Policy: Responsibilities of members of Council and Council Committees

Purpose
The purpose of this policy is to articulate:

- the application of the Public Governance, Performance and Accountability Act 2013 to Council and Council Committee members; and
- the general expectations of conduct by Council and Council Committee members.

Overview
The policy sets out the legal duties and expectations for the conduct for Council members and Council Committee members.

Scope
This Policy applies to all members of Council and Council Committees. The conduct of members of the Academic Board is to be governed by the Code of Conduct of the University.

Definitions
Council Committee covers the following committees of Council:

- Finance Committee
- Audit & Risk Management Committee
- Campus Planning Committee
- Honorary Degrees Committee
- Remuneration Committee
- Nominations Committee
- Any other Committee of Council, as established from time to time

Policy statement
General

1. The Australian National University is a body corporate established by the Australian National University Act 1991 ("ANU Act").

2. The Public Governance, Performance and Accountability Act 2013 ("PGPA Act") provides a set of core planning, performance reporting and auditing requirements and sets out standards of conduct for directors, officers and employees of corporate Commonwealth entities. Many of these standards of conduct are modelled on comparable areas of corporations law.

3. By section 8 of the ANU Act, the Council of the University is the governing body of the University and, by section 9(1) the Council has the entire control and management of the University. The Council is the “accountable authority” under section 12 of the PGPA Act. Members of the Council are therefore “officials” of the University within the meaning of section 13 of the PGPA Act.

4. Those Council Committee members who are not members of Council are not regarded as “officials” within the meaning of section 13 of the PGPA Act. However, the Council expects all such persons to conduct themselves in a manner consistent with, and to comply with, the imposed duties of the PGPA Act, as if they were officials.

5. The PGPA Act applies to all duties a Council member or Council Committee member undertakes in their role as an official under the PGPA Act and is not confined solely to members’ participation in formal meetings.

Council’s duties as an Accountable Authority under the PGPA Act

6. The Council is the “accountable authority” for the purposes of the PGPA Act. The PGPA Act imposes duties on accountable authorities of Commonwealth entities. There are five duties, namely:

- Duty to govern
- Duty regarding risk and control
- Duty to encourage cooperation
- Duty in relation to requirements imposed on others
- Duty to keep the responsible Minister and the Finance Minister informed

7. Council Committee members are expected to act in a manner consistent with these duties.

Duty to govern
8. The Council is to govern the University in a way that:
- promotes the proper use and management of public resources for which the Council is responsible for;
- promotes the achievement of the purposes of the University; and
- promotes the financial stability of the University.

9. In this context, “proper use” means efficient, effective, economical and ethical use.

**Duty regarding risk and control**

10. The Council must establish and maintain:
- an appropriate system of risk oversight and management for the University; and
- an appropriate system of internal control for the University including by implementing measures directed at ensuring officials comply with the finance law (eg the PGPA Act and associated rules).

**Duty to encourage cooperation**

2. The Council must encourage officials of the University to cooperate with others to achieve objectives they have in common with the University, where practicable.

3. In this context, “others” refers to other Commonwealth entities, other levels of government, and other public and private bodies and organisations, including in the not-for-profit sector.

**Duty in relation to requirements imposed on others**

4. When imposing requirements on others in relation to the use of public resources, the Council must take into account risks and the effects of imposing those requirements.

**Duty to keep responsible Minister and Finance Minister informed**

5. The Council must:
- keep the responsible Minister informed of the activities of the University and any subsidiaries of the University;
- give the responsible Minister or the Finance Minister any reports, documents and information in relation to those activities as that Minister requires;
• notify the responsible Minister as soon as practicable after the Council makes a significant decision in relation to the University or any of its subsidiaries;

• give the responsible Minister reasonable notice if the Council becomes aware of any significant issue that may affect the University or any of its subsidiaries;

• notify the responsible Minister as soon as practicable after the Council becomes aware of any significant issue that has affected the University or any of its subsidiaries.

6. The ANU Act provides that members of the Council are not required to do anything concerning this duty that will or might affect the academic independence or integrity of the University.

**Duties of “Officials” under the PGPA Act**

7. Council members are considered “officials” for the purposes of the PGPA Act. The Council expects all members of Council Committees to conduct themselves in a manner consistent with, and to comply, with the imposed duties of the PGPA Act, as if they were officials.

8. The PGPA Act imposes the following duties on officials:

- Duty of care and diligence
- Duty of good faith
- Duty in relation to use of position
- Duty in relation to use of information
- Duty to disclose interests

**Duty of care and diligence**

9. Council members and Council Committee members must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

a. were a Council member or Council Committee member in the University's circumstances; and

b. occupied the position held by, and had the same responsibilities within the University as, the Council member or Council Committee member.
Duty of good faith

10. Council members and Council Committee members must exercise their powers, perform their functions, and discharge their duties in good faith and for a proper purpose. The duty to act in good faith is owed to the University itself. This overrides any duty to another body, even one that has appointed or elected the Council Member.

Duty in relation to use of position

11. Council members and Council Committee members must not improperly use their position to gain an advantage for themselves or for any other person; or cause detriment to the University, the Commonwealth or to any other person.

Duty in relation to use of information

12. Council members and Council Committee members who obtain information because of their membership position, must not improperly use that information to gain an advantage for themselves or for any other person; or to cause detriment to the University, the Commonwealth, or any other person.

Duty to disclose interests

13. Council members and Council Committee members who have a material personal interest that relates to the affairs of the University must disclose the details of that interest.

Conflict of interest

14. A Council member or Council Committee member must disclose a material personal interest in a matter that relates to the affairs of the University to the other Council members or Council Committee members unless the interest:

a. arises in relation to a Council member's remuneration as a Council member; or

b. relates to a contract that insures, or would insure, the Council member against liabilities the Council member incurs as a member of Council (but only if the contract does not make the University or a subsidiary of the University the insurer); or

c. relates to a payment by the University or a subsidiary of the University in
relation to an indemnity permitted under section 61 of the PGPA Act; or
d. relates to a contract relating to an indemnity permitted under section 61 of the PGPA Act; or
e. is in a contract, or a proposed contract with; or for the benefit of; or on behalf of a subsidiary of the University; and arises merely because the Council member or Council Committee member is, or is a member of, the governing body of the subsidiary.

15. Where a Council member has disclosed their material personal interest in a matter, they must not be present while the matter is being considered, nor vote on the matter unless:

a. the responsible Minister for the Australian National University Act 1991 has declared, in writing, that the Council member may be present or vote (or both);

b. or if the members of the Council who do not have a material personal interest in the matter have decided that the Council member is not disqualified from being present or voting (or both), and the decision is recorded in the minutes of a meeting of the Council; then the official may be present or vote (or both) in accordance with the declaration or decision.

2. Where a Council Committee member has disclosed their material personal interest in a matter, they must not be present while the matter is being considered or vote on the matter unless if the members of the Council Committee who do not have a material personal interest in the matter have decided that the Council Committee member is not disqualified from being present or voting (or both), and the decision is recorded in the minutes of a meeting of the Council Committee; then the official may be present or vote (or both) in accordance with the declaration or decision.

**Delegation by Council members**

3. The ANU Act (s17) authorises Council members to delegate any of their powers not only to a Committee of Council, but to a single Council member, an employee of the University or any other person, subject to specific restrictions under the ANU Act which are:

4. The Council must not delegate its power to:

a. appoint the Chancellor, Pro-Chancellor or Vice-Chancellor; or

b. approve the University’s annual budget or its business plan; or
c. approve the annual report of the University; or

d. monitor its commercial activities, and its subsidiaries and any other entities that it controls, to the extent required to ensure they do not have any significant adverse impact on, or pose an unreasonable risk to, the University’s finances and operations; or

e. review and monitor the management of the University as a whole or the University’s performance as a university (as defined by the Higher Education Support Act 2003).

Removal from office

5. A Council member who is appointed to Council under section 10(1)(q) of the ANU Act may be removed from office by the responsible Minister, under section 30 of the PGPA Act, where the Council member has contravened his or her duties as an official. Such removal will be conducted in accordance with the procedures provided for in the PGPA Act.

6. A Council member may be removed from office by the Council itself, under section 15(1)(k) of the ANU Act, where the Council forms an opinion by resolution that a Council member has contravened his or her duties as an officer. Such a removal will be conducted in accordance with the procedures provided for in the ANU Act.

7. A Council Committee member, whether they are a member of the Council or not, may be removed from membership of a Committee by the Council, where the Council forms an opinion by ordinary resolution that the Council Committee member has contravened the duties of an official under the PGPA Act.

General conduct

8. In addition to the legislative obligations described, there is also an expectation that Council and Council Committee members will:

a. take an active interest in issues affecting the University and higher education;

b. attend meetings, come well prepared and play an active role in proceedings; and

c. relate constructively with each other and with the senior management of the University.

9. Council and Council Committee members are encouraged to bring to
meetings, objective independent judgement in relation to the matters under consideration, to ask incisive, probing questions and require accurate, honest answers.

10. Council and Council Committee members should regard Committees of Council and the Vice–Chancellor as their principle sources of information and advice concerning the University.

11. Notwithstanding, Council and Council Committee members may interact and discuss matters relating to the University with other members of the University Executive, as well as staff and students. Council and Council Committee members must ensure that such interactions are otherwise consistent with the obligations described in this policy. In seeking and receiving information from staff and students on matters that could be regarded as sensitive, confidential or contentious, Council and Council Committee members should be mindful of the context of how that information is provided and confer with the Vice–Chancellor or the Director, Corporate Governance and Risk Office, before acting further with that information.

12. The Council is a collective decision making body, and as such, individual members of the Council, other than the Vice–Chancellor, may not issue any form of directive to a member of staff or a student, unless they have been authorised to do so by a statute, rule or order; by a resolution of the Council or a Council Committee; or with the consent of the Vice–Chancellor.

13. The University has a Code of Conduct which applies to all staff members and to all those who enter into a particular relationship with the University for a specified time period. Council and Council Committee members are expected to adhere to the Code of Conduct.

14. Responsibilities under the Code of Conduct fall under the following categories:
   a. respect for the law and University governance;
   b. fair treatment of people;
   c. personal and professional behaviour; and
   d. exercising care and diligence in employment.

Privacy Act obligations

15. From time to time Council members, in the course of their duties, may encounter personal information related to staff and students of the
University. The *Privacy Act 1988* imposes obligations on the University (including Council and Council Committee members) in relation to the use of personal information contained in University records.

16. All members of Council and Council Committees are expected to adhere to the requirements of the University's Privacy Policy and any other relevant legal obligations.

**Independent legal advice and access to information**

17. Council and Council Committee members are entitled to any information they need, or require, from the University to exercise their functions and to fulfil their duties, and subject to the prior approval of the Chancellor (which is not to be unreasonably withheld), may seek independent legal advice at the University's expense on any issue submitted to Council or a Council Committee.

18. Council and Council Committee members should submit such requests for information to the Vice-Chancellor or the Director, Corporate Governance and Risk Office.