

## Governance Requirements – Relevant Entities Procedures

### 1. COMPLIANCE OBLIGATION SUPPORTED

[Voluntary Code of Best Practice for the Governance of Australian Public Universities](#)

### 2. PROCEDURAL DETAILS

#### Background

- 2.1. These Procedures set out the governance requirements for certain incorporated entities (“**Relevant Entities**”) in which the University has an interest or has nominated an officer, namely:
- an incorporated legal entity (eg a company or other body corporate, incorporated joint venture, incorporated association or similar);
  - which the University has established or proposes to establish, or in which it has acquired or proposes to acquire a shareholding, membership or similar interest; and/or
  - in respect of which the University nominates or formally approves a Staff Member to be an officer (eg Director, Company Secretary) in connection with their employment/engagement with the University (“**Entity Officer**”).

- 2.2. These Procedures do not apply:

- to unincorporated bodies such as partnerships, unincorporated associations, unincorporated joint ventures or collaboration arrangements, unincorporated industry bodies etc; or
- where Staff Members wish to become officers of a body/entity in their private capacity (eg school or charity boards).

However, similar considerations may apply to such arrangements and they remain subject to:

- other general University requirements (such as risk management, contract management and conflict of interest processes);
- relevant specific procedures such as the [External Collaborative Research Centres Procedures](#) and [Research Institutes, Centres and Clusters Procedures](#); and
- general employment obligations, such as confidentiality.

Specifically, as required by clause 13 of the Voluntary Code referred to in 2.7 below, risk assessments must be undertaken on a regular basis in respect of the University’s involvement with partnerships and unincorporated joint ventures, and reported to Executive Managers in accordance with the University’s general risk management framework.

- 2.3. These Procedures take precedence to the extent of any inconsistency with other University policies and procedures.
- 2.4. Relevant Entities arise in a range of scenarios, with common examples including incorporated research and collaboration entities (such as incorporated Cooperative Research Centres), companies created to commercialise outcomes of the University’s research, and incorporated industry bodies.
- 2.5. A reference in these Procedures to the University “**taking an interest**” in a Relevant Entity includes the University establishing or acquiring an interest in that entity, and/or nominating or formally approving a Staff Member for appointment as an Entity Officer.
- 2.6. A Relevant Entity may be considered as a Controlled or Non-Controlled Entity, depending on the extent to which the University can control its financial and operating policies. Different legal, accounting, financial and compliance obligations may apply in respect of the Relevant Entity depending on this designation.
- 2.7. These Procedures will assist the University to comply with its various legal, accounting, financial and other obligations in respect of Relevant Entities and Entity Officers. This includes giving effect to the requirements of clauses 12 and 13 of the *Voluntary Code of Best Practice for the Governance of Australian Public Universities* (“**Voluntary Code**” - extracted

at Schedule 1). The Procedures will also assist Staff Members/Entity Officers to effectively navigate their respective roles within the University and the Relevant Entity.

- 2.8. These Procedures cover a range of scenarios and flexibility may be required in some cases (for example where certain requirements are not relevant or practical). Any proposed deviation from these Procedures must be approved in advance by the Chief Legal Officer on a case by case basis.

### **Implementation**

- 2.9. The Executive Manager has overall responsibility for the implementation of these Procedures for Relevant Entities within their portfolio. This includes assessing whether a Relevant Entity is or remains aligned with the University's strategic objectives, general oversight of the University's relationship with the Relevant Entity, and overall risk management. Where it is proposed that an Executive Manager be nominated or formally approved for appointment as an Entity Officer, this must be discussed with and approved by the Chief Legal Officer in consultation with other relevant stakeholders, including in respect of the development of an appropriate conflict management plan.
- 2.10. The Executive Manager must appoint an appropriately qualified and experienced Responsible Officer ("RO") for each Relevant Entity. The RO is responsible for representing and managing the University's interest in the Relevant Entity on a day to day basis, subject to the oversight of the Executive Manager and in accordance with these Procedures. To ensure that the RO is able to effectively represent the University without conflicts of interest, the RO must be a University employee, and not an officer or employee of the Relevant Entity (or likely to be appointed as one). Where practicable, he or she must not report directly to the Entity Officer (if there is one) within the University. If that is not practicable, this must be discussed with and approved by the Chief Legal Officer.
- 2.11. The University may nominate a Staff Member for appointment as an Entity Officer where a high level of engagement with a particular entity is desirable. However the University recognises that Entity Officers will owe independent duties to Relevant Entities as part of that role, in addition to their obligations to the University as Staff Members. Nominees remain personally responsible for the performance of their respective duties as Entity Officers and University Staff Members, but will be supported to understand the requirements of those roles by the University, as detailed in these Procedures.
- 2.12. The Chief Legal Officer is generally responsible for ensuring that the University has appropriate governance arrangements in place in respect of Relevant Entities (including to enable compliance with the Voluntary Code), subject to these Procedures.

## **3. RESPONSIBILITIES**

In addition to the general responsibilities set out in section 2, specific duties in respect of these Procedures are set out below.

### **3.1. The RO's duties include the following (in conjunction with relevant stakeholders):**

- a. preparing and submitting proposals for the University to take an interest in the Relevant Entity, including any subsequent material changes to the University's interest or level of control;
- b. ensuring that the Key Requirements for Relevant Entities detailed in Schedule 2 are met;
- c. developing, negotiating and managing relevant legal instruments in conjunction with the Chief Legal Officer;
- d. preparing recommendations for nomination of Entity Officers, managing the Entity Officer review process, and keeping appropriate records in accordance with Schedule 3;
- e. monitoring performance, risk management, and incident reporting on an ongoing basis in accordance with the University's Risk Management Framework;
- f. providing regular feedback to the Executive Manager, including in respect of the matters in 3.1(e), any matters which may materially affect the University's interest, risk exposure or level of control of a Relevant Entity, the level of compliance with the Voluntary Code, and any other relevant matters;

- g. providing audit reports to the Executive Manager and Council Secretary;
- h. as directed by the Council Secretary, preparing University compliance certifications, reports, annual review documentation and proposals to address any adverse findings, for review and approval by the Executive Manager; and
- i. keeping appropriate official records in respect of the Relevant Entity.

Subject to the Executive Manager's approval, a Staff Member who is likely to be appointed as an Entity Officer may perform any of the RO's duties (other than recommending his or her own appointment), prior to being appointed.

### **3.2. The Executive Manager is responsible for:**

- a. notifying the Council Secretary of the appointment of an RO, including any changes to the appointment;
- b. overseeing the performance of the RO's duties and providing relevant approvals as required;
- c. receiving feedback and reports from the RO and escalating significant matters as appropriate (including notifying the Council Secretary of any matters which may materially affect the University's interest, risk exposure, level of control of a Relevant Entity, or compliance with the Voluntary Code);
- d. reviewing and approving University compliance certifications, reports, annual review documentation and proposals to address any adverse findings, as prepared by the RO; and
- e. conducting regular strategic reviews of Relevant Entities to determine the level of risk involved, and whether they remain aligned with the University's strategic objectives. The Executive Manager must consider at least annually whether or not it is appropriate for such a strategic review to be conducted.

### **3.3. The Council Secretary is responsible for:**

- a. managing the compliance certification and annual review processes for Relevant Entities and reporting results (including regarding compliance with the Voluntary Code) to the Audit Risk and Compliance Committee and/or Council as appropriate; and
- b. escalating significant matters (including those reported by the RO and/or Executive Manager) within the University as appropriate.

### **3.4. Taking an interest in a Relevant Entity**

If the University is considering taking an interest in a Relevant Entity, the RO must prepare, in consultation with relevant stakeholders and advisers, a proposal appropriate to the context which includes:

- a. a business case, due diligence report and risk assessment which addresses all matters relevant to the decision as to whether or not to take an interest in the Relevant Entity, and if so on what terms;
- b. a recommendation from the Chief Legal Officer as to the appropriate legal structure and governance arrangements for the Relevant Entity;
- c. confirmation that the *Key Requirements for Relevant Entities* in Schedule 2 have or will be met;
- d. where relevant, proposed nominees for appointment as Entity Officers, addressing the selection criteria in Schedule 3;
- e. details of any potential conflicts of interest in respect of University nominees, and proposals for managing these in accordance with these Procedures and the Conflict of Interest Procedures;
- f. advice from the Chief Financial Officer as to any material tax, accounting or other financial implications for the University in relation to the Relevant Entity; and

- g. confirmation from the Chief Financial Officer as to whether the Relevant Entity will be a Controlled or Non-Controlled Entity.

The Executive Manager must endorse the proposal and submit it for approval as follows:

- h. in respect of Controlled Entities, to the Vice-Chancellor for submission to the Finance Committee of Council for approval by Council as required by the Voluntary Code;
- i. in respect of Non-Controlled Entities which are Research Entities:
  - (i) to the Deputy Vice Chancellor Research for approval where the financial value is up to and including \$1 million;
  - (ii) to the Vice-Chancellor for approval where the financial value is above \$1 million but less than \$5 million;
  - (iii) to the Finance Committee for approval where the financial value is between \$5 million and \$20 million; and
  - (iv) to Council for approval where the financial value exceeds \$20 million; and
- j. in respect of Non-Controlled Entities which are not Research Entities:
  - (v) to the Vice-Chancellor for approval where the financial value is less than \$5 million;
  - (vi) to the Finance Committee for approval where the financial value is between \$5 million and \$20 million; and
  - (vii) to Council for approval where the financial value exceeds \$20 million.

The Chief Financial Officer should be consulted if there is any doubt as to the financial value of the transaction or the appropriate approval requirements. The Chief Legal Officer must review and approve in writing all legal instruments relating to the establishment or acquisition of an interest in a Relevant Entity, subject to final approval and execution of the relevant signatory.

Taking on a position of Chair (or equivalent) of a Relevant Entity involves additional considerations in relation to time commitment, risk and reputation which need to be specifically addressed in any proposal.

### **3.5. Divestment and other material changes in or affecting Relevant Entities**

The University's relationship with Relevant Entities and associated strategic alignment considerations and risk profile can change, either at the initiation of the University or as a result of changes in the Relevant Entity's strategy, operations, ownership, management, financial position, reputation or other matters outside the University's control. Material changes initiated by the University may include:

- a. increasing or decreasing significantly the University's level of control or interest, including in a way which would change its designation as a Controlled or Non-Controlled Entity;
- b. significantly increasing or decreasing engagement with the entity;
- c. disposing of the whole or part of the University's interest;
- d. change or withdrawal of the University's nomination of an Entity Officer; or
- e. disestablishing or winding up the entity.

Proposals for such material changes must be made and approved through the same process as required for taking the initial interest in a Relevant Entity, addressing matters in 3.4 which are relevant to the change, and any other matters relevant to the decision to make the change.

Where material changes of the type referred to above have occurred or appear at risk of occurring other than at the initiation of the University, the RO must:

- f. report them (along with comments on implications to the University) to the Executive Manager and Council Secretary as soon as practicable, for appropriate escalation;
- g. consult with the Chief Financial Officer as to any material tax, accounting or other financial implications for the University;
- h. confirm with the Chief Financial Officer whether there is any change to the entity's designation as a Controlled or Non-Controlled Entity; and
- i. report the matters in (b) and (c) to the Executive Manager and Council Secretary as soon as practicable.

#### 4. SCOPE OF PROCEDURES

These procedures apply to members of the University's Council, Council Committees and Boards, and to all Staff Members. These procedures apply to existing Relevant Entities as at the date of adoption as well as future Relevant Entities. However, no further approvals under clause 3.4 are required in respect of existing Relevant Entities.

#### 5. DEFINITIONS

(Note: Commonly defined terms are located in the [Curtin Common Definitions](#). Any defined terms below are specific to this document)

##### **Research Entity**

A Relevant Entity which conducts, as a significant part of its operations, research and development activities of the kind usually conducted by the University, or which seeks to commercialise the outcomes of the University's research activities. Research Entities are distinct from other Relevant Entities which conduct, for example, predominantly non-research, commercial, or representative activities.

##### **Controlled Entity**

An entity which satisfies the test of control in section 50AA of the Corporations Act 2001 (Cth). Broadly, an entity controls another entity when it has the capacity to determine that entity's financial and operating policies.

##### **Non-Controlled Entity**

A Relevant Entity which is not a Controlled Entity.

##### **Staff Member(s)**

University employees, and non-employees formally associated with the University such as contract workers, adjunct or visiting academics etc.

References to the **Chief Legal Officer** and **Chief Financial Officer** include delegates within their respective teams.

#### 6. SCHEDULES

Schedule 1 – Clauses 12 and 13 of the *Voluntary Code of Best Practice for the Governance of Australian Public Universities*.

Schedule 2 - Key Requirements for Relevant Entities

Schedule 3 - Selection Criteria for nomination of Entity Officers

Schedule 4 - Guidelines for Relevant Entity Officers

#### 7. RELATED DOCUMENTS/LINKS/FORMS

[Voluntary Code of Best Practice for the Governance of Australian Public Universities](#)

[Corporations Act 2001 \(Cth\)](#)

[Disclosure of Relationships and Interests Procedures](#)

[Risk Management Policy](#)

[Risk Management Procedures](#)

[Brand Use Procedures](#)

[External Collaborative Research Centres Procedures](#)

[Research Institutes, Centres and Clusters Procedures.](#)

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<b>Approval Authority</b>	Council
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## REVISION HISTORY

<b>Version</b>	<b>Approved/ Amended/ Rescinded</b>	<b>Date</b>	<b>Committee / Board / Executive Manager</b>	<b>Approval / Resolution Number</b>	<b>Key Changes &amp; Notes</b>
	Approved	27/01/2009	Planning and Management Committee	PMC 10/09	Attachment A to Document No 00027/09
	Amended	12/12/2012	Council	C 160/12	Attachment A to Document No 01272/12 (Council rescinded existing policy and procedures and approved new procedures as per new Policy Framework, includes title name change) effective 1 January 2013
	Administratively Updated	19/08/2013	Director, Legal and Compliance Services		Links Updated
	Approved	01/07/2020	Council	C 103/20	Attachment A to Item 8.1
	Approved	16/10/2024	Council	C 157/24	Attachment to Item 9.2.2

## Schedule 1

### **Clauses 12 and 13 of the *Voluntary Code of Best Practice for the Governance of Australian Public Universities***

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 the 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.

## Schedule 2

### Key Requirements for Relevant Entities

The RO must ensure that the following requirements are met to enable:

- compliance with the Voluntary Code; and
- appropriate management of the respective interests of the University as a stakeholder in the entity, and University Staff Members who also serve as Entity Officers.

Prior to the University taking an interest in the Relevant Entity, the RO must obtain written confirmation that each requirement has or will be met (or approval to deviate from the requirement, along with reasons) from the responsible person listed in the table below.

Item	Requirement	RO to confirm fulfilment of requirement with
<b>Training and Support</b>		
1.	Prior to appointment as an Entity Officer, Staff Member to confirm in writing that they have read and understood the Guidelines for Relevant Entity Officers in Schedule 4 regarding their respective responsibilities to the Relevant Entity and the University, including where to seek further information and advice.	Executive Manager
2.	Appropriate indemnity and insurance arrangements are in place to protect Entity Officers in their performance of that role.  Entity Officer is required to provide details of the entity's D&O and other relevant insurance policies to the University in compliance with the University's own insurance requirements.	Chief Legal Officer (in consultation with Director Risk, Compliance and Audit)
3.	Staff Member's employment/ engagement arrangements with the University to allow for reasonable use of University administration resources to support the Entity Officer role.	Executive Manager (in consultation with Director, People & Culture)
<b>Independence</b>		
4.	Governance Instruments to reflect and support the independent capacity in which the Entity Officer holds that role, as distinct from their role as a University Staff Member.	Chief Legal Officer
5.	The Staff Member's employment / engagement arrangements with the University: <ul style="list-style-type: none"> <li>a) must not include a requirement for the person to take on officer roles at the University's request; and</li> <li>b) must provide that if the person agrees (at their discretion) to take on an Entity Officer role, their University commitments will be adjusted and/or accommodated accordingly, without deduction in their remuneration.</li> </ul>	Executive Manager (in consultation with Director, People & Culture)
<b>Confidentiality</b>		
6.	Governance Instruments to permit Entity Officers to share relevant information with the University, to the extent permitted by law and subject to appropriate confidentiality requirements.	Chief Legal Officer
7.	University communication and information management arrangements to comply with confidentiality obligations for Entity Officers.	Chief Legal Officer (in consultation with Chief Information Security Officer)
<b>Conflicts of Interest</b>		
8.	Governance Instruments to include appropriate processes for managing conflicts of interest in respect of Entity Officers, including how the University will be kept informed of actual or potential areas of conflict.	Chief Legal Officer
9.	Conflict Management Plan to be put in place for each Entity Officer, prior to their appointment.	Chief Legal Officer (in consultation with Risk, Compliance and Audit)



	<b>Voluntary Code</b>	
10.	Governance instruments to contain provisions enabling compliance with clauses 12 and 13 of the Voluntary Code, as applicable.	Chief Legal Officer (in consultation with Council Secretary)

### Schedule 3

#### Selection Criteria for nomination of Entity Officers

1. The RO must address the following in any proposal for a University Staff Member to be nominated for appointment as an Entity Officer:
  - a) skills and experience appropriate to the business of the entity;
  - b) understanding of and experience in entity governance;
  - c) ability to commit the requisite time and effort to understand the business of the entity, attend meetings and otherwise perform the duties of an Entity Officer in addition to any duties owed to the University; and
  - d) any actual, potential or perceived conflicts of interest, and proposals for managing these in accordance with these Procedures and the [Conflict of Interest Procedures](#).

#### Review of Entity Officers

2. The RO must arrange for a review (at least annually, or more frequently if required) of the performance and ongoing suitability of each Entity Officer, and whether it remains appropriate for the University to continue to nominate an Entity Officer. The review will be conducted in conjunction with relevant stakeholders which may include the nominee's University line manager and Executive Manager. Any recommendations for withdrawal or renewal of the University's nomination must be considered and approved by the relevant Executive Manager, and by Council in the case of officers of Controlled Entities.

#### Record keeping

3. The RO must formally document and record the nomination, approval, appointment and review process for Entity Officers, as well as the process for any withdrawal of the nomination and resignation of the Entity Officer.

## Schedule 4

### Guidelines for Relevant Entity Officers

#### 1. Purpose

This information will assist University Staff Members who are nominated for appointment as Entity Officers to:

- understand their respective obligations as University Staff Members and Entity Officers;
- identify and manage actual or potential conflicts which may arise between their duties to the University and the Relevant Entity;
- understand the indemnity and insurance arrangements designed to protect them from personal liability incurred in the performance of their role as an Entity Officer; and
- access further information, advice and assistance in relation to these issues.

Prior to appointment as an Entity Officer, University Staff Members must confirm in writing to the relevant Executive Manager that they have read and understood these Guidelines.

#### 2. Role of Directors

The most common position which University Staff Members may be nominated for within a Relevant Entity is that of a company director.

Staff Members should be aware that, even if they are not officially appointed as a director, they may legally be considered a “de facto director” if they act in the position of a director, or as a “shadow director” if the other directors are accustomed to act in accordance with that person’s instructions or wishes.

A director’s role varies depending on the size, nature and type of entity, however generally the board of directors is responsible for the overall strategy, governance and performance of the entity. The board supports and oversees the entity’s management, and monitors financial and other risk issues.

#### 3. Directors’ Duties

Directors are subject to a range of duties imposed through legislation (notably the [Corporations Act 2001 \(Cth\)](#)), common (ie judge-made) law, and obligations imposed by the entity’s governance instruments such as the Constitution. Generally speaking, these duties can’t be limited by contract (eg an agreement between the relevant parties or a provision of the Constitution purporting to permit a director to act contrary to their legal duties). Staff Members should seek advice from the entity and/or the University’s Chief Legal Officer as appropriate in respect of any provisions which attempt to do this, as they may not necessarily mean what they say and therefore may not be effective to protect a director’s position.

Directors are personally responsible for discharging their duties and must exercise independent judgment in performing their role. They cannot be directed by shareholders, the University, or anyone else as to how to perform their role.

The core general duties of directors can be summarised as follows:

- Care and diligence: directors must act with the degree of care and skill that a reasonable person might be expected to show in the role. This will vary depending on the particular role, but in general means they must take reasonable steps to place themselves in a position to monitor the management of the entity and obtain a general understanding of its business and the effect that circumstances and decisions may have on the entity. Directors must attend board meetings and take a diligent interest in the affairs of the company.

However, so as not to unduly restrict entrepreneurial activity, the *Corporations Act* provides a limited scope of defence to an alleged breach of duty by a director where the director can prove that they made a “business judgement” and they:

- made the judgment in good faith for a proper purpose;

- do not have a material personal interest in the subject matter of the judgment;
  - informed themselves about the subject matter of the judgment to the extent they reasonably believed to be appropriate; and
  - rationally believed that the judgment was in the best interests of the company.
- Good faith: directors must act in good faith in the best interests of the company as a whole (that is, all of the shareholders collectively and not just a particular group), and for a proper purpose. They must also avoid situations where there is a real possibility that a conflict of interest may arise, and disclose and manage conflicts if they do arise.
  - Properly use position: directors must not improperly use their position to gain an advantage for themselves or someone else, or to the detriment of the company.
  - Properly use information: directors must not improperly use information gained through their role as a director to gain an advantage for themselves or someone else, or to the detriment of the company.

In addition to these core duties, directors owe a number of more specific duties such as:

- Insolvent trading: directors must ensure that a company does not trade whilst insolvent or where they do or should suspect that it might be or become insolvent.
- Financial information: directors must take reasonable steps to ensure that a company complies with its legal obligations related to the keeping of financial records and financial reporting.
- Listed companies: directors of companies listed on the Australian Stock Exchange must continuously disclose price-sensitive information to the market, as well as certain personal interests and a range of other matters.
- Other laws: there are a range of other state and federal laws which impose personal liability on directors in relation to issues such as occupational health and safety, tax, competition and consumer law, privacy and environmental matters.

Directors who breach their duties may be personally liable for a range of civil and criminal sanctions including fines, disqualification from holding office in a company, compensation orders, and even imprisonment.

Staff Members must ensure that they understand the general scope of their duties as Entity Officers, as well as any specific duties applicable to the Relevant Entity in question. Staff members are encouraged to seek clarification and advice from the entity and/or the University's Chief Legal Officer as appropriate. The University may also arrange access to independent legal advice if required.

#### **4. Staff Members duties to the University**

The primary source of Staff Members' duties to the University are their terms of employment or engagement, including where relevant their employment contract, position description and the terms of the relevant enterprise agreement. The common law also imposes a range of duties on employees more generally.

In general, Staff Members core duties will include a requirement to:

- serve the University faithfully, and not knowingly act in a manner contrary to its interests,
- exercise due care and skill;
- obey lawful and reasonable directions of the University;
- comply with University policies and procedures; and
- convey information obtained in the course of employment which is of value to the University.

Staff Members should review all relevant documents to ensure they fully understand the requirements of their specific position and, in consideration of the matters below, any potential areas of conflict with their role as an Entity Officer. It is important that Staff Members' terms of employment/engagement do not stipulate that it is part of their role to take on Entity Officer positions. Staff Members may seek further advice from the Chief Legal Officer as required.

## 5. Conflicts of Interest

### 5.1 Overview

Where a Staff Member is also appointed as an Entity Officer, there is a high risk that their respective duties to the University and the Relevant Entity may come into conflict. Such conflicts must be disclosed, managed to the extent possible, and eliminated (eg through resignation as an Entity Officer) where management is not possible.

Some examples of scenarios where the potential for conflict might arise include:

- If an Entity Officer receives confidential financial information which may be relevant to the University's interests as a shareholder, this may conflict with their duty as a Staff Member to pass on relevant information to the University.
- Similarly, where Staff Members are privy to confidential strategic information about the University which may be relevant to the entity's commercial activities, this may conflict with their duty to act in the best interests of the Relevant Entity by sharing that information.
- In commercial negotiations between Relevant Entities and the University, an Entity Officer's duty will be to obtain favourable terms for the entity, which may conflict with their duty to also obtain favourable terms for the University as a Staff Member. Similar issues arise in relation to resolving disputes or complaints between the organisations.
- Where an Entity Officer is called on to make a commercial or strategic decision for the entity which may adversely affect the interests of the University, this may create conflict between their duty to act in the best interests of the entity as a whole, and their obligation as a Staff Member to act in the best interests of the University.

The University's [Conflict of Interest Procedures](#) outline general strategies for dealing with conflicts of interest and should be read in conjunction with the more specific guidance contained in these guidelines.

Prior to their appointment as an Entity Officer, Staff Members must:

- disclose their impending appointment as creating an actual or potential conflict of interest using the [Conflict of Interest Register](#); and
- work with the Director, Risk, Compliance and Audit and Chief Legal Officer to develop and register an appropriate Conflict Management Plan.

Most importantly, if in doubt seek advice. If at any time Staff Members have queries in relation to conflicts issues, they should discuss these with the Relevant Entity and/or the University's Chief Legal Officer as appropriate. The University may also arrange for Staff Members to access independent legal advice if required.

### 5.2 Separation of roles

Staff Members should maintain a clear distinction between their role within the University and as an officer of the Relevant Entity. Staff Members must not use University letterhead for entity-related business, and must sign entity-related correspondence as an Entity Officer and not as a University Staff Member. When interacting with third parties or in public fora, Staff Members should also clearly identify whether they are representing the University or the Relevant Entity.

To minimise the extent of potential conflicts, unless approved in writing by the Executive Manager, Staff Members may not be appointed as Chair of the Relevant Entity or hold managerial, executive or operational positions within the Relevant Entity.

### 5.3 General conflict management processes

The entity's governance instruments should outline the process for disclosing and managing conflicts of interest, ideally as a standing item and also on a case by case basis when matters of conflict arise. Usually this will include a requirement for Entity Officers to declare potential conflicts of interest and absent themselves from discussion on those topics and/or refrain from voting on them. Entity Officers must review and understand the requirements of the entity's governance, policy and other relevant instruments in this regard, seeking advice from the entity and/or the University's Chief Legal Officer as appropriate.

Similarly, Staff Members should remove themselves from discussions and decision-making within the University on matters which may give rise to a conflict with their duty as an Entity Officer to act in the best interest of the Relevant Entity. Such discussions and decisions should instead be managed by the Responsible Officer and/or Executive Manager as appropriate.

If it is not possible to appropriately manage conflicts of interest and an Entity Officer's position becomes untenable, they should seek advice from the entity and/or the University's Chief Legal Officer, as appropriate. The only appropriate course may be resignation of an Entity Officer's role, and in certain circumstances the University may withdraw its nomination for the appointment of a particular Entity Officer (e.g. where a person ceases to be a Staff Member).

There may be an inherent potential for a conflict of interest where a Staff Member takes on a role as an Entity Officer. The challenge is how best to manage that potential for a conflict should one arise in the future. The primary responsibility of the Entity Officer in such circumstances is to "avoid" the conflict by resolving it before the potential conflict becomes an actual conflict. The [Conflict of Interest Procedures](#) provide more detailed guidance on these and related issues.

### 5.4 Confidentiality and information sharing

Staff Members and Entity Officers are generally obliged to keep information gained in the course of performing their respective roles confidential to each organisation.

However, in recognition of the University's particular interest in a Relevant Entity, the entity's governance instruments will ideally permit the Entity Officer to share certain information with the University, subject to appropriate further confidentiality measures. Staff members must review and understand the scope of the confidentiality obligations contained in the Relevant Entity's governance, policy and other relevant instruments, seeking advice from the entity and/or the University's Chief Legal Officer as appropriate.

Ideally, Entity Officers should use an email account provided by the entity for entity-related business, and the entity's own document management system to receive, store and process entity-related information. If this is not possible, Staff Members must work with the Chief Information Security Officer to arrange secure access to and storage of entity-related emails and information within the University. Staff Members must also securely store and clearly identify as non-University records, all physical records relating to the Relevant Entity where this is maintained on campus.

Unless required by law, Staff Members must not disclose the University's confidential information to the Relevant Entity without the express written consent of the relevant Executive Manager, after seeking advice from the Chief Legal Officer as appropriate.

### 5.5 Remuneration, gifts and benefits

Unless otherwise approved in writing by the Executive Manager, Entity Officers must not accept remuneration, gifts, hospitality or other benefits from the Relevant Entity in connection with their appointment.

## 6. **Indemnification and Insurance**

The University expects that Relevant Entities will provide appropriate indemnification and insurance coverage for claims against Entity Officers in connection with the performance of their role. This would include claims and proceedings against Entity Officers for actual, alleged or proposed acts, errors or omissions, breach of duty, breach of trust, neglect, misstatement, or misleading statement.

Where a Relevant Entity's indemnity or insurance does not cover the Entity Officer's loss, the University's own Directors and Officers insurance ("**D&O insurance**") for Outside Entities should generally apply, subject to its terms, if the Entity Officer assumed that position at the specific request of the University. The cover extends to legal defence costs and fines or penalties (unless the insurer is prohibited by law from paying these). The Entity Officer must ensure they are in a position to provide the University's insurers with details of the Relevant Entity's D&O Insurance through the annual certification process.

The extent to which insurance responds to a particular loss depends on the individual circumstances and the precise terms of the policy. There are also some matters which cannot be insured against, for example safety breaches. Entity Officers should review and understand the scope and limitations of the indemnity and insurance arrangements provided by the Relevant Entity and/or the University, seeking advice from the entity and/or the University's Chief Legal Officer and Director, Risk, Compliance and Audit as appropriate.

The Guidelines in this Schedule 4 may be revised from time to time with the approval of the Chief Legal Officer without formally amending these Procedures.