

# Governance Framework for Controlled Entities

## Section 1 - Introduction

(1) Section 16A of the [University of Newcastle Act 1989 No 68](#) (NSW) requires the Council to ensure that a controlled entity does not exercise any function or engage in any activity that is not authorised by or under the Act. This framework establishes the governance requirements for the University's controlled entities.

(2) The University is a body corporate, with a number of controlled entities. Currently, each is a separate legal entity, governed by its own Board. An entity will be regarded as a controlled entity if the definition of Control is satisfied.

(3) This framework establishes the governance requirements for controlled entities to ensure that:

- a. the Council can meet its obligations under the Act; and
- b. Controlled entities:
  - i. exercise functions in the manner required by the Council;
  - ii. engage in activities that are authorised by the Council; and
  - iii. act at all times in accordance with relevant legislation.

(4) A number of other acts and policies also impact on the activities of the Council and controlled entities. These acts and policies include, but are not limited to, those listed in [Controlled Entities - Applicable Governance Documents](#).

## Section 2 - Audience

(5) The Council.

(6) University of Newcastle management.

(7) Controlled entities.

## Section 3 - Definitions

(8) In the context of this framework Act means the [University of Newcastle Act 1989 \(NSW\)](#).

(9) In the context of this framework AASB means the Australian Accounting Standards Board.

(10) In the context of this framework Board means the board of directors of a controlled entity.

(11) In the context of this framework Constitution means the constitution of the controlled entity.

(12) In the context of this framework Control means the definition of control contained in AASB10, outlined below. Note that the definition of control within AASB10 is not a straight forward application or decision.

- a. The University, regardless of the nature of its involvement with an entity, shall determine whether it is a parent by assessing whether it controls the entity. The University controls an entity when it is exposed, or has rights, to variable returns from its involvement with the entity and has the ability to affect those returns through its power of the entity. Thus, the University controls an entity if and only if the entity has all of the following:
  - i. power over the entity;
  - ii. exposure, or right to, variable returns from its involvement with the entity; and
  - iii. the ability to use its power over the entity to affect the amount of the University's returns.

(13) In the context of this framework, Director means a director or member of the Board of a controlled entity.

(14) In the context of this framework, External Member in relation to a Board member of a controlled entity means not a staff member or student of the University, nor a member of the Council.

## **Section 4 - The Council's Responsibilities**

### **Overarching Responsibilities**

(15) The Council is responsible for establishing and authorising the participation by the University in controlled entities, including monitoring and oversight of the functions and activities of the controlled entities.

(16) The Council will ensure that a controlled entity does not exercise any function or engage in activity that the University itself is not authorised by the Act to undertake and as far as is reasonably practicable:

- a. that the governing bodies of controlled entities:
  - i. possess expertise and experience necessary to provide proper stewardship and control, and comprise, where possible, at least some External Members, and
  - ii. adopt and evaluate their own governance principles, and
  - iii. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets, and
- b. that a protocol is established regarding reporting by governing bodies of controlled entities to the Council.

### **The Council's Approval**

(17) Any proposal to establish or acquire a controlled entity must be submitted to the Council for its approval.

(18) Proposals must be submitted through the Vice-Chancellor to the Council and must include the following information:

- a. legal and financial due diligence report;
- b. comprehensive business plan;
- c. draft Constitution;
- d. risk assessment; and
- e. any other information relevant to the proposal.

(19) The Council's approval is also required for the following matters insofar as they relate to a controlled entity:

- a. the scope of the functions and the commercial activities of the controlled entity;
- b. the controlled entity Directors to be appointed, removed or replaced;
- c. the controlled entity's governance principles, including any significant amendments;

- d. the induction and director training program for Directors;
- e. the controlled entity's corporate or business strategy or plan, including any changes to previously approved plans;
- f. the controlled entity's annual budget;
- g. the controlled entity's measurable performance targets;
- h. the controlled entity's annual statutory financial reports to the Auditor General or other relevant regulatory body (as appropriate); and
- i. the publication of the controlled entity's annual report (if required).

(20) Where the Council is required to nominate persons for appointment to a Board, the Council will seek the recommendation of the Nominations and Governance Committee, including the appropriate skills and experience required for the particular board positions.

## **Audit Reports**

(21) The Council and the Controlled and Associated Entity, Finance or Risk Committee may obtain independent audit reports on controlled entities.

(22) The Chief Financial Officer may require internal audits to be performed on controlled entities. Internal audit reports will be reported through to the relevant Council committee.

## **Risk Management**

(23) The Council, through the Risk Committee, is responsible for overseeing risk management and risk assessment across the University and its controlled entities.

## **Reporting**

(24) The Council will advise each Board of the reporting requirements of the controlled entity.

# **Section 5 - Controlled Entity's Responsibilities**

## **Board Duties**

(25) Each Board is responsible for ensuring that its activities are consistent with the University's strategic goals and governance practices.

(26) The Board is responsible for the good governance and stewardship of the controlled entity, driving performance and compliance through the adoption and evaluation of its own governance principles in accordance with its Constitution, the Act and other applicable legislation.

(27) The Board of a controlled entity must ensure that:

- a. it does not take any action, or omit to take any action, that adversely affects the University's ability to comply with its obligations as a public authority;
- b. it complies with legislation relevant to the controlled entity in the State or country it operates in;
- c. risk management, compliance and accountability processes are in place and are consistent with current legislation, University policy, and controlled entity policy; and
- d. the controlled entity's management conforms to relevant legislation, University and controlled entity and relevant University policies and guidelines.

## The Council's Requirements of a Controlled Entity Board

(28) The Board must ensure that the controlled entity exercises those functions and activities as approved by the University in accordance with the Act, its Constitution and any other relevant law.

(29) The Board is responsible for:

- a. providing the Council with a statement of the controlled entity's governance principles, reviewed annually;
- b. complying with the Council reporting requirements as set out in the [Annual Reporting Calendar for Controlled Entities](#);
- c. establishing, in conjunction with the Council, a directors' induction and governance training program for Directors;
- d. ensuring that it does not use the University name, logo and brand unless such use is approved in writing by the University and is in accordance with relevant University consents and policies;
- e. ensuring adequate control and accountability systems and reporting are in place including frameworks for delegations, risk management and legislative compliance, and providing assurance of the adequacy of these;
- f. providing the Council with the corporate or business strategy or plan and annual budget;
- g. monitoring performance against the annual budget and business plan;
- h. providing oversight of internal and external audit plans, including monitoring of matters arising from the audits;
- i. ensuring policies and procedures are in place to govern Director disclosures of interest and management of conflicts of interest;
- j. ensuring the controlled entity's insurances, whether through University insurance policies or the controlled entity's own insurance policy, provide coverage at a level acceptable to the University.

## Director's Duties Generally

(30) Each Director is required to serve and act in the best interests of the controlled entity and act in accordance with the roles and responsibilities of a director as required by law.

(31) Director's roles and responsibilities include:

- a. to act with the degree of care and diligence that a reasonable person might be expected to show in the role. This includes not entering into transactions that cause risk or no benefit, or entering into transactions without the Council's approval;
- b. to act in good faith, in the best interests of the controlled entity and the University and for a proper purpose. This includes avoiding conflicts of interest;
- c. not to improperly use their position to gain an advantage for themselves or someone else or to the detriment of the controlled entity or the University; and
- d. not to improperly use the information they gain in the course of their role as Director to gain an advantage for themselves, or for someone else, or to the detriment of the controlled entity or the University. A Director can be held personally liable for failure to discharge their duties as a Director.

## Constitution

(32) Each controlled entity must have a Constitution that states the objects and functions of the controlled entity. The Constitution must be adopted either upon incorporation or within a reasonable time thereafter.

(33) In establishing a controlled entity, the Council will ensure that the Constitution requires that the University maintains Control of the controlled entity and that, so far as is reasonably practicable and possible, that at least some Directors are External Members.

(34) The Constitution must include the following:

- a. the objects and purpose of the controlled entity, which establishes a connection with the University and describes the benefit the controlled entity provides to the University;
- b. the means by which the University Controls the controlled entity's decision-making, directly or indirectly, through one or more of the following:
  - i. the composition of the controlled entity's Board;
  - ii. the majority of votes which may be cast at a general meeting;
  - iii. holds the majority of the share capital (for a company which has share capital); or
  - iv. governs the financial and operating policies under statute or agreement; and
- c. if the controlled entity is a wholly owned subsidiary of the University (as defined under the Corporations Act), include a provision which expressly authorises a Director to act in the best interests of the University (as permitted by section 187 of the Corporations Act). The Council must approve any amendments to the controlled entity's Constitution before those amendments can take effect.

## **Board Approval**

(35) Board approval is required for:

- a. the entry into agreements, including with the University, within delegated authority limits; and
- b. policies and procedures for the controlled entity, consistent with the objects and functions of the University, as stipulated in the Act, and the controlled entity.

## **Risk**

(36) Each Board is responsible for ensuring systems, policies, procedures and practices are in place to adequately assess and manage the risks to the controlled entity and the University, to the extent applicable, in all business and commercial activities.

## **Pricing and Competitive Neutrality**

(37) After consideration of the requirements set out in the NSW Government Policy Statement on the Application of Competitive Neutrality (the Statement) and their application to the commercial activities of the University, it has been determined that the University is not required to comply with the principles in the Statement.

## **Corporate Strategy and Performance**

(38) Controlled entities are required to document and keep updated a corporate or business strategy or plan containing achievable and measurable performance targets.

(39) The business plan for a controlled entity must be approved by the Council prior to the establishment or acquisition of the controlled entity.

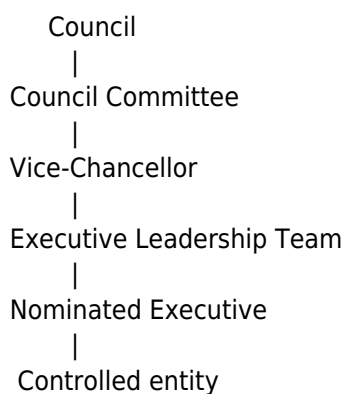
(40) Any amendment or replacement of the Council's approved business plan requires the Council's re-approval.

## **Reporting**

(41) Each Board is responsible for ensuring that the controlled entity complies with Council's reporting requirements, which are set out in the [Annual Reporting Calendar for Controlled Entities](#).

(42) Each controlled entity is required to provide regular reports, in a form approved by Council, to the appropriate Nominated Executive.

## Reporting Structure



## Section 6 - Controlled Entity Reporting

### The Council

(43) Each controlled entity Board must report to the Council, through the Nominated Executive, Vice-Chancellor, Executive Leadership Team and the relevant Council Committee, on the following matters:

- a. Board membership, and annual statement of governance principles;
- b. immediate notification of any representation (non-routine correspondence) to or from a government or statutory authority;
- c. annual corporate, strategy or business plans and budget;
- d. annual audited statutory financial statements;
- e. annual reports on audit and risk;
- f. an annual assurance statement;
- g. quarterly finance and performance reports against the business plans and including reporting on safety, risk, insurance, audit, operations and finance;
- h. review of Board performance every two years; and
- i. annual report on commercial activities.

### Vice-Chancellor

(44) The Nominated Executive must immediately advise the Vice-Chancellor, through the General Counsel, of any threatened or potential legal action involving the controlled entity.

(45) Each Board must immediately also advise the Vice-Chancellor of any possible or actual extreme risk as identified by the [Risk Management Framework](#).

### Executive Leadership Team

(46) The Board of each controlled entity is to report to the Executive Leadership Team, through the Nominated Executive, on matters described under Clause 36 above, and the following matters:

- a. possible or actual extreme risk, possible or actual insurance claims, significant changes to entity performance, significant business changes, as they may arise; and
- b. monthly exception reports where significant financial or performance risk is identified, or where there is a significant change in the risk profile of any business area.

## **Nominated Executives**

(47) Subject to each Director's duties to the controlled entity under the Corporations Act and the law, the Board of each controlled entity reports to a Nominated Executive.

(48) The Nominated executive is then responsible for reporting that information through to the Executive Leadership Team or Vice-Chancellor, depending on the information received. The Nominated Executive will manage obligations and any potential conflicts of interest in the performance of their duties.

(49) A summary of Nominated Executives is provided in [Controlled Entities - Nominated Executives](#).

## **Chief Financial Officer**

(50) Each controlled entity is to deliver reports to the Chief Financial Officer on the following:

- a. all commercial activities for recording in the Commercial Activities Register, as described in the [Guidelines for Commercial Activities](#); and
- b. the Commercial Activity Review Report each three (3) years.

## **Section 7 - De-registration or Exit**

(51) A business case is to be prepared to de-register or exit a controlled entity. A controlled entity may seek to be de-registered or an exit option sought, when the entity:

- a. is not carrying on a business; and/or
- b. its assets are worth less than \$1,000.

(52) A business case is to be prepared to confirm that the company has:

- a. paid all fees and penalties;
- b. has no outstanding liabilities or contractual obligations; and
- c. is not a party to any legal proceedings.

(53) The business case is to be reported to the Nominated Executive for consideration of the financial, commercial and legal aspects, before being issued to the Vice-Chancellor for consideration and Council approval.

## **Section 8 - Winding Up and Distribution of Assets**

(54) A controlled entity may only be wound up and its assets distributed in accordance with the provisions contained in the controlled entity's Constitution and the relevant legislation, which will vary according to the country of domicile of the controlled entity.

## **Section 9 - Appendices**

(55) [Controlled Entities - Applicable Governance Documents](#)

(56) [Annual Reporting Calendar for Controlled Entities](#)





## Status and Details

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## Glossary Terms and Definitions

**"Council"** - The governing authority of the University established under section 8A of the University of Newcastle Act 1989.

**"Nominated executive"** - In relation to an entity, the executive within the University that has oversight for the governance and business activities of the entity.

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"Risk management"** - The co-ordination of activities to optimise the management of potential opportunities and reduce the consequence or impact of adverse effects or events.

**"Risk assessment"** - The overall process of risk identification, risk analysis, and risk evaluation.

**"Commercial activities"** - As defined in the University of Newcastle Act 1989.

**"Controlled entity"** - Has the same meaning as in section 16A of the University of Newcastle Act 1989.

**"Delegated authority"** - refers to the specific description of the authority that is delegated or sub-delegated to a holder.