

Controlled Entities

Policy UP25/4

Approver	Senate
Sponsor	Deputy Vice-Chancellor (Operations)
Owner	University Secretariat
Secretary	Corporate Secretary
Policy Type	Institutional
Policy Category	Corporate Governance

1 Purpose

- 1.1 The purpose of this Policy is to:
- establish a consistent approach to the governance framework and requirements of the University's Controlled Entities;
 - assist the Senate in achieving better practice governance and meet its responsibilities under the *University of Western Australia Act 1911* ('the Act') and the *Corporations Act 2001* (Cth); and
 - assist the Senate in having regard to the Voluntary Code of Best Practice for the Governance of Australian Public Universities ('Voluntary Code').
- 1.2 This Policy is to be read in conjunction with the following —
- Controlled Entities Procedure.
 - Model Constitution – Company Limited by Guarantee.
 - Model Constitution – Company Limited by Shares.
 - Directors' Briefing Pack – Controlled Entities.

2 Scope

- 2.1 This Policy applies to all Controlled Entities of the University unless otherwise stated.
- 2.2 This Policy applies to an entity that is incorporated under relevant legislation (e.g. *Corporations Act 2001* (Cth), *Associations Incorporation Act 2015* (WA), *Charities Act 2013* (Cth), or equivalent international legislation), and is controlled by the University as defined in section 50AA of the *Corporations Act 2001* (Cth) or AASB 10 – Consolidated Financial Statements, where applicable.
- 2.3 This Policy does not apply to entities that are not incorporated, even if they are considered controlled under AASB 10 for financial reporting or compliance purposes.
- 2.4 For the avoidance of doubt, any Foundation or Research Entity which is not a separate legal entity, even if treated as such for some tax and accounting purposes, is excluded from the requirements of this Policy.
- 2.5 Any investment within the scope of the Investment Policy Statement, as overseen by the Senate, is excluded from the requirements of this Policy.

3 Controlled Entity

- 3.1 A Controlled Entity is an Entity over which the University has capacity to exercise control as per section 50AA of the *Corporations Act 2001* (Cth).
- 3.2 Circumstances in which control may arise under section 50AA include, but are not limited to, instances

where the University:

- (a) directly or indirectly owns more than half of an entity's voting shares;
- (b) is the sole member of a company limited by guarantee;
- (c) owns less than half of an entity's voting shares but still has power;
 - i. over the voting rights attaching to more than half of the voting shares in the entity by virtue of an agreement with other shareholders;
 - ii. to determine the financial and operating policies of the entity, and/or
 - iii. to appoint or remove a majority of the Board.

3.3 The General Counsel is authorised to determine whether an entity is controlled by the University, taking into account the recommendation of the Chief Financial Officer and the University Secretary, and any other relevant advice.

4 Principles

4.1 The University will apply a consistent approach in relation to any Controlled Entity's:

- (a) establishment or acquisition, oversight, disposal and winding up;
- (b) governing documents;
- (c) powers, responsibilities, governance, and reporting; and
- (d) transactions and arrangements between the University and any Controlled Entity (e.g., supply of services or secondments).

4.2 Subject to the approval process described in this Policy, the University may establish a Controlled Entity for one or more of the following purposes:

- (a) to provide a more appropriate governance or operational framework for the management of specialised functions of the University;
- (b) to separate the management of functions of the University;
- (c) to comply with regulatory requirements (e.g., specific legislative requirements for offshore operations);
- (d) to commercially make use of a particular facility, resource, or research of the University;
- (e) to manage the risks associated with a project or activity of the University;
- (f) to act as a holding entity or trustee for specific activities of the University; and/or
- (g) for any other reason approved by Senate that is consistent with the University's object and functions.

5 Establishment or Change in Interest

5.1 Senate must approve the formation, acquisition or change in an interest of a Controlled Entity of commercial significance by the University before the establishment, acquisition or amended activity is undertaken.

5.2 The Vice-Chancellor is responsible to submit to Senate for approval the formation, acquisition or change in an interest of a Controlled Entity of commercial significance.

5.3 Where a Controlled Entity is deemed not to be of commercial significance, the approval for the formation, acquisition or change in an interest of such is delegated to the Vice-Chancellor.

6 Governing Documents

6.1 A Controlled Entity is required to use the Model Constitution unless otherwise approved by both the General Counsel and the University Secretary.

6.2 The governing documents of a Controlled Entity, including any proposed amendment, must:

- (a) be approved by Senate;
- (b) be compliant with the laws in the jurisdiction in which the Controlled Entity is registered; and
- (c) not authorise the Controlled Entity to exercise a function or engage in an activity that the University itself cannot exercise or engage in, or infringes on the constitutional and reserved rights of the University, unless approved by the Senate.

7 Corporate Governance Structure

- 7.1 The Board of a Controlled Entity must have:
- (a) have at least three (3) directors, subject to any requirement under local laws for Controlled Entities registered outside Australia; and
 - (b) conform to the common board model, unless otherwise approved by the General Counsel and the University Secretary.
- 7.2 In accordance with the Controlled Entity Procedure, the General Counsel and the University Secretary will determine the need for an independent director to a Controlled Entity.
- 7.3 The Senate will approve the directors of a Controlled Entity if the common board model is not adopted.
- 7.4 In accordance with the Controlled Entity Procedure and Model Board Constitution, the directors of a Controlled Entity are responsible to, unless Senate chooses to do so:
- (a) appoint a Company Secretary, who will keep the Company books and records; and
 - (b) appoint a Public Officer (where applicable).
- 7.5 Administration of a Controlled Entity will be managed in accordance with the Controlled Entity Procedure and applicable Model Board Constitution.

8 Policies, Governance and Reporting

- 8.1 Where a Controlled Entity has proposed material operational activity, the Controlled Entity must, acknowledging additional reporting requirements as defined in the Controlled Entities Procedure:
- (a) adopt and comply with, at a minimum, core and relevant University's policies as defined in the Procedure, unless otherwise authorised in writing by the General Counsel and the University Secretary;
 - (b) document a clear corporate strategy, including an annual business plan containing achievable and measurable performance targets and milestones;
 - (c) provide an annual report to the Senate against the Entity's approved business plan;
 - (d) comply with financial and other compliance reporting requirements as requested by the University as the parent entity and otherwise as required to support the University's compliance with legislative, regulatory and governance obligations, as further detailed in the Controlled Entity Procedure; and
 - (e) provide ad hoc reporting, as requested by Senate or Senate Committees, from time to time.
- 8.2 The Executive Member is responsible to ensure the Vice-Chancellor has sufficient and regular information regarding the activities of a Controlled Entity.
- 8.3 A report on the good standing of each Controlled Entity must be provided to the Audit and Risk Committee and the Senate at least annually.
- 8.4 Each Controlled Entity is to be audited annually by the Western Australian Office of the Auditor General ('OAG') or by any other arrangement approved by the OAG. If it is an entity outside of Australia, the University is to nominate an auditor to the satisfaction of the OAG.

9 Support and Services

- 9.1 The University may provide support, services, and resources to a Controlled Entity at the discretion of the applicable Executive Member in accordance with the Controlled Entity Procedure, and/or the applicable memorandum of services.
- 9.2 A Controlled Entity may access the University's insurance cover at the discretion of the Chief Risk

Officer.

10 Disposal or Divestment

- 10.1 Disposal of an interest in a Controlled Entity includes a sale, transfer or surrender with or without consideration.
- 10.2 In accordance with the Controlled Entity Procedure, the Vice-Chancellor is responsible to submit a proposal to the Senate for the disposal of an interest in, sale of a material asset or winding up of a Controlled Entity.
- 10.3 Senate is responsible to approve:
- (a) the disposal of an interest in a Controlled Entity before the disposal of any such interest by the University;
 - (b) the disposal of material assets of a Controlled Entity before the sale of any such asset by the University; and
 - (c) the winding up of a Controlled Entity before winding up by the University.

Definitions

Term	Definition
Controlled Entity	Means an entity that is incorporated under relevant legislation (e.g. <i>Corporations Act 2001</i> (Cth), <i>Associations Incorporation Act 2015</i> (WA), <i>Charities Act 2013</i> (Cth), or equivalent international legislation), and is controlled by the University as defined in section 50AA of the <i>Corporations Act 2001</i> (Cth) or AASB 10 – Consolidated Financial Statements, where applicable.
Director	Director (for this Policy) means a member of the governing body of the Controlled Entity, regardless of how that member is referred to in the written instrument that regulates the governance of that Entity and irrespective of how they refer to themselves.
Foundation	An organisation within the University that which has no separate legal status and is established by the relevant delegate in accordance with the <i>University of Western Australia Act 1911</i> (WA).
Independent Director	A director appointed to the Board of a controlled entity who is not a member, officer or student of the University.
Interest in an Entity	Means any interest in an Entity, whether a controlling interest or not, and includes: <ul style="list-style-type: none">a) the acquisition of a share in a company;b) the acquisition of a unit in a trust, or becoming a beneficiary in a trustc) participation in an incorporated joint venture; andd) becoming a partner in a partnership. <p>The term excludes any investment within the scope of the Investment Policy Statement.</p>
Policy	An approved instrument registered on the UWA Policy Library that expresses principles to regulate behaviour and practice.
Research Entity	Formally constituted units within the University that focus on the production of research. They comprise groups of academic staff members and research associates who engage in research on a common theme (or set of themes) and who collaborate on matters such as: grant proposal writing;

	research projects; publications; conference hosting; HDR supervision; research translation; and research engagement activities.
University	University means The University of Western Australia, as defined in the <i>University of Western Australia Act 1911 (WA)</i> .
University Executive collectively, or individually, Executive Member	Means any of the following positions — <ol style="list-style-type: none"> 1. Vice-Chancellor; 2. Senior Deputy Vice-Chancellor; 3. Deputy Vice-Chancellors; 4. Chief Financial Officer; and 5. any other University Officer nominated by the Executive Member to represent the University under this Policy.

Legislative Context

Relevant Legislation or Regulations
<i>University of Western Australia Act 1911 (WA)</i>
<i>University of Western Australia Statute (2020)</i>
<i>Corporations Act 2001 (Cth)</i>
<i>Charities Act 2013 (Cth)</i>
<i>Associations Incorporation Act 2015 (WA)</i>
<i>AASB 10 – Consolidated Financial Statements</i>

End