Controlled and Associated Entities Governance Framework

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Purpose

This Controlled and Associated Entities Governance 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.

Scope

This framework applies to the establishment and management of the University's interests in controlled and associated entities of the University.

Definitions

Term	Definition
Associated entity	Is defined in s.50AAA of the Corporations Act 2001 (Cth) to mean an entity that is the 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.
Board	The board, governing body or ultimate management committee of a controlled or associated entity.
Controlled entity	A legal 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 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 entity's 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.
Director	For the purposes of this Framework, refers to a person appointed by the University to the board of a controlled or an associated entity.
Entity	For the purposes of this Framework, refers to a company, an incorporated association, a trust, an incorporated or unincorporated joint venture or partnership arrangement.

Framework

1. Background

The Federation University Act 2010 (the Act) obliges the University Council to oversee the management and control of the business affairs of the University. In Division 5 of Part 6 of the Act the University is given the power to be a member of a company, association, trust or partnership, or to form, manage or participate in the formation of a company, association, trust or partnership.

The Council has responsibility to ensure an 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.

Federation University Australia has established a number of controlled entities as companies under the Corporations Act 2001 (Cth), companies in foreign jurisdictions, and acquires interests in associated entities from time to time.

2. Establishment or Acquisition

The University Council has reserved to itself authority to approve the establishment of a controlled entity, and it has not delegated this function under section 18 of the Act.

3. Governance of Controlled and Associated Entities

Under the Federation University Act 2010 Section 8(3), Council is responsible for approving and monitoring systems of control and accountability of the University, including those required to maintain a general overview of any entity over which the University has control within the meaning of section 3 of the Audit Act 1994.

These include requirements that boards of University controlled entities should:

a. possess the expertise and experience necessary to provide proper stewardship and control;
b. adopt and evaluate their own governance principles;
c. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets; and
d. report regularly to the University Council (through the relevant Committee of Council and Vice-Chancellor's Senior Team) on the performance of the entity and to provide assurance that risks are being identified, recorded and managed appropriately in accordance with the University's risk management framework.

3.1 Governance Principles Generally

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 may establish, as appropriate, sub-committees;
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 that incorporates strategy, alignment with the University, operational targets and management responsibilities, financial budget, KPIs, riskassessment 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.

In addition to these principles, controlled and associated entities are also expected to adopt and comply with other relevant legislative and regulatory requirements, including the Higher Education Standards Framework (Threshold Standards) 2021 and the Australian Skills Quality Authority's Standards for RTOs 2015.

3.2 Constitution

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 and functions.

All controlled entity constitutions should:

a. unless the University Council 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 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 member representative (usually the Vice-Chancellor).

The Vice-Chancellor and President or that person's delegate has authority to approve the constitution of a controlled or associated entity, including any amendment to it, subject to the requirements of section 3.2.

3.3 Body Corporate Representative

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.

To that end, the University Council has delegated this function to:

a. Vice-Chancellor and President;
b. Chief Operating Officer; and/or
c. Chief Financial Officer.

3.4 Board Composition and Appointment Process

All proposals for appointment of new directors to controlled or associated entities must be submitted to the 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.

The following additional information is required for new appointments to the boards of controlled entities:

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 (25) 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 he or she is willing to 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 requested by the Vice-Chancellor and President or the University Secretary.

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.

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).

3.5 Director's Duties

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.

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.

All directors are required to comply with relevant University policies governing conduct, including this Framework, the University's Code of Conduct, and the Managing Conflicts of Interest Procedure.

3.6 Board Responsibilities

The University expects the boards of controlled and associated entities to:

a. adhere to the governance principles set out in 3.1, above;
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.

3.7 Remuneration of Directors

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

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.

3.8 Company Secretary/Public Officer

An entity board must appoint an appropriately qualified and experienced company secretary and/or public officer.

If a public officer is required, the Vice-Chancellor and President is to nominate a University employee to act in this role.

To avoid conflicts of interest, associated entities are to engage their own company secretary and public officer.

3.9 Winding Up or Termination of Participation

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 University Council.

Termination of the University's participation in an associated entity must be approved by the University Council and in accordance with the relevant shareholder agreement.

4. Compliance and Risk

4.1 Reporting and Assurance Responsibilities

The boards of controlled and associated entities are responsible for ensuring the entity’s compliance with the University's annual and other reporting requirements, including:

a. board membership;
b. 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, strategy or business plans and budget;
e. annual audited financial statements;
f. annual report on audit and risk;
g. review of board performance.

Controlled entities are required to comply with the University's Corporate Governance Policy and supporting governance and risk frameworks in order to promote and strengthen a positive safety and security culture and build resilience to foreign interference.

Controlled entities are also required to report or provide assurance in relation to operational and financial performance and controls and management of risk. This is normally done via quarterly reports to the Vice-Chancellor’s Senior Team and through to Council and its Committees.

The board of a University controlled entity, 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.

Any such notifications are to be reported to, as appropriate, the University Council Resources Committee and/or Audit and Risk Management Committee.

A controlled entity must make its financial and other records available to the University's internal auditors upon request.

4.2 External Audit of Controlled Entities

All controlled entities must be audited by the Victorian Auditor General or by other arrangements approved by the Victorian Auditor General and by the University.

The Vice-Chancellor and President may at any time require an audit of a University controlled entity to be carried out by the University's internal auditor. A copy of any such audit report will be made available to the entity board and to the University Council via its Audit and Risk Management Committee. The entity board is expected to implement, track and report against any agreed management actions arising from the audit report.

4.3 Policies and Compliance

Controlled and associated entities are generally responsible for establishing and implementing their own policies and procedures, including those relating to risk and compliance.

Controlled entities may adopt University policies, frameworks and procedures as appropriate or as directed by the University. The board of a controlled entity is responsible for ensuring compliance.

4.4 Employment Practices and Conditions

Controlled and associated entities are responsible for establishing their own staffing policies and conditions, including salary and superannuation.

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.

4.5 Insurance and Indemnities

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.

A University 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.

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.

Legislative context

- Federation University Australia Act 2010
- Audit Act 1994
- Financial Management Act 1994
- Corporations Act 2001

Supporting documents

- Corporate Governance Policy
- Operations Governance Policy
- Sanctions Compliance Procedure
- Information Privacy Procedure
- Finance Governance Procedural Manual - Procurement of Goods & Services, Corporate Purchasing Card, Travel, and Motor Vehicles

Responsibility

- The Vice-Chancellor and President (as the Approval Authority) is responsible for monitoring the implementation, outcomes and scheduled review of this procedure.
- The University Secretary (as the Document Owner) is responsible for maintaining the content of this procedure as delegated by the Approval Authority.

Promulgation

The Controlled and Associated Entities Governance Framework will be communicated throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.
2. Distribution of emails to relevant University staff.

Implementation

The Controlled and Associated Entities Governance Framework will be implemented throughout the University via:

1. A FedNews announcement and on the 'Recently Approved Documents' page on the University's Policy Central website.
2. Staff induction sessions.
3. Training sessions.