

## **STATUTE 10.3 - TRUSTS GOVERNANCE**

### **10.3.1 Definitions**

- (1) In this Statute, unless inconsistent with the context or subject matter-
  - (a) 'award' includes prizes, scholarships, exhibitions and bursaries.
  - (b) 'net annual income' is the annual income of the trust fund less any deductions allowable under the terms of the trust or the Act, such deductions to include income added to capital and income deducted as commission pursuant to the Act.
  - (c) 'trust fund' means any fund comprising trust monies.
  - (d) 'trust monies' are monies or other property held by the University on trust for a designated charitable purpose.
  - (e) 'unexpended monies' are monies available for expenditure pursuant to the terms of a trust, but not expended.
  - (f) 'University trust record' means a document not being a regulation or any other form of subordinate legislation which is certified by a staff member of the University designated by the Vice-Chancellor for that purpose to contain an accurate record of the relevant background to the creation of the trust fund, the trust terms and any administrative provisions devised by the University for the implementation of the trust according to its terms.
- (2) The terms defined in sub-section (1) shall have the same meaning in any regulation or University trust record, unless inconsistent with the trust terms, the context or subject matter.

### **10.3.2 University Trust Record**

- (1) The University may record the terms of its acceptance and administration of any trust fund in a regulation coming within the terms of the Act, or in a University trust record.
- (2) The University may maintain a consolidated record of regulations reflecting the terms of trusts (and related background and administrative provisions) and University trust records, in such manner as in the University's absolute discretion facilitates access to that information for any person who may need to review the terms and other provisions referable to any trust administered by the University and recorded in a regulation or University trust record.
- (3) The University may at any time elect to revoke all or any regulations reflecting trust terms and other provisions referable to such trusts, and create University trust records reflecting the same terms and provisions, and the University shall continue to be bound by the terms of such trusts as then reflected in University trust records.

### **10.3.3 Trust Capital and Income**

Subject to the terms of the Act and this statute, trust monies must be spent only in accordance with the terms on which such monies are held as required by the terms recorded in the relevant regulation or University trust record or, where no regulation or University trust record exists, the instrument whether made by the

University or any third party which records the trust terms.

#### **10.3.4 Accountability of Deans and Heads**

Subject to section 10.3.3, deans and heads of non-academic departments may in writing authorise expenditure from trust funds which are to be administered by them, and they are accountable to the University for any such expenditure. They must certify when so required by the University for compliance purposes-

- (a) the name of, or an identification reference for, the relevant trust;
- (b) the applicable trust requirement whether or not reflected in a regulation or University trust record;
- (c) the amount of money available for distribution in fulfilment of the trust requirement;
- (d) the amount of money expended in fulfilment of the trust requirement;
- (e) the manner in which the expended monies were applied; and
- (f) such other information referable to compliance as may be required from time to time by the University.

#### **10.3.5 Decisions to be made by Council**

Subject to the terms of the Act, including any power of Council to delegate the performance of trust obligations notwithstanding any rule of common law or equity, where the terms of a trust oblige Council to make a decision, including making an award or otherwise applying trust monies, Council must make the decision, taking into account such recommendations as may be made by officers, committees or the Board as required by the trust terms or, as prescribed by the University from time to time.

#### **10.3.6 Decisions to be made by the University**

Subject to section 10.3.5, when the University is appointed as trustee of any trust fund, the University may make any decision as trustee to make awards from, or to apply, trust monies, or authorise other payment from trust funds by the dean or applicable head of department accountable for expenditure under section 10.3.4. All such decisions must be in writing.

#### **10.3.7 Shortfall in Income**

If in any year the income of any trust fund is insufficient to provide the full amount prescribed by regulation or University trust record for any award, then, subject to the terms of the gift, the amount of the award for that year may be reduced to the net annual income.

#### **10.3.8 Unexpended Income**

Subject to any Act or trust terms to the contrary, in accordance with trust law, any unexpended income in any perpetual trust fund in any year is to be retained as income and be available in any subsequent year for the purpose of the fund.

#### **10.3.9 Addition of Income to Capital**

- (1) Where trust terms require or permit unexpended income to be added to the capital of the fund, the University must comply with the requirement so imposed or may act pursuant to the permission so given.
- (2) Subject to sub-section (1) and to any Victorian Act, the net annual income of each trust fund is to be applied in its entirety towards the implementation of the

trust purpose.

#### **10.3.10 Power to amend administrative arrangements**

- (1) The University may by regulation or University trust record amend any administrative arrangements established by it from time to time to implement or administer the terms of any gift received by it.
- (2) The terms upon which a donor has made a gift are only altered as provided in the Act or otherwise alterable as provided in the *Charities Act 1978*.

#### **10.3.11 Record Keeping**

Where the terms of a trust are not governed by a regulation or University trust record, the University must maintain an appropriate and accessible record of -

- (a) the terms of the trust as contained in either a formal trust instrument or relevant correspondence;
- (b) any scheme or plan settled within the University for the application of the trust monies, consistent with the terms of the trust upon which they are held;
- (c) amounts held and received from time to time;
- (d) amounts available for expenditure from time to time;
- (e) how the monies in paragraph (d) were expended, consistent with the terms of the trust; and
- (f) unexpended monies.

#### **10.3.12 Applicability of this Statute**

All trust regulations prefaced by the numbers 6 or 7, whether remaining in the form of regulations or converted pursuant to section 10.3.2 to University trust records, are governed by this statute, as are all other University trust records.

#### **10.3.13 Recommendations for Awards**

Subject to any statute, regulation or University trust record, a head or a deputy head of the relevant academic unit (including a faculty) or administrative department of the University may act on behalf of that academic unit or administrative department in making any recommendation of that academic unit or administrative department for the purposes of an award. In all other situations, the chair of the relevant committee nominated by the president of the Board shall have authority to make recommendations for applicable undergraduate or graduate and postgraduate awards, as the case may be.

#### **10.3.14 Making of regulations**

The Council or the vice-chancellor may, by regulation, make rules and give directions regarding any matter relevant to this statute.

[Made by Council 14/12/09; approved by the Minister 1/3/10]