Controlled Entities Policy

Section 1 - Purpose

(1) This Policy establishes the University's governance framework for its Controlled Entities.

Scope

(2) This Policy applies to all officers and Directors, employees, consultants and contractors of Macquarie University (the University) and its Controlled Entities (collectively referred to as the University Group).

Section 2 - Policy

(3) The University may establish Controlled Entities for the purpose of conducting activities that support the Object and functions of the University.

(4) The University Council will:

a. approve the establishment, sale, transfer or deregistration/liquidation of a Controlled Entity; and
b. approve the acquisition of an interest in a Third Party that will result in the entity becoming a Controlled Entity of the University.

(5) Controlled Entity means a person, group of persons or body over where the University has the ability to determine the outcome of the entity's financial and operating policies. Circumstances in which this occurs may include where the University:

a. owns the majority of the shares in a company;
b. has power over more than half of the voting rights in the Controlled Entity;
c. has the power to:
    i. cast the majority of votes at meetings of the Controlled Entity's Board;
    ii. appoint or remove the majority of the Controlled Entity's Board; and/or
    iii. cast, or to control the casting of, a majority of the votes likely to be cast at a general meeting of the Controlled Entity.

This list is not exhaustive, and the specific facts and circumstances of each entity must be considered.

(6) Where there is uncertainty as to whether an entity is within the University's control, a detailed review of the circumstances will be undertaken and the General Counsel and the Vice-President, Finance and Resources will make a joint determination.

(7) The University will operate its Controlled Entities in accordance with the Macquarie University Act 1989 (the Act) and the provisions of the Government Sector Finance Act 2018 (NSW), the Corporations Act 2001 (Cth) and the Macquarie University Risk Appetite Statement.

(8) In compliance with the Act, the University Council (Council) must ensure that:

a. a Controlled Entity does not exercise any function or engage in any activity that the University is not authorised by or under the Macquarie University Act 1989 to exercise or engage in, except to the extent that Council is permitted to do so by the Minister;
b. the governing bodies of Controlled Entities:
    i. possess the expertise and experience necessary to provide proper stewardship and control;
    ii. comprise, where possible, at least some members who are not members of the Council, or members of staff, or students of the University;
    iii. adopt and evaluate their own governance principles; and
    iv. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets; and
c. a protocol is established regarding reporting by governing bodies of Controlled Entities of the Council.

(9) By default, Controlled Entities will comply with University policies. In principle, University policies will be written to accommodate the needs of both the University and Controlled Entities, to minimise the need for local policies.

(10) A Controlled Entity may implement its own policy where a University policy does not exist or the University policy does not meet the needs of the Controlled Entity. Governance Services should be consulted on the development of Controlled Entities' policies.

(11) The Controlled Entity member has obligations as set out in the Corporations Act 2001 and each Controlled Entity's constitution.

Section 3 - Procedures

Establishing a Controlled Entity

(12) A recommendation to establish (or acquire) a Controlled Entity must be discussed with the Vice-Chancellor and the General Counsel by the relevant Executive Group member prior to a formal proposal being submitted.

(13) If supported (in principle) by the Vice-Chancellor, the proposal will be submitted to the Executive Group and must include:

a. a purpose statement;
b. the objects and proposed activities of the Controlled Entity;
c. the governance structure, including the Controlled Entity Board composition;
d. the management/operational structure;
e. resource requirements, including budget and any University specialist support;
f. the membership/shareholding structure and composition of the Controlled Entity; and
g. any other relevant details.

(14) Following the endorsement of the Executive Group, the proposal will be submitted to the Council for consideration and approval (if deemed appropriate).

Controlled Entity Constitution

(15) A Controlled Entity constitution must be developed under the direction of the General Counsel.

(16) The Controlled Entity's constitution, and any subsequent material amendments, must be approved by Council. Any amendment will be made in accordance with the requirements of the Controlled Entity's constitution.

(17) Where the University is the sole or the majority voting member/shareholder of the Controlled Entity, Council may appoint the Vice-Chancellor or any other University representative to exercise all or any of the powers that the University may exercise as member/shareholder of the Controlled Entity.

Delegations of Authority

(18) Each Controlled Entity Board will approve and implement a Delegations of Authority Register, developed with advice from Governance Services. The Controlled Entity Delegations of Authority Register will be reviewed at least every three years and must be consistent with the principles of the University's Delegations of Authority Policy.

Controlled Entity Board

Terms of Reference

(19) A Controlled Entity Board will be established in accordance with the entity's Constitution and the Macquarie University Act 1989.

(20) A Controlled Entity Board should implement a terms of reference (with advice from Governance Services), which clearly defines the roles, responsibilities and authorities of the Board (both individually and collectively) and the Controlled Entity's management in setting the direction, management and control of the organisation.

(21) Amendments to the terms of reference approved by the Controlled Entity Board must be reported to the Council.

(22) A Controlled Entity Board should review its terms of reference at least every three years.

(23) In the event of any inconsistency between a Controlled Entity's constitution and the Controlled Entity Board's terms of reference, the constitution will prevail.

Membership and Remuneration

(24) The membership of a Controlled Entity Board will be subject to annual review by Council through the Nominations and Remuneration Committee.

(25) The review of Controlled Entity Board membership will include such matters as:

a. composition, diversity, tenure and succession planning;
b. development of senior leaders within the University Group for Board positions;
c. a skills matrix of Directors, to ensure the Board has the collective governance experience and commercial acumen necessary for the Controlled Entity and its activities; and
d. the mix of internal and external Directors. External Directors will be appointed where it is necessary to adhere to statutory requirements, or to bring relevant industry or other technical expertise to the Board.

(26) Any changes to the Controlled Entity Board membership will be approved by Council subject to the endorsement of the Nominations and Remuneration Committee (unless otherwise delegated by Council) and made in accordance with the Controlled Entity's constitution.

(27) Controlled Entity Board members who have paid employment within the University Group will not be eligible for remuneration for their role on a Board.

(28) External Controlled Entity Board members will generally not be paid. Exceptions will be recommended by the Vice-Chancellor to the Nominations and Remuneration Committee, for discussion and recommendation to, and ultimate approval by Council.

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Meetings

(29) Council requires each Controlled Entity Board to balance its time monitoring compliance and performance, with both an internal and external focus.

(30) The Board of each Controlled Entity should develop an annual Board agenda plan with advice from Governance Services.

(31) The Vice-Chancellor has ex-officio rights to receive papers and attend Controlled Entity Board meetings as an observer.

Assurance and Oversight

(32) Controlled Entity management will provide an annual attestation (developed with advice from Group Finance) to their Board, covering critical operating controls and adherence to policies of the University (and the Controlled Entity if applicable), as part of the preparation of the Controlled Entity's financial statements.

(33) The Managing Director and/or Chief Executive Officer of a Controlled Entity will have a reporting line to a member of the University's Executive Group.

(34) Controlled Entities will report to Council as required through the relevant Committees of Council and/or the Vice-Chancellor.

(35) An annual compliance attestation on Controlled Entities will be provided to the Audit and Risk Committee as part of the University Group attestation.

(36) Tax, legal and constitutional implications must be assessed in consultation with the General Counsel before any proposed material changes to a Controlled Entity's operations are enacted.

University Specialist Support Functions

(37) To ensure consistent quality and transparency of specialist functional expertise across the Group, specialist support functions required by Controlled Entities will be provided by the University. These will include:

a. financial management and reporting;
b. risk management, including insurance and workplace health and safety;
c. Procurement;
d. Human Resource management and remuneration;
e. Legal Services;
f. Governance;
g. Information Technology and Security Services;
h. Property Services, including facilities management; and
i. Internal and External audit.

(38) The Controlled Entity may be required to pay or contribute to the costs of providing specialist support functions.

(39) Any other specialist support function or service required by a Controlled Entity that is not provided by the University must be approved by the Vice-Chancellor unless otherwise delegated by Council.

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Section 4 - Guidelines

(40) Nil.

Section 5 - Definitions

(41) The following definitions apply for the purpose of this Policy:

a. Controlled Entity means a person, group of persons or body over which the University has control as defined in Section 16A of the Macquarie University Act 1989 (as amended) and Section 2.2 of the Government Sector Finance Act 2018.
b. Director means a member of a Board of a Controlled Entity.
c. Third Party refers to a person or entity other than Macquarie University.

Status and Details

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Responsible Executive	S. Bruce Dowton Vice-Chancellor
Responsible Officer	Sophie Buck Director, Governance Services
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