

COUNCIL HANDBOOK

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Section 1: Council Charter

1 Introduction

1.1 Flinders University (“University” or “Flinders University”) was established by the Flinders University Act 1966 (SA) (the “Act”).

1.2 Flinders University is registered as a self-accrediting Higher Education Provider under the Tertiary Education Quality and Standards Agency (TEQSA) Act 2011 (Commonwealth), which establishes TEQSA as the national quality assurance regulator for Australian higher education.

2 Purpose

The purpose of this Charter is to document the objectives, responsibilities and management of the Council to reflect its legal and other obligations as the governing body of the University.

Where there are inconsistencies between the Act and the Charter, the Act will prevail.

3 Authority

3.1 Council is the governing body of Flinders University and is responsible for the strategic direction, general oversight and performance of the University and the attainment of its objectives.

3.2 The Council’s powers, authorities, duties and responsibilities as the University’s governing body are derived from the Act and as applicable the law.

4 Compliance

4.1 The Council must at all times comply with the requirements which establish the legal and regulatory basis for governing and managing the University. These include:

- the Act;
- applicable Commonwealth and State legislation, regulations and standards;
- Statutes and By-laws made pursuant to the Act;
- the law.

4.2 The Council will, to the extent appropriate, comply with the Voluntary Code of Best Practice for Governance of Australian Universities, as adopted by Universities Australia and the University Chancellors’ Council in 2011.

5 Council composition

5.1 The composition of the Council is defined under section 5(3) of the Act and includes *ex officio*, elected and appointed members, with a majority of independent persons who are not employees or students of the University. The membership comprises:

- the Chancellor *ex officio*;
- the Vice-Chancellor *ex officio*;
- the presiding member of the Academic Senate *ex officio* or if the presiding officer is the Vice-Chancellor, an academic staff member of the Academic Senate who is not a student of the University, elected by the Academic Senate;
- eight persons appointed by the Council on the recommendation of a selection committee (the term of office is 2 or 4 years determined on the recommendation of the selection committee)
- if the Council so determines, one person co-opted and appointed by the Council; (the term of office is 2 or 4 years determined by Council)
- one member of the academic staff elected by the academic staff (the term of office is 2 years)
- one member of the professional staff elected by the professional staff (the term of office is 2 years)
- two students of the University (not being persons in the full time employment of the University), one of whom must be a postgraduate student and one of whom must be an undergraduate student, appointed or elected in a manner determined by the Council. (the term of office is 2 years)

5.2 A member appointed or elected is eligible for re-appointment or re-election, providing that the term of office does not normally exceed 12 years, unless otherwise specifically agreed by a resolution of Council.

5.3 The Act and the Statutes provide for Council to appoint up to two Deputy Chancellors from among its members for a term of four years and eligible for reappointment.

6 Appointment and removal of Council members

6.1 Council has adopted procedures for appointment, election and removal of Council members (including the appointment of Deputy Chancellors).

6.2 Council may remove an appointed or elected member from office for:

- mental or physical incapacity
- failing to comply with requirements in relation to attendance at Council meetings without reasonable excuse;
- conviction of an indictable offence;
- serious misconduct, which includes non-compliance with duties imposed under the Act to exercise care and diligence etc, to act in good faith etc, and with respect to conflict of interest.

7 Powers and Functions of Council

7.1 Corporate powers and functions

7.1.1 The University may exercise broad corporate powers, which invest the University with full juristic capacity and unfettered discretion, subject to the laws of this State, to conduct its affairs in the manner it thinks fit.

7.1.2 The University may exercise its powers within or outside the State (including outside Australia).

7.1.3 The functions of the University are defined in the Act and include:

- (a) the provision of educational facilities at university standards for persons who being eligible to enrol seek the benefits of such facilities; and
- (b) the establishment of such facilities as the University thinks desirable for providing courses of study, whether within the University or elsewhere, for evening students, giving instruction to and the examination of external students, and providing courses of study or instruction at such levels of attainment as the Council thinks appropriate to meet the special requirements of industry, commerce or any other section of the community; and
- (c) generally, the dissemination of knowledge and the promotion of scholarship.

7.2 Primary Responsibilities of Council

7.2.1 The primary responsibilities of Council are to:

- (a) appoint the Chancellor and as considered appropriate other office bearers;
- (b) appoint a Vice-Chancellor as the chief executive officer and Chief Academic of the University and monitoring his or her performance;
- (c) approve the mission and strategic direction of the University;
- (d) approve the annual budget and the strategic, operational and financial plans;
- (e) oversee and review the management of the University and its performance;
- (f) establish appropriate policy and procedural principles, consistent with legal requirements and community expectations;
- (g) approve and monitor systems of control and accountability, including general overview of any entities controlled by the University;
- (h) oversee and monitor the assessment and management of risk across the University, including commercial undertakings;
- (i) oversee and monitor the academic activities of the University;
- (j) approve significant commercial activities of the University.

7.2.2 The Council must, in exercising its responsibilities, endeavour to advance the interests of the University.

7.3 Power to make statutes, regulations and by-laws

7.3.1 Council is empowered to make, alter and repeal statutes and regulations in respect of a

broad range of purposes relating to the organisation, management and governance of the University.

7.3.2 All statutes and regulations must be submitted to the Governor for approval.

7.3.3 Council is empowered to make by-laws for a wide range of purposes, including:

- prohibiting trespass on, and preventing damage to, University grounds
- regulating vehicles, traffic and parking
- removal of persons for disorderly conduct or indecent language
- consumption of alcohol on campus
- prescribing fines and expiation fees for contravention of the by-laws/alleged offences against the by-laws

7.3.4 By-laws must be submitted to the Governor for approval.

7.4 Delegation

7.4.1 The Act empowers Council to delegate its powers to officers, employees, boards or committees of the University.

7.4.2 Council has approved a Delegations Policy and Register to record its approach to delegation in accordance with the Act. The Delegations Framework comprises governing legislation, such as the University Act, the Delegations Policy, the Delegations Register and the Application of Delegation Principles Guidelines.

7.5 Annual Report

Not later than 30 June each year, Council must submit to the Minister an Annual Report on the proceedings of the University during the previous year. The report must include a copy of the audited accounts for the University, and of every statute and regulation of the University allowed by the Governor.

8 Rights and duties of council members

8.1 Council members' rights include:

- (a) initial induction pack and briefing sessions from University officers followed by ongoing appropriate professional development;
- (b) prompt and direct access to information about the University's business and to members of the Vice-Chancellor's senior executive team to directly answer questions, such access to be arranged via the Chancellor or Vice-Chancellor;
- (c) the right to place items of business before Council in accordance with Council's established procedures;
- (d) indemnity against actions and claims in respect of acts or omissions undertaken in good faith in the exercise of their role as a Council or committee member (section 29 of the Act);

(e) Directors and Officers insurance, which provides protection against claims made by third parties against Council members and a Deed of Indemnity, Access and Insurance signed by the University to mitigate risk of personal liability incurred in the course of carrying out duties and functions;

(f) the right to receive reimbursement of legitimate expenses incurred in the role of Council member.

8.2 The principal duties owed to the University by Council members are imposed by the Act. They are similar to the duties and obligations imposed on company directors by the Corporations Act and the general law and are summarised as follows:

(a) never vote at the direction of another person, either an outsider or another Council member

(b) exercise a reasonable degree of care and diligence and act in the best interests of the University

(c) at all times act honestly and in good faith for a proper purpose and never improperly use the position as a Council member to gain an advantage for the council member or another person

(d) always disclose a direct or indirect personal or pecuniary interest in matters considered by Council, in writing, and the council member should absent themselves from discussion and voting on the matter

9 Council committees

9.1 Council has established a number of standing committees, which contribute to the effective governance of the University. The Standing Committees of Council are:

- (a) Executive Committee
- (b) Academic Senate
- (c) Audit and Risk Committee
- (d) Finance and Investment Committee
- (e) Remuneration Committee

9.2 Council approves a charter or terms of reference for each committee, which set out the committee's responsibilities, composition, quorum, meeting frequency and any powers delegated to the Committee by Council.

10 Meetings

10.1 Council has adopted operating procedures for meetings of Council and its committees, which are set out in the Council Handbook.

10.2 Council may hold regular and special meetings and annually sets the dates for its regular meetings, currently five per year plus an annual strategic planning retreat.

10.3 Council/committee members are required to attend meetings regularly and when they cannot attend, they should observe the procedures regarding apologies or leave of absence.

10.4 In order to assist Council with its deliberations and under the direction of the Vice-Chancellor, the following members of staff attend meetings of Council:

- (a) The Vice-Chancellor's senior executive team; as required for consideration of relevant items of business;
- (b) Members of management as required for consideration of a particular item;
- (c) The University Secretary and the Council Secretary.

11 Chancellor's role

11.1 The Chancellor is appointed by Council for a term of four years on terms and conditions fixed by Council and is eligible for re-appointment.

11.2 The Chancellor's role includes the following responsibilities:

- a. To act as the Chair of the Council, responsible for ensuring the effective operation of the Council and in accordance with good contemporary governance;
- b. To ensure that there is an annual schedule of topics that require regular attention of the Council, including:
 - the University's strategy and performance
 - budget
 - capital infrastructure plan
 - financial statements
 - reports on risk management and work health and safety
 - evaluation of Council and committee performance;
- c. To Chair the Executive Committee of Council;
- d. To Chair the selection/nomination committees for the appointment of the Vice Chancellor, Deputy Chancellors and external members of Council;
- e. To work closely with the Vice-Chancellor to achieve the objectives of the University;
- f. To work with the Vice-Chancellor to build and develop local, Australian and International relationships;
- g. To be responsible for ensuring an effective and supportive relationship between the Council, the Vice-Chancellor and the senior executive management of the University, and for conducting performance reviews of the Vice-Chancellor;
- h. To ensure that Council is reviewed at least every second year, unless there is good reason, as determined by Council, to defer a review;

- i. To represent the University regularly at functions and events and in the wider community;
- j. Various ceremonial functions, including presiding at graduation ceremonies.

11.3 At the request of the Chancellor, or in his or her absence, and subject to the Act, a Deputy Chancellor is empowered to exercise any of the Chancellor's responsibilities (Statute 2.2, clause 3). Note that under section 18(4) of the Act, a Council member elected by other members present will preside over Council meetings in the absence of the Chancellor. In the ordinary course, the Council would expect a Deputy Chancellor to be elected.

12 Vice-Chancellor's role

12.1 The Vice-Chancellor is an *ex officio* member of the Council and the principal academic and chief executive officer of the University, responsible to the Council for the academic standards and management of the University.

12.2 The Vice-Chancellor, by powers delegated to him or her, advises Council on, and exercises the general management over the affairs of the University.

12.3 The Vice-Chancellor's role includes the key responsibilities to:

- a. work with Council to develop, implement and update a vision and Strategic Plan for the University so that the University can deliver on its objectives;
- b. assist Council to provide a clear strategic direction for the University and in building a productive and ethical work culture that can readily adapt to rapid economic, social and political change;
- c. lead and drive, where appropriate, a robust change agenda, whilst efficiently managing the multi-dimensional operations of the University and ensuring quality outcomes;
- d. apply a highly engaged, broad and strategic understanding of the nature and context of the challenges for the higher education sector to respond to key issues in Higher Education policy and funding, both nationally and globally;
- e. encourage, promote and facilitate the very best academic and organisational performance across the whole University and strengthen the academic and research reputation and visibility of the University through the pursuit of quality and high standards;
- f. secure and continue the growth of the University's financial base, ensuring the University acquires the necessary public and private resources to underpin the successful achievement of the University's goals and objectives;
- g. take a principal role in the University's fundraising and development of strategic partnerships as well as strengthening and expanding ties and involvement with alumni throughout the world;
- h. ensure the University's approach to learning, teaching and research, and all aspects of the broader experience of students are relevant and of consistently high quality across all of locations in Australia and beyond, and in the University's virtual and physical presences;

- i. build a strong and united senior executive team and management culture that fosters both internal and external innovation and collaboration;
- j. maintain Flinders University's position at the forefront of educational innovation, discovery, and progress through a continued commitment to incorporating technology and entrepreneurial thinking into teaching, learning, and research;
- k. expand the external profile and focus of the University, regionally, nationally and internationally and its contribution, where appropriate, to the development of public policy;
- l. provide leadership to best position the University with government, industry and the community, respond to strategic opportunities, public policy debate and effectively influence decisions that impact upon the University;
- m. embed modern and fit-for-purpose governance and structures to ensure Council and the University fulfil their compliance, oversight and reporting obligations;
- n. ensure the promotion and provision of a safe working environment for students, staff and visitors with attention to the requirements of the Work Health and Safety (WHS) Act, the Return to Work Act, University WHS and Injury Management; policies and Equal Opportunity Legislation.

13 University Secretary role

13.1 The University Secretary provides strategic advice on policy, governance and related matters to the President and Vice-Chancellor and the Chancellor, and undertake initiatives that progress best practice governance at the University. The University Secretary's responsibilities include:

- a. the provision of high level strategic advice pertaining to policy and governance;
- b. advising the President and Vice-Chancellor, the Chancellor, University Council and its standing committees on critical matters, coupled with managing the timely and accurate release of the Flinders University Annual Report and other external announcements and communications;
- c. ensuring the effective operation of the University Council and maintaining strong channels of communication between the Chancellor, the Council and its standing committees, the University senior executive team, and other stakeholders as appropriate;
- d. overseeing the development and effective implementation of the University policy framework in liaison with the University Senior Executive, responsible officers and University Council;
- e. ensuring compliance with external regulatory requirements, legislation and ensuring the management of correspondence to Council and the University.

14 Protocols in relation to engagement between Council members and management

Council members may from time to time wish to communicate or engage with members of Management and vice versa (eg to pass on useful industry information, to share networks, seek information on a topic of interest etc). In order to minimise any confusion, having regard to the role of Council as an oversight and governing body and the role of Management, under the leadership of the Vice-Chancellor, to manage the operations of the University, the following protocols are proposed:

1. the Vice-Chancellor and Chancellor should as a matter of course be consulted before any communication between Council members and Management – a simple email will suffice
2. if the Vice-Chancellor is unable to be contacted (eg overseas) or the matter is urgent, the person initiating the contact should promptly inform the Vice-Chancellor by email or copy the Vice-Chancellor into any email communications between the Council member and Management
3. Communications between Committee Chairs and the relevant Executive (eg Chair of Audit & Risk Committee and CFO) in relation to Committee agendas and Committee matters should continue as usual, with the Vice-Chancellor and University Secretary kept informed as appropriate
4. Communications in relation to agendas, papers, meeting logistics, matters of governance and other workings of Council should be directed to the University Secretary
5. Council members will continue to receive invitations to functions and events from the Office of Communication & Marketing Engagement which will remain the primary contact for such communications.

15 Review

The Council will review and update this Charter annually.

Section 2: Responsibilities, Liabilities and Rights of Council Members

1 Introduction

The information contained in this section is intended to inform members of Council and other committees of the University of their legal responsibilities as members and to provide, particularly in paragraph 8 Principles of Conduct: Guidelines for Council Members, a clear set of principles to which members can refer.

The information was reviewed in 2013 by the University's solicitors, Fisher Jeffries, who endorsed it as an accurate summary of the relevant legal principles at the review date. Information has subsequently [December 2014] been incorporated in relation to the impact of South Australia's Independent Commissioner Against Corruption legislation (ICAC Act). Further updates have been implemented [Dec 2017] following amendment to the Flinders University Act.

2 The Nature of the Corporate Entity

The University is a type of corporation often referred to as a "public statutory corporation". It is incorporated by its own Act of Parliament, the Flinders University Act 1966 (referred to hereafter as "the University Act"), for public purposes. The University is not incorporated under the Corporations Act 2001 and, for all practical purposes, is therefore not subject to that Act. At the same time, the University is not an instrumentality or agency of the Crown. Any doubts about this were clarified by the inclusion in 2005 of an explicit provision in section 3(7) of the University Act.

3 The Law that Applies to the University

The University is subject to the University Act, the rules of common law and equity as modified by the express provisions of the University Act, and of any other relevant state or federal legislation. It is also bound by its own statutes, but has the power to alter these.

4 Functions of the University

The functions of the University as a body corporate are prescribed in Section 4 of the University Act.

"The functions of the University include, within the limits of its resources -

(a) the provision of educational facilities at university standards for persons who being eligible to enrol seek the benefits of such facilities; and

(b) the establishment of such facilities as the University thinks desirable for providing courses of study, whether within the University or elsewhere, for evening students, giving instruction to and the examination of external students, and providing courses of study or

instruction at such levels of attainment as the Council thinks appropriate to meet the special requirements of industry, commerce or any other section of the community; and

(c) generally, the dissemination of knowledge and the promotion of scholarship."

5 Powers of the University

The powers which the University may exercise are set out in Sections 3(3) to 3(6) of the University Act.

"3(3) Subject to subsection (5), the University is a body corporate invested with full juristic capacity and unfettered discretion, subject to the laws of this State, to conduct its affairs in a manner it thinks fit.

(4) The University may exercise its powers within or outside the State (including outside Australia).

(5) The University must not alienate (except by way of lease for a term not exceeding 21 years), mortgage or charge land vested in or conveyed to the University on trust except with, and in accordance with any terms or conditions of, an approval given by the Governor.

(6) To avoid doubt, subsection (5) does not confer any power to alienate land contrary to the terms of a trust relating to the land."

If, in the exercise of its powers, the University commits or threatens to commit a civil wrong such as a breach of contract, or acts in excess or abuse of its powers, it may be sued privately for damages or other appropriate relief.

6 Statute Law and Common Law

The University is also subject to general statute law and the common law.

Statute law comprises legislation enacted by the South Australian Government and Commonwealth legislation that applies in the State. It includes an increasing number of Acts regulating matters such as taxation, freedom of information, work health and safety, the environment, civil rights, etc.

Common law is "judge-made" law developed by the courts through decisions handed down by judges and includes common law and equity. Statute law usually reflects the non-statutory law but can differ in the penalties and remedies and the standard of conduct applied.

If the University commits an offence under any penal statute, state or federal, the University may incur a fine or other penalties set out in the legislation.

The University may also incur vicarious liability through the actions of its employees or agents, either at common law or under statute.

In summary, the University is answerable in the courts for its performance of its statutory public duties, for its behaviour as a corporate citizen engaged in dealings with other citizens

and society at large, and to some extent, for the wrongful acts of persons acting under its authority.

7 Principal Duties of a Council Member to the University

The principal duties owed to the University by Council members are imposed by the University Act. They are the statutory embodiment of fiduciary duties which have long been imposed by the law of equity and may be broadly described as:

- the duty to act honestly, in good faith for the benefit of the University;
- the duty to avoid actual and potential conflicts between personal interests and the interests of the University.
- and of the duty of care, which has been determined by common law.

These duties are similar to the duties and obligations imposed on company directors by the Corporations Act, although neither the Corporations Act 2001 (Cth) nor the Public Corporations Act 1993 (SA) apply to members of the University Council¹

Section 5 (4) of the University Act states: "A member of the Council is not, in the exercise of his or her powers or functions as such, subject to the direction of any person or body of persons."

Section 18A states: "A member of the Council must at all times in the performance of his or her functions

(a) exercise a reasonable degree of care and diligence; and

(b) act in the best interest of the University."

Section 18B states:

(1) A member of the Council must at all times act in good faith, honestly and for a proper purpose in the performance of the functions of his or her office, whether within or outside the State.

(2) A member of Council must not improperly use his or her position to gain an advantage for himself or herself or another person, whether within or outside the State.

(3) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the interests of the University.

The fiduciary duty involves both the nature of the decision (is it in the interests of the University, has the power been used for the purpose for which it was given?) and the propriety of the conduct of the decision-maker (has the Council member avoided all possible conflict between his or her interests and that of the University?).

¹ However, the University Act does make one reference to the Corporations Act in section 6(7)(f), which provides for the office of a Council member to become vacant if the member is disqualified from managing corporations under Chapter 2D part 2D.6 of the Corporations Act.

Other examples of fiduciary relationships are those between an agent and principal, a trustee and beneficiary, solicitor and client, a director and a corporation.

The duty of care prescribed in section 18A(a) is concerned with competence.

Conduct has been measured in two ways:

- an objective standard - the person is expected to take such care as a reasonably prudent person might be expected to take on his/her own behalf;
- a subjective standard - the person is expected to exhibit in the performance of his/her duties, the degree of skill that might be reasonably expected from a person of his/her knowledge and experience.

Over time the courts have defined these principal duties and have developed standards of conduct which governments have also included in the legislation that applies to corporations. For the benefit of Council members, these duties, as they have been defined by the courts, are summarised in the following Guidelines.

8 Principles of Conduct: Guidelines for Council Members in Exercise of their Principal Duties To Council

Expressed in the form of directives for members of Council, the principles of conduct developed by the courts may be practically summarised as follows:

- a. Always act honestly;
- b. Always act in the best interest of the University;
- c. Attend Council meetings regularly;
- d. Read Council papers, be attentive at meetings and take an active part in the business of Council;
- e. Be prepared to hear and consider all relevant information before making a final decision as members cannot bring a closed mind to the decision making process; it is the legal obligation of a Council member to bring a fair and unprejudiced mind to any issue before the Council meeting;
- f. Never vote at the direction of another person, either an outsider or another Council member; thus, a member elected by a constituency must not vote at the direction of the constituency; the member who is the presiding member of Academic Senate must not vote at the direction of the Senate;
- g. Never promote one's own personal interest;
- h. Never divert or make improper use of the University's corporate business opportunities or otherwise compete with the University;
- i. Never make improper use of University property or confidential information;

- j. Only exercise the powers for the particular purpose for which the powers were conferred and not for some extraneous purpose, even though the extraneous purpose might appear to be in the interest of the University;
- k. Always act to avoid actual or potential conflict between one's duties to the University and one's own interests;
- l. Always act with reasonable care. Where the courts have had to measure the requisite degree of care and skill, they have generally demanded a subjective standard, ie a degree of skill that might be reasonably expected of someone with the knowledge and experience of the person in question;
- m. Make reasonable efforts to become familiar with the affairs of the University, its public duties and functions;
- n. Make reasonable efforts to be familiar with legislation and the penalties for which the University or its officers personally may be held liable if the University commits and the Council members have permitted an infringement of the legislation;
- o. Ensure Council has in place policies and procedures for the administration of the University's affairs and the conduct of day-to-day business together with a system of Council supervision. Such provisions enable members of Council to trust those put into a position of trust for the express purpose of attending to the details of management.

The guidelines have been drawn up to ensure that Council is aware that high standards are expected of all directors (AS Sievers, "Directors' Duty of Care: What is the New Standard?" (1997) 15 Company and Securities Law Journal 392). The prevailing standards that apply are always open to change by Parliament and courts (Professor Baxt, Duties and Responsibilities of Directors and Officers, 17th edition, 2002, Australian Institute of Company Directors).

Whether a court finds that a person has breached legal duties will always depend on the circumstances in a particular case. Nevertheless, it is considered that a Council member who adopts the above guidelines as a standard of conduct and practises them conscientiously would be unlikely to be found personally liable for any damages, fines or other penalties or remedies as a result of acts or omissions as a member of Council.

9 Duties with respect to work health and safety

Consistent with Council's role as the governing body of the University and expanding on the principles for conduct of Council members, set out in paragraph 8, a Council member must make reasonable efforts to:

- a. be familiar with State work health and safety legislation and the University's obligations to ensure a safe working environment;
- b. be familiar with the University's work health and safety and injury management systems, including the processes for the review and audit of work health and safety and injury management systems;

c. understand the nature of the University's operations and the general hazards and risks associated with those operations;

d. exercise due diligence to ensure that the University complies with its work health and safety obligations, including that :

- the University has in place appropriate systems of work
- adequate resources are provided and used to eliminate or minimise risks to health and safety
- appropriate work and safety processes are in place including for receiving, considering and responding in a timely fashion to information regarding incidents, hazards and risks.

e. Verify the matters in d. above including by actively monitoring, reviewing and evaluating the University's Work Health and Safety Management System.

10 Duties with Respect to Conflict of Interest

Expanding on the general principle that a Council member must not "improperly use his or her position to gain an advantage for himself or herself or another person" (section 18B(2)), the University Act contains specific provisions governing the duties of members of Council who have a conflict between their personal or pecuniary interests, and the interests of the University.

These are set out in section 18C:

"(1) A member of Council who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council - (a) must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest; and (b) must not take part in any discussion by the Council relating to that matter; and (c) must not vote in relation to that matter; and (d) must be absent from the meeting room when any such discussion or voting is taking place."

"(6) If a member of Council has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council, the member must, as soon as is reasonably practicable, disclose in writing to the Council full and accurate details of the interest or office."

Note that all four components of section 18C(1) must be followed: disclose the interest, do not participate in discussion on the relevant matter, do not vote, and be absent during the discussion and the vote. Note also, that under sub-section (6), potential conflicts, not just actual conflicts, must be disclosed.

Personal or pecuniary interest is not defined, except that "a member of the Council will be taken to have an interest in a matter ... if a relative of the member, has an interest in the matter". *Relative* is specifically defined as being "the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the member" (sub-sections 18C(8) and (10)). It is possible that there might still be a conflict between an interest involving other relatives of a Council member, falling outside this definition, and the

University's interests. Council members must assess the potential for such conflict and disclose it as appropriate.

A *personal* interest could include an affiliation with, membership of or holding office in particular organisations or interest groups. However, Section 18C does specifically state that:

"(2) A member of Council will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with staff members, graduates or students of the University generally, or with a substantial number of staff members, graduates or students of the University."

11 Guidelines in Respect of Conflict of Interest

Expressed in the form of directives for members of Council, the principles of conduct in respect of conflict of interest, as specified by the University Act and developed by the courts, may be practically summarised as follows:

Remember that when considering whether a conflict of interest exists or not, a Council member has an interest if the Council member or a person with whom the member is closely associated on a business or personal basis would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving:

- a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering, a direct or indirect pecuniary detriment; or
- a personal or non-pecuniary benefit or suffer or have a reasonable expectation of suffering, a personal or non-pecuniary detriment.

Remember when considering whether a conflict of interest exists, that a person is closely associated with the Council member if that person is:

- a spouse, child, de facto spouse or close relation of the Council member (see specifically the definition of *relative* in s.18C(10) of the Act);
- an employer or employee of the Council member;
- a business partner of the Council member;
- a person with whom the Council member has a current and ongoing professional relationship and from whom the Council member receives fees for professional or other services;
- a corporation of which the Council member is a director;
- a proprietary company of which the Council member is a shareholder;
- a beneficiary under a trust of which the Council member is a trustee.

Always disclose any direct or indirect *pecuniary* interest and be absent from any discussion or voting on the matter. For example, a member who is a shareholder of a public company would be deemed to have a direct pecuniary interest in a decision of Council to award a tender to that company;

Always disclose a direct or indirect *personal* interest in a matter before the Council and be absent from any discussion or voting on the matter. For example, a member who is related by birth or marriage to a person who is recommended to Council for an appointment could be

deemed to have either a direct or indirect personal interest depending on the nature of the relationship;

Always disclose an individual *personal* interest in a matter before the Council, and be absent from any discussion or voting on the matter. For example, a member being recommended to Council for an appointment or award could have such an interest;

If unsure whether there is a conflict of a personal interest and a duty to the University Council, ask for advice from the University Secretary before a meeting, or from the Chancellor during a meeting, Notwithstanding any such advice, Council members are personally responsible for assessing and declaring any actual or potential conflict of interest. A failure to disclose a conflict of interest and comply with the provision of s.18C constitutes a breach of the Act.

Note that all disclosures of conflicts of interest are required in writing, and must be recorded in the Council minutes.

12 Legal responsibilities of Council Members in signing off the Annual Financial Statements

There is both statute law and standards which should be referred to in considering the legal obligations of Council members in signing off annual financial statements.

12.1 University Act

The primary source of the general obligations of Council members which will apply in this particular context is the *Flinders University Act 1966 (SA)*, (**University Act**), re-stated in section 7: *Principal Duties of a Council Member to the University* and expressed as *Principles of Conduct* at clause 8. Although the *Corporations Act 2001 (Cth)* does not apply to members of the University Council, case law dealing with these duties and obligations under that Act are useful in providing guidance on how these duties and obligations should be exercised.

For example, in relation to the duty of care and diligence, in *ASIC v Healey*² the Federal Court of Australia said:

All directors must carefully read, understand and focus upon the contents of financial reports, consider whether the financial statements are consistent with his or her knowledge of the company's financial position, consider the statutory requirements, apply the knowledge he or she has of the affairs of the company, and if necessary, make further inquiries if matters revealed in the financial statements call for such inquiries ...

The directors have an objective duty of skill, competence and diligence in the understanding of the financial statements that are to be disclosed to the public as adopted and approved by the directors. The objective duty of competence requires that the directors have the ability to read and understand financial statements. A director must, at least, understand the terminology used in the financial statements and understand that financial statements classify

² (2011) 278 ALR 618

*assets and liabilities as current and non-current, and what those concepts mean. This classification is relevant to the assessment of solvency and liquidity.*³

The Court made it clear that directors, in approving financial statements, must bring their own knowledge of an organisation's situation to bear and cannot simply rely on auditors or management. This case also suggests that it is unlikely that a Council member can fulfil his or her duties without being reasonably financially literate.

12.2 Australian Charities and Not-for-profits Commission Act 2012 (Cth) (ACNC Act)

One of the governance standards introduced under the ACNC Act on 1 July 2013, is relevant to signing off annual financial statements. A registered entity (Flinders University is a charity registered with the ACNC) must take reasonable steps to ensure that its responsible entities (here, Council members) are subject to, and comply with, the following duty that specifically addresses the management of financial affairs:

5(2) (f) to ensure that the registered entity's financial affairs are managed in a responsible manner;

In regards to this duty the ACNC has stated that registered entities should have appropriate and tailored financial systems and practices in place suitable to the size and circumstances of the entity and the complexity of its financial affairs.⁴ Specifically in regards to financial statements, the ACNC suggests:

- Council members should be alive to issues of significant variation in expenditure or income and ask for additional information if considered necessary. The Council may wish to seek independent advice if there is any serious discrepancy or uncertainty;
- financial information should be received at regular intervals before each board meeting. This information may include the latest financial accounts, a comparison of actual figures against the budget, an explanation of any variations from the budget, or details of cash flow and closing bank balances;
- ensuring there is a culture where Council members are not embarrassed to ask questions about the accounts.⁵

12.3 Public Finance and Audit Act 1987 (SA)

The *Public Finance and Audit Regulations 2002 (PFA Regulations)* provides that the University is a public authority for the purpose of the Public Finance and Audit Act 1987 (SA) (PFA Act).⁶ As a prescribed public authority under the PFA Regulations, the University is required to deliver its financial statements to the Auditor-General within 42 days after the end of the financial year (31 December, in the case of the University) that the statements relate to.⁷

³ Ibid at 619

⁴ *Governance for Good: The ACNC's guide for charity board members* (Version 2, July 2013), page 15

⁵ ACNC website 'Quick tips: basic financial controls'

⁶ *Public Finance and Audit Act 1987 (SA)*, s. 23; *Public Finance and Audit Regulations 2002*, s. 5(b)

⁷ *Public Finance and Audit Act 1987 (SA)*, s. 23(1)

The financial statements must be accompanied by a certificate of compliance with the requirement that the statements:

- a) are in accordance with the accounts and records of the University;
- b) comply with the relevant Treasurer's instructions;
- c) comply with relevant accounting standards; and
- d) present a true and fair view of the financial position of the University at the end of the financial year and the results of its operations and cash flows for the financial year.⁸

The certificate must also include a statement as to the effectiveness of the internal controls adopted by the University for the financial year over its financial reporting and preparation of the financial statements.⁹

The certificate must be signed by:

- a) the Chief Executive Officer - in the University's case this is the Vice-Chancellor¹⁰; and
- b) the person entitled to preside at meetings of the Council which, in accordance with section 18(4) of the University Act, is the Chancellor (or in his or her absence a member of the Council elected by those present); and
- c) the officer responsible for the financial administration of the University (the Chief Financial Officer).¹¹

The PFA Act states that it is an offence under section 23 for a person to intentionally or recklessly provide the Auditor-General with a certificate that does not comply with the requirements set out above, with a maximum penalty of \$5,000.¹²

12.4 HESA and ARCA

Section 19-10 of the *Higher Education Support Act 2003* (Cth) and section 58 of the *Australian Research Council Act 2001* (Cth) prescribe obligations in relation to financial statements which require that financial statements are provided in a prescribed form.

The prescribed form for financial statements is currently provided in the Financial Statement Guidelines for Australian Higher Education Providers for the 2013 Reporting Period (which changes on an annual basis).

This form includes the requirement that relevant officers certify in annual statements in respect of monies provided by the Australian Government that the monies were used for the purpose for which they were provided.

⁸ Ibid, s. 23(2)

⁹ Ibid, s. 23(2c)

¹⁰ Ibid, s. 4(1) definition of Chief Executive Officer and s. 23(2a)

¹¹ Ibid, s. 23(b)

¹² Ibid, s. 23(b)

Certification is required to be provided by the Vice-Chancellor and a Member of Council on behalf of the Council declaring as follows:

“The amount of Australian Government financial assistance expended during the reporting period was for the purpose(s) for which it was intended and [the University] has complied with applicable legislation, contracts, agreements and program guidelines in making expenditure.

[The University] charged Student Services and Amenities Fees strictly in accordance with the Higher Education Support Act 2003 and the Administration Guidelines made under the Act. Revenue from the fee was spent strictly in accordance with the Act and only on services and amenities specified in subsection 19-38(4) of the Act.”

13 Personal (Direct) Liability of a Council Member to the University

Duties owed to the University arise as a result of the member's acceptance of the position on Council and are owed to the University alone, not to persons outside the University.

Thus, a breach of duty would be a breach of a duty owed to the University and would be actionable only by the University.

The Council may remove a Council member from office on the ground of serious misconduct as provided under section 6(6)(d). Section 18D specifically provides that non-compliance with a duty imposed under sections 18A, 18B or 18C "will be taken to be serious misconduct and a ground for removal of the member from office".

The Council would have to decide whether to seek remedies such as damages for losses incurred by the University or recovery of gains made by the member, as a result of a breach of a duty owed to the University. Under section 18E, the University is specifically given the power to bring a civil action against a member or former member of Council for breaches of the duties imposed under sections 18B or 18C.

Were the Council to decide not to take action against a member who was in breach of duty, the circumstances could be such that the Attorney General might decide to intervene and bring an action on behalf of the University in order to achieve a remedy.

In summary, liability on the part of a member of Council to the University would be likely to arise only if loss had been caused to the University by a member of Council who was in breach of his/her duty and it could be shown that the loss was a result of the breach of duty.

14 Liability of a Council Member to Third Parties

Council members owe no duty, under the University Act or at common law, by virtue of their office, to anyone other than the University. Nor can they be made liable to third parties for the debts or other contractual engagements of the University. In this respect, their position is different from company directors who, under the Corporations Act, in limited circumstances relating to insolvent trading by the company, are made personally liable for debts.

It is in the area of statutory offences that Council members may be at real personal risk of liability for the wrongful acts of the University. There is an increasing tendency for

legislation to impose heavy penalties on corporations for offences under the legislation, and to make the directors and other officers and managers personally liable as well (often referred to as lifting the corporate veil). In some cases, third parties are given the right to proceed against the directors for compensation in respect of the offence.

Examples of this can be found in legislation relating to Dangerous Substances, Work Health and Safety, Competition and Consumer, Environment Protection, Equal Opportunity, Privacy, Superannuation Guarantee Administration, Taxation Administration, Fair Work and Fair Trading.

Much of this legislation is capable of applying to the University and of rendering Council members and other executives of the University personally liable for an offence by the University.

Provided, however, that the Council takes reasonable steps to ensure that there is an effective system for ensuring that the University complies with its statutory obligations, it is unlikely that a Council member would be pursued and held liable for statutory offences.

Reforms to Commonwealth and State legislation in 2012 and 2013 harmonise the imposition of personal criminal liability for corporate fault across all Australian jurisdictions with the objective of modifying or removing personal and vicarious liability of directors and other executives of bodies corporate for offences committed by the bodies corporate. The effect of this reform is discussed below.

Part 16, below, deals with protection for Council members against some of these potential liabilities.

15 Directors' Liability Legislation

The SA Directors Liability Act commenced on 17 June 2013 and is part of the implementation of the Council of Australian Governments' (COAG) directors' liability reforms which aim to harmonise the imposition of personal criminal liability for corporate fault across all Australian jurisdictions.

The *Personal Liability for Corporate Fault Reform Act 2012 (Cth)* (**Commonwealth Directors Liability Act**) amends Commonwealth legislation to achieve a number of objectives.

Notwithstanding that the SA Directors Liability Act, the Commonwealth Directors Liability Act and equivalent legislation in other States purport to modify or remove personal and vicarious liability of directors and other executives of bodies corporate for offences committed by the bodies corporate, the reform does not affect the general obligations and responsibilities to act in the best interests of an entity, to act honestly and in good faith for the benefit of an entity and exercise a reasonable degree of care and diligence in performing duties, which are clearly set out in the University Act and re-stated in section 7: *Principal Duties of a Council Member to the University* and expressed as *Principles of Conduct* at clause 8.

16 Protection against Liability

The University is not permitted at common law to pay for insurance to indemnify its Council members against liability to the University for breach of their duties to the University.

Such insurance may be available for Council members to purchase personally or as a group, but the cost would have to be met entirely by the Council members personally.

Section 29 of the University Act provides an indemnity by the University for Council and committee members against all claims and actions for acts or omissions undertaken in good faith in the exercise of their powers or duties. This would include statutory fines and penalties but not those of a criminal nature nor those expressly limited by the imposing statute.

Additional protection is provided by the University's Management Liability policy, which provides protection against claims made by third parties against Council members. Council members are not required to contribute to the cost of the policy.

This policy may also provide coverage for certain fines and penalties, provided it is not unlawful for the insurer to provide coverage in the particular circumstances. Policy exclusions, limitations and thresholds apply.

16.1 Deed of Indemnity, Access and Insurance

To mitigate the risk of personal liabilities being incurred by Council members or Senior Officers in the course of carrying out their duties and functions, the University enters into deeds of indemnity with relevant categories of indemnified persons (i.e. Council members and certain Senior Officers) to provide a further level of potential protection beyond that offered by statute and the existing insurances. This includes protection against legal defence costs which are often unmanageable for most individuals in a contested statutory prosecution, and may exceed any actual penalty.

17 Rights of Council Members

For a member of Council to discharge his/her duties to the University requires the member to have a sound working knowledge of the affairs of the University and of its economic, political and social environment and an understanding of its resources and its commitments. Accordingly, the member has a right to have prompt and direct access to information about the University's business and to place items of business before Council.

The right to information must be balanced against the University's need in very limited cases to maintain the utmost confidentiality concerning details of an agreement or contract with a third party. Council members must have confidence in the executive of the University and, on occasion, this may extend to being prepared to support a decision whether or not the individual Council member has all the details of the decision. However, if a Council member believes that his or her general duty to exercise a reasonable degree of care and diligence can only be met by access to certain information, then ultimately that member of Council cannot be denied the information if he or she demands it.

Where a member insists upon being supplied the information in disregard of a claim for confidentiality by those who handled the matter on behalf of the University, the member would be obliged to act in accordance with the guidelines adopted by Council in relation to confidentiality.

Where an individual member of Council requests information or documents, that request should be via the Chancellor or Vice-Chancellor, and the information and documents would usually be provided to the Council as a whole. This is because Council members function as a collective and not individuals.

18 Procedures for Lodging Disclosure of Interest by Council Members

18.1 At the commencement of a Council member's appointment, he or she is required to complete a Disclosure of Interests form and lodge it with the University Secretary, who will circulate a copy to all Council members with the Agenda papers for the next meeting. If a member's interests change (including a material increase in the nature or extent of an interest), the member must ensure that a new form is lodged as soon as is reasonably practicable with the University Secretary for circulation to Council members with the Agenda papers for the next meeting.

18.2 A copy of each Council member's Disclosure of Interests form (Appendix 11) will be held on a University file and will be made available on request through the University Secretary for Council members to peruse. The Chancellor and the University Secretary are entitled to remind Council about an interest that has been disclosed by a Council member where this is relevant to a matter decided or under consideration by the Council.

18.3 The Council Agenda will contain a regular item to provide members with an opportunity to disclose any personal or pecuniary interests which may affect the proper process for decision-making on any particular agenda item. If a member becomes aware of an additional interest that has not previously been declared, he or she must advise the Chairperson or the University Secretary before the meeting or, where this is not reasonably practicable, inform Council of the matter in writing at the meeting, and take other action in accordance with 18.1 above.

18.4 If an actual personal or pecuniary interest in a matter decided or under consideration by Council is disclosed by a Council member, that Council member must not be present during Council discussions of the matter and must not vote on the matter, unless the other non-interested Council members have passed a resolution that:

- identifies the Council member, the nature and extent of his or her interest in the matter and its relation to the affairs of the University; and
- acknowledges that those Council members are satisfied that the interest is one falling within section 18C(2) of the University Act (namely, an interest that is shared in common with staff members, graduates or students of the University generally, or with a substantial number of staff members, graduates or students) and should not disqualify the Council member from being present or voting on the matter at the Council meeting.

18.5 If a Council member believes there is a potential conflict of interest, the University requires the same standards as apply to an actual conflict. Thus a potential conflict must be

disclosed in accord with these procedures, and the Council member must not participate in discussion of or vote on the matter.

18.6 All disclosures made under this section will be recorded in the confidential minutes of Council.

19 Independent Commissioner Against Corruption

The functions of South Australia's Independent Commissioner against Corruption (ICAC) include:

- (i) the identification and investigation of corruption in public administration; and
- (ii) the prevention or minimisation of corruption, misconduct and maladministration in public administration, including through referral of potential issues, education and evaluation of practices, policies and procedures;

The intent of the *Independent Commissioner against Corruption Act 2012* (the ICAC Act) is to treat members of Council and its standing committees as public officers within the meaning of the Act, so that they then have an obligation to report corruption if they become aware of it, and are subject to the sanctions under the Act.

The key implication of the legislation for Council members, especially external members who operate in the wider community, is the need to be particularly aware of and to recognise potential conflicts of interest between personal or business interests and the interests of the University [Refer to the clause 11 guidelines for Council members to follow in respect of conflict of interest]. A former Chancellor of the University of New England, for example, was investigated by the NSW ICAC in relation to his purchase in 2005 with a business partner of a hotel from the University's student union which he failed to disclose at the time to the University.

More information about ICAC, including a link for making a complaint report is available at www.icac.sa.gov.au or the University's webpage <http://www.flinders.edu.au/whistleblowers/> and from Council paper C 9/4/14, available on request from the Council Secretary.

Section 3: Appointment, Election and Removal of Council Members

1 Appointment of Members of Council who are not Employees or Students of the University

Section 5 (3) (d) of the University Act provides for eight members of the Council to be "appointed by the Council on the recommendation of a selection committee (which consists of the Chancellor and 6 other persons appointed by the Chancellor in accordance with guidelines determined by the Council)".

Section 5 (3) (e) of the University Act provides for one person to be co-opted and appointed by the Council if the Council so determines.

The selection committee referred to in section 5(3)(d) of the University Act will be constituted by the Chancellor as and when required for recommending to Council prospective members for appointment.

In the normal course the Chancellor intends that the membership of the selection committee will comprise the members of the Executive Committee. However, the Chancellor will review and vary this as required. For example, a person who would otherwise be a member of the selection committee who intends to seek reappointment to Council, must not be appointed by the Chancellor to sit on the selection committee (in light of section 5(3d) of the University Act which prohibits the selection committee from recommending any one of its number for appointment to Council).

The Chancellor intends that the selection committee will as far as practicable, be constituted of equal numbers of men and women who:

- have a commitment to education and, in particular, to higher education; and
- have an understanding of, and commitment to, the principles of equal opportunity and social justice and, in particular, to access and equity in education.

The Chancellor will also consult with the Executive Committee and seek their advice regarding the composition of the selection committee.

1.1 Process for Appointment of Members of Council

a. The selection committee must take into consideration subsection 5 (3a) of the Act which requires appointees to have a commitment to and understanding of higher education, and principles of equal opportunity and social justice, and subsection 5 (3b) which requires that at least two of the eight appointed members must have financial expertise and at least one of the eight appointed members must have commercial expertise. The selection committee must also, in accordance with section 5(3a) of the Act, "recognise that the Council is, as far as practicable, to be constituted of equal numbers of men and women".

b. The selection committee must also take into consideration other provisions relating to the composition and skills and expertise of Council as identified in the Voluntary Code of Best

Practice for the Governance of Australian Universities, and in particular the requirement that appointed members must be selected on the basis of their ability to contribute to the effective working of the Council by having the required skills, knowledge and experience, an appreciation of the values of the University and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the external community needs from the University.

c. Under s 5(3d) of the University Act the selection committee cannot recommend one of its number for appointment. Accordingly, any member who intends to offer themselves for reappointment is not eligible to sit on the selection committee and the Council will appoint another person to replace them.

To assist with the above, members of the selection committee will be provided with the skills matrix, members profiles and register of potential members.

a. Nominations for consideration by the selection committee will be invited by the Chancellor from Council members, and other persons, at the discretion of the Chancellor.

b. Persons making nominations or nominating themselves for Council will be reminded of the criteria set down in the Act and must provide the selection committee with appropriate information about the nominee and a curriculum vitae.

c. The selection committee will consult widely as necessary to ascertain the suitability of a person nominated.

d. The selection committee will recommend eight persons for appointment by the Council and will recommend a term of office (two or four years) for each nominee.

1.2 Process for Appointment of Deputy Chancellors

Section 16(2) of the University Act provides that Council "may appoint no more than 2 Pro-Chancellors or Deputy Chancellors".

Statute 2.2: The Deputy Chancellors states:

1. The Council may from time to time appoint from among its members not more than two Deputy Chancellors;
2. The Deputy Chancellors shall hold office for four years from the date of their appointment and shall be eligible for reappointment.
3. At the request of the Chancellor, or in his absence, and subject to the *Flinders University Act 1966*, it shall be lawful for a Deputy Chancellor to do any act, matter, or thing, which the Chancellor is ordinarily empowered to do.

Note that under s 18(4) of the Act, a Council member elected by other members will preside over Council meetings in the absence of the Chancellor. In the ordinary course, the Council would expect a Deputy Chancellor to be elected.

1.2.1 Council procedures

- Prior to the expiry of the term of office of a Deputy Chancellor, the Executive Committee will be asked to consider and make a recommendation to Council on the appointment of a Deputy Chancellor.
- The Executive Committee will recommend to Council the person or persons it considers eligible for appointment as a Deputy Chancellor taking into account the views of Council members which can be conveyed to the University Secretary in confidence.

1.3 Provisions under the University Act

Section 5 (3d) of the Act provides that a selection committee cannot recommend one of their number for appointment.

Section 6 (5) provides that on the expiration of a term of office, a member appointed or elected to the Council is eligible for reappointment or re-election, subject to subsection (5a) which precludes, except by resolution of Council, a person from being appointed or elected as a member of Council if the appointment or election would result in the person being a member of Council for more than 12 years.

Subsection 6 (7) provides that the office of an appointed or elected member becomes vacant if the member - .

(a) dies; or

(b) completes a term of office and is not reappointed or re-elected; or

(c) does not continue in the capacity in which he or she was appointed or elected to membership of the Council; or

(d) resigns by notice in writing addressed to the Chancellor; or

(e) is removed from office by the Council under subsection 6 (6) of the Act (refer to paragraph 7 *Removal from Office* below); or

(f) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

Section 6 (9) requires that on the office of an appointed or elected member of Council becoming vacant, a person must be appointed or elected, as the case may require, to the vacant office in accordance with the Act. Section 6 (10) states that a member appointed or elected to fill a casual vacancy in the membership of Council holds office for the balance of the term of his or her predecessor.

Section 5 (3c) states that a person appointed by the Council cannot be a student of the University or a member of its staff.

Section 6 (1) states that a member appointed by the Council will have a term of two or four years.

2 Election of Members of the Council by the Academic and Professional Staff

The procedure for elections of members of Council by the academic and professional staff is set out in the Election Procedures. The University Secretary is the Returning Officer for Council elections. The appointed day for elections is set by the University Secretary, under delegation from Council. The term of office is two years. Commencement of the Statutes Amendment (University Councils) Act 1996 Part 2 on 1 January 1997 determined that terms of office will run from 1 January to 31 December of the following year.

3 Elected or Appointed Student Members of the Council

Section 5 (3)(h) of the University Act provides for two student members of Council, one of whom must be a post graduate student and one of whom must be an undergraduate student, to be appointed or elected to the Council in a manner determined by the Council.

Where Council determines that student members will be chosen by election, the election will be conducted in accordance with Election Procedures. The appointed day for elections will be set by the University Secretary, under delegation from Council. The University Secretary is the Returning Officer. Where Council determines that the student members will be appointed, procedures will be developed in consultation with the Student Association.

The term of office for student members is two years.

4 Procedure for Appointment of Chancellor

Under Section 16 of the University Act, Council must appoint a Chancellor for a four year term on terms and conditions fixed by the Council. The Chancellor may be a member of the Council or any other appropriate person who is not an employee or student of the University.

4.1 Council procedures

- a. Prior to the expiry of the term of office of the current Chancellor, Council will be asked to establish a committee to consider and make a recommendation to it on the appointment of a Chancellor. The composition of the Committee and its Chair will be determined by Council.
- b. The committee will recommend to Council the person or persons it considers eligible for appointment as Chancellor taking into account the views of Council members which can be conveyed to the Chair in confidence.
- c. If the committee recommends only one candidate, Council may appoint that person as Chancellor in accordance with Section 16 of the University Act.
- d. If the committee recommends more than one candidate, a secret ballot will be held. The University or Council Secretary will act as Returning Officer. Each Council member will have one vote. If there is a tie between two candidates, Council members will be invited to vote for a second time. The successful candidate will be the person who gains the most votes and that person will be appointed by the Council in accordance with Section 16 of the University Act

5 Procedure for Appointment of Vice-Chancellor

Prior to the expiry of the term of appointment of the current Vice-Chancellor, the Council shall establish an Appointment Committee on the recommendation of the Chancellor. The Appointment Committee shall be responsible for recommending to Council on the appointment of a Vice-Chancellor in accordance with Section 16 of the University Act and Statute 2.3: The Vice-Chancellor.

6 Procedure for Appointment of Senior Executive Managers

The procedure for the appointment of senior executive managers will be determined by Council in accordance with Section 16 of the University Act (where relevant) and the University's Appointment Policy.

7 Removal from Office

The conditions of appointments and elections to Council are set out in Section 6 of the University Act which includes provision for Council to remove members for:

- mental or physical incapacity to carry out official duties satisfactorily;
- failing to comply with requirements in relation to attendance at Council meetings without reasonable excuse;
- conviction of an indictable offence;
- serious misconduct.

Section 6 (6a) provides that a member may only be removed for serious misconduct by a resolution passed by at least a two-thirds majority of the members of the Council.

Attendance requirements are identified in Section 4, paragraph 2.1. Serious misconduct procedures are set out below.

8 Serious Misconduct

A member may be removed from office by Council on the ground of serious misconduct (University Act Section 6 (6) (d)).

Council operates in accordance with the following guidelines in relation to serious misconduct:

- Council may resolve that the conduct of a member constitutes serious misconduct. A motion to this effect may only be proposed in a Confidential item of the Council meeting. Council may, where appropriate, seek independent advice as part of its deliberations in relation to whether the conduct of a member constitutes serious misconduct.
- Council shall conduct its consideration of a serious misconduct motion in accordance with principles of natural justice. In order to give the subject of the motion time to prepare a response to it, either:
 - notice of a serious misconduct motion must be given prior to the meeting; or

- notice of a serious misconduct motion may be given at a meeting, in which case the member giving notice of the motion must inform Council of the substance of the allegations of serious misconduct and must provide evidence to substantiate these allegations at the time notice is given. The subject of the motion shall then be given the right to respond to the allegations. However, the Chancellor shall allow no further discussion, and debate and resolution on the motion shall be deferred to the next regular meeting
- Once appropriate notice has been given, the serious misconduct motion shall be included as a confidential item for consideration and decision at the next regular meeting of the Council. A serious misconduct motion must be moved and seconded prior to debate on it. In proposing the motion, the mover must inform Council of the substance of the allegations of serious misconduct and must provide evidence to substantiate these allegations. If he/she fails to do so the Chancellor shall disallow the motion. If the motion is accepted by the Chancellor, the member who is the subject of the motion then has the right to put his/her case to Council. In accordance with Section 6 (6a) of the Act the motion must have the support of a two-thirds majority of the members of the Council. The motion and the outcome of Council's debate on it shall be recorded in a Confidential item of the minutes.

9 Induction, Professional Development and Performance Review

- Each new member of Council will receive an induction briefing and will be provided with opportunities to undertake professional development as a Council member. Induction arrangements and the provision of information and support for Council members are outlined in Appendix 4.
- Every second year the Chancellor will arrange for Council to undertake a self-review process.

Section 4: Meetings, Papers and Meeting Procedures

The operating procedures derive from the Act, Statutes, procedural decisions taken by Council and standard meeting practices adopted by decision of Council. The procedures may be used as a guide for the effective operation of boards and committees constituted by the Council. Queries about the operating procedures may be directed to the Council Secretary.

1 Meetings

1.1 Dates, Time

Statute 4.1: Council will hold regular meetings as it determines. Council sets the dates of regular meetings on an annual basis. Council has determined for the time being that there shall be at least five regular meetings per year commencing at 2.00 pm and an annual strategic retreat.

1.2 Chairing of Council meetings

Section 18(4) of the University Act states that *"the Chancellor or, in his or her absence a member of the Council elected by those present, will preside at meetings of the Council"*. In the ordinary course, Council expects that a Deputy Chancellor will be elected to Chair a meeting in the absence of the Chancellor.

1.3 Lack of business

If the Chancellor and Vice-Chancellor consider that there is insufficient business to justify a meeting of Council, the Chancellor will instruct the University Secretary to cancel the meeting.

1.4 Special Meetings

Statute 4.1: Special meetings of Council may be convened:

- by resolution of the members present and voting at a previous meeting;
- by the University Secretary at the request of the Chancellor or Vice-Chancellor. A written notice of such a meeting shall be sent to each member at least seven clear days prior to the meeting;
- by the University Secretary at the written request of at least four members. Such a request will explain the reasons for holding the meeting. The meeting will be held within fourteen days of receiving the request.

A special meeting will consider only the business for which the meeting was convened. Other business may only be considered at a special meeting with the agreement of a majority of the members present and voting.

1.5 Adjournments

The Council may adjourn any meeting or debate to a future setting. New business may only be considered at an adjourned meeting with the agreement of a majority of the members present and voting.

1.6 Use of Technology

A meeting may be called or held using any technology, including a Board portal, e-mail circulation, tele- or video-conference.

1.7 Quorum

No question can be decided at any meeting of the Council unless a quorum of one half of the total number of Council members plus one (ignoring any fraction) is present (Section 18(3) - University Act). If a quorum has not been achieved after a quarter of an hour from the time appointed for the meeting, or if the quorum is not maintained during the meeting, the Chairperson shall close or adjourn the meeting, and any scheduled business that has not been dealt with shall be held over until a later time, or until a future meeting.

1.8 Decisions

Section 18 (1) of the University Act states that... *“A question that comes before a meeting of the Council will be decided by the majority of members present at the meeting and voting on the question.”*

Section 18(2) of the University Act states that *“The person presiding at a meeting of the Council has a vote and, in the case of an equality of votes, a casting vote.”*

All members of Council, including *ex officio* members, are entitled to vote.

The mechanism for voting is outlined at section 8. In practice, few matters require the formality of a vote and the Chancellor (and standing committee Chairs) generally prefer to guide discussion towards a consensus view.

Members can expect that questions for decision will be in the form of a clearly written draft resolution. Where there is discussion of a matter, the Chairperson has a responsibility to identify whether there are any contrary views and if so, to ensure that such views are discussed. If a draft resolution is amended, the Chairperson must ensure that there is clarity on exactly what members are being asked to do or agree to. The Chairperson must also ensure that the majority decision is clear and is recorded in the minutes before the meeting moves to the next item.

The Chancellor’s expected standard of conduct for Council members is that:

- dissenting opinions will be acknowledged and respected;
- having reached a decision on a matter, all Council members are expected to respect and accept the majority decision and refrain from speaking out publicly against the decision.

1.9 Management of Urgent Business

Urgent matters that the Chancellor and Vice-Chancellor consider cannot be held over to the next regular meeting of Council may be considered and dealt with by a circular resolution of Council or by the Executive Committee, either at a scheduled meeting or by a circular resolution, as determined by the Chancellor.

The following will apply to circular resolutions of the Council or the Executive Committee, as the case may be:

- a. Subject to b. below, if a majority of the Council or Executive Committee members entitled to vote on a matter (and being not less than a quorum) indicate in writing (in a document or by email or other electronic means) that they are in favour of a resolution in the terms, and by the deadline set out in the circulated papers, a resolution in those terms shall be deemed to have been passed.
- b. In the event that a member(s) is not in favour, the matter will be referred to the Chancellor, who will discuss the matter with the member(s) concerned and decide whether the majority decision prevails or the matter must be held over.

Matters decided will be reported to the next regular meeting of Council and recorded in the minutes.

1.10 *In Camera* Session

Before the commencement of every alternate Council meeting, the Chancellor may elect to hold a half-hour in-camera session attended by the appointed external members of Council only. This time, if taken, enables the external appointed members of Council, who otherwise only meet together at Council meetings, to raise and discuss matters which relate to their responsibilities as external appointed members of Council. This is in accordance with good contemporary governance. No decisions are made and minutes are not recorded.

2 Attendance at Meetings

2.1 Attendance by Council members

Council members are required to attend meetings regularly and when they cannot attend, they should observe Council procedure regarding apologies or leave of absence. Under the University Act Section 6(6)(b), Council may remove from office a member who fails without reasonable excuse to comply with Council requirements in relation to attendance at meetings.

2.2 Apologies

A member who is unable to attend a meeting should inform the Council Secretary as early as possible before that meeting. Apologies are announced at the meeting and recorded in the minutes.

2.3 Leave of Absence

A member who will be absent from Council for two or more regular meetings in succession should seek leave of absence. Written requests for leave of absence should be submitted to the Council Secretary for consideration by Council at its next regular meeting.

2.4 Attendance by other persons

Confidential items are open only to the members of Council, and those members of the University staff who provide secretarial services to the Council. Non-confidential items are open to members of the University who are defined as members of staff of the University, students enrolled in the University and graduates of the University. Persons who are not members of the University may not attend meetings of Council unless approved by the Chairperson. If the Chairperson becomes aware that a person who is not a member of the University is an observer, he/she shall ask the person to leave the meeting.

Persons who attend meetings of Council are subject to the following provisions:

- observers shall not publish matters discussed at Council meetings without the prior approval of the University Secretary;
- observers may not speak or participate in the meeting unless invited to do so by the Chairperson;
- if Council resolves to go into confidential session, observers shall leave the meeting at the request of the Chairperson;
- in the event of a disturbance being created by one or more observers, the Chairperson will ask the person or persons to desist. If the disturbance continues the Chairperson will ask the person or persons to leave the meeting. If they refuse, the Chairperson will ask all observers to leave the meeting. If they refuse the Chairperson will adjourn the meeting and it will be reconvened later to deal with the remaining items on the agenda, in which case the Chairperson will determine whether the meeting should be held in camera.

2.5 Recording of Attendances at Council Meetings in the Minutes

The attendance of members or invited guests during a Council meeting will be recorded in the Minutes, and a record will be made of any instance where a person who has been present at the meeting leaves the meeting or returns to it during an item.

3 Preparing for meetings

Council members have a duty to the University to exercise care and diligence in the performance of their functions (University Act Section 18A). To ensure the most constructive use of Council time it is essential for all members to prepare adequately for meetings. Specifically, Council members should:

“Read Council papers, be attentive at meetings and take an active part in the business of Council.” (Handbook Section 2 clause 8 Principles of Conduct). Each member should feel satisfied that there has been enough time to prepare for the meeting, and that an appropriate level and quality of information has been provided to enable members to understand the issues under discussion. The agenda is the key tool in managing Council’s time effectively.

4 Agenda

4.1 Notice of meeting and Circulation of agenda and papers

The Council Secretary will send the agenda and papers for the meeting electronically to each member of Council, at least seven clear days before the meeting (ie on the same day of the week in the week prior to the meeting).

4.2 Late circulation of papers

Additional papers may be circulated no later than two clear days before the meeting unless approved by the Chairperson.

4.3 Tabling of papers

The Chancellor may allow papers to be tabled at a meeting, although a majority of members present and voting may resolve not to consider them at that meeting.

4.4 Submission of items for the agenda

Items of business for inclusion in the agenda may be submitted by the Chancellor, the Vice-Chancellor, members of the Senior Executive, the University Secretary, the standing committees of Council and individual Council members. They should be supported by documentation which explains the item and recommends action to be taken by the Council. To be accepted for inclusion on the agenda, items of business must concern matters which are within the jurisdiction of the Council.

Standing committee agendas are the responsibility of the Chairs, working closely with the Vice-Chancellor and other senior executive staff, as appropriate. A large part of the standing committee business is cyclical, e.g. the annual financial statements and budget.

4.5 Deadline for Agenda

Items and papers for inclusion in the agenda for a regular meeting of Council must be received by the Council Secretary no later than nine clear days before the meeting. As Council meetings are normally held on a Thursday, this means that to be included in the agenda, material must be received by the Council Secretary before 5.00pm on the Friday of the week before the agenda is circulated. Except with the approval of the University Secretary of the Council, material received after this deadline will be held over until the next regular meeting.

4.6 Agenda papers and questions/comments about agenda papers

Every item of business for the meeting is introduced by a paper which sets out the draft resolution, background - including the relationship of the item to the powers, duties and functions conferred and imposed on the Council (terms of reference) - and discussion providing a concise explanation of the matter.

Council members should contact the Council Secretary if they have queries about items in the Council agenda and minutes, or if they want additional information pertaining to a particular item(s) or the operation of the University, prior to the meeting.

4.7 Nominated address

Members of Council will advise the Council Secretary of the address to which all communications about the Council are to be sent and will notify the Council Secretary of any change of address.

4.8 Additions to the agenda

A new item of business which does not appear on the agenda may only be considered at a regular meeting with the agreement of a majority of the members present and voting.

4.9 Starring of items for discussion

A starring system is used to enable efficient handling of routine items. The * symbol is used to denote significant items of business to be discussed by Council. Prior to circulating the agenda for each meeting, an agenda preview group comprising the Chancellor, Vice-Chancellor and the University Secretary, determines which items will be starred. At the beginning of each regular meeting, members may request any additional items for starring and discussion. All unstarred items will be deemed to have been received and noted or approved as appropriate, which means that the recommendations attaching to such items are accepted without discussion.

5 Order of Business

The Chairperson may vary the order of business at any meeting. The order of business at each regular meeting shall generally be as follows:

- apologies;
- any matters concerning the membership of Council;
- confirmation of the minutes of the last regular meeting and the minutes of any special meetings held since the last regular meeting;
- business arising from the minutes – this item allows members to raise for discussion items arising from the minutes which are not included elsewhere in the agenda;
- report of matters approved by the Executive Committee of Council;
- arrangement of the agenda, including starring of agenda items which members wish to be discussed;
- identification of significant items which should be given priority to allow a full discussion during the meeting;
- Council members' disclosure of interests;
- presentations from the senior executive;
- items for decision/approval;
- items for discussion, including a report from the Vice-Chancellor (confidential and/or non-confidential);
- items for noting, including committee minutes;
- date of next meeting;
- rolling meeting schedule.

6 Confidentiality

6.1 Confidential items

The items for Council meetings will be designated confidential (with the symbol 'C' before the item number or non-confidential). The confidential items are circulated to Council members, members of the Senior Executive and those members of the University staff who provide administrative and secretarial services to the Council. Prior to a meeting, a member may only discuss confidential items with other members of Council, the member of the senior executive who has sponsored the item, the University Secretary or the Council Secretary. A small number of these matters are confidential only until a decision has been made by the Council and they are then reported as non-confidential items of the minutes. Following a decision by Council on a confidential item, information about the decision may be disclosed to persons who are not members of Council unless the Chairperson directs or the minutes indicate that the item is to remain confidential.

6.2 Confidential minutes

If a matter remains confidential following a Council meeting (eg because it is still subject to negotiation or formal acceptance), it will be denoted by a symbol "C" alongside the number of the item in the minutes and circulated to Council members, members of the Senior Executive and those members of the University staff who provide administrative and secretarial services to the Council and senior executive only. Matters decided by Council as part of the confidential agenda, which are no longer confidential following the meeting, will be recorded as non-confidential and included in the non-confidential minutes distributed to members of the University.

6.3 Breach of confidentiality

If there is evidence that a breach of confidentiality has occurred but the source is not able to be identified, the Chairperson will bring the matter to the attention of Council at its next meeting, and will remind members that it is their responsibility to act in accordance with these confidentiality provisions. If a particular member is alleged to have breached confidentiality, that person may be the subject of censure on the grounds of misconduct, in accordance with procedures that parallel Council's procedures for handling serious misconduct (Handbook Section 3 clause 8). The outcome of Council's debate on an alleged breach of confidentiality will be recorded in the confidential section of the minutes.

6.4 Recording of Proceedings

The making of any electronic or other recording of meetings is not permitted except with the permission of the Chairperson.

7 Minutes

Minutes of the proceedings of every meeting of Council will be recorded and at the end of each year will be kept as a permanent record of the decisions of the Council in the University's electronic document and record management system (EDRMS) which is a State Records compliant EDRMS. The unconfirmed minutes of each meeting will be circulated as soon as possible after each meeting and will be presented at the next regular meeting for

confirmation as a correct record and signature by the Chairperson. Discussion about the minutes will be restricted to questions about their accuracy as a record of the business of the Council. Members who wish to question the accuracy of the minutes should contact the Council Secretary prior to the next regular meeting in order to propose an amendment to the minutes prior to their confirmation.

The minutes of Council will record:

- the nature of the meeting, whether regular, special, or adjourned;
- the date, time and place of the meeting;
- the name of the person presiding at the meeting, the names of members of Council who are present, the names of officers of the University in attendance, the names of any persons present by invitation and the names of members who have tendered an apology;
- a summary of the business conducted at the meeting; a concise statement of major points of discussion about a draft resolution, followed by the resolution; at the request of any member, a note that the member voted against or abstained from voting on a draft resolution or amendment;
- any other matters at the direction of the Chairperson.

8 Method of Voting

A question that comes before a meeting of the Council will be decided by the majority of members present at the meeting and voting on the question (Section 18(1) of the Act). *Ex officio* members are entitled to vote.

Voting will be conducted by a show of hands, unless a secret ballot is requested by at least three members. The Chairperson will ask the members who are present to vote on a draft resolution or amendment by asking first those members who wish to vote in favour to raise their hands. The Chairperson will then ask those members who wish to vote against the draft resolution or amendment to raise their hands. The Chairperson will then declare the draft resolution carried or lost. A member who does not vote for or against a draft resolution or amendment will be deemed to have abstained from voting. At the request of a member, the Chairperson will inform the meeting of the numbers voting for and against.

Numbers of votes cast will not appear in the minutes unless a member asks for the vote to be recorded. At the request of a member, the minutes will record that the member voted against or abstained from voting on a draft resolution or amendment.

Section 18(2) of the University Act provides for the Chancellor or person presiding at the meeting to have a vote and, in the case of an equality of votes, a casting vote. Any reasons given by the Chairperson to explain his/her use of the casting vote will be recorded in the minutes. Note: The Chancellor or person presiding at the meeting may be precluded from voting, for example, by a conflict of interest.

Where a secret ballot is held, the University Secretary will act as Returning Officer.

9 Matters Not Dealt With in Procedures and Guidelines

If questions arise which are not dealt with in these procedures and guidelines the decision of the Chairperson shall be final.

10 Suspension or Variation of Procedures and Guidelines

Any of these procedures and guidelines may be suspended or varied by a majority decision of the members present and voting.

Section 5: University Governance and Management Structures, and Accountability Framework

1 Standing Committees of Council

The Council is the governing body of the University and has responsibilities as set out in the University Act (see Section 1).

Council has established five standing committees to provide expert advice to Council in key areas of responsibility. Each of the standing committees is chaired by a member of Council, ensuring effective communication with and accountability to Council.

The standing committees of Council are:

- Academic Senate;
- Audit and Risk Committee;
- Executive Committee; and
- Finance and Investment Committee.
- Remuneration Committee

Council members may attend any meeting of the standing committees. With the exception of the Chancellor, Chairs of standing committees will be appointed to chair one standing committee only.

The composition and terms of reference of the standing committees, as determined by Council, are set out in Appendix 6 , as are delegations to the standing committees made by Council under the provisions of Section 19A of the University Act.

The Council refers matters to its standing committees in accordance with their terms of reference.

If Council is unable to approve a recommendation from a standing committee it will refer that recommendation back to the committee for reconsideration, together with advice about the concerns expressed at the Council meeting.

A chart showing the University's central committee structure forms Appendix 5 - Central Committee Structure

2 Officers of the University

The Officers of the University are as follows:

- Chancellor
- Deputy Chancellors
- President and Vice-Chancellor

- Deputy Vice-Chancellor (Students)
- Deputy Vice-Chancellor (Research)
- Vice President and Pro Vice-Chancellor (International)
- Vice-President (Corporate Services)
- University Secretary

3 Organisational Structure

The organisational structure of the University comprises the

- College of Business, Government and Law
- College of Education Psychology and Social Work
- College of Humanities, Arts and Social Sciences
- College of Medicine and Public Health
- College of Nursing and Health Sciences
- College of Science and Engineering

and its Administration is organised into five portfolios covering the areas of

- Students (including Academic)
- International
- Research
- Office of the Vice-Chancellor
- Corporate Services

A chart of the Organisational Structure forms Appendix 7.

A list of administrative divisions and units is shown in Appendix 8.

4 Mechanisms to Ensure Accountability to Council

Council has a responsibility for prudential management and oversight of the business of the University. Specifically, it has a responsibility to ensure that the University has in place policies and procedures for the administration of the University's affairs and the conduct of day-to-day business. It also has a responsibility to ensure that there is a system in place whereby Council can supervise the effectiveness of the management of the University.

Accountability is provided for through:

- reports from the Vice-Chancellor;
- reports from major University committees;
- the University's policy framework (published on the University's web site);
- planning and monitoring processes which are subject to consideration and approval by Council.

The University is subject to internal and external audit processes, and its own risk management processes. The University is also subject to regulation by the Tertiary Education Quality and Standards Agency.

The processes and time-lines for reporting to Council on the principal accountability mechanisms are summarised below.

Item	When
Report on Flinders Strategic Plan via progress reports on the Operational Plan	June December
Regular reports from the Vice-Chancellor on major developments and strategic initiatives	All meetings
Regular reports from the Executive Committee	Following each meeting of the Committee
Reports from the Finance and Investment Committee including:	Following each meeting of the Committee
Reports on University Budget and financial performance	Quarterly
Reports on risk, including work health and safety	Quarterly
Regular reports from the Audit and Risk Committee	Following each meeting of the Committee
Regular reports from Academic Senate	Following each meeting of Academic Senate
Reports from senior executive staff on major university developments	Annually
Council review of its own operation and the operation of its major committees	Biennially
Annual review of the Vice-Chancellor's performance by the Chancellor and Deputy Chancellors	December

Approved Council 13 March, 2003; Revised 4 December, 2003; Revised 4 December, 2008; Revised 3 December, 2009; Revised June 2012; Revised May 2015

The Council delegations empowering specified University Officers or Committees to undertake certain powers and functions are detailed at:

[University delegations](#)

5 Meeting Dates and Key University Dates

Meeting dates for Council and its standing committees and key University dates, form Appendix 10.