

GUIDE TO DEAKIN UNIVERSITY APPOINTED DIRECTORS TO BOARDS OF COMMERCIAL ENTITIES

Persons appointed by Deakin University as directors to Boards of commercial entities must comply with all common law fiduciary duties or statutory obligations including:

- acting in good faith, in the best interest of the corporation and with care and diligence
- exercising their powers for a proper purpose
- not fettering their own future discretion
- avoiding conflicts of interest, not using their position or information to gain advantage for themselves or others causing detriment to the corporation.

If the appointee is a director of an incorporated entity in which the University is the sole shareholder, the appointee may act in the best interests of the University (in which case the appointee is taken to have also acted in the best interests of the incorporated entity), provided that:

- the constitution of the incorporated entity expressly authorises the appointee to act in the best interests of the University;
- the appointee acts in good faith in the best interests of the University; and
- the incorporated entity is not insolvent at the time the appointee acts and does not become insolvent because of the appointee's actions.

If the appointee is a director of an entity in which the University is not the sole shareholder, the appointee may:

- have regard to and represent the interests of the University; and
- act on the wishes of the University in performing any of their duties or exercising any power, right or discretion as a director in relation to the entity in which he or she has been appointed as a director,

except in any particular case where no honest and reasonable director could have formed the view that, in doing so, the appointee was not acting in good faith and in the best interests of the company as a whole.

Where Deakin University has appointed a director to a Board of a commercial entity, that director must be willing to undertake appropriate training as required to discharge their duties, and will be required to take all reasonable steps to ensure the following.

BUSINESS STRATEGY AND PERFORMANCE

- That the entity has appropriate business, strategic and operational planning processes in place.

FINANCIAL PLANNING AND FINANCIAL PERFORMANCE

- That the Board has processes in place to ensure that the entity is in a sound financial position and is able to meet its debts and other obligations when they fall due.
- That the Board has a clear understanding of its responsibilities and liability with respect to solvency.
- That an annual financial Business Plan is prepared and approved by the Board.
- That the Board considers reports, at least four times each year, of the financial performance of the entity.
- That the Board approves any variations to the financial Business Plan and any Strategic and Operational Plans.

CONTROL AND ACCOUNTABILITY SYSTEMS INCLUDING RISK MANAGEMENT AND COMPLIANCE

- That the Board ensures that there are adequate reporting systems and internal controls (both operational and financial) in place for monitoring and compliance activities.
- That the Board ensures there is a risk management process in place.

POLICY

- That the Board satisfies itself that policies exist on key issues, taking into account risk exposure and compliance requirements.
- That the Board approves policy and ensures policy compliance.

TERMS OF REFERENCE OR OBJECTS

That the entity has documented terms of reference or objects, and that the Board operates in accordance with them.

COMPOSITION AND MEMBERSHIP

That the composition of the Board is in accordance with the following principles:

- the Board shall be constituted so that its members possess the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
- Wherever appropriate, the Board shall include at least some independent¹ directors;
- wherever appropriate, the Chairperson of the Board shall be an independent director; and
- the roles of Chairperson and Chief Executive Officer shall not be exercised by the same individual.

TERMS OF OFFICE

That the terms of office of members of the Board are prescribed in its constitution.

CONFLICTS OF INTEREST

That the Board has procedures in place for ensuring there are no conflicts of interest that may interfere or be seen to interfere with its effective operation, including ensuring that written procedures for handling conflicts of interest at the Board level exist and are operational.

CHAIRPERSON

That there is a Chairperson appointed by the Board who presides at each meeting of the Board, and that an interim Chairperson is appointed by the Board in the absence of the Chairperson at any meeting.

COMPANY SECRETARY

That there is a Company Secretary appointed by the Board who is responsible for ensuring that Board procedures are followed and that there is compliance with all applicable laws.

CONDUCT OF MEETINGS

That the Board is responsible for the efficient and effective conduct of its meetings by ensuring that meetings are held with appropriate frequency and include a written agenda, appropriate and timely papers and minutes.

INDUCTION AND TRAINING

That the Board has an appropriate induction program for directors and ensures training of directors as required.

REVIEW OF PERFORMANCE AGAINST TERMS OF REFERENCE OR OBJECTS

That the Board has in place a procedure for the regular review of its own performance in relation to its terms of reference or objects.

¹The University adopts the following guidelines as to 'independence' for independent directors appointed by it to its controlled entities and to boards of commercial entities, drawn from the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations 3rd Edition*).

An independent director is a non-executive director who:

- (a) is not an employee of the University or a member of its Council, unless there has been a period on three years since ceasing that employment or membership;
- (b) has not within the three years preceding appointment as a director been a partner, director or senior employee of a provider of material professional services to the University or its wholly-owned subsidiaries;
- (c) has not within the three years preceding appointment as a director been in a material business relationship with the University or any of its wholly-owned subsidiaries;
- (d) is otherwise free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the board and to act in the best interests of the company and (where permitted by the Constitution of the company) the University.