

CONTROLLED ENTITY POLICY 2012

The Vice-Chancellor and Principal, as delegate of the Senate of the University of Sydney, adopts the following policy.

Dated: 28 February 2012

Last amended: 20 June 2017 (administrative amendments only)

Name: Dr Michael Spence

Position: Vice- Chancellor and Principal

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1 Name of policy

This policy is the Controlled Entity Policy 2012.

2 Commencement

This policy commences on 1 March 2012.

3 Policy is binding

Except to the extent that a contrary intention is expressed, this policy binds the University, staff, and affiliates.

4 Statement of intent

This policy is intended to ensure that Australian entities controlled by the University:

- (a) have in place effective systems of control and accountability;
- (b) meet standards of governance which satisfy legal requirements and community expectations; and
- (c) meet their stated objectives and operational requirements.

5 Application

This policy applies to all controlled entities:

- (a) which are incorporated in Australia; or
- (b) whose activities are substantially conducted in Australia.

6 Definitions

board	means the governing body of a controlled entity, whether or not that entity is a corporation.
commercial activity	has the meaning given to it in the Guidelines Concerning Commercial Activities , which at the date of this policy is: <ul style="list-style-type: none">a) any activity engaged in by or on behalf of the University in the exercise of commercial functions of the University; andb) any other activity comprising the promotion of, establishment of or participation in any partnership, trust, company or other incorporated body, or joint venture, by or on behalf of the University, that is for the time being declared by the Guidelines Concerning Commercial Activities to be a commercial activity.
control	means the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.
controlled entity	means a person, group of persons or body over which the University has control. Note: See also the definition of “controlled entity” in Section 16A of the <i>University of Sydney Act 1989</i> (as amended); Sections 39 (1A) and 45A of the <i>Public Finance and Audit Act 1983</i> and Australian Accounting Standard AASB 127 <i>Consolidated and Separate Financial Statements</i>
delegate	means a person authorised by the Senate to act on behalf of the University in specified situations, as provided by the University of Sydney (Delegations of Authority – Administrative Functions) Rule 2016 .
director	means a member of the board of a controlled entity.

educational services means services delivered, for commercial gain or otherwise, by or on behalf of the University or any controlled entity, that use or develop any educational facility, resource or property of the University or in which the University has a right or interest (such as curriculum, research, knowledge or intellectual property).

They include:

- non-award training
- teaching and assessment
- curriculum development review and endorsement
- curriculum transfer or licensing
- co-delivery of courses
- joint venture campuses

They do not include:

- student exchange, study abroad or cotutelle arrangements
- educational services delivered to the University or controlled entity by other parties

relevant Deputy Vice-Chancellor or Vice-Principal in relation to a current or proposed controlled entity, means the Deputy Vice-Chancellor or Vice-Principal whose accountability area most closely aligns with the entity's activity.

University director means a director appointed by the University.

7 Determining control

- (1) The University regards itself as being in a position to control an entity where:
- (a) the University, directly or indirectly, owns the majority of the shares in a company;
 - (b) the University is the sole member of a company limited by guarantee;
 - (c) the University has power over more than half of the voting rights in the entity;
 - (d) the University has the power to cast the majority of votes at meetings of the entity's board;
 - (e) the University has the power to appoint or remove the majority of the entity's board;
 - (f) the University has the power to govern the financial and operating policies of the entity; or
 - (g) the University has the power to cast, or to control the casting of, a majority of the votes likely to be cast at a general meeting of the entity.
- (2) The list in sub-clause 7(1) is not exhaustive. The question of whether or not an entity is within the University's control must be decided in reference to the particular circumstances.

- (3) Where there is doubt, the Vice-Principal (Operations) will determine whether or not the University considers an entity to be within its control.

8 Establishing or acquiring controlled entities

- (1) The University may establish or acquire a controlled entity for the purpose of undertaking commercial activity.
- (2) A person proposing the establishment or acquisition of a controlled entity must first consult the Vice-Principal (Operations) and each of:
 - (a) the relevant Deputy Vice-Chancellor or Vice-Principal, about the desirability of doing so; and
 - (b) the Office of General Counsel, about the appropriate structure of the entity.
- (3) A formal written proposal which complies with the procedures applicable to this policy and, where appropriate, the [Guidelines Concerning Commercial Activities](#) must then be submitted to Vice-Principal (Operations) and the relevant delegate.
- (4) The relevant delegate will determine whether or not to establish or acquire the proposed controlled entity.

9 Boards and directors

- (1) The directors of a controlled entity must possess the experience and expertise necessary to provide proper stewardship and control of that entity.
- (2) The board of each controlled entity must:
 - (a) consist of at least three members;
 - (b) meet at least twice a year; and
 - (c) adopt a board charter against which its performance as a whole, and the performance of its individual members, is regularly assessed.
- (3) The board of each controlled entity must appoint the University's Group Secretary as company or organisational secretary, unless the appointment of another person to this position is approved by the Vice-Principal (Operations) after consultation with the relevant Deputy Vice-Chancellor or Vice-Principal.
- (4) Where possible, each board will include individuals who are not members of the Senate, the staff or students of the University.
- (5) All directors must comply with the [Code of Conduct - Staff and Affiliates](#) and the [External Interests Policy 2010](#).
- (6) Directors' remuneration, if any, should be determined in consultation with the University.
 - (a) Remuneration should be determined after consideration of:
 - (i) normal industry practice;
 - (ii) the needs of the board to attract and retain relevant skills;
 - (iii) whether there is a clear relationship between remuneration and performance; and
 - (iv) any other relevant matters.

- (b) In some cases, entities may have volunteers as directors and remuneration may not be appropriate.
- (7) Any benefits provided to directors, including remuneration, must be disclosed in the entity's annual financial statements and report to the University.
- (8) The board will determine the managing director's remuneration and disclose this in the entity's annual report to the University.
- (9) A University director may only be appointed, or such an appointment terminated, with the prior approval of the Vice-Principal (Operations) after consultation with the relevant Deputy Vice-Chancellor or Vice-Principal.

10 Governance generally

- (1) Controlled entities must adhere to the following principles.
 - (a) The respective roles and responsibilities of board and management must be recognised and clearly stated.
 - (b) The board must be of an effective composition, size and commitment to adequately discharge its responsibilities and duties.
 - (c) The board and management must actively promote ethical and responsible decision making. In relation to companies limited by guarantee, this includes being aware of, and acting in furtherance of, the objects of the company.
 - (d) The board and management must have appropriate regard to their legal obligations and the interests of stakeholders including shareholders and employees.
 - (e) The board and management must:
 - (i) establish and implement appropriate structures to independently verify and safeguard the integrity of the entity's financial reporting;
 - (ii) respect the rights of members and facilitate the effective exercise of those rights;
 - (iii) establish a sound system of risk oversight, risk management and internal control; and
 - (iv) ensure that the level and composition of remuneration is sufficient and reasonable, and that its relationship to organisational and individual performance is clear.
- (2) The constitution of a controlled entity must address the matters prescribed in *Schedule 1*.
- (3) The Vice-Principal (Operations) may determine procedures which specify matters which must be taken into account when considering amendments to be made to a controlled entity's constitution
- (4) A controlled entity may enter into an agreement with the University which further defines aspects of the entity's relationship with the University. Any such agreement will be negotiated on the University's behalf by the Vice-Principal (Operations) after consultation with the relevant Deputy Vice-Chancellor or Vice-Principal.
 - (a) The provisions of such an agreement must not be inconsistent with this policy.
 - (b) Matters addressed in such an agreement may include:

- (i) principles and procedures for dealing with key issues or assets, such as intellectual property;
 - (ii) provision of services by the University to the entity, or vice-versa;
 - (iii) application of specified University policies to the entity;
 - (iv) risk management and insurance arrangements;
 - (v) the University's relationship with third parties with whom the entity has, or may have, dealings (including other members of the entity);
 - (vi) the entity's dividend policy; and
 - (vii) dispute resolution procedures.
- (5) A controlled entity must inform the Vice-Principal (Operations) as soon as possible after becoming aware of any of the following:
- (a) a potential material risk exposure, financial or otherwise;
 - (b) changes of directors;
 - (c) identified conflicts of interests;
 - (d) proposed or actual related party transactions (including any proposed agreements with University staff);
 - (e) any indemnity or insurance against a liability given to a current or former officer;
 - (f) any benefits provided by the controlled entity to the University or a University staff member; and
 - (g) any changes to any previous such notification.
- (6) A controlled entity must make its financial and other records available to the University's internal auditors upon request.
- (7) A controlled entity which is engaged in, or proposes to become engaged in, the provision of educational services must:
- (a) appoint a nominee of the Deputy Vice-Chancellor (Education) to its board;
 - (b) in consultation with the Deputy Vice-Chancellor (Education), establish a committee with responsibility for academic governance, which is accountable to the entity's board; and
 - (c) adopt a policy which:
 - (i) includes provisions to the same effect as the University's [Agreements for Educational Services Policy 2011](#) (or any replacement policy); and
 - (ii) is endorsed by the Deputy Vice-Chancellor (Education).

11 Reporting

- (1) A controlled entity must submit an annual report on its activities to Senate through the Vice-Principal (Operations) by 30 April each year in the form prescribed in the procedures.
- (2) The Vice-Principal (Operations) will consult with the relevant Deputy Vice-Chancellor or Vice-Principal and will submit the entity's annual report to Senate together with a recommendation as to whether the entity should continue in operations.

- (3) The Vice-Principal (Operations) may determine procedures which further specify the form and content of the annual report required under this clause.
- (4) The Vice-Principal (Operations) may request further reports on other matters as he or she considers appropriate.
- (5) The accounts of each controlled entity will be reported in the consolidated accounts of the University.

12 Employees of controlled entities

- (1) Staff employed by a controlled entity are not employees of the University unless:
 - (a) they are seconded from the University; and
 - (b) their letter of appointment specifies that they will remain employees of the University;or
 - (c) an alternative arrangement, approved by the Vice-Principal (Operations) in the case of professional staff or the Provost in the case of academic staff, provides for their employment by the University.
- (2) A controlled entity is responsible for establishing its own staffing policies and conditions for its employees, including superannuation.

13 Insurance

- (1) A controlled entity is responsible for managing its own risk.
- (2) Each controlled entity must carry appropriate levels of:
 - (a) directors' and officers' insurance;
 - (b) workers' compensation and related injury insurance; and
 - (c) public liability insurance.

Note: Audit and Risk Management Office can provide assistance on insurance cover.

SCHEDULE 1

The constitution of a controlled entity must contain, at a minimum, provisions which address the following matters.

Provision	Content requirements
<i>Purpose</i>	The commercial or other purposes of the controlled entity, and its responsibility to act in the interests of the University.
<i>Membership</i>	The members of the controlled entity and procedures relating to admission to membership and circumstances when membership will cease.
<i>Governance structure</i>	The establishment of a board, and procedures for appointment and removal of the chairperson and directors. The constitution would generally also specify the powers and duties of directors and address matters concerning directors' interests.
<i>Limits of authority</i>	<p>Provisions requiring the approval of the University, as controlling member, and a majority vote of directors for certain actions. For example, to:</p> <ul style="list-style-type: none"> • materially change the controlled entity's activities; • acquire an interest in another legal entity which could expose the University to significant risk; • borrow funds without the knowledge or agreement of the University's Chief Financial Officer; • issue shares, or options to acquire shares, to other parties; • trade in derivatives except forward exchange contracts to cover known foreign currency commitments; • create employee share schemes • act, or purport to act, as agents/partners of the University or represent that the University is underwriting its activities • commit University resources into contractual arrangements with other entities, except that a controlled entity may commit its own resources in contractual arrangements with another entity; • grant equity in an associated company to directors or to employees of the entity or the University; • provide any loans to directors or entity staff or associates of directors or entity staff; • provide benefits to directors, in their role as director, other than directors' fees; • charge, pledge or otherwise encumber its assets.

Provision	Content requirements
<i>Management structure</i>	The role and appointment of a managing director and company secretary (and other key positions, as required).
<i>Accountability arrangements</i>	Annual reporting and accountability arrangements to the University, addressing requirements specified in this policy and any associated procedures.
<i>General meetings</i>	Provisions relating to the calling and holding of general meetings and the voting of members, including the respective voting rights to be enjoyed by the University and the other members.
<i>Taxation office and other reporting requirements</i>	Specific clauses that the constitution of a non-profit company must contain to be eligible for tax concessions as required by the Australian Taxation Office. Reporting requirements to bodies other than the University should be identified.
<i>Audit and accounts</i>	A requirement that the directors cause the controlled entity to keep written financial records in relation to the business of the controlled entity and, if relevant, to have those financial records audited in accordance with the requirements of the <i>Corporations Act 2001 (Cth)</i> .
<i>Arrangements for winding up or a sale of the undertaking of a controlled entity</i>	Requirements of the members upon winding up. The University, as controlling member, is empowered to approve the winding up of, or sale of the undertaking of, a controlled entity. The board and managing director will normally be responsible for ensuring that the sale or winding up occurs in accordance with any requirements specified by the University.
<i>Constitutional amendments</i>	Amendments to the constitution will be made by the members in general meeting. The University, as controlling member, should have the power to approve any amendments to the constitution of a controlled entity on the recommendation of its board.
<i>Indemnity</i>	A clear statement of the extent to which the controlled entity indemnifies its directors and secretary for liabilities incurred by those persons as officers of the controlled entity.

NOTES

Controlled Entity Policy 2012

Date adopted:	28 February 2012
Date commenced:	1 March 2012
Date amended:	29 February 2016 (commenced 14 March 2016) 20 June 2017 (administrative amendments only)
Administrator:	Vice-Principal (Operations)
Review date:	29 February 2021

Related documents:

Corporations Act 2001 (Cth)

[*University of Sydney Act 1989 \(as amended\)*](#) (NSW)

Public Finance and Audit Act 1983 (NSW)

Australian Accounting Standard AASB 127 *Consolidated and Separate Financial Statements*

[*Guidelines Concerning Commercial Activities*](#)

[*University of Sydney \(Delegations of Authority – Administrative Functions\) Rule 2016*](#)

[*Affiliates Policy*](#)

[*Code of Conduct – Staff and Affiliates*](#)

[*External Interests Policy 2010*](#)

[*Controlled Entity Procedures 2012*](#)

AMENDMENT HISTORY

Provision	Amendment	Commencing
6	Added definition of educational services	14 March 2016
10(7)	New clause	14 March 2016
6; related documents	Updated references to the University of Sydney (Delegations of Authority – Administrative Functions) Rule 2016	20 June 2017
Related documents	Amended hyperlink to <i>University of Sydney Act 1089 (as amended)</i>	20 June 2017