

# Governance (Declaration of Material Interests) Rule 2022

## Section 1 - Introduction

### Name of Rule

(1) This is the Governance (Declaration of Material Interests) Rule 2022.

### Commencement

(2) This Rule commences on 1 January 2022 under resolution CNL171/15.

### Purpose

(3) This Rule is enacted for the purpose of achieving effective management of conflicts of interest by members of the Council and its committees and to ensure best practice by:

- a. maintaining public confidence in the integrity of decision-making of the Council,
- b. ensuring that members make and are seen to make, decisions free from bias or partiality,
- c. guarding against conflicts of interest that may arise as a result of the positions held by members,
- d. protecting the University and members against allegations of impropriety, or the appearance of impropriety, and
- e. protecting the reputation of the University and ensuring good governance,
- f. in accordance with the requirements of the [Higher Education Support Act 2003](#) and the [Voluntary Code of Best Practice for the Governance of Australian Universities](#), the [Charles Sturt University Act 1989](#) and other legislative and compliance obligations.

### Authority

(4) This Rule is made pursuant to authority granted to the Council under sections 31(1)(f) and 32 of the [Act](#).

### Glossary

(5) In this Rule:

- a. Act – means the [Charles Sturt University Act 1989](#).
- b. Associate of a member – has the definition in the [Act](#) and includes:
  - i. a spouse, de facto partner, parent, child, sibling, business partner or friend of the member (where a business partner includes a person who is committed with the member to a business venture, or who is operating a business with the member as a partnership),
  - ii. the spouse, de facto partner, parent, child, sibling, business partner or friend of a person referred to in subclause (i) if that relationship is known to the member,
  - iii. any other person who is known to the member for reasons other than that person's connection with the University or that person's public reputation, and which includes, without limitation:

- an entity of which a member or a member's nominee is a shareholder, member or officer (where an officer includes a director or employee),
  - an employer or employee of the member, or
  - any other person or entity who could be advantaged (directly or indirectly) by the improper use of a member's position as a member or information acquired by the member because of that position.
- c. By-law - means the [Charles Sturt University By-law 2005](#).
- d. Conflict of interest - means a situation where there is an actual, potential or perceived divergence between the individual interests of a member (including any interests of an associate of a member) and their obligations to the University, such that an independent observer might reasonably question that the member's conduct may have been influenced by their own private interests or personal circumstances. A conflict of interest may also be:
- i. Actual conflict of interest - a direct or real conflict between a person's duties and responsibilities to the University and a competing interest or obligation, whether personal or involving a third party.
  - ii. Perceived conflict of interest - where it could reasonably be perceived that a competing interest or bias could improperly influence the decisions or activities of the person (whether or not that is actually the case).
  - iii. Potential conflict of interest - where someone has an interest or obligation, whether personal or involving a third party, which has the capacity to develop a conflict with the person's duties or responsibilities at the University.
  - iv. Examples of where conflicts of interest might occur include:
    - personal relationships (inside and outside the University),
    - perceptions of bias in favour of, or against, another person or something, or
    - acceptance of bribes or other financial incentives.
- e. Council - means the University Council established under Part 3 of the [Act](#).
- f. Member - means a member of the Council and a member of a committee of the Council.
- g. Non-pecuniary interest/relationship - relates to a person having a personal or family relationship or other non-financial interest (such as involvement in a sporting, social or other cultural group or association) that may result in an actual or potential bias in the exercise of judgement or discretion.
- h. Pecuniary interest/relationship relates to a person having an actual or potential financial interest or affiliation.
- i. University Secretary means the Secretary to the Council appointed under the [By-law](#).

(6) In this Rule, unless the contrary intention appears:

- a. a word or term that has not been defined in this Rule has the same meaning attributed to that word or term in the Act or By-law,
- b. a reference to an officer of the University includes any person acting in that position, and
- c. headings and notes do not form part of this Rule.

## Application

(7) This Rule applies to members of the Council and its committees.

## Section 2 - Rule

## Part A - Roles and responsibilities

(8) Managing conflicts of interest appropriately is important and necessary to protect the University's reputation, ensure good governance and continue to meet legislative and compliance obligations. The University requires all University representatives, including members of Council and its committees, to act ethically at all times, with openness and fairness, and to proactively safeguard the performance of their official duties and responsibilities as University representatives against conflicts of interest.

(9) The University expects all members of Council and its committees, to actively and continuously:

- a. restrict the acts and/or activities that could lead to an actual, perceived or potential conflict of interest,
- b. be aware of the situations that can give rise to conflicts of interests, and
- c. identify, declare, manage and monitor all conflicts of interests appropriately in accordance with this Rule.

(10) The Chancellor must actively and continuously seek information from Council members declaring any non-University duties and/or interests that could or could reasonably be perceived to influence the actions of the Council or its committees, and ensure they are monitored and managed in accordance with this Rule.

(11) The University Secretary is responsible for providing advice on the definitions of a conflict, maintaining a register of material interests and maintaining a record of annual declarations.

## Part B - Identification

(12) To identify a conflict of interest, Council members must:

- a. maintain an understanding of the University's purpose or mission and the activities the University undertakes to achieve that purpose,
- b. maintain an awareness of their private interests, including non-pecuniary interests/relationships and pecuniary interests/relationships,
- c. understand and comply with the duties of Council members set out in Schedule 3 of the [Act](#), including in particular clause 5 of Schedule 3 (Disclosure of material interests by Council members), and
- d. actively consider how the above relate to each other.

(13) Once a conflict of interest is identified, the member needs to declare the conflict.

(14) Where a member is also a staff member of the University, and an issue arises in their capacity as a staff member, the issue shall be resolved according to the provisions of the [Code of Conduct](#) and the [Conflict of Interest Procedure](#) (for staff) rather than this Rule.

(15) Where an issue arises involving a staff member in their capacity as a Council member, this Rule will take precedence over the [Code of Conduct](#) (for staff) in resolving the issue.

### Perceived, potential, or unclear conflicts of interest

(16) Members have legal obligations to declare conflicts of interest based on a reasonable perception of a conflict.

(17) Where it is unclear if a conflict of interest is present, or whether an interest is a material interest, the member may consult with the Chancellor or committee chair and/or should take a more conservative approach (e.g. if uncertain about the nature of the interest, the interest should be treated as if it were a material interest).

(18) Where a member perceives another member to have an unacknowledged or undeclared conflict of interest, the member shall contact the University Secretary and inform them of the perceived conflict. Where, in the opinion of the

University Secretary, the perceived conflict may constitute a material interest, the University Secretary will contact the member and request a declaration be made.

(19) Where another member perceives another member to have an unacknowledged or undeclared conflict of interest at a meeting of Council or a committee of Council, either in person or by flying minute, the member shall inform the meeting and the members may (after hearing from the member alleged to have the conflict of interest) resolve by majority that a conflict of interest does exist. A resolution to that effect imposes the same obligation on the affected member as would apply had that member disclosed a conflict of interests in relation to the issue.

(20) Members are subject to a positive duty to inform the meeting if, in their opinion, another member has a conflict of interest which has not been disclosed.

## **Part C - Declaration**

### **Statement of material interests**

(21) All Council members must complete and maintain a statement of material interests.

(22) The University Secretary may require a person applying for appointment to the Council or a committee of the Council to complete and submit a statement of material interests with their application for appointment in the form set out in [Schedule 1](#).

(23) In considering recommendations for appointment to the Council, the Council may take into account the statement of material interests of the applicant.

(24) Where a member has not been required to do so under clause 22, the member shall submit a statement of material interests to the University Secretary in the form set out in [Schedule 1](#) no later than 20 working days after the commencement of their appointment or election to the Council or committee of the Council.

(25) The University Secretary will issue instruction for members to review and resubmit their statement of material interests annually in January of each year to ensure they remain accurate.

### **Declaration of material interests outside a meeting of the Council or a committee**

(26) The University Secretary or their delegate may distribute a draft list of agenda items prior to a meeting and seek declarations of material interest in relation to the proposed agenda items. Members will review the draft agenda and advise of any conflicts of interest.

(27) Notwithstanding any declaration contained in a member's statement of material interests, where a member has a conflict of interest in an item or items of business, the member must, as soon as practicable, declare the interest at a meeting of the Council or committee in accordance with clause 5 of Schedule 3 of the [Act](#).

(28) If a declaration is made by any means outside of a meeting or the statement of material interests, the member, Chancellor or University Secretary must report the declaration to the next meeting of the Council or committee and must update the statement of material interest form prior to the next meeting.

### **Declaration of material interests during a meeting of the Council or a committee**

(29) The Chancellor or chair of the committee will provide an opportunity for members to declare material interests at the beginning of each meeting. A member may make a declaration at this time or at any other time during a meeting prior to consideration of the matter which may constitute the conflict of interest. Declarations made to the Chancellor or University Secretary prior to the meeting will be reported at this time.

(30) The declaration together with a summary of how the declaration was managed, in accordance with the

management process outlined below, will be recorded in the meeting minutes and will be transferred to the register of material interests as soon as practicable after the meeting.

(31) If a material interest is declared during a meeting the member must update and submit a new statement of material interests form to the University Secretary following the meeting.

## **Declarations of gifts and hospitality**

(32) Members will declare gifts or hospitality offered to them by external bodies as part of their annual statement of material interests in line with clauses 62-67 of the [Conflict of Interest Procedure](#).

(33) Notwithstanding clause 32, members should declare any gifts, donations, benefits, sponsorship, hospitality or service offered from an external body referenced in business papers or documents at the meeting where the paper is being considered.

## **Part D - Management**

(34) Where a conflict of interest has been declared the relevant member must, prior to any meeting, assess whether the conflict can be avoided altogether or, if not, ensure it can be managed appropriately by implementing risk mitigation strategies which are managed by Council or the applicable committee, together with the University Secretary.

(35) Declared conflicts of interests may be managed through one or more of the following risk mitigation strategies:

- a. Register – Council members are required to maintain their statements of interest which are then entered into a register of material interests, see the ‘Register of material interests’ heading below. If a conflict of interest is declared prior to, or during a meeting, on an item to be considered during that meeting, the interest will be recorded in the meeting minutes and the register of interests. The Council or committee may decide to take no further action if the members voting for the resolution are satisfied that the conflict of interest should not disqualify the member from participating in the deliberations and voting on the issue; or may restrict the conflicted member’s involvement as outlined below.
- b. Restrict – the Council or committee may resolve by majority to restrict the conflicted member’s involvement with an item or activity. If the interest relates to an item for consideration at a meeting, this may include:
  - i. Business papers: the University Secretary taking necessary steps at any time, on direction of the Chancellor, the Council or committee, or where personally satisfied there may be conflict, to restrict the conflicted member’s access to the relevant business papers or documents. Where a member receives information or documents that may constitute a conflict of interest, the member shall return or delete the information or document and advise the University Secretary of the nature of the conflict of interest in writing. Where the member has been provided with electronic access to the information or documents that may constitute a conflict of interest, this access will be rescinded.
  - ii. Discussion/decision: during a meeting, the Council or committee may ask the conflicted member to leave for the duration of discussion and/or decision making in relation to an item, or may permit the member to remain in the meeting but ask them not to participate in discussion or decision making. The member may also be asked not to discuss the item with other members and/or staff in or outside of the meeting.
- c. Remove – if a conflict of interest is ongoing, the Council or committee may remove the member from all situations, including informal and formal discussion or decision making, in relation to the conflicted item or activity.
- d. Recruit – the Council or committee may seek to recruit an impartial and independent party to oversee discussion and/or decision making where it would not be appropriate for the conflicted member to be removed.
- e. Relinquish – where a conflict cannot be managed by the above strategies, the member may be asked to relinquish their private interest.

- f. Resign - where the member is unwilling or unable to relinquish a private interest, the member may be asked to resign from the Council or committee on a temporary or permanent basis.

## **Part E - Monitoring**

### **Maintaining the statement of material interests**

(36) Members must ensure their statements of material interest remain accurate and up to date.

(37) Notwithstanding clause 36, whenever information in a member's statement of material interests has changed, including where an interest no longer exists, the member must submit a new statement to the University Secretary as soon as practicable.

(38) The University Secretary will maintain the statements of material interest in a central location which is accessible to the member.

(39) The University Secretary shall update the register of material interests upon receipt of a variation using the form set out in [Schedule 1](#).

### **Register of material interests**

(40) The University Secretary shall maintain a register of material interests.

(41) The University Secretary shall make available a copy of the register of material interests upon request in writing by a member of the Council within five working days of that request.

(42) The timeframe under clause 41 may be extended by an additional five working days to allow the University Secretary to obtain legal or other advice in relation to the request (e.g. in order to consider any obligations with respect to any third party personal information included in the register of material interests).

(43) Where a member has been granted access to the register under this Rule, the member shall undertake to ensure that any information contained in the register of material interests remains confidential to the Council or the relevant committee, and to any persons named in the register, except as provided by law.

(44) The University Secretary may approve procedures or requirements from time to time in relation to:

- a. the physical security of the register,
- b. access to the register by staff authorised by the University Secretary,
- c. the form of undertakings required by members with respect to access to the register, and
- d. such other procedures or requirements to ensure the confidentiality of the register.

(45) Other than as permitted by this Rule, the register shall not be available to any other person, except as required by law.

(46) Where the register of material interest is required to be made available by law, the University Secretary shall make the register available upon payment of a fee of no less than \$100 (except where otherwise provided under the law under which the register must be made available).

## **Part F - Failure to declare**

(47) Failure to declare an interest, including a perceived interest upon request of the Chancellor or the University Secretary, in a reasonable timeframe, may constitute a breach of the duties of Council members set out in Schedule 3 of the [Act](#) and may result in removal from office.

## **Rule subject to privacy laws**

(48) This Rule shall operate subject to the requirements of the [Privacy and Personal Information Act 1988](#) and any related privacy laws, and anything in this Rule that is inconsistent with the requirements under the law shall be invalid to the extent of inconsistency.

## **Liability**

(49) No matter or thing done or omitted to be done by any person under this Rule shall, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Rule, subject the person so acting personally to any action, liability, claim or demand.

## **Correction of statement in relation to an associate of a member**

(50) An associate of a member whose material interests have been declared has the right to request the University Secretary to supply that part of a statement of material interests containing information about that associate without charge and to request corrections be made to a statement of material interests if any personal information of that associate is inaccurate.

(51) In supplying a copy of that part of a statement of material interests under clause 50, the University Secretary shall ensure that any personal information not relating to that associate requesting access is restricted to protect the privacy of members and any other associate.

## **Part G - Miscellaneous**

### **Transitional provisions**

(52) Submission to the University Secretary of a completed statement of material interests in the form set out in [Schedule 1](#) within one month of the date of amendment of this Rule will be deemed to have satisfied the requirements of this Rule and the [Act](#).

## Status and Details

<b>Status</b>	Current
<b>Effective Date</b>	22nd December 2022
<b>Review Date</b>	22nd December 2027
<b>Approval Authority</b>	University Council
<b>Approval Date</b>	22nd December 2022
<b>Expiry Date</b>	Not Applicable
<b>Unit Head</b>	Anthony Heywood University Secretary
<b>Author</b>	Anthony Heywood University Secretary
<b>Enquiries Contact</b>	Office of Governance and Corporate Affairs +61 2 63384207