of interests (refer 2.4).

2.8.4 The following management positions are responsible for implementation and compliance monitoring of these procedures in their work areas:

- i. **Council Secretary:** responsible for reporting to Council the requirements described in these procedures, and that these procedures provide for compliance with the Voluntary Code;
- ii. **Executive Manager:** responsible for compliance and designating an RSO for an entity within their portfolio, oversight of the RSO in that role and other responsibilities as outlined in these Procedures; and
- iii. **Responsible Senior Officer (RSO):** relationship with the entity and compliance with the Voluntary Code, these Procedures and for providing up to date information to the Council Secretary.

3. SCOPE OF PROCEDURES

This policy applies to members of the University's Council, Council Committees and Boards, and to all staff of the University.

4. DEFINITIONS

(Note: Commonly defined terms are located in the [Curtin Common Definitions](#). Any defined terms below are specific to this document)

Controlled Entity

Where the University is exposed to variable returns of the entity and currently has the ability to direct decisions that impact them (see Schedule 2 for elaboration)

Other Entity

Any entity in which the University has an interest that is not a controlled entity. An entity may be, but not limited to, a company, partnership or joint venture.

5. SCHEDULES

- 1 - Nomination and reappointment of Directors to Boards of Controlled Entities
- 2 - Elaboration of definitions

6. RELATED DOCUMENTS/LINKS/FORMS

[Voluntary Code of Best Practice for the Governance of Australian Universities](#) - Clauses 12 and 13

[Corporations Act, 2001](#)

[Risk Management Policy](#)

[Brand Use Procedures](#)

Toolkit

Policy Compliance Officer	Jon Porter , Council Secretary Secretariat
Policy Manager	Council Secretary
Approval Authority	Council
Review Date	1 st April 2016

REVISION HISTORY

Version	Approved/ Amended/ Rescinded	Date	Committee / Board / Executive Manager	Approval / Resolution Number	Key Changes and Notes
	Approved	27/01/2009	Planning and Management Committee	PMC 10/09	Attachment A to Document No 00027/09
	Amended	12/12/2012	Council	C 160/12	Attachment A to Document No 01272/12 (Council rescinded existing policy and procedures and approved new procedures as per new Policy Framework, includes title name change) effective 1 January 2013
	Administratively Updated	19/08/2013	Director, Legal and Compliance Services		Links Updated

SCHEDULE 1

Part One – Selection criteria for Directors and the Chairman of a Board of an entity

1. Apart from the curriculum vitae for each candidate, the Responsible Senior Officer (RSO) will provide commentary on the suitability of each candidate for the role being envisaged for that individual against the criteria described in section 4 below. The RSO will arrange for each prospective candidate to be consulted on his or her preparedness to accept appointment as Chairman or Director as the case may be.

The following criteria will be addressed in the recommendations for appointment:

- a. professional competencies and background appropriate to the business of the controlled entity;
 - b. professional, business and community networks which will support the operations of the controlled entity;
 - c. ability to commit the requisite time and effort to understand the business of the controlled entity and attend meetings; and
 - d. experience in, or demonstrated sound knowledge of good corporate governance and the responsibilities of directors under Corporations law.
2. The following additional criteria will be addressed in the recommendation for appointment of the Chairman to the Board:
 - a. demonstrable skills in the effective management of meetings, including time management, and the facilitation of active, disinterested and informed participation by all members of the Board;
 - b. understanding and commitment to a leadership model of corporate governance; and
 - c. demonstrable experience in the setting of strategic objectives and priorities for entities.

Part Two – Procedure for the Renewal of Appointment of Directors to the Board of controlled entity

Chair of the Board

3. No later than six months before the term of office of the Chair of the Board is due to conclude, the Company Secretary will arrange for the Board to consider the formulation of advice to the Council on the appointment of a new Chairman. The Chairman will take no part in the proceedings of the Board relating to this, unless the Board has been formally notified that he or she will not or cannot be a candidate for re-appointment. Where the Chairman is available and prepared to be re-appointed, the Deputy Chair of the Board will take the chair for all proceedings of the Board relating to this matter.
4. If the Chair is willing to be a candidate for re-appointment and is eligible to be re-appointed the Board will consider this in light of the needs of the entity and the Board, the spread of qualifications and experience of all other Board members, and the environment in which the entity is operating at the time.
5. In relation to controlled entities the RSO will advise the Vice-Chancellor of the Boards' advice, for transmission to the Council.

Members of the Board

6. No later than six months before the date of conclusion of a Board member's terms, the Company Secretary will place an item on the agenda of the Board, for the consideration of an appointment to the prospective vacancy. The process may include consideration of the re-appointment of the serving member, if that person is eligible for re-appointment.
7. The Board will consider the imminent vacancy in light of the skills, knowledge and experience necessary to provide proper stewardship and control of the entity in its current operational environment. The Chairman of the Board will confidentially ascertain the availability and preparedness of any new candidate whose name the Board intends to submit to the Council for appointment.
8. The Board's recommendations for the appointment of members of the Board of a controlled entity will be transmitted to the Council. The Council will bear in mind its obligations under the Voluntary Code of Best Practice for the Governance of Australian Universities in making an appointment, or a re-appointment. The Council will specify the term of office of an appointee, and any other conditions e.g. whether the appointee will be eligible to serve further consecutive terms.

SCHEDULE 2

Controlled Entities

An entity is regarded as controlled by the University where the University:

- i. has the current ability to direct decisions affecting the entity's returns; and;
- ii. is exposed to variable returns as a result of the entity's performance.

Examples:

The factors to be considered when determining if an entity is controlled or otherwise are many and complex. Matters which may indicate control include where the University has:

- more than 50% shareholding; or
- control over the appointment of the majority of board members; or
- more than half of actual or potential voting rights; or
- the power to appoint or remove key management personnel

Financial Services can provide further advice.

Relevant Documents

Clauses 12 and 13 of the Voluntary Code of Best Practice for the Governance of Australian Universities

12. *The governing body should oversee controlled entities by:*
 - (a) *ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;*
 - (b) *appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;*
 - (c) *ensuring that the board of the entity adopts and regularly evaluates a written statement of its own governance principles;*
 - (d) *ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and*
 - (e) *establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.*

13. *A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of a university should, where appropriate in the light of the risk assessment, use its best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.*