

## CONTROLLED ENTITIES GOVERNANCE FRAMEWORK POLICY

<b>Section</b>	Risk Management
<b>Contact</b>	Risk Management
<b>Last Review</b>	December 2013
<b>Next Review</b>	December 2016
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### 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 undertake activities that are consistent with the University's objects and functions.

Massey University has a number of entities which have been established for a variety of reasons. These include subsidiary companies, joint ventures, and other legal entities, such as Trusts. Each is a separate legal entity to the University, governed by its own Governance Board, but each entity is connected to the University financially, legally and operationally ("Controlled Entities"). Massey University also has a number of Associated Entities where investment is significant, but which are not within the scope of this policy.

This *Controlled Entities Governance Framework Policy* establishes a framework which is consistent with the University's strategic goals as described in *The Road to 2020*, and responsible governance and risk management practices, to assist Council and University Management to discharge their respective responsibilities effectively in relation to Controlled Entities.

The *Register of Controlled Entities* details those entities in which the University has a controlling stakeholder role.

The *Controlled Entities Reporting Schedule* details the annual reporting cycle that Boards of Controlled Entities must provide to Council via the Audit and Risk Committee.

### Policy

The Massey University Council is responsible for

- Approving establishment, or acquisition, and authorising the participation of the University in Controlled Entities,
- Approving appointment of Directors to Controlled Entities
- Approving the Statement of Corporate Intent of Controlled Entities that establishes the systems of control and accountability of Controlled Entities to Council,

- Monitoring and providing oversight of the activities of the Controlled Entities
- Receiving and reviewing regular reports to the Council (in a format approved by the Council) including by not limited to reports on performance against approved business strategy and performance targets of the entity, and risk, as described in the relevant Statement of Corporate Intent (SCI).
- Disposal or divestment of Controlled Entities

### **Establishment of Controlled Entities**

The Council must approve the establishment or acquisition of, and participation in, a Controlled Entity.

The Vice Chancellor will provide to the Council a preliminary proposal on the potential establishment or acquisition of a Controlled Entity, including the recommendation for the appointment of directors and officers of the Controlled Entity.

If the Council endorses the preliminary proposal, the Vice Chancellor will provide a Business Case (where required by Council) and draft Company Constitution (or equivalent) for consideration by the Audit and Finance Committee of Council, and a draft recommendation for approval by Council.

The Audit and Risk Committee of Council may seek advice from any Council member, and/or 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. If satisfied with the recommendations of management, the Audit and Risk Committee will forward to proposal to Council for approval.

Once the establishment of the Controlled Entity has been approved by Council, management will ensure that the Controlled Entity is accountable and operates within a system of internal control that allows the Council to verify and understand the appropriateness of decision making and management.

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 Massey University.

### **Reporting, Governance and Monitoring**

The Council will advise the Board of Controlled Entity of the Council reporting requirements for University Controlled Entities as described in the *Controlled Entities Reporting Schedule*.

In addition to routine reporting requirements to Council, the Board of the Controlled Entity must advise the University through the Vice-Chancellor (or AVC and University Registrar as the Vice-Chancellors Delegate) of any threatened or potential legal action involving the Controlled Entity.

Massey University Management (through the Office of the AVC and University Registrar) must maintain a *Register of Controlled Entities*, and will report this Register to Council at least annually.

### **Requirements of Controlled Entities**

Controlled entities of the University must operate high standards of governance in order to meet stakeholder expectations, and to meet legal obligations.

The Constitution of the Controlled Entity 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. It must comply with any obligations imposed by law from time to time including but not limited to, for example;

- Activities must be appropriate for Universities and undertaken without disadvantage to the core activities of the University
- No borrowing or otherwise raising funds other than from the University
- No issuing of shares, or options to acquire shares to other parties
- No acting as an Agent of the University, or making warranties or representations on the part of the University without authority
- No committing University resources into contractual obligations with other parties without University authority
- Entering into joint ventures without prior University permission
- No providing loans or benefits to directors, other than directors fees (if any)
- No investing funds except in accordance with University Policy
- No mortgaging or charging assets without University consent
- No disposing of tangible assets above \$5,000 without University consent
- No disposing of intangible assets without University consent
- Such other matters as may be determined by Council

#### **Requirements of the Board of the Controlled Entity**

The Board of the Controlled Entity is responsible for

- Managing the Controlled Entity with particular regard to the best interests of the University, and in accordance with law and relevant policy and procedure.
- Maintaining oversight of the performance of the Controlled Entity, including the performance of any subsidiaries and/or spin-out companies of the Controlled Entity
- Documenting and implementing a clear business strategy and performance criteria against which outcomes are reported on the basis agreed in the *Controlled Entities Reporting Schedule*.
- Adopting a risk management policy and process which is consistent with the Massey University Risk Management Framework.
- Establishing systems to monitor and review the effectiveness of internal controls within the Controlled Entity
- Providing an annual report to the Vice-Chancellor by 31<sup>st</sup> March each year. The report would normally include
  - o a review of performance of the past year as measured against objective
  - o planned performance for the next year
  - o overview of the operating environment
  - o key risks and risk management strategies
  - o annual audited financial statements
  - o list of directors and officers of the entity

#### **Definitions:**

**Associated entity:** means an entity over which the University has significant influence by virtue of investment, but that is neither a subsidiary nor an interest in a joint venture

**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), Joint Venture Agreement, and Partnership Agreement

**Controlled Entity:** means organisations which are separate entities to the University, but over which either the University has control or is deemed by the Council or the Vice-Chancellor to have control, through its capacity to dominate decision making, directly or indirectly, in relation to financial and non-financial matters pertaining to the entity. Such entities may be incorporated, such as companies, trusts, joint ventures, or unincorporated, such as partnerships, Centres of Research Excellence CoRES, or joint ventures.

**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.

**External:** in relation to a Controlled Entity means that person involved in the governance of the entity who is not a staff member or student of the University.

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

**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:**

[Policy on Conflict of Interest and Commitment](#)

Register of Controlled Entities

Controlled Entities Reporting Schedule

[Formation of Spin-out Companies Policy](#)

**Document Management Control:**

Prepared by: Risk Manager

Authorised by: AVC Operations, International and University Registrar

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