

# Corporate Governance Statement

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## 1 Purpose

This document is intended to assist current and future members of Council, and executive management and senior staff of the University in carrying out their respective roles. Furthermore, it is intended to inform staff and student members of the broader University community about governance processes at the University, while also serving a similar purpose for the external community, including stakeholders such as governments.

The document is informed by the Voluntary Code of Best Practice for the Governance of Australian Universities<sup>1</sup> which was developed by the Commonwealth. The Voluntary Code of Best Practice for the Governance of Australian Universities was designed to strengthen university governance and deal with: the membership, functions, responsibilities and operations of university governing bodies; reporting and accountability; and oversight and risk assessment associated with entities and commercial ventures of universities.

## 2 Statutory Framework

The governance of the University takes place within a specific statutory framework. At the highest level of that framework is the *Edith Cowan University Act 1984 (WA)* ('the Act'), as amended, which establishes the University as a body corporate, consisting of the Council, the members of staff and the enrolled students (s.5).

### Functions of the University

Section 7 of the Act sets out, in non-exhaustive terms, the functions of the University which include: providing courses of study to meet the needs of the community in Western Australia; encouraging and providing for tertiary education; supporting and pursuing scholarship and research; fostering the welfare and development of all enrolled students; promoting and encouraging collaboration and consultation with other institutions throughout the State; and providing such facilities that relate to its functions.

### Council: its authority, functions and duties, powers and responsibilities:

Section 8 of the Act provides that the Council is the *governing authority of the University*.

Section 16 specifies the functions and duties of Council, with s.16(1)(c) encapsulating the full scope of the Council's functions:

- (1) *Subject to this Act the Council shall –*
- (a) *perform any function or duty conferred or imposed upon the University under this Act;*
  - (b) *act in all matters concerning the University in such manner as appears to it best calculated to promote the objects and interests of the University; and*
  - (c) *control and manage the operation, affairs, concerns and property of the University.*

Council has, however, exercised its power of delegation to delegate to the Vice-Chancellor powers to manage the University – see section 5.3 of this Statement.

Section 17 relates to the powers of Council and provides in the preamble that:

*Subject to this Act and the Statutes the Council has power to do all things necessary or convenient to be done for or in connection with the operation, affairs, concerns and property of the University ....*

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<sup>1</sup> The Voluntary Code of Best Practice for the Governance of Australian Universities was developed by Universities Australia and the University Chancellors Council as a replacement for the National Governance Protocols.

Section 17 then specifies a number of specific matters relating to contracts, courses of study, use of facilities, provision of residential accommodation for staff and/ or enrolled students, and award degrees, diplomas and certificates.

Under the ECU Act, Council has responsibility for University lands (s.28), finance (s.36), the appointment, termination, terms and conditions of academic and other staff, including the Vice-Chancellor (ss.30 and 31), and to make Statutes, and By-laws and Rules under the Statutes (s.26).

### **3 Responsibilities of Council**

With reference to the Voluntary Code of Best Practice for the Governance of Australian Universities, Council has adopted the following responsibilities:

- (a) appointing the Vice-Chancellor as the chief executive officer of the University, and monitoring his/her performance;
- (b) approving the mission and strategic direction of the University, as well as the annual budget and business plan;
- (c) overseeing and reviewing the management of the University and its performance;
- (d) establishing policy and procedural principles, consistent with legal requirements and community expectations;
- (e) approving and monitoring systems of control and accountability, including general overview of any controlled entities. A controlled entity is one that satisfies the test of control in s.50AA of the Corporations Act;
- (f) overseeing and monitoring the assessment and management of risk across the University, including commercial undertakings;
- (g) overseeing and monitoring the academic activities of the University;
- (h) approving significant commercial activities of the University.

These are high order responsibilities and should be read in conjunction with the functions and duties of Council as specified in the ECU Act.

### **4 Manner of operating**

The Statutory Framework sets out in formal terms the authority and legislative context in which the Council operates. Council recognises, however, that to be effective its members must share a common understanding of the manner in which it operates.

#### **4.1 Conduct of Council meetings**

The Council Standing Orders 2015 (the Standing Orders) regulate the conduct of meetings of Council and certain designated committees of Council and are intended to result in:

- (a) better decision making by the Council and its committees;
- (b) the orderly and efficient conduct of meetings dealing with the University's business; and
- (c) greater understanding of the rules governing the conduct of meetings.

#### **4.2 Duties and responsibilities of Council members**

The University Council Code of Conduct is designed to:

- (a) ensure that members of Council are aware of the legal duties, liabilities and protections arising from their membership of the Council;
- (b) promote good practice among Council members by describing the general responsibilities they have to the University, the Council and fellow members and to the staff and students of ECU; and

- (c) describe the University's obligations to Council members, which will assist them to carry out their duties and responsibilities to the best of their abilities.

The legal duties of members of Council are set out in Schedule 1 of the ECU Act. Under the ECU Act each member:

- (a) must at all times act honestly in the performance of the functions of a member, whether within or outside the State;
- (b) must at all times exercise the degree of care and diligence in the performance of the functions of a member, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Council's circumstances;
- (c) must at all times act in the best interests of the University and give precedence to the interests of the University over the interests of any person appointing or electing a member;
- (d) must not, whether within or outside the State, make improper use of information acquired by virtue of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University;
- (e) must not, whether within or outside the State, make improper use of the position of member to gain, directly or indirectly, an advantage for any person or to cause detriment to the University.

Furthermore, under the ECU Act a member who has a material personal interest in a matter being considered or about to be considered by Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature and extent of the interest at a meeting of the Council.

Under the Code of Conduct, in addition to these legal duties, the responsibilities of members in respect of the general operation of Council include:

- (a) attend, unless unavoidably absent, and be prepared to constructively contribute to all Council meetings and meetings of committees on which they serve;
- (b) draw relevant matters to the attention of the Chancellor for the information of or possible action by the Council or the Vice-Chancellor;
- (c) inform the Chancellor if at any time they consider that the information provided is insufficient to permit the Council to discharge its responsibilities;
- (d) inform the Chancellor of any concerns that they might hold about any Council decisions or actions that appear contrary to its public duties, and to do so as soon as these concerns arise;
- (e) inform the Chancellor of the possible material interests of other members of the Council in matters before or about to come before the Council, if those interests are not declared by the member or members concerned; and
- (f) accept collective responsibility for decisions of the Council and support University management in the implementation of these decisions.

To assist Council members to carry out their duties and responsibilities to the best of their abilities, under the Code of Conduct, the obligations of the University include:

- (a) provide Council members with such comprehensive, accurate and timely information as is required for members to act with the degree of care, skill and diligence required of them by the ECU Act, other relevant Statutes and the general law;
- (b) provide such legal and financial advice as may be necessary to enable Council members to discharge their duties; and
- (c) provide, subject to any contrary legal restrictions, Council members with access to any University documentation required to perform their duties.

#### **4.3 Maintaining the distinction between governance and executive management**

In order for Council and executive management to perform their respective roles effectively, Council recognises that a distinction needs to be maintained between governance and executive management.

In recognising the importance of this distinction, Council considers that the advice given in the *Higher Education Management Review Report* (Hoare 1995:42) is relevant and pertinent:

*The governing body should have strategic planning oversight for the university. It should set the broad strategic framework within which the Vice-Chancellor and senior university administrators can operate. It is important that the governing body does not get caught up in a 'local response syndrome' but should confine itself to strategic and policy issues.*

Clarity as to which matters require Council approval is an important foundation for good governance and helps define decision making boundaries. In 2006 Council approved a schedule of items which it determined that it would not delegate. The document *Matters to be Reserved to Council* outlines these items. The Matters to be Reserved to Council is amended by Council from time to time. The University also has an appropriate system of delegations in place to ensure the effective discharge of other responsibilities.

#### **4.4 Evaluating Council Performance**

Council is committed to both collective and individual performance appraisal.

##### **Council Performance and Effectiveness**

Council undertakes a survey regularly (at least every two years) seeking feedback from members on:

- The extent to which Council as a whole is meeting its corporate governance responsibilities;
- The functionality of meetings of Council, including the performance of the Chair and the utility of reports and other input from Council committees; and
- Logistics and practical support for Council and individual members.

Council commissions a more extensive review of the operations of Council at least every three-to-five years. The precise timing, focus and methodology for such in-depth reviews will be approved by Council, on advice from the Governance and Nominations Committee.

##### **Individual Council Member Performance and Effectiveness**

The survey includes a section on Self Reflection designed to assist individual members to reflect on their own performance and any resources or training needs that would assist them in their role.

#### **4.5 Induction of Members**

Council is committed to its members being well informed about:

- (a) their role and responsibilities;
- (b) the role of Council as the governing body of the University; and
- (c) the strategic direction and key features of the University.

As soon as practicable after appointment, each Council member shall receive:

- (a) an invitation to meet with the Chancellor, Deputy Chancellor and Vice-Chancellor;
- (b) appropriate materials including those listed below:
  - (i) Edith Cowan University Act 1984
  - (ii) Corporate Governance Statement
  - (iii) Council Standing Orders
  - (iv) University Council Code of Conduct
  - (v) Council Membership list and profiles
  - (vi) University Organisational Chart and profiles of Executive Staff
  - (vii) Key committees and the University's Meeting Schedule
  - (viii) ECU Budget Principles
  - (ix) ECU Strategic Plan
  - (x) Annual Report
  - (xi) Policies approved by Council

- (c) ECU promotional material

#### **4.6 Professional Development**

The University aims to provide a structured but flexible professional development program for members of the Council.

Accordingly, Council has adopted a professional development program that consists of the following components:

- (a) series of discussions on agreed topics of strategic interest;
- (b) workshops on agreed themes; and
- (c) individual professional development activities based on need.

#### **4.7 Council Committees**

Council establishes committees to assist it to meet its responsibilities. It considers that committees provide a mechanism by which matters may be explored more fully than would be possible at Council, and then put to Council by way of advice or recommendations.

In establishing committees, Council is mindful that the committees must add value to Council deliberations and operate at a strategic level. Council therefore reviews its committee structure on a regular basis and expects each committee to assess and report to Council each year on the committee's performance.

In addition to its standing committees, Council from time to time establishes specific purpose taskforces to address particular issues. These have a fixed life, the duration of which depends on the assigned task.

The Standing Committees of Council are:

- (a) Council Executive;
- (b) Resources Committee;
- (c) Quality, Audit and Risk Committee;
- (d) Governance and Nominations Committee;
- (e) Remuneration Committee;
- (f) Legislative Committee; and
- (g) Honorary Awards Committee.

#### **4.8 Academic Board**

The Academic Board has a special role within the governance framework of the University. This is indicated by the fact that, while Council can determine its committee structure, the Act under which the University operates specifies that there "*shall be an Academic Board of the University*" (s18(1)), the constitution of which may be prescribed by Statute.

The Act specifies that the functions of the Academic Board shall include:

*the discussion and submission to the Council of opinions and recommendations on academic policy, academic development, the admission of students, instruction, studies and examinations, research, the admission to degrees, the discipline of the University and any other matters which in the opinion of the Academic Board are relevant to the objects of this Act (s.18(3)(a)).*

The Council views the Academic Board as a forum through which senior academics within the University can provide advice to Council on the University's core business of teaching, learning and

research. It also looks to the Academic Board to ensure that appropriate quality assurance processes are in place relating to academic programs and services, and that academic standards are maintained.

#### **4.9 Other Boards Reporting to Council**

There are three Boards that support Council: two Advisory Boards established under the ECU Act, and one Board established by Council under Statute. The Boards are:

- (a) the ECU South West Campus (Bunbury) Advisory Board, established under Section 20(1) of the ECU Act.

The Act specifies that the functions of the ECU South West Campus (Bunbury) Advisory Board shall include to provide the Council with strategic advice in relation to the ECU South West Campus (Bunbury) and education matters relevant to the south-west region of the State (s.20(3)(a)).

- (b) the Advisory Board of the Western Australian Academy of Performing Arts (WAAPA Advisory Board), established under Section 25(1) of the ECU Act.

The Act specifies that the functions of the WAAPA Advisory Board shall include to provide the Council with strategic advice in relation to the Academy (s.25(3)(a)).

- (c) The Edith Cowan University Foundation Board, established under Section 3 of University Statute 17.

Rule 3 of the Foundation Rules, which are made under Statute 17, specifies that functions of the Foundation Board shall include:

- (1) *to advise Council and the Vice-Chancellor on opportunities and strategies for fundraising activities which are aligned to the University's purpose, vision, values and strategic priorities;*
  - (2) *to make recommendations to Council on the University's Fundraising Plan;*
  - (3) *to facilitate, in consultation with the Vice-Chancellor, actions to raise funds for the Foundation;*
  - (4) *to provide stewardship for the Funds by receiving financial and audit reports;*
- [...]

## **5 Roles of designated officers of the University**

### **5.1 Role of the Chancellor**

The Act (section 12) requires the Council to elect a Chancellor and requires the Chancellor to preside at all meetings of the Council. Other than this, neither the Act nor the University Statutes further define the role of the Chancellor.

The role of the Chancellor at the University is multi-faceted and may evolve as circumstances change. Council recognises the key elements of the role as encompassing:

- (a) *Overall Role:*

The Chancellor is elected by Council to facilitate its work and collegiality by effective and ethical means, providing a focal point to ensure the high standing of the University in the wider community.

- (b) *In relation to University Council:*

- (i) to provide leadership to enhance the effectiveness of Council and ensure that Council business is effectively managed. As part of this role, the Chancellor presides over Council meetings and oversees the development of Council agendas;
  - (ii) to promote and work with other Council members to enhance the visibility and accessibility of the Council in the University community (that is to students, staff and the alumni); and
  - (iii) with the Vice-Chancellor ensure that the Council, Council committees and senior executives work as a cohesive team characterised by integrity, confidentiality, transparency of process, mutual trust and respect, with a paramount fiduciary duty of loyalty to work in the best interests of the University.
- (c) *In relation to the Vice-Chancellor:*
- To work cooperatively with the Vice-Chancellor, providing support and counsel, and encouraging free, trusting and frank communication on all issues concerning the well-being of the University.
- (d) *In relation to the external community:*
- (i) to assist in representing the University in the political, cultural and business life of the community at large, including, in consultation with the Vice-Chancellor providing a high level bridge to the wider community, promoting the aims of the University and responding to the interests and concerns of society in accordance with the Strategic Plan of the University and co-operatively with the implementation of those plans by the University management; and
  - (ii) to, as appropriate, represent the University and its Council in relation to other universities in Western Australia, Australia regionally, in the Commonwealth and internationally.
- (e) *In relation to the general University community:*
- (i) to work collaboratively with Council, the Vice-Chancellor and the University community to promote the aims, ethos, independence, morale and spirit of the University and encourage high standards;
  - (ii) to preside where appropriate at important University occasions; and
  - (iii) to represent Council at various University functions that may be held from time to time as appropriate.

The Chancellor is elected by Council Members and is expected to hold office subject to retaining the confidence of Council.

## **5.2 Role of the Deputy Chancellor**

The Act provides that there shall be a Deputy Chancellor and that the Deputy Chancellor presides at meeting of Council in the absence of the Chancellor (Act s.12).

The role of the Deputy Chancellor is to act for the Chancellor in the absence of that Officer and on other occasions support the Chancellor in all the Chancellor's roles.

The Deputy Chancellor is elected by Council Members and is expected to hold office subject to retaining the confidence of Council.

## **5.3 Role of the Vice-Chancellor**

The Act provides that Council shall appoint a person to be the Vice-Chancellor of the University (s.30(1)). As well as being the chief executive officer of the University, the Vice-Chancellor is also its chief academic officer.

University Statute No 6 provides that the person appointed as the chief executive officer is the Vice-Chancellor of the University (s.2). This Statute further provides that, the functions of the Vice-Chancellor are to:

- (a) provide strategic leadership and manage the academic, administrative, financial and other affairs of the University;
- (b) promote the interests and further the development of the University, and represent the University;
- (c) ensure that advice and information is given to the Council to enable the Council to make informed decisions in carrying out its functions;
- (d) liaise with the Chancellor on the affairs of the University and the performance of its functions;
- (e) implement policies and decisions of the Council;
- (f) report to the Council from time to time on the affairs of the University;
- (g) administer University Statutes, by-laws and rules and approve University policies, other than policies reserved for approval by the Council;
- (h) exercise supervision over the activities and welfare of the enrolled students of the University;
- (i) administer the recruitment, appointment, management and supervision of the University's officers and employees; and
- (j) perform any other function conferred by the Act, Statutes, by-laws and rules of the University or any other written law as a function to be performed by the Vice-Chancellor.

In addition, the role of Vice-Chancellor encompasses:

*(a) In relation to the University:*

- ensuring that appropriate quality assurance processes are in place for all major functions of the University, including systems to monitor the performance of the University against agreed strategic directions and operational plans; and
- providing leadership to the senior leadership team of the University.

*(b) In relation to the University Council:*

- ensuring that Council is thoroughly informed of administrative or academic implications, fiduciary, and other risks or legal constraints which affect the operations of the University, policy recommendations and strategic direction; and
- working with the Chancellor and Deputy Chancellor to ensure that Council, Council committees and senior leadership team work together in the best interests of the University and as a cohesive team characterised by integrity, confidentiality, transparency of process and mutual trust and respect.

*(c) In relation to the external community:*

- ensuring that the University is represented externally in the political, cultural and business life of the community at large and amongst its various constituencies in a manner which promotes its best interests; and
- acting as the key representative of the University with the wider community, sharing that responsibility with the Chancellor and, as appropriate, with other Council members and nominated officers.

## **6 Support for Council**

The Council Secretary and Manager, Risk and Assurance and Chief Risk and Assurance Officer are officers of the University who provide specific support and advice to Council and the Chancellor, but who also have other line management responsibilities. To be effective in this support and advice role, an appropriate degree of independence is required.

### **Council Secretary**

The Council Secretary is required to provide a support service to the Council and Chancellor and in that capacity preserves independence from the management of the University despite the need to participate in other operational activities. To the extent that the work of the Council Secretary involves other University staff, this independence extends to those staff.

The Council Secretary has the following responsibilities:

- to assist the Chancellor in the discharge of his or her duties as Chair of the Council and Committees of the Council chaired by the Chancellor;
- to work with the Chancellor, Council and the Vice-Chancellor to establish and implement good governance practices;
- to keep the Chancellor, Council and Vice-Chancellor fully informed on all issues relating to the Council;
- to manage all aspects of the meeting arrangements for Council and Council Committees, including the coordination of the production and distribution of papers for the Council and Council Committees and Boards, ensuring the accuracy of draft minutes of those bodies, and prompt dissemination of the confirmed minutes to officers with responsibility for implementation of decisions;
- to coordinate the Induction Program for new Council members;
- to develop professional development programs for Council members, and coordinate arrangements for their participation;
- to maintain the Council *Register of Interests*;
- to be the main point of contact for Council Members, including for Members wishing to obtain information direct from officers of the University;
- to be the formal contact for Council-related communication with the State Minister for Education and officers of the Department of Education Services, in respect of Council resolutions which require notification to or action by the Minister or the Department;
- to manage the Council-related budget.

### **The Manager, Risk and Assurance and Chief Risk and Assurance Officer**

The Manager, Risk and Assurance and Chief Risk and Assurance Officer, and the Manager's staff also operate in an independent manner in the performance of audits and risk assessments, and are required to assure Council that the work of the University is being conducted in an appropriate manner and consistent with its objectives.

Job descriptions for these positions and line management arrangements are so organised as to recognise the above requisite degree of independence and responsibility directly to Council.

Likewise, the Council will ensure that the budget provides appropriate funding for these support functions.

## **7 Review**

This Statement is a dynamic document and will be subject to periodic review.

**Supporting Documents:**

- Council Standing Orders
- Council Code of Conduct

**References:**

Hoare D (Chair of Committee of Inquiry), 1995, Higher Education Management Review: Report of the Committee of Inquiry, AGPS, Canberra.