

JAMES COOK UNIVERSITY – ELIGIBILITY REQUIREMENTS – COUNCIL POSITIONS

This information sheet provides a basic guide to the legislative requirements regarding eligibility to become or remain in the office of an additional, appointed or elected member or the Chancellor, Vice Chancellor or Chairperson of the Academic Board. The legislation should always be referred to where a comprehensive understanding of the legislative requirements is needed.

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR A PERSON TO BECOME A MEMBER? ²

The *James Cook University Act 1997* provides that a person is not eligible to become an official (Chancellor, Vice Chancellor or Chairperson of the Academic Board), appointed, additional or elected member if:

- (a) the person is disqualified from managing corporations under Part 2D.6 of the Corporations Act¹; or
- (b) the person has a conviction for an indictable offence, other than an offence in relation to which the person is not eligible under paragraph (a).

In addition, a person is not eligible to be elected or appointed as an elected, appointed or additional member if the person's election or appointment as the member would result in the person being a member for twelve years or more (whether continuously or not) unless the majority of members of the Council agree the person is eligible to be appointed or elected as an appointed or additional or elected member.

UNDER WHAT CIRCUMSTANCES DOES THE OFFICE OF AN ELECTED, APPOINTED, ADDITIONAL OR OFFICIAL MEMBER BECOME VACANT? ³

The *James Cook University Act 1997* also provides that the office of an elected, appointed or additional member becomes vacant if:

- (a) the member dies; or
- (b) for an elected or additional member — the member ceases to be an eligible person for the entity that elected or appointed the person; or
- (c) for an additional member—the member becomes a member of the university's staff or a student; or
- (d) the member is absent without the council's leave, from 3 consecutive meetings of the council of which proper notice has been given to the member; or
- (e) the member becomes an official member; or
- (f) the member resigns from office by signed notice; or
- (g) the member is removed from office; or
- (h) the member is disqualified from managing corporations under Part 2D.6 of the Corporations Act; or
- (i) the member is convicted of an indictable offence, other than an offence which means the person's office becomes vacant under paragraph (g).

¹ *Corporations Act 2001 (C'wlth)*

² *Section 23 and Section 40C of JCU Act*

³ *Section 24 of JCU Act*

For the Chancellor, Vice Chancellor or Chairperson of the Academic Board, a person cannot continue in these positions if:

- (a) the person is disqualified from managing corporations under Part 2D.6 of the Corporations Act; or
- (b) the person has a conviction for an indictable offence, other than an offence in relation to which the person is disqualified from office under paragraph (a).

HOW CAN A PERSON BE DISQUALIFIED FROM MANAGING CORPORATIONS UNDER PART 2D.6 OF THE CORPORATIONS ACT?

Under Part 2D.6 of the Corporations Act a person can be disqualified from managing corporations in the following ways:

- automatically (section 206B);
- by the Australian Securities and Investments Commission (ASIC); or
- by a decision of the court.

ON WHAT GROUNDS CAN A PERSON BE AUTOMATICALLY DISQUALIFIED FROM MANAGING CORPORATIONS?

Section 206B of the Corporations Act details the grounds for when a person is or becomes automatically disqualified from managing corporations. Some examples of the grounds for automatic disqualification are:

- the person has been convicted of an offence that is a Contravention of the Corporations Act and is punishable by imprisonment for a period of greater than 12 months; or
- the person has been convicted of an offence that involves dishonesty and is punishable by imprisonment for at least 3 months; or
- the person is an undischarged bankrupt; or
- the person has executed a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* or similar law and the terms of the agreement have not been fully complied with.

WHAT CHECKS SHOULD BE CONDUCTED ON PERSONS BEING CONSIDERED FOR ELECTION OR APPOINTMENT AS AN ADDITIONAL ELECTED OR OFFICIAL MEMBER?

It is the responsibility of the university to ensure that a person satisfies the eligibility requirements for the office the person is being considered for, before the person is elected or appointed (e.g. as an additional, elected or official member). To fulfil this responsibility, it is recommended that the following checks be undertaken.

To ascertain if a person has been disqualified from managing corporations under Part 2D.6 of the Corporations Act, it is recommended that the university check:

- ASIC's Disqualified Persons Register². This register will contain a person's details if they have been disqualified from managing corporations by ASIC or the courts.
- A person's criminal history to ascertain if they have any convictions for offences which automatically disqualifies the person from managing Corporations.

² Available on the ASIC website — www.asic.gov.au

³ Available on ITSA's website — www.itsa.gov.au

- The National Personal Insolvency Index³ to ensure that a person is not an undischarged bankrupt or has not executed a personal insolvency agreement and the terms of the agreement have not been met.

To ascertain if a person has been convicted of an indictable offence, it is recommended that the university check the person's criminal history.

The *James Cook University Act 1997* provides that the Council may ask the Queensland Police Service to provide a report on a person's criminal history to decide whether a person is eligible to be an elected or additional member or the Chancellor, Vice Chancellor or Chairperson of the Academic Board.

With regard to convictions for an indictable offence, it should be noted that the Council has the discretionary power to allow a person to become or continue as an elected or additional member or as the Chancellor, Vice Chancellor or Chairperson of the Academic Board. It should be noted that this discretionary power does not apply to offences which mean that the person is disqualified from managing corporations under Part 2D.6 of the Corporations Act.

The Department is responsible for conducting the necessary checks on persons being considered for appointment as appointed members.