

# BOARD CHARTER

## SECTION 1. INTRODUCTION

### 1 Purpose of Charter

- 1.1 The purpose of this Board Charter (*Charter*) is to inform directors of the Company on key information including information relating to the governance of the Company.

### 2 Terms used

2.1 In this Charter –

- *Approvals Threshold* means the threshold for approvals referred to in clause 1(e) of this Charter set out in the Reference Schedule;
- *Board* means the board of directors of the Company;
- *Charter* means this board charter containing a statement of governance principles and other relevant information for the Company;
- *Chair* means the chair of the Board;
- *Company* means the Company named in the header of this document;
- *Companies Coordinator* means the person holding this or a like position and responsible for the oversight of JCU Controlled Entities;
- *Companies Guide* means the Guide to Controlled Entities contained *Annexure A* hereto.
- *Controlled Entity* means a controlled entity of JCU;
- *HSE* means health safety and the environment and incorporates obligations under the Work Health and Safety Act;
- *JCU* means James Cook University;
- *JCU Act* means the James Cook University Act 1997;
- *JCU Council* means the Council of JCU, the governing body of JCU;
- *Manager* means the senior manager of the Company by whatever description;
- *Vice Chancellor* means the Vice Chancellor of JCU.

### 3 JCU Controlled Entity

- 3.1 The Company is a controlled entity of JCU. This term is explained in the Companies Guide. An entity (parent entity-JCU) controls a second entity (the Company) if the parent entity has the capacity to determine/influence the outcome of decisions and policies being considered by the second entity.
- 3.2 For all Controlled Entities, JCU is the sole beneficial shareholder.

## **4 Key Information**

4.1 See Reference Schedule Part 1

## **5 Company Constitution**

5.1 The Company Constitution sets out the objectives for the Company and the rules for operation of the Company. These include provisions for the calling of shareholders' and directors' meetings, regulating conflicts of interests, and the appointment of directors. The Company's constitution contains a number of provisions particular to JCU Controlled Entities including that:-

- No shares are to be issued or transferred without the approval of JCU Council;
- The Company must not borrow or grant security over the assets or undertaking of the Company, other than via a financial lease, without the approval of the Deputy Vice Chancellor Services and Resources;
- Every director must have a Certificate of Approval of the Vice Chancellor;
- The Vice Chancellor may appoint one of the directors to be chair of the Board;
- The Board may appoint another director to fill a casual vacancy, subject to consulting with the Vice Chancellor, the director having a Certificate of Approval, and the maximum number of directors not being exceeded;
- The Company may by ordinary resolution remove a director.
- The Business Manager for the Company must not be a board member;
- JCU may at any time inspect accounting records and other documents of the Company and obtain information in relation to the affairs of the Company;
- The Company must provide reports to JCU when reasonably required by JCU;
- The Company must provide copies of board minutes, key documents, management reports and financial reports to JCU on a periodic basis;
- Key Documents include business plans on a three (3) year rolling basis;
- The Company must adopt policies to cover risk management and work health and safety and any others nominated by JCU;
- The Company must once each year evaluate a written statement of its own governance principles;
- The Vice Chancellor may give notice to the Company of recommendations or requirements for the good governance of JCU and in such case, the Company is required to comply with such direction;
- The constitution and any amendment to the constitution must be approved by JCU Council;
- Directors must not be paid fees without the consent of JCU;
- The accounts of the Company must be audited to meet the requirements of the Queensland Audit Office.

## **6 Contact Information**

6.1 See Reference Schedule Part 2

## **7 Directors and Officers Liability Insurance**

- 7.1 All directors of JCU Controlled Entities are covered by JCU's directors' and officers' liability insurance, key details of which are, as at the Issue Date- See Schedule 3.
- 7.2 In the case that a claim is made against a director or officer of a JCU Controlled Entity, it is essential that JCU Insurance Office is immediately notified of the claim and its details – [insurance@jcu.edu.au](mailto:insurance@jcu.edu.au)

## **8 Indemnity of Directors**

- 8.1 The Company's constitution provides that directors are entitled to be indemnified out of the assets of the Company as provided for in the relevant provision.
- 8.2 In addition, the Indemnity, Insurance and Legal Claims Policy provides a framework under which directors, may, on application, apply to JCU and be indemnified by JCU – see <https://www.jcu.edu.au/policy/corporate-governance/indemnity,-insurance-and-legal-claims-policy>

## **9 Information**

- 9.1 Sources of information for directors include-
- JCU's website;
  - The Companies Guide, located on the JCU website
  - Australian Institute of Company Directors website;
  - Governance Institute of Australia website;
  - JCU's Companies Coordinator contacted via [companies@jcu.edu.au](mailto:companies@jcu.edu.au).

## **SECTION 2. CHARTER**

### **1 Board Responsibilities (see Companies Guide, section 3.1)**

- 1.1 The Board adopts its responsibilities that it –
- 1.1.1 Provides leadership and sets the strategic objectives of the Company;
  - 1.1.2 Oversees management's implementation of the Companies strategic objectives and level of performance;
  - 1.1.3 Ensures the Board has the right complement of skills;
  - 1.1.4 Appoints, and where necessary replaces, the Business Manager and other designated key staff;
  - 1.1.5 Approves the operating budget and the major capital expenditure in excess of the Approvals Threshold;
  - 1.1.6 Oversees the integrity of the Company's accounting and reporting systems, including via the annual audit process;
  - 1.1.7 Ensures the Company has the proper systems to record, manage, and report on risk;
  - 1.1.8 Oversees the necessary reporting in relation to-
    - a) JCU in areas requested by JCU, including in relation to claims, possible claims, risk, and health safety and the environment; and, where required-
    - b) Relevant bodies in accordance with legislation;
  - 1.1.9 Approves the Company's remuneration framework; and

1.1.10 Monitors and reviews the Company's governance practices.

*The Board notes –*

1.1.11 That while its primary focus is that of the Company, this focus needs to be considered in the context of what is in the best interests of JCU; and

1.1.12 Directors of the Company may act in the best interests of JCU in accordance with section 187 of the Corporations Act if the constitution allows, the directors act in good faith and in the best interests of JCU and the Company is not insolvent at the time the Directors act and the Company does not become insolvent because of the Director(s) actions. (See Companies Guide section 2.2).

## **2 Roles of Chair and Secretary**

2.1 These roles are in accordance with those described in sections 3.4 and 3.6 of the Companies Guide.

## **3 Management Responsibilities**

3.1 Subject to the terms of any delegations by the Board, and any written directions by the Chair on behalf of the Board, the Board delegates to the Business Manager the authority and responsibility for the management of the business of the Company.

3.2 The Business Manager is responsible for presenting an organisational structure to the Board for approval and this organisational structure is reviewed at least annually.

3.3 The Business Manager meets with an executive management team on a regular basis with a view to optimizing operational and financial performance, achieving legislative compliance and managing risk of all kinds.

3.4 The Business Manager provides a written report to each meeting of the Board and arranges for other relevant reports to be provided to the Board as required, including those required by JCU. Reports by the General Manager include reports on financial performance against budget, enterprise risk and HSE, utilising JCU's Riskware systems for HSE and enterprise risk.

3.5 The Business Manager is responsible for implementing strategies and policies approved by the Board.

3.6 The Business Manager is responsible for ensuring that the Board has the information in a form, timeframe and quality to allow directors of the Company to effectively discharge their responsibilities and duties.

## **4 Delegations (Companies Guide, section 3.3)**

4.1 The Board delegates authority via delegations which are approved by the Board;

4.2 The Board records its delegation in a Table of Delegations and reviews its delegations at least annually;

4.3 Any table of Board delegations is attached as Schedule 1.

## **5 Directors Responsibilities**

### **5.1 Commitment**

5.1.1 Each Director must commit the time necessary to discharge effectively their role as Director.

5.1.2 All Directors are entitled to be heard at all Board meetings and should bring an independent judgment to bear in decision-making.

## 5.2 Code of conduct

### 5.2.1 Directors have adopted the following standards of conduct which is based on common law and statutory duties -

- c) Directors will act honestly, in good faith and in the best interests of the Company as a whole.
- d) Directors have a duty to use care and diligence in fulfilling the functions of office and exercising powers attached to that office.
- e) Directors will use the powers of office for proper purpose, in the best interests of the Company as a whole.
- f) Directors must recognise that the primary responsibility is to the Company, but they should, where appropriate, have regard to the interests of JCU to the extent permitted by law.
- g) Directors should not make improper use of information acquired as a Board member, and acknowledge that they may be liable for any loss arising out of a breach of this obligation.
- h) Directors should not take improper advantage of the position of Board member, and acknowledge that they may be liable for any loss arising out of a breach of this obligation.
- i) Directors should properly disclose and manage any conflict of interests which may arise between their own interests, direct or indirect, and those of the Company.
- j) Directors have an obligation to be independent in judgment and actions, and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board.
- k) Confidential information received by Board member in the course of the exercise of Directorial duties remains the property of the Company and it is improper to disclose, unless that disclosure has been authorized by the Board, or unless required by law.
- l) Directors should not engage in conduct likely to bring discredit upon either the Company or JCU.

## 5.3 Confidentiality

### 5.3.1 All deliberations, decisions and activities of the Board are confidential unless expressly stated by the Chair or, in the absence of the Chair, any other person presiding over a meeting of the Board

## 5.4 Disclosure of conflict of interests

### 5.4.1 At each Board meeting (including meetings convened by teleconference or other form of electronic communication), the Chair must seek declarations of conflicts interests from all Directors present or participating.

### 5.4.2 A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the conflict of interest including the nature and extent of the interest and how it relates to business of the Company. The notice must be given at a Board meeting as soon as practical after the Director becomes aware of their conflict of interest.

- 5.4.3 The details must be recorded in the minutes of the meeting.
- 5.4.4 The Director is responsible for disclosing conflicts of interest and for keeping the disclosure up to date.
- 5.4.5 The Company secretary must retain all details of interests declared.

#### 5.5 Restrictions on voting

- 5.5.1 A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting, or vote on the matter, unless the Directors who do not have a material personal interest in the matter have passed a resolution that-
  - a) identifies the Director, the nature and extent of the Director's interest in the matter how it relates to business of the Company ; and
  - b) states that those Directors are satisfied that the interest should not disqualify the Director from being present when the matter is discussed and/or voting on the matter.

#### 5.6 Access to independent advice

- 5.6.1 The Board may obtain independent professional advice to assist in the proper exercise of its powers and responsibilities.
- 5.6.2 A Director may obtain independent professional advice to assist them in the proper exercise of powers and discharge of duties as a Director provided that the Director has obtained prior written approval from the Chair, or if the Director is the Chair, prior approval from the Board. The Chair may agree that the cost will be paid by the Company, or if the Director seeking advice is the Chair, the Chair must seek agreement from the Board or JCU for the cost to be paid by the Company.
- 5.6.3 Any advice paid for by the Company will be immediately disclosed to the whole Board.

#### 5.7 Access to information

- 5.7.1 Directors are entitled to request and receive such additional information as they consider necessary to support informed Board decision-making.
- 5.7.2 Any Director has the authority to seek any information they require from the Business Manager or Secretary and such persons must comply with such requests. Any significant issues raised by a Director in relation to a process covered by this paragraph is to be forwarded to the Chair for appropriate action.

### 6 Risk and HSE

- 6.1 Risk and HSE matters are recorded, monitored and managed using JCU's Riskware systems – see clause 1.1.7

## **7 Board Composition**

- 7.1 The composition and membership of the Board is set out in the Company constitution.
- 7.2 The Board reviews its composition annually to ensure that it has the requisite skills.

## **8 Board Meetings**

- 8.1 A schedule of board meetings for each calendar year is distributed at the commencement of each year. The board is to meet calendar monthly of each year and not less than four (4) times each year.
- 8.2 An agenda with supporting material is distributed at least five (5) business days before the meeting.
- 8.3 Board members notify the Company Secretary if they are not attending, and if they are attending the place and manner of participation.
- 8.4 Members may attend board meetings in person, or by phone or video-conference.
- 8.5 With the approval of the Chair, persons may be invited to attend the board meeting as an observer or as a guest presenter.
- 8.6 The Manager is invited to attend a meetings of the Board and provides a report on operational matters to each meeting of the Board. The Manager receives the agenda for board meetings, exclusive of any material in which the Manager has an interest.
- 8.7 At each meeting of the Board, directors declare if they have a conflict of interest. At the first meeting of the board in each calendar year, directors who are employees of JCU disclose their role and this is taken as a standing disclosure for the year ahead.
- 8.8 The quorum for board meetings is set out in the company constitution and in the Reference Schedule.
- 8.9 With the approval of the Chair, resolutions may be passed by circulating resolution of all directors. Circulating Resolutions are not a suitable process for business of the Board where the subject matter is contentious or it is known that there are varying views held by individual board members, such as to warrant the item of business being discussed.
- 8.10 Minutes of meetings are finalized within 14 days of the meeting and confirmed by the Chair. After this, minutes along with financial statements and any key documents such as business plans, are forwarded to [companies@jcu.edu.au](mailto:companies@jcu.edu.au) for distribution to Finance Committee. After any necessary discussion about the wording of the minutes, the resolution of the Board is that they are adopted as a true and correct record of the meeting.

## **9 Board Committees and Advisory Bodies**

- 9.1 The Board has established the Committees listed in the Schedule 2.
- 9.2 Where the Committee has terms of reference, these are available from the Company secretary.
- 9.3 The role of all committees is advisory only to the Board.
- 9.4 The chair of each committee is set by the Chair in consultation with the Board.
- 9.5 Minutes of each committee meeting are provided to the Company Secretary to be included in the board agenda for each meeting.
- 9.6 The Board may join with JCU in the appointment of advisory bodies such as Clinical Governance Committees. In such cases the minutes of such committees are provided to the Board via the Company Secretary.

## **10 Review of Board Performance**

10.1 The Board reviews its performance annually.

## **11 Audit and End of Year**

11.1 The Company is a controlled entity of JCU.

11.2 Accordingly the audit process for the Company is governed by arrangements for the audit of JCU.

11.3 The Company participates in JCU's End of Year process, including an End of Year Report on Company Matters.



## SCHEDULE 1 BOARD DELEGATIONS

Delegation Name	Delegation Date	Delegation Review Date	Appendix
Financial Delegations of Authority	13 June 2017	30 June 2018	Appendix A
Human Resources Delegations	13 June 2017	30 June 2018	Appendix B

## INTRODUCTION

### 1. Delegation

The power of Tropical Queensland Centre for Oral Health Pty Ltd t/a JCU Dental (JCU Dental Board) to delegate is contained in Section 14 of the Tropical Queensland Centre for Oral Health Pty Ltd constitution. *“the business of the Company shall be managed by the directors”* s14.1

The JCU Dental Board may delegate its powers to:

- An appropriately qualified member of the JCU Dental Board; or
- A committee consisting of appropriately qualified persons, but which must include one or more members of the JCU Dental Board; or
- An appropriately qualified member of JCU Dental or James Cook University Discipline of Dentistry.

However, the JCU Dental Board may not delegate its power to:

- Adopt the JCU Dental annual budget; or
- Approve spending of funds available to JCU Dental by way of bequest, donation or special grant.

These delegation powers cannot be sub-delegated.

In granting the delegation, the JCU Dental board directs:

- That all delegations must be exercised in line with all JCU Dental approved financial and human resource policies and procedures;
- That a delegation relates to a position, not to the individual in that position. Similarly, where a delegation is to a body by reference to the body's title, it relates to the body acting as a body, not to individual members of the body;
- Where any delegation is given to a holder of an office as such then, except in so far as a contrary intention appears, the power may be exercised and the duty performed by the person for the time being acting in the office;
- That a delegate may appoint another person or body to advise about the exercise of delegated authority (including decision making), however the delegate always remains responsible and accountable for the decision or action;
- The delegations granted apply only in respect of operations and functions within the responsibility span of the officer exercising the delegation and within budgetary limits, except where stated;
- In relation to Restricted Funds, delegations must be exercised in accordance with the terms and conditions governing each account;
- All Human Resources, Travel and Hospitality/entertainment related delegations and reimbursements of the delegates own expenditure are to be exercised under the principle of “one-

up” authorisation, i.e. an officer cannot exercise the delegation in relation to another officer at the same or more senior level, except where stated;

- A delegate may not exercise a delegation where this would involve a conflict of interest, such as bringing personal or financial benefit to the delegate or to a member of the delegate’s family.

## POSITIONS OF ACCOUNTABILITY

Within this instrument, delegations have been granted to the following:

1. Schedule of JCU Dental Board’s Financial Delegations of Authority – by Function	SCHEDULE 1	Approved by JCU Dental Board at its meeting of 13 June 2017
2. Amendments to Financial Delegation of Authority - Schedule 1 Item 1.3	Schedule 1 Item 1.3	Approved by JCU Dental Board at its meeting of 13 February 2018

**SCHEDULE 1****SCHEDULE OF JCU DENTAL BOARD'S FINANCIAL DELEGATION OF AUTHORITY – BY FUNCTION****PRINCIPLES GOVERNING THE EXERCISE OF FINANCIAL DELEGATIONS:**

- Delegations must be exercised within the provision of the Acts referred to in the Introduction section above, other relevant legislation, terms and conditions of granting bodies, audit requirements, budget limitations, and other JCU Dental policies and procedures.
- A financial limit on a delegation for incurring expenditure relates to the total cost of the transaction (inclusive of GST, freight and other taxes or duties etc.), not to instalments or the periodic lease amount. It also applies to the original cost price of the item not the net cost after deductions of any trade-in or the like. If the sum of the original cost plus the variation exceeds the delegated limit, then a delegate with an appropriate level of delegation authority must approve the transaction.
- Financial authorisation on documents must include (printed) the relevant delegate's name and position as shown in this document for the Delegations Register.
- The authority to approve the acquisition of goods and/or services (refer 1.1 below) and the authority to sign purchase orders (refer 1.2 below) must not be exercised by the same financial delegate.

**DELEGATIONS REGISTER**

The Delegations Register is available on the JCU Dental Share Drive and includes all staff that hold delegations for which they may exercise authority. The Delegations Register provides the definitive list of staff that holds and may exercise delegations including acting appointments, where these have been entered into the Human Resource Management System. Staff who are not entered in the Register should not exercise delegations.

**1. Expenditure (Goods and Services, Including Plant and Equipment)****1.1 Authority to approve the acquisition of goods and/or services, including plant and equipment by:**

- The authorisation of a purchase order; or
- The certification for payment of invoices not raised against JCU Dental purchase orders.

<b>Officer to Whom Authority is Delegated</b>	<b>Amount</b>	<b>Limits of Delegation (all amounts are inclusive of GST &amp; Taxes)</b>
Business Manager in consultation with Head of Dentistry	Unlimited	Upon prior approval from the JCU Dental Board.
Business Manager – JCU Dental	\$100,000	From all sources – provided the amounts are within budget limits

**1.2 Authority of sign purchase orders and purchase order amendments excluding those for:**

The purchase of Schedule 4 restricted drugs, Schedule 8 controlled drugs and Schedule 2 and 3 poisons as per the Health (Drugs and Poisons) Regulation 1996.

For the appointment of Contractors and Consultants it is recommended that these Delegations are exercised only where the proposed commercial engagement has been endorsed by:

- A contract reviewed by a suitably informed member of the JCU Board or member of the management team.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources – provided the amounts are within budget limits

**1.3 Authority to sign purchase orders for the purchase of Schedule 4 restricted drugs, Schedule 8 controlled drugs and Schedule 2 and 3 poisons as per the Health (Drugs and Poisons) Regulation 1996.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Associate Professor in General Dental Practice	Unlimited	Upon prior approval from the JCU Dental Board.
Associate Professor in General Dental Practice	\$50,000	From all sources on any single occasion – provided the amounts are within budget limits

**1.4 Incur expenditure on a JCU Dental corporate credit card for the acquisition of goods and/or services.**

[Please note: pre-approval is required for travel expenditure on a JCU Dental corporate credit card. ]

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager with Corporate Credit Card Financial/Purchasing Delegation (refer Corporate Credit Card Register)	<\$5,000	Must be exercised within prior agreed budget limits and within corporate card limits.

Business Manager with Travel Delegation (refer Corporate Credit Card Register)	<\$5,000	Pre-approval is required for travel expenditure on a JCU Dental corporate credit card.
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**1.5 Approve payment schedules (i.e. payments not supported by purchase orders or invoices) relating to accounts payable financial system transactions**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board.
Business Manager – JCU Dental	\$100,000	From all sources – provided the amounts are within budget limits.

**1.6 Approve payment schedules relating to payroll system transactions and approve payments relating to payroll, payroll tax, PAYG withholding tax, employee deductions and superannuation.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	\$200,000	From all sources

**1.7 Authority to sign agreements, contracts and schedules relating to salary packaging and approve all payments in relation to the salary packaging program.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

**1.8 Authority to approve Entertainment or payments relating to Hospitality or Entertainment expenses.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	\$5,000	Must be exercised within prior agreed budget limits

**1.9 Authority to authorise and incur legal expenditure**

- It is mandated that these Delegations are exercised only where the proposed legal advice has been approved by the JCU Dental Board.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	From all sources only with prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$20,000	From all sources

## 2. Donations and contributions (funding by JCU Dental) and refunds to external organisations

### 2.1 Approve the refunding of unexpended grant funds to the funding body.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board

### 2.2 Donation by JCU Dental of plant and equipment

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$5,000	Upon prior approval from the JCU Dental Board

### 2.3 Donation by JCU Dental of cash.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board.
Business Manager – JCU Dental	\$1,000	Must be exercised within prior agreed budget limits.

## 3. Revenue and debt write-off

**3.1 Authority to grant credit (ie raise an invoice) or raise a credit note, to an individual or organization.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

**3.2 Authority to recover an overpayment made by JCU Dental to an individual or organization (i.e. raise an invoice to recover overpayment).**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	From all sources

**3.3 Authority to approve a refund in respect of an overpayment made to JCU Dental**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$50,000	From all sources

**3.4 Authority to approve the write-off of a debt**

JCU Dental Board to be provided with a report detailing all write-offs exercised under this delegation.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$2,000	From all sources

**4. Authority to Sign Contracts and Agreements**

- The term “Agreement” in relation to this policy refers to:
  - Commercial Contracts, Leases, Licences or Finance Agreements
  - Funding Agreements – Non-Research or Teaching
  - Deed of Arrangements



- Invitations to Offer/Quote
- Standing Offer or Preferred/Sole Supplier Agreements
- Tender & Expression of Offer Documents

The delegations under Section 4 (authority to sign contracts and agreements) do not extend to matters dealt with under Section 7 (purchase, acquisition, disposal and write-off of plant and equipment).

**4.1 Authority to sign Australian and International contracts and agreements on behalf of JCU Dental, except where delegation is varied in section 4.2 to 4.11 listed below.**

\*Legal advice must be sought where such agreements are not in a standard contractual form.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

**4.2 Authority to sign contracts and agreements for expenditure (Goods and Services), excluding those for the appointment of Contractors and Consultants.**

\* Legal advice must be sought where such agreements are not in a standard contractual form.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

**4.3 Authority to sign contracts and agreements for the appointment of Contractors and Consultants**

\*All contracts must be processed and recorded and reviewed prior to authorization/signing.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

**4.4 Authority to sign sole-supplier agreements, preferred supplier agreements and standing offer agreements for the provision of goods and services.**

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental		From all sources

#### 4.5 Authority to sign agreements or contracts where the financial worth cannot be valued.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon consultation with the Chair

#### 4.6 Authority to send out proposals, submit tenders/responses to sign agreements/contracts for the provision of services by JCU Dental.

These delegations may only be exercised after appropriate legal advice.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$100,000	From all sources

#### 4.8 Maintain custody of the Seal of JCU Dental (if any)

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Company Secretary – JCU Dental		Seal to be affixed in accordance with s.127 of the Corporations Act 2001

#### 4.7 Deeds of Settlement (including Confidentiality and Non-Disclosure Agreements).

All the above mentioned documents to be made available at JCU Dental Board meetings.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Any two directors or one director and Company Secretary	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$10,000	Upon prior approval from the JCU Dental Board

**5. Approval of major capital projects and minor works projects****5.1 Approval of a Major or Minor Capital Project (with accompanying business plan).**

JCU Dental Board and James Cook University approval is required for projects in excess of \$100,000.

<b>Officer to Whom Authority is Delegated</b>	<b>Amount</b>	<b>Limits of Delegation (all amounts are inclusive of GST &amp; Taxes)</b>
JCU Dental Board for Major Capital Projects	\$100,000	From all sources Variations may be approved by the delegate, provided the amended scope and the budget of the project remain within 5% of the prior limit approved and James Cook University approval is received.
Business Manager – JCU Dental in consultation with Head of Dentistry for minor projects	<\$10,000	From all sources

**6. Purchase, acquisition, disposal and write-off of Plant and Equipment****6.1 Authority to dispose of, or write off plant and equipment.**

<b>Officer to Whom Authority is Delegated</b>	<b>Amount</b>	<b>Limits of Delegation (all amounts are inclusive of GST &amp; Taxes)</b>
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$50,000	Only to assets where JCU Dental book value is less than \$50,000 excluding intangibles

## 7. Investment transactions

### 7.1 Authority to purchase and dispose of Investments.

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
Business Manager – JCU Dental	Unlimited	Upon prior approval from the JCU Dental Board
Business Manager – JCU Dental	\$200,000	All sources

## 8. Bank Accounts

### 8.1 Authority to drawdown borrowings, sign cheques, approve electronic payment transfers and sign other banking documents.

Two signatories are required (only as registered with the bank).

Officer to Whom Authority is Delegated	Amount	Limits of Delegation (all amounts are inclusive of GST & Taxes)
<ul style="list-style-type: none"> <li>Two directors of JCU Dental who are signatories</li> <li>One Director and the Business Manager and who are signatories</li> <li>Business Manager and the Company Secretary who are signatories</li> </ul>	Unlimited	On all accounts In respect of draw downs on Borrowings Account, only upon prior approval from the JCU Dental Board
<ul style="list-style-type: none"> <li>Two directors of JCU Dental who are signatories</li> <li>One Director and the Business Manager and who are signatories</li> <li>Business Manager and the Company Secretary who are signatories</li> </ul>	\$1,000,000	On all accounts Except drawdowns on Borrowings Account
<ul style="list-style-type: none"> <li>Two directors of JCU Dental who are signatories</li> <li>One Director and the Business Manager and who are signatories</li> <li>Business Manager and the Company Secretary who are signatories</li> </ul>	\$500,000	On all accounts Except drawdowns on Borrowings Account

**8.2 Authorise the issue and withdrawal of JCU Dental corporate credit cards to/from staff members.**

<b>Officer to Whom Authority is Delegated</b>	<b>Amount</b>	<b>Limits of Delegation (all amounts are inclusive of GST &amp; Taxes)</b>
Business Manager – JCU Dental	\$5,000	Approved by JCU Dental Board

## Approval Details

Policy sponsor	Business Manager – JCU Dental
Approval authority	JCU Dental Board
Version no.	002
Date for next review	June 2018

## Modification History

<b>Version no.</b>	<b>Approval date</b>	<b>Date notification sent by Approval Authority to</b>	<b>Implementation date</b>	<b>Details</b>
001	10/02/2012		10/02/2012	Approved by JCU Dental Board
002	13/06/2017		03/07/2017	Approved by JCU Dental Board

## Human Resources Delegations

### *Policy and Procedures*

#### DELEGATIONS POLICY

#### INTRODUCTION

##### 1. Delegation

The power of Tropical Queensland Centre for Oral Health Pty Ltd t/a JCU Dental (JCU Dental Board) to delegate is contained in Section 14 of the Tropical Queensland Centre for Oral Health Pty Ltd constitution. *“the business of the Company shall be managed by the directors”* s14.1

The JCU Dental Board may delegate its powers to:

- An appropriately qualified member of the JCU Dental Board; or
- A committee consisting of appropriately qualified persons, but which must include one or more members of the JCU Dental Board; or
- An appropriately qualified member of JCU Dental or James Cook University Discipline of Dentistry.

However, the JCU Dental Board may not delegate its power to:

- Make JCU Dental statutes; or
- Adopt the JCU Dental annual budget; or
- Approve spending of funds available to JCU Dental by way of bequest, donation or special grant.

These delegation powers cannot be sub-delegated.

In granting delegation, the JCU Dental board directs:

- That all delegations must be exercised in line with all JCU Dental approved financial and human resource policies and procedures;
- That a delegation relates to a position, not to the individual in that position. Similarly, where a delegation is to a body by reference to the body's title, it relates to the body acting as a body, not to individual members of the body;
- Where any delegation is given to a holder of an office as such then, except in so far as a contrary intention appears, the power may be exercised and the duty performed by the person for the time being acting in the office;
- That a delegate may appoint another person or body to advise about the exercise of delegated authority (including decision making), however the delegate always remains responsible and accountable for the decision or action

- The delegations granted to these offices apply only in respect of operations and functions within the responsibility span of the office exercising the delegation and within budgetary limits, except where stated;
- In relation to Restricted Funds, delegations must be exercised in accordance with the terms and conditions governing each account;
- All Human Resources delegations are to be exercised under the principle of "one-up" authorisation, i.e. an officer cannot exercise the delegation in relation to another officer at the same or more senior level, except where stated.
- A delegate may not exercise a delegation where this would involve a conflict of interest, such as bringing personal or financial benefit to the delegate or to a member of the delegate's family.

#### POSITIONS OF ACCOUNTABILITY

Within this instrument, delegations have been granted to the following:

Schedule of Councils Human Resource Delegations of Authority - by Function	SCHEDULE 2	Approved by JCU Dental Board at its meeting of 13 June 2017
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## SCHEDULE 2

## SCHEDULE OF COUNCIL'S HUMAN RESOURCES DELEGATIONS OF AUTHORITY BY FUNCTION

Delegated Authority	Officers to Whom Authority is Delegated	Limits of Delegations
<b>1. Approval to fill vacancies</b>		
Approval to fill vacancies, and Approval of the commitment of funds for an employment obligation	Business Manager – JCU Dental	All JCU Dental staff within budgetary limits. All appointments outside budget require JCU Dental Board approval
<b>2. Establish new positions</b>		
Approval to establish new positions	Business Manager – JCU Dental	All JCU Dental staff within budgetary limits. All appointments outside budget require JCU Dental Board approval
<b>3. Position descriptions</b>		
Approval for position descriptions for new positions	Business Manager – JCU Dental	All JCU Dental staff other than Business Manager Position description for the Business Manager requires Board approval
<b>4. Continuing appointments</b>		
Confirmation of continuing appointments	Business Manager – JCU Dental	All JCU Dental staff within budgetary limits in consultation with Head of Dentistry.
<b>5. Appeals</b>		
Appeals against action by subordinate staff	Business Manager – JCU Dental	Actions of all JCU Dental staff.
<b>6. Business Manager Performance Review</b>		
Review and confirm performance of the Business Manager	JCU Dental Chair	
<b>7. Staff Performance Review</b>		
Review and confirm performance management reports against subordinate staff	Business Manager – JCU Dental	JCU Dental staff. Actions of all.



8. Staff Development		
General management and development of staff, including the preparation of performance appraisal reports and the approval of attendance at training courses, conferences, leave, casual appointments, etc.	Business Manager – JCU Dental	All staff, subject to relative industrial conditions and current Industrial Agreements in consultation with Head of Dentistry

\* Delegations to any employee of the company extends to any employee in an acting position

#### Approval Details

Policy sponsor	Business Manager – JCU Dental
Approval authority	JCU Dental Board
Version no.	002
Date for next review	June 2018

#### Modification History

Version no.	Approval date	Date notification sent by Approval Authority to	Implementation date	Details
001	08/12/2011		08/12/11	Approved by JCU Dental Board
002	13/06/2017		13/06/2017	Approved by JCU Dental Board

## SCHEDULE 2 COMMITTEES AND ADVISORY BODIES

Committee/ Advisory Body Name	Activity	Approval	Members
Clinical Governance Committee	To assist JCU Dental and the Discipline of Dentistry monitor and improve the quality and effectiveness of the dental services provided by the students and staff of the Discipline of Dentistry and JCU Dental. It has been established to provide oversight and monitoring of quality improvement systems and processes, incident trends, clinical risk trends, accreditation issues and other clinical issues.	Delegation approved by the board	Board Members

### SCHEDULE 3 JCU'S DIRECTORS AND OFFICERS LIABILITY INSURANCE

See Attached.

# Certificate of Currency

Aon Risk Services Australia Limited  
ABN 17 000 434 720 AFSL 241141

To Whom It May Concern

In our capacity as Insurance Brokers to **James Cook University**, we hereby certify that the under mentioned insurance policy is current.

## As at Date

25 October 2017

## Policy Information

### Policy Type

**Directors' & Officers' Liability & Employment Practices Liability Insurance**

### Insurer

Zurich Insurance Limited

### Policy Number(s)

42 EP00010 GNX

### Period of Insurance

From 4.00pm (01/11/2017) to 4.00pm (01/11/2018)

### Covering (Summary Only)

#### Directors & Officers Liability

Insurer agrees to pay on behalf of the Insured all loss for which the Insured may grant indemnification to each entity, director or officer as permitted by law, which such entity, director or officer has become legally obligated to pay on account of any claim first made against him/her during the policy period for a wrongful act committed before or during the policy period.

#### Employment Practices Liability

Legal liability of the insured entity and /or it's directors and/or officers for damages and legal costs resulting from wrongful employment practice for which a claim had first been made against the Insured and notified to insurers during the period of insurance.

### Sum Insured

Directors & Officers Liability:	\$20,000,000
Employment Practices Liability:	\$ 5,000,000

### Situation

Worldwide

## Important notes

- This certificate is a summary of cover only. Please refer to the Policy Wording and Schedule for its full terms and conditions.
- Aon does not guarantee that the insurance outlined in this Certificate will continue to remain in force for the period referred to as the Policy may be cancelled or altered by either party to the contract, at any time, in accordance with the terms of the Policy and the *Insurance Contracts Act 1984 (Cth)*.
- Aon accepts no responsibility or liability to advise any party who may be relying on this Certificate of such alteration to or cancellation of the Policy.
- This Certificate does not:
  - represent an insurance contract or confer rights to the recipient; or
  - amend, extend or alter the Policy.

## Contact Us

### CRM

Olivia Bazzoni

### Telephone

(07) 3223 7559

### Email

olivia.bazzoni@aon.com

## Policy Schedule

### Class of insurance:

Directors and Officers Liability

### Policy Number:

42 EP00010 GNX

### Policyholder:

James Cook University

### Country of incorporation:

Australia

### Period of insurance:

From 1 November 2017 at 4.00pm, local standard time

To 1 November 2018 at 4.00pm, local standard time

### Premium:

As Agreed.

### Limit of liability:

Insuring clauses 1.1, 1.2 and 1.4	\$20,000,000 in the aggregate
Insuring clauses 1.3	\$5,000,000 in the aggregate
Insuring clauses 1.5	\$20,000,000 in the aggregate
Aggregate for all claims during the period of insurance	\$20,000,000

### Additional limits for directors or officers and outside entity executives:

(i) per director or officer/outside entity executive	\$1,000,000
(ii) in the aggregate	\$10,000,000

### Sub-limits of liability:

(i) Insured organisation reputation protection expenses (Extension 2.2)	\$50,000
(ii) Emergency costs and expenses (Extension 2.4)	10% of the limit of liability
(iii) Insured Persons Protection Cover (Extension 2.8)	\$50,000
(iv) Travel and accommodation costs and living away from home expenses (Extension 3.22)	\$50,000

Zurich Australian Insurance  
Limited  
ABN 13 000 296 640  
General Insurance Division

### Deductibles:

(i) Insuring Clause 1.1	\$ NIL
(ii) Insuring Clause 1.2	\$20,000
(iii) Insuring Clause 1.3	\$50,000
(iv) Insuring Clause 1.4.1	\$ NIL
(v) Insuring Clause 1.4.2	\$20,000
(vi) Insuring Clause 1.5.1	\$ NIL
(vii) Insuring Clause 1.5.2	\$20,000
(viii) Insuring Clause 1.5.3	\$20,000
(ix) Insured organisation reputation protection expenses cover (Extension 2.2)	\$20,000

Level 15, 150 Charlotte Street  
Brisbane, QLD 4000, AUSTRALIA  
PO Box 684  
Spring Hill, QLD 4004, Australia



# Educators Directors and Officers Liability Insurance

Policy Wording



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## Important

### **Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)**

This notice is provided in connection with but does not form part of the policy. This is a 'claims made' liability insurance policy. It only provides cover if a claim is made against the insured, by some other person, during the period of insurance.

The policy does not cover prior and pending claims or investigations (subject to extension 2.3 'Continuous cover'). See exclusion 4.4 'Prior and pending' for details.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if the insured becomes aware, during the period of insurance, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the insured notifies the insurer of the matter as soon as reasonably practicable after the insured becomes aware of the occurrence or fact and before this policy expires, the insurer may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured prior to the end of the period of insurance.

If the insured, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the insured will not have the benefit of Section 40(3) of the Insurance Contracts Act 1984 (Cth) and Zurich may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the wrongful acts alleged in it may have taken place during the period of insurance.

If a claim is actually made against the insured by some other person during the period of insurance but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.



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### Continuity Date:

- |                     |                 |
|---------------------|-----------------|
| (i) Insured persons | 1 November 2004 |
| (ii) Company        | 1 November 2004 |

### Prior or pending date:

1 November 2004

### Conditions:

- |  |     |
|--|-----|
| (i) US market capitalisation increase (Condition 5.3.2)          | 10% |
| (ii) Creation and acquisition of subsidiaries (Condition 5.11.1) | 25% |

### Notifications:

The Financial Lines Claims Manager  
 Zurich Australian Insurance Limited  
 PO Box 677 North Sydney 2059  
 Or by email to:  
 The Financial Lines Claims Manager  
 fl.claims@zurich.com.au

### Policy wording:

Standard Zurich Educators Directors and Officers Liability: CGEL-010654-2015. The definitions, extensions, exclusions and conditions specified in the named policy apply, except to the extent they are hereby modified by the following endorsement(s), which are attached.

No special endorsements apply

### Issued

at Brisbane on 29 January 2018




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Zurich Australian Insurance Limited  
 ABN 13 000 296 640  
 AFS Licence No: 232507

# Welcome to Zurich

## About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

## Duty of Disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you.

You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

### If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

## Our contract with you

This policy is a contract of insurance between the *policyholder* and Zurich and contains all the details of the cover that we provide.

The policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *submission*, which is the information provided to us when applying for insurance cover;
- the most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in the policy *schedule* are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

# Zurich Educators Directors and Officers Liability Insurance – Policy Wording

Subject to payment of the *premium* set out in the *schedule*, we agree with the *insured* to provide insurance in accordance with the terms, conditions and exclusions of this policy.

## 1. Insuring clauses

### 1.1 Directors and officers liability cover

We will pay to or on behalf of an *insured person* any *non-indemnified financial loss* and *pre-claim costs* which arises from a *claim* made against such *insured person*.

### 1.2 Institution reimbursement cover

We will pay to or on behalf of the *insured organisation* any *indemnified financial loss* of an *insured person* which arises from a *claim* made against such *insured person*.

### 1.3 Insured organisation employment claims cover

We will pay to or on behalf of the *insured organisation* any *financial loss* which arises from an *employment claim* made against the *insured organisation*.

### 1.4 Outside entity executive excess cover

We will pay to or on behalf of:

1.4.1 an *outside entity executive* any *non-indemnified financial loss* and *pre-claim costs*; or

1.4.2 the *insured organisation* any *indemnified financial loss*,

which arises from a *claim* made against such *outside entity executive*.

Without detracting from the operation of condition 5.16 'Other insurance and indemnification', this coverage is available only as specific excess after exhaustion of any indemnification provided by an *outside entity*; and excess after exhaustion of any other applicable, valid and collectible Directors and Officers Liability policy or Management Liability policy.

In the event that such other Directors and Officers Liability policy or Management Liability policy is provided by us or any part of the Zurich Insurance Group (or would be provided but for the application of the retention amount, exhaustion of the *limit of liability* or failure to submit a notice of a *claim* as required), then our maximum aggregate *limit of liability* for all *financial loss* under this policy, as respects such cover, will be reduced by the amount of the limit of liability (as set forth on the policy Schedule) of the other Zurich policy provided to such *outside entity*.

### 1.5 Investigation costs cover

We will pay to or on behalf of:

1.5.1 an *insured person* any *investigation costs* which arise from an *investigation* into the conduct of such *insured person* in their capacity as such, to the extent that such *investigation costs* are *non-indemnified financial loss*;

1.5.2 the *insured organisation* any *investigation costs* which arise from an *investigation* into the conduct of an *insured person* in their capacity as such, to the extent that such *investigation costs* are *indemnified financial loss*; and

1.5.3 the *insured organisation* any *investigation costs* which arise from an *investigation* into the affairs of the *insured organisation*.

Provided such coverage shall not be afforded under 1.5.3 for any *investigation* which is in whole or in part:

(i) within the jurisdiction of; or

(ii) pursuant to the laws of,

the United States of America, or its territories or possessions, including but not limited to one conducted by the United States Securities and Exchange Commission (SEC).

This policy only covers *claims* or *investigations* first made during the *period of insurance* or the *extended reporting period*, if applicable.

## 2. Extensions

We agree to extend cover in accordance with the following extensions, subject to the terms, conditions and exclusions of this policy, unless expressly stated otherwise. No extension increases our *limit of liability*, unless expressly stated otherwise.

### 2.1 Additional limits for directors or officers and outside entity executives

Each *director or officer* and *outside entity executive* is entitled to an additional limit of liability in respect of *non-indemnified financial loss* up to the amount specified as the 'Additional limit per director or officer and outside entity executive' in the *schedule*, subject to the maximum aggregate amount specified as the Additional limit in the aggregate in the *schedule*.

This extension applies only in excess of and only after the total exhaustion of:

- 2.1.1 the *limit of liability* of this policy; and
- 2.1.2 the limit of liability of all other applicable Directors and Officers or Management Liability or indemnity Insurance policies written as specific excess policies over this policy; and
- 2.1.3 any other policy entered into by or effected on behalf of the *director or officer* or *outside entity executive* or under which the *director or officer* or *outside entity executive* is a beneficiary; and
- 2.1.4 all other indemnification for *financial loss* available to the *director or officer* or *outside entity executive*.

The *insured* must notify us of the existence of any other insurance policy issued as an excess policy above this policy and provide details of it as soon as reasonably practical.

### 2.2 Insured organisation reputation protection

We will pay to or on behalf of the *insured organisation* any *insured organisation reputation protection expenses*.

The maximum that we will pay in the aggregate for *insured organisation reputation protection expenses* is the 'Insured organisation reputation protection expenses' sub-limit of liability specified in the *schedule*.

### 2.3 Continuous cover

Notwithstanding exclusion 4.5 'Prior and pending', and subject to condition 5.12 'Non-disclosure and misrepresentation waiver', we will pay *financial loss* which arises from any *claim* or *investigations* first made against an *insured* during the *period of insurance* arising from a *prior known fact*, provided always that:

- 2.3.1 the *insured* has maintained without interruption, Directors' and Officers Liability insurance from the *continuity date* to the present date; and
- 2.3.2 neither the *claim* nor the *prior known fact* has been notified to us earlier or to any other insurer under any policy at any time; and
- 2.3.3 cover under this extension will be pursuant to the terms, conditions, and exclusions of the policy in force at the time the *insured* first became aware of the *prior known fact*, but only where such earlier policy affords no greater or wider cover in respect of the *claim* than the provisions of this policy.

### 2.4 Emergency costs and expenses

We agree, in respect of a *claim*, *personal reputation crisis* or *insured organisation crisis* and prior to final adjudication or finalisation of the *claim*, or resolution of the *personal reputation crisis* or *insured organisation crisis*, unless or until we have denied indemnity, to pay *defence costs*, *investigation costs*, *extradition costs*, *pre-claim costs*, *prosecution costs*, *civil or bail bond expenses*, *personal reputation protection expenses* and *insured organisation reputation protection expenses* in advance as they are incurred by an *insured*.

We will not rely on either exclusion 4.2 'Conduct' or exclusion 4.5 'Prior and pending' to deny indemnity or to refuse to advance such costs and expenses until the matter in question has been finally established by a court judgment or other final non-appealable adjudication.

If our prior written consent to such costs and expenses cannot reasonably be obtained by the *insured*, the *insured* may incur them without our prior written consent for a period of up to thirty (30) days from the date on which they were first incurred.

The maximum that we will pay in the aggregate for any such costs and expenses incurred without our prior written consent is the 'Emergency costs and expenses' sub-limit of liability specified in the *schedule*.

Any such costs and expenses advanced by us to an *insured* will be repaid by that *insured* in the event that the *insured* is not entitled to the payment of those costs and expenses under this policy.

## **2.5 Environmental mismanagement and pollution**

We will pay to or on behalf of:

2.5.1 any *insured person* any *non-indemnified financial loss* which arises from an *environmental mismanagement claim*; and

2.5.2 any *insured organisation* for *indemnified financial loss* which arises from an *environmental mismanagement claim*

## **2.6 Extended reporting period (ERP)**

### **2.6.1 Non-renewal**

If the policy is not renewed by us or any other insurer, the *policyholder* will be entitled to an *extended reporting period*:

- (a) of ninety (90) days at no additional premium, automatically; or
- (b) of twelve (12) months at the additional premium required by us.

The entitlement under (b) above will lapse unless the *policyholder* provides written notice of its election to take it up within thirty (30) days after the expiry of the *period of insurance*.

### **2.6.2 Change in control**

In the event of a *change in control*, the *policyholder* may purchase an *extended reporting period* of up to eighty four (84) months to commence immediately following the expiry date of the *period of insurance*. The *policyholder* must make a written request for such *extended reporting period* no later than thirty (30) days after the *change in control* and pay the additional premium required (less any unearned premium for this policy).

### **2.6.3 Insured person ERP election**

If the *policyholder* is entitled to but does not exercise an *extended reporting period* as described in 2.6.1 or 2.6.2 above, then any *insured person* will have the right to elect an *extended reporting period* of up to eighty four (84) months. The *extended reporting period* elected will only apply to *financial loss* of the *insured persons* who elected such *extended reporting period* arising from *claims* or *investigations* against such *insured persons*, and will not apply to:

- (a) any cover for the *insured organisation*;
- (b) any cover for any other *insured*; or
- (c) *indemnified financial loss*.

Only one *extended reporting period* will apply to all *insured persons* (combined) who elect the *extended reporting period* under this extension.

The right of election under this extension will lapse unless written notice of such election is given by the *insured person* to us within thirty (30) days after the *policyholder's* right to exercise the *extended reporting period* has expired. This extension for each *insured person* is conditional upon the *insured persons* paying the applicable additional premium for the *extended reporting period* within ninety (90) days.

#### 2.6.4 Unlimited ERP for retired/resigned directors and officers

If any *director or officer* retires or resigns from all of their positions as *director or officer* during the *period of insurance* or the period of any other previous Directors and Officers Liability insurance policy we issued to the *policyholder* of which this policy is a continuous renewal; and this policy:

- (a) is not renewed or replaced; or
- (b) is renewed or replaced but the renewal or replacement policy does not specifically provide cover for such *director or officer*,

then such retired or resigned *director or officer* will be entitled to an *extended reporting period* of unlimited duration at no additional premium.

This extension will not apply to any *directors or officers* who resigned or retired their positions with the *insured organisation* by reason of or after a *change in control*.

### 2.7 Indemnity costs for shareholder derivative claims

If the *insured organisation* is ordered by a court to pay the costs of claimant shareholders pursuing a derivative action against any *insured persons* (hereinafter '*indemnity costs for shareholder derivative claims*') then we will pay such costs to or on behalf of the *insured organisation*, provided that such derivative action is a *claim* otherwise covered under this policy.

### 2.8 Insured persons' protection

We will pay to or on behalf of any *insured person* (or the *insured organisation* to the extent that these costs and expenses are *indemnified financial loss*) any:

- 2.8.1 *asset and liberty protection costs and prosecution costs*;
- 2.8.2 *extradition costs* which arise from any *extradition claim* made against such *insured person*;
- 2.8.3 *personal expenses*; and
- 2.8.4 *personal reputation protection expenses* arising from a *personal reputation crisis*.

### 2.9 Joint venture

We will pay to or on behalf of any *insured person* any *non-indemnified financial loss* (and to or on behalf of the *insured organisation* for *indemnified financial loss*) in respect of any *claim* made against an *insured person* arising from any *joint venture* of the *insured organisation*.

This extension will not apply to any *US Claim* brought by or on behalf of any *joint venture* party(ies) or any vehicle established to conduct, control or manage such *joint venture*.

### 2.10 Late arising extensions

If during the *period of insurance* we:

- 2.10.1 issue a new version of our Directors and Officers Liability Insurance policy in the country where the *policyholder* is incorporated (as specified in the *schedule*); or
- 2.10.2 make available a standard endorsement providing enhancements of cover to the current version of our Directors and Officers Liability Insurance policy to our clients in the country where the *policyholder* is incorporated (as specified in the *schedule*) for no additional premium,

then the *policyholder* is entitled to the benefit of, but is not obliged to accept, such new version or standard endorsement from the date it becomes available, subject to all underwriting information or particulars as we may require.

This extension will not apply:

- (i) in the event of *financial impairment* at the time such endorsement becomes available;
- (ii) during any *extended reporting period* under extension 2.6; or
- (iii) in the event of a *change in control* before or at the time such endorsement becomes available.



### 2.11 Runoff cover for outside entity executives

If an *insured person* ceases to act as an *outside entity executive* of an *outside entity* at any time prior to or during the *period of insurance*, then cover under this policy will continue in respect of any *claim* first made against such *outside entity executive*, during the *period of insurance* or *extended reporting period* (if applicable) but only in respect of *wrongful acts* or conduct:

2.11.1 committed prior to the date such *insured person* ceased to be such *outside entity executive*; and

2.11.2 committed during the time such *insured person* was such *outside entity executive*; and

2.11.3 otherwise covered under this policy.

### 2.12 Runoff cover for past subsidiaries

If an entity ceases to be a *subsidiary* at any time prior to or during the *period of insurance*, then cover under this policy will continue to apply with respect to any *claim* made against such *subsidiary* and any *insured person* thereof first brought during the *period of insurance* or the *extended reporting period* (if applicable), but only in respect of *wrongful acts* or conduct:

2.12.1 committed prior to the date such entity ceased to be a *subsidiary*; and

2.12.2 committed during the time such entity was a *subsidiary*; and

2.12.3 otherwise covered under this policy.

### 2.13 Tax liability

We will pay to or on behalf of an *insured person* his or her personal liability for the unpaid taxes of the *insured organisation* due to the *insured organisation's financial impairment*, except for any *superannuation guarantee charge*. Provided that we will not cover any loss arising from the commission of an *insured person's* dishonest or fraudulent act or omission or any intentional violation or breach of any law or regulation.

### 2.14 Workplace health and safety

Notwithstanding exclusion 4.1 'Bodily injury / property damage', we will pay to or on behalf of an *insured person* any *defence costs* which arise from any *claim* by an *official body* against such *insured person* or *investigation costs* in respect of an *investigation* in relation to any alleged breach of workplace health and safety laws, to the extent permitted by law. This extension includes *defence costs* in relation to any *corporate manslaughter proceeding*.

## 3. Definitions

For the purposes of this policy:

### 3.1 Asset and liberty protection costs

*asset and liberty protection costs* mean reasonable and necessary fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) by an *insured person* in defending a *deprivation of asset and liberty proceeding* against such *insured person*.

### 3.2 Associated company

*associated company* means a company or legal entity in respect of which, at the commencement of the *period of insurance*, the *policyholder* owns, directly or indirectly, no more than 20% of the issued share capital or voting rights representing the present right to vote for the election of directors, but is not a *subsidiary*.

### 3.3 Bodily injury

*bodily injury* means bodily injury, sickness, disease or death of any person resulting therefrom, and will include mental anguish or emotional distress.



### 3.4 Change in control

*change in control* means an event or events occurring, with the result that any person, entity or group:

- 3.4.1 acquires more than 50% of the *policyholder's* share capital;
- 3.4.2 acquires the majority of the voting rights in the *policyholder*;
- 3.4.3 assumes the right to appoint or remove the majority of the board of directors (or equivalent position) of the *policyholder*;
- 3.4.4 assumes control pursuant to written agreement with other shareholders over the majority of the voting rights in the *policyholder*; or
- 3.4.5 merges with the *policyholder*, such that the *policyholder* is not the surviving entity.

### 3.5 Civil or bail bond expenses

*civil or bail bond expenses* means a reasonable fee or premium necessary to obtain a bond or other similar form of financial guarantee, in respect of obligations as to a specific security or collateral placed upon the *insured person* by a civil or criminal court in connection with any covered *claim*, and excluding any form of actual security or collateral itself.

### 3.6 Claim

*claim* means:

- 3.6.1 (a) a written demand for monetary damages or non-monetary or injunctive relief;
  - (b) a civil, administrative, regulatory or arbitration/mediation proceeding or suit or alternative dispute resolution proceeding, including any counter-claim commenced by the service of a statement of claim, summons or similar pleading, or receipt of filing of a notice of charges;
  - (c) a criminal proceeding alleging a *wrongful act*, including any counter claim commenced by the service of the return of an indictment, information or similar document,
- issued by a *third party* against an *insured person* for a *wrongful act*.

*claim* also means:

- 3.6.2 a written request to extend the operation of or waive any statute of limitations or contractual time-bar in respect of a *claim*;
- 3.6.3 an *extradition claim* solely with respect to extension 2.8 'Insured persons' protection' clause 2.8.2;
- 3.6.4 an *environmental mismanagement claim* solely with respect to extension 2.5 'Environmental mismanagement and pollution' and an *employment claim*; and
- 3.6.5 a *insured organisation crisis* or *personal reputation crisis*.

### 3.7 Clean up costs

*clean up costs* means reasonable professional fees, costs and expenses incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralising, detoxifying or assessing the effects of *pollutants*.

### 3.8 Continuity date

*continuity date* means:

- 3.8.1 for *insured persons*, the Continuity date for Insured persons specified in the *schedule*; and
- 3.8.2 for the *insured organisation*, the Continuity date for the Insured organisation specified in the *schedule*.

### 3.9 Corporate manslaughter proceeding

*corporate manslaughter proceeding* means a formal criminal proceeding against an *insured person* for manslaughter (including but not limited to involuntary, constructive or grossly negligent manslaughter) in their capacity as such for the *insured organisation* and directly related to the business of the *insured organisation*.

### 3.10 Deductible

*deductible* means the amounts specified as such in the *schedule* that will be the responsibility of the *insured organisation*, as applicable, to pay in respect of *financial loss* covered under the applicable Insuring clause or extension of this policy.

### 3.11 Defence costs

*defence costs* mean reasonable legal and other professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons* or *employees* of the *insured organisation* or an *outside entity*, cost of their time or costs or overheads of the *insured organisation* or an *outside entity*), incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) in the investigation, defence, settlement or appeal of any *claim* made against an *insured*.

*Defence costs* will also include reasonable fees, costs, charges and expenses of any accredited expert retained through defence lawyers approved with our prior written consent to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a *claim*.

*Defence costs* do not include *investigation costs*.

### 3.12 Deprivation of asset and liberty proceeding

*deprivation of asset and liberty proceeding* means any proceeding brought against an *insured person* by an *official body*, resulting directly from or as part of a covered *claim* or *investigation*, seeking an order for:

- 3.12.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*;
- 3.12.2 a charge over real property or personal assets of such *insured person*;
- 3.12.3 a temporary or permanent prohibition on or disqualification of such *insured person* from holding the office of or performing the function of a director or officer (or equivalent) of any entity or from managing a *insured organisation*;
- 3.12.4 the restriction of such *insured person's* liberty to a specified domestic residence or official detention;
- 3.12.5 a prohibition on such *insured person* departing from a country; or
- 3.12.6 the deportation of such *insured person* following revocation of otherwise proper, current and valid immigration status for any reason other than such *insured person's* conviction of a crime.

### 3.13 Director or officer

*director or officer* means:

- 3.13.1 any natural person who is a past, present or future director, officer, senior manager, management committee member, member of the board of managers, supervisory board member, management board member, trustee or governor of the *insured organisation* duly elected or appointed pursuant to the laws and will include any equivalent position in a *foreign jurisdiction*;
- 3.13.2 any natural person who is a past, present or future *shadow director* of the *insured organisation*;
- 3.13.3 any natural person who is a past, present or future director of a corporate trustee of a superannuation fund established for the benefit of the *employees* of the *insured organisation*;
- 3.13.4 any *director or officer* defined in 3.13.1 to 3.13.3 above, who is, was or becomes a member of the *insured organisation's* internal audit committee, internal compensation committee or any other internal committee of the *insured organisation*;
- 3.13.5 any *employee* of the *insured organisation* who is a past, present or future corporate general counsel or risk manager (or equivalent position) of the *policyholder* or any *employee* acting in a management or supervisory capacity at the direction or request of a *director or officer* of the *insured organisation* defined in 3.13.1 to 3.13.4 above; and
- 3.13.6 any natural person named as a prospective director in the listing particulars or prospectus for a public offering issued by the *insured organisation*.

### 3.14 Employee

*employee* means a natural person while in the regular service of the *insured organisation* in the ordinary course of the *insured organisation's* business and whom the *insured organisation* compensates by salary, wages and/or commissions and has the right to govern, instruct and direct in the performance of such service. The definition of *employee* does not include independent contractors or agents.

### 3.15 Employee entitlements

*employee entitlements* means *employee* benefit arrangements of any kind (whether during or post employment) including:

- 3.15.1 provisions for unemployment, redundancy, retirement, sickness, disability, maternity leave, paternal leave, adoption leave, annual leave, long service leave, compassionate leave or personal leave;
- 3.15.2 entitlements under any statute or *industrial instrument* including the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay, time in lieu, allowance and penalties alleged to be due and owing;
- 3.15.3 accident, life, medical, disability or other welfare plans, including insurance of any kind;
- 3.15.4 superannuation, retirement or pension contributions, benefits and entitlements; or
- 3.15.5 profit sharing, stock benefits or deferred compensation plans.

### 3.16 Employment claim

*employment claim* means:

- 3.16.1 a *claim* as defined in definition 3.6.1 and 3.6.2, based on any actual or alleged act, error or omission with respect to employment or prospective employment of any past, present, future or prospective *employee* of the *insured organisation* or *employee* of an *outside entity*; or
- 3.16.2 a proceeding, investigation or charge brought by or before the Australian Human Rights Commission (or similar body in any *foreign jurisdiction*).

Such proceeding, investigation or charge will be deemed to be made against an *insured person* or the *insured organisation* when it is first brought.

### 3.17 Environmental event

*environmental event* means:

- 3.17.1 the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of *pollutants* or *greenhouse gases* into or on real or personal property, water or the atmosphere; or
- 3.17.2 any direction or request that the *insured organisation* or *insured persons* test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *pollutants* or *greenhouse gases*, or any voluntary decision to do so,

whether or not such *greenhouse gases* are *pollutants*.

### 3.18 Environmental mismanagement claim

*environmental mismanagement claim* means any *claim* based upon, arising out of or attributable to an *environmental event* if and to the extent such *claim*:

- 3.18.1 is an *employment claim* against an *insured person*, including any such *claim* for retaliatory treatment;
- 3.18.2 is against an *insured person* for *wrongful acts* in connection with an *environmental event* and/or in connection with misrepresenting or failing to disclose information related to *greenhouse gases* or actual or alleged global warming or climate changes; or
- 3.18.3 results in *financial loss* incurred by an *insured person* for which the *insured organisation* does not indemnify the *insured persons* either because the *insured organisation* is neither permitted nor required to grant such indemnification or because of *financial impairment*.

### 3.19 Extended reporting period

*extended reporting period* means the period specified in extension 2.6 'Extended reporting period (ERP)' during which written notice may be given to us of any:

3.19.1 *claim* which alleges a *wrongful act*; or

3.19.2 *pre-claim event* or *investigation* in respect of *wrongful acts* or conduct, occurring prior to the expiry of the *period of insurance* or *change in control*.

Any *extended reporting period* will:

- (a) commence immediately from expiry of the *period of insurance* or *change in control*, as applicable; and
- (b) terminate immediately on the effective date of:
  - (i) the renewal of this policy by us; or
  - (ii) the placement of any directors and officers or management liability contract of insurance issued by any other insurer which effectively replaces or renews the coverage provided by this policy, either in whole or in part.

The additional premium for any *extended reporting period* will be deemed fully earned at the commencement of the *extended reporting period*.

### 3.20 Extradition

*extradition* means any formal process by which an *insured person* located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation resulting directly from another *claim* (other than an *extradition claim*) that is covered under this policy.

### 3.21 Extradition claim

*extradition claim* means a formal request, claim, warrant for arrest or other proceedings pursuant to the provisions of the Extradition Act 1988 (Cth) or any replacement legislation in Australia or similar legislation in any *foreign jurisdiction*.

### 3.22 Extradition costs

*extradition costs* mean reasonable fees, costs, charges and expenses incurred, with our prior written consent (such consent not to be unreasonably withheld or delayed) resulting solely from:

3.22.1 an *insured person* lawfully:

- (a) opposing, challenging, resisting or defending any *extradition claim*;
- (b) appealing any order or other grant of *extradition* of that *insured person*; or
- (c) seeking a judicial review to challenge the designation of any territory for the purpose of extradition law;

3.22.2 the appointment of an accredited crisis counsellor and/or tax advisor and/or a public relations consultant retained by the *insured person* exclusively and directly in connection with the *extradition* of that *insured person*; or

3.22.3 travel and accommodation costs and living away from home expenses incurred by the *insured person*, his/her lawful spouse or domestic partner and any children under the age of eighteen, directly in connection with the *extradition* of such *insured person*. Provided that the 'travel and accommodation costs and living away from home expenses' sub-limit of liability specified in the *schedule* will be our maximum liability in the aggregate for all such costs and expenses under this policy for all *insured persons*, spouses/partners and children, combined.

### 3.23 External administrator

*external administrator* means any liquidator, receiver, receiver and manager, administrator, controller or holder of similar office or position in any jurisdiction whether appointed under the provisions of Part 5 of the Corporations Act 2001 (Cth) or any other law in a *foreign jurisdiction*.

### 3.24 Financial impairment

*financial impairment* means the status of the *insured organisation* resulting from:

- 3.24.1 the appointment by any governmental, provincial, federal or state official, agency or court of any receiver, conservator, liquidator, trustee, administrator, deed administrator, statutory manager or similar official to take control of, supervise, manage or liquidate the *insured organisation*;
- 3.24.2 the appointment by or on behalf of the *insured organisation* of administrators; or
- 3.24.3 the *insured organisation* being placed into receivership or liquidation.

### 3.25 Financial institution

*financial institution* means any bank including any merchant or investment bank, finance *insured organisation*, hedge fund, insurance or reinsurance *insured organisation* (other than a captive owned by the *policyholder*), mortgage bank, savings and loan association, building society, credit union, stockbroker, investment trust, asset management *insured organisation*, fund manager or any entity established principally for the purpose of carrying on commodities, futures or foreign exchange trading or any other similar entity.

### 3.26 Financial loss

*financial loss* means the total amount the *insured* is legally and personally liable and obligated to pay resulting from a *claim* made against such *insured* for which coverage applies, including but not limited to:

- 3.26.1 damages and judgments (including pre and post judgment interest awarded on a covered judgment and plaintiff's legal fees and/or their reasonable costs, charges and expenses arising from the *claim* awarded on a covered judgment and any statutory compensation orders whether made under Part 9.4B of the Corporations Act 2001 (Cth) or otherwise) which any *insured* becomes legally liable to pay;
- 3.26.2 sums payable for any settlement to which we have consented;
- 3.26.3 *defence costs*;
- 3.26.4 *pre-claim costs*;
- 3.26.5 punitive, exemplary, aggravated and multiple damages awarded against an *insured person* where permissible and insurable under applicable law;
- 3.26.6 *civil or bail bond expenses*;
- 3.26.7 *investigation costs* (under Insuring clause 1.5);
- 3.26.8 *asset and liberty protection costs*;
- 3.26.9 *extradition costs*;
- 3.26.10 fines and pecuniary penalties (including fines for corrupt practices) awarded against an *insured person* where permissible and insurable under applicable law;
- 3.26.11 *personal expenses*;
- 3.26.12 *prosecution costs*;
- 3.26.13 *personal reputation protection expenses*;
- 3.26.14 *insured organisation reputation protection expenses* (under extension 2.2 'Insured organisation reputation cover'); and
- 3.26.15 *indemnity costs for shareholder derivative claims* (under extension 2.7 'Indemnity costs for shareholder derivative claims').

Only sub-paragraphs 3.26.1 to 3.26.3 are applicable to *employment claims* under Insuring clause 1.3 of this policy.  
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*Financial loss* (other than *defence costs*) does not include:

- (i) taxes (other than those covered under extension 2.13 'Tax liability' and condition 5.8 'Goods and service tax');
- (ii) criminal fines and penalties;
- (iii) social security contributions;
- (iv) fines and pecuniary penalties that we are legally prohibited from paying, or are uninsurable or are imposed by law for a deliberate or intentional breach of law or any matter deemed uninsurable or prohibited under the law applicable to this policy;
- (v) payments that are uninsurable under the law pursuant to which this policy will be construed;
- (vi) *clean up costs*; or
- (vii) any sum payable pursuant to a financial support direction or contribution notice issued by a superannuation or pension regulator such as the Australian Prudential Regulation Authority or similar.

We will not assert that any *defence costs* or settlements incurred by an *insured person* is uninsurable due to the *insured person's* actual or alleged violation of Sections 11, 12 or 15 of the U.S. Securities Act of 1933 (as amended) unless precluded from doing so due to court order.

### **3.27 Foreign jurisdiction**

*foreign jurisdiction* means any jurisdiction other than Australia.

### **3.28 Greenhouse gases**

*greenhouse gases* mean carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>), or any other emission or substance defined by any applicable law as a greenhouse gas.

### **3.29 Indemnified financial loss**

*indemnified financial loss* means *financial loss* of the *insured person* which the *insured organisation* is required to and not prohibited from indemnifying, and does not include *pre-claim costs*.

### **3.30 Insured**

*insured* means:

- 3.30.1 any *insured person*; and
- 3.30.2 the *insured organisation*.

### **3.31 Insured organisation**

*insured organisation* means:

- 3.31.1 the *policyholder*;
- 3.31.2 any past, present and future *subsidiary* of the *policyholder* (subject to the terms and conditions of the policy);
- 3.31.3 any foundation or charitable trust solely controlled or sponsored by the *policyholder* or any *subsidiary* of the *policyholder*, other than any pension or superannuation fund, trust or scheme;
- 3.31.4 any company, organisation, association, group or committee existing for the benefit of the *policyholder* or any *subsidiary* thereof, including but not limited to alumni associations, student associations, cultural committees, sporting committees and support groups for all of the foregoing, research and scientific organisations where the *insured organisation* has management control, staff social clubs, first aid, fire and ambulance service organisations and welfare and child care facility organisations, whether they are incorporated or unincorporated; and
- 3.31.4 in the event a bankruptcy proceeding shall be instituted by or against the foregoing entities, the resulting debtor-in-possession (or equivalent status in any applicable jurisdiction), if any.



### 3.32 Insured organisation crisis

*insured organisation crisis* means:

- 3.32.1 a *claim* made against an *insured* during the *period of insurance* under this policy that we reasonably believe will exceed AUD \$5,000,000 in damages over and above the *deductible* of the relevant Insuring clause to which the *claim* relates; or
- 3.32.2 the unforeseen death during the *period of insurance* of a key individual that we deem will have a significant adverse impact on the *insured organisation's* financial performance; or
- 3.32.3 a reduction of more than 30% in the *insured organisation's* revenue during the *period of insurance* that can reasonably be attributed to one or more of the following unforeseen events:
  - (a) an extortion threat;
  - (b) an *environmental event*;
  - (c) an *extradition*; or
  - (d) a product recall.

A *insured organisation crisis* ends once the external public relations or crisis management consultant advises the *insured organisation* that such *insured organisation crisis* no longer exists or six (6) months after the event in 3.32.1, 3.32.2 or 3.32.3 (whichever is applicable), whichever occurs first.

### 3.33 Insured organisation reputation protection expenses

*insured organisation reputation protection expenses* mean the reasonable fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed) by the *insured organisation* until a *insured organisation crisis* ends or six (6) months after a *insured organisation crisis*, whichever occurs first, for an external public relations or crisis management consultant (that is not a law firm) specifically to mitigate the adverse publicity or potential adverse publicity to the *insured organisation* as a direct result of the *insured organisation crisis*.

### 3.34 Insured person

*insured person* means any:

- 3.34.1 *director or officer*;
- 3.34.2 *outside entity executive*;
- 3.34.3 any chancellor, provost, dean, risk manager, counsellor, faculty member, volunteer, committee or council member, coach, consultant, contractor, assistant, trainer, teacher or academic, researcher, supervisor, *employee* or student and any other person acting on behalf of the *insured organisation* for whose acts the *policyholder* is legally responsible; and
- 3.34.4 *employee* of the *insured organisation*, other than a *director or officer*, in relation to:
  - (b) *employment claim*;
  - (c) any *investigation*; or
  - (d) all other *claims*, provided that such *claim* is also made concurrently, against a *director or officer*.

*Insured person* also means any lawful spouse or domestic partner (including same sex relationships) of any *insured person* listed in 3.34.1 to 3.34.4 above, and estates, heirs or legal representatives of any *insured person* listed in 3.34.1 to 3.34.4 above with respect to *wrongful acts* by such *insured person* committed prior to the death, incapacity, insolvency or bankruptcy of the *insured person*, provided that such estates, heirs or legal representatives are subject to the terms, conditions and exclusions of this policy in so far as they can apply.

For the avoidance of doubt, this policy will not cover any *claim* arising out of any act, error or omission of any spouse, domestic partner, estate, heir or legal representatives.

*Insured person* will not include any agent, contractor, consultant, external auditor, trustee in bankruptcy, receiver, liquidator, conservator, rehabilitator, deed administrator, administrator or receiver and manager (or similar official or person appointed for the *policyholder* or the equivalent in any other jurisdiction) of the *insured organisation*.

### 3.35 Interrelated wrongful acts

*interrelated wrongful acts* mean all *wrongful acts* that have as a common link any fact, circumstance, situation, event, transaction, cause or source or series of causally connected facts, circumstances, situations, events, transactions, causes or sources.

### 3.36 Investigation

*investigation* means a formal or official criminal, administrative or regulatory investigation, examination, hearing or enquiry:

3.36.1 of an *insured person* in their capacity as such:

- (a) commenced or brought and maintained by an *official body* (except the U.S. Securities and Exchange Commission or similar U.S. state or local agency), once an *insured person* is required or requested to attend in writing; or
- (b) commenced or brought and maintained by the U.S. Securities and Exchange Commission or similar U.S. state or local agency after the service of a subpoena or Wells Notice upon such *insured person*; or
- (c) commenced by the arrest and detainment or incarceration for more than twenty-four (24) hours of such *insured person* by any law enforcement authority in a *foreign jurisdiction*.

3.36.2 into the affairs of the *insured organisation* or an *outside entity* by an *official body*, once an *insured person* is required or requested to attend in writing, including by a formal or official notice, request, demand or subpoena from an *official body*:

- (a) to examine, interview or depose an *insured person*; or
- (b) for the production of documents by an *insured person*,  
in connection with such investigation, examination, hearing, or enquiry.

For the purposes of part 3.36.2 of this definition, *official body* will not include the U.S. Securities and Exchange Commission or similar U.S. state or local agency.

*Investigation* does not include industry-wide or sector investigations, examinations, hearings, enquiries or any routine regulatory audit, examination, inspection or review.

An *investigation* will be deemed to be 'first made' when the *insured person* is first so required or requested to attend in writing, first so served or first so arrested and detained.

### 3.37 Investigation costs

*investigation costs* mean reasonable professional fees, costs, charges and expenses (other than remuneration payable to any *insured persons*, cost of their time or costs or overhead of the *insured organisation* or an *outside entity*) incurred with our prior written consent, such consent not to be unreasonably withheld or delayed, by or on behalf of an *insured person* directly in connection with such *insured person* preparing for and attending an *investigation*.

### 3.38 Joint venture

*joint venture* means any unincorporated enterprise undertaken jointly by the *insured organisation* with any *third party*.

### 3.39 Limit of liability

*limit of liability* means the amounts specified as such in the *schedule* which will be our maximum liability, in the aggregate, payable under this policy for all covered *financial loss*, subject to the terms and conditions of this policy.



### **3.40 Non-indemnified financial loss**

*non-indemnified financial loss* means *financial loss* of the *insured person* which the *insured organisation* is unable to indemnify due to:

3.40.1 a prohibition under law (statutory or at common law);

3.40.2 a prohibition in the *insured organisation* charter, by-laws, articles of association or similar documents; or

3.40.3 the *insured organisation's financial impairment*.

### **3.41 Non-profit organisation**

*non-profit organisation* means any company or legal entity established for any charitable, community, social or industry purpose or for the provision of services or benefits to its members and not for the purpose of making profits.

### **3.42 Official body**

*official body* means:

3.42.1 any regulator, government or administrative body or agency, official trade body, self-regulatory body or *external administrator* legally empowered to conduct an *investigation* into the affairs of the *insured organisation* or *outside entity*, or the conduct of an *insured person* in such capacity. For clarity, this includes a Royal Commission, judicial body, commission of inquiry or stock exchange; and

3.42.2 any government, federal, state, or provincial agency that regulates the purchase or sale or offer to purchase or sell *securities*.

### **3.43 Outside entity**

*outside entity* means any:

3.43.1 *non-profit organisation*; or

3.43.2 *associated company*; or

3.43.3 for profit entity,

but excluding any:

(i) *financial institution*;

(ii) entity whose *securities* are traded on a primary, secondary or other market in the United States of America or its territories and/or possessions; or

(iii) other entity (other than a *non-profit organisation*) that had negative net worth at the commencement date of this policy,

unless such *financial institution* or entity is specified as an *outside entity* in an endorsement to this policy.

### **3.44 Outside entity executive**

*outside entity executive* means any *director or officer* or *employee* of the *insured organisation* who:

3.44.1 did or will serve or act; or

3.44.2 during the *period of insurance* is serving or acting,

in his or her capacity as a director or officer (or equivalent executive or management position in any other country) of an *outside entity* at the *insured organisation's* specific direction and request.

### **3.45 Period of insurance**

*period of insurance* means the period of time specified as the Period of insurance in the *schedule* including any extension thereto agreed in writing by us.

### 3.46 Personal reputation crisis

*personal reputation crisis* means any negative statement specifically regarding and referencing an *insured person* that is included in any press release or published in any print or electronic media outlet in respect of a *claim*. A *personal reputation crisis* will be deemed to be made against an *insured person* when such press release or such publication was first released or syndicated to a *third party*.

### 3.47 Personal expenses

*personal expenses* mean housing, utilities, personal insurances and schooling expenses paid on behalf of an *insured person* directly to the provider of such services in the event of an interim or interlocutory order during the *period of insurance* for:

3.47.1 the confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of such *insured person*; or

3.47.2 a charge over real property or personal assets of such *insured person*,

resulting directly from or as part of a covered *claim* and provided that a personal allowance has been directed by the court to meet such payments and such personal allowance has been exhausted.

Such expenses will be payable from thirty (30) days following the order described above for a period of twelve (12) months from the date of the order.

### 3.48 Personal reputation protection expenses

*personal reputation protection expenses* mean the reasonable fees, costs, charges and expenses incurred, by a public relations firm or consultant, crisis management firm (but not a law firm), which an *insured person* in the reasonable exercise of his or her discretion may engage with our written consent (such consent not to be unreasonably withheld or delayed) to prevent or limit adverse effects of or negative publicity in respect of a *personal reputation crisis*.

### 3.49 Policyholder

*policyholder* means the legal entity as specified in the *schedule*.

### 3.50 Pollutants

*pollutants* mean any solid, liquid, gaseous irritant or contaminant, including smoke, vapour, soot, fumes, acids, alkalis, chemicals, toxic mould or any thermal irritant or contaminant, ionising radiation or radioactivity from any nuclear fuel and waste (waste includes, but is not limited to, nuclear waste or materials which are intended to be or have been recycled, reconditioned or reclaimed) and any other similar substance of any kind or nature whatsoever including electromagnetic fields, asbestos, asbestos products and any noise.

### 3.51 Pre-claim costs

*pre-claim costs* mean reasonable professional fees, costs, charges and expenses incurred, with our prior written consent (such consent not to be unreasonably withheld or delayed), by an *insured person* in retaining advisors separate from the *insured organisation* or an *outside entity*:

3.51.1 to provide legal advice directly related to a *pre-claim event*; or

3.51.2 to prepare a report (and any supplementary reports as necessary) to an *official body* in response to a *pre-claim event*.

Provided that *pre-claim costs* will not include *indemnified financial loss*, nor form part of the definition of *indemnified financial loss*.

### 3.52 Pre-claim event

*pre-claim event* means with respect to an *insured person* in their capacity as such:

- 3.52.1 a raid on, or on site visit, to any *insured organisation* or any *outside entity* by an *official body* that involves the production, review, copying or confiscation of documents or interviews of such *insured person*;
- 3.52.2 any formal written notification to an *official body* by the *insured organisation*, by the *outside entity* or by such *insured person* of a suspected material breach of such *insured person's* legal or regulatory duty; or
- 3.52.3 the receipt by such *insured person* of a formal notice from an *official body* which legally compels such *insured person* to produce documents to, or answer questions by, or attend interviews with, that *official body* directly as a result of a *self report*.

Provided that such raid, visit, announcement, notification or receipt of notice first takes place or first occurs during the *period of insurance*, or *extended reporting period* if applicable. A *pre-claim event* will be deemed to be 'first made' against an *insured* when such raid, visit, announcement, notification and receipt of notice first took place or occurred.

A *pre-claim event* will not include industry-wide or sector investigations, hearings, examinations or inquiries or any routine or regular regulatory audit, examination, inspection or review.

### 3.53 Prior known fact

*prior known fact* means any fact or matter which:

- 3.53.1 an *insured person* first became aware of, after the *continuity date*, but prior to the commencement of the *period of insurance*; and
- 3.53.2 the *insured person* knew, at any time after the *continuity date* but prior to the commencement of the *period of insurance*, may result in an allegation against the *insured* of a *wrongful act*.

### 3.54 Property damage

*property damage* means any damage to or destruction of any property or loss of use of such property, and any consequential loss resulting therefrom.

### 3.55 Prosecution costs

*prosecution costs* mean the reasonable professional fees, costs, charges and expenses incurred with our prior written consent (such consent not to be unreasonably withheld or delayed), by an *insured person* in bringing a proceeding to obtain:

- 3.55.1 a declaration and/or injunction to oppose any *deprivation of asset and liberty proceeding*;
- 3.55.2 the discharge or revocation of an order arising from a *deprivation of asset and liberty proceeding*; and/or
- 3.55.3 a finding that an *official body* is acting beyond its powers or in breach of the rules of natural justice in conducting an *investigation*.

### 3.56 Schedule

*schedule* means the Schedule attaching to and forming part of this policy duly signed and stamped by an authorised officer of Zurich.

### 3.57 Securities

*securities* mean any bond, debenture, note, share, stock, American Depositary Receipts or other equity or security for debt which is issued or given by the *insured organisation*, and includes any certificate of interest or participation in, receipt for, warrant or other right to subscribe to or to purchase, voting trust certificate relating to, or other interest in any of the foregoing items.

### 3.58 Securities claim

*securities claim* means any:

- 3.58.1 written demand for damages or other legal remedy or civil proceeding commenced directly or derivatively by a past or present holder of *securities* of and issued by the *insured organisation*, in that holder's capacity as a security holder in the *insured organisation*; or
- 3.58.2 a regulatory proceeding commenced by any *official body*, but only in connection with the purchase, sale, or offer to purchase or sell *securities* of and issued by the *insured organisation*,

which alleges a *wrongful act* involving the violation of securities laws.

A securities claim shall include any *US securities claim*.

### 3.59 Self report

*self report* means a written report or notification to an *official body* by the *insured organisation*, an *outside entity* or an *insured person* pursuant to a legal obligation to inform such *official body* of matters giving rise to an actual or potential regulatory issue where failure to provide such a report or delay in reporting can itself give rise to enforcement consequences from such *official body*.

### 3.60 Shadow director

*shadow director* means any person who has not been validly appointed as a director, if:

- 3.60.1 they act in the position of a director; or
- 3.60.2 the directors of the *insured organisation* are accustomed to act in accordance with the person's instructions or wishes.

However, a person is not a shadow director pursuant to paragraph 3.61.2 above, merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the *insured organisation* or body.

### 3.61 Submission

*submission* means:

- 3.61.1 any information and/or statements or materials;
- 3.61.2 any proposal form signed, dated and completed by any *insured* (including any attachments thereto, information included therewith or incorporated therein); and/or
- 3.61.3 the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *policyholder* in connection with this policy.

### 3.62 Subsidiary

*subsidiary* means any entity in which the *policyholder* directly or indirectly:

- 3.62.1 holds more than 50% of the voting rights;
- 3.62.2 holds more than 50% of the issued share capital or equity; or
- 3.62.3 has the right, pursuant to a written agreement with other shareholders, to appoint or remove a majority of the board of directors (or equivalent in any other country),

and any company or legal entity whose financial accounts are required to be consolidated with those of the named *policyholder* pursuant to the Corporations Act 2001 (Cth) or the applicable Australian accounting standard (or equivalent legislation and accounting standards in a *foreign jurisdiction*).

Cover in respect of:

- (i) any *insured person* of any *subsidiary*; or
- (ii) any *subsidiary*,

only applies to *wrongful acts* or conduct committed after such entity becomes a *subsidiary* and prior to such entity ceasing to be a *subsidiary*, unless otherwise stated in this policy.

### **3.63 Superannuation guarantee charge**

*superannuation guarantee charge* means an *insured person's* personal obligation to pay a superannuation guarantee charge to the Australian Taxation Office pursuant to Section 5 of the Superannuation Guarantee Charge Act 1992 (Cth).

### **3.64 Third party**

*third party* means any person or entity other than the *insured organisation*, an *insured person* or an *outside entity*.

### **3.65 US claim**

*US claim* means any *claim* brought or maintained, in whole or in part:

3.65.1 within the jurisdiction of; or

3.65.2 pursuant to the laws of,

the United States of America or Canada or their territories and/or possessions.

### **3.66 US securities claim**

*US securities claim* means any *securities claim* brought or maintained, in whole or in part:

3.66.1 within the jurisdiction of; or

3.66.2 pursuant to the laws of,

the United States of America or Canada or their territories and/or possessions.

### **3.67 Wrongful act**

*wrongful act* means any act or omission occurring before or during the *period of insurance*, including but not limited to (or with respect to a shareholder 'derivative action', any proposed) breach of duty, breach of statutory duty, breach of trust, breach of warranty of authority, neglect, error, misstatement, misleading statement, libel, slander or defamation or any other wrongful act or omission committed or attempted by or allegedly committed or attempted by:

3.67.1 any *insured person* whilst acting in his or her capacity as an *insured person* on behalf of the *insured organisation* or any matter claimed against such *insured person* solely by reason of his/her status as such, but only with respect to a *claim* under Insuring clauses 1.1 and 1.2;

3.67.2 any *insured person* whilst acting in the capacity as a director or officer (or in an equivalent executive or management position in any other country) of an *outside entity* at the *insured organisation's* specific direction and request, but only with respect to a *claim* under Insuring clause 1.4; or

3.67.3 the *insured organisation*, but only with respect to an *employment claim* under Insuring clause 1.3.

## 4. Exclusions

### Exclusions applicable to all Insuring clauses

We will not be liable under this policy for any *financial loss* in respect of the following:

#### 4.1 Bodily injury / property damage

any *claim* for *bodily injury* and/or *property damage* except that cover will be provided for:

- 4.1.1 mental anguish or emotional distress in connection with any *employment claim*; or
- 4.1.2 *financial loss* otherwise covered under extension 2.14 'Workplace health and safety'.

#### 4.2 Conduct

any *claim* arising from, based upon, attributable to or as a consequence of:

- 4.2.1 any *insured* having gained in fact any profit or advantage to which he, she or it had or has no legal entitlement; or
- 4.2.2 any dishonest or fraudulent act or omission committed by any *insured* or any intentional violation or breach of any law or regulation; provided that this exclusion will not apply to *defence costs* incurred by an *insured person* in connection with a *corporate manslaughter proceeding* or workplace health and safety proceeding.

Part 4.2.1 of this exclusion shall not apply in a *securities claim* against an *insured person* alleging violations of Sections 11, 12 or 15 of the United States of America Securities Act of 1933 to the portion of any *financial loss* attributable to such violations.

For the avoidance of doubt, this exclusion includes any conduct or contravention in respect of which a prohibition in section 199B of the Corporations Act 2001 (Cth) applies.

This exclusion only applies where the conduct in question has been finally established by court judgment or other final non-appealable adjudication.

For the purpose of determining the applicability of this exclusion:

- (a) no conduct or knowledge of an *insured* will be imputed to any other *insured person*; and
- (b) only the conduct and knowledge of any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or holder of any equivalent position) of the *insured organisation* will be imputed to the *insured organisation*, for the purposes of Insuring clause 1.3.

#### 4.3 Insured vs insured US claims only

any *US claim* brought by, or on behalf of, or at the instigation of the *insured organisation* or an *outside entity*; provided, however, this exclusion will not apply to:

- 4.3.1 a *claim* brought or maintained by a liquidator, receiver, bankruptcy trustee or administrative receiver, (or the equivalent in any other country), either directly or derivatively on behalf of the *insured organisation* or the *outside entity* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *insured organisation* or the *outside entity*;
- 4.3.2 a *claim* in the form of a derivative action brought or maintained in the name of the *insured organisation* or the *outside entity* by one or more persons who are not directors or officers (or equivalent in any other country) of the *insured organisation* or the *outside entity* and who bring and maintain the *claim* without the solicitation, voluntary assistance or active participation of any director or officer (or equivalent in any other country) of the *insured organisation* or the *outside entity*; or
- 4.3.3 *defence costs* incurred by the *insured person*.

#### 4.4 Non outside entity

any *claim* alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an *insured person* serving in his capacity as a director, officer, trustee or manager (or similar position) or an employee of any entity that is not the *insured organisation* or an *outside entity*, or by reason of his or her status as a director, officer, trustee or manager (or similar position) or an employee of an entity that is not the *insured organisation* or an *outside entity*.

#### 4.5 Prior and pending

any *claim* arising from, based upon, attributable to or as a consequence of any:

- 4.5.1 facts alleged or the same or related *wrongful act(s)* alleged or contained in any *claim* or circumstance that has been:
  - (a) notified under any directors and officers or management liability insurance policy or employment practices liability insurance policy of which this policy is a renewal or replacement or which it may succeed in time (unless such prior policy was issued by us and we did not cover or accept such claim or circumstance under such prior policy); or
  - (b) disclosed in the *submission* or notified to any other insurer before the commencement of the *period of insurance*.
- 4.5.2 *investigation* or other proceedings ordered or commissioned at the behest of an *official body* or other legally empowered body as defined parts 3.36.1 (a) and (c) of the definition of 'Investigation' initiated prior to or pending on the *continuity date* specified in the *schedule*.
- 4.5.3 any civil, criminal, administrative, regulatory proceeding, litigation, suit, *claim*, proceeding, arbitration or mediation initiated or commenced prior to or pending at the 'Prior or pending date' specified in the *schedule*, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

#### 4.6 Professional liability

any *claim* or *investigation* arising from, based upon, attributable to or as a consequence of a breach of duty in respect of any professional services provided by the *insured*.

#### 4.7 Superannuation fund trustees

any *claim* or *investigation* in respect of the infringement of obligations imposed by any statute, regulation or common law whilst acting in the capacity of trustee of any pension or superannuation trust, plan or scheme operated by or at the behest of the *insured organisation* for the benefit of its employees.

This exclusion does not apply to an *insured person* acting in the capacity as defined in part 3.13.3 of the definition of 'Director or officer'.

#### Additional Exclusions applicable to Insuring clause 1.3

The following exclusions are applicable to Insuring clause 1.3 and we will not be liable under this policy to make any payment for *financial loss* (including *defence costs*) in connection with any *employment claim* made against the *insured organisation*, or *investigation costs* in respect of an *investigation*:

#### 4.8 Employee reinstatement

based upon, arising out of, or attributable to any judgment or court order for the reinstatement of an *employee* including any future *employee entitlements* if the *insured organisation* fails to hire, promote or reinstate the claimant as an *employee*.

However, this exclusion will not apply to any *defence costs* incurred by the *insured organisation* with respect to the *employment claim*.



#### 4.9 Industrial relations

based upon, arising out of, or attributable to:

- 4.9.1 any collective industrial or labour relations including but not limited to: strikes; lock-outs; demarcation disputes; negotiating awards or enterprise agreements; collective redundancies; obligations to consult representatives and *employees* in relation to redundancies and other actions that arise, other than *claims* based on an individual employment relationship; or
- 4.9.2 any collective redundancies or mass-layoffs or any restructure within the *institution* whereby two or more *employees* of the *insured organisation* are made redundant or laid-off.

#### 4.10 Modifications

in respect of or for modifications to any premises in order to make them more accessible or accommodating to persons with disabilities, or for the provision of any special facilities, arrangements, variations or alterations to the work place, working hours, work systems or procedures, for the benefit of disabled persons, persons in special circumstances or persons requiring any form of special accommodation due to family or carer responsibilities, cultural, religious, social or political considerations.

However, this exclusion will not apply to any *defence costs* incurred by the *insured organisation* with respect to the *employment claim*.

#### 4.11 Specified sums under contract

for any sum of money:

- 4.11.1 in respect of or in lieu of a notice period;
- 4.11.2 pursuant to an express written contract of employment; or
- 4.11.3 pursuant to an express written obligation to make payments in the event of the termination of employment.

#### 4.12 Statutory entitlement

based upon, arising out of, or attributable to any actual or alleged violation of the responsibilities, obligations, or duties imposed by any statutory or common law that governs the rights of *employees* to engage in, or to refrain from engaging in, union or other collective activities, or the enforcement of any collective bargaining agreement, including but not limited to grievance and arbitration proceedings.

#### 4.13 Worker compensation

based upon, arising from or consequence of any actual or alleged obligation of any *insured* pursuant to any workers compensation, unemployment insurance, social security, disability benefits or similar law, regulation or by-law.

### 5. Conditions

#### 5.1 Assignment

Any rights under this policy will not be assigned without our prior written consent.

#### 5.2 Cancellation

This policy may not be cancelled by us except in accordance with section 60 of the Insurance Contracts Act 1984 (Cth) including for non-payment of premium. If the *policyholder* cancels the policy, a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *period of insurance*.

In the event there are any notified, reserved or paid circumstances or *claims* under this policy, the *policyholder* will have the right to cancel this policy, but without the right to a return of premium, and the entire premium will be deemed fully earned, unless the *policyholder* withdraws such circumstances or *claims* and reimburses us for any payments made under this policy.

This policy may not be cancelled by the *policyholder*:

- 5.2.1 during the *extended reporting period*, once elected;
- 5.2.2 after the *policyholder* undergoes a *change in control*.



### 5.3 Change in control and public offering

- 5.3.1 If during the *period of insurance* the *policyholder* undergoes a *change in control*, then the cover provided by this policy will be amended to only apply in respect of *wrongful acts* or conduct occurring prior to the effective date of such *change in control* until the policy expiry date. The *policyholder* will give us written notice of such *change in control* as soon as reasonably practicable.
- 5.3.2 If during the *period of insurance* the *policyholder* or any *subsidiary* plans or makes, in whole or in part, in the United States of America, a public offering of its *securities* of more than the US market capitalisation increase percentage specified in the *schedule*, it will inform us as soon as practicable. We will not be liable to make any payment of *financial loss* arising from any *securities claim* associated with, relating to or arising from such offering or any related registration or reporting requirements, unless and until the *policyholder* agrees with us on any amendments to this policy and makes payment of any additional premium required, within 90 days following the public announcement of such offering, after which cover will apply retroactively for the full *period of insurance*. The payment of any additional premium (including insurance premium tax) will be a condition precedent to our liability under this condition.

### 5.4 Confidentiality

The existence and terms of this policy will be confidential as between the *insured* and us and will not be published, disclosed or otherwise communicated except where:

- 5.4.1 the law requires disclosure in the financial statements or annual reports of payment by the *policyholder* of a premium in respect of a contract insuring persons against a liability;
- 5.4.2 we consent in writing to disclosure of the existence and/or terms of this policy; or
- 5.4.3 the *insured* is compelled by order of a court to do so.

### 5.5 Deductible and coinsurance

- 5.5.1 The *deductible* will apply to the *insured persons* for *indemnified financial loss* and the *insured organisation* for all *financial loss*.

We will be liable only for the amount of *financial loss* which arises from a *claim*, or is in respect of a *insured organisation crisis*, that exceeds the *deductible* applicable to such *claim* or *insured organisation crisis*. The *deductible* is not part of our *limit of liability*. The *deductible* is to be borne by the *insured organisation* and will remain uninsured.

Irrespective of the number of *insureds* claimed against, a single *deductible* will apply to all *financial loss* in respect of any one *claim*, or two or more *claims* arising from one *wrongful act* or from a series of *interrelated wrongful acts*.

- 5.5.2 The *insured organisation* will bear uninsured and at its own risk the co-insurance percentage specified in the *schedule* of all *financial loss* payable under Insuring clause 1.3, up to the *limit of liability*. This is in addition to the applicable *deductible*.
- 5.5.3 No *deductible* will apply to any *claim*, and we will reimburse those *defence costs* incurred by the *insured* to the extent not already paid by us, if:
- (a) the *claim* is dismissed without any payment by or on behalf of the *insured*;
  - (b) there is a final judgment of no liability in favour of the *insured*, whether by settlement to which we have consented or by summary judgment, and without any payment by or on behalf of the *insured*; or
  - (c) there is a final judgment of no liability obtained after trial, in favour of the *insured*, after the exhaustion of all appeals.

Any reimbursement under this clause will only occur if, sixty (60) days after the date of dismissal or final judgment of no liability is obtained, there is no further *claim* brought based on the same *wrongful act* or *interrelated wrongful acts* or facts or matters relating to or alleged in the original *claim*.

## 5.6 Defence costs, settlements and allocation

- 5.6.1 For *claims* other than those under Insuring clause 1.3, it will be the duty of the *insured* against whom a *claim* is made to take all reasonable steps to defend such *claim* and not to do anything to prejudice our position. We will have no duty to defend any such *claim* made against any *insured*. It is the duty of the *insured persons* to arrange representation at any *investigation* which is the subject of a claim for *investigation costs* under Insuring clause 1.5.
- 5.6.2 For *employment claims* under Insuring clause 1.3, we have the right at all times to conduct the defence of any *employment claim* made against the *insured organisation*.
- 5.6.3 With respect to any *claim, investigation or insured organisation crisis* as may potentially be covered by this policy, we will have the right to:
- (a) be provided with all such information as we reasonably require, at the *insured's* own cost;
  - (b) be kept fully informed as to all matters relating to or concerning the investigation, defence, settlement or appeal of any *claim or investigation* or the resolution of any *insured organisation crisis* and will have the right to receive copies of all relevant documentation relating thereto; and
  - (c) associate effectively with the *insured* in the defence, investigation and the negotiation of any settlement of any *claim or investigation*.
- 5.6.4 In the event of any dispute regarding whether or not to contest any *claim* against any *insured*, the matter will be referred for determination by a Senior Counsel (to be mutually agreed or in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory out of which the policy was issued). The costs of such determination by Senior Counsel are to be paid by us and will not form part of the *limit of liability*.
- If the *claim* is to be contested, then the *insured* agrees to provide all such information and assistance as is reasonably required to those persons representing the *insured*.
- 5.6.5 The *insured* will not admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *defence costs, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs or prosecutions costs*, and no legal representative will be retained to defend any *insured*, without our prior written consent, such consent not to be unreasonably withheld or delayed.
- Only those settlements, consent judgments, *defence costs, investigation costs, asset and liberty protection costs, extradition costs, pre-claim costs and prosecutions costs* that have been consented to by us in writing will be recoverable as *financial loss* under the terms of this policy (other than as allowed under extension 2.4 'Emergency costs and expenses').
- 5.6.6 We will not settle any *claim* against any *insured* without the consent of the relevant *insured*, such consent not to be unreasonably withheld or delayed. In addition and notwithstanding any of the foregoing paragraphs in this condition, if all *insured* defendants are able to dispose of all *claims* which are subject to one *deductible* (inclusive of all *financial loss*) for an amount not exceeding the applicable *deductible*, then our consent will not be required for such disposition.
- 5.6.7 Our liability under this policy is limited to the proportion of *financial loss* which is a fair and equitable allocation:
- (a) between the *insured persons* and any other uninsured person or entity (including the *insured organisation*) where the *financial loss* has been jointly or jointly and severally incurred by them. Such allocation will be determined having regard to the relative legal and financial exposures of, and relative benefits obtained by, the *insured persons* and those other persons or entities; and/or
  - (b) between the *insured persons*, the *insured organisation* and us, having regard to the covered and uncovered matters and the relative legal and financial exposures attributable to those matters.

Where we and the *insured* are unable to agree upon a fair and equitable allocation then such allocation will be determined by Senior Counsel (to be mutually agreed or, in default of agreement, to be selected by the then President of the Bar Association, or equivalent organisation, for the State or Territory of the Commonwealth of Australia out of which the policy was issued).

The parties will be bound by Senior Counsel's determination as to the fair and equitable allocation. The costs of obtaining this determination will be paid by us and will not form part of the *limit of liability*.

While no fair and equitable allocation has been agreed or determined in respect of any *claim*, we will advance *defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses* and *insured organisation reputation protection expenses* in the proportion which we contend should be allocated to *financial loss* under this condition. Any such allocation negotiated or determined will be applied retrospectively to all *defence costs, investigation costs, extradition costs, pre-claim costs, prosecution costs, civil or bail bond expenses, personal reputation protection expenses* and *insured organisation reputation protection expenses* incurred prior to the date of such negotiation or determination.

### 5.7 Failure of the insured organisation to indemnify insured persons

If the *insured organisation* or an *outside entity* is not prohibited at law from indemnifying an *insured person*, but for whatever reason fails or refuses to do so, other than by reason of *financial impairment*, they will be presumed to have indemnified such *insured person* for *indemnified financial loss* up to the *deductible* applicable to Insuring clauses 1.2, 1.4.2 and 1.5. In this event, we will pay the *insured person financial loss* which should otherwise have been indemnified by the *insured organisation* and we will be entitled to recover that loss, up to the amount of the applicable *deductible*, from the *insured organisation*.

In the event of the *insured organisation* being placed in liquidation (other than voluntary liquidation), no *deductible* amount will apply.

### 5.8 Goods and services tax

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth), in relation to that acquisition, whether or not that acquisition is actually made.

When we make a payment to the *insured*, or on behalf of the *insured*, under this policy as compensation instead of payment for the acquisition of goods, services or other supplies, we will reduce the amount of the payment by the amount of any input tax credit that the *insured* is, or will be, or would have been entitled to under A New Tax System (Goods & Services Tax) Act 1999 (Cth) had the payment been applied to acquire such goods, services or supply.

### 5.9 Law and jurisdiction

This policy is governed by the law of the State or Territory within the Commonwealth of Australia in which the policy is issued by us, as specified in the *schedule*, and the parties agree to submit to the exclusive jurisdiction of the courts in that State or Territory within the Commonwealth of Australia.

### 5.10 Limit of liability

Subject to the Insuring clauses and extensions, the *limit of liability* will be our maximum liability (over and above any applicable *deductible*) in the aggregate, payable under this policy for all covered *financial loss* arising from all *claims* and *investigations* made against all *insureds* during the *period of insurance* and any *extended reporting period* (if applicable) and all *insured organisation crises* or *personal crises* during the *period of insurance*. The *limit of liability* specified as Limit of liability for Insuring clauses 1.1 to 1.5 in the *schedule* will apply to the applicable Insuring clause if lower than the *limit of liability* specified as 'Aggregate for all *claims* during the *period of insurance*'.

For the avoidance of doubt:

5.10.1 the operation of any applicable *extended reporting period* will not increase the *limit of liability*;

5.10.2 all sub-limits of liability are part of and not in addition to the *limit of liability*; and

5.10.3 the additional limit available under extension 2.1 'Additional limits for directors or officers and outside entity executives' is in addition to the *limit of liability* and is our maximum liability, in the aggregate, payable under that extension for all covered *financial loss*, subject to the terms and conditions of this policy.

All *claims* arising out of the same *wrongful act* and all *interrelated wrongful acts* of all *insureds* will be deemed one *claim*, and such *claim* will be deemed to be first made on the date the earliest of such *claims* is first made against any *insured*, regardless of whether such date is before or during the *period of insurance*.

All *investigations* (whether linked to a *claim* or otherwise) which have a common or related fact, circumstance, situation, event, cause or source will be deemed a single *investigation* and such single *investigation* will be deemed to be first made on the date the earliest of such *investigations* is first made against an *insured person*, regardless of whether such date is before or during the *period of insurance*.

## 5.11 Newly created or acquired subsidiaries

5.11.1 If during the *period of insurance* the *policyholder* creates or acquires an entity:

- (a) that has total consolidated assets equal to or less than the amount or percentage of the *policyholder's* total consolidated assets specified for the creation and acquisition of subsidiaries in the *schedule*;
- (b) whose *securities* are not listed in the United States of America; and
- (c) that is not a *financial institution*;

then that entity will be deemed as a *subsidiary* under this policy and any individuals of that entity holding positions equivalent to those positions set forth in the definition of *insured person* will also be deemed as *insured persons* under this policy.

5.11.2 If during the *period of insurance* an entity is created or acquired but the criteria described in 5.11.1 (a) to (c) do not apply, such entity will be deemed as a *subsidiary* under this policy and will be covered for a period of ninety (90) days from the date the entity became a *subsidiary* or until the expiry date of the *period of insurance*, whichever period expires first.

We may, at our discretion, agree to extend cover beyond ninety (90) days provided that the *policyholder*:

- (a) notifies us in writing of such creation or acquisition of a *subsidiary*;
- (b) provides all information about the entity that we require; and
- (c) agrees to any additional premium and/or amendments to the terms and conditions of this policy.

## 5.12 Non-disclosure and misrepresentation waiver

Where we have any rights in respect of fraudulent non-disclosure or fraudulent misrepresentation we agree not to rescind or avoid this policy. In respect of any fraudulent non-disclosure or fraudulent misrepresentation, we will be entitled to reduce our liability to pay *financial loss* in respect of a *claim*, *investigation* or *insured organisation crisis* by an amount equivalent to the financial prejudice we have suffered as a result of the fraudulent non-disclosure or fraudulent misrepresentation. Any such rights will only be exercised:

- 5.12.1 against an *insured person* who, before the *period of insurance*, knew the non-disclosure or misrepresentation was fraudulent, and any *insured organisation* to the extent that it may indemnify such *insured person*; and
- 5.12.2 against a *insured organisation* where any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or the holder of any equivalent position) of the *insured organisation* or the holder of any equivalent position in a jurisdiction, knew the non-disclosure or misrepresentation was fraudulent.

and only where the *claim*, *investigation* or *insured organisation crisis* is based upon or arises from the facts or matters fraudulently not disclosed or fraudulently misrepresented.

In respect of any innocent non-disclosure or innocent misrepresentation, we waive any right we have to reduce our liability to pay *financial loss* in respect of a *claim*, *investigation* or *insured organisation crisis*.

### 5.13 Notifications – claims, crises and investigations

The *insured* will give written notice to us of any *claim* or *investigation* made against an *insured* during the *period of insurance* or *extended reporting period* (if applicable) or *insured organisation crisis* during the *period of insurance* as soon as is reasonably practicable after the *insured organisation's* risk manager, general counsel, company secretary, chief legal counsel or equivalent position first becomes aware of such *claim*, *investigation* or *insured organisation crisis* and in no event later than 90 (ninety) days after the expiry of the *period of insurance* or the *extended reporting period* (if applicable).

Written notice will include but not be limited to a description of the:

- 5.13.1 *claim*, the nature of the alleged or potential damage, the names of the actual or potential claimants and the date and manner in which the *insured organisation* or *insured persons*, as the case may be, first became aware of the *claim*;
- 5.13.2 *investigation*, the nature of the *investigation*, the name of the *official body* conducting the *investigation* and the date and manner in which the *insured organisation* or *insured persons*, as the case may be, first became aware of the *investigation*; or
- 5.13.3 *insured organisation crisis* and the resultant actual or potential adverse publicity.

All notices under condition 5.13 will be provided in writing to the Notification address specified in the *schedule*. Any notification, sent by post or email, will be effective from the date received by us.

### 5.14 Order of payments

In the event of *financial loss* arising from a *claim* or *investigation* for which payment is due under the provisions of this policy, then we will always first pay *non-indemnified financial loss* of an *insured person* under Insuring clauses 1.1, 1.4.1 and 1.5 and then only after this payment, with respect to whatever remaining amount of the *limit of liability* is available, pay such other *financial loss* for which cover is provided under the other Insuring clauses of this policy.

### 5.15 Order of recoveries

Any sums recovered following a payment or payments under this policy will be distributed in the following order:

- 5.15.1 the costs we have incurred in the course of such recovery;
- 5.15.2 to the *policyholder* in respect of any amount by which the amount of the *financial loss* exceeded the *limit of liability*;
- 5.15.3 to us to the extent of the *financial loss* paid or payable; and
- 5.15.4 to the *policyholder* for the amount of any *deductible* applicable.

### 5.16 Other insurance and indemnification

The *insured* must notify us of the existence of any other insurance policy or equivalent indemnity or cover available to the *insured* in respect of *financial loss* covered under this policy and provide details of it as soon as reasonably practical.

To the extent permitted by the Insurance Contracts Act 1984 (Cth), this policy will always apply as excess over any other valid and collectable insurance or indemnification (other than from the *insured organisation*), available to the *insured*. When any other insurer has acknowledged a duty to defend any *claim* that would otherwise be subject to coverage under this policy, this policy will not respond or contribute to such *defence costs* to the extent of that other insurer's duty to defend.



### 5.17 Plurals and headings

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- 5.17.1 headings are descriptive only, not an aid to interpretation;
- 5.17.2 singular includes the plural, and vice versa;
- 5.17.3 the male includes the female and neuter;
- 5.17.4 all references to specific legislation include amendments to and re-enactments of such legislation and similar legislation in any jurisdiction in respect of which a *claim* is made or an *investigation* is commenced; and
- 5.17.5 references to positions, offices or titles will include their equivalents in any jurisdiction in which a *claim* is made or an *investigation* is commenced.

### 5.18 Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich will not be deemed to provide coverage and will not make any payments nor provide any service or benefit to any *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* would violate any applicable trade or economic sanctions, law or regulation.

### 5.19 Severability and non-imputation

In granting cover under this policy we have relied upon the *submission* which forms the basis of this contract of insurance and will be considered as incorporated in and constituting part of this policy.

In respect of the declarations, statements and financial information of the *submission*:

- 5.19.1 no statement in the *submission* made by any *insured* or knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by any *insured* will be imputed to any other *insured persons* for the purpose of determining the availability of cover under this policy;
- 5.19.2 the statements in the *submission* made by and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*) possessed by an *insured person* will be imputed to the *insured organisation* for the sole purpose of determining if cover is available under Insuring clauses 1.2, 1.4.2 and 1.5 of this policy with respect to *claims* against such *insured person*, but will not be imputed to the *insured organisation* with respect to *claims* against other *insured persons* for the purpose of cover under Insuring clauses 1.2, 1.4.2 and 1.5 in relation to the *financial loss* of that other *insured person*; and
- 5.19.3 only the statements in the *submission* made by, and the knowledge (including knowledge of any misrepresentation or non-disclosure with regard to the *submission*), possessed by any past, present or future chairman, chief executive officer, chief operating officer, chief financial officer, general counsel or chief legal counsel (or equivalent position) of the *insured organisation* will be imputed to the *insured organisation* for the purposes of indemnity under Insuring clause 1.3 in relation to the *financial loss* of any *insured organisation*.

### 5.20 Subrogation

Upon any payment of or towards any *claim* we will be entitled to assume conduct of all rights of recovery available to any *insured* and all reasonable assistance will be rendered to us in the prosecution of such rights by such *insured persons* or the *insured organisation*. The *insured* will execute all papers reasonably required and must take all reasonable action that may be necessary to secure any and all of our subrogation rights including, but not limited to, an action against the *insured organisation* for non-payment of indemnity to the *insured persons* by the *insured organisation*.

In no event, however, will we exercise our rights of subrogation against an *insured person* under this policy unless it is determined by a court judgment or final non-appealable adjudication in the underlying action or in a separate action or proceeding that such *insured person* had engaged in any conduct which is the subject of exclusion 4.2 'Conduct'.

### **5.21 Territorial scope**

Cover under this policy will apply to *financial loss* incurred, *claims* made, *investigations*, *wrongful acts* and conduct committed and either *insured organisation crisis* or *personal crisis* anywhere in the world, unless otherwise specified.

### **5.22 Valuation and foreign currency**

All premiums, *limits of liability*, sub-limits of liability, *deductibles*, retentions, *financial loss* and other amounts under this policy are expressed and payable in Australian currency. Except as otherwise provided, if judgment is rendered, settlement is denominated or another element of loss under this policy is stated in a currency other than Australian dollars, payment under this policy will be made in Australian dollars at the cash rate of exchange for the purchase of Australian dollars in accordance with the Reserve Bank of Australia on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of *financial loss* is due, respectively.

### **5.23 Waiver of contribution**

We will not pay any *financial loss* to the extent that it has been caused or contributed to by the *insured* giving up any right or contribution or indemnity without our prior written consent.

**Zurich Australian Insurance Limited**  
ABN 13 000 296 640, AFS Licence No: 232507  
Head Office: 5 Blue Street, North Sydney NSW 2060

Client enquiries  
Telephone: 132 687  
<https://www.zurich.com.au/>



## REFERENCE SCHEDULE

Part 1 - Key Information				
Item	Detail			
Clause 4 -	ACN	153 926 080		
	ACNC Registration	Registered ABN 89 153 926 080		
	Company Acts as trustee	n/a		
	Name of Trust (if applicable)	n/a		
	Taxation Status – income tax	Income Tax Exemption from 01.01.2012		
	Taxation Status – Deductible Gift Recipient	No		
	Trading Name	JCU DENTAL		
	Nature of Business	Clinical Dental Practice for the training of JCU Dental Students and provision of dental services to the public (Refer to Section 2 of the Constitution)		
	Principal Place of Business	14-88 Mcgregor Rd CAIRNS QLD 4878 AUSTRALIA		
Part 2 - Contact Information				
Item	Detail			
Clause 6	Chair	Clive Skarrot		
	Secretary	Kristin Navarro		
	Business Manager	Jeffrey Reddy		
	Companies Coordinator	<a href="mailto:companies@jcu.edu.au">companies@jcu.edu.au</a>		
Part 3 - Other Information				
Item	Detail			
Clause 11 – Subsidiaries	Name of Company	n/a	% Interest	n/a
	Name of Company	n/a	% Interest	n/a
Clause 12 – Audit and End of Year	Name of Auditor	Queensland Audit Office c/o Crowe Horwath (Townsville)		

## ANNEXURE A

See Attached.

# James Cook University

## Guide for Controlled Entities

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## 1.0 Introduction – Overview of JCU Controlled Entities

### 1.1 Introduction – Purpose of this Guide

This Guide has been prepared to assist staff and office bearers of James Cook University (**JCU**) and JCU Controlled Entities (**Controlled Entities**) in matters relating to the operations and governance of the entities. It is not intended to operate as a definitive statement on any matters such as company or taxation law. This Guide forms part of a package of JCU Companies Website which will be developed to include a Knowledge Base of background information and articles, a section on Frequently Asked Questions, and a table of Forms and Precedents.

Controlled Entities are entities which are under the control of JCU. Whether an entity is *controlled* by JCU is assessed under the *Corporations Act 2011* (section 50AA). As set out in the *JCU Controlled and Non Controlled Entities Policy* (the **Controlled Entities Policy**), in essence, an entity (parent entity) controls a second entity if the parent entity has the capacity to determine/influence the outcome of decisions and policies being considered by the second entity.

The determination of whether or not an entity controls another entity will take account of board composition, shareholding, relevant agreements such as shareholder agreements, and the overall facts and circumstances. In the case of all existing Controlled Entities, JCU is either the sole shareholder or a major shareholder. In the case of entities which operate as trusts, JCU is the sole beneficiary. In addition, for most board appointments, a Certificate of Approval from the Vice Chancellor is required before a person can be appointed to act as a director of a Controlled Entity. The Vice Chancellor may withdraw that certificate at any time.

Controlled Entities may take a number of forms including companies, trusts and joint ventures, and within these major groupings there are subsets e.g. in the case of companies, there are companies limited by shares and companies limited by guarantee.

The reasons for forming a Controlled Entity include:

- to provide a more appropriate governance framework for the management of specialized functions of JCU;
- to separate the management of non-core functions of JCU from core functions;
- to provide a level of independence in the decision making or operation of a function of JCU;
- a legislative requirement connected with the operations of the entity;
- a condition of a funding agreement for the relevant operations;

- seeking to quarantine trading risks in a corporate entity; and
- ease of administration and financial accountability for the operations of the entity.

All of the above factors will also take account of taxation considerations and advice. As dealt with in this Guide, the establishment of a Controlled Entity requires the approval of JCU Council and the JCU Policy refers.

JCU is a body corporate, established under the *James Cook University Act 1997* (the **JCU Act**). While all Controlled Entities are separate legal entities, there are many areas of overlap between JCU and the individual controlled entities. In most situations, each body corporate will look after and manage its own affairs, but there are cases when support is provided by JCU to Controlled Entities. There are occasions when boards of Controlled Entities properly take into account the interests of JCU in their decision making processes. This is authorized by clauses in entity constitutions which contain enabling provisions in accordance with the Corporations Act (see Guide, Section 2.2).

Examples of the overlap between JCU and its Controlled Entities include:

- In most cases, JCU and Controlled Entities employ their own staff. However, in some cases, one entity may arrange for its staff to provide services to the other, usually on commercial terms including payment/ inter-entity adjustment.
- Managing risks for Enterprise Risk and HSE (Health, Safety and Environment), once again is a matter fundamentally for each entity to manage. However Controlled Entities record and manage these risks utilizing the JCU Riskware systems.
- While each entity prepares its own financial statements, the financial positions for each of the Controlled Entities are consolidated with that of JCU for end of year reporting.
- It is recognized that an incident which adversely affects the reputation of a Controlled Entity will, in most cases, also adversely affect the standing and reputation of JCU. An example would be if a Controlled Entity was prosecuted for a breach of the Environmental Protection Act with resulting damaging publicity.

This Guide sets out information and recommended practice which in many cases is directed to trading entities. Appropriate adjustment can be made for companies which do not trade and have no employees. However it is important to note that the duties of directors, including in relation to enterprise risk and work health and safety matters apply regardless whether the company is trading.

This Guide references Australian legislation and does not seek to provide advice on the laws of Singapore. However it is suggested that much of this Guide has application to the JCU's two Singapore based Controlled Entities.

A wealth of information is contained on the websites for ASIC, ACNC, ASX, AICD and GIA (terms defined below). While the ASX necessarily deals with publicly listed companies, much of the material has application to companies regardless of size.

A key communication line to JCU for all reporting and queries in relation to Controlled Entities is [companies@jcu.edu.au](mailto:companies@jcu.edu.au)

## 1.2 Terminology

In this Guide, a number of terms are used, including in abbreviated form:

*ACNC* means the Australian Companies and Not-for-profits Commission—see Guide, Section 2.3

*ACNC Act* means the *Australian Companies and Not-for-Profits Commission Act (Cth) 2012*

*AICD* means the Australian Institute of Company Directors

*ASIC* means the Australian Companies and Investments Commission

*ASX* means the Australian Stock Exchange

*Company Coordinator* means the person nominated to this position by the DVC Services and Resources, as recorded in the JCU Companies Website

*Company Forms* means the company forms contained in the JCU Companies Website

*Company Officer* means an Officer as defined in the Corporations Act and therefore includes directors, the company secretary, and persons who make, or participate in making decisions that affect the whole, or a substantial part, of the business of a company, persons who have the capacity to affect significantly a company's financial standing and shadow directors – see Guide Section 3.5(a)

*Company Reference Material* means the reference material contained in the JCU Companies Website

*Controlled Entities Policy* means the Controlled and Non-Controlled Entities Policy of JCU

*Controlled Entity* means an entity which is controlled by JCU under the Controlled Entities Policy – see Guide, Sections 1.1 and 1.3

*Corporations Act* means the *Corporations Act (Cwth) 2001*

*FAA* means the *Financial Accountability Act (Qld) 2009*

*FaBS* means the directorate of Financial and Business Services within the Division of Services and Resource

*GIA* means the Governance Institute of Australia

*Guide* means this Guide for Controlled Entities of JCU

*HSE* means the management of health safety and environment.

*James Cook University Act* or *JCU Act* means the *James Cook University Act (Qld) 1997*

*JCU Companies Website* means the website and information at the [Link](#)

*JCU Council* means the Council of James Cook University, as the governing body of JCU, established under section 7 of the JCU Act

*Model Constitution* means the model constitution for a JCU controlled entity as approved by JCU Council, a copy of which is contained in the Company Forms

*Schedule* means a schedule to this Guide

*Riskware* means the JCU Riskware System used for recording and managing HSE and enterprise risks

*WHS Act* means the *Work Health and Safety Act (Qld) 2011*

*Voluntary Code* means the Voluntary Code of Conduct of Universities Australia referred to in Guide Section 2.1

### **1.3 JCU Controlled Entities**

There are currently ten (10) JCU Controlled Entities. These are listed in the JCU Companies Website. Three of these entities are connected with the operations of JCU Singapore, including two companies which are incorporated in Singapore. The JCU Companies Website contains a chart setting out the structure for the three companies and the ultimate beneficial ownership by JCU.

### **1.4 Core Documents**

Each entity will have core documents relevant to its establishment and operations. These include:

- company constitutions (in Singapore these take the form of Memorandum and Articles of Association);
- shareholder agreements;
- trust deeds; and
- joint venture agreements.



The terms of these documents, and any amendments to them, must be approved by JCU Council.

JCU Council has approved a model constitution for Controlled Entities – See Forms and Precedents and Guide, Section 8, dealing with taxation. This pro forma constitution has been prepared on the basis of a not-for-profit. Not all JCU Controlled Entities are not-for-profit.

Under clause 11 of the model constitution, a company must not, without the prior approval of JCU Council:

- a) agree to purchase a new business or substantially all of the assets of a business;
- b) agree to sell the business of the company or substantially all of the assets of the company; or
- c) borrow money or grant security over the assets or undertaking of the Company.

## **1.5 JCU Support for Entity Operations**

To begin with, the basic proposition is that Controlled Entities are in charge of their own business affairs and are responsible for managing their operations in every respect. This general statement is qualified by the following:

- support for Controlled Entities which are non-trading and have no staff is supplied by entity office bearers and JCU staff;
- in some cases, JCU requests that Controlled Entities use JCU systems and resources in their governance and management processes. Examples include the use of the JCU Riskware System HSE and enterprise risk mentioned above, and the insurance cover that is arranged by JCU for the University which extends to the activities of Controlled Entities and their boards – see Guide, Section 7 (Insurance);
- staff in JCU service divisions and directorates are a reference point for initial advice, assistance in scoping work required, and reference to appropriately qualified contractors and advisers.

Set out in Schedule No. 1 is a table of JCU support areas and contact details. As noted above, where JCU provides significant support to a Controlled Entity, there is scope for the JCU business unit to provide that support on agreed commercial terms including payment.

## **1.6 Forming a Controlled Entity – the Controlled and Non-Controlled Entities Policy**

### [Controlled and Non-Controlled Entities Policy](#)

The terms of this policy necessitate that the approval of JCU Council is required for the following acquisitions and disposals:

- the formation of an entity which, when formed, will be a Controlled Entity;
- the acquisition of an interest in a Controlled Entity;
- the acquisition of an increased interest in a Controlled Entity;
- the disposal of an interest in a Controlled Entity; and
- the amendment of the constitution for a Controlled Entity.

The principal form of entity that JCU will form are companies, under the Corporations Act 2001, and trusts. Other forms of entity that may be established are joint ventures and partnerships. Companies may be public or private and either limited by shares or limited by guarantee. Note that clause 8 of the Controlled Entities Policy provides that the Vice Chancellor may approve JCU becoming a member of a company limited by guarantee where:

- the company will be a non-controlled entity; and
- there will be no capital commitment on the part of JCU to fund the operations or capital of the company.

The Vice Chancellor may also approve JCU ceasing to be a member of a company limited by guarantee for which approval under clause 8 has been given.

The Controlled Entities Policy sets out in clause 2.3 the material to be provided to Council. This includes the reason for the acquisition, the business case, the risk assessment, key documents and key commercial considerations.

The formation of Controlled Entities, including the drafting of company constitutions, is the responsibility of the Company Coordinator.

## 2.0 Legislation, Legislative Compliance and Policies

### 2.1 The JCU Act and Role of JCU Council - Governance

Relevant provisions in the JCU Act include the following:

- section 6(3) which provides that JCU may exercise its powers inside or outside Queensland;
- section 8 which provides that the JCU Council is the University's governing body;
- section 61 which allows JCU to form companies and participate in the formation of companies whose objectives include:
  - making available facilities for study, research or education;
  - providing teaching research, development, consultancy or other services for public or private entities;

- engaging in the development or promotion of the University's research and the application and use of that research;
- publishing, distributing or licensing the use of literary or artistic works; ➤ exploiting commercially a facility or resource of the University; and ➤ seeking gifts to the university for University purposes.

Universities Australia has prepared a "*Voluntary Code of Practice for the Governance of Australian Universities*" (**Voluntary Code**). A copy of this code is set out in Schedule No.2. JCU is not bound by the Voluntary Code and the code is currently being updated. However JCU aims to ensure that the management and oversight of its Controlled Entities is consistent with the Voluntary Code.

Paragraphs 12 and 13 of the Code are set out below:

12. *The governing body (i.e. JCU Council) should oversee controlled entities by-*

- a) ensuring that the entity's board possess the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;*
- b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;*
- c) ensuring that the board of the entity adopts and regularly evaluates a written statement of its own governance principles;*
- d) ensuring that the board documents 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; and*
- e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.*

13. *A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of a university should, where appropriate in light of the risk assessment use its best endeavours to obtain an auditor's report..... by an external auditor.*

The Code was considered by Council at its meeting (7/11) on 1 December 2011. The role of JCU Council in the oversight of Controlled Entities is therefore clearly established and put into effect via the Controlled Entities Policy. It can be seen that under this policy, approval of JCU Council is required to the acquisition and disposal of an *Interest in an Entity* as defined in the policy. This extends to the acquisition of interests by Controlled Entities in other entities.

In general terms, in addition to any issue-specific agenda items and reports which may be considered by the JCU Council, members of Council are informed in relation to the affairs of Controlled Entities by:

- receiving periodically via Finance Committee, minutes, financial statements and any other key documents such as business plans for Controlled Entities; • receiving via the HSE Sub-Committee, periodic reports on HSE matters;
- receiving via Finance Committee, End of Year information including:
  - audited end of year financial reports; and
  - a report on End of Year Company Matters which includes information on HSE and enterprise risk matters.

Clause 27 of the pro forma constitution for Controlled Entities provides that:

- the board must adopt, and not less than once each year evaluate, a written statement of its own governance principles; and

- the Vice Chancellor may give notice to the board of recommendations or requirements for good governance of the Company and in such case the board shall, as far as is practicable, act in accordance with that advice.

The JCU Companies Website (Company Reference Material) contains a shell Board Charter which is intended to record the governance arrangements for the relevant company.

For information in relation to the formation of Controlled Entities, see Guide – Section 1.6.

## 2.2 Corporations Act (section 187) and JCU Interests

There are circumstances where it is acceptable and appropriate for the directors of a Controlled Entity to take into account the best interests of JCU when making decisions that impact the Controlled Entity. Section 187 of the Corporations Act provides that a director of a Controlled Entity is taken to act in the best interests of that entity if:

- the constitution of the subsidiary expressly authorizes the director to act in the best interests of JCU;
- the director acts in good faith and in the best interests of JCU; and
- the Controlled Entity is not insolvent at the time the director acts, and the entity does not become insolvent because of the director's actions.

The application of this section to Controlled Entities is given effect to via the inclusion of clause 17.4 of the model constitution.

## 2.3 ACNC – Australian Companies and Not-for-profits Commission

As the name connotes, the *Australian Companies and Not-for-profits Commission Act (Cth) 2012* (the **ACNC Act**) regulates the not for profits sector, while at the same time, many provisions in the Corporations Act remain relevant.

A wealth of information including guides and fact sheets is set out on the [ACNC website](#) which also includes a link to the legislation. Key points to note are :

- the role of the Commission established under the ACNC Act, commonly referred to as the ACNC, is to:
  - register organizations as charities;
  - help charities understand and meet their objectives;
  - help the public understand the work of the not-for-profit sector;
  - maintain a public register of charities; and
  - develop and implement a reporting framework for charities;
- the ACNC registers and regulates not-for-profit entities as assessed by the ACNC;

- the JCU Model Constitution contains provisions designed to allow registration of companies with ACNC. Key requirements on this point include the inclusion of charitable objects and provisions which prohibit the distribution of profits and assets to the shareholder;
- the above means that any change to constitution documents, including trust deeds, must be considered carefully to ensure that there is no loss of charity/not-for-profit status;
- the ability for entities to register for ACNC quarterly updates;
- the need for not-for-profits to meet certain basic Governance Standards (set out below);
- ACNC registered entities receive a password and this password enables access to the ACNC records for that entity. Changes of directors and office bearers (excluding the company secretary) must be notified to ACNC;
- for ACNC registered companies, it is not necessary for ASIC to be notified of these changes. However it is JCU practice to notify ASIC of changes to directors and the secretary, noting that changes must be notified within 28 days, otherwise penalties apply, and *notifiable changes* include changes of address;
- normally, not-for-profits must file an Annual Statement with the ACNC attaching financial statements. However as JCU, the ultimate beneficial owner of all Controlled Entities, is itself registered with ACNC, arrangements have been made for the annual reporting obligations of Controlled Entities to be met by JCU filing a “parent company” Annual Statement which includes financial information on a consolidated basis – a joint reporting basis.
- it should be noted that the normal reporting period under the ACNC Act is the financial year. Therefore new Controlled Entities must make an application for a substituted reporting period to align with that of JCU – namely the calendar year.

The Governance Standards which ACNC registered companies must meet are the following –

#### Standard 1: Purposes and not-for-profit Nature

*Charities must be not-for-profit and work towards their charitable purpose. They must be able to demonstrate this and provide information about their purposes to the public.*

#### Standard 2: Accountability to Members

*Charities that have members must take reasonable steps to be accountable to their members and provide them with adequate opportunity to raise concerns about how the charity is governed.*

#### Standard 3: Compliance with Australian Laws

*Charities must not commit any serious offence (such as fraud) under any Australian law or breach a law that may result in a penalty of 60 penalty units or more.*

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#### Standard 4: Suitability of Responsible Persons

*Charities must take reasonable steps to:*

*be satisfied that its responsible persons (such as the board) are not disqualified from managing a corporation under the Corporations Act 2001 or disqualified from being a responsible person of a registered charity by the ACNC Commissioner; and*

- *remove any responsible person who does not meet these requirements.*

#### Standard 5: Duties of Responsible Persons

*Charities must take reasonable steps to make sure that responsible persons are subject to, and understand and carry out, the duties set out in this standard. (See Guide Section 3.5).*

### **2.4 Statutory Bodies Financial Arrangements Act (QLD) 1982–(SBFA)**

Section 60A of the SBFA provides that a statutory body (a term which includes JCU) may enter into Type 1 Financial Arrangements with the approval of the State Treasurer. This category of arrangements is defined to include *entering into a joint venture, partnership or trust*.

In relation to the above, there have been two relevant approvals by the Minister. These are dealt with below and the terms of the approvals are set out in Schedule No. 3.:

- the terms of a General Approval dated 12 September 2003 that statutory bodies may enter into arrangements involving the formation of membership of Cooperative Research Centres for the purpose of undertaking activities associated with discharging the statutory functions of the university;
- the terms of a General Approval dated 12 June 2008 that public universities may enter into arrangements involving:
  - a) entering into a joint venture, partnership or trust; and
  - b) forming or participating in forming a corporation where:

*participation in these arrangements are deemed necessary by the Council of the relevant University to carry out the core functions of study, research or knowledge stipulated in the university's enabling legislation.*

The General Approval is subject to the following conditions:

- 1) JCU Council must ensure that appropriate risk mitigation and control strategies are in place to manage any risks which may arise as a result of the relevant arrangement;
- 2) Commercial activity that falls outside the scope of the university's core functions will not be covered by the General Approval; and

- 3) JCU must advise the Office of Higher Education and the Auditor-General when it enters into and exits any such arrangements.

It will be noted that the above approval sets out conditions for the formation of companies, whereas the terms of section 61 are not so limited. The Office of Higher Education has confirmed that the terms of the 2008 Approval do not limit the power of JCU to form Companies under Section 61 of the JCU Act – see Schedule No. 4.

## 2.5 Legislative Compliance

A fundamental obligation of company Officers is to ensure that their company complies with all relevant legislative obligations. For full trading companies this is an onerous, but highly desirable task. Legislative obligations will be sourced from federal, state and local authority laws and include acts of parliament, regulations and other subordinate legislation. The task is one which will necessarily take place over a period of time and should be reviewed approximately every 5 years. External legal assistance may be required to assist Controlled Entities in completing the process.

It is suggested that the task of identifying relevant legislative obligations can be best approached by the creation of 3 lists in the first place:

### **Category A – General Legislation**

Legislation that has general application to areas such as health safety and environment, environmental protection, taxation and companies.

### **Category B – Key Specific Legislation**

Legislation that applies to the specific area of work area of the entity concerned. For example, health and medical legislation in the case of JCU Health Pty Ltd and JCU Dental.

### **Category C – Other Legislation**

Legislation that imposes obligations on the company of lesser importance than Category B.

The creation of these categories allows a staged approach. Once the legislation has been identified, the next stage is to review the legislation concerned to record the key obligations and then measure the level of compliance. Where there is a lack of compliance, an action list setting out areas of non-compliance should be created with remedial action taken after a prioritization process. This process should have regard to the level of risk and expenditure required in relation to the various areas of non-compliance.

An important element in legislative compliance is updating the table of key legislative obligations as new legislative obligations arise. This can be assisted by regular review of professional and trade journals and also by subscription to on-line updating services such as SAI Global.

Company officers should be aware that:



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- Legislative obligations of companies and boards is sourced from both the common law and acts of parliament, state and federal;
- Many acts provide that where a company is in breach of legislation, directors may be subject to fines, and in some cases prosecution;

Separately to the above, where a company has committed an offence, there is the possibility that directors can be charged as being accessories to the wrongful acts in question;

- Controlled Entities are open to requests for information under the *Right to Information Act 2009* via JCU, where companies are obliged to provide information to JCU; and
- Controlled Entities may also be the subject of complaints to an Ombudsman.

In any legislative compliance process there are many areas of important focus, including:

- Areas of regulation closely connected with the core business of the company;
- Competition law;
- Environmental law;
- Work health and safety law [HSE];
- Taxation law; and
- Anti-discrimination and bullying and harassment legislation.

## 2.6 Compliance and Business Checklist

A useful management tool is the creation of a timetable for recording relevant legal *compliance* obligations such as the filing of taxation returns. This can be expanded to cover key *contractual* obligations such as the submission of a grant acquittal, which is often a condition of on-going funding. This Checklist should then be reviewed by the board at each meeting for compliance and contractual obligations arising between board meetings – See Guide, Section 4.4.

## 2.7 Policies

### a) Preliminary

Controlled Entities should address what policies are required to enable their business to operate effectively, balancing the interests of efficiency and certainty which arise through the use of policies on the one hand, and on the other, the down side of over-regulation. As Controlled Entities are separate bodies to JCU, it is necessary that they should adopt their own policies. At the same time, [JCU's policy library](#) is a useful reference point. Policies should make use of detailed procedures to be attached to the policy where this is appropriate.

## b) What Policies?

As in the case of logging relevant legislative obligations, there will be policies which can be seen to be of general application to all companies and those which are company / industry specific. JCU is working on the preparation of general-application shell policies for use by all Controlled Entities. The list of possible policies includes:

### Governance

Code of Conduct - directors  
Conflicts of Interest

### Financial

Financial Delegations

### General

Work Health and Safety  
Risk Management  
Retention of Records  
Employee Development  
Intellectual Property

### HR

Code of Conduct – staff  
Leave  
Travel  
Use of Social Media  
Grievance  
Bullying and Harassment  
Sexual Discrimination

## c) Contracts of Employment

Contracts of employment reference existing policies, where they are located, and highlight any policies that are of particular application to an employee in terms of their duties. It is suggested that a useful clause would read along the lines of:

- *The Employee must comply with any obligations imposed upon the Employee by the Company's policies and procedures as in force and as amended from time to time including any Code of Conduct of the Company. The policies and procedures whilst applying to the Employee do not form part of this employment contract and are not otherwise binding upon the Company.*
- *The Employee must keep themselves informed of the Company's policies and procedures at all times.*
- *Where benefits are provided to the Employee under this employment contract which are subject to Company policies or procedures, those benefits are provided on the basis that the Employee agrees to comply with the requirements in the policy or procedure in force from time to time.*

It is intended that a model employment contract will be prepared for use by Controlled Entities. This model contract will need to be amended to take account of any relevant awards or industrial agreements.

## d) Register of Policies

Entities should have a central repository for company policies in the form of a JCU Companies Website. This will ensure that all employees and office bearers are aware of, and have access to, the policies of the entity.

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**e) Process for Policy Formulation**

Entity staff involved in policy formulation should follow a carefully designed process for policy formulation involving:

- *clearly identifying the subject matter of the policy;*
- *sourcing and considering relevant background documents;*
- *drafting the relevant policy and procedure in clear and concise terms, making use of defined terms;*
- *seeking input from key stakeholders;*
- *obtaining legal advice where this is appropriate;*
- *obtaining board approval; and*
- *notifying staff when the policy has been approved and how the policy can be sourced.*

Note that all policies should be approved by the Board. Matters which properly fall within *procedures* under a policy, may be approved by the relevant management head who is responsible for administration and oversight of the policy.

## 3.0 Governance, the Role of the Board and Related Parties

### 3.1 The Role of the Board Generally

It is necessary to first address the role of the board in the context of the concept of **corporate governance**. This has been defined by the Australian Stock Exchange (**ASX**) in the following terms:

*The framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in corporations. It encompasses the mechanisms by which companies, and those in control, are held to account. Corporate Governance influences how the objectives of the company are set and achieved, how risk is monitored and assessed, and how performance is optimized. [ASX Link](#) See also Guide, Section 2.1.*

The ASX has identified 8 key principles of corporate governance:

1. Lay solid foundations for management and oversight.
2. Structure the board to add value.
3. Act ethically and responsibly.
4. Safeguard integrity in corporate reporting.
5. Make timely and balanced disclosure (to JCU in this context).
6. Respect the rights of shareholders (and interests of stakeholders in the JCU context).
7. Recognize and manage risk.
8. Remunerate fairly and responsibly.

In its most basic form, corporate governance is about the manner in which companies are governed and the systems for regulating and overseeing corporate conduct. Critical elements therefore include the way in which management and governance committees report to and interact with boards. It has been observed that there is a direct connection between good corporate governance and good corporate performance.

For all Controlled Entities, there is a wide range of stakeholders, which will generally look something like this:



The ASX has summarized the responsibility of boards. Adapting this to the JCU landscape, rather than that of a public company, the **role of the board** includes the following:

1. Providing leadership and setting the strategic objectives of the entity;
2. Overseeing management's implementation of the entity's strategic objectives and the level of performance;
3. Ensuring the board has the right complement of skills;
4. Appointing, and where necessary replacing, the general manager and other designated key staff;
5. Approving the operating budget and major capital expenditure in excess of designated thresholds;
6. Overseeing the integrity of the entity's accounting and reporting systems, including via the annual audit process;
7. Ensuring that the entity has proper systems to record, manage and report on risk;
8. Overseeing the necessary reporting to:
  - JCU in areas requested by JCU, including in relation to claims, possible claims, risk, and work, health and safety; and, where required,
  - relevant bodies in accordance with legislation;
9. Approving the entity's remuneration framework; and
10. Monitoring and reviewing the entity's governance practices.

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Books have been written on governance and the role of boards. Board members are encouraged to continue to consider the topic, asking questions of themselves such as:

- What is my role on the board?
- Is this board working?
- What can be done to improve the performance of the board?
- Does the company have the right board and the right general manager?

If board members have any concerns in relation to these questions, it is suggested that they should in the first place consult with their Chair.

It is good practice for boards to carry out strategic planning on a regular basis, normally not less than once every three years.

In addition, boards should complete on an annual basis a Self-assessment Questionnaire – see Guide, Section 3.5(i).

## 3.2 Committees

Most boards assist their governance processes via committees which report to the board. These committees would normally not be decision making (in the case of Controlled Entities), would contain a membership consisting of board and management (and in some cases, external representatives), have members with skills complementary to the focus area of the committee, and meet on a regular basis. Committees allow small groups to work on specific or selected topics in an informal way to inform and guide board decisions.

All committees should have a committee charter setting out arrangements for the appointment of the chair and secretary, committee membership, scope of the committees' activities, any level of decision making authority, meeting procedure and any process matters that should be recorded to assist in the smooth running of the committee. Clause 18 of the model constitution sets out some rules dealing with the committees.

A List of Possible Committees is set out in the Company Reference Material. It needs to be borne in mind that committees should be established strictly on a needs basis and that with a board of volunteers, many board members will have limited availability. Chairs might consider appointing committees on an as required basis. Otherwise, management can seek guidance and input from selected board member(s) on topics where this is appropriate to inform the board discussion.

Boards should consider whether to include as one of their committees an Audit Committee. In addition Boards should establish an Audit Committee if requested by JCU to do so.

## 3.3 Delegations

Section 198 D of the Corporations Act provides that unless the company's constitution provides otherwise, the directors of a company may delegate any of their powers to a committee of directors, a director, an employee or any other person.

Section 190 provides that if directors delegate a power under Section 198 D, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves. However a director will not be liable if:

- the director believed on reasonable grounds at all times that the delegate would exercise the power given in conformity with the duties imposed on directors by the Corporations Act and the company constitution; and
- the director believed on reasonable grounds, and in good faith, and after making proper enquiry, that the delegate was reliable and competent in relation to the power delegated.

Separately to the power to delegate to a committee, it is common and recommended that there be a formal delegation of key financial and human relation decision topics to nominated persons, identified by position. In many cases, the board adopts a schedule of delegations which has reference to financial limits or the approved budget, and may also reference in appropriate cases a requirement for the prior approval of the board to the exercise of a power. A model Table for Board Delegations is set out in the Company Forms.

### 3.4 Role of the Chair

The *Book of the Board* <sup>1</sup> conveniently summarizes the key dimensions of the Chair's role to include, expressed in the JCU context:

- For the general manager, acting as a sounding board, mentoring and performance monitoring;
- Being the figurehead for the entity when required;
- Providing leadership of the board team;
- Chairing all board meetings and facilitating board discussion; and
- Leading the stewardship of the entity's governance processes.

It is accepted good practice, but not mandatory to have an "independent" Chair. Under the model constitution, the Vice Chancellor may appoint a board member to act as Chair.

JCU encourages boards to appoint a person to be the Deputy Chair.

### 3.5 Directors

#### a) Who is a director?

In the normal case the directors will be the persons who have consented to act as directors of a company, have been appointed in accordance with the company constitution and whose appointment has been notified to the ASIC and/or ACNC as required. Other terms which need to be taken account of are –

- i. *Alternate directors* – being directors who, under the constitution, are authorized to act in the place of a director of the company. JCU's model constitution does not provide for alternate directors.
- ii. *Nominee directors* – are directors appointed by a party by reason of a contractual right or provision in a company constitution. Nominee directors are frequently used in joint ventures where each party to the joint venture has the right to appoint to the board a given number of directors.
- iii. *Shadow directors* – are persons who, though not formally appointed as directors, are in fact at law directors by reason of their role in the company. This arises from the definition in the Corporations Act for *director*. A person will be a director of a company, though not formally appointed, if they *act in the position of a director*.

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<sup>1</sup> The Book of the Board, 2<sup>nd</sup> Edition, David Fishel, Page 83

They will also be a director if either the company or the validly appointed directors, *are accustomed to act in accordance with the wishes or instructions of* the shadow director.

It is in order for persons to attend meetings as observers, but such persons should always be recorded in the minutes as observers. In addition, they should not take part in general directors' discussions or vote. The contribution of observers should be made at the invitation, or approval, of the chair. The significance of being a shadow director is that a person who falls within the definition of *director* under the Corporations Act will have the same duties and potential liabilities in respect to their actions.

#### **b) Procedure for Appointment of Directors**

Where a new Controlled Entity is formed, the board of directors will be those persons who have been approved by the Vice Chancellor to act as the initial board. Note the requirement in the model constitution to have the Certificate of Approval of the Vice Chancellor to act as a director. If this certificate is withdrawn then the person ceases to be a director of the company.

The model constitution provides that, subject to the requirement for each director to have a Certificate of Approval, the board may appoint persons to act as director, either to fill a casual vacancy, or to act as an additional director, within the maximum limit of 10 directors. The Company Forms contain a Checklist for the Appointment of a Director.

#### **c) Decision Making**

It is fundamental that directors must act in the best interests of the company on which they serve, subject to the provisions of Section 187 of the Corporations Act dealt with above. While JCU and the Controlled Entities are separate bodies corporate, they are all part of the JCU "family". This is recognized in the treatment of HSE where the activities of the Controlled Entities are treated as part of the JCU undertaking under the oversight of JCU Council.

Each of JCU and the Controlled Entities will at times have interests and agendas that are not precisely the same. However in all cases, the activities of the Controlled Entity will be closely connected with the mission of JCU. Indeed the core reason for the formation of every JCU Controlled Entity will not be to advance a business interest, but rather to advance the JCU mission.

Accordingly the relationship between JCU and the Controlled Entities should always be a collaborative one. Where there are perceived to be problems, chairs of controlled entities are encouraged to have dialogue with senior JCU representatives.



A helpful list of questions that directors might usefully ask themselves includes the following<sup>2</sup>

1. Do I as a director have any conflict in regard to the issue before the board?
2. Do I have all the facts to enable me to make a decision on the issue before the board?
3. Is the decision being made a rational business decision based on all the facts available at the time of the board meetings?
4. Is the decision in the best interests of the company?
5. Is the communication of the decision to the stakeholders of the company transparent, with substance over form, and does it contain all the negative and positive features bound up in that decision?
6. Will the company be seen as a good corporate citizen as a result of the decision?
7. Am I acting as a good steward of the company's assets in making the decision?
8. Have I understood the material in the board pack and the discussion at the boardroom table?
9. Will the board be embarrassed if its decision and the process employed in arriving at its decision were to appear on the front page of the national newspaper?
10. What does the decision mean for James Cook University?

The AICD has asked its members to follow a Code of Conduct for companies with which they are associated. This is set out in the Company Reference Material.

#### **d) Duties and Responsibilities – Corporations Act**

There exist a number of duties for directors and officers both at common law and by statute. To the extent that the Corporations Act has now effectively incorporated the essence of the common law duties, for companies that are not ACNC registered, these are now best considered in terms of those set out in the Corporations Act and briefly noted as follows:

1. Duty to exercise care and diligence with the degree of care that a reasonable person would exercise [section 180 (1)] – see also below.
2. Duty to Act in Good Faith, in the best interests of the entity, and for a proper purpose (section 181).
3. Duty not to Misuse Position so as to gain advantage for themselves or cause detriment to the company (section 182).
4. Duty not to misuse Information so as to gain advantage for themselves or cause detriment to the company (section 183).
5. Duty to avoid Conflicts of Interest and notify the other directors of any material personal interest (sections 191-194) – see also below.
6. Duty to prevent insolvent trading (section 588G) – see also below.

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<sup>2</sup> Principals of Contemporary Corporate Governance, 3<sup>rd</sup> Edition. Jean Jacques du Plessis; Anil Hargovan; Mirko Bagaric; Jason Harris. Page 104

## e) Duties and Responsibilities – ACNC Act

The duties under this act for responsible persons are set out in detail in the Company Reference Material, and the headings are listed below:

1. Act with reasonable care and diligence; 2. Act honestly in the best interests of the charity and for its purposes; 3. Not misuse the position of a responsible person; 4. Not misuse information obtained in performing duties;
5. Disclose any actual or perceived conflict of interest;
6. Ensure the charity's financial affairs are managed responsibly.

It can be seen that the 6 duties under the ACNC Act mirror those under the Corporations Act, other than the last one, which, while having common ground, has a slightly different focus. Set out in Schedule 5 is a summary of the provisions in the *Corporations Act* which do not apply to charities registered with ACNC.

### Conflicts of Interest

Section 191(1) of the Corporations Act provides that, subject to the exceptions contained in Section 191(2), *a director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest.*

Section 192 provides that directors may give other directors a standing notice of the nature and extent of an interest which they hold.

Clause 17 of the model constitution contains provisions consistent with the Corporations Act and provides that:

- Directors may give a general notice that they are a member of a company. In this case they are taken to be interested in any dealings of the company of which they are a director, with that company;
- Where a director makes disclosure of their interest in a contract or arrangement, then, with the prior consent of the other directors, the director may receive information about the matter, be present at discussions about the matter, participate in discussions, and vote in relation to the matter;
- A director is not disqualified from participating in meetings just because the director is an employee, officer or student of JCU;
- In accordance with Section 187 of the Corporations Act, directors may act in the best interests of JCU, and in such cases, will be taken to have acted in the best interests of the company.

It is good practice for directors to make any standing declarations of their interest, including their employment with JCU, at the first meeting of each calendar year.

### Exercising Care and Diligence – the “Business Judgment Rule”

Section 180(2) provides what has been described as safe harbour legislation in the following terms:

*A director or other officer who makes a business judgment is taken to meet the requirements of Section 180(1) if they:*

- a) Make the judgment in good faith for a proper purpose; and*
- b) Do not have a material personal interest in the subject matter of the judgment; and*
- c) Inform themselves about the subject matter of the judgment to the extent that they reasonably believe to be appropriate.*

*The director's or other officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.*

#### Duty to Prevent Insolvent Trading

This duty is a duty of all directors and not just the person(s) on the board who may be regarded as having professional expertise in areas of finance and accounting. Where directors of Controlled Entities believe that there is a danger of the entity trading while insolvent, they should in the first place email [companies@jcu.edu.au](mailto:companies@jcu.edu.au).

#### Case Law – the National Safety Council case

A case that provides a good insight into directors' duties, not just in relation to insolvent trading, is *Commonwealth Bank v. Friedrich and others* (1991). In that case, the chair was held liable to the Commonwealth Bank in circumstances which followed fraud by the CEO. The bank's case was that in making loans to the company, it had relied on financial statements which had not been properly examined by the directors. In this case the judge said:

*As the complexity of commerce has gradually intensified....the community has of necessity come to expect more than formerly from directors whose task it is to govern the affairs of companies to which large sums of money are committed by way of equity capital or loan.*

*In response, the Parliament and the courts have found it necessary in legislation and litigation to refer to the demands made on directors in more exacting terms than formerly; the standard of capability required of them has correspondingly increased. **In particular, the stage has been reached when a director is expected to be capable of understanding his company's affairs to the extent of reaching a reasonably informed opinion of its financial capacity.** Moreover he is under a statutory obligation to express such an opinion annually.*

***I think it follows that he is required by law to be capable of keeping abreast of the company's affairs, and sufficiently abreast of them to act appropriately if there are reasonable grounds to expect that the company will not be able to pay its debts in due course and he had reasonable cause to expect it.** (Emphasis added).*

**f) Directors and Officers [D+O] Liability Insurance**

JCU has D+O insurance cover which extends to directors of Controlled Entities. Information on the policy details is available from the company secretary and JCU Insurance Office.

**g) Indemnity of Directors**

In addition to the cover from the D+O insurance there are two basic ways in which directors of Controlled Entities may receive indemnity - from the company of which they are a director, and from JCU:

Indemnity from the company

This is provided for in the model constitution in clause 24. The indemnity included covers action arising from their role as a director of the company and covers legal costs in defending proceedings both civil and criminal, as well as liability- • In which judgment is given, or in which they are acquitted; and

- In connection with an application to the court under the Corporations Act where the directors are seeking relief under that act.

This indemnity is subject to the limitations in Section 199A of the Corporations Act.

Indemnity from JCU

Under the SBFA Act JCU has legislative restrictions on when it can grant indemnities. By reason of an approval under that act, JCU is now empowered to implement a system for indemnity of directors. The process for implementation of these indemnity arrangements has commenced.

**h) Reporting to JCU Model Constitution**

Clause 21.3 provides that where the company is a Controlled Entity then:

- JCU has the right at any time to inspect the company records and obtain information relating to the affairs of the company;
- The company must provide reports to JCU in relation to its affairs as requested by JCU from time to time; and
- The company must provide to JCU copies of minutes, periodic management reports and other key documents including annual business plans on a 3 year revolving basis.

Claims and Risks

JCU has a process for completing periodic reports in relation to claims and contingent liabilities and Controlled Entities are part of this process. In addition, work health and safety and enterprise risks are recorded via JCU Riskware systems – see Guide, Section 6.

When claims, or circumstances giving rise to a claim, arise, in addition to any internal company reporting processes, notice with supporting information should be given to:

- JCU Legal Office; and
- JCU Insurance Office.

Further, if there are any matters which it is considered may result in adverse media and/or adversely affect JCU's reputation, then notice with supporting information should be provided to:

- [companies@jcu.edu.au](mailto:companies@jcu.edu.au);
- JCU Media and Communications office; and
- [chiefstaff@jcu.edu.au](mailto:chiefstaff@jcu.edu.au) (in the case of very serious matters).

#### End of Year – Annual Report on Company Matters

As part of the end of year accounting process, Controlled Entities are asked to provide information in the form of a Company End of Year Report on Company Matters. The form of this report is set out in the Company Forms.

#### **i) Good Practice for Directors – Ten Tips**

Good practice advice for company boards, directors and officers includes:

1. Read the material distributed carefully *before* each meeting;
2. Understand the financial position of your company and its financial statements;
3. Ensure the Board monitors and manages risks;
4. Senior management - make sure that you have the right people in the right places;
5. *Know* the business of your company;
6. Be prepared to ask questions, including the tough questions;
7. In some cases, questions on notice or points of concern on notice via the Chair are appropriate to enable management to consider and provide informed responses at the board meeting;
8. Try and attend all meetings in person or by phone;
9. Make sure your board has the right skills sets;
10. If you have concerns, remember you can talk to the chair off-line.

Collectively acting as a board, directors should, as required, and at least on an annual basis –

- complete a Board Self- Assessment
- complete a Board Skills Matrix

**j) Remuneration for Directors**

Clause 14.14 of the pro forma constitution provides that directors of Controlled Entities must not be paid any fees without the prior written approval of JCU.

**k) Key Information for Directors of Controlled Entities**

Refer Company Reference Material.

**3.6 The Secretary**

The role of the secretary and the appointment of a secretary are important in every company. A good company secretary will not only fulfil functional matters such as taking minutes, but also guide, assist and inform the company and the directors across a wide range of matters including governance, compliance and risk management. Secretaries should have a close working relationship with each of the chair and general manager and be seen as approachable by all board members.

Commentary included with the ASX Corporate Governance Principles and Recommendations in relation to the role of the company secretary is in the following terms- *The company secretary of a [listed] entity plays an important role in supporting the effectiveness of the board and its committees. The role of the company secretary should include:*

- *Advising the board and its committees on governance matters;*
- *Monitoring that board and committee policy and procedures are followed;*
- *Coordinating the timely completion and dispatch of board and committee papers;*
- *Ensuring that the business at board and committee meetings is accurately captured in minutes; and*
- *Helping to organize and facilitate the induction and professional development of directors.*

*Each director should be able to communicate directly with the company secretary and vice versa. The decision to appoint or remove a company secretary should be made or approved by the board.*

While the above list is not exhaustive, this quotation highlights the focus areas for all company secretaries. It follows that the company secretary should:

- Have good working relationships with the chair, all directors and senior management;
- Be familiar with all key company contract documents;
- Be familiar with the company constitution and governance documents;
- Understand the company and its operations and policies;
- Understand what constitutes good governance;
- Know how to prepare board agendas and discussion papers;
- Know how to prepare accurate and informative minutes (see Guide, Section 4.5); and

- Have strong communication skills.

The role of company secretary is one that must not be delegated, while it is in order for a company secretary to have assistance in the fulfillment of their functions.

## 4.0 Board Meetings

### 4.1 Conduct of meetings generally – Quorums

#### Generally

The manner in which meetings are conducted is primarily under the control of the chair, acting in accordance with all legal requirements including the company constitution. The company secretary and all directors also have an important role in ensuring that meetings are effective. Some governing bodies adopt rules of practice in relation to meeting procedure. It is suggested that this is not necessary for meetings of Controlled Entities. However it is essential that meetings are held in accordance with the normal laws of meetings and it is highly desirable that the chair is familiar with these and has access to a reference text on the law of meetings when required.

It is desirable that at the commencement of each year a list of the scheduled business meetings is distributed with calendar invites sent to all directors and regular observers. This enables directors to both plan ahead and advise in advance if they will not be available.

Conflicts of interest are a standing item on the agenda – see Guide, Section 3.5.

#### Quorums

Clause 16.3 of the model constitution provides that a quorum at a meeting of directors will be that number which has been determined by the board to constitute a quorum and otherwise one half of the number of directors (which requires rounding up in the case of a board with an odd number of directors).

#### Shareholder Meetings

Occasionally, it is necessary for there to be a shareholders' meeting e.g. prior to the change of name for a company. Where JCU is the shareholder then these should be arranged by contacting [companies@jcu.edu.au](mailto:companies@jcu.edu.au). In other cases the company should make contact with their parent entity.

### 4.2 Number and Frequency of Meetings

The number of meetings to be held each year will depend on the nature of the entity's business – trading entities will need more meetings than non-trading entities. It is suggested that a minimum number of meetings will be four, to include one at the end of each quarter, with the end of year meeting in February covering the last quarter and the previous year.

Clause 16 of the model constitution provides that:

- *The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit; and*
- *A Director may, and a Secretary will on the requisition of a Director, convene a meeting of the Directors.*

### 4.3 Method of Meeting, Circulating Resolutions and Special Board Meetings

#### Method of Meeting (Corporations Act section 248D)

Generally board meetings will take place in person. Clause 16.7 of the model constitution reflects like provisions in the Corporations Act and allows meetings to be held by telephone, radio and other electronic and audio-visual means. It is common to have meetings with members present on different JCU campuses connected by video-conference, sometimes with others connected by phone.

#### Circulating Resolutions (flying minutes) – Corporations Act section 248 A

Clause 16.12 of the model constitution also reflects like provisions in the Corporations Act and provides that if all directors sign stating that they are in favour of a resolution, then such resolution will be taken as passed by the board at the time when the last director's signature is applied. Circulating resolutions should be utilized at the discretion of the chair. They are useful for short notice, urgent matters or where a position needs to be formally resolved and has the agreement of the board. Care needs to be exercised where the resolution in question is contentious, bearing in mind that there will be no board debate on the resolution in question.

Note that the approval of all directors is required, otherwise a meeting needs to be held. This highlights the desirability of the company secretary having a range of contact information for all directors, so that the directors can be contacted on short notice when there is the need, including to inform them of the distribution of a circulating resolution.

#### Special Board Meetings

Special Board meetings are usually meetings of the board called to consider a special or single item of business, sometimes on short notice e.g. the appointment of a new general manager or the signing of a deed of settlement. They should not be confused with special general meetings of shareholders, relating to special resolutions, which require 21 days' notice unless the requirements of section 249 H of the Corporations Act have been met.

### 4.4 Agendas

The preparation of a carefully prepared Agenda, distributed in time for all directors to consider prior to the board meeting, is an essential part of an effective meeting taking place. As a rule, agendas with supporting material should be distributed at least 5 business days before the date for the board meeting. When there is a hold up in one particular agenda



item or paper, the secretary should send the agenda out on time and then send the other material as a late distribution.

A useful, but not mandatory practice, is for agenda items to go forward to the board in the form of a standard agenda item, following the JCU practice, which includes draft resolutions, and comment on risk, HSE and resourcing topics. Separately to this, there are occasions when it is useful for the secretary to prepare draft resolutions for consideration by the board and for these draft resolutions to be distributed with the agendas.

It is recommended practice for the Agenda to take the form of a “board pack” which contains a notice of meeting, an agenda of items for the meeting and the supporting material. The board pack should be book-marked and the covering agenda should identify the separate attachments.

Agendas for trading companies (and non-trading companies as required), should:

- Contain reports from key staff including the General Manager;
- Be supported by the following tables:
  - A. Table of Outstanding Actions – Refer Company Forms
  - B. Table of Key Compliance and Business Obligations (Annual) – refer Company Forms
  - C. Table of Claims, Possible Claims and Complaints – refer Company Forms

## 4.5 Minutes

Minutes are the official record of what took place at a meeting of the board. They are the responsibility primarily of the company secretary. Under section 251A(6) of the Corporations Act a signed minute is evidence of the proceeding or resolution unless a contrary intention is proved. Minutes should never be backdated, or record proceedings which did not occur or the presence of someone who did not attend a meeting. In general terms, falsification or destruction of minutes may constitute an offence under the Corporations Act.

It is important that minutes are clear and concise and accurately record the decision and relevant parts of the background board discussion. In relation to recording discussion, it is normal to include some notes on the background, and, where appropriate, some noting of the points and material considered by the board. Minutes should not record matters which have arisen since the meeting. Any update on a position recorded in the minutes is best dealt with in a covering note when distributing minutes.

It is usually sufficient to record a resolution under the heading “Resolved”. That is, it is not normally necessary to record the mover and seconder. However in some contentious matters, it may be appropriate to record this information as well as the names of board members who dissent to the resolution passed.

JCU practice is for minutes to be prepared by the secretary and confirmed by the chair within 14 days of the board meeting. It is recommended that minutes are then distributed to board members in advance of also receiving a copy of the minutes with the board pack. When the minutes are considered by the board, the chair will ask if there are any corrections required. Subject to this, the minutes should then record that the minutes are received as a true and correct record of the meeting.

At the time when minutes are sent to directors confirmed by the chair, they should also be forwarded to [companies@jcu.edu.au](mailto:companies@jcu.edu.au) (See also Guide, Section 5.1). Minutes are circulated periodically to Finance Committee and after this, they are included in the Finance Committee material considered by JCU Council.

A Template for Minutes is contained in the Company Forms. JCU Controlled Entities are asked to follow this form.

## 4.6 Confidentiality

Board members should treat all Agenda material and all discussions arising at board meetings as confidential. They should also take care to ensure that their information in relation to company affairs, in both soft and hard copy, is stored in a way that confidentiality is maintained.

It is normal that minutes are not communicated to staff, but rather the outcomes and decisions of the board. This is best communicated by the General Manager. However there will also be times when the chair may wish to communicate with staff e.g. in relation to change of board membership or the resignation or appointment of the General Manager. Board members should be careful not to discuss board discussions or decisions with company staff.

## 5.0 Financial Management

### 5.1 Financial Management Generally – (see also Guide, Section 1.4)

Thorough ongoing financial management is fundamental to the ongoing operations of all Controlled Entities and, as noted above, it is the responsibility of ALL directors to ensure that this is in place. This outcome should be supported by:

- Management who are competent and experienced in the field;
- Up to date accounting systems;
- Preparation of financial statements, not less frequently than quarterly;
- “exception reporting” on significant variances between year to date budget, and year to date actual, figures;
- Diligent review of financial statements including a review of exceptional items;
- Annual budgeting and a budget approval process for the year ahead;

- Business plans – reviewed and updated annually in relation to financial matters and refreshed every 3 years.

A Template Business Plan is contained in the Company Forms.

Key financial documents for Controlled Entities such as end of month and quarterly financial statements, budgets and business plans, should be forwarded to JCU along with the related minutes for distribution to Finance Committee, after boards have considered and approved the statements and financial information.

## **5.2 Audit, and Financial Reporting – Financial Accountability Act (FAA) Auditor-General Act 2009 (QLD)**

The Auditor- General Act 2009 (Qld) requires all public sector entities to be audited by the Auditor-general. The definition of a public sector entity includes a statutory body and entities controlled by the statutory body. Section 50 of the *James Cook University Act 1997* (Qld) confirms that the University is a statutory body for the purposes of the *Financial Accountability Act 2009* (Qld). Section 62 of the *Financial Accountability Act 2009* (Qld) requires a statutory body to prepare annual financial statements and have them audited by the Queensland Audit Office. The audit must be completed no later than two months after the end of the financial year and an annual report tabled in Parliament within three months after the end of the financial year. Under the Australian Accounting Standards the University must prepare consolidated financial statements which means the financial performance and position of its controlled entities from part of the University's consolidated financial statements. Note that JCU's financial year is the calendar year.

The timetable for the end of year process is a very tight one. It involves the consolidated financial statements being considered by each of Finance Committee and JCU Council by the end of February for the financial year just ended. This means that:

- It is essential to be "year-end ready" by the end of year and to have done the necessary planning and preparation for this;
- The bulk of the work for the end of year financial statements needs to be done in January; and
- Meetings of boards to approve financial statements are normally held in the second week of February and provided to JCU for input into the governance process.

JCU financial statements are prepared by the Financial and Business Services directorate (**FaBS**). In around October of each year, FaBS arranges for a memo to be sent to all Controlled Entities setting out the requirements and timetable for the year end accounting process. It is essential that this information is carefully noted and acted upon.

## **5.3 Key Points to Note**

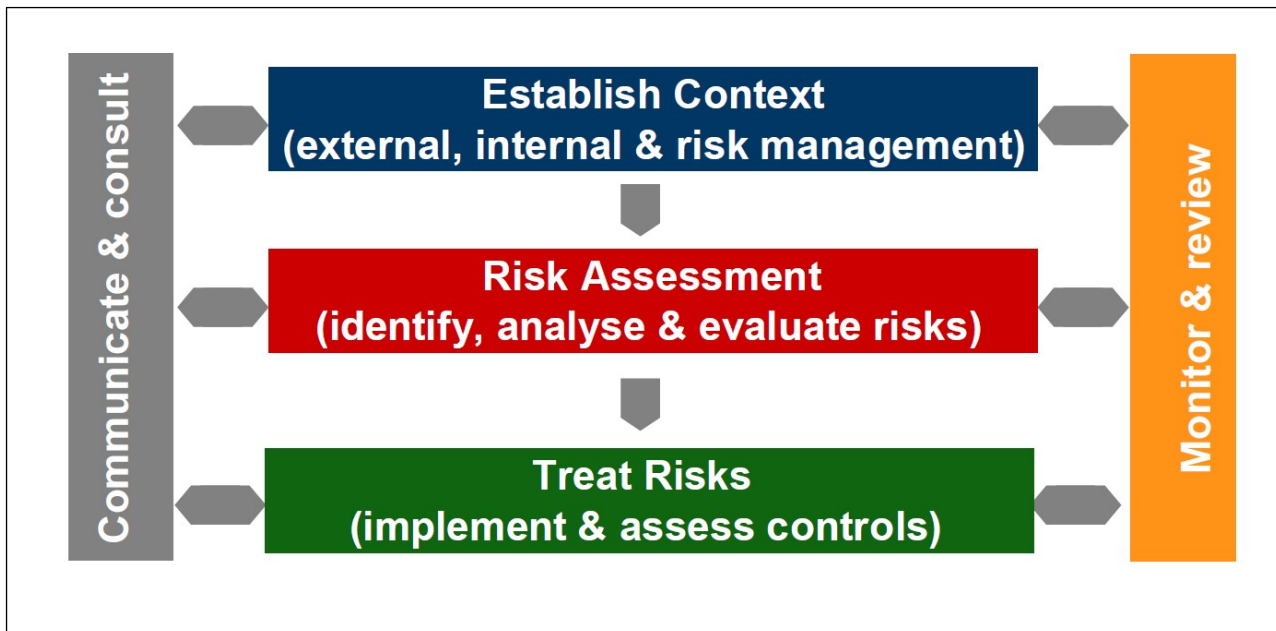
Points to note include the following:

- Within 2 weeks of the date of each board meeting or resolution, periodic financial statements and key financial documentation (such as annual budgets) must be provided with related minutes to JCU for consideration by Finance Committee and JCU Council – forward to [companies@jcu.edu.au](mailto:companies@jcu.edu.au).
- Like process should follow via appropriate minutes or communication by the chair for any major financial problems or threats to financial viability;
- Constant monitoring and action should be taken in relation to inter-entity balances as between JCU and the Controlled Entities. It is JCU's preferred position that there should be no such inter-entity balances as at year end;
- The principle of competitive neutrality should be observed in billing by Controlled Entities. That is, billing to the public should be on a commercial basis and not in any way reduced to take advantage of any lower cost base that the entity may enjoy e.g. that it does not pay rental on its premises or pays rental on a concessional basis.
- Further information on best practice for financial accounting and JCU requirements can be obtained by contacting FaBS.

## 6.0 Riskware – Risk and HSE

### 6.1 Riskware, Risk and HSE

As set out in this Guide, Section 3.1, ensuring that entities have proper systems for recording, managing and reporting on risk is a key element of good corporate governance and one of the core functions of a board. *Risk* is defined in the JCU Risk Management Framework as the *effect of uncertainty on objectives*. Management of risk is therefore about the management of uncertainties. The [JCU Risk Management Framework](#) is a very good reference document and risk for Controlled Entities should be monitored and managed consistently with that framework. The following table is derived from the framework:



JCU manages a software system (Riskware). That is, there are two separate modules, one for enterprise risk and one for HSE management. JCU uses the terminology of *HSE* rather than work health and safety, to incorporate obligations of safe work practices under the *Work Health and Safety Act*. JCU uses the terminology of *enterprise risk* to describe the strategic risks that JCU must record, monitor and manage, namely:

- strategic risks;
- financial risks;
- legal and compliance risks; and
- reputational and business disruption risks.

It must be borne in mind that certain HSE risks also form part of enterprise risk.

It is suggested that for each of HSE and enterprise risk there are at least two persons who are familiar with the recording, managing and reporting process via Riskware.

The template Agenda contains standing items for HSE and enterprise risk, which JCU requires its Controlled Entities to include in ALL agendas, other than for single topic, special purpose board meetings.

Insurance is dealt with in Section 7.0. Insurance should not be seen as a form of risk management, but rather a contract which, for the premium and subject to the conditions of the policy, compensates the entity for the loss or damaged suffered. There exist many claims which are unsuccessful because the claims are excluded because of the terms of the policy of insurance.

## 6.2 Risk Management – Enterprise Risk

Delegate Accounts are created by JCU for each controlled entity through the ICT function. The delegate account enables access to the Riskware system. The Riskware system is then configured separately with permission levels that enable use by nominated persons within each controlled entity. No more than two people should have editing privileges, minimizing the need for multiple login credentials for non JCU staff.

After the configuration of Riskware is completed by the JCU Risk and Compliance Officer for enterprise risk and WHS Advisor for HSE, the controlled entity can begin to use Riskware directly to develop its own risk register and for entering other enterprise risk and HSE information in the system.

The Riskware System:

- Identifies the *current risks (existing controls in place)* and their impact on a whole-of-business approach, before any mitigation strategies have been implemented;
- Rates the likelihood and overall consequences and then applies a risk rating;
- Records mitigation actions and the current status of the action;
- Records the *residual risks* after mitigation strategies have been implemented; and
- Is updated and reviewed on a regular basis – as risks arise, and not less than quarterly.

Controlled entity risks can be monitored and managed through the Riskware reporting and analysis functions and become operational after Riskware configuration.

Numerous reports are available via Riskware which include heat-maps which highlight the high risk areas for the entity. It is suggested that each entity should:

- Utilize relevant reports for enterprise risk from Riskware; and
- Provide these reports and appropriate commentary to each regular board meeting.

Under the Riskware system, there is a recording of the residual risk, after risk mitigation strategies have been applied. Boards need to consider the appropriateness of the risk mitigation strategies in the context of the residual risk rating and whether they consider this rating represents an acceptable position for the entity. That is, for individual risks, the boards of entities need to consider their *risk appetite*. Risk should also be addressed in the entity's business plan.

Information on the management of risk and the use of Riskware is available from [chiefstaff@jcu.edu.au](mailto:chiefstaff@jcu.edu.au). The management systems for risk will normally be the primary responsibility of the General Manager, reporting to the board. Note also that the End of Year Report on Company Matters contains a section for information on enterprise risk. This report should be used to record any significant risk issues.

## 6.3 Health Safety and Environment

### Work Health and Safety Act (Qld.) 2011 – WHS Act 2011

This Queensland legislation is part of a uniform set of laws across Australia designed to provide a framework to protect the health, safety and welfare of all workers and other people who may be affected by the work. As in the case of financial management, it is important to note that the responsibility for compliance with HSE obligations is for all Officers, as defined in the WHS Act 2011 (section 27) – being officers as defined in the Corporations Act 2001 and a person who makes, or participates in making, a decision that affects the whole, or a substantial part, of the organization's activities. The Office of Industrial Relations [Guide to the Work Health & Safety Act 2011](#) provides a useful overview of the legislation – and this Guide includes extract summaries from this document:

- In terms of relevant obligations, reference needs to be made also to regulations under the WHS Act and any relevant Codes of Practice. Codes of Practice are not mandatory, but provide practical guidance on how to meet standards set out in the WHS Act and regulations. In addition; Codes of Practice are admissible in court proceedings under the Act and Regulations are evidence of whether or not a duty or obligation has been complied with. Section 247 of the WHS Act;
- The guiding principle under the WHS Act is that all people are given the highest level of safety protection from hazards arising from work, so far as is reasonably practicable;
- The term *reasonably practicable* means what could reasonably be done at a particular time to ensure health and safety measures were in place;
- A key concept is that of PCBU – the *person conducting the business or undertaking*. The obligations under the WHS Act sheet home to the PCBU and its Officers;
- It is the obligation of PCBUs to ensure the health and safety of workers, so far as is reasonably practicable. *Workers* includes volunteers, contractors and contractors' workers, labour hire workers, outworker, apprentice or trainee, student gaining work experience or person of a prescribed class;
- PCBUs have the same duty of care to any other people who may be at risk from work carried out by the business;
- The WHS Act sets out specific duties which a PCBU must comply with as part of their general duty, so far as is practicable. In summary form, these include:
  - providing and maintaining a safe work environment;
  - providing and maintaining plant, structure and systems of work that are safe and do not pose health and safety risks. (Like obligations apply to construction, installation, removal and decommissioning of these items) ;
  - ensuring the safe use, handling, storage and transport of plant, structures and substances e.g. toxic chemicals;
  - providing adequate facilities for the welfare of workers at workplaces;

- providing workers with information, training and supervision needed for them to work safely and without risk to their health;
- monitoring the health of their workers and workplace conditions to prevent injury or illness;
- consulting with workers and HSR's (if any) about matters that affect them. *HSR's* are workers who have been elected by a work group to represent them on work health and safety matters; and
- ensuring that regular meetings are held to assist in the management and decision making of HSE matters and include HSR's. These meetings may take the form of designated HSE meetings, for example. However the preferred position is that HSE is a topic on the agenda for all management and operational meetings, just as it is for the board agendas i.e. an integrated approach.

### Other Points to Note

In addition to the above, important provisions in the WHS Act and points to note include:

- Boards must identify what officers and staff (by position) are “officers” for the purposes of the WHS Act and record this in their HSE Policy;
- The WHS Act defines *officer* in terms of the definition for that term in the Corporations Act. In practical terms, this means that officers, for the purposes of the HSE Act will include:
  - Directors ○ The secretary
  - Persons who make, or participate in making, decisions that affect the whole, or a substantial part, of the business of a company;
  - Persons who have the capacity to affect significantly the company's financial standing; and
  - Shadow Directors – see Guide, Section 3.5 (a).
- Workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU and any reasonable policy or procedure of the PCBU designed to ensure compliance with the WHS Act and regulations;
- Health and Safety Committees may be formed to facilitate cooperation between workers and the PCBU in providing a safe place to work;
- Inspectors under the WHS Act have extensive powers to enter work places, make enquiries, request information and issue improvement and other notices under the legislation;
- The WHS Act provides for 3 levels of offence which can result in prosecution or fines against the entity and/or Officers (as defined in the legislation), namely:
  - *Category 1* - a duty holder engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.



- *Category 2* – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.
- *Category 3* – a duty holder fails to comply with a health and safety duty.
- Notifiable Incidents under the WHS Act must be notified to Workplace Health and Safety Queensland. This will be attended to by the JCU HSE Unit based on Riskware reporting. *Notifiable Incident* is a term defined in section 35 of the WHS Act to mean:
  - *the death of a person;*
  - *a serious injury or illness of a person (defined in section 36); or*
  - *a dangerous incident (defined in section 37).*

In addition, it is desirable for a call to be made to the HSE Unit immediately a Notifiable Incident occurs.

### HSE Management

As noted above, all Controlled Entities are required to utilize Riskware for HSE reporting, monitoring and to inform management practices. This reflects the JCU HSE Policy which recognizes each Controlled Entity as a PCBU. Management of HSE is demonstrated through the controlled entities management system which is underpinned by WHS planning, policies and procedures. Controlled entities are required to utilise Riskware for HSE reporting.

In summary, Controlled Entities, their directors and senior management, should:

- Have their own HSE policy in terms consistent with that of JCU;
- Carry out a whole-of-business HSE risk assessment and periodically review the same to inform the basic HSE risk information stored in Riskware. This is then updated with incidents as they arise and hazards as they are observed.
- Have at board and senior management level, a high level of understanding of HSE obligations;
- Ensure that those obligations are met;
- Ensure that the entity has the policies, systems and processes necessary to ensure that all HSE obligations are met;
- Ensure that regular consultation with workers and HSR's (if any) occurs;
- Log HSE incidents via Riskware and ensure that all workers know how to do this also;
- Manage HSE incidents and risks via Riskware;
- Monitor any trends which occur in matters reported, and address any systemic issues arising from the trend analysis;
- Ensure that appropriate reports are provided to regular meetings of their board, and to JCU at end of year via the End of Year Report on Company Matters;
- Ensure that all appropriate action is taken based on HSE incidents and risks;

- Ensure that contracts, including any that relate to construction, have appropriate clauses to deal with HSE issues; and
- Ensure that all relevant staff have the requisite HSE training.

## 7.0 Insurance and Workers Compensation

### 7.1 What Insurance?

Controlled Entities should make an assessment of what type of cover is required in the context of their business operations. JCU Insurance ([insurance@jcu.edu.au](mailto:insurance@jcu.edu.au)) is responsible for arranging insurances for both the university and for controlled entities, unless otherwise arranged. This is because a number of insurances arranged for JCU by its insurance broker specifically extend to Controlled Entities. These include:

- Industrial and Special Risks (**ISR**);
- Professional Indemnity;
- Public Liability;
- Directors and Officers Liability Insurance.

Another reason for having JCU arrange the insurance is to ensure that the position does not arise where a controlled entity claims on insurance and the insurance company, standing in the shoes of the insured entity, can then claim against JCU under the principle of subrogation. On receipt of insurance premiums, for trading entities, JCU Insurance assesses what constitutes a fair contribution from the entity and invoices for that amount. This should be allowed for in entity budgets.

It is recognized that some entities will have specific insurance needs which are not included in the standard JCU arranged policies e.g. medical malpractice. In such cases, Controlled Entities should consult with JCU Insurance to arrange appropriate cover.

Policy details including information in relation to policy terms, the insurance company, the amount of cover and the amount of any excess are also available from JCU Insurance.

JCU Insurance should be notified as soon as possible in the following circumstances:

- Injury or accident or any other circumstances which may give rise to a claim;
- Any claim against the entity which may be covered by insurance;
- The acquisition or shipment of plant and equipment in excess of \$750,000.00;
- Any significant change proposed to the nature of the entity's business undertaking.

### 7.2 Non-Controlled Entities – Directors and Officers Liability Insurance

The directors and officers liability insurance (D&O Cover) arranged by JCU does not extend to cover directors of non-controlled entities. However an extension of insurance cover does exist to include such cover where the director or officer or employee of JCU will serve or act

in his or her capacity as a director or officer of an outside entity at JCU's specific direction and request.

### 7.3 Workers Compensation

All Controlled Entities that have staff must arrange workers compensation. Enquiries to [rehab@jcu.edu.au](mailto:rehab@jcu.edu.au)

## 8.0 Taxation

### 8.1 Income Tax, Exemptions and ACNC

For income tax, Controlled Entities will be either taxable or non - taxable. An entity will be taxable until such time as an income tax exemption has been obtained. It is important to note that any income tax exemptions are usually granted on conditions and the terms of those conditions must be closely observed. Registration as a not-for-profit organization with ACNC does not automatically attract income tax exemption.

All applications for tax exemption of any kind should be referred to the Company Coordinator, and processed via that person, acting in consultation with FaBS and staff of the Controlled Entity.

Entities which are liable for tax must of course lodge income tax returns. Those that are exempt will generally be registered with ACNC and will not need to – see Section 2.3.

Controlled Entities which are exempt from income tax may also consider applying for DGR status – deductible gift recipient status, so that donors to their entity may receive an income tax deduction for their gift.

All entity officers should have a clear understanding of their taxation position. Taxation is one of the items on the template Agenda – which should be retained for consideration at all ordinary board meetings.

Legal advice on all contracts should include advice on the potential taxation consequences of the entity entering into the contract.

For further information on taxation matters for Controlled Entities, please write to [companies@jcu.edu.au](mailto:companies@jcu.edu.au) or [taxation@jcu.edu.au](mailto:taxation@jcu.edu.au)

### 8.2 Other Taxes / Exemptions

There exist a number of taxes which entities may be subject to, or exempt from, and these are listed below:

- PAYG for taxation payments to the ATO on account of staff wages
- Superannuation guarantee legislation - compulsory employer superannuation payments for employees

- Goods and Services Tax (GST)
- Fringe Benefits Tax (FBT)
- Payroll tax under the *Payroll Tax Act 1971(Qld)*
- Duty under the *Duties Act 2001(Qld)*

Under the Payroll Tax Act there are grouping provisions which mean that Controlled Entities are grouped with JCU. However, depending on the activities of the entity, it is often possible to obtain an exemption under that legislation.

Under the Duties Act, Controlled Entities are not entitled to the exemption that applies to JCU. In the case that an entity is acquiring a business or other dutiable assets, significant ad valorem conveyance duty may be payable.

Once again, all enquiries regarding registration, exemption and related matters in relation to the above should be directed in the first place to the Company Coordinator.

## 9.0 Procurement

### 9.1 Procurement – Value for Money and other Objectives

JCU is bound by the Queensland Procurement Policy and has adopted a Procurement Procedure [FMPM 711](#). While Controlled Entities are not bound by either of these documents, the objectives of procurement listed in the JCU Procurement Procedure have equal application to Controlled Entities, being:

- Achieving value for money and continuous improvement in the provision of goods and services;
- Ensuring resources are used efficiently and effectively;
- Ensuring compliance with legislative requirements;
- Achieving high standards of fairness, openness, probity, transparency, risk management and accountability;
- Minimizing the cost of submitting quotations for potential suppliers.

It is recommended that Controlled Entities observe the principles in these objectives, and in particular:

- Practice procurement planning – see FMPM 711, section 1.
- Obtain competitive quotations or invite public submissions where this is appropriate – see FMPM 711, section 2.
- Consider Preferred Supply arrangements where this is appropriate – see FMPM section 4. Controlled Entities may consider whether there is benefit in connecting up with JCU preferred supply arrangements – contact [procurement@jcu.edu.au](mailto:procurement@jcu.edu.au).
- Ensure that probity and fairness of process is observed in all procurement processes – see FMPM 711 section 11.

- Have a designated employee to receive and manage complaints, with an established framework for managing procurement complaints.

## 10.0 Other Matters

- **AICD – GIA** It is strongly recommended that office bearers of Controlled Entities become members of one or both of these organizations and participate in training that is available from those organizations;
- **Subsidiaries** Controlled Entities may, with the approval of JCU Council, have a subsidiary, which may or may not be a Controlled Entity itself. Where the subsidiary is not a Controlled Entity, it is suggested that boards of Controlled Entities use their best endeavours to ensure that operations and governance of the subsidiaries follow the recommendations in this Guide, so far as they may be applicable.
- **Non- Controlled Entities** are entities which are not Controlled Entities under the Controlled Entities Policy. Once again, JCU representatives should use their best endeavours to follow the recommendation in this Guide, so far as they may be applicable, and to the extent that they are able to, noting that JCU's participation in a non-controlled entity requires approval under the Controlled and Non-Controlled Entities Policy
- **Becoming a director or secretary** of a JCU Controlled Entity – just send an expression of interest with supporting information to [companies@jcu.edu.au](mailto:companies@jcu.edu.au)
- **Enquiries about this Guide** or matters relating to the operations and/or governance of Controlled Entities should be addressed to [companies@jcu.edu.au](mailto:companies@jcu.edu.au)

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## List of Schedules and Documents Referred To

(\*\* indicates under construction)

### Schedules

1. Table of Support Areas and Support
2. Voluntary Code of Practice
3. SBFA General Approvals
4. Department of Education – SBFA Clarification

## List of Company Forms referred to (+)

1. Model Constitution
2. Table for Board Delegations\*\*
3. Checklist for Appointment of Directors\*\*
4. Company End of Year Report on Company Matters
5. Board Self – Assessment\*\*
6. Board Skills Matrix\*\*
7. Table of Outstanding Actions
8. Table of Key Compliance and Business Obligations
9. Table of Claims, Possible Claims and Complaints
10. Template for Minutes
11. Template Business Plan \*\*
12. Board Charter (Statement of Governance Principles)

## List of Company Reference Material referred to (+)

1. List of Possible Committees \*\*
2. AICD Director's Code of Conduct
3. Duties of Directors – ACNC Act
4. This Guide for Controlled Entities

(+) The JCU JCU Companies Website contains information which includes-

- Company Forms; and
- Company Reference Material.

### Schedule No. 1

## JCU Support Areas

No.	Area	Position/Office	Email Address
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1	Buildings & Grounds	Director, Estate	<a href="mailto:directore@jcu.edu.au">directore@jcu.edu.au</a>
2	Financial & Accounting	Director, Financial & Business Services	<a href="mailto:directorfabs@jcu.edu.au">directorfabs@jcu.edu.au</a>
3	General Enquiries	Divisional Office, Division of Services & Resources	<a href="mailto:companies@jcu.edu.au">companies@jcu.edu.au</a>
4	HR	Director, HRM	<a href="mailto:directorhrm@jcu.edu.au">directorhrm@jcu.edu.au</a>
5	HSE	Health Safety & Environment Unit	<a href="mailto:safety@jcu.edu.au">safety@jcu.edu.au</a>
6	ICT	Director Information & Communications Technology	<a href="mailto:directorict@jcu.edu.au">directorict@jcu.edu.au</a>
7	Legal	University General Counsel	<a href="mailto:Fiona.macdonald@jcu.edu.au">Fiona.macdonald@jcu.edu.au</a>
8	Media	Media & Communications	<a href="mailto:Richard.davis@jcu.edu.au">Richard.davis@jcu.edu.au</a>
9	Policies	Quality Planning & Analytics	<a href="mailto:vicki.hamilton@jcu.edu.au">vicki.hamilton@jcu.edu.au</a>
10	Risk & Insurance	Insurance Office	<a href="mailto:insurance@jcu.edu.au">insurance@jcu.edu.au</a>
11	Taxation	FaBS	<a href="mailto:taxation@jcu.edu.au">taxation@jcu.edu.au</a>

## Schedule No. 2



## VOLUNTARY CODE OF BEST PRACTICE FOR THE GOVERNANCE OF AUSTRALIAN UNIVERSITIES

- 1: A university should have its objectives and/or functions specified in its enabling legislation<sup>1</sup>.
- 2: A university's governing body should adopt a statement of its primary responsibilities, to include:
  - (a) appointing the Vice-Chancellor as the Chief Executive Officer of the university, and monitoring his/her performance;
  - (b) appointing other senior officers of the university as considered appropriate;
  - (c) approving the mission and strategic direction of the university, as well as the annual budget and business plan;
  - (d) overseeing and reviewing the management of the university and its performance;
  - (e) establishing policy and procedural principles, consistent with legal requirements and community expectations;
  - (f) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the *Corporations Act*;
  - (g) overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
  - (h) overseeing and monitoring the academic activities of the university;
  - (i) approving significant commercial activities of the university.

A university's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

- 3: A university should have the duties of the members of its governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board, each member should be appointed or elected *ad personam*. All members of the

<sup>1</sup> In the case of a university established under the *Corporations Act* a reference to enabling legislation is taken to mean its constitution and/or, where applicable, the *Corporations Act*.

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Deakin ACT 2600  
GPO Box 1142  
Canberra ACT 2601  
AUSTRALIA

Ph: +61 (0)2 6285 8100  
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contact@universitiesaustralia.edu.au  
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governing body should be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body should always act in the best interests of the university.

Duties of members should include the requirements to:

- (a) act always in the best interests of the university as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- (b) act in good faith, honestly and for a proper purpose;
- (c) exercise appropriate care and diligence;
- (d) not improperly use their position to gain an advantage for themselves or someone else; and
- (e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

There should be safeguards, exemptions and protections for members of a university's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the *Corporations Act*. A university (with the exception of those subject to the *Corporations Act*) should have a requirement included in its enabling legislation that its governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above. A member should be required, automatically, to vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the *Corporations Act*.

- 4: If permitted by its enabling legislation, a university should develop procedures;
  - a) to provide that the Chancellor and Deputy Chancellor hold office subject to retaining the confidence of the governing body; and
  - b) to deal with removal from office if the governing body determines that such confidence is no longer held.
- 5: Each governing body should make available a programme of induction and professional development for members to build the expertise of the governing body and to ensure that all members are aware of the nature of their duties and responsibilities.
- 6: On a regular basis, at least once each two years, the governing body should assess its performance, the performance of its members and the performance of its committees. The Chancellor should have responsibility for organising the assessment process, drawing on external resources if required. On an annual basis, the governing body should also review its conformance with this Code of Best Practice and identify needed skills and expertise for the future.
- 7: The size of the governing body should not exceed 22 members. There should be at least two members having financial expertise (as demonstrated by relevant

qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. There should be a majority of external independent members who are neither enrolled as a student nor employed by the university. There should not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.

- 8: A university should adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations for the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.

Members so appointed should be selected on the basis of their ability to contribute to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a university and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what a university's external community needs from it.

To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms should generally overlap and governing bodies should establish a maximum continuous period to be served. This should not generally exceed 12 years unless otherwise specifically agreed by the majority of the governing body.

- 9: A university should codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
- 10: The annual report of a university should be used for reporting on high level outcomes.
- 11: The annual report of a university should include a report on risk management within the organisation.
- 12: The governing body should oversee controlled entities by:
- (a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
  - (b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;
  - (c) ensuring that the board of the entity adopts and regularly evaluates a written statement of its own governance principles;
  - (d) ensuring that the board documents 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; and

- (e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.

- 13: A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of a university should, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report (including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.
- 14: A University should disclose in its Annual Report its compliance with this Code of Best Practice and provide reasons for any areas of non-compliance.

*This Code was approved out-of-session by the Ministerial Council for Tertiary Education and Employment on 27 July 2011.*

TYPED EXTRACT FROM  
QUEENSLAND GOVERNMENT GAZETTE NO. 8

12 SEPTEMBER 2003

**Statutory Bodies Financial Arrangements Act 1982**

GENERAL APPROVAL UNDER PART 7 DIVISION 3

*Treasury Department*

**Brisbane 3 September 2003**

In pursuance of section 60A of the *Statutory Bodies Financial Arrangements Act 1982*, I hereby grant a general approval for all Queensland Public Universities to enter into type 1 financial arrangements involving:

- Joint ventures involving the formation or membership of Cooperative Research Centres as defined in the Cooperative Research Centres Program administered by the Commonwealth Department of Education, Science and Training, for the purpose of undertaking activities associated with discharging the statutory functions of the university.
- The provision of guarantees or indemnities on behalf of members of the university governing body or university committees, university employees, consultants or contractors engaged by the university or students of the university where these persons are undertaking activities associated with discharging the statutory functions of the university subject to the following condition:

This approval is subject to the university governing body having endorsed that the university's risk mitigation and control strategies are appropriate to manage the risk of providing guarantees or indemnities.

Where the university does not hold appropriate insurance coverage for the activities of members of the university governing body or university committees, university employees or students of the university or the university is not satisfied that consultants or contractors engaged by the university hold appropriate insurance coverage for these activities, the university governing body must be satisfied that risks are mitigated and warranted prior to the provisions of a guarantee or indemnity.

This approval is to commence on 3 September 2003.

TERRY MACKENROTH  
Deputy Premier, Treasurer and Minister for Sports

{document3}

*State Development and Public Works Organisation Act 1971***NOTIFICATION OF DEVELOPMENT SCHEME VARIATION**

On 21 December 2017 under Sections 79 to 80 of the *State Development and Public Works Organisation Act 1971* the Governor in Council approved a variation of the development scheme for the Bromelton State Development Area.

*State Development and Public Works Organisation Act 1971***NOTIFICATION OF DEVELOPMENT SCHEME APPROVAL**

On 21 December 2017 under Sections 79 to 80 of the *State Development and Public Works Organisation Act 1971* the Governor in Council approved the development scheme for the Bundaberg State Development Area.

*Statutory Bodies Financial Arrangements Act 1982***GENERAL APPROVAL UNDER PART 7 DIVISION 3 AND PART 9 DIVISION 2**

Under sections 60A and 70 of the *Statutory Bodies Financial Arrangements Act 1982*, I grant a general approval for all public universities in Queensland to enter into type 1 financial arrangements involving:

- a) entering into a joint venture, partnership or trust; and
- b) forming or participating in forming a corporation,

where participation in these arrangements is necessary by the Council of the relevant university to carry out the core functions of study, research or knowledge stipulated in the university's enabling legislation. This approval is granted subject to the following conditions:

1. the university's governing body to ensure that appropriate risk mitigation and control strategies are in place to manage any risks which may arise as a result of entering into any of the above financial arrangements;
2. commercial activity undertaken by a university that falls outside the scope of its core functions will not be covered by this general approval. The Treasurer's prior approval will be required where a university contemplates entering into such an arrangement; and
3. the university to advise the Department of Education and Training and the Auditor General of its entry into or exit from the above financial arrangements.

This approval is to commence on gazettal.

Jim Murphy  
Under Treasurer  
13/12/2017

*Transport Operations (Marine Safety) Regulation 2016***NOTIFICATION OF SPEED LIMIT**

This notice amends part of the Notification of Speed Limit in Gazette No. 64 published 27 March 2015. Specifically, it revokes and replaces only the section 'Ross River (c)' on page 563.

I, Captain Frank D'Souza, Regional Harbour Master, Maritime Operations (Townsville Region), Maritime Safety Queensland, pursuant to section 206A of the *Transport Operations (Marine Safety) Act 1994*, approve the fixing of a speed limit for the waters listed in Column 1, at the speed listed in Column 2, for the ships listed in Column 3 of the following table.

Column 1	Column 2	Column 3
<b>TOWNSVILLE</b>		
<b>Ross River</b>		
(c) The waters of Black Weir, Ross River, described as: <ul style="list-style-type: none"> <li>Commencing at the waterline of the eastern bank nearest to location 19°20.288'S, 146°43.771'E,</li> <li>then southerly along the waterline of the eastern bank upstream to a location on the waterline nearest to 19°21.212'S, 146°44.036'E,</li> <li>then westerly across the river to a point on the waterline of the western bank nearest to location 19°21.223'S, 146°43.990'E,</li> <li>then northerly along the waterline of the western bank to a point on the waterline nearest to 19°20.304'S, 146°43.692'E,</li> <li>then easterly across Ross River to the point of commencement.</li> </ul>	6 knots	all motorised vessels except motorized vessels operating as support vessels to rowing craft underway.

Captain Frank D'Souza  
Regional Harbour Master  
Maritime Operations (Townsville Region)  
Maritime Safety Queensland  
21 December 2017

**Marilyn Twomey**

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**From:** KIMBER, Ian [ian.KIMBER@data.qld.gov.au]  
**Sent:** Thursday, 25 September 2008 7:28 PM  
**To:** Michael.Kern@jcu.edu.au  
**Cc:** SMITH, Alan  
**Subject:** General Approval

Good afternoon Michael

I refer to your letter of 10 September seeking clarification of the intent and extent of the operation of the General Approval under the SBFA having regard to the JCU Act.

Although my office agreed with your interpretations in particular with regards to sections 5 and 61 of the JCU Act I referred the matter to Treasury for their comment.

Treasury has responded to your concerns outlined in your letter and has provided the following response:

"Treasury has reviewed the JCU letter and can confirm that the University has interpreted the provisions of Sections 5 and 61 of the JCU Act correctly, in the context of the clarification provided via the general approval granted by the Under Treasurer on 13 June 2008."

I hope this advice will enables you to proceed with your considerations successfully.

Regards

Ian Kimber  
Executive Director, Office of Higher Education Queensland Department of  
Education, Training and the Arts  
Ph: (07) 3234 1955  
Fax: (07) 3237 1444





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> [Corporations Act provisions that no longer apply to charities registered with the ACNC](#)

## Corporations Act provisions that no longer apply to charities registered with the ACNC

Certain provisions in the Corporations Act no longer apply to bodies corporate registered under the ACNC Act. The provisions that have been 'turned' off are listed in the table below.

Provisions that no longer apply	Summary of provisions
<b>Directors duties</b>	
sections 180 to 183; and section 185, to the extent that it relates to sections 180 to 183	Civil obligations of directors and other officers to: - exercise due care and diligence - act in good faith - not improperly use their position, and - not improperly use company information
section 188, to the extent that it relates to another provision mentioned in this table	Responsibilities of secretaries and directors for certain contraventions
section 191 - 194	Interests of directors
<b>Corporate reporting</b>	
subsection 136(5)	Public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution
section 138	ASIC may direct company to lodge consolidated constitution
section 139	Company must send copy of constitution to member

<http://asic.gov.au/for-business/running-a-company/company-officeholder-duties/chari...> 12/07/2017

Provisions that no longer apply	Summary of provisions
subsection 142(2), section 146 and subsection 146A(2)	Company must notify ASIC of changes of address
section 201L and 205A to 205C; section 205D, to the extent it relates to section 205B, and section 205E	Public information about directors
Chapter 2N	Updating ASIC information about companies and registered schemes
Part 2G.2 (other than sections 250PAA and 250PAB); and Part 2G.3, to the extent that it relates to meetings of the body corporate's members	Meetings of members
Parts 2M.1 to 2M.3	Financial reports and audit
sections 601CDA, 601CK and 601CTA	Foreign companies
subsection 601CT(3), section 601CV and subsection 601DH(1) to (1A)	Registered body must notify ASIC of certain changes

*Note: The Corporations Act also contains a table of provisions that will no longer be applicable to bodies corporate registered under the ACNC Act (see section 111L(1)).*

## What this means for company directors and officers

Governance standard 5 (an ACNC governance standard) requires that directors of companies that are registered charities understand and comply with certain duties. This standard is based on and replaces some of the sections that applied to directors of registered charities under the Corporations Act.

The following provisions of the Corporations Act have been 'turned off' for companies registered with the ACNC:

- sections 180 to 183 (civil obligations of directors and other officers to exercise due care and diligence, act in good faith and not to improperly use their position or company information)
- section 188, to the extent it relates to other provisions that have been 'turned off' (responsibilities of secretaries and directors for certain contraventions), and
- sections 191 to 194 (obligation of director to disclose material personal interest).

Instead, registered charities are required to take reasonable steps to ensure that any responsible persons comply with governance standard 5. For a registered charity that is also a company under the Corporations Act 2001, its responsible persons are each of the directors of the company and the duties contained in governance standard 5 apply to each director.

Other officers of a company may also be responsible persons depending on their responsibilities. For more information, see ACNC's guidance on responsible persons.

<http://asic.gov.au/for-business/running-a-company/company-officeholder-duties/chari...> 12/07/2017