



Council Policy on Conflict of Interest

This Policy should be read in conjunction with the [Fraud and Corruption Control Policy](#)

Preamble

The University expects Council and committee members to maintain the highest professional standards when fulfilling the duties associated with their position or office. One aspect of this professionalism is the avoidance of conflicts of interest, and the prompt disclosure of such conflicts if and when they arise or might be seen to arise.

Generally speaking, Council and committee members' professionalism is taken as a given, but part of being a conscientious professional is making appropriate choices when the occasion demands. The University therefore expects Council and committee members to disclose conflict of interest situations as soon as they arise or might be seen to arise.

The University is an institution of public trust. Council and committee members must respect the position and conduct themselves in a manner that will not discredit the integrity of the University.

The University of Adelaide is therefore committed to dealing with conflict of interest situations in a manner that is sensible, equitable and accountable.

Application

This policy applies to all persons who sit on University Council or on committees which have external members. It applies whenever Council or committee members perform any of the duties associated with their position on Council or the relevant committee, because such persons can only discharge the responsibilities of their position by acting at all times in the interests of the University and not in any other interests, even where it is perceived that there is no detriment to the University by serving another interest. Council and committee members are required, when exercising the responsibilities of their office or position, to act not only in the University's interests, but in its *best* interests.

NOTE: In the case of Council members, this policy is subject to the specific disclosure and other requirements of sections 15, 16 and 17 of the *University of Adelaide Act 1971* (**'University Act'**).

Actual or potential

The *opportunity* to place personal or other interests above those of the University community is enough to bring the objectivity and impartiality of one's judgment into question, and therefore to erode public trust and confidence. A "happy coincidence" (where an outcome particularly beneficial to a committee member was reached following proper process) does not dull the suspicion of improper favouritism.

For this reason, this policy applies the same disclosure requirements to potential (i.e. the opportunity alone) and actual conflict situations.

Determining whether one has a conflict or potential conflict of interest

It is impossible to define every situation where conflicting interests might arise or might be perceived to arise. Conflict of interest does not depend on a person's character, integrity or actions, but on the person's range of interests, involvements and situations.

Section 15 of the University Act imposes a duty on Council or committee members to exercise a reasonable degree of care and diligence and to act in the *best* interests of – and certainly not to the detriment of – the University at all times when discharging the responsibilities of their office. If there is a public perception that there is a conflict of interest that is not being resolved, the interests of the University are not being advanced.

The test for whether a conflict or a perception of a conflict exists is whether, in all the circumstances, a fair-minded and informed member of the public might entertain a reasonable apprehension that the person is in a position to abuse their office or that the interests of the University might be compromised because the Council or committee member has another interest which conflicts with the University's best interest. Whether a conflict or potential conflict of interest exists is not simply a matter of the personal judgment of the Council or committee member.

Obvious interests which *prima facie* raise an immediate conflict of interest are:

Divided Loyalties – Where there is a significant tension between the objective and impartial discharge of one's University responsibilities and either personal interests, or the interests of an organisation with which one is closely associated. For example, a person who has a role in respect of a decision-making process on behalf of the University, when that decision affects their role or their interests in another organisation, is likely to have a conflict of interest.

Personal interests – Where the Council or committee member stands to be harmed or benefited, even indirectly, by the outcome of the Council or committee decision. For example, when Council debates a policy concerning an area of interest affecting a Council member directly or indirectly, that Council member would usually have a conflict because knowledge of the policy could not be excluded by the Council member when determining their own interests.

Abuse of office – Using information gained in a person's capacity as a Council or committee member, to promote the interests (usually self-interest, but not always) of a person or body other than the University, usually involves a conflict of interest. (It might also involve breaches of other duties and laws).

"The mere fact that a Council member is elected or appointed from a particular interest group within the University does not mean that as a general rule the person concerned is to be regarded as being in a position of conflict of interest with respect to any item of business concerning that interest group. When deliberating or voting on business before Council, members must not act in a representative capacity, that is, as representatives of the particular interest group from which they are drawn. Once elected or appointed to Council, the Council member must act in the interests of the University as a whole, even if to do so may be thought to be contrary to the particular interests of the group from which his or her membership has been drawn."

Disclosing and dealing with the conflict or potential conflict of interest (Council members)

University Act provisions

Section 16 of the University Act imposes a duty on Council members at all times to act in good faith, honestly and for a proper purpose in the performance of the functions of their office as Council members. Section 15(b) further requires that Council members act in the best interests of the University at all times. Section 17 of the Act deals specifically with conflicts of interests of Council members. Sections 17A and 17B of the Act deal with the consequences of failure to comply with sections 15, 16 and 17.

Disclosing and dealing with a conflict or potential conflict of interest for committee members who are *not* Council members is discussed in **Attachment A**.

Section 17(1), in effect, defines an actual conflict of interest as arising when a Council member "has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Council". Section 17(6) defines a potential conflict of interest as arising when a Council member "has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a member of the Council".

"Personal interest" and "pecuniary interest" are not defined.

Section 17(8) sheds some light on the meaning of an "indirect" interest by referring to interests held by a Council member's "relative", as that term is defined in section 17(10). Section 17(8) should not be read as providing a comprehensive definition of what constitutes an indirect interest for the purpose of section 17.

Sections 17(2) and 17(9) also provide some assistance, by describing circumstances in which a Council member is *not* to be regarded as having a personal or pecuniary interest in a matter.

The thrust of section 17 is to require that actual and potential conflicts are disclosed to the Council at an appropriate time.

Dealing with an actual conflict

When a Council member becomes aware of an actual conflict of interest, section 17(1) requires that he or she:

- (a) disclose in writing to the Council, as soon as reasonably practicable, full and accurate details of the interest;
- (b) take no part in any discussion by the Council relating to the matter;
- (c) refrain from voting in relation to the matter; and
- (d) be absent from the meeting room when any such discussion or voting is taking place.

Conflicts of interest should be disclosed to the Council Secretary by emailing:

council.secretary@adelaide.edu.au.

Dealing with a potential conflict

When a Council member becomes aware of a potential conflict of interest, section 17(6) requires that he or she disclose in writing to the Council, as soon as reasonably practicable, full and accurate details of the interest or office giving rise to the potential conflict.

Protection afforded by compliance

Section 17(3) of the University Act provides that where a Council member's conflict in relation to a proposed contract with the University has been properly disclosed before the contract was entered into then:

- (a) the contract will not be liable to be avoided by the University on the ground of that conflict; and
- (b) the Council member will not be liable to account to the University for profits derived from the contract.

Disclosures to be minuted

Section 17(7) requires that any disclosure made under section 17 be recorded in the minutes of the Council.

Consequences of non-compliance

Section 17(4) allows the University, subject to the exception set out in section 17(5), to avoid a contract where a Council member has failed to disclose a conflict relating to the contract.

Section 17A provides that failure by a Council member to comply with section 17 constitutes serious misconduct and a ground for removal of the member from office.

Section 17B gives the University certain rights of action against a Council member who has failed to comply with section 17.

Policy

Council members are required to comply with the provisions of section 17 of the University Act in relation to actual and potential conflicts of interest. If a Council member is in doubt about the existence of a conflict, he or she should seek advice from the Council chair, who may rule on whether a conflict or potential conflict of interest exists.

Where a conflict only becomes apparent in the course of a meeting:

- (a) it should be disclosed immediately and recorded in the minutes; and
- (b) the Council member affected by the conflict must leave the meeting for the duration of any discussion or vote on the affected matter.

Written disclosure should follow as soon as possible.

If there is a reasonable basis for suspecting that a fellow member of Council has a conflict of interest, this may be raised in confidence with the Council chair, who must then decide on an appropriate course of action.

Where the resolution of a situation of suspected conflict of interest is not achieved consensually, the chair has the right to rule on the matter. Whether or not the chair makes a ruling, the Council may, by resolution, determine the question.

Disclosures and resolutions relating to conflicts of interests should be dealt with at Council meetings, as far as possible, under the standing item on the agenda.

Withdrawal of conflict of interest (Council members)

Council members are required to notify the Council Secretary in writing should they determine at any time that a previously disclosed conflict of interest no longer exists. The Council Secretary will place notice of the withdrawal of the conflict of interest in the papers for the next meeting of Council, after which time the conflict will be withdrawn.

Review History:

Approved by Council 25 October 1999.

Approved in revised form on 7 June 2004 and 5 December 2005.

Updated on 15 January 2008 to reflect amendments made to section 17 on 1 June 2007.

Reviewed by Minter Ellison on 4 July 2012 and noted by Council on 23 July 2012.

Reviewed with clerical amendments 28 July 2016

Reference added to Fraud and Corruption Control Policy in accordance with a resolution of the Audit, Compliance and Risk Committee meeting 2/18, 24 May 2018

Disclosing and dealing with a conflict or potential conflict of interest (committee members who are not Council members)

University Act provisions do not apply

Section 17 of the University Act does not apply to committee members who are not Council members. The following procedure is appropriate in the case of those persons.

Disclosure of conflict or potential conflict

In any situation of conflict of interest or potential conflict of interest, the situation should be disclosed immediately to the committee. The conflict may be disclosed ahead of time in writing to the committee secretary, or orally at the meeting.

It is better to err on the side of caution. If in doubt, committee members should seek advice from the committee chair, who may rule on whether a conflict or potential conflict of interest exists.

Where a conflict only becomes apparent in the course of a meeting, it should be disclosed immediately.

Dealing with a disclosed conflict or potential conflict

In most circumstances it is expected that, once a committee member has disclosed a conflict of interest, the member will not participate in the discussion or vote. This will usually be ensured by withdrawing from the meeting for the duration of the item of business under which the conflict or potential conflict arises.

This procedure should only be departed from where the chair of the committee rules that the procedure is unnecessary in the particular circumstances of the case.

If there is a reasonable basis for suspecting that a fellow committee member has a conflict of interest, this may be raised in confidence with the committee chair, who must then decide on an appropriate course of action.

If a committee member is unwilling to explain the nature of the conflict in enough detail for the committee to determine what action (if any) is needed, the member should withdraw immediately from the situation.

Where the resolution of a situation of conflict of interest is not achieved consensually, the chair has the right to rule on the matter. Whether or not the chair pronounces a ruling, the committee itself may, by resolution, determine the question.

Withdrawal of conflict of interest

Committee members are required to notify the Council Secretary in writing should they determine at any time that a previously disclosed conflict of interest no longer exists. The Council Secretary will place notice of the withdrawal of the conflict of interest in the papers for the next meeting of the Committee, after which time the conflict will be withdrawn.

Failure to comply with this policy

Where a committee member, who is not a Council member, fails or refuses to comply with this policy, the Chancellor is empowered to remove that person from the relevant committee.

Other policies relevant to staff members of committees

[Behaviour and Conduct Policy](#) and [Staff Complaints Procedure](#)

University of Adelaide Enterprise Agreement 2017-2021
<http://www.adelaide.edu.au/hr/handbook/enterprise-agreement/>

[Conflict of Interest Procedure](#)

Responsible Conduct of Research Policy
<http://www.adelaide.edu.au/policies/96/>

Research Grants, Contracts and Consultancies Policy
<http://www.adelaide.edu.au/policies/122/>

[Behaviour and Conduct Policy](#)