

Controlled Entities Establishment and Reporting Procedure

Version 1 – Approved 25 June 2023

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Purpose

This procedure describes how University-controlled entities are established or acquired by University Council, how parent obligations are administered by the Vice-Chancellor, and entity reporting requirements.

Applicable governance instruments

Instrument	Section	Principles
<i>University of Tasmania Act 1992</i>	7(1)(b) and (c)	
<i>University Council Ordinance</i>		
<i>Entities and Affiliated Organisations Policy</i>	1 Controlled and Associated Entities	All
<i>Corporations Act 2001</i>		
<i>Incorporated Associations Act 1964</i>		
<i>Australian Charities & Not-for-profits Commission Act 2012</i>		

Procedure

1. General principles

- 1.1. In the *University Council Ordinance*, University Council has reserved to itself the authority conferred by the *University of Tasmania Act 1992* to approve the establishment of a controlled entity or controlling interest in an entity and consequently to wind it up, deregister it or dispose of it when required.
- 1.2. Under the *Entities and Affiliated Organisations Policy*, the Vice-Chancellor is accountable for ensuring that controlled entities deliver on their objectives and are managed in accordance with their purpose and the terms of their establishment. This includes responsibility for operational management functions of the parent including University endorsement and appointment of Directors, remuneration of Directors and any other operational matters requiring University approval.

2. Establishing a controlled entity

- 2.1. Section 50AA of the Corporations Act states that "...an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies". An entity is therefore controlled if the University, for example:
 - directly or indirectly owns the majority of the shares in a company
 - is the sole member of a company
 - controls more than 50 per cent of shareholder or member voting rights in the entity, including by use of a casting vote
 - controls more than 50 per cent of votes of the entity's board, including by use of a casting vote
 - has power to appoint or remove more than 50 per cent of the entity's board
 - has power to govern the financial and operating policies of the entity
 - has power to cast or control the casting of majority of votes likely to be cast at a general meeting of the entity.

The above is not an exhaustive list and ultimately depends on the circumstances.

- 2.2. A charitable trust of which the University is trustee is not a controlled entity for the purposes of this Procedure. The process for establishment of charitable trusts is set out in the *Charitable Trusts Procedure* and the *Charity Management Procedure*.
- 2.3. From time to time, the University may establish or acquire a separate but controlled corporate entity to assume responsibility for a specific aspect of University business or University objective in support of one or more of its legislated functions. That entity may be wholly or partly owned. As per the *Entities and Affiliated Organisations Policy*, it must be for one or more of the following reasons:
 - a. it is needed
 - b. it will achieve a University objective
 - c. it is required to (for example, by the conditions of a research grant).
- 2.4. To establish a controlled entity or acquire a controlling interest in an entity, a proposal for the Vice-Chancellor must be developed for submission to University Council. The proposal will include:
 - a. a clearly articulated rationale for establishing the entity which must be consistent with the requirements of the *Entities and Affiliated Organisations Policy* (see Section 2.3 above)
 - b. an explanation of how the establishment of the entity is aligned with strategy and will support achievement of the University's mission

- c. whether the entity has a charitable purpose and will be registered under the *Australian Charities and Not-for-profits Commission Act 2012*
- d. any supporting financial data including tax implications, a risk assessment and a statement regarding alignment with the University's risk appetite
- e. the planned operating model including entity type and whether registration as a charity will be sought.

2.5. The Vice-Chancellor will be the member representative for all University controlled entities for the purposes of annual general meetings etc but may approve another staff member to represent the University as appropriate.

3. The constitution and other governing documents

- 3.1. A constitution and other appropriate governing documents such as member or shareholders agreements, will be endorsed by the General Counsel for the Vice-Chancellor's approval to submit to Council for consideration as the approving authority.
- 3.2. The constitution, other governing documents and relevant regulation and legislation (eg the *Corporations Act 2001*) will determine how the entity will be controlled, including by:
 - a. declaring the University as the sole member or shareholder unless University Council resolves otherwise
 - b. determining the objects and functions of the entity which must appropriately align with the University's functions as established by the Act
 - c. for wholly owned subsidiaries, setting the composition of the board and enabling the appointment and removal of directors by the University
 - d. setting the number of votes that can be cast at a meeting
 - e. determining the majority share capital (for a company with share capital)
 - f. if the University is the only shareholder/member, incorporating a provision that authorises a director to act in the University's best interest as permitted for wholly-owned subsidiaries under Section 187 of the *Corporations Act 2001*.
- 3.3. The governing documents must also:
 - a. enable the establishment of sub-committees required by the board to provide oversight of matters including risk and compliance issues, and financial management
 - b. enable remuneration of directors if directors are to be remunerated (and remuneration to be set by the University)
 - c. provide guidance on the term and maximum term of directors if they can be reappointed
 - d. enable the payment of dividends to the University, if dividends are to be paid
 - e. provide direction on the application of University policies to the entity in addition to the *Academic Freedom and Free Speech Policy* which will always apply
 - f. enable the winding up of the entity and distribution of assets
 - g. enable the entity to meet the requirements of all relevant legislation including the *Higher Education Standards Framework (Threshold Standards) 2015* as required
 - h. set out the entity's charitable purpose if the entity is to be a charity.
- 3.4. Once governing document are approved by Council, they will be lodged by the relevant company secretary as required with the appropriate regulator (eg ACNC, ASIC, Tasmanian Consumer, Building and Occupational Services) and all documents and seals will be housed appropriately by the entity secretary or public officer as appropriate.
- 3.5. Amendments to governing documents will be made consistent with their provisions for doing so and approved by the Vice-Chancellor before submission to Council for consideration.

4. Entity policies and legislative compliance

- 4.1. Entities will adopt University policies, frameworks and procedures the Board considers appropriate in addition to any the entity has been directed to adopt by the University (per Section 3.3 e above).
- 4.2. The General Counsel in consultation with the entity will prepare a delegations policy to enable the entity to operate effectively and efficiently. This will be consistent with the University's *General Delegations Ordinance*, as appropriate, to support operational efficiency. It must be approved by Council.
- 4.3. Entity investment decisions must be administered in accordance with the University's *Treasury Procedure* and due diligence processes.
- 4.4. The entity board will ensure compliance with its policies and procedures and the requirements of all applicable state, Commonwealth and international laws.

5. Entity reporting

- 5.1. The board will ensure the entity's compliance with the University's and all regulatory reporting requirements, including in relation to:
 - a. the updating of directors, the company secretary and their residential addresses
 - b. the directors' annual declaration of interest
 - c. notification to or from any reporting agencies about non-routine matters (such as mandatory reports for breaches of legislation)
 - d. annual corporate plan, strategy or business plans and budget
 - e. annual financial reporting and regular tax reporting
 - f. annual report on audit and risk
 - g. review of board performance.
- 5.2. The company secretary will provide all chair-endorsed board meeting minutes to Council and the chair will be available to attend any Council meetings as requested, not less than once per year.
- 5.3. The board will report and/or provide assurance in relation to financial performance and controls, and management of risk to Council or a relevant Council Committee in a format agreed by Council.
- 5.4. The company secretary will confirm the content and timing of reporting to Council with the University Secretary.
- 5.5. The board must inform the Vice-Chancellor promptly upon becoming aware of any of the following operational matters as they relate to that entity:
 - a. a potential material risk exposure including financial or reputational
 - b. any significant actual or threatened legal action
 - c. any proposed or actual related party transactions (including any proposed agreements with University staff)
 - d. any fraudulent activity
 - e. any indemnity or insurance against a liability given to a current or former officer.and the Vice-Chancellor will take appropriate action including escalating or reporting to Council as required.

- 5.6. The entity must make its financial and other records available to the University's internal and external auditors upon request.

6. Branding and communications

- 6.1. Wholly owned entities may have a brand mark in accordance with the prescribed brand architecture and guidelines, developed by the University's marketing team.
- 6.2. The brand mark of entities which the University controls but does not wholly own will be considered on a case-by-case basis.
- 6.3. Wholly owned entities' public communications and media are managed through the University's public relations team.

7. Winding up the entity

- 7.1. A request to wind up an entity and distribute its assets according to its governing documents must be developed for the Vice-Chancellor's submission to Council for approval with a clear rationale for the request.
- 7.2. The entity may then be wound up or deregistered according to the terms of its governing documents or regulator process.

8. Appointing the board directors

- 8.1. Directors of controlled entities are either University directors or non-executive directors (ie independent directors). University directors include members of the University Council and staff (executive) directors.
- 8.2. Nominations for director appointments are made to the Vice-Chancellor who will appoint the directors of an entity consistent with any requirements of the constitution or other governing document and to ensure its proper stewardship and control.
- 8.3. In appointing directors to the board, the Vice-Chancellor will ensure that the board is of an effective composition (including mix of skills and diversity), size and commitment to properly discharge its responsibilities and duties which may require appointment of external directors.
- 8.4. The Vice-Chancellor will appoint directors for a term generally consistent with the following:
 - a. Non-executive directors will be appointed for terms not exceeding three years but are eligible for reappointment to a maximum specified in the constitution or governing document.
 - b. University directors who are Council members will be appointed with the approval of the Chancellor for terms not exceeding their term as a Council member. If a Council member's term ceases prematurely, their University director term will also cease.
 - c. University executive directors will be appointed on an ongoing basis but may be replaced by the University at any time for any reason, including if they are no longer employed by the University or the entity.and will ensure that the governing documents of the entity are not inconsistent with these principles where possible.
- 8.5. The Vice-Chancellor will only appoint a nominee to the board of a controlled entity if:
 - a. due diligence has been carried out to check that the nominee is not disqualified or otherwise ineligible or unsuitable for appointment
 - b. the nominee has consented in writing.

- 8.6. The Director Governance and Compliance is responsible managing the submission of director nominations for approval by the Vice-Chancellor.
- 8.7. The Director Governance and Compliance will ensure that all relevant individuals and the chair of the board is supportive of the nomination prior to submitting to the Vice-Chancellor.
- 8.8. Board directors will be appointed in writing with their duties, term and remuneration clearly articulated, and they will each accept in writing.
- 8.9. There may be additional requirements for appointment provided for in the governing documents and the Director Governance and Compliance will work with the company secretary to ensure these are followed.
- 8.10. Once a director is appointed, the company secretary will ensure the relevant regulator is notified as required (eg ACNC, ASIC).

9. Remunerating directors

- 9.1. University directors who are employees are not entitled to receive any financial remuneration or other benefit (other than a refund of expenses) as a director.
- 9.2. Remuneration of Council members who are appointed as directors per Section 8.4 (b) is determined by University Council.
- 9.3. If remuneration is provided for in the governing documents, the Vice-Chancellor will establish an appropriate remuneration framework for directors including statements of duties and all remuneration and entitlements which must be aligned with any Council-established framework for sizing of controlled entities and must consider:
 - a. the expectations of the directors including the relationship of remuneration to performance
 - b. the level of risk and resourcing to be managed by the board
 - c. normal industry practice determined through benchmarking
 - d. the needs of the board to attract/retain an appropriate mix of skills
 - e. any other relevant matters.
- 9.4. The board will disclose any benefits provided to directors, including remuneration, in the annual financial statements and the annual report provided to the University.

10. The company secretary and public officer of wholly owned subsidiaries

- 10.1. Either the University's General Counsel or their nominee will be appointed as company secretary for each entity.
- 10.2. The board will appoint a public officer who may also be the company secretary.
- 10.3. The appropriate regulators will be notified of these appointments by the company secretary.

11. Duties and responsibilities of directors

- 11.1. The board will ensure that an appropriate induction program for directors is developed and that all directors undertake it such that each director understands that:
 - a. They are required to act in the best interest of the entity to which they are appointed as required by law, noting that where the constitution of the entity includes the provisions in relation to Section 187 of the *Corporations Act 2001* as per Section 3.3 f, a director is taken to have discharged that duty if they have acted in the best interests of the University.
 - b. They must:

- i. act with the degree of care and diligence that a reasonable person might be expected to exercise in that role, for instance, not approving transactions that cause unacceptable levels of risk or are of no benefit to the entity
- ii. act in good faith, in the best interests of the entity and for a proper purpose
- iii. disclose actual or potential conflicts of interest, and take appropriate steps to avoid them or minimise their impact
- iv. not use their position or information they gain as a director to obtain an advantage for themselves or for another person, or to the detriment of the entity
- v. comply with relevant University policies governing conduct, including this procedure and the University's *Behaviour Policy* and *Conflict of Interest Policy*.

12. Board responsibilities and actions

12.1. The entity board:

- a. will clearly articulate its roles and responsibilities
- b. will plan an appropriate schedule of meetings and have protocols for holding those meetings consistent with the entity's constitution and/or other governing documents
- c. will ensure the entity exercises its functions and carries on its activities in accordance with its constitution and relevant laws
- d. should establish, as appropriate and only as required, sub-committees to provide oversight of risk and compliance issues and financial management, with clear terms of reference and meeting protocols
- e. will work with its management to establish, and implement properly, systems of oversight and control to appropriately identify and manage a full range of strategic and operational risks and issues and report regularly (as per Section 5 above) to provide assurance to University Council (principally through its Audit and Risk Committee) that risks are being identified, recorded and managed appropriately
- f. must have in place:
 1. a corporate or business plan or strategy
 2. a budget, which must be approved by the University for wholly-owned entities, with approval requirements for controlled entities which are not wholly owned determined on a case-by-case basis as appropriate,and monitor the entity's performance against these, reporting regularly to University Council
- g. will work with its management to actively promote ethical and responsible decision-making, including declaration and management of conflicts of interest
- h. will work with its management to establish and implement appropriate structures and systems to independently verify and safeguard the integrity of the entity's financial reporting and to meet its financial and taxation reporting obligations
- i. will ensure that the employment practices, and levels and composition of employee remuneration for the entity are reasonable or are as directed by the Vice-Chancellor
- j. must adopt and comply with all applicable corporate governance principles prescribed by law, including the *Higher Education Standards Framework (Threshold Standards) 2015*.

13. Entity staff employment practices and conditions

- 13.1. An entity may only employ, second or otherwise engage a current University employee if agreed in writing with the University.
- 13.2. University staff to be employed by a controlled entity will be seconded from the University unless approved otherwise by the Vice-Chancellor. Secondment will be using a secondment agreement under terms and conditions approved by the Vice-Chancellor or delegate and agreed with the employee.

- 13.3. Where required, entities will adopt University employment practices that the Board considers appropriate in addition to any the entity has been directed to adopt by the University (see 12.1 i. above).

14. Engagement of parent corporate services

- 14.1. A controlled entity's corporate services including financial, human resources and legal services, and bank accounts, will usually be provided by the University with exceptions approved by the Head of Student Services and Operations.
- 14.2. Such arrangements will be managed using a clear written agreement detailing the services to be provided, any limitations in relation to those and any management fee required, which will be approved by the Head of Student Services and Operations.

15. Investee companies of controlled entities

- 15.1. University Council determines whether University controlled entities may acquire or establish investee companies, controlled or uncontrolled, and the conditions under which they can do so.
- 15.2. Employees of controlled investee companies established or acquired by a controlled entity for commercialisation purposes may be remunerated by means other than salary, including equity, as recommended by the entity board and approved by the Vice-Chancellor.

16. Acquired controlled entities

- 16.1. In acquiring a controlling interest in an established entity, the University will adhere to the principles of the *Entities and Affiliated Organisations Policy* and general principles of this procedure and ensure the amendment of the governing documents as appropriate and practicable to enable the effective control of the entity by the University.

17. Summary of accountabilities

Task	Responsibility	Section
Establishment of an entity	University Council	2
Approval of constitution/other governing instrument	University Council	3
Approval of delegations policy	University Council	4
Appointment of directors	Vice-Chancellor	1.2, 3.2, 8
Remuneration and duties statements for directors in specific entity	Vice-Chancellor	1.2, 3.3, 8.8, 9
Entity staff employment terms and conditions	Vice-Chancellor	12.1(i), 13
Appointment of the public officer	Entity Board	10
Induction of directors	Entity Board	11
Entity reporting	Entity Board	5, 12
Nomination of company secretary when other than the General Counsel	General Counsel	10.1
Submission of governance documents to regulator(s)	Company Secretary	3.4, 5.1, 8.10, 10.3
Winding up of an entity	University Council	1.1, 3.3, 7

Related procedures

Charitable Trusts Procedure

Charity Management Procedure

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Definitions and acronyms can be found at: <https://www.utas.edu.au/policy/policy-definitions>

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Versions

Version	Action	Approved by	Business Owner/s	Approval Date
1	Approved	Head of Student Services and Operations	Director Governance and Compliance	25 June 2023

DefinitionsControlled Entity

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