

# Governance Framework for Associated Entities and Third Party Interests

## Section 1 - Audience

- (1) The University Council.
- (2) The University of Newcastle Executive.
- (3) Associated entities, joint ventures, non-controlled entities or other incorporated bodies where the University has a third party interest, including Start-up companies.
- (4) The University of Newcastle professional, research, teaching and academic staff and students.

## Section 2 - Executive Summary

(5) This document provides a set of principles and establishes the protocol for Council oversight of associated entities and third party interests. The protocols for controlled entities are provided under the [Governance Framework for Controlled Entities](#).

## Section 3 - Purpose

(6) Section 16(1B)(e) of the [University of Newcastle Act 1989 No 68](#) (NSW ) (“the Act”) outlines the Council's statutory function in relation to entities, including to oversee risk and obtain independent audit reports of entities in which the University has an interest. This Policy establishes the governance framework for entities or bodies where the University has or proposes to have an interest.

(7) The Act further provides under clause 16(1)(f) that the Council may on behalf of the University in the exercise of the University functions, to promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) partnerships, trusts, companies and other incorporated bodies or joint ventures (whether or not incorporated).

(8) The purpose of this document is to detail the role of Council in governing the University's associated entities, joint ventures, independent entities, companies and other bodies (in which the University has an equitable interest) to maintain compliance with relevant laws, rules and regulations. It confirms that a person must not make representations to a party, or to establish or participate in companies and other incorporated bodies or joint ventures (whether or not incorporated) on behalf of the University, without the approval of the delegate. All proposed parties must align, as far as possible, with the University values, objects and functions.

## Section 4 - Scope

(9) This framework relates to the [Governance Framework for Controlled Entities](#), the [Guidelines for Commercial activities](#), the Australian Accounting Standards and the University policies.

# Section 5 - Principles

## The Council's Responsibilities

(10) The Council's role in governing its controlled and associated entities, joint ventures and non-controlled entities are outlined in the Act, the Australian Accounting Standards, the National Governance Protocols for Higher Education Providers and the University policies.

(11) The responsibilities of the Council and application of control or influence over an entity varies, relevant to the entity type. A summary of the governing obligations, level of control or influence relevant to each entity type is summarised in the table below.

Entity Type	Definition of Entity	Level of Control/Influence
Associated entity	A separate legal entity which is controlled and operated by a separate governing body, but over which the University maintains significant influence but not control	<p>The University has the ability to exercise the power to participate in the financial and operating policy decisions of the investee (entity) but does not have control or joint control of those policies.</p> <p>The University holds 20% to 50% of the voting power.</p> <p>Legal – where a Council/University staff member is a director of the entity an inherent potential conflict of duties arises.</p> <p>Accounting – investments in the entity must be accounted for using the equity method.</p>
Joint Venture	A Joint Arrangement, which includes the University and another entity, or entities (whether incorporated or not) where control is equally shared and each party has joint rights to the net assets of the arrangement.	<p>The parties have joint control over the arrangement and relevant activities require the unanimous consent of the parties.</p> <p>Legal – if the joint arrangement is operated through a separate legal entity and a Council/University staff member is a director of the entity, an inherent potential conflict of duties arises.</p> <p>The parties have rights to the net assets of the arrangements.</p> <p>Accounting – the University investment/interest in the joint venture must be accounted for using the equity method.</p>
Joint Operation	A Joint Arrangement where parties which includes the University and another entity, or entities (whether incorporated or not), where parties share joint control, yet relevant parties have rights to the assets, and obligations for the liabilities, relating to the arrangement.	<p>The parties have joint control over the arrangement and relevant activities require the unanimous consent of the parties.</p> <p>Legal – if the joint arrangement is operated through a separate legal entity and a Council/University staff member is a director of the entity, an inherent potential conflict of duties arises.</p> <p>The parties have rights to the assets and obligations for the liabilities relating to the arrangement.</p> <p>Accounting – university must recognise its share of assets, liabilities, revenues and expenses in the joint operation.</p>

Entity Type	Definition of Entity	Level of Control/Influence
independent entity	A separate legal entity that is controlled and operated by a separate governing body independent of the University.	<p>No obligations are assumed by the University under the entity's constitution.</p> <p>The University has a shared interest, however no control. The University holds less than 20% of shares in the entity (without significant influence). University approval is not required by the governing body of the entity.</p> <p>Legal - There is typically no University representative on the governing body of the entity. Where there is representation, there is the potential for a conflict of duties to arise.</p> <p>There may be accounting or legal responsibilities that flow to the University.</p>

(12) The University's contribution to a party may be by means of debt, equity, contribution of assets, human resources, premises, infrastructure, technical, funding, in-kind or subsidised support (such as concessional rental agreements) or other means.

(13) In many cases, the nature of the collaboration or affiliation requires the contribution by the University of resources to support the operation of the associated or affiliated entity. The nature of those resources and the basis upon which the University is to contribute them must be documented in an agreement involving at least the University and the third party. The formality of the documentation will generally correlate with the degree of control or influence that the University has over the entity.

(14) For Joint Arrangements (Joint Operations or Joint Ventures), the existence of a formal written contractual arrangement is an essential element of the structure, providing clear definition of how the joint control is shared and the rights and liabilities of all parties to the arrangement.

(15) For Associated entities, depending upon the nature of the relationship between the parties, the relationship may be reflected in investments, various agreements and control and/or influence held by the University.

(16) Start-ups are generated through innovation investment, entrepreneurship, commercialisation of university research or industry engagement and may require the University's promotion or participation. Where investment is made with specified return mechanisms, the existence of a formal written contractual arrangement is an essential element of the structure, providing clear definition of the terms and commercial aspects of the arrangement, which may be by means of royalty return, licence, equity stake, options, convertible notes, shares, IPO, venture capital. While Early stage start-ups are not covered under this framework, they are covered under this framework once they develop to a Start-up company with commercial status which may have financial or reputational impacts on the University, as recommended by the Start-up Investment Group.

## The Council Protocol

(17) The application of Council's oversight obligations are directly related to the level of control or influence applicable to the different entity type. Early stage start-ups (separate to Start-up company), as defined, are excluded from this Framework. Entity reporting through the relevant committee to Council is summarised in the table below:

Entity Type	Entity Reporting for Council Oversight and University Rights
Associated entity	<ul style="list-style-type: none"> <li>- Annual reports (excluding early stage start-up Companies).</li> <li>- Annual audited statutory accounts.</li> <li>- Risk management framework.</li> <li>- Annual assurance that conflicts of interests are managed, where a Council or University staff member is a director or member of the entity board.</li> <li>- Report any investments in the entity (these are to be tested for materiality and accounted for using the equity method).</li> </ul>
Joint Venture	<ul style="list-style-type: none"> <li>- Annual reports.</li> <li>- Annual audited statutory accounts.</li> <li>- Risk management framework.</li> <li>- Annual assurance that conflicts of interests are managed, where a Council or University staff member is a director or member of the entity board.</li> <li>- Report any investments in the entity (these are to be tested for materiality and accounted for using the equity method).</li> <li>- The University retains rights to assets and obligations relating to the arrangement.</li> </ul>
Joint Operation	<ul style="list-style-type: none"> <li>- Annual reporting.</li> <li>- Financial reporting, as per terms of the arrangement.</li> <li>- Risk management framework.</li> <li>- Annual assurance that conflicts of interests are managed, where a Council or University staff member is a director or member of the entity board.</li> <li>- The University retains rights to assets and obligations relating to the arrangement (with direct accounting for assets and liabilities).</li> </ul>
independent entity	<ul style="list-style-type: none"> <li>- Minimal, if any oversight obligations, as may be prescribed in an agreement between the parties.</li> <li>- University annual reporting of third party interest register and/or share register.</li> </ul>
Internal Body	<ul style="list-style-type: none"> <li>- An institute of the University, bound by the University rules, policies and procedures.</li> </ul>

## The Council's Oversight

### Proposals

(18) A proposal is required to determine the risks and opportunities for the University, prior to it entering into an arrangement with a party, in one of the entity types described above.

(19) To develop the proposal for consideration, initial consultation with the Governance and Assurance Services, Finance division and the Legal and Compliance unit is required where relevant on:

- a. strategic relevance of the proposed investment
- b. determination of the legal structure of the entity, which may be an association, company (usually limited by guarantee or by shares), joint venture or other structure;
- c. consideration of whether the proposed party is a University Commercial Activity and is subject to the University's [Guidelines for Commercial activities](#), to be processed in accordance with these Guidelines;
- d. assessment of the University's contribution to the entity, which may be by means of debt, equity, contribution of assets, human resources, premises, infrastructure, technical, funding, in-kind or subsidised support or other means; and
- e. other legislative, or commercially relevant matters as may arise with regards to the proposed party.

(20) The proposal is to address the elements outlined in the [Proposal Checklist](#), for the delegate to determine whether the University supports the proposal.

(21) Approved proposals will be subject to reporting.

## Activities of Controlled Entities

(22) Controlled entities are commercial activities, as described under the [Guidelines for commercial activities](#). Any commercial activity or proposed commercial activity of a controlled entity is subject to the requirements of the [Guidelines for Commercial activities](#).

(23) Commercial activities are required to be reported to the Finance Committee annually. The Directors of controlled entities are also required to report to the Controlled and Associated Entities Committee about their compliance with the [Guidelines for Commercial activities](#) and the applicable legislation each year.

## Conflicts of Interest

(24) Where a Council or University staff member is a director or member of the entity Board or committee, any conflicts of interest are to be managed in accordance with the [Staff Code of Conduct](#), [Conflict of Interest Policy](#) and the [Conflict of Interest for Higher Degree by Research Supervisors Guideline](#), including any potential or perceived conflict of interest that may arise.

(25) In relation to potential related party disclosures, under the Australian Accounting Standards Related Party Disclosures, the University and its controlled entities are obliged to report material related party relationships, transactions and outstanding balances in their annual financial statements. All subsidiaries, associates and joint ventures will be considered related parties along with their key management personnel (KMP) and close family members of KMP. As such, they are required to provide details of relationships, transactions and outstanding balances in order for the university to assess if disclosure of the information is required in the annual financial statements.

(26) As a director or member of an entity, each director is required to act in the best interests of the entity and act in accordance with the roles and responsibilities of a director, as required by law.

## Risk Management

(27) Risk management is an essential component of the University's governance arrangements. Effective risk management contributes to and supports the achievement of the University's objectives and provides assurance to the University Council, Risk Committee and Vice-Chancellor that current and emerging risks are being clearly identified and managed appropriately, with consideration to the Council's risk appetite and in line with the University's objectives. The assessment of risk is to be managed in accordance with the University's [Risk Management Policy](#) and [Risk Management Framework](#).

(28) The level of risk to the University varies based on the different type of entity and the extent of influence or control the University applies to the entity.

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

## The Council's Approval

(30) Any proposal to promote, establish or participate in (whether by means of debt, equity, contribution of assets or by other means) companies and other incorporated bodies or joint ventures must be submitted to the Council for its approval.

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

- a. Strategic relevance and the proposed exit mechanism / options;
- b. Detailed cost-benefit analysis;

- c. Proposed ownership structure (including details of the financial instruments)
- d. Legal, tax, financial and technical due diligence report;
- e. Contract or agreement or business plan;
- f. Entity constitution;
- g. Risk assessment (including impact on the University);
- h. Conflict of interest report, where a Council or University staff member is to be a member or director of the entity board;
- i. Who (Nominated executive) will be responsible for overseeing the investment / third party interest (including managing its records); and
- j. The Nominated executive of the University to be appointed to the entity's board, (subject to entity type, level of control or influence by the University and delegations of authority)

(32) Refer to the [Proposal Checklist](#) to inform the level of information to be included in a proposal.

## Reporting

### Council

(33) Governance:

- a. Annual reporting of the University and Controlled entity Share Register to the Finance Committee
- b. Annual reporting of the Associated Entities and Third Party Interests Register to the Controlled and Associated Entities Committee (including Associated Entities, Third Party Entities, Incorporated Student Entities) Governance
- c. Annual reporting of Start-up company investments, where the University holds options, convertible notes, royalty rights or equity stake to the Controlled and Associated Entities Committee
- d. The Nominated executive must provide all contracts, agreements or other document where the University is a party to the agreement that describes the arrangements to the University Secretary and Legal and Compliance unit. The University Secretary to maintain a register, including information about the purpose of the entity and any University obligations or liabilities.

(34) Associated Entity and Joint Venture or Joint Operation operation:

- a. Annual provision of the entity Annual Report
- b. Annual provision of the audited statutory accounts
- c. Annual provision of the risk management framework
- d. Annual provision of the assurance report, advising that legal, compliance and statutory obligations have been met and conflicts of interest are managed
- e. Report any investments in the entity annually

(35) Independent entities:

- a. If an incorporated entity
- b. Subject to terms contained in the entity constitution or shareholders agreement that creates a position of control or influence by the University

(36) Start-up company:

- a. The reporting to Council on Start-ups under this framework is to occur as the Start-up develops to a commercial status, being incorporated as a separate legal entity, which may have a financial or reputation impact on the

University, typically resulting in royalty rights, options, convertible notes or equity stake.

- b. The University delegations of authority defines when the Start-up company is to:
  - i. Submit a short business case Proposal
  - ii. Submit a full business case Proposal
  - iii. Report consistently with the requirements of an independent entity
- c. The reputational risk when there is a moderate or major reputational consequence to the University or where the risk is rated as medium.

### **Vice-Chancellor and Nominated Executive**

(37) The Nominated executive must immediately advise the Vice-Chancellor, through the University Secretary or Deputy University Secretary, of any material adverse changes regarding the entity's performance, or any event which is likely to affect the entity as a going concern (including, but not limited to, its solvency).

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

(39) The Nominated executive must immediately advise the Vice-Chancellor, who will advise Council as appropriate, of any significant events concerning the entity which could have a material adverse impact on, or extreme risk to the University's investment in that entity, or adversely impact the reputation of the University.

(40) Staff are required to declare any directorships held in accordance with the annual declarations obligations reported to Human Resource Services annually.

## **Section 6 - Definitions**

(41) Board means the board of directors of an entity.

(42) Constitution means the constitution of the entity.

(43) Control means the definition of control contained in the Australian Accounting Standard (AASB10), outlined below. Note, that the definition of control within the Australian Accounting Standards is not a straightforward 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.
- b. 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.
- c. 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.

(44) Director means a director or member of the Board of an entity.

(45) Entity means a person, group of persons or body of which the University or the council has a third party interest.

(46) Significant influence is the power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies, holding 20% or more of the voting power (AASB128(5)). The annual statutory financial reports further defines this as 20% or 50% or more of the voting power.

(47) University Commercial Activity has the same meaning as set out in section 21A of the Act.

## **Section 7 - Appendices**

(48) [Proposal Checklist](#)



## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	28th July 2017
<b>Review Date</b>	31st December 2019
<b>Approval Authority</b>	University Council
<b>Approval Date</b>	28th July 2017
<b>Expiry Date</b>	Not Applicable
<b>Responsible Executive</b>	Dianne Allen University Secretary dianne.allen@newcastle.edu.au
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## Glossary Terms and Definitions

**"Associated entity"** - A separate legal entity which is controlled and operated by a separate governing body, but over which the University maintains significant influence but not control.

**"Early stage start-up"** - Where one or more persons come together with the common goal of developing and commercialising an innovative idea into a commercially viable product or service.

**"Independent entity"** - A separate legal entity that is controlled and operated by a separate governing body independent of the University.

**"Joint Arrangement"** - An arrangement for which two or more parties have joint control and are bound by a contractual arrangement.

**"Joint Operation"** - A Joint Arrangement where parties (which includes the University and another entity or entities, whether incorporated or not) share joint control and have rights to the assets and obligations for the liabilities relating to the arrangement.

**"Joint Venture"** - A Joint Arrangement (which includes the University and another entity or entities, whether incorporated or not) where control is equally shared and each party has joint rights to the net assets of the arrangement.

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

**"Start-up company"** - An incorporated entity which possesses one or more of the following characteristics: • It is incorporated as a separate legal entity; • It has a valid constitution and shareholders agreement, to which the University is a party; • The University's investment in the Start-up is considered material, in terms of its relative size and/or strategic importance, as determined by the Start-up Investment Group (SIG); and • It is required to prepare audited general purpose financial statements.

**"Start-up Investment Group"** - The group that has oversight of early stage investment in start-ups, comprising representation from University staff and external experts.

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

**"Significant influence"** - Has the same meaning as defined in AASB 128(5). The University Annual Report further defines this as 20% to 50% or more of the voting power.

**"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 appetite"** - An organisation's approach to assess and eventually pursue, retain, take or turn away from risk.

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

**"Level of risk"** - Magnitude of a risk or combination of risks, expressed in terms of the combination of their consequence and likelihood.

**"Academic staff"** - An academic employee holding a substantive academic position of 0.5 full-time equivalent or above where the contract length is twelve months or longer.

**"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.

**"Third party"** - A person or group other than the University or any of the University's partner institutions.

**"Delegate"** - (noun) refers to a person occupying a position that has been granted or sub-delegated a delegation of authority, or a committee or body that has been granted or sub-delegated a delegation of authority.