

## CONTROLLED ENTITIES GOVERNANCE FRAMEWORK POLICY

<b>Section</b>	AVC operations, International & University Registrar
<b>Contact</b>	Risk Management
<b>Last Review</b>	January 2018
<b>Next Review</b>	January 2021
<b>Approval</b>	C18/45
<b>Effective Date</b>	01 March 2018

### Purpose:

This policy establishes a governance framework to assist Council and University Management to discharge their responsibilities effectively in relation to controlled entities.

### Introduction

Massey University is empowered under Section 192(1) of the Education Act 1989 to establish entities to perform functions characteristic of a University, or functions that are of a kind that, in the opinion of the University Council:

- (i) may conveniently, and without disadvantage to the performance of those characteristic functions, be performed in association with those functions; and
- (ii) are appropriate for institutions of the class to which the institution belongs or, in the case of an institution that incorporates another institution or other institutions under section 164(4), are appropriate for institutions of the classes represented in the institution.

University controlled entities are separate entities to the University, but are characterized by the University having control through its capacity to dominate decision making, directly or indirectly, in relation to financial and operating policies of the entity. Such entities may be companies, trusts, incorporated societies or partnerships.

Massey University also has a number of Associated Entities where investment is significant, but is not significant enough to enable the University to directly control the financial and operating policies of the entity. Such entities are not within the scope of this policy.

### Policy

#### 1.0 The Massey University Council is responsible for:

- 1.1. Approving establishment, or acquisition, and authorising the participation of the University in Controlled Entities;
- 1.2. Approving the Constitution of a controlled entity, which established the systems of control and accountability of that entity to the University;

- 1.3. Approving the Statement of Corporate Intent of Controlled Entities, and monitoring performance and activities of the entity, unless otherwise delegated to the Vice-Chancellor;
- 1.4. Disposal, disestablishment or divestment of Controlled Entities.

## **2.0 Establishment and Disestablishment of Controlled Entities**

- 2.1 Council must approve the establishment or acquisition of, and participation in, a controlled entity, as well as the disestablishment, exit, or divestment of University interests in a controlled entity.
- 2.2 On deciding that a suitable case has been made to establish a controlled entity or participate in a controlled entity, the Vice Chancellor will provide to Council a preliminary proposal for endorsement.
- 2.3 If endorsed, the Vice Chancellor will undertake to complete a full proposal, which will include:
- required due diligence;
  - a draft Constitution ;
  - details of available options and pathways for the University to initiate an exit strategy in order to disestablish or dissolve the entity, or to remove the University's interest in that entity;
  - the circumstances in which the exit strategy should be considered (i.e. minimum performance levels, number of benefits realised, useful lifetime);
  - Details of the internal control systems to be adopted/implemented;
  - Any specific requirements as requested by Council.
- 2.4 The full proposal will be considered by the Finance and Assurance Committee in the first instance. The Finance and Assurance Committee may seek advice from any senior University staff, as appropriate, in relation to risk management, the constitutional provision, and/or legal and financial aspects of the business plan and/or constitution. Once satisfied with the recommendations of management, the Finance and Assurance Committee will make a recommendation to Council.
- 2.5 Subject to the requirements of this policy the Controlled Entity will operate independently of the University and will maintain and manage its own operations in accordance with the Education Act 1989, other relevant legislation, constitution, and where applicable any agreement with the University.

## **3.0 Governance**

- 3.1 Controlled entities of the University must operate high standards of governance in order to meet stakeholder expectations, and to meet legal obligations. The Board of the controlled entity is responsible for the governance of the entity in line with its Constitution, which must be consistent with the objects and functions of the University, and must not exceed the powers of the University as set out in the Education Act 1989.
- 3.2 It must comply with any obligations imposed by law from time to time, which unless explicitly excluded by the entities' Constitution, or adoption of specific Policy, will include:
- A requirement that activities must be appropriate for Universities and undertaken without disadvantage to the core activities of the University;
  - A requirement not to:
    - borrow or otherwise raise funds other than from the University;
    - issue shares, or options to acquire shares to other parties;
    - act as an Agent of the University, or make warranties or representations on the part of the University without authority;
    - commit University resources into contractual obligations with other parties without University authority;
    - enter into joint ventures without prior University permission;

- provide loans or benefits to directors, other than director fees (if any);
  - invest funds except in accordance with University Policy;
  - mortgage or charge assets without University consent;
  - dispose of intangible assets without University consent
  - Restrictions or special requirements relating to the disposal of assets;
  - Such other matters as may be determined by Council.
- 3.3 Where University authority, permission or consent is required for any specific activity listed in section 3.2 above, such authority, permission or consent may be provided within an annually approved Statement of Corporate Intent or budget by Council (as applicable) or otherwise with the specific approval or delegation of Council.
- 3.4 Appointment of Directors of controlled entities will be made by the Vice-Chancellor, unless otherwise directed by Council or in circumstances where the Vice-Chancellor is likely to be appointed into such roles.
- 3.5 Once the establishment and Constitution of the controlled entity has been approved by Council, the Board must ensure that the controlled entity operates within a system of internal control that ensures the highest standard of decision-making and management.
- 4.0 Reporting**
- 4.1 Each controlled entity must provide an annual report of performance to Council, whether independently or within the consolidated reporting of their parent entity, as applicable. :

## Definitions:

**Associated entity:** means an entity over which the University has influence (but not control) by virtue of investment or decision-making ability.

**Board:** means the Board of a Massey University Controlled Entity.

**Company:** means a legal entity established in New Zealand under the Companies Act 1993.

**Constitution:** means the company constitution of the Controlled Entity. Alternatively, it means the founding document such as a Trust Deed (in case of a Trust), Rules (in the case of an Incorporated Society) or Partnership Agreement.

**Controlled Entity:** means organisations which are separate entities to the University, but are characterized by the University having control through its capacity to dominate decision making, directly or indirectly, in relation to financial and operating policies of the entity. Such entities may be companies, trusts, incorporated societies or partnerships.

**Council:** means the Council of Massey University.

**Director:** means a person who has capacity to influence in a material way the financial, operational and/or policy direction of the Controlled Entity whether appointed to a position of Director of a company, a Trustee of a Trust, or a Partner of a Partnership, or Office bearer of an association whether incorporated or not.

**Spin-out company:** means an entity set up to make commercial use of new technology and/or intellectual property that has been developed within the University.

**Statement of Corporate Intent:** in relation to a Controlled Entity means the agreement between the Council and the Controlled Entity in relation to performance against planned strategy.

**Audience:**

Council and University Management

**Relevant legislation:**

Companies Act 1993  
Charities Act 2005  
Education Act 1989

**Legal compliance:**

**Companies Act 1993;** Obligations of the Companies Act will apply to companies, in particular Section 208, which requires the Board to prepare and annual report, within 5 monthly after the balance date of the company; Section 209 which requires an annual report to be sent to every shareholder: Section 214 requires filing of an Annual Return with the Companies Officer Registrar.

**Charities Act 2005:** Organisations registered on the Charities Register are required under Section 40 to notify changes of business details and officers, and under Section 41 to prepare and lodge an annual return with the Charities Commission within 6 months of balance date

**Education Act 1989:** Stipulates the powers and functions of the University. In particular, it limits the nature of the activities that the University may undertake (Section 192(2)) and it limits the exercise of powers in respect of those permitted activities (Section 192(4)) unless the University is Trustee (Section 195).

**Related procedures / documents:**

Establishment and Operation of Research and Specialist Centres Policy  
Policy on Conflict of Interest and Commitment  
Formation of Spin-out Companies Policy  
Asset Disposal and Write Off Policy  
Insurance Policy

**Document Management Control:**

Prepared by: Director Risk and Assurance  
Authorised by: AVC Operations, International and University Registrar  
Approved by: Council - C18/45  
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