Controlled and Associated Entities Governance Framework

Section 1 - Introduction

Background

(1) The Western Sydney University Act 1997 requires the Board of Trustees to ensure that a Controlled Entity does not exercise a function or engage in an activity that is not authorised by, or under, the Act and to ensure that appropriate levels of control are in place.

(2) Western Sydney University has established a number of Controlled Entities as companies under the Corporations Act 2001 (Cth) and in overseas jurisdictions. It also acquires interests in Associated Entities from time to time.

Purpose and Application

(3) This Framework sets out how the University manages its relationship with Controlled and Associated Entities with a view to maximising their effectiveness and promoting good governance and sound risk management.

(4) This Framework applies to the establishment and management of the University's interests in Controlled and Associated Entities of the University.

Section 2 - Definitions

(5) Associated Entity is defined in s.50AAA of the Corporations Act 2001 (Cth) to mean an entity that is a member of the same corporate group, or if one entity has a certain degree of control over another, for example, through the appointment of directors to the board or share ownership.

(6) Board means the board, governing body or ultimate management committee of a Controlled or Associated Entity.

(7) Controlled Entity means an entity that is subject to the control of the University as defined in s.50AA of the Corporations Act 2001 (Cth). The University treats Entities (including overseas Entities) as Controlled Entities if the University:

a. directly or indirectly owns the majority of the shares in a company;
b. is the sole member of a company limited by guarantee;
c. controls more than 50% of shareholder or member voting rights in the Entity, including by use of a casting vote;
d. controls more than 50% of votes of the Entity’s board, including by use of a casting vote;
e. has power to appoint or remove more than 50% of the board;
f. has power to govern the financial and operating policies of the Entity; or
g. has power to cast or control the casting of a majority of the votes likely to be cast at a general meeting of the Entity.

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

(8) Director means a person appointed by the University to the board of a Controlled or an Associated Entity.

(9) Entity means a company, an incorporated association, a trust, an incorporated or unincorporated joint venture or partnership arrangement.

Section 3 - Establishment or Acquisition

Requirements

(10) The establishment of a University Controlled Entity or acquisition of an interest in an Associated Entity falls within the definition of a commercial activity under the University's Commercial Activities Guidelines.

(11) The Board of Trustees has reserved to itself authority to approve the establishment of a Controlled Entity, and has not delegated this function. Acquisition of an interest in Associated Entities is also governed by the University's Delegations of Authority Policy.

Section 4 - Governance of Controlled and Associated Entities

Requirements under Western Sydney University Act

(12) Section 22A of the Western Sydney University Act prescribes certain minimum governance requirements for University Controlled Entities.

(13) These include requirements that boards of University Controlled Entities should:

a. possess the expertise and experience necessary to provide proper stewardship and control;
b. comprise, where possible, at least some board members who are not members of the Board of Trustees or who are not University staff or students;
c. adopt and evaluate their own governance principles;
d. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets; and
e. report regularly to provide assurance to the Board of Trustees (principally through its Finance and Investment Committee and Audit and Risk Committee) that risks are being identified, recorded and managed appropriately.

Governance Principles Generally

(14) Controlled and Associated Entities are expected to adhere to the following principles:

a. The respective roles and responsibilities of the board and of management must be clearly articulated;
b. The board must be of an effective composition (including mix of skills), size and commitment to properly discharge its responsibilities and duties;
c. The board should establish, as appropriate, sub-committees to provide oversight of risk and compliance issues and financial management;
d. The board must ensure the Entity exercises its functions and carries on its activities in accordance with its constitution and relevant laws;
e. The board must have in place a corporate or business plan and budget and monitor the Entity’s performance against these;
f. The board and management must actively promote ethical and responsible decision-making, including

declaration and management of conflicts of interest;

g. The board and management must establish and implement proper systems of oversight and control to appropriately identify and manage a full range of strategic and operational risks and issues and notify the University of any significant risks;
h. The board and management must establish and implement appropriate structures and systems to independently verify and safeguard the integrity of the Entity's financial reporting;
i. The board and management must ensure that the levels and composition of employee remuneration are sufficient and reasonable and are linked to organisational and individual performance.

(15) In addition to these principles, Controlled and Associated Entities are also expected to adopt and comply with other relevant corporate and (where relevant) academic governance principles prescribed by law, including for instance, under the Higher Education Standards Framework (Threshold Standards) 2021.

(16) While the University recognises that overseas Entities might not be University Controlled Entities for the purposes of local overseas laws, the University expects the governing bodies of those Entities to comply with this Framework to the extent that this is not inconsistent with local overseas laws and government policy.

(17) Controlled and Associated Entities are also required to comply with the University's Global Network Policy except to the extent that it conflicts with regulatory requirements (whether in Australia or overseas) applicable to those Controlled and Associated Entities.

Constitution

(18) Each Controlled or Associated Entity is to have its own constitution that describes its objects and functions, and which should appropriately align with the University's objects, functions, and the requirements under Section 4 of this Framework.

(19) All Controlled Entity constitutions must be approved by the Board of Trustees and:

a. unless the Board of Trustees resolves otherwise, name the University as sole member or shareholder;
b. set out the means by which the University controls that Entity, such as:
    i. composition of the Entity board, including appointment and removal;
    ii. the number of votes that can be cast at a meeting;
    iii. the majority share capital (for a company with share capital);
    iv. governance of financial and operating policies by legislation or agreement;
    v. depending on the activity carried out by the Controlled Entity, where the University is the only shareholder or member (including any tax implications), include a provision that authorises a director to act in the University's best interests (as permitted under s.187 of the Corporations Act 2001 for wholly-owned subsidiaries); and
c. include a provision that the constitution may only be amended with the prior approval of the Board of Trustees (for material amendments) of the University's member representative (for non-material amendments).

(20) The Vice-Chancellor and President or that person's sub-delegate (on the advice of the Office of General Counsel) has delegated authority to approve the constitution of a Controlled or Associated Entity, including any amendment to it, subject to the requirements of clauses (and sub-clauses)(18) and (19).

Body Corporate Representative

(21) Section 250D of the Corporations Act 2001 permits the University to appoint a representative to exercise all or any of the powers of the body corporate at, among other things, a members' meeting.

(22) To that end, the Board of Trustees has delegated this function to any one or more of:

a. Vice-Chancellor and President;
b. Chief Financial Officer.

Board Composition and Appointment Process

(23) In order to comply with requirements and under section 22A of the Western Sydney University Act 1997 with respect to composition of Controlled Entity boards, the Board of Trustees has delegated authority to the Vice-Chancellor and President to review and endorse the appointment of all University-appointed directors. Approval is required even if an Entity board has direct power to appoint directors under its constitution.

(24) Section 22A of the Western Sydney University Act 1997 prescribes that, where possible, some directors should be people who are not members of the Board of Trustees, or who are not University staff or students.

(25) All proposals for appointment of new directors to boards must be submitted to the General Counsel and University Secretary for endorsement by the Vice-Chancellor and President, and must include the following details:

a. full name of the nominee and a short biography including details of relevant qualifications, skills and experience;
b. details of current employment and/or directorships of other organisations;
c. a statement about how the nominee will enhance the role and performance of the Entity board, having regard to its objects and functions and strategic goals;
d. confirmation that the nominee has consented or indicated consent to appointment; and
e. any other information requested by the General Counsel and University Secretary.

(26) A proposal to the Vice-Chancellor and President for a new appointment to a board must include the following information:

a. whether the nominee is a University employee or an external nominee;
b. the current profile of the board, including:
    i. full names of current directors;
    ii. relevant diversity factor balance;
    iii. internal/external balance;
    iv. mix of skills and experience (skills and experience matrix);
c. the proposed term of appointment (see clause (27) below);
d. if a re-appointment, the number of years already served;
e. if a replacement appointment, the name of the outgoing director;
f. confirmation that:
    i. the nominee has consented or has indicated their consent to appointment;
    ii. due diligence has been carried out to check that the nominee is not disqualified or otherwise ineligible or unsuitable for appointment;
g. any other information considered appropriate by the General Counsel and University Secretary.

(27) The term of appointment for directors is generally as follows, subject to the Entity constitution:

a. external directors will be appointed for terms not exceeding three years, but are eligible for reappointment;
b. University employee directors will be appointed on an ongoing basis but may be replaced by the University at any time, including if they resign from the University.

(28) All directors are required to:

a. complete and sign consents and declarations required for regulatory compliance;
b. undertake an induction program (which may be offered externally or internally through the University).

Directors' Duties

(29) Each director is required to act in the best interest of the Entity to which they are appointed and as required by law, but subject (if appropriate) to s.187 of the Corporations Act 2001 for wholly-owned subsidiaries.

(30) Directors' responsibilities include:

a. acting 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;
b. acting in good faith, in the best interests of the Entity and for a proper purpose;
c. disclosing actual or potential conflicts of interest, and taking appropriate steps to avoid them or minimise their impact;
d. not using their position or information they gain as a director to gain an advantage for themselves or for another person, or to the detriment of the Entity.

(31) All directors are required to comply with relevant University policies governing conduct, including this Framework, the University's Code of Conduct and Integrity Compliance and Reporting Policy (Conflicts of Interest, Gifts, Benefits).

Board Responsibilities

(32) The University expects boards to:

a. adhere to the governance principles set out in clauses (and sub-clauses) (14) and (15);
b. review their performance annually and, where appropriate, undertake an external review every 3 to 5 years;
c. provide an induction and ongoing support for directors to perform their role.

Remuneration of Directors

(33) Remuneration of directors, as may be recommended by the board, should be determined in consultation with the University.

(34) The following principles apply:

a. remuneration should consider normal industry practice, the needs of the board to attract/retain relevant skills, whether its relationship to performance is clear and any other relevant matters;
b. directors who are University employees are not entitled to receive any financial remuneration or other benefit (other than a meeting allowance or refund of expenses) as a director unless first approved by the Vice-Chancellor and President;
c. any benefits provided to directors, including remuneration, must be disclosed in the annual financial statements and the annual report provided to the University.

Company Secretary/Public Officer

(35) A board must appoint an appropriately qualified and experienced company secretary and/or public officer.

(36) The General Counsel and University Secretary and/or Company Secretary, Entities and Associate Director

Secretariat, is to act as company secretary of University Controlled Entities, except for existing Controlled Entities with their own company secretary.

(37) If a public officer is required, the Chief Financial Officer is to nominate a person to act in this role.

(38) To avoid conflicts of interest, Associated Entities are to engage their own company secretary and public officer.

Winding Up or Termination of Participation

(39) A Controlled Entity can only be wound up and its assets distributed according to its constitution and (if applicable) shareholder or member agreement and with the prior approval of the Board of Trustees.

(40) Termination of the University's participation in an Associated Entity must be approved by the Board of Trustees and in accordance with the relevant shareholder agreement.

Section 5 - Governance, Compliance and Risk

Reporting and Assurance Responsibilities

(41) Boards are responsible for ensuring the Entity’s compliance with the University's annual and other reporting requirements, including:

a. board membership;
b. annual statement of governance principles;
c. directors’ annual declaration of interest;
d. notification to or from any reporting agencies about non-routine matters (such as mandatory reports for breaches of legislation);
e. annual corporate, strategy or business plans and budgets;
f. annual audited financial statements;
g. annual report on audit and risk;
h. review of board performance.

(42) Controlled Entities are required to comply with the University's governance and risk frameworks in order to promote and strengthen a positive safety and security culture and build resilience to foreign interference.

(43) Controlled Entities are also required to provide quarterly reports and assurance to the Board of Trustees' Audit and Risk Committee, and Finance and Investment Committee,in relation to the Entity’s financial performance and controls and management of risk.

(44) The board or a director of an Associated Entity, must inform the Vice-Chancellor and President promptly upon becoming aware of any of the following as it relates 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 indemnity or insurance against a liability given to a current or former officer.

(45) Any notifications under clause (44) are to be reported to, as appropriate, the Board of Trustees’ Finance and Investment Committee and/or Audit and Risk Committee.

(46) A Controlled Entity must make its financial and other records available to the University's internal auditors upon

request.

Audits of Controlled Entities

(47) All Controlled Entities must be audited by the NSW Audit Office, or by other arrangements approved by the NSW Audit Office and by the University.

(48) The Vice-Chancellor and President may at any time require an internal or external audit of a University Controlled Entity to be carried out. A copy of any such audit report will be made available to the Entity board and to the Board of Trustees (via its Audit and Risk Committee). The Entity board is expected to implement any recommendations from that audit report.

Policies and Compliance

(49) Subject to clause (50), Controlled and Associated Entities are generally responsible for establishing and implementing their own policies and procedures, including those relating to delegations of authority, risk and compliance.

(50) Controlled Entities may adopt University policies, frameworks and procedures as appropriate, or must adopt them if directed by the University or as set in an agreement between the University and that Controlled Entity that further defines aspects of the Entity's relationship with the University. Matters that may be addressed in such an agreement may include:

a. principles and procedures for dealing with key issues or assets, such as intellectual property rights;
b. academic governance and matters related to students (including admission, enrolment, academic assessment and progress, and student services);
c. application of specified University policies to the Entity;
d. any other matters referred to in this Framework or agreed between the parties.

(51) The board of a Controlled Entity is responsible for ensuring compliance.

Delegations of Authority

(52) The governing bodies of Controlled and Associated Entities must establish and maintain policies and procedures relating to delegations of authority appropriate to and within that organisation.

(53) Delegations of authority should adhere to the following principles:

a. the policy must clearly delineate between governance and management functions, with the governing board reserving to itself governance functions;
b. the Controlled or Associated Entity must establish and maintain a Delegations Register that lists all delegations of authority approved under the policy;
c. only properly appointed delegates can exercise a delegation of authority;
d. delegates can only exercise delegations of authority consistently with other applicable policies and within the limits of their delegated authority and budget;
e. delegates cannot approve their own expenditure items or exercise delegated authority if this would involve them in an actual or potential conflict of interest.

Employment Practices and Conditions

(54) Controlled and Associated Entities are responsible for establishing their own staffing policies and conditions, including salary and superannuation.

(55) Controlled and Associated Entities are not permitted to employ, second or otherwise engage current University employees unless:

a. the University first gives its written consent; and
b. the Entity enters into an agreement on terms acceptable to the University.

Insurance and Indemnities

(56) Controlled and Associated Entities must effect and maintain appropriate types and levels of insurance to manage risks against which a prudent organisation would normally insure, and specific to the needs of the Entity, including:

a. directors' and officers' insurance;
b. workers' compensation and related injury insurance;
c. professional indemnity insurance;
d. student personal accident insurance (where relevant);
e. travel insurance;
f. motor vehicle insurance (where relevant);
g. property insurance;
h. cyber liability insurance;
i. industrial special risks; and
j. public liability insurance.

(57) A Controlled Entity may have access to the University's insurance cover, but on the conditions that the Entity:

a. establishes and maintains an effective risk management process and takes actions to mitigate the risks;
b. contributes a reasonable amount towards the cost of that cover as determined by the University; and
c. complies with all conditions of insurance cover, including disclosure requirements.

(58) A Controlled Entity may, with the prior approval of the Vice-Chancellor and President, enter into a deed of indemnity with a director or other officer on such terms as the Vice-Chancellor and President considers appropriate, and within any limits prescribed under the Corporations Act 2001.

Status and Details

Status	Current
Effective Date	27th November 2025
Review Date	19th June 2027
Approval Authority	General Counsel and University Secretary
Approval Date	27th November 2025
Expiry Date	Not Applicable
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