



DOCUMENT TYPE	D	
ADMINISTRATIVE	5	
GOVERNANCE	1	
LEGAL & CONTRACTS	4	
NUMBER	004	
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APPOINTMENT, REMUNERATION AND INDEMNIFICATION OF INDIVIDUALS APPOINTED TO COMPANIES AS DIRECTORS AND OFFICERS ON BEHALF OF THE UNIVERSITY PROCEDURES


Parent Policy Title	Policy for Appointment, Remuneration and Indemnification of Individuals appointed to Companies As Directors and Officers on behalf of the University.												
Associated Procedures	Not Applicable												
Preamble	This Procedure applies to any person whether a staff member of the University or not who is to be appointed as a director or officer of a company on behalf of the University.												
General	<p>Council has the power to appoint and revoke a person's position as a Director/Officer of a company.</p> <p>An employee will be entitled to receive Director/Officer fees, subject to the Corporations Act 2001, unless the employee is remunerated in his/her salary package to act as a Director/Officer from time to time.</p> <p>A person appointed as a Director/Officer will be indemnified by the University to the extent permitted by law unless the person is indemnified by the company.</p>												
Table of Contents	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Item</th> <th style="text-align: left;">Section</th> </tr> </thead> <tbody> <tr> <td>Background</td> <td>1</td> </tr> <tr> <td>Appointment of Directors/Officers</td> <td>2</td> </tr> <tr> <td>Remuneration of Directors/Officers</td> <td>3</td> </tr> <tr> <td>Indemnification of Directors/Officers and Directors and Officers Liability Insurance Policy</td> <td>4</td> </tr> <tr> <td>Revocation of Appointment</td> <td>5</td> </tr> </tbody> </table>	Item	Section	Background	1	Appointment of Directors/Officers	2	Remuneration of Directors/Officers	3	Indemnification of Directors/Officers and Directors and Officers Liability Insurance Policy	4	Revocation of Appointment	5
Item	Section												
Background	1												
Appointment of Directors/Officers	2												
Remuneration of Directors/Officers	3												
Indemnification of Directors/Officers and Directors and Officers Liability Insurance Policy	4												
Revocation of Appointment	5												
1. Background	From time to time the University is required to appoint an individual, whether an employee of the University or not, to act as a Director or an Officer of a Company.												
2. Appointment of Directors/Officers	2.1. All appointments of individuals as Directors/Officers to Companies shall be made in accordance with this Procedure.												

DOCUMENT TYPE	D	
ADMINISTRATIVE	5	
GOVERNANCE	1	
LEGAL & CONTRACTS	4	
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		Policy Database Document Reference Number 514004D

	<p>2.2. Where the Executive Director, Office of the Vice-Chancellor considers that it is in the best interests of the University that the University nominates an individual to be a Director/Officer of a Company, the Executive Director, Office of the Vice-Chancellor shall submit a recommendation to the University Council for approval.</p> <p>2.3. A person who proposes to nominate as a Director/Officer of a Company, other than at the request of the University, shall first submit a proposal to the Executive Director, Office of the Vice-Chancellor setting out the reasons why he or she is qualified to be appointed as a Director/Officer the Company and why that appointment is in the best interests of the University.</p> <p>2.4. A recommendation by the Executive Director, Office of the Vice-Chancellor may only be made to the University Council to approve the appointment of a person to act as a Director/Officer of a Company if:</p> <ul style="list-style-type: none"> (a) the Executive Director, Office of the Vice-Chancellor is satisfied that the person is qualified to be appointed as a Director/Officer and it is in the best interests of the University for the person to act in this role; and (b) the Director, Risk Management of the University has certified that the University has adequate insurance to cover the liability of the Director/Officer. <p>2.5. All appointments of individuals as Directors/Officers to Companies shall be made by the University Council. In doing so the Council shall take all reasonable steps to ensure that:</p> <ul style="list-style-type: none"> (a) in relation to University Companies, <ul style="list-style-type: none"> (i) the nominated Director/Officer possesses the business and financial skills, knowledge and experience to professionally discharge the responsibilities of a Director/Officer in accordance with professional standards; (ii) it is satisfied that the current Directors/Officers of the Companies possess the business and financial skills, knowledge and experience to professionally discharge the responsibilities of a Director/Officer in accordance with professional standards; and (iii) where practicable, some individuals who are not members of the University Council, officers or students of the University are also appointed as Directors/Officers of University Companies. (b) in relation to Non University Companies, the nominated Director/Officer possesses the business and financial skills, knowledge and experience to professionally discharge the responsibility of a Director/Officer in accordance with professional standards. <p>2.6. Nominated Directors/Officers shall be given the opportunity to seek independent legal advice regarding the duties owed as a Director/Officer prior to accepting this role.</p>
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LEGAL & CONTRACTS	4	
NUMBER	004	
		Policy Database Document Reference Number 514004D

	<p>2.7. All costs associated with the appointment of a Director/Officer including the costs of obtaining legal advice shall be borne by the Company. Where a Non University Company refuses to pay such costs, the University shall pay those costs.</p> <p>2.8. The Executive Director, Office of the Vice-Chancellor shall report to the University Insurance Office the appointment of an individual as a Director/Officer under this Procedure.</p>
3. Remuneration of Directors/Officers	<p>3.1 All remuneration of individuals as Directors/Officers of Companies shall be in accordance with the provisions of the Australian <i>Corporations Act 2001</i> as amended from time to time or an equivalent law of a foreign jurisdiction in which a company is registered. The remuneration must be at a level consistent with fees paid to Directors/Officers in the market place generally and the financial position of the Company.</p> <p>3.2 Where a University staff member is being remunerated in his/her salary package to act from time to time as a Director/Officer of a Company, Directors/Officers fees shall not be paid to the staff member as it would be inappropriate for them to receive further payment for the same duties.</p> <p>3.3 A staff member appointed after the commencement of this Procedure shall be deemed to be remunerated in his/her salary package if the staff member's contract of employment contains a provision:</p> <p style="margin-left: 20px;">(a) requiring the staff member to act as a Director/Officer of Companies at the request of the University; and</p> <p style="margin-left: 20px;">(b) giving the University the right to be directly paid all Directors/Officers fees which would otherwise be paid to the staff member while acting as a Director/Officer of a Company.</p> <p>3.4 A University staff member appointed as a Director/Officer of a Company before the commencement of this Procedure shall be deemed to be remunerated in his/her salary package unless otherwise agreed to by the University Council.</p> <p>3.5 Where a University staff member is not remunerated by the University for performing duties as a Director/Officer, fees may be paid to the staff member by the Company in acknowledgement of the special and unique skills which the staff member is able to bring to the Company.</p> <p>3.6 Where a non staff member, who is not remunerated for performing duties as a Director/Officer under any agreement with the University, is at the request of the University appointed as a Director/Officer of a Company, the non staff member may be paid a Director/Officer fee directly by the Company in acknowledgement of the special and unique skills which the non staff member is able to bring to the Company.</p>

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<p>4. Indemnification of Directors/Officers and Directors and Officers Liability Insurance Policy</p>	<p>4.1 The University shall use its reasonable endeavours to require the Companies to indemnify Directors/Officers appointed under this Procedure to the extent permitted by law for claims made against them in connection with their duties as Directors/Officers of the Company.</p> <p>4.2 The University shall use its reasonable endeavours to require the Companies to hold adequate Directors and Officers Liability insurance to protect the Directors/Officers of the Company appointed under this Procedure.</p> <p>4.3 An individual who is appointed as a Director/Officer of a Company under this Procedure, at the specific request of the University, shall be indemnified by the University:</p> <ul style="list-style-type: none"> (a) to the extent that the Director/Officer is not indemnified by the University Company, the Non University Company or any other legal person; (b) to the extent permitted by law including the law of a foreign jurisdiction in which a Company is registered; and (c) in accordance with the Deed of Indemnity referred to in paragraph 4.4 of this Procedure. <p>for any actions which may be taken against the Director/Officer provided that the Director/Officer has acted in good faith.</p> <p>4.4 A Deed of Indemnity in a form approved by the Director, Legal Services shall be entered into between the University and an individual who acts as Director/Officer of a Company.</p> <p>4.5 An employee who becomes a Director/Officer of a Non University Company not at the specific request of the University in accordance with paragraphs 2.3 of this Procedure may be covered by Directors and Officers Liability insurance policy of the University but will not be separately indemnified by the University as provided by this Procedure.</p> <p>4.6 The University shall use its reasonable endeavours to ensure, to the extent permitted by law, that its Directors and Officers Liability Insurance Policy covers individuals who are Directors/Officers of a Company.</p>
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<p>5. Revocation of Appointment</p>	<p>5.1 The University Council may revoke the appointment of a person appointed as a Director/Officer under this Procedure at any time.</p> <p>5.2 The appointment of a staff member as a Director/Officer shall be automatically revoked if that person ceases to be employed by the University provided that the individual may be reappointed by Council as a non staff member Director/Officer.</p> <p>5.3 Where a person's appointment has been revoked under paragraph 5.2 of this Procedure, such person will cease to be insured by the University in accordance with this Procedure except to the extent that the University is able to purchase appropriate insurance to cover causes of action which arose while the person was an employee of the University.</p> <p>5.4 Any indemnity granted by the University to a person under this Procedure will be automatically withdrawn when the person ceases to be employed by the University unless that individual is reappointed by Council as a non staff member Director/Officer.</p> <p>5.5 Where a person's indemnity has been withdrawn under paragraph 5.4 of this Procedure, the University will continue to indemnify the person for any cause of action which arose while the person was an employee of the University.</p>
<p>Status</p>	<p>Revised Format. Approved by Council on 3 October 2005.</p> <p>The implementation of the latest version of these procedures supersedes all previous versions of these procedures.</p>
<p>Approval Body</p>	<p>University Council on 3 October 2005, Senior Management Committee, 29 May 2009, SMC09/17(M), Minute 3.3(d).</p>
<p>Initiating Body</p>	<p>Vice-Chancellor</p>
<p>Definitions</p>	<p>In this Procedure:</p> <ul style="list-style-type: none"> • the term 'Directors/Officers' includes a director and officer within the meaning of the Australian Corporations Act 2001 or an equivalent law of a foreign jurisdiction in which a company is registered; • the term "Company" means a company registered under the Australian Corporations Act 2001 or an equivalent law of a foreign jurisdiction in which a company is registered and includes a University Company or a Non University Company; • the Companies referred to as "University Companies" are: <ul style="list-style-type: none"> ○ Companies which are wholly owned by the University; and ○ Companies in which the University has a controlling interest within the meaning of the La Trobe University Act 1964; and

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	<ul style="list-style-type: none"> • the Companies referred to as “Non University Companies” are: <ul style="list-style-type: none"> ○ Companies of which the University is a member and has a right or option to nominate Directors/Officers but which are not University Companies; ○ Companies of which the University is a member but does not have a right or option to nominate Directors/Officers but which are not University Companies; and ○ Companies of which the University is a not a member and does not have a right or option to nominate Directors/Officers but which are not University Companies
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