

Policy Title: **Controlled Entities**

Policy Owner: **Chief Financial Officer**

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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:

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8. APPROVAL HISTORY

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