

DUTIES AND RESPONSIBILITIES OF COUNCIL AND COMMITTEE MEMBERS

Extracts from the following documents set out the duties and responsibilities of Council members.

1. James Cook University Act 1997

Section 26A of the JCU Act sets out the functions and obligations of Council members:

26A Member's function, and obligations about function

- (1) A member has the function of ensuring the council performs its functions and exercises its powers appropriately, effectively and efficiently.
- (2) In performing the function, a member—
 - a) must act honestly and in the best interests of the university; and
 - b) must exercise reasonable skill, care and diligence; and
 - c) must disclose to the council any conflict that may arise between the member's personal interests and the interests of the university; and
 - d) must not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

2. Induction Presentation to JCU Council

The key duties of Council members are as follows:

- ▶ **duty to act honestly in the best interests of JCU** – Council members owe a common law and statutory duty to act honestly and in the best interests of the University (section 26A(2)(a) of the JCU Act). Because Council members are in a position of trust and oversee the expenditure of large sums of public monies, their actions and standards of behaviour are required to be exemplary;
- ▶ **duty to exercise reasonable skill, care and diligence** – this duty arises under the common law and under the JCU Act (section 26A(2)(b)). Council Members should take reasonable steps to inform themselves about the affairs of the University and the circumstances and environment within which it operates and obtain sufficient information and advice, and then exercise an active discretion at all times to make conscientious and informed decisions;
- ▶ **duty not to make improper use of their position** – this is both a common law and statutory duty that arises for Council members under section 26A(2)(d) of the JCU Act, which states that a Council member must not make improper use of their position, or of any information acquired as a member, to gain directly or indirectly an advantage for the member or another person. The pursuit of particular, individual vested interests is not consistent with this duty;
- ▶ **duty of confidentiality** – a Council member has a common law duty not to disclose or misuse any confidential information and must not:
 - » use or divulge information which is not yet public information, of which they are aware in their capacity as a Council member, in circumstances where there is an obligation of confidentiality; or
 - » make improper use of information acquired because of their role as a Council member to benefit any person or cause detriment to the University; or
 - » compile records or information of the University for the Council member's own private use. This duty can be particularly relevant and contentious for Council members who are members of more than one Board or organisation. Such Council members may have to clearly define which "hat" they are wearing to inform what information is received; and
 - » disclose commercial-in-confidence information, which is a category of confidential information that, if disclosed, may result in damage to the University's commercial interests, intellectual property or trade secrets or that of another party in negotiations with the University or lend advantage to others. Such information must not be disclosed without authorisation;
- ▶ **duty to avoid conflicts of commitment** – where a Council member is a member of more than one Board or organisation they may owe a fiduciary duty to each legal entity. If a conflict arises between the loyalty owed to one entity and the loyalty owed to a second entity, a conflict of commitment will arise. This conflict of commitment must be managed to avoid the improper pursuit or preference of the interests of one entity at the expense of the other. As a member of one Board or organisation, a Board member must not exercise his or her powers for the benefit or gain of a second entity. Where this may be at risk, the member must clearly disclose the second entity's interest and obtain the informed consent from the Board of the first entity or, if consent is not forthcoming, not take part in deliberations, decision-making or voting; and
- ▶ **duty to avoid and disclose conflicts of interest** – this is both a common law and statutory duty under the JCU Act (section 26A(2)(c)). The key principle is that Council members must disclose any conflict that arises between a Council member's personal interests and the interests of the University. However, there is a clear higher expectation in Queensland that the obligation in the Act also requires the disclosure not only of all "actual" but also of all "perceived" and "potential" conflicts of interest of any type, not confined to material interests.

3. [Conflict of Interests Policy – University Council and its Committees](#)

Council members have a duty to avoid and disclose conflicts of interests. The University's arrangements in this regard are set out in the [Conflict of Interests Policy – University Council and its Committees](#) and the [Conflicts of Interest Procedure – University Council and its Committees](#).

A Conflict of Interests occurs where Council or Committee members with a particular interest could be influenced, or might appear to be influenced, in the performance of their duties. Council and Committee members are required to disclose and obtain evaluation of any conflict of interests.

The Policy defines a Conflict of Interests as:

A conflict of interests involves a conflict between the public duty and personal, private or other interests of a public official, in which the public official has personal, private or other interests which could improperly influence the performance of their official duties and responsibilities.

It arises when a Council or Committee member's personal, private or other interests, or those of a person with whom they have a close personal relationship, conflict with their primary obligation to act in the interests of the University. A conflict of interests may be actual, perceived or potential. It can be pecuniary (involving financial gain or loss), or non-pecuniary (based on enmity or amity) and can arise from avoiding personal losses as well as gaining personal advantage, financial or otherwise, material or otherwise. Conflict of interests includes conflict of commitment.

Please use the links above to access the full policy and procedure.

4. [Voluntary Code of Best Practice for the Governance of Australian Public Universities](#)

The Voluntary Code also reflects the requirements as set out under section 26A of the JCU Act, is similar to the requirements set out in the Corporations Act and reiterates the duties of members.

Duties of Members

Other than the Chancellor, the Vice Chancellor and the Presiding Member of the Academic Board, each member should be appointed or elected *ad personam*.

In practice this means that members of Council are in attendance in a personal capacity. The members appointed by the Governor-in-Council do not represent the State Government, the elected staff members do not represent the University's staff and the elected student does not represent the students of JCU. Members, whether they were appointed or elected to Council, are not to act as delegates speaking for and reporting back to a particular constituency.

All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the University.

Duties of members include the requirements to:

- ▶ act always in the best interests of the university as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- ▶ act in good faith, honestly and for a proper purpose;
- ▶ exercise appropriate care and diligence;
- ▶ not improperly use their position to gain an advantage for themselves or someone else; and
- ▶ disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

Please use the link above to access the full code.

5. [Welcome Aboard: A guide for members of Queensland Government Boards, committees and statutory authorities \(Queensland Government\)](#)

This guide includes University Councils under section 2.3 and sets out what the State Government considers to be the obligations of members of boards, committees, statutory authorities and universities.

3.3 Board members

Members of Government Boards are required to familiarise themselves with the work of the Government Board, including their legal and statutory obligations. They must take reasonable steps to ensure that they are knowledgeable about the business of the Government Board and can make informed decisions. Individual Government Board members are responsible collectively for, and should support and adhere to, all Government Board decisions. Members however can exercise a dissenting view on particular decisions which should be appropriately minuted.

In practice this means irrespective of whether a member agreed with or voted against a particular matter, if the majority of Council members agree to a decision or approve a particular action, all of the Council is subsequently duty bound to support and adhere to the majority decision on a collective basis. When a

member dissents and they make it known at the time that they dissent it is always recorded in the minutes but does not mean that the member can disavow the decision.

7.2 General law

Fiduciary duties are obligations of trust and confidence owed by a fiduciary to another person. The law usually recognises certain relationships, including those of director and company and employer and employee, to be fiduciary relationships. The courts may also find other relationships to be fiduciary in nature, particularly where one party stands in a position of trust and confidence in relation to the other, and is bound to place the interests of the other before his or her own personal interests. As Government Board members will often be in a similar position to a company director, they may be subject to fiduciary obligations.

Company directors, and other Government Board members acting in a fiduciary capacity, have an obligation to:

- ▶ **act honestly and to exercise powers for their proper purposes** – members must act openly and honestly at all times in the performance of their duties. They must ensure that they do not use information acquired by virtue of their position to gain directly or indirectly an advantage for themselves or any other person.
- ▶ **avoid conflicts of interests** – members should avoid actual or potential conflicts between their duties to the Government Board and their personal interests or their duties to others. Members should also be aware of possible perceived conflicts of interest and seek to avoid these.
- ▶ **act in good faith** - because of their position of trust, member's actions and standards of behaviour are required to be exemplary. Members should always act bona fide in the interests of the Government Board and never in their own interest or to pursue personal agendas. Members are expected to act in the best interests of the Government Board, the state and the community.
- ▶ **exercise diligence, care and skill** - members have to ensure that they exercise diligence, care and skill in the performance of their duties. They must also take reasonable steps to inform themselves about the functions of the Government Board, its business and activities and the circumstances in which it operates. A member must give close attention to Government Board affairs. A member should obtain sufficient information and advice and exercise an active discretion at all times to enable him/her to make conscientious and informed decisions. A member should also maintain confidentiality of Government Board discussions and of information made available to them, such as Government Board papers.

There is a recurring theme with a range of documents setting out in similar terms what members' obligations are under the general law, the Voluntary Code and the JCU Act.

Please use the link above to access the full guide.

6. [Code of Conduct – University Council](#)

Relevant extracts from the [Code of Conduct - University Council](#) include personal/behavioural attributes that assist in the efficient, effective and smooth running of Council meetings. The whole code has not been reproduced.

The Code of Conduct – University Council states that in our roles as members, and in dealing with other members, University staff, University students and the community, we will be guided by the University's Statement of Strategic Intent, the University Plan, the University's policies and other documents contained within the Policy Library, the *James Cook University Act 1997 (Qld)* and the *Public Sector Ethics Act 1994 (Qld)* (hereafter referred to as the Act).

The Act outlines four fundamental ethical principles which are fundamental to good public administration:

- ▶ integrity and impartiality,
- ▶ promoting the public good,
- ▶ commitment to the system of government, and
- ▶ accountability and transparency.

These ethical principles form the basis of the obligations outlined in the Code of Conduct. In giving expression to the Act, the University has developed the Code of Conduct around four principles which will act to guide the actions of members. These principles are:

Principle 1: Seek excellence as part of a learning community

Principle 2: Act with integrity

Principle 3: Behave with respect for others

Principle 4: Embrace sustainability and social responsibility

Please use the link above to access the full code.