

Policy Title: **Controlled Entities**

Policy Owner: **Chief Financial Officer**

Keywords: **1) Controlled Entity 2) ECU Holdings 3) Director**

Policy Code: **PL296 (ad098)**

[Intent](#)

[Organisational Scope](#)

[Definitions](#)

[Policy Content](#)

[Accountabilities and Responsibilities](#)

[Related Documents](#)

[Contact Information](#)

[Approval History](#)

1. INTENT

The intent of this policy is to:

- (a) provide direction on the establishment, abolishment or change in control of any Controlled Entity; and
- (b) ensure that each Controlled Entity is managed appropriately and meets its stated objectives.

This policy is to be read in conjunction with the University's policy PL069 – Joint Arrangements.

2. ORGANISATIONAL SCOPE

This policy applies to all Controlled Entities and staff of the University.

3. DEFINITIONS

TERM	DEFINITION
Board	Governing body of a Controlled Entity
Control	Whenever the University: (a) owns, directly or indirectly through subsidiaries, more than half of the voting power of an entity unless, in exceptional circumstances, it can be clearly demonstrated that such ownership does not constitute control; or (b) owns half or less of the voting power of an entity when there is: (i) power over more than half of the voting rights by virtue of an agreement with other investors; (ii) power to govern the financial and operating policies of the entity under a statute or an agreement; (iii) power to appoint or remove the majority of the members of the board of directors or equivalent governing body and control of the entity is by that board or body; or (iv) power to cast the majority of votes at meetings of the board of directors or equivalent governing body and control of the entity is by that board or body <i>(in accordance with the definition provided by AASB 127 - Consolidated and Separate Financial Statements)</i>
Controlled Entity	A legal entity under the Control of the University
Director	A director of a company or a member of a Board
ECU Holdings	The wholly owned Controlled Entity of the University, bearing the name "ECU Holdings"
ECU Holdings Subsidiary	A Controlled Entity of ECU Holdings
Governance and Reporting Guidelines (ECU Holdings)	The correspondingly named guidelines appended to this Policy
Governing Documentation	Documentation which formally prescribes the governance of any Controlled Entity

4. POLICY CONTENT

4.1 Approvals for Controlled Entities

4.1.1 Only the University Council may approve :

- i. the establishment or abolition of any Controlled Entity; or
- ii. any acquisition or disposal of interests which would change Control of a Controlled Entity,

except where permitted under paragraph 4.1.2 below.

4.1.2 ECU Holdings may establish, abolish or change Control of one or more ECU Holdings Subsidiaries provided that:

- i. doing so complies with the Governance and Reporting Guidelines (ECU Holdings);
- ii. the activities of the ECU Holdings Subsidiary remain within the scope of ECU Holdings' purpose as defined by ECU Holding's Governing Documentation;
- iii. there is no material increase in risk to ECU Holdings as a result of establishing the ECU Holdings Subsidiary; and
- iv. prior approval has been obtained from the Vice-Chancellor.

4.2 Approval Process

4.2.1 Proposals to establish, abolish or change Control of a Controlled Entity, other than an ECU Holdings Subsidiary, will be submitted by the Vice-President (Corporate Services) via the Resources Committee to the University Council.

4.2.2 Any such proposals will:

- i. have a business plan which meets the information requirements necessary for a justifiable decision to be made on the proposal;
- ii. demonstrate compliance with the 'Voluntary Code of Best Practice for the Governance of Australian Public Universities' as jointly published by Universities Australia and University Chancellors Council;
- iii. include a rationale for the decision on the appropriate legal structure;
- iv. have obtained the prior endorsement of both the University's Chief Financial Officer and General Counsel; and
- v. address all relevant risk management arrangements.

4.3 Board

4.3.1 The Board of each Controlled Entity must:

- i. possess the experience and expertise necessary to provide proper stewardship and control of that entity;
- ii. adopt a board charter against which its performance as a whole, and the

- performance of its individual Directors, is regularly assessed;
- iii. adopt and regularly evaluate a written statement of its own governance principles;
- iv. be of an effective composition, diversity, size and commitment to adequately discharge its responsibilities and duties;
- v. actively promote ethical and responsible decision making; and
- vi. establish and maintain a code of conduct for directors, employees and contractors in undertaking their business, consistent with the University's Code of Conduct.

4.4 Nomination and Appointment of Directors

- 4.4.1 The Council shall appoint or remove any Directors of any Controlled Entity (including ECU Holdings) other than the Directors of ECU Holdings Subsidiaries, subject to consideration and recommendation by its Governance and Nominations Committee.
- 4.4.2 Council authorises ECU Holdings to appoint or remove any Director of an ECU Holdings Subsidiary, in accordance with any applicable Governing Documentation.
- 4.4.3 The Board of each Controlled Entity will include a Director who is not a member of the Council or one of its committees, staff or student of the University, in accordance with the Voluntary Code, unless it is determined that such an appointment is not feasible by:
 - i. Council in respect of any Controlled Entity other than ECU Holdings Subsidiaries; or
 - ii. the Board of ECU Holdings in respect of ECU Holdings Subsidiaries.
- 4.4.4 In order to ensure appropriate breadth of representation as well as retention of corporate memory, periods of appointment should be staggered and overlap where practicable.
- 4.4.5 Directors' remuneration, if any, shall be approved for:
 - i. Directors of any Controlled Entity (including ECU Holdings), other than the Directors of ECU Holdings Subsidiaries, by Council on the recommendation of its Remuneration Committee; and
 - ii. Directors of ECU Holdings Subsidiaries by ECU Holdings.
- 4.4.6 The remuneration of any Director must have consideration given to:
 - 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.

4.5 Governing Documentation

4.5.1 The Governing Documentation of a Controlled Entity must:

- i. be approved by University Council unless the Controlled Entity is an ECU Holdings Subsidiary;
- ii. provide that the Controlled Entity must comply with a policy of Edith Cowan University which:
 - (a) states that it applies to the Controlled Entity; or
 - (b) ECU Holdings determines should apply in respect of ECU Holdings Subsidiaries or Council determines should apply in respect of any other Controlled Entity; and
- iii. be substantially in accordance with any prescribed templates, including matters which are to be reserved to the University.

4.5.2 ECU Holdings and ECU Holdings Subsidiaries must comply with all applicable requirements of the Governance and Reporting Guidelines (ECU Holdings).

4.5.3 The Governing Documentation for any ECU Holdings Subsidiary must require that subsidiary's compliance with the Governance and Reporting Guidelines (ECU Holdings).

4.6 Performance Monitoring and Reporting

4.6.1 Each Controlled Entity must:

- i. have a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones;
- ii. adopt and apply the University's Strategic Plan unless and until another strategic plan is approved to supersede it;
- iii. review its business plan and performance against the business plan and report on the outcomes of those reviews, to the extent required;
- iv. assess the risk to the University in relation to its activities on a regular basis, consistent with the University's Risk Management Framework;
- v. establish controls and processes to ensure that there is effective financial oversight and compliance with all relevant policies of the University;
- vi. in consultation with the Chief Financial Officer, document and maintain its approach to managing its short and long term funding requirements and capital structure;
- vii. promptly advise the Chief Financial Officer of any material changes to its business plan;
- viii. promptly respond to and comply with any reasonable information requests from Edith Cowan University;
- ix. submit an annual report (including financial statements) on its activities to Council through the Resources Committee each financial year in the form

prescribed by any procedures established under this Policy and in accordance with paragraph 4.6.2 below; and

- x. comply with all relevant registration, legislative and reporting obligations required to maintain the operations of the Controlled Entity.

4.6.2 ECU Holdings must obtain the approval of Council (through the Resources Committee) for its:

- i. annual budget (operational and capital); and
- ii. strategic plan and any related whole-of-enterprise purpose, vision or values statements, goals (and associated timelines) or priorities and key performance indicators.

4.6.3 The Resources Committee may:

- i. determine procedures which further specify the form and content of any report required under this clause; and
- ii. require any Controlled Entity to produce further reports on any matters as the Resources Committee considers appropriate.

4.6.4 The Vice-Chancellor may, if satisfied that it is appropriate to do so, provide a letter of support to satisfy any external audit requirements.

4.7 Legal or Financial Concerns

4.7.1 Any person or Controlled Entity who reasonably suspects that a Controlled Entity may be at risk of insolvency, must notify the University's Chief Financial Officer immediately.

4.7.2 A Controlled Entity must immediately advise the University's General Counsel of any threatened or potential legal action involving the Controlled Entity.

4.7.3 The statutory obligations of Directors are set out in the Corporations Act (or equivalent local legislation, if the relevant Controlled Entity is not domiciled in Australia) and appointees are personally responsible for understanding and satisfying their obligations.

5. ACCOUNTABILITIES AND RESPONSIBILITIES

In relation to this policy, the following positions are responsible for the following:

Policy Owner

The Chief Financial Officer has overall responsibility for the content of this policy and its operation at the University.

University Staff and Controlled Entities

The University's staff and Controlled Entities must comply with the content of this policy and to seek guidance in the event of uncertainty as to its application.

Council

The University Council is responsible for approving and amending the Controlled Entities Policy,

Governance and Reporting Guidelines (ECU Holdings).

6. RELATED DOCUMENTS:

- 6.1 Voluntary Code of Best Practice for the Governance of Australian Universities.
- 6.2 Governance and Reporting Guidelines (ECU Holdings).

7. CONTACT INFORMATION

For queries relating to this document please contact:

Policy Owner	Chief Financial Officer
All Enquiries Contact:	Mr Brad Francis
Telephone:	+61 8 6304 2434
Email address:	b.francis@ecu.edu.au

8. APPROVAL HISTORY

Policy Approved by:	University Council
Date Policy First Approved:	2 May 2019 (UC193/05)
Date last modified:	None
Revision History:	None
Next Revision Due:	Three (3) years from first approval
TRIM File Reference	SUB/95065

Governance and Reporting Guidelines (ECU Holdings)

(Established under the Controlled Entities Policy)

1. Introduction

ECU Holdings Pty Ltd, as trustee for the ECU Hold Trust (**ECU Holdings**), has been established to manage the University's interests in ECU Holdings Subsidiaries (all capitalised terms have the definition given by the Controlled Entities Policy) and entrusted assets. It does so under a framework of oversight, accountability, resources, and reporting for its subsidiaries.

The purpose of this document is to set out the operational details of the governing and reporting guidelines for ECU Holdings and the ECU Holdings Subsidiaries.

2. Responsibility of ECU Holdings Subsidiary Boards

The Board of Directors for each ECU Holdings Subsidiary must develop strategic objectives for its activities, the achievement of the planned results, the protection and efficient use of its resources, compliance with laws and applicable University governance frameworks, and meeting reporting obligations to ECU Holdings and the University.

3. Appointment of Directors of ECU Holdings Subsidiaries

- a) ECU Holdings Subsidiaries may nominate for consideration by ECU Holdings prospective candidates for appointment as Directors.
- b) All prospective candidates should be appropriately qualified and experienced. Nominations should explain the relevant skills of the candidate and how that person is expected to contribute to the board having regard to the need for the board to comprise an appropriate balance of relevant skills and diversity.
- c) ECU Holdings may appoint any appropriate candidate to an ECU Holdings Subsidiary. ECU Holdings may refuse any candidate proposed by an ECU Holdings Subsidiary or appoint a candidate(s) not proposed by an ECU Holdings Subsidiary.
- d) Appointments as Directors will usually be for three years and the term for non-executive directors will not usually exceed two terms and, for the chair, three terms. Appointment terms may be staggered or varied in duration to maintain board continuity.
- e) ECU Holdings Subsidiaries require approval from ECU Holdings for the appointment of a Chief Executive Officer as a Director. ECU Holdings will appoint the chair of each ECU Holdings Subsidiary Board.
- f) ECU Holdings will set the remuneration of the directors of each ECU Holdings Subsidiary.
- g) ECU Holdings will provide appointment letters for chairs and Directors of ECU Holdings Subsidiaries. Each ECU Holdings Subsidiary will provide all Directors

(including the chair) with a copy of the entity's constitution, and directors' and officers' insurance arrangements, and will arrange for a director's and officer's deed of indemnity, insurance and access.

- h) ECU Holdings may remove Directors of ECU Holdings Subsidiaries at any time prior to the completion of their term of appointment.
- i) Each Board should seek to include at least one Director who is not a member of the Council, staff or student of the University.
- j) A Director of an ECU Holdings Subsidiary is required to act in the best interests of: any ECU Holdings Subsidiary of which they are a Director; ECU Holdings; and Edith Cowan University, provided that the Subsidiary is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

4. Director's induction and performance

- a) Each ECU Holdings Subsidiary will provide an appropriate induction and continuing development for its Directors. Inductions should include information on the entities performance and accountability obligations.
- b) Directors are expected to attend all scheduled board meetings.
- c) On an annual basis the Board of each ECU Holdings Subsidiary will assess its performance as a board and the Board will assess the performance of the chair. Chairs are expected to confirm that this process has been followed and raise any areas of concern with the chair of the Board of ECU Holdings.

5. Chief Executive Officer

- a) The Board of each ECU Holdings Subsidiary will appoint its own Chief Executive Officer, but in recognition of the critical role the chief executive plays in the operations and success of a ECU Holdings Subsidiary, each ECU Holdings Subsidiary will consult with ECU Holdings on the selection process and preferred candidate, and will obtain prior written approval from ECU Holdings on their terms of appointment.
- b) In addition to 5a) above, the chair of an ECU Holdings Subsidiary must advise the ECU Holdings Board in advance of any proposed changes to its Chief Executive Officer's remuneration package before such changes are confirmed or the Chief Executive Officer is notified.

6. Board conduct

- a) The Boards for ECU Holdings Subsidiaries will implement effective governance frameworks to support their role and responsibilities and report on their implementation in the annual report.

- b) ECU Holdings Subsidiary Boards must establish and maintain a code of conduct for Directors, employees and contractors in undertaking their business, consistent with the Code of Conduct of the University.
- c) Directors of any ECU Holdings Subsidiary must:
 - (i) exercise sound judgment in all ECU Holdings Subsidiary matters; and
 - (ii) comply with all of the University's relevant policies including its Code of Conduct policy, Conflict of Interest policy and any relevant disclosure obligations.

7. Approvals for Controlled Entities

The proposed establishment, abolition or Change in Control of any ECU Holdings Subsidiary must be approved by the ECU Holdings Board.

8. Corporate planning and reporting

- a) ECU Holdings Subsidiaries must provide ECU Holdings with the corporate planning and reporting documents for comment and review by the dates contained in Table 1.
- b) Activities of ECU Holdings Subsidiaries must be informed by the University's Strategic Plan and any successor to it.
- c) ECU Holdings Subsidiaries will engage with ECU Holdings to assist ECU Holdings in their review of the planning and reporting documents.
- d) The Directors of an ECU Holdings Subsidiary are to keep ECU Holdings informed of the operations of the entity and its subsidiaries and must disclose any information that may have a material effect on the value or performance or reputation of the entity, ECU Holdings or the University.
- e) ECU Holdings Subsidiaries must consult with ECU Holdings prior to entering into any transaction which the entity believes may incur a potentially significant liability, including without limitation any exposure to legal liability above \$5 million, or which could result in a material change of business. ECU Holdings will provide a timely response to such consultation.
- f) In the event that a ECU Holdings Subsidiary forms the view that it requires additional financial support or funding, the entity shall present a business case to ECU Holdings to support such funding or support, including an analysis of its financial position, and projected return (financial or non-financial).

9. Amendment to these Guidelines

Any amendment to these Governance and Reporting Guidelines (ECU Holdings) is subject to approval by the University's Council.

Table 1

Document	Description	Due date
Corporate Plan, Budget, Reforecast and Funding Requirements	Outline of strategy, objectives, environmental assumptions, key risk and success factors, resources, financial targets and projections, incremental funding requirements (if any), proposed capital expenditure, non-financial performance measures, rolling 3 year cash flow forecast.	Dates to be advised annually.
Progress reports	Monthly progress reports which include analysis of financial performance YTD against budget and updated annual forecast, key achievements over the past month, key objectives for the following month, commentary on emerging or critical issues or changes to risk factors that may have a material impact on performance and outlook statement.	Monthly (no later than 14 days after month end) ¹
Management accounts at ECU year end	Management accounts to for the financial year to date as at 31 December.	Annually, within 10 business days of 31 December
Annual financial statements	Annual financial statement information (in the form of a template provided by ECU) to enable consolidated financial statements to be prepared for both ECU and ECU Holdings.	Annually, within 60 days of the end of its financial year
Risk Appetite Statement	The report is to be consistent with the requirements of ECU's Integrated Risk Management Framework.	Annually, within 60 days of the end of its financial year

¹ Refer template in Annexure 1

Annexure 1 Template for Monthly Reporting

1. Financial Performance – Year To Date

	20xx YTD Actual	20xx YTD Budget	Difference	%	20xx STLY Actual	Difference	%
Revenue	–	–	–	x%	–	–	x%
Expenditure	–	–	–	x%	–	–	x%
YTD Result	–	–	–		–	–	

Key points to note from the year-to-date financial performance are as follows:

- XXXXX
- XXXXX
- XXXXX
- XXXXX

2. Financial Performance – Annual Forecast

	20xx Annual Forecast	20xx Annual Budget	Difference	%	20x-1 Annual Actual	Difference	%
Revenue	–	–	–	x%	–	–	x%
Expenditure	–	–	–	x%	–	–	x%
YTD Result	–	–	–		–	–	
At Xxx 20xx	–	–	–		–	–	

Key points to note in relation to the current annual forecast are as follows:

- XXXXX
- XXXXX
- XXXXX
- XXXXX

3. Achievements

Key achievements over the past month are as follows (please list no more than 5):

- XXX
- XXX
- XXX
- XXX
- XXX

(Insert Entity Name Here)

Monthly Report for the Board of ECU Holdings

For the month ended xx xxxx 20xx

4. Objectives

Key objectives for the next month are as follows (please list no more than 5):

- XXX
- XXX
- XXX
- XXX
- XXX

Key objectives for the next three months are as follows (please list no more than 5):

- XXX
- XXX
- XXX
- XXX
- XXX

5. Critical Issues

Critical issues affecting the company and the way they are being dealt with are as follows (please list no more than 5):

- XXX
- XXX
- XXX
- XXX
- XXX

6. Cash Flow Forecast

Please note any material changes to the cash flow forecast.