

# Controlled Entities Policy

## Section 1 - Purpose

(1) This Policy is enacted to ensure compliance by the Charles Sturt University (the University) with section 19A and Division 3 of Part 4 of the [Charles Sturt University Act 1989](#) and Protocol 10 of the National Governance Protocols for Higher Education Providers made pursuant to the [Higher Education Support Act 2003](#) of the Commonwealth.

### Application

(2) This Policy and Procedure applies to all employees.

### Authority

(3) This Policy and Procedure is made pursuant to the authority granted to the Council under section 32 of the Act and pursuant to the Statutory Guidelines approved by the Minister under Division 3, Part 4 of the Act.

## Section 2 - Glossary

(4) For the purpose of this Policy and Procedure, unless the contrary intention appears:

- a. Acquisition - means the acquisition, for payment or not, of a controlled entity as well as an interest in a controlled entity.
- b. Act - means the [Charles Sturt University Act 1989](#)
- c. By-law - means the [Charles Sturt University By-law 1995](#)
- d. Committee - means the Finance, Audit and Risk Committee established by the University Council.
- e. Company - means an entity organised and registered under the [Corporations Act 2001](#) of the Commonwealth, or the corporations law of a country or state outside Australia, for economic purposes and trading as a business, whether for profit or not, and includes a company limited by guarantee, a company limited by shares or an unlimited company.
- f. Constituting documents - includes a constitution, articles of association, terms of reference or similar document establishing the controlled entity.
- g. Control - means the capacity of the University to dominate decision making, directly or indirectly, in relation to the financial and operating policies of an entity so as to enable that other entity to operate with it in pursuing the objectives of the University.
- h. Controlled entity - has the same meaning as set out in Australian Accounting Standard AAS 24: Consolidated Financial Reports and Accounting Standard AASB 1024 : Consolidated Accounts and includes:
  - i. an entity which the University wholly owns; or
  - ii. an entity in which the University holds a partnership interest or other legal or beneficial interest of any kind (including a shareholding interest or membership interest); and
  - iii. the University has control of the entity.
- i. Council - means the Council of Charles Sturt University established under section 9 of the [Act](#).
- j. Employee - means the full-time, part-time or casual members of the staff of the University or a controlled entity

of the University, including contractors, honorary and adjunct staff.

- k. Entity - means and incorporated or unincorporated legal, administrative, or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives and includes a:
  - i. company;
  - ii. body corporate;
  - iii. partnership;
  - iv. association; and
  - v. trust.
- l. Governing board - includes a board of directors, council, management committee or similar body responsible for the governance of a controlled entity.
- m. Minister - means the New South Wales Minister for Education and Training, or if there is not such a Minister, the ministerial officeholder responsible for higher education in New South Wales in accordance with the Act
- n. Registrar - means Registrar of Commercial Activities appointed under the Statutory Guidelines.
- o. Rules - means a rule made in accordance with section 32 of the [Act](#) and the [By-law](#), and includes a policy, procedure, guideline or regulation approved by the Council, or by a person or body delegated by the Council, under section 20 of the [Act](#).
- p. Secretary - means the Secretary to the Council appointed under the By-law.
- q. Statutory Guidelines - means the [Commercial Activities Guidelines](#) approved by the Minister under Division 3 of the Act.

## **Roles and Responsibilities**

(5) The Council is responsible for:

- a. approving the establishment or acquisition of a controlled entity;
- b. approving rules for the establishment, acquisition and management of controlled entities by the University;
- c. ensuring the University complies with the [Statutory Guidelines](#) with respect to the establishment, acquisition, management, sale or winding-up of a controlled entity;
- d. approving and monitoring systems of control and accountability in relation to controlled entities;
- e. ensuring that a controlled entity does not exercise any function or engage in any activity that the University is not authorised by or under the Act to exercise or engage in, except to the extent that the Council is permitted to do so by the Minister under the Act;
- f. ensuring, as far as is reasonably practicable that the governing bodies of controlled entities:
  - i. possess the expertise and experience necessary to provide proper stewardship and control;
  - ii. comprise, where possible, at least some members who are not members of the Council or members of staff, or students, of the University;
  - iii. adopt and evaluate their own governance principles;
  - iv. document, and keep updated, a corporate or business strategy containing achievable and measurable performance targets; and
- g. establishing requirements regarding reporting by governing bodies of controlled entities to the Council.

(6) The Vice-Chancellor is responsible for:

- a. monitoring the day to day management and performance of controlled entities of the University;
- b. conducting assessments in accordance with this Policy and Procedure; and
- c. reporting to the Council in relation to the operation of controlled entities.

(7) The governing board of a controlled entity is responsible for managing the controlled entity with particular regard to the best interests of the University and in accordance with the law and this Policy and Procedure.

### **Relationship to Statutory Guidelines**

(8) This Policy establishes the requirements for the approval of the establishment and acquisition of controlled entities pursuant to the [Statutory Guidelines](#).

(9) A controlled entity established or acquired under this Policy and Procedure is deemed to have been established or acquired in accordance with the Statutory Guidelines.

## **Section 3 - Policy**

(10) The Council is responsible for the control and management of the affairs of the University.

(11) Controlled entities may be established or acquired by the University for a variety of reasons including:

- a. to provide a more appropriate governance framework for the management of specialised functions of the University under the Act;
- b. to separate the management of non-core functions of the University from core functions;
- c. to provide for a level of independence in the decision making or operation of a function of the University;
- d. to enable the University to establish a more flexible operational environment for the purpose of the management of specific functions of the University;
- e. to enable, in accordance with the requirements under the [Act](#), the University to engage in functions that the Minister views would be more appropriately managed through a separate entity; or
- f. to act as a holding entity or trustee for specific activities of the University.

(12) Controlled entities operate independently of the University and may have duties and responsibilities imposed by law, in addition to any duties, functions or limitations imposed under the Act.

(13) As independent decision making bodies, controlled entities are capable of exposing the University to increased levels of risk and liability for their decisions and activities.

(14) The Council must accordingly takes reasonable steps to ensure that controlled entities operate at all times in the best interests of the University and are accountable to the University as the owner or part-owner, in addition to meeting their own stated objects.

(15) The University acknowledges the need to allow the controlled entity to independently manage those functions in accordance with the objects approved by the University in its constituting documents.

(16) Where the University does not view that it is desirable or necessary for the functions managed by a controlled entity to be independent of the University, or that the governance or management of University functions by the controlled entity is inadequate or exposes the University to inappropriate levels of risk, the University must take steps to sell or wind-up the controlled entity.

(17) Where the University has approved the establishment or acquisition of a controlled entity, the University must ensure that the controlled entities are accountable and operate within the a system of internal controls that allows the Council to verify and assure the appropriateness of decision making and management.

(18) Subject to the requirements of this Policy and Procedure, a controlled entity will operate independently of the University and will manage its own operations in accordance with the [Act](#), relevant laws, its constituting documents and, where applicable, any agreement with the University.

(19) Consistent with the obligations of controlled entities under the Act, controlled entities of the University must operate in accordance with high standards of corporate governance which ensure accountability and meets community expectations as identified in this Policy and Procedure, the law and any other rule of the University.

## Section 4 - Procedures

### Part A - Establishment or Acquisition of a Controlled Entity

#### Application and authority

(20) Part A applies to the establishment or acquisition of a new controlled entity by the University.

#### Limitations on establishment or acquisition of controlled entities

(21) An employee must not for, on behalf of or in the name of, the University establish or acquire a controlled entity otherwise than in accordance with this Policy.

#### Vice-Chancellor may propose establishment or acquisition of a controlled entity

(22) The Vice-Chancellor may submit a proposal to the Committee for the establishment or acquisition of a controlled entity.

#### Content of Proposal

(23) For the purpose of compliance with the [Statutory Guidelines](#), a proposal under clause 22 shall include the following:

- a. the method and appropriateness of establishment, acquisition or incorporation;
- b. the constituting documents for the controlled entity or a draft of the constituting document for the controlled entity, including its primary objects, functions and areas of activity;
- c. the requirements for registration under any relevant Act and how those requirements will be met;
- d. the proposed method for protection of University intellectual property, including trademarks, logos and business names;
- e. a due diligence assessment (where the controlled entity is to be acquired);
- f. a feasibility assessment including:
  - i. a business plan identifying the appropriateness of the establishment, acquisition or incorporation to the mission and strategic objectives of the University;
  - ii. a financial plan and cost/benefit analysis setting out the total resource implications of establishing or acquiring the controlled entity including establishment costs, compliance costs, operating costs and relevant taxation costs where appropriate;
  - iii. an assessment of the taxation implications;
  - iv. the identification of the proposed governance and administrative arrangements (including as to legal structures and audit procedures) including the responsibilities and duties of the governing board, management responsibilities, monitoring arrangements, reporting arrangements and the distribution of powers between the shareholders and board;
  - v. proposals regarding restrictions to be placed on the functions and activities of the controlled entity and functions and activities which will require shareholder approval; and
  - vi. a risk assessment and management plan, including mechanisms for the limitation of the liability of the University;
- g. an assessment of the skills, knowledge and experience required by members of the governing board of the

controlled entity relative to its objects and functions;

- h. the number and names of people proposed for appointment as members of the governing board and how they meet the skills, knowledge and experience requirements;
- i. proposals regulating and imposing requirements concerning the delegation by the Council of any of its functions under the Act in connection with the controlled entity;
- j. the application of University rules to the operation of the controlled entity; and
- k. such other requirements as may be determined by the Committee from time to time.

### **Committee to Consider Proposal from the Vice-Chancellor**

(24) The Committee shall consider the proposal submitted by the Vice-Chancellor under clause 23 and may:

- a. recommend to the Council that the establishment, acquisition or incorporation of the controlled entity is approved (subject to such terms and conditions as the Committee thinks fit);
- b. recommend to the University Council that the establishment, acquisition or incorporation of the controlled entity is not approved; or
- c. request the Vice-Chancellor to re-submit the proposal addressing such issues or matters as the Committee determines.

(25) In considering a proposal under clause 23, the Committee shall satisfy itself that:

- a. the establishment or acquisition of the entity is in the best interests of the University;
- b. the proposal complies with the [Act](#), [By-laws](#), the Rules and this Policy and Procedure.

### **Council to Consider Recommendations from the Committee**

(26) The Council shall consider a recommendation submitted by the Committee under clause 24 to 25 and may:

- a. approve the establishment, acquisition or incorporation of the controlled entity (subject to such terms and conditions as the Council thinks fit);
- b. decline to approve the establishment, acquisition or incorporation of the controlled entity; or
- c. request the Vice-Chancellor to re-submit the proposal to the Committee addressing such issues or matters as the Council determines.

(27) In considering a recommendation under clause 24 to 25, the Council shall satisfy itself that:

- a. the establishment or acquisition of the entity is in the best interests of the University;
- b. the proposal complies with the [Act](#), [By-laws](#), the Rules and this Policy and Procedure.

## **Part B - Requirements for Controlled Entities**

### **Application**

(28) Part B applies to controlled entities established or acquired after the commencement of this Policy and Procedure.

### **Requirements Relating to the Constituting Documents**

(29) The constituting documents of the controlled entity should address the following:

- a. specify the objects of the controlled entity, which shall not be inconsistent with the objects of the University as set out in the Act; and

- b. include relevant restrictions on the functions of the controlled entity and impose such restrictions as may be necessary to ensure compliance by the University with the Act or any other Act which may include restrictions on the:
  - i. establishment or acquisition of a controlled entity or other incorporated body;
  - ii. acquisition of an interest of 20% or more in another entity;
  - iii. borrowing funds other than from the University;
  - iv. issuing shares, or options to acquire shares, to other parties;
  - v. acting, or purporting to act, as agents or partners of the University or make warranties or representation on behalf of the University;
  - vi. committing University resources into contractual arrangements with other entities;
  - vii. entering into joint ventures or partnerships;
  - viii. providing loans;
  - ix. providing benefits to directors, other than directors' fees;
  - x. charging, pledging or otherwise encumbering its assets;
  - xi. incurring any debt or contingent liability;
  - xii. providing any guarantee;
  - xiii. investing any funds; or
  - xiv. such other matters as may be determined by the Council; and
- c. provide for the appointment of members of the governing board by the Council, not inconsistent with the [Act](#), in such proportion as may be desirable or necessary for the management of the University's risk;
- d. provide that the Council approve the appointment, and termination of appointment, of the chairperson of the governing board;
- e. require the appointment of a secretary or company secretary by the Secretary to the Council;
- f. require the controlled entity to keep accounting records in accordance with relevant requirements under the Act, or any other Act, and prepare financial statements in accordance with the standards required by the University from time to time;
- g. require approval of the Council for any amendments to the constituting documents of the controlled entity; and
- h. require Council approval for the sale or winding-up of the controlled entity.

### **Requirements Relating to the Governing Board**

(30) The constituting documents of the controlled entity shall specify the role and responsibilities of the governing board and that the governing board is responsible, and accountable to the University, for:

- a. oversight of the controlled entity's performance;
- b. documenting a clear corporate and business strategy which reports on and updates annually the controlled entity's long-term objectives;
- c. adopting an annual business plan containing achievable and measurable performance targets and milestones;
- d. adopting a risk assessment and management policy in accordance with the standards required by the University and overseeing risk management and risk assessment;
- e. approving and monitoring systems of control and accountability consistent with the requirements established by the Council;
- f. establishing policies and procedural principles consistent with legal requirements and community expectations;
- g. regularly reviewing its own performance (in light of its functions and obligations imposed by or under this Policy and Procedure, the [Act](#) or any other Act);
- h. adopting and annually evaluating a written statement of its own governance principles; and
- i. such other matters as the Council may determine from time to time with respect to a particular controlled

entity.

### **Requirements relating to the Statutory Guidelines**

(31) The governing board shall comply with Division 5 of the [Statutory Guidelines](#).

## **Part C - Reporting by Controlled Entities**

### **Responsibilities of the Governing Board**

(32) The governing board of a controlled entity shall be responsible for its control and management and is accountable to the University as owner or part-owner for the controlled entity's performance.

### **Responsibilities of the Vice-Chancellor**

(33) The Vice-Chancellor shall monitor the day to day performance of controlled entities and shall report to the Council or the Committee on any matter where the Vice-Chancellor, acting reasonably, forms the view would constitute a significant benefit, risk or concern to the University.

### **Submission of a Corporate and Business Strategy**

(34) The governing board of a controlled entity of the University will submit to the Committee a draft corporate and business strategy every five years.

(35) In developing the draft corporate and business strategy, the governing board shall have particular regard to the identified priorities and objectives of the University.

(36) The Committee shall refer the draft corporate and business strategy for each controlled entity of the University to the Council including any recommendations from the Committee to the Council.

(37) The Council may make recommendations to the controlled entity with respect to the draft corporate and business strategy and the governing board shall take the recommendations into account in approving the corporate and business strategy for that period.

### **Submission of Annual Business Plan**

(38) The governing board of a controlled entity of the University will submit to the Committee no later than 31 October in each year a draft business plan for the next calendar year.

(39) In developing the draft business plan, the governing board shall have particular regard to the identified priorities and objectives of the University.

(40) The Committee shall refer the draft business plan for each controlled entity of the University to the Council including any recommendations from the Committee to the Council.

(41) The Council may make recommendations to the controlled entity with respect to the draft business plan and the governing board shall take the recommendations into account in approving a business plan for that year.

### **Quarterly Performance Report by Controlled Entities**

(42) A controlled entity shall submit a quarterly report to the Secretary on the performance of the controlled entity against the approved business plan ('Quarterly Performance Report').

(43) The Quarterly Performance Report shall be submitted to the Secretary no later than 10 working days after the end of each quarter.

(44) For the purpose of clause 43, the end of each quarter shall be:

- a. 31 March;
- b. 30 June; and
- c. 30 September.

(45) The Committee may approve an extension of time to submit reports under this clause.

(46) The Committee may make recommendations to the Council with respect to the performance of controlled entities arising from the report.

### **Annual report for Controlled Entities**

(47) The governing board of a controlled entity will provide an Annual Report for the year ending 31 December no later than 30 January each year to the Committee which should address the following:

- a. high level outcomes for the controlled entity against its annual business plan for the year;
- b. a report on risk management for the entity, including a copy of its risk assessment and management plan;
- c. a report on the management performance of the controlled entity;
- d. any significant changes in the governance or operations of the controlled entity;
- e. any significant matters or issues in relation to the controlled entity; and
- f. compliance with the [Statutory Guideline](#), this Policy and Procedure and other relevant University rules, relevant laws, policies and standards.

(48) The Committee may make recommendations to the Council arising from the report.

(49) The Committee may establish additional requirements for reports under this clause.

### **Annual Financial Statements**

(50) The governing board of the controlled entity shall submit an annual audited financial statement to the Secretary for presentation to the Committee no later than 30 March in each year.

### **Consolidation of Financial Accounts**

(51) The financial accounts of each controlled entity will be reported in the consolidated accounts of the University to enable the University to meet its legal reporting obligations in relation to fully owned entities.

### **Regular Financial Reporting for On-budget entities**

(52) Where the financial accounts of the controlled entity are managed by the Division of Financial Services of the University, the Vice-Chancellor shall ensure that the monthly and quarterly financial statements for each controlled entity are reported to the Executive Committee of Council, or the Council, in accordance with the rules and resolutions of the Council.

### **Audit**

(53) Unless otherwise determined by the NSW Auditor General, the NSW Auditor General shall be the external auditor of each controlled entity.

(54) A controlled entity will be subject to internal audit arrangements of the University, unless otherwise approved by the Council.



## Part D - Committee

### Delegation

(55) The Committee has such functions as may be necessary or convenient for giving effect to this Policy and Procedure in accordance with section 20 of the Act.

### Assessment of Skills, Knowledge and Experience Required for Membership of the Governing Board

(56) The chairperson of the governing board shall conduct an annual assessment of the skills, knowledge and experience required by members of the governing board consistent with the processes set out in the Governance (Criteria for Appointment to the Council) Rule 2005.

(57) The chairperson shall submit draft criteria with respect to the skills, knowledge and experience required for appointment to the governing board to the Committee no later than 30 June in each year.

(58) The Committee shall consider the criteria submitted under clause 57 and shall recommend to the Council:

- a. approval of the criteria recommended by the chairperson, if the Committee is satisfied that the criteria are appropriate for the purpose of the proper stewardship and control of the controlled entity; or
- b. approval of amended criteria as recommended by the Committee.

(59) The Council shall consider the recommendations from the Committee and shall:

- a. approve recommendation from the Committee; or
- b. approve the recommendation subject to such amendments as the Council thinks fit.

(60) In recommending or approving the criteria for appointment, the Committee and the Council respectively shall:

- a. ensure that the governing board has the skills, knowledge and experience necessary to provide proper stewardship and control of the entity relative to its objects, functions and corporate and business strategy; and
- b. comprises, where possible, at least some members who are not members of the Council or members of staff, or students, of the University.

(61) Appointments to the governing board of a controlled entity shall be in accordance with the criteria approved by the Council, unless otherwise provided by the constituting documents of the controlled entity.

### Amendment to Constituting Documents

(62) A proposal to amend the constituting document of a controlled entity shall be forwarded to the Committee by the governing board for review.

(63) The Council may approve an amendment to the constituting document of an entity on recommendation from the Committee.

## Part E - Registration of Controlled Entities

### Controlled Entities to be Registered

(64) The requirements set out in Division 6 of the Statutory Guidelines apply to the registration of controlled entities.

(65) The secretary to the governing board shall be the responsible for registering and updating the Register of Commercial Activities in accordance with the Statutory Guidelines.

(66) The governing board shall maintain such records as may be required under the law and the [Statutory Guidelines](#).

## **Part F - Review of Controlled Entities**

### **Assessment of Control of Entities**

(67) The Chief Financial Officer, shall conduct an assessment on behalf of the Vice-Chancellor no later than 31 December in each year of any entity which the University owns or part-owns to determine:

- a. whether the University controls the entity; or
- b. a controlled entity has ceased to be within the control of the University,

within the meaning set out in the Public Finance and Audit Act 1983 Australian Accounting Standard AAS 24: Consolidated Financial Reports and Accounting Standard AASB 1024: Consolidated Accounts.

(68) Where an entity comes within the control of the University, the entity shall be deemed a controlled entity for the purpose of the Act and the [Public Finance and Audit Act 1983](#) and shall be subject to this Policy and Procedure.

(69) The Council, the Committee or the Auditor General of NSW may request the Vice-Chancellor to undertake an assessment in accordance with clauses 67 to 73 at any other time.

(70) The Vice-Chancellor shall present a report to the Committee on the outcomes of the assessment under this clause.

(71) The Committee shall consider the report and may make recommendations to the Council.

### **Annual Risk Review**

(72) The Vice-Chancellor shall conduct and submit to the Committee an annual review of the risk to the University of its ownership, or part-ownership, of each controlled entity no later than 31 October in each year.

(73) The Committee shall consider the review and shall make recommendations to the Council.

### **Triennial Review**

(74) The Committee will conduct a review of each controlled entity at least every three years ("the review date").

(75) The Vice-Chancellor will recommend to the Committee the appointment of a person or panel to conduct the review appropriate to the nature of the controlled entity.

(76) The terms of reference for the review shall be:

- a. to assess the risk to the University of its ownership or part-ownership of the controlled entity;
- b. to assess the management and financial performance of the controlled entity;
- c. to evaluate the continuing viability of the controlled entity;
- d. to review any significant changes in the controlled entity;
- e. to assess the appropriateness and effectiveness of risk management strategies and plans;
- f. to evaluate opportunities for future development of the controlled entity;
- g. to assess compliance with the Statutory Guideline, this Policy and Procedure and other relevant University policies and procedures, relevant laws, policies and standards; and
- h. to make any finding or recommendations regarding the controlled entity.

(77) The Committee may establish additional or alternative terms of reference with respect to particular controlled

entities from time to time.

(78) The Committee may approve Guidelines for risk assessment with respect to controlled entities.

(79) The report of the review, including any findings and recommendations, will be provided to the chairperson of the governing board of the controlled entity for comment prior to referral to the Committee.

(80) The review (including comments) will be completed within 3 months of the review date, unless otherwise approved by the Committee.

(81) A copy of the review will be forwarded to Committee.

(82) The Committee shall, in light of the findings of the review, recommend to Council that the controlled entity continue without change, continue with recommended changes, be wound up or cease operation.

(83) Where a controlled entity is sold or wound up prior to the date of review a report will be prepared by the Vice-Chancellor assessing the extent to which the controlled entity achieved the objects set out in the proposal for its establishment or acquisition.

(84) Nothing in clauses 74 to 83 will prevent the Internal Auditor or an external auditor, from conducting a review of a controlled entity at any time. Where a review is conducted under this clause a copy of the report of the Internal Auditor or external auditor will be supplied to the Committee.

## **Part G - Savings and Transitional Provisions**

### **Council to use best endeavours to ensure conformity by existing controlled entities**

(85) The Council must use its best endeavours to negotiate with the governing boards of existing controlled entities of the University to bring them into conformity with the requirements of this Policy and Procedure.

(86) The Council acknowledges that the governing board of University controlled entities have a duty to act in the best interests of the controlled entity and that the final determination of the scope and extent of compliance with respect to clause 85 is a matter for the governing board.

### **Application to Entities that come within Control After Commencement of this Policy and Procedure.**

(87) The Council will use its best endeavours to negotiate with the governing board of an entity that comes within the control of the University after the commencement of this Policy and Procedure to ensure conformity with the requirements of this Policy and Procedure.

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	12th May 2014
<b>Review Date</b>	27th February 2020
<b>Approval Authority</b>	University Council
<b>Approval Date</b>	10th May 2014
<b>Expiry Date</b>	Not Applicable
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