

## SENATE CODE

This Code was adopted by Senate for the information and guidance of members of Senate and Senate committees. Members are:

- responsible for familiarising themselves with this Code;
- required to acknowledge in writing, on commencement as a member of Senate, that they agree to abide by the duties and obligations as set out in this Code;
- expected to continuously adhere to the Code; and
- encouraged to seek guidance from the relevant Chair or appropriate University Officers if they have any queries concerning their duties.

### 1. DEFINITIONS

In this Code:

“UWA Act” means *The University of Western Australia Act 1911*.

“Senate” includes the Senate and committees appointed by the Senate.

“Member” means an elected, ex-officio, appointed, or co-opted member of Senate or a committee of the Senate.

“University Community” means members of Senate, members of Convocation, Staff, Students, and holders of honorary, emeritus, visiting, adjunct or clinical appointments.

### 2. RATIONALE

The responsibilities of the Senate, as the governing body of a large public institution, are heavy. The actions of the Senate or of individual senators have the potential either to promote the interests of the University or to damage its reputation and standing. It is therefore critical to the continued well-being of the University that members understand and fully accept the responsibilities of Senate and of membership. This Code is intended:

- to ensure that members are aware of, and accept, the legal and other responsibilities associated with their membership of Senate; and
- to promote good practice and appropriate behaviours among members, in the interests of the University and the University Community.

### 3. MEMBERS' LEGAL RESPONSIBILITIES, ACCOUNTABILITIES AND LIABILITIES

#### 3.1. Relevant legislation

The sources of member’s legal duties, potential liabilities and protections include:

- the [UWA Act](#) (which mirrors the *Statutory Corporations (Liability of Directors) Act 1996* (WA) and the *Corporations Act 2001* (Cth)) and reflects the requirements of the *Voluntary Code of Best Practice for the Governance of Australian Public Universities*);
- other State and Federal Acts;<sup>1</sup>
- the general law, given the fiduciary nature of the relationship between Senate members and the University, including the duty to act in good faith and the duty to act with reasonable care, skill and diligence; and
- decisions of the Senate.

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<sup>1</sup> For example, privacy, freedom of information, and corruption and crime legislation. See also the list of legislation at: <https://www.hr.uwa.edu.au/policies/policies/conduct/code/acts>

The specific duties of Senate members are set out in the UWA Act (Schedule 1), together with provisions relating to: safeguards, exemptions and protections; sanctions for breaches; and automatic vacation of office for a disqualified member. They reflect the requirements of the *Voluntary Code of Best Practice for the Governance of Australian Public Universities* and, like the *Statutory Corporations (Liability of Directors) Act 1996* (WA), mirror the provisions of the *Corporations Act 2001* (Commonwealth).

Consistent with the relevant provisions of the sources identified above in section 3.1,

**Members:**

- (a) must at all times act honestly in the performance of the functions of a member of the Senate, whether within or outside the State [clause 1(1)(a) of Schedule 1 of the UWA Act];
- (b) must at all times exercise the degree of care and diligence in the performance of the functions of a member of the Senate, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the Senate's circumstances [clause 1(1)(b) of Schedule 1 of the UWA Act];
- (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 of the Senate [clause 1(1)(c) of Schedule 1 of the UWA Act];
- (d) must not, whether within or outside the State, make improper use of information acquired by virtue of the position of member of the Senate to gain, directly or indirectly, an advantage for any person or to cause detriment to the University [clause 1(1)(d) of Schedule 1 of the UWA Act];
- (e) must not, whether within or outside the State, make improper use of the position of member of the Senate to gain, directly or indirectly, an advantage for any person or to cause detriment to the University [clause 1(1)(e) of Schedule 1 of the UWA Act];
- (f) where they have a material personal interest in a matter being considered or about to be considered by the Senate 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 Senate [clause 2(1) of Schedule 1 of the UWA Act].

This requires individual members of Senate to –

- disclose the nature and extent of any material personal interest<sup>2</sup> at a meeting of the Senate; and
- absent themselves from a meeting while the matter is being considered and not vote on the matter, whether at a meeting or otherwise, except if permitted to consider or vote on the matter under the provisions of either clause 4 or clause 6 of Schedule 1 of the UWA Act.

In carrying out the duties referred to above, members are also required to abide by the responsibilities in sections 4-7 of this Code and relevant University policies (as amended from time to time).

### **3.2. Accountability and potential liability**

While the day-to-day operations of the University are the responsibility of the Vice-Chancellor and other managers, the Senate is accountable for satisfying itself that the University has appropriate structures, policies and processes in place for the effective management of its activities, such that statutory and legal requirements are met and that there is a likelihood of efficient, effective and defensible outcomes. This it does by ensuring that it is properly informed; satisfying itself that the University is complying with statutory and legal requirements; analysing financial statements and management reports with due care and seeking explanations where necessary; and satisfying itself on audit reports.

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<sup>2</sup> A material personal interest arises where there is a realistic expectation that, directly or indirectly, a member of Senate or an associated/related person stands to gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss need not be financial.

Senate members may be held accountable for perceived or actual mismanagement in a range of ways. For example:

- Senate would be accountable for any decision it made which was contrary to the law or clearly negligent.
- Senate could be held accountable if it chose to make decisions which it has no authority to make, particularly if it could be shown that such decisions were taken with the intent of causing harm.
- Senate could be held accountable for mismanagement where this could be shown to be the outcome of failure to ensure the existence of adequate policies or procedures within the University.
- Senate could be held accountable for financial mismanagement where this could be shown to be the outcome of negligence in monitoring financial reports and compliance with audit requirements.

Members should therefore be aware that their office potentially exposes them to various risks. They may become the targets, either as part of the Senate body or as individuals, of public or media attention over particular issues. They may be held responsible by the public and the media for the effect of unpopular decisions. Similarly, if they make decisions which are, or are perceived to be, poor or negligent, exposure of those decisions through the media may have an adverse impact on their personal reputations. In extreme cases they may be legally accountable for the effects of mismanagement within the University, where this can be shown to be the outcome of failure to ensure the existence of proper management procedures.

The Chancellor, or Senate as a body, or individual members, or groups of members could potentially be sued for negligence in certain circumstances. In all cases the courts may look more sympathetically on members who could be shown to have acted honestly and in good faith and to have fulfilled their obligations conscientiously.

### **3.3. Protection from liability**

Members of the Senate and its committees enter into a Deed of Access, Insurance and Indemnity and are covered by the Directors' and Officers' Liability Insurance held by the University.

The Directors' and Officers' Liability Insurance and the indemnity under the Deed do not apply to any act prohibited by law<sup>3</sup> or liability of the member arising out of conduct involving a lack of good faith. The indemnity continues despite the person ceasing to be a Member.

Additionally, section 16E(a) of the UWA Act grants a Senate member a degree of statutory protection from liability in civil proceedings. The statutory protections only apply to Senate members and do not apply to others such as committee members who are not also Senate Members. Relief may also be available under the *Statutory Corporations (Liability of Directors) Act 1996 (WA)*.

## **4. GENERAL RESPONSIBILITIES**

### **4.1. Understanding the role of the Senate**

#### ***Members will:***

- take advantage of the opportunities provided for induction and professional development;
- develop and maintain a clear understanding of the role and purpose of the Senate within the context of the changing nature of the University activities;
- familiarise themselves with the contents of the *Senate Charter*;

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<sup>3</sup> For example, fines that may be imposed on a member ('officer') under the *Work Health and Safety Act 2020 (WA)*. Under that Act, an insurance policy is of no effect to the extent that it purports to indemnify a person against their liability to pay a fine under the Act (s. 272A). Elements of an insurance policy that do not relate to insurance or indemnification against fines will continue to apply. The prohibition on insurance does not extend to court costs.

- develop an understanding of the political, social and economic environment in which the Senate operates;
- stay informed about all relevant activities affecting the Senate's business; and
- develop and maintain a clear understanding of the role of any Senate committee on which they serve.

#### **4.2. Being an active member**

***Members will:***

- attend all committee meetings or, where attendance is not possible, submit an apology;
- obtain a leave of absence if absence will extend for three or more consecutive meetings;
- familiarise themselves with the contents of key University documents provided to them;
- seek clarification and take advice in respect of matters outside the member's expertise;
- prepare for meetings and seminars/ retreats by reading and considering all papers circulated with the agenda;
- make new points succinctly without reiterating at length points already made;
- participate actively and work co-operatively with fellow members, University staff and stakeholders to achieve agreed goals; and
- when requested by the Chancellor or Vice-Chancellor represent the University and the Senate in external and internal forums.

#### **4.3. Raising concerns**

***Members will:***

- express concerns to the Chancellor as Chair of Senate about decisions or actions which appear contrary to the Senate's public duty, and do so as soon as those concerns arise;
- as required under the *Corruption, Crime and Misconduct Act 2003*, report to the Commission any information about actual or potentially corrupt or illegal activities preferably through the Chancellor or the Vice-Chancellor;
- draw relevant matters to the attention of the Chancellor for possible consideration, information or action by Senate or a University Officer; and
- approach the Chancellor if at any time they believe that the information provided to Senate is insufficient to enable it to fulfil its responsibilities effectively.

#### **4.4. Professional conduct**

***Members will:***

- familiarise themselves with and abide by the *Senate Charter*; the University's *Code of Ethics and Code of Conduct* and *Code for the Protection of Freedom of Speech and Academic Freedom*;
- treat each other, and University staff and students with professionalism, courtesy and respect;
- not improperly influence other Senate members;
- not allow sectional or factional interests to deflect Senate's focus on the University's general welfare;
- accept collective responsibility for decisions of the Senate and support University management in the implementation of these decisions;
- recognise that only the Chancellor or the Chancellor's nominee may speak publicly on behalf of the Senate; and

- not act as spokesperson for the University or represent the University in any form unless specifically requested by the Chancellor or Vice-Chancellor to do so.

#### **4.5. Security of Information**

***Members will:***

- ensure that appropriate care is taken to ensure the security of all Senate and other University documents, whether in paper or electronic form;
- avoid discussing confidential Senate or University business in public places where there is a likelihood of being overheard;
- recognise that confidential information received by them in the course of their duties as Senators remains the property of the University and ensure that it is not disclosed, or allow it to be disclosed, unless that disclosure has been authorised by the University, or is required by law;
- ensure they take appropriate care to ensure the security of any notes taken at Senate (which are University documents) for their personal use; and not to use these in future correspondence outside the Senate meeting; and dispose of duplicate copies of records no longer required, in accordance with archive procedures.

### **5. RECORD KEEPING AND USE OF INFORMATION**

#### **5.1. Documentation of decisions**

All decisions affecting the policy, practice and welfare of a public body or public officers must be transparent. Decisions and processes should be documented. Documentation protects all parties involved in a decision, both collectively and individually.

***The Senate and Members will:***

- ensure that minutes of all official meetings are prepared and retained; and
- ensure adequate procedures are observed for documenting all decisions, events and transactions involving the Senate.

#### **5.2. Use of confidential information**

Sometimes highly sensitive matters are discussed by the Senate. These may be discussed with only Senate members present and in strict confidence. All decisions should be documented, and appropriate minutes prepared, while according certain records an extra level of security.

The Senate will ensure that confidential records are subject to appropriate access procedures.

***The Senate and Members will:***

- respect confidential information and observe any restrictions agreed by the Senate (subject to *Freedom of Information Act 1982* requirements);
- maintain confidentiality and not divulge information deemed confidential or sensitive;
- ensure that information obtained in the course of Senate duties is not misused for direct or indirect gain or advantage, or to do harm to other people, the Senate or the University; and
- respect the privacy of individuals.

### **6. CONFLICTS OF INTEREST**

#### **6.1. Gifts and gratuities**

Members should not accept gifts or benefits likely to place them under an actual or perceived financial or moral obligation to other organisations or individuals.

**Members will not**, in their capacity as members:

- seek or accept in connection with their official duties any fee, favour, reward, gratuity or remuneration of any kind;
- use their public position for personal profit, gain or advantage; and
- accept a gift if it could be seen by the public, knowing the full facts, as intended or likely to cause a member to act in a particular way or deviate from public duty.

**Members will** comply with relevant University policies regarding gifts bequest and hospitality.

## 6.2. Employment and Private interests

The employment or private interests of a senator or members of their immediate family<sup>4</sup> may have the potential to create an ongoing conflict of interest or the perception of an ongoing conflict of interest for the senator in his/her responsibilities as a senator. These interests should be declared both via the Register of Interests which members complete annually and under the “Declaration of Interests” item at the meeting/s concerned

Alternatively, there may be instances in which these interests conflict with, or may be perceived to conflict with, a member’s responsibilities in relation to an isolated, unforeseeable activity of the Senate or a Senate committee. Such interests should be declared at the meeting/s concerned under the “Declaration of Interests” item.

Members are expected to place the public interest above employment or private interests and not use their position for employment or private gain or advantage.<sup>5</sup>

Conflicts between employment or private interests and public duties can arise when:

- a senator’s employer or private business or those of a member of his/her immediate family has a commercial relationship with, or is in conflict with the University;
- a member stands to make a financial gain from, or to be otherwise advantaged by a Senate decision;
- a member of the senator’s immediate family stands to make financial gain from or to be otherwise advantaged by a Senate decision;
- a member holds membership of, or ownership in another organisation likely to benefit from a Senate decision; and
- a member of the senator’s immediate family or a close associate is a member of an organisation affected by Senate decisions.

Accordingly, **members will**, through the appropriate mechanism:

- openly declare situations in which their employment, or that of a member of their immediate family, may conflict, or be perceived to conflict, with their responsibilities as senators;
- openly declare matters of private interest such as investments, relationships, voluntary work and membership of other groups that may conflict or be perceived to conflict with their public duty as members;
- record any issues of conflict to ensure they are transparent and capable of review; and
- disqualify themselves from any discussions and decisions where a conflict of interest has occurred or could occur.

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<sup>4</sup> For the purpose of this section, ‘immediate family’ may include spouse or partner, parents and parents-in-law, children and children’s spouses or partners

<sup>5</sup> See also: Governance Institute of Australia (2019) *Good Governance Guide: Conflicts of Interest*

## 7. INDUCTION AND PROFESSIONAL DEVELOPMENT

The University provides a program of induction and professional development to build the expertise of the Senate, to ensure that all members are aware of the nature of their duties and responsibilities and to support members to fulfil their role.

The Chancellor's Committee reviews these programs on behalf of the Senate. Its terms of reference provide for the committee to:

- (h) *review the Induction Program for new senators every three years and make recommendations to Senate as appropriate;*
- (i) *review the Ongoing Professional Development Program for Senators every three years and make recommendations to Senate as appropriate;*
- (j) *make recommendations to the Senate on the assessment of its performance and compliance with the Voluntary Code through the annual Senate performance survey, including the identifications of skills and expertise needed for the future.*

Members are expected to participate in induction and ongoing professional development activities. In addition, at any time, members are encouraged to seek guidance from appropriate University officers if they have any queries concerning their duties.

## 8. REVIEW

This Code has been authorised by Senate. Senate will amend this Code as and when necessary and will also review the Code as a whole at least once every two years.

Under the direction of the Chancellor, the University Secretary is authorised to make administrative amendments to the Code as required.

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### **Approval and Implementation:**

Approval Authority: Senate

Responsible Officer(s): University Secretary

### **Revision History and Document Control**

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-	18 December 2000	Approved	SR275/00
-	27 May 2002	Amended	S R37/02
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