



## Controlled and Related Entities Policy

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In developing this policy the University had regard to the provisions of section 40B(1)(b) of the Human Rights Act 2004 (ACT).

### 1. PURPOSE:

1.1. The purpose of this Policy is to establish the governance framework for the University of Canberra (University) controlled and related entities.

1.2. The [University of Canberra Act 1989](#) (ACT) (**the Act**) allows the University to participate in, acquire or establish an entity including a company, joint venture or trust whose objectives are consistent with the Act.

### 2. SCOPE:

2.1. This Policy applies to Council, staff, affiliates, and controlled entities, including the staff and affiliates of controlled entities.

### 3. PRINCIPLE:

#### 3.1. Controlled entity

3.1.1. A controlled entity is a separate legal body which the University has the capacity to determine the outcome of decisions about the entity's business and financial arrangements.

3.1.2. A company is a controlled entity if the University's interest in the company allows it to:

3.1.2.1. control the composition of the board of directors of the company;

3.1.2.2. cast, or control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of the company; or

3.1.2.3. control more than 50 per cent of the issued share capital of the company (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

3.1.3. A joint venture is a controlled entity if the University's interest allows it to control the

material acts and things done during the venture.

3.1.4. A trust is a controlled entity if the University's interest allows it to control the material acts and things done while carrying out the terms of the trust.

*Example:* if the University is the sole beneficiary of a trust, or where it has a beneficial interest of more than 50 per cent in the trust, then the trust is a controlled entity. Likewise, if the University is the sole trustee of a trust, it will be taken to be a controlled entity.

### 3.2. Related entity

3.2.1. An entity is a 'related entity' if the University holds an interest in the entity and Council appoints University representatives to the governing board.

### 3.3. Controlling interest under Auditor-General Act 1996 (ACT)

3.3.1. The University has a controlling interest in an entity under the [Auditor-General Act 1996 \(ACT\)](#) even if the University does not have the ability to control the board, votes or share capital as contemplated in section 3.1, if no other entity holds a greater interest in the company.

3.3.2. For each entity in which the University has a controlling interest:

3.3.2.1. the University must try to ensure that the auditor-general under the *Auditor-General Act 1996 (ACT)* is appointed auditor for the entity (pursuant to section 100 of the [Financial Management Act 1996 \(ACT\)](#));

3.3.2.2. the University must facilitate the auditor-general under the Auditor-General Act 1996 (ACT) to conduct a performance audit in respect of the entity (pursuant to section 12 of the Auditor-General Act 1996 (ACT)); and

3.3.2.3. the entity's constitutional documents should contain provisions to ensure the entity does not do anything that the University itself could not do (pursuant to section 100 of the *Financial Management Act 1996 (ACT)*).

### 3.4. Treasurer approval required for significant events and activities

3.4.1. Additional requirements apply to the University's participation in significant events and activities in accordance with section 99 of the *Financial Management Act 1996 (ACT)* and section 35 of the *University of Canberra Act 1989 (ACT)*.

3.4.2. The University must not without the prior written approval of the ACT Treasurer form or take part in a corporation, trust or joint venture that is considered a significant event or activity.

3.4.3. The University's participation in a corporation, trust or joint venture will be considered a significant event or activity if it satisfies the requirements set out in section 101 of the *Financial Management Act 1996 (ACT)*, summarised below:

3.4.3.1. it is significant when interpreted in accordance with accounting standards relating to materiality;

3.4.3.2. a document published by the University identifies it as significant;

3.4.3.3. an agreement between the University and the relevant Minister or Treasurer identifies it as significant; or

3.4.3.4. it is prescribed under the Territory's financial management guidelines.

### 3.5. Objectives of a controlled entity to be consistent with University functions

3.5.1. Section 37 of the Act provides that the University may form or participate in the formation of a company or enter into a joint venture, provided that the objectives or purposes of the company or joint venture are consistent with the functions of the University.

3.5.2. Without limiting subsection 3.5.1, these objectives may include:

- 3.5.2.1. providing facilities for study, research or education;
- 3.5.2.2. undertaking research, development, consultancy or other services for commercial organisations, public bodies or individuals;
- 3.5.2.3. aiding or engaging in the development or promotion of University research or the application or use of the results of university research;
- 3.5.2.4. preparing, publishing, distributing or licensing the use of literary or artistic work, audio or audio-visual material or computer software;
- 3.5.2.5. seeking or encouraging gifts to the University or for the purposes of the University; and
- 3.5.2.6. promoting drama, music, or the visual arts.

### **3.6. Establishing a controlled or related entity**

- 3.6.1. Pursuant to its reserved powers, Council must approve the establishment of a controlled entity.
- 3.6.2. Proposals to establish a controlled entity must be submitted to Council via the Finance Committee.
- 3.6.3. Council must be notified of the establishment of a related entity.

### **3.7. Board and management**

- 3.7.1. Council must approve all director appointments to the governing board of a controlled entity, and the termination of any appointments, based on the advice of the governing board of the controlled entity.
- 3.7.2. Where appropriate, Council will appoint at least one independent director to the governing board of each controlled entity.

### **3.8. Reporting and notification requirements**

- 3.8.1. The governing board of a controlled entity must report to the Finance Committee on any matter which may have a material effect on their financial position and their ability to meet budget and business plan objectives and outcomes, as soon as these matters come to light.
- 3.8.2. The governing board of a controlled entity must report to or notify Council or the Finance Committee as required in the [Procedure](#).
- 3.8.3. Council may, in its discretion, require (as a condition of participation) a related entity to notify or report to the Finance Committee in the same manner and frequency as a controlled entity.
- 3.8.4. Council must be notified of the annual financial statements of a related entity.
- 3.8.5. Finance committee may require a related entity to give updates to Council on any matter which may have a material impact on the related entity's financial position, ability to meet budget, business plan objectives and outcomes.

### **3.9. Winding up**

- 3.9.1. Pursuant to its reserved powers, Council may approve the winding up of a controlled entity.
- 3.9.2. Proposals to wind up a controlled entity must be submitted to Council via the Finance Committee.
- 3.9.3. Council must be notified of the winding up of a related entity.

### **3.10. Policies**

3.10.1. Controlled entities must comply with any University policies and procedures that the University may require.

3.10.2. Governing boards may determine by resolution to adopt the policies of the University.

#### 4. RESPONSIBILITIES:

WHAT	WHO	RESPONSIBILITIES
This Policy	Council	Consistent with the Reserved Powers of Council and the Delegations of Authority Policy, Council is responsible for approving and making alterations to this policy.
Controlled entity	Council	Consistent with the Reserved Powers of Council and the Delegations of Authority Policy, Council is responsible for: <ul style="list-style-type: none"> <li>• approving the establishment, acquisition or additional investment in a controlled entity;</li> <li>• approving the wind-up, deregistration or sale of a controlled entity;</li> <li>• approving the remuneration payable to directors of a controlled entity, based on the advice of the entity's governing board;</li> <li>• approving amendments to the constitution of a controlled entity; and</li> <li>• receiving annual financial statements of a controlled entity.</li> </ul>
Related entity	Council	Notifications to Council are required in connection with: <ul style="list-style-type: none"> <li>• the establishment of a related entity;</li> <li>• the winding up of a related entity; and</li> <li>• the annual financial statements of a related entity.</li> </ul> <p>Council is responsible for appointing University representatives to the governing board</p>

#### 5. LEGISLATION:

5.1. This Policy is governed by the following legislation:

5.1.1. [University of Canberra Act 1989 \(ACT\)](#)

5.1.2. [Financial management Act 1996 \(ACT\)](#)

5.1.3. [Auditor-General Act 1996 \(ACT\)](#)

5.2. In developing this Policy, the University had regard to:

5.2.1. the [Voluntary Code of Best Practice for the Governance of Australian Universities](#); and

5.2.2. the provisions of section 40B(1)(b) of the [Human Rights Act 2004 \(ACT\)](#).

#### 6. SUPPORTING INFORMATION:

6.1. Documents related to this policy are:

6.1.1. [Delegations of Authority Policy](#)

6.1.2. [Controlled and Related Entities Procedure](#)

## 7. DEFINITIONS:

Terms	Definitions
Constitutional documents	Are documents which define the existence of the entity and regulate the structure and control of that entity and its members, such as: <ul style="list-style-type: none"><li>• a constitution;</li><li>• memorandum of association;</li><li>• replaceable rules; and</li><li>• trust agreements.</li></ul>
Controlled entity	Has the meaning given in section 3.1 of this Policy.
Controlling interest	Has the meaning given in section 3.3 of this Policy and otherwise in accordance with section 5 of the <a href="#">Auditor-General Act 1996 (ACT)</a> .
Director(s)	Are members of the governing board of an entity, who have certain powers and duties relating to the management and administration of the controlled entity.
Entity	Includes companies, joint ventures, and trusts.
Governing board	Is the governing board of directors of an entity.
Related entity	Has the meaning given in 3.2 of this Policy.