

Charitable Trusts Procedure

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Purpose

This procedure describes the requirements for charitable trusts of which the University is appointed as trustee.

Applicable governance instruments

Instrument	Section	Principles
University Foundation Committee Ordinance	3.1	
<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>		
Variation of Trusts Act 1994 (Tas)		
Trustee Act 1898 (Tas)		
<i>University of Tasmania Act 1992 (Tas)</i>		
<i>Income Tax Assessment Act 1997 (Cth)</i>		

Procedure

1. Background

The objectives of this procedure are to ensure:

- a) The University meets its legal and accounting obligations.
- b) The management and administration of charitable trusts is financially responsible.
- c) The clear allocation of responsibility and accountability in relation to charitable trusts including how charitable trusts are established, managed, and administered, and the ongoing monitoring and reporting obligations for charitable trusts.

Charitable trusts are managed by the Advancement Office with assistance from the University's Legal and Finance teams. The University as trustee has certain legal obligations. Strict adherence to this procedure will assist in ensuring these obligations are met.

This procedure applies to all existing charitable trusts and any new charitable trusts established.

Definitions and acronyms can be found at: <https://www.utas.edu.au/policy/policy-definitions>

Related policy and procedures can be found at: <https://www.utas.edu.au/policy>

2. Trustee duties

For each charitable trust for which it is trustee, the University must:

- a) adhere to and carry out the terms of the trust;
- b) act in good faith;
- c) properly invest the trust funds in accordance with its legal obligations;
- d) exercise reasonable care in the administration of the trust;
- e) not benefit from its position as trustee;
- f) avoid a position of, or appearance of a position of, conflict or compromise;
- g) keep proper accounts and records; and
- h) carry out all other duties as required by law.

3. New charitable trusts

- 3.1. The University may from time to time be appointed trustee of a charitable trust, without its consent, by the terms of a donor's will (bequest). In such cases, the Advancement office will consult with Legal Services to advise on whether a charitable trust has or will be established and whether or not the University should accept the appointment as Trustee. Advice must be sought, and a decision made by the Director, Advancement about whether or not the University will accept the appointment, as soon as possible and before the University takes any steps that amount to acceptance of the appointment, or may indicate an intention to accept the appointment.
- 3.2. In all other cases, due to the costs and potential complexity involved in the administration of trusts, the University will only consent to being appointed trustee in the following circumstances:
 - a) the fund the subject of the proposed trust is greater than AUD1,000,000; or
 - b) where the Director, Advancement considers that the circumstances surrounding a philanthropic donation are such that the complexity of a charitable trust is justified.
- 3.3. The Advancement office will consult with Legal Services on the documentation of trust terms, including consideration on how funds are to be held pursuant to the terms of the trust and the University's legal requirements.
- 3.4. Where a new charitable trust is established, the Advancement office will:
 - a) generate a University Trust Record which records the details of the charitable trust;
 - b) follow the process in section 2 of the *Charity Management Procedure*;
 - c) instruct Financial Services to set up an appropriate bank account for the holding of the trust fund. Unless the terms of the trust specify otherwise, all trust funds must be held separately from other funds of the University; Legal services must review and give advice on how funds are to be held pursuant to the terms of the trust and the University's legal requirements;
 - d) instruct Financial Services to set up an appropriate investment platform for the trust fund. Legal Services must provide advice at this stage on the appropriate investment of trust funds per any trust deed documentation.

4. Administration of charitable trust

- 4.1. The obligations in the *Philanthropic Gift Acceptance Procedure*, continue to apply to charitable trusts.

- 4.2. The Advancement office must monitor the performance of each charitable trust to ensure the terms of the trust are being strictly met, including by ensuring expenditure is made from the trust in accordance with its terms.
- 4.3. The terms of a charitable trust may only be amended where permitted by its terms or as provided for in relevant legislation and law. Legal Services must be consulted on any amendment to trust terms.

5. Monitoring, recording, and reporting

- 5.1. The Advancement office will maintain a University Trust Record for all charitable trusts which will include a summary of the charitable trust's administration, expenditure and performance, details of any breaches of trust, confirmation of compliance with the ACNC (Australian Charities and Not for profits Commission) Governance Standards.
- 5.2. The Advancement office provide Financial Services and Legal Services with University Trust Records as they are established and updated.
- 5.3. The Advancement office will provide University Trust Records to the University Foundation Committee (UFC):
 - a) for any new charitable trusts established in the period since the previous UFC Meeting;
 - b) where any breach of trust has been identified in the period since the previous UFC Meeting; and
 - c) annually.
- 5.4. Reporting to University Council members (as the responsible people for each charity) and to the Australian Charities and Not-for-profits Commission (ACNC) will be in accordance with the Charity Management Procedure.
- 5.5. UFC will report to University Council:
 - a) when new charitable trusts are established;
 - b) on the performance of all Charitable Trusts annually; and
 - c) as otherwise considered necessary.
- 5.6. On establishment of a charitable trust a donor relinquishes all rights to the funds donated. Reporting to donors on the performance of donations, including where a trust has been established, will be in accordance *Philanthropic Gift Acceptance Procedure*.
- 5.7. Financial Services will also be responsible for all taxation compliance of managing the Charitable Trust.

Related procedures

Charity Management Procedure

Philanthropic Gift Acceptance Procedure

Investment Procedure

Versions

<u>Version</u>	Action	Approved By	Business Owner/s	Approval Date
1	Approved	Director Advancement	Director Advancement	30 August 2023
2	Approved	Director Advancement	Director Advancement	6 September 2024