



Edith Cowan University

Code of Conduct

for Members of the Council
and Council Bodies

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1. Purpose and Scope

The Council is the governing authority of the University. The Council has established a number of Committees and Boards that report to the Council (“Council Bodies”) to support the Council in meeting its responsibilities.

This Code of Conduct has been prepared to assist members of the Council and of specified Council Bodies to discharge their duties and responsibilities in a manner which will contribute to the greater good of ECU. It should be read in conjunction with the *Corporate Governance Statement* approved by the Council and the *Council Standing Orders*.

In this Code, “Member” refers to a Council member and/or to a member of any of the following Council Bodies:

- Governance and Nominations Committee
- Honorary Awards Committee
- Legislative Committee
- Quality, Audit and Risk Committee
- Resources Committee
- Foundation Board

The provisions of this Code apply to each Member to the extent that they are applicable to that Member’s role as a Member of the Council or Council Body.

It is intended that the Code will:

- (i) ensure that Members are aware of the legal duties, liabilities and protections arising from their membership of the Council;
- (ii) promote good practice among Members by describing the general responsibilities they have to the University, the Council and Council Bodies and fellow Members and to the staff and students of ECU; and
- (iii) describe the University’s obligations to Members, which will assist them to carry out their duties and responsibilities to the best of their abilities.

2. Legal Duties, Potential Liabilities and Protections

Schedule 1 of the *Edith Cowan University Act 1984* (“ECU Act”), as set out in Appendix A of this Code, prescribes a range of duties for members of the Council. Other sources of Members’ legal duties, potential liabilities and protections are set out in Appendix B.

All Members are expected to:

2.1 *act honestly*

This requires each Member to:

- carry out their duties in good faith, honestly and for proper purposes consistent with the interests of the University;
- avoid conflicts between their personal interests and those of the University; and
- exercise independent judgment in relation to matters coming before the Council and or Council Body on which they serve.

2.2 exercise care and diligence

This requires each Member to:

- exercise due diligence and care in carrying out their functions;
- exercise any special skills or experience that a Member might possess to assist the Council (or Council Body) to arrive at a decision;
- have informed themselves to the extent reasonably necessary to make such decisions;
- rationally believe the decisions they make to be in the best interests of the University; and
- respect the often confidential nature of material coming before the Council (or Council Body) and abide by any restrictions on the disclosure of information agreed by the Council (or Council Body).

2.3 act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member

This requires each Member to:

- when voting on a matter, give precedence to the interests of the University as a whole over the interests of any representative affiliation or association; and
- place the University's interests above their personal employment or other interests and not use their position for private gain or advantage.

2.4 not make improper use of information to gain an advantage for any person or to cause detriment to the University

This requires each Member to:

- ensure that any information received in their capacity as a Member (not only information that the general law would protect as confidential) is not disclosed if that would allow any person to gain a direct or indirect advantage or cause detriment to the University.

2.5 not make improper use of the position of Member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University

This requires each Member to:

- not seek or accept in connection with their capacity as a Member any improper fee, favour, reward, gratuity or remuneration of any kind;
- not use their position as a Member for personal profit, gain or advantage or use that position improperly to enable themselves or another person to achieve any profit, gain or advantage;
- not accept any gift if it could be seen by any other party, in possession of all of the facts of that case, as intended or likely to cause the Member to act in a particular way or to deviate from their duties; and
- not misuse any property or facilities of the University provided to enable them to carry out their duties.

2.6 disclose all conflicts of interest

This requires each Member to:

- disclose the nature and extent of any material personal interest at a meeting of the Council or Council Body; and
- absent themselves from a meeting while the matter is being considered and not vote on the matter, whether at a meeting or otherwise, except if permitted to consider or vote on the matter as resolved by the Council or Council Body.

Notes:

- A material personal interest arises where there is a realistic expectation that, directly or indirectly, a Member or an associated/related person stands to gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss need not be financial.

- A matter that arises from membership of a group qualifying that person for election or appointment as a Member, which is not otherwise special or personal to that Member, is not a material personal interest. Examples could include student Members voting on assessment policy or staff Members voting on a general industrial matter.

3. General Responsibilities of Members

Note: In this section, “Chair” means the Chancellor with reference to the Council, or the person appointed as Chair of a Council Body with reference to that Council Body.

In carrying out their duties and as applicable to their role, each Member is expected to:

- behave at all times in a manner that is consistent with the University’s values;
- attend, unless unavoidably absent, and be prepared to contribute constructively to all meetings of the Council and/or Council Bodies on which they serve;
- draw relevant matters to the attention of the Chair for the information of or possible action by the Council or relevant Council Body or the Vice-Chancellor;
- inform the Chair if at any time they consider that the information provided is insufficient to permit the Council or relevant Council Body to discharge its responsibilities;
- inform the Chair of any concerns that they might hold about any Council or relevant Council Body decisions or actions that appear contrary to its public duties, and to do so as soon as these concerns arise;
- inform the Chair of the possible material interests of other Members in matters before or about to come before the Council or relevant Council Body, if those interests are not declared by the Member or Members concerned;
- accept collective responsibility for decisions of the Council or relevant Council Body and support University management in the implementation of these decisions;
- inform themselves about their duties and obligations as Members;
- comply with any University Statutes, Rules, by-laws and policies and procedures applicable to them in their capacity as Members;
- make reasonable efforts to become familiar with the governance and affairs of the University, and its public duties and functions;
- keep themselves informed about matters affecting the higher education sector, particularly those impacting directly or potentially on ECU;
- take advantage of opportunities provided for induction and professional development in their role as Members;
- recognise that only the Chancellor or their nominee may speak publicly on behalf of the Council or any Council Body;
- contribute to the setting of the University’s mission and strategic direction and the annual budget;
- represent the University and the Council in external and internal forums, including attending graduation ceremonies and other ceremonial functions whenever possible; and
- as required by the *WA Corruption and Crime Commission Act 2003*, report to the Commission, preferably through the Chancellor or Vice-Chancellor, any information about actual or potentially corrupt or illegal activities involving Members or staff of the University.

4. The University’s Obligations to Members

The University will:

- provide Members with such comprehensive, accurate and timely information as is required for members to act with the degree of care, skill and diligence expected of them;
- provide such legal and financial advice as may be necessary to enable Members to discharge their duties;
- provide, subject to any contrary legal restrictions, Members with access to any University documentation required to enable them to perform their duties;

- make available a program of induction and professional development for Members to build the expertise of the Council and of Council Bodies and to ensure that all Members are aware of the nature of their duties and responsibilities;
- provide such other administrative assistance as may be required from time to time, including but not limited to reimbursement of expenses incurred on authorised Council or Council Body business and the provision of vehicle parking;
- ensure to the best of its ability that all statutory responsibilities imposed on the Council and Members by the ECU Act, internal University legislation, external legislation applicable to the University and processes approved by the Council are met; and
- to the extent permissible by law, maintain adequate levels of insurance cover and other forms of indemnity appropriate to indemnify and keep indemnified each Member in respect of liability arising out of their discharge of duties and responsibilities.

5. Members to Agree to be Bound by Terms of Code

On commencement, each Member will be required to acknowledge in writing that they:

- (a) agree to abide by the duties and obligations of Members as set out in this Code, and
- (b) have read and understood:
 - i. the provisions of **Schedule 1 Council members** of the ECU Act (Appendix A); and
 - ii. their legal duties, potential liabilities and protections (Appendix B).

Edith Cowan University Act 1984

Schedule 1 Council members

Division 1 Duties

1. Duties

- (1) Each member -
- (a) must at all times act honestly in the performance of the functions of a member, whether within or outside the State;
 - (b) must at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council's circumstances;
 - (c) must at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;
 - (d) must not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;
 - (e) must not, whether within or outside the State, make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.
- (2) Nothing in subclause (1) or section 11A or 13 affects -
- (a) any other duty a member may have under any other law; or
 - (b) the operation of any other law in relation to such a duty.

Division 2 Disclosure of interests

2. Disclosure of interests

- (1) A member who has a material personal interest in a matter being considered or about to be considered by the Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the Council.
- (2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

3. Voting by interested members

A member who has a material personal interest in a matter that is being considered by the Council -

- (a) must not vote whether at a meeting or otherwise -
 - (i) on the matter; or
 - (ii) on a proposed resolution under clause 4 in respect of the matter, whether relating to that member or a different member;
 and
- (b) must not be present while -
 - (i) the matter; or
 - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),
 is being considered at a meeting.

4. Clause 3 may be declared inapplicable

Clause 3 does not apply if the Council has at any time passed a resolution that -

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the⁶ resolution are satisfied that the interest should not

disqualify the member from considering or voting on the matter.

5. [deleted]

6. Minister may declare clauses 3 inapplicable

- (1) The Minister may, on the application of a member, by writing declare that clause 3 does not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (2) The Minister must cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament within 14 sitting days of that House after the declaration is made.

Legal duties and potential liabilities of Members of the Council and protections afforded

1. Sources

The sources of Council members' legal duties, potential liabilities and protections are:

- 1.1 *Edith Cowan University Act 1984* ("ECU Act"), particularly Schedule 1 of that Act (refer Appendix A);
- 1.2 *Statutory Corporations (Liabilities of Directors) Act 1996*;
- 1.3 other relevant Statutes;
- 1.4 the general law, given the fiduciary nature of the relationship between Council members and the University, including duties to act in good faith and with reasonable care, skill and diligence; and
- 1.5 decisions of the Council.

2. Protection from Liability

- 2.1 Section 17A of the ECU Act provides that a court may relieve a member of the Council or former member of the Council either wholly or partially of liability for negligence, default, breach of trust or breach of duty in a civil action arising from that person's capacity as a Council member if he or she -
 - has acted honestly; and
 - ought fairly to be excused having regard to all of the circumstances of the case.
- 2.2 The potential relief provided by section 17A of the ECU Act is in addition to other forms of defence or protection available under any other laws or otherwise including:
 - directors' and officers' liability insurance covering non-criminal negligence and other liabilities included in the policy held by the University; and
 - any indemnities provided by resolution of the Council to cover matters not included by directors' and officers' liability insurance.

3. Potential Liabilities

- 3.1 The Council may be held accountable for perceived or actual mismanagement in a number of instances, such as -
 - any decision it made which was contrary to the law or clearly negligent;
 - decisions which the Council has no authority to make, particularly if it could be shown that such decisions were taken with the intent of causing harm;
 - mismanagement, where this could be shown to be the outcome of failure to ensure the existence of adequate University procedures or policies; or
 - financial mismanagement, if this could be shown to be the result of negligence in monitoring financial reports and compliance with audit requirements.
- 3.2 Because individual members of the Council contribute to the operations of the Council, to the extent that they breach their legal duties they may be exposed to legal action.
- 3.3 Various external parties, including the State Governor, the WA Minister for Education and/or the WA Attorney-General, may take legal or other actions for breaches of the duties of members of the Council, as can a third party who sustains a loss as a result of a breach of duties.
- 3.4 The University, members of the Council and University managers may also be liable, collectively and/or individually, for offences committed under a range of legislation including, but not limited to, legislation relating to animal welfare, equal opportunity, fair trading and trade practices.
- 3.5 The University has the capacity to enforce the general law duties of acting in good faith and honestly arising from the fiduciary relationship between individual members of the Council and the University.
- 3.6 Provisions of the ECU Act also include powers for the Council to suspend or remove from office a member who breaches their duties.