Trusts Policy (MPF1110)

1. Objective

The objectives of this policy are to ensure the management and administration of University trusts are:

(a) lawful;

(b) accountable;

(c) financially responsible; and

(d) respectful.

2. Scope

This policy applies to all University staff.

3. Authority

This policy is made under the University of Melbourne Act 2009 (Vic), the Council Regulation and the Vice-Chancellor Regulation, and supports compliance with the:

(a) Trustee Act 1958 (Vic);

(b) Charities Act 1978 (Vic);

(c) Income Tax Assessment Act 1997 (Cth); and

(d) University legislation.

4. Policy

General

4.1. The University establishes, manages and administers trusts of which the University is trustee in accordance with the relevant legal requirements, and accounting principles and standards.

4.2. The University is also the beneficiary of a number of trusts that are managed by external independent trustees. The University receives income from these external trusts and applies the income according to the terms of the particular trust.

4.3. For each trust for which it is trustee, the University, and University staff responsible for managing and administering trusts and applying trust funds, must:

(a) carry out the terms of the trust;

(b) act in good faith;

(c) preserve the trust assets by prudently investing the trust capital;
(d) exercise reasonable care in the administration of the trust;

(e) not benefit from its position;

(f) avoid a position of, or appearance of a position of, conflict or compromise; and

(g) keep proper accounts and records.

4.4. Records created under this policy are managed in accordance with the University’s [Records Management Policy](#).

**Terms of trusts**

4.5. The University may accept gifts from a variety of sources, which establish perpetual charitable trusts and expendable trusts.

4.6. Subject to the terms of the University of Melbourne Act, the Statute and the Council Regulation, trust monies (including income) must be applied in accordance with the terms of each particular trust.

4.7. The University may determine the minimum amount required to establish a perpetual charitable trust from time to time.

4.8. The University does not accept gifts which establish perpetual charitable trusts or expendable trusts that include discriminatory terms, unless otherwise permitted by the Discriminatory Terms Guidelines.

4.9. The University accepts gifts which establish perpetual charitable trusts only where standard University authorised documentation has been used, unless approval is obtained from Legal Services to use alternative documentation.

4.10. Trust terms may be amended only as provided for in the Charities Act. Please contact Legal Services for assistance.

4.11. The University may establish processes for:

(a) creating perpetual charitable trusts and expendable trusts;

(b) handling/managing bequests; and

(c) investment, accounting, compliance and reporting.

4.12. The University must apply income from external trusts and expendable trusts in accordance with the terms of the trust, and keep proper accounts and records.

**Management of trust assets**

4.13. The University invests the funds of perpetual charitable trusts with the objective of preserving the real value of trust capital while generating an appropriate level of annual income to support the purpose of the trust.

4.14. Subject to the Council Regulation, 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 head of division accountable for expenditure under section 4.16. All such decisions must be in writing.

4.15. Subject to the terms of the trust, the net annual income of each trust fund is to be applied in its entirety towards implementing the trust’s purpose.

4.16. Subject to any statute, regulation or University trust record, a head or a deputy head of the relevant academic or non-academic division or administrative department of the University, or the chair of the relevant committee:

(a) may authorise, in writing, expenditure from trust funds administered by their unit or department; and

(b) is accountable to the University for any such expenditure and must certify, when so required by the University:

i. the name of, or an identification reference for, the relevant trust;

ii. the applicable trust requirement whether or not reflected in a regulation or University trust record;

iii. the amount of money available for distribution in fulfilment of the trust requirement;

iv. the amount of money expended in fulfilment of the trust requirement;

v. the manner in which the expended monies were applied; and

vi. any compliance information required by the University.

4.17. If in any year the income of any trust fund is insufficient to provide the full amount prescribed by 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.

4.18. In accordance with trust law, 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, subject to the terms of the trust.

4.19. Where trust terms require unexpended income to be added to the capital of the fund, the University must comply with the requirement. Where the terms permit unexpended income to be added to the capital of the fund, the University may do so at its discretion.

University trust record

4.20. The University records the terms of its acceptance and administration of any perpetual charitable trust in a University trust record.

4.21. The University may maintain a consolidated record of University trust records (formerly regulations) reflecting the terms of trusts (and related background and administrative provisions), in a manner at the University’s discretion that facilitates access to that information for any relevant person.

4.22. The University may amend its administrative arrangements from time to time to implement or administer the terms of any gift it receives.
4.23. Where the terms of a trust are not governed by a University trust record, the University must maintain an appropriate and accessible record of:

(a) the terms of the trust as contained in a formal trust instrument or in relevant correspondence;
(b) any scheme or plan settled within the University for applying trust monies, consistent with the terms of that trust;
(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;
(f) unexpended monies; and
(g) relevant reports.

5. Procedural principles

5.1. The Executive Director, Legal and Risk, is responsible for central oversight of legal and compliance matters related to trusts and for advising all University staff with trust-related responsibilities.

5.2. The Vice-Principal, Advancement, is responsible for central oversight of:

(a) liaising with donors and the administrative unit responsible for managing the trust to establish the purpose and terms of donations, and with potential donors;
(b) in consultation with Legal Services, liaising with executors and estate solicitors;
(c) maintaining a contact history with donors on the purpose and terms of their gift, and with executors and estate solicitors on estates under administration;
(d) receipting all donations and bequests; and
(e) reporting to donors.

5.3. A trust comes into existence when the University accepts a gift (ie cash, shares, real estate or personal property whether by bequest or during a donor’s lifetime) to which terms are attached, or creates a trust on its own terms in relation to certain property, funds raised in appeals for a stated purpose or its own funds.

5.4. The University’s trustee responsibilities begin as soon as it accepts the gift or creates the trust.

5.5. Acceptance of donations and bequests creating trusts must comply with the Advancement Policy.

Trusts from donations

5.6. Gifts establishing perpetual charitable trusts of which the University is trustee must have a minimum value of A$50,000.
5.7. In consultation with Legal Services and the administrative unit responsible for managing the trust, Advancement staff must prepare appropriate gift documentation (ie Memorandum of Gift (MOG) or Deed of Gift) which specifies the trust terms based on the donor’s instructions (see Staff MOG guide and University Trusts Manual).

5.8. Legal Services must approve all draft and final gift documentation before they are sent to the donor.

5.9. The donor must sign the appropriate gift documentation before the University can accept a gift.

**Trusts from bequests**

5.10. Legal Services provides information on suggested will clause wordings on the Gifts and Bequests website.

5.11. Staff notified directly of a bequest or of an external trust of which the University is a nominated beneficiary must inform the Head of Bequests, by forwarding a copy of the will and any other relevant documents.

5.12. Based on the will, the Head of Bequests liaises with Legal Services to advise whether a gift is an absolute bequest (a gift without conditions), subject to trust obligations, and/or an endowment. The University may elect to create an endowment for a prescribed purpose from any absolute gift or bequest.

**Trusts from appeals**

5.13. Staff must plan, approve and conduct appeals in accordance with the Advancement Policy.

5.14. Legal Services must approve all appeal documentation.

5.15. Trust terms are derived from the documents that solicit donations to an appeal. Staff planning an appeal from which a trust will be established must ensure that all appeal documents state the purpose for which donations are being solicited consistently and accurately.

**Trusts from University funds**

5.16. Budget division funds of more than A$50,000 may be used to establish a generic fund for research and teaching or scholarship with Finance Committee approval through the Chief Financial Officer (see University Trusts Manual or contact Specialist Trusts Officer for more information).

**Receipt and notification of trust funds**

5.17. Advancement staff must notify the administrative unit responsible for managing the trust, the Specialist Trusts Officer and the Trusts Management Accountant of the receipt of a donation or appeal funds, the realisation of a bequest that may establish a trust, or the receipt of funds from an external trust of which the University is a nominated beneficiary.

5.18. The administrative unit responsible for managing the trust must:

(a) complete and provide to the Trusts Management Accountant a Trust Project Creation form for any funds that may establish a trust;

(b) forward to Legal Services a copy of all relevant documents (eg MOG, will or appeal documents and other correspondence) that may establish a trust.
University trust records

5.19. University Trust Records (UTRs) record trust terms and administrative arrangements for perpetual charitable trusts of which the University is trustee.

5.20. The General Counsel certifies UTRs on behalf of the University.

Investment and accounting

5.21. Staff must manage trust accounting and investment in accordance with the Trust Accounting and Investment Process.

5.22. The income total in a trust project should not be in deficit at any time.

Administration and application of trust money

5.23. The relevant head of division is responsible for the administration and application of trust money.

5.24. The head of division appoints a trusts officer to oversee administration of trust money and liaise with Legal Services, the Specialist Trusts Officer, Trusts Management Accountant and Advancement.

5.25. Authority to approve expenditure of trust income is in accordance with the Delegations Policy and the UTR.

5.26. The head of division must ensure that expenditure of all trust money fully complies with the trust terms and the UTR where relevant (see the University Trusts Manual).

5.27. A division that has difficulty performing the specifications in the UTR must consult Legal Services for advice.

5.28. For external trusts, the head of division must ensure processes are in place to meet any reporting requirements specified by the trustee.

Compliance review and certification

5.29. The Specialist Trusts Officer, assisted by the Trusts Management Accountant, manages an annual trust fund compliance review.

5.30. The annual trust fund compliance review forms the basis for annual endowment reports that are sent to donors by Advancement’s Donor Relations team.

5.31. The head of the relevant academic or non-academic division or administrative department of the University must certify the annual compliance report.

5.32. The General Counsel provides an annual trust compliance report to the Vice-Chancellor for reporting to Council.

5.33. The Vice-Principal, Advancement is responsible for donor stewardship and donor reporting in accordance with the Advancement Policy.

Student awards
5.34. Student award proposals must be approved in accordance with the Establishment and Award of Student Awards Policy. If the award is governed by a trust, the selection procedures and eligibility criteria detailed in the proposal must be within the terms of the trust.

5.35. Trusts and UTRs are not made for student awards established on the basis of an arrangement for a specified period.

6. Roles and responsibilities

<table>
<thead>
<tr>
<th>Role/Decision/Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ensure proper administration and performance of all trusts for which the University is trustee</td>
</tr>
<tr>
<td>Report, at least annually, to Council on the performance of each trust against its obligations</td>
</tr>
<tr>
<td>Oversee legal and compliance matters related to trusts and advise all University staff with trust-related responsibilities</td>
</tr>
<tr>
<td>Certify University trust records on behalf of the University</td>
</tr>
<tr>
<td>Approve all draft and final gift documentation</td>
</tr>
<tr>
<td>Advise on statement of purpose for appeals</td>
</tr>
<tr>
<td>Oversee the following activities:</td>
</tr>
<tr>
<td>- liaise with donors, and potential donors, to establish the purpose and terms of the donation;</td>
</tr>
<tr>
<td>- liaise with executors and estate solicitors;</td>
</tr>
<tr>
<td>- maintain a contact history with donors, and with executors and estate solicitors;</td>
</tr>
<tr>
<td>- receipt all donations and bequests; report to donors.</td>
</tr>
<tr>
<td>Prepare appropriate gift documentation</td>
</tr>
<tr>
<td>Notify Specialist Trusts Officer and Trusts Management Accountant of receipt of a donation or appeal funds, or</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice-Chancellor</td>
</tr>
<tr>
<td>Vice-Chancellor</td>
</tr>
<tr>
<td>Executive Director, Legal and Risk</td>
</tr>
<tr>
<td>General Counsel</td>
</tr>
<tr>
<td>General Counsel, through Legal Services</td>
</tr>
<tr>
<td>General Counsel, through Legal Services</td>
</tr>
<tr>
<td>Vice-Principal, Advancement, or person authorised by the Vice-Principal, Advancement</td>
</tr>
<tr>
<td>Vice-Principal, Advancement, through Advancement staff</td>
</tr>
<tr>
<td>Vice-Principal, Advancement, through Advancement staff</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Conditions and limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>In accordance with the Vice-Chancellor’s Regulation and this policy</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>In consultation with Legal Services</td>
</tr>
<tr>
<td>In consultation with Legal Services</td>
</tr>
</tbody>
</table>


...
<table>
<thead>
<tr>
<th>Activity</th>
<th>Responsible Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Realisation of a bequest, which may establish a trust</td>
<td></td>
</tr>
<tr>
<td>Advise on type of gift in relation to trusts from bequests</td>
<td>Head of Bequests</td>
</tr>
<tr>
<td>Ensure expenditure of all trust money fully complies with trust terms</td>
<td>Head of division</td>
</tr>
<tr>
<td>and UTR, where relevant, and meets reporting requirements of external</td>
<td>division, through the divisional trusts officer</td>
</tr>
<tr>
<td>trusts</td>
<td></td>
</tr>
<tr>
<td>Oversee administration of trust money and liaise with Legal Services,</td>
<td>Head of division, through the divisional trusts officer</td>
</tr>
<tr>
<td>the Specialist Trusts Officer and Trusts Management Accountant</td>
<td></td>
</tr>
<tr>
<td>Notify Specialist Trusts Officer and Trusts Management Accountant of</td>
<td>Division staff</td>
</tr>
<tr>
<td>decision to allocate division funds to form a trust</td>
<td></td>
</tr>
<tr>
<td>Forward a copy of all relevant documents to Legal Services</td>
<td>Administrative unit responsible for management of the trust</td>
</tr>
<tr>
<td>Approve establishment of generic fund for research and teaching or</td>
<td>Finance Committee through Chief Financial Officer</td>
</tr>
<tr>
<td>scholarship in relation to trusts from appeals</td>
<td></td>
</tr>
<tr>
<td>Manage an annual trust fund compliance review</td>
<td>Specialist Trusts Officer Assisted by Finance and Employee Services</td>
</tr>
<tr>
<td>Ensure records are kept and maintained in accordance with the</td>
<td>Administrative unit responsible for management of the trust</td>
</tr>
<tr>
<td>University's <a href="https://example.com">Records Management Policy</a></td>
<td>For the documents within their relevant responsibilities</td>
</tr>
<tr>
<td></td>
<td>Legal Services</td>
</tr>
<tr>
<td></td>
<td>Advancement</td>
</tr>
</tbody>
</table>

**7. Definitions**

**Appeals** is as defined in the [Advancement Policy](https://example.com).

**Bequest** means a gift that the University receives as a consequence of a will of a donor.

**Endowment** means to provide with a permanent fund or source of income.

**External trust** means a trust for which an external party is trustee. The University does not hold or invest the trust capital, but receives income from the invested capital to be applied for the trust purpose.

**Expendable trust** means a trust established for the advancement of education that operates until the funds received are fully expended; it is not perpetual.

**Gift** is as defined in the [Advancement Policy](https://example.com).
Net annual income means the annual income of the trust fund less any deductions allowable under the terms of the trust or the University of Melbourne Act; deductions may include income added to capital and income deducted as commission pursuant to the Act.

Perpetual charitable trust means a trust established for the advancement of education (in the case of the University) that operates for so long as there is trust capital or income, often in perpetuity. The trust terms of a charitable trust are specified by the donor at the time the donor makes the gift (or endowment) that establishes the trust and forms its capital base.

Student award means prizes, scholarships, exhibitions and bursaries.

Trust means a set of legal obligations attached to trust property by which that property is held and managed by one party for the benefit of another party or parties, or for a specific purpose. In the context of the University, trusts are for charitable purposes; the trustee may be the University or an external party.

Trust fund means any fund comprising trust monies.

Trust monies means monies or other property held by the University on trust for a designated charitable purpose.

Trust officer means a staff member responsible for overseeing administration of trust money and liaising with Legal Services, the Specialist Trusts Officer, Trusts Management Accountant and Advancement.

Trust terms means mandatory conditions set by the donor or will maker (or by the University where settlor), which govern the creation and performance of the trust. In the context of the University, these include the purpose of the trust, but can also cover certain operational matters, unless expressed in precatory terms or covered separately by administrative arrangements determined by the University.

Unexpended monies means monies available for expenditure under the terms of a trust, but not expended.

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 implementing the trust according to its terms.

POLICY APPROVER
Council

POLICY STEWARD
Executive Director, Legal and Risk and General Counsel

REVIEW
This policy is to be reviewed by 23 June 2021.

VERSION HISTORY
<table>
<thead>
<tr>
<th>Version</th>
<th>Authorised by</th>
<th>Approval Date</th>
<th>Effective Date</th>
<th>Sections modified</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Governance and Nominations Committee</td>
<td>23 June 2016</td>
<td>21 July 2016</td>
<td>New version arising from the Policy Consolidation Project incorporating the Trusts Policy (MPF1110) and the Trusts Procedure (MPF1111).</td>
</tr>
</tbody>
</table>