

Company Directors and Officers Policy

Section 1 - Background and Purpose

Background

- (1) 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) The University Council has the power to approve the nomination of a person to be appointed as a Director/Officer of a company.
- (3) 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.
- (4) 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.
- (5) This Policy and Procedure is intended to establish clear guidelines for the following:
 - a. How individuals are appointed as Directors/Officers on behalf of the University;
 - b. Whether Directors/Officers are remunerated; and
 - c. How the Directors/Officers are indemnified and the requirement for the University to have Directors and Officers Liability Insurance Policy.

Section 2 - Scope

- (6) Applies to:
 - a. All campuses
 - b. All staff
 - c. All individuals appointed as a Director/Officer of a company on behalf of the University

Section 3 - Policy Statement

- (7) A person may only be appointed as a Director/Officer of a company on behalf of the University if they are nominated by the Chief Operating Officer and approved by University Council.
- (8) A person may be remunerated as a Director/Officer, subject to the [Corporations Act 2001](#), unless the person is remunerated in his/her salary package to act as a Director/Officer from time to time.
- (9) Where a person is not indemnified as a Director/Officer of a company, the person will be indemnified by the

University to the extent permitted by law and subject to the terms of a Deed of Indemnity between the University and the person.

Section 4 - Procedures

Appointment of Directors/Officers

(10) All appointments of individuals as Directors/Officers to Companies shall be made in accordance with this Procedure.

(11) Where the Chief Operating Officer 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 Chief Operating Officer shall submit a recommendation to the University Council for approval. Refer to the [Company Directors and Officers Application Form](#).

(12) A recommendation by the Chief Operating Officer may only be made to the University Council to approve the nomination of a person to be appointed as a Director/Officer of a Company if:

- a. 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;
- b. it is in the best interests of the University for the person to act in this role; and
- c. the Chief Finance and Operations Officer of the University has certified that the University has adequate insurance to cover the liability of the Director/Officer.

(13) All appointments of individuals as Directors/Officers to Companies shall be made by the University Council.

(14) 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.

(15) 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 Company refuses to pay such costs, the University shall pay those costs.

(16) The Chief Operating Officer shall report to the University Insurance Office the appointment of an individual as a Director/Officer under this Procedure.

Remuneration of Directors/Officers

(17) All remuneration of individuals as Directors/Officers of Companies shall be in accordance with the provisions of the Australian [Corporations Act 2001](#), 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.

(18) 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, unless otherwise approved by the University Council, be paid to the staff member as it would be inappropriate for them to receive further payment for the same duties.

(19) 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 requiring the staff member to act as a Director/Officer of Companies at the request of the University.

(20) 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.

(21) 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.

Indemnification and Liability Insurance

(22) 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.

(23) 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.

(24) 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:

- a. to the extent that the Director/Officer is not indemnified by the 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 clause 25 of this Procedure.

for any actions which may be taken against the Director/Officer provided that the Director/Officer has acted in good faith.

(25) A Deed of Indemnity in a form approved by the General Counsel & Director of Assurance, Legal Services may be entered into between the University and an individual who acts as Director/Officer of a Company.

(26) 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.

(27) Unless otherwise agreed by the University Council, 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 except that the University will continue to indemnify the person for any cause of action which arose while the person was an employee of the University.

Section 5 - Definitions

(28) In this Policy and Procedure:

- a. 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;
- b. 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.

Status and Details

Status	Current
Effective Date	19th October 2016
Review Date	5th May 2020
Approval Authority	University Council
Approval Date	19th October 2016
Expiry Date	Not Applicable
Responsible Policy Officer	Linda Robertson General Counsel & Director of Assurance
Author	Gilbert Ducasse
Enquiries Contact	Legal Services +61 3 9479 2495