

## STATEMENT AND GUIDELINES ON DECLARATIONS OF INTERESTS OF COUNCIL MEMBERS AND MEMBERS OF COUNCIL COMMITTEES

### The legislation

Section 19(3)(c) of the *Deakin University Act 1974* (Vic) (the Act) provides that:

*A member of Council, in carrying out his or her functions and duties, must ...take reasonable steps to avoid all conflicts of interest unless they are disclosed in accordance with section 19A.*

Section 19A provides that:

*(1) A member of the Council who has an interest in a matter being considered or about to be considered by the Council must, as soon as practicable, after the relevant facts have come to his or her knowledge, declare the nature of the interest at a meeting of the Council or in writing addressed to the Chancellor.*

*(2) If the Chancellor receives a written declaration under sub-section (1), the Chancellor must report it or cause it to be reported, at the next meeting of the Council.*

*(3) The person presiding at a meeting at which a declaration is made under sub-section (1) or reported under sub-section (2) must cause a record of the declaration to be made in the minutes of the meeting.*

*(4) After a declaration is made under sub-section (1) by a member of the Council—*

*(a) unless the Council otherwise directs, the member must not be present during any deliberation with respect to that matter*

*(b) the member is not entitled to vote on the matter*

*(c) if the member does vote on the matter, the vote must be disallowed.*

Section 19 applies to Council members in their duties as members of Committees; section 19A is restricted to proceedings of Council itself.

### What kind of interest must be declared?

The Act does not define “interest”. Further, “interest” in sections 19 and 19A is not qualified as to the extent of the interest or anything else.

Guidance as to what is meant by “interest” may be obtained from the analogous realm of company directors’ duties. A company director has both a statutory and common law duty to avoid a conflict of interest as between himself or herself and the company. The duty has been considered by the Courts in many cases, although the extent of the duty is still open (Butterworth’s *Australian Corporation Practice*)—

*For the duty to apply, the conflicting duty must be sufficient to force the [director], in deciding how to act in a matter, to consider both it and his duty to the corporation: ANZ Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd (1978) 139 CLR 195; 19 ALR 519. It must be real, not theoretical, remote or contingent...A small shareholding in a public company with which the corporation does business, for example, would not usually be considered an interest which would give rise to a breach of duty, but any doubt may be removed by disclosing it fully.*

Butterworth’s *Australian Corporation Practice* lists situations of potential conflict as including where the director—

- *has an interest in a contract with the corporation*
- *uses information of the corporation*
- *uses property of the corporation*
- *uses his or her office otherwise than for its proper purpose*
- *competes with or takes an opportunity that may be open to the corporation*
- *holds an office or property [eg. shares] giving duties or interests which conflict with the duties to the corporation.*

On the subject of shareholdings by directors, there is case law which would suggest that to constitute an interest adverse to that of the company’s a shareholding in the other company would have to be so large that the director would have effective control at a general meeting (Ford’s *Principles of Corporation Law*).

It is possible that not a director, but instead a director's spouse [partner] or close relative, holds an interest which conflicts with an interest of the company. While the director may or may not stand to benefit personally, there is a risk that the holding of the interest by the spouse or relative may place the director at risk of using his or her office otherwise than for its proper purpose (ie for the benefit of the spouse or relative rather than for the benefit of the company). This can be a conflict of interest.

Based on the above, some examples of instances where a declaration by a Council member of an interest would be appropriate are—

- on the part of either the member or the member's spouse or close relative, employment by, shareholding (or other interest) in, or directorship (or being a member of the controlling body) of a company or other institution dealing with the University
- on the part of either the member or the member's spouse or close relative, membership of a body that is in competition or conflict with the University
- in the case of a staff member of Council, outsourcing or restructuring of functions directly related to the area of employment of a member of staff elected to membership of the Council
- any matter under discussion that would result in personal financial advantage or financial advantage to the member's spouse or close relative
- in the case of a Council member appointed by the Minister, responsibility for an aspect of policy or an operational area or activity which affects a matter under consideration by the University.

A matter which arises from membership of the group qualifying an individual for election or appointment to membership of the Council and which is not otherwise special or personal to that member of Council is not a conflict of interest. (Examples could include students voting on assessment policy, or staff voting on a salary increase for all staff.)

#### **At a meeting**

Section 19A(4) makes it clear that when an interest is declared by a member in relation to a matter to be considered by Council, Council has a discretion as to whether the member is present during any deliberation on the matter, but that there is no discretion as to the member's being allowed to vote. Section 19A(4) provides that the member is not entitled to vote on the matter.

Section 19A(4) says nothing as to whether the member, if present, may participate in deliberations. It is arguable that Council could restrict the member to simply being present or allow the member to participate.

Council, and Council committee, agendas provide for declarations of conflicts of interest.

The chair of Council, or of a Council committee, is bound by the process set out in section 19A in relation to dealing with an interest declared at or before a meeting.

#### **Annual declaration of potential conflicting interests**

To facilitate compliance with sections 19 and 19A, the Council Secretary will forward to members, on their appointment and annually, for completion and return a proforma entitled Declaration of Interests and Transactions.

Should a member wish to declare a new potentially conflicting interest at any time the Council Secretary can be contacted for a new form.

Copies of completed forms will be held on a confidential file by the Council Secretary and will be made available to the chair of Council and the chair and secretary of any relevant Council committee. If the chair considers there to be a potential conflict of interest in relation to a matter to be considered at a meeting, the chair may raise the matter with the member in the absence of any declaration by the member.

The proforma Declaration of Interests and Transactions also provides for the declaration of transactions entered into with the University by the member in the previous 12 months. The *Financial Management Act 1994* (Vic) and the Australian Accounting Standards require 'responsible persons' (i.e. Council members) to disclose, at the end of each financial reporting period, the transactions that they (or those people close to them) had with the University during that financial period. This information is reported in the University's Annual Report.

#### **Attachment A: Proforma Declaration of Interests and Transactions**

Approved by Council for inclusion in the Council Manual on 11 December 2008.

Attachment A

DEAKIN UNIVERSITY COUNCIL

DECLARATION OF INTERESTS AND TRANSACTIONS

This form gathers information about any interest held by you which may potentially lead to a conflict of interest in respect of your membership of the Council. It also records transactions with the University in the previous twelve months. Please complete and return to the Council Secretary.

NAME OF COUNCIL MEMBER: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

INTERESTS

(If nil write 'Nil')

ENTITY (e.g. Acme Academic Removals Ltd.)	INDIVIDUAL INVOLVED (e.g. elf/partner/son/daughter/ wife/husband)	NATURE OF INTEREST IN ENTITY SUCH AS RELATIONSHIP OR OFFICE HELD (e.g. large parcel of shares/director/CEO/purchasing officer)
1.		
2.		
3.		

TRANSACTIONS WITH DEAKIN UNIVERSITY DURING THE PREVIOUS CALENDAR YEAR

(If nil write 'Nil')

NATURE OF TRANSACTION	INDIVIDUAL/S INVOLVED (eg self/partner/son/daughter/wife/husband)	DATE OF TRANSACTION	AMOUNT INVOLVED
1.			
2.			
3.			