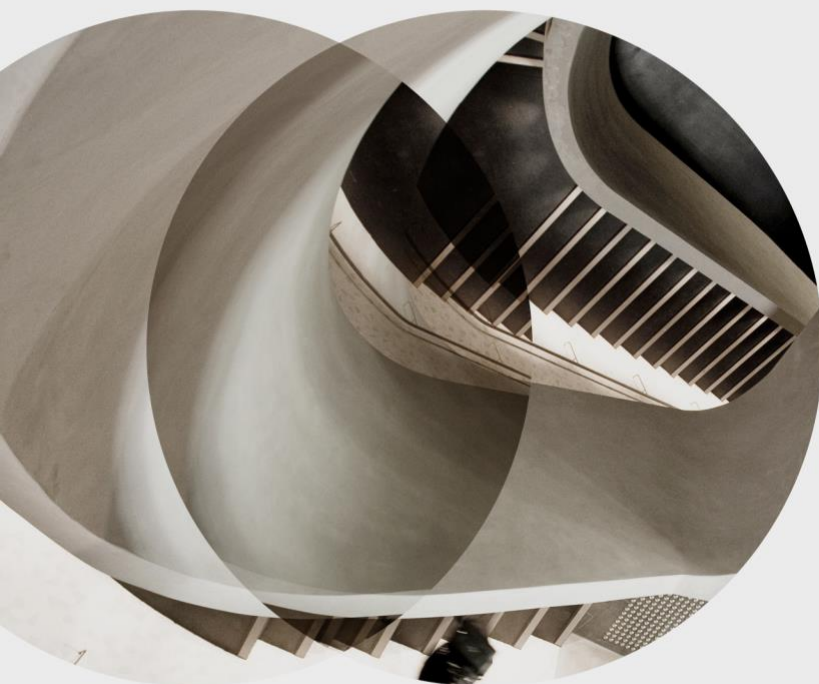


Governance Overview Handbook

For Council and its committees



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Disclaimer

This handbook contains information that is current from March 2020.

Production

Corporate Governance

1. Purpose of the Governance Overview Handbook

The purpose of this handbook is to advise new and continuing members of Council and its committees of their role and responsibilities; in the context of the role, functions and responsibilities of the Council as the governing body of the university. The information contained in this handbook applies to Council and equally to the committees of Council.

2. UTS governance principles

To advance governance across the university, Council, by way of resolution COU/05/084, adopted the following set of governance principles.

1. Focus on university's purpose and goals	
	UTS Act, purpose and vision: those attributes that have traditionally characterised a university (such as the unique role of Academic Board and collegiality), strategy/direction and policy.
2. Perform effectively in clearly defined roles and responsibilities	
	Role and responsibilities statements and evaluation of performance for governance bodies, their members and others with significant governance functions.
3. Promote and act in accordance with UTS guiding principles	
	Shape the UTS environment and culture to express UTS values drawn from UTS guiding principles and various codes of conduct.
4. Make informed, transparent decisions within UTS accountability systems	
	Processes and protocols for providing appropriate information to decision makers. Processes and instruments that direct and assess conformance with the university's requirements for conducting activities, eg delegations, risk management framework, compliance management framework.
5. Develop the effectiveness of the UTS Council and others responsible for governance	
	Processes and protocols for induction and development of members; performance evaluation; ensuring the appropriate balance of skills, knowledge and experience.
6. Recognise and engage the relevant interests of the university's stakeholders	
	Processes for consultation with UTS stakeholders.

3. The university

Object of the university

The *University of Technology Sydney Act 1989* (NSW) (the UTS Act) both establishes the university and defines its object and functions. Section 6(1) provides that the object of the university is:

... the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence.

This provision sets out the major parameters in which all functions and powers of UTS, and those who act on its behalf, must act.

Functions of the university

Section 6 of the UTS Act further distinguishes between the principal functions that the university has 'for the promotion of its object' and several 'other' functions. The principal functions are defined in section 6(2) as:

- (a) the provision of facilities for education and research of university standard
- (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry
- (c) the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community
- (d) the participation in public discourse
- (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards
- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

The 'other' functions, which since 2001 have included explicit commercial functions, are defined in section 6(3) as follows:

- (a) the University may exercise commercial functions comprising the commercial exploitation or development, for the University's benefit, of any facility, resource or property of the University or in which the University has a right or interest (including, for example, study, research, knowledge and intellectual property, and the practical application of study, research, knowledge and intellectual property), whether alone or with others
- (b) the University may develop and provide cultural, sporting, professional, technical and vocational services to the community
- (c) the University has such general and ancillary functions as may be necessary or convenient for enabling or assisting the University to promote the object and interests of the University, or as may complement or be incidental to the promotion of the object and interests of the University
- (d) the University has such other functions as are conferred or imposed on it by or under this or any other Act.

In order to meet the object, and fulfil the functions, the UTS Act confers an extensive set of powers on those responsible for the university. Details of these are outlined below. It is important to understand that the ambit of each and every one of these powers is determined by reference to the object and functions as outlined above. These powers can be exercised both inside and outside New South Wales.

4. Role, functions and responsibilities of the Council

The Council is 'the governing authority of the University' (section 8A(2) of the UTS Act) and it has the powers needed to enable UTS to carry out its functions, including the power:

- to control and manage the affairs of the University (section 16(1A))
- over money and property (sections 16, 18, 19, 20 and 21)
- to appoint a Vice-Chancellor (section 12)
- to delegate its functions (section 17).

The Council is empowered to act 'in all matters concerning the University in such manner as appears to the Council to be best calculated to promote the object and interests of the University' (section 16(1A)(c)).

The Council has wide powers, but, as earlier emphasised, they may only be exercised in pursuance of the university's object (section 6(1)) and then only in discharge of the university's functions specified in the UTS Act. These powers must be exercised subject to the by-laws of the university (section 16(2)), which are made by Council and approved by the governor (section 28)).

In accordance with Council resolution COU/18-4/78, UTS has implemented the Voluntary Code of Best Practice for the Governance of Australian Public Universities (Voluntary Code) as the peak framework against which the university monitors and reports its governance compliance. The Australian Government considers the Voluntary Code a benchmark for good governance. The Voluntary Code requires university councils to adopt a statement of their primary responsibilities. The statement of primary responsibilities and the minimum components of such a statement were incorporated into the UTS Act by the *University Legislation Amendment Act 2004* (NSW).

The following table contains Council's primary responsibilities as prescribed by the UTS Act and a brief summary of the way in which Council carries out each of the responsibilities.

Council's primary responsibilities as prescribed by the UTS Act (section 16(1B)) are to:	How Council carries out these responsibilities
(a) monitor the performance of the Vice-Chancellor	The Chancellor, in consultation with the Remuneration Committee, annually reviews the Vice-Chancellor's performance.
(b) oversee the university's performance	Council approves the UTS Corporate Plan and annual targets. Council receives regular progress reports and briefings on strategic matters, KPI and financial performance reports.
(c) oversee the academic activities of the university	The Academic Board and the Vice-Chancellor are the principal sources of advice to the Council on all academic matters. The Chair, Academic Board is an ex officio member of Council.
(d) approve the university's mission, strategic direction, annual budget and business plan	Council approves the UTS strategy, UTS Corporate Plan and annual budget. The Finance Committee advises Council on financial matters.
(e) oversee risk management and risk assessment across the university (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the university has an interest but which it does not control or with which it has entered into a joint venture)	Council approves the UTS Risk Management Policy. The Audit and Risk Committee advises Council on UTS risk management generally. Other committees report on risk management within their terms of reference, eg Commercial Activities Committee.
(f) approve and monitor systems of control and accountability for the university (including in relation to controlled entities within the meaning of section 16A)	Council's delegations are contained in the university's delegations. The Audit and Risk Committee approves and monitors the annual audit plan.
(g) approve significant university commercial activities (within the meaning of section 21A)	The UTS Commercial Activities Policy provides the framework for UTS commercial activities. The Commercial Activities Committee advises Council on these matters.
(h) establish policies and procedural principles for the university consistent with legal requirements and community expectations	Council makes all university policy except where it has delegated authority to the Vice-Chancellor and to Academic Board for academic policies. The UTS Policy Framework details requirements for policy content and structure.
(i) ensure that the university's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public	Grievance and appeal procedures are published widely within UTS.

Council's primary responsibilities as prescribed by the UTS Act (section 16(1B)) are to:	How Council carries out these responsibilities
(j) regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act)	Council has established a Governance Review Framework, which is coordinated by the Governance Committee.
(k) adopt a statement of its primary responsibilities	Council has adopted a statement of primary responsibilities reflecting section 16(1B) of the UTS Act.
(l) make available for members of the Council a program of induction and of development relevant to their role as such a member.	Council has adopted statements on the structure and content of its induction and development program.

Council's delegation of its functions

The Council, acting under section 17 of the UTS Act, has delegated many of its functions. Delegation serves a number of purposes, especially the efficient performance of the multitude of functions involved in the government of a modern university.

In line with Council resolution COU/05/039, Council undertakes a review of the UTS delegations annually. The university's delegations indicate functions that Council has reserved to itself, such as approval of the annual budget and the UTS strategy.

5. Composition of the Council

In accordance with sections 8A-H and 9 of, and Schedule 1 to, the UTS Act, the University of Technology Sydney By-law 2005 (the UTS By-law) and the UTS Rules, the Council comprises 20 members as follows:

- three official members:
 - the Chancellor
 - the Vice-Chancellor
 - the Chair of the Academic Board
- two external persons appointed by the NSW education minister for terms not exceeding four years
- 10 external persons appointed by the Council for terms not exceeding four years
- two elected (academic staff) members elected by the academic staff members for a term of two years in accordance with election procedures set out in Rule G3 of the UTS General Rules
- one elected (professional staff) member elected by the professional (non-academic) staff members for a term of two years in accordance with the election procedures set out in Rule G3 of the UTS General Rules
- one elected (postgraduate student) member elected by the postgraduate students for a term of two years in accordance with election procedures set out in Rule G3 of the UTS General Rules, and
- one elected (undergraduate student) member elected by the undergraduate students for a term of two years in accordance with election procedures set out in Rule G3 of the UTS General Rules.

Members may be re-appointed or re-elected, with the proviso that a person may not serve more than 12 consecutive years of office unless the Council resolves otherwise (section 9(3) of the UTS Act).

A requirement of the Voluntary Code, enshrined in section 8C(1) of the UTS Act, is that at least two members of the Council must have financial expertise and at least one member must have commercial expertise.

Section 8C(2) further provides that all appointed members of the Council must have expertise and experience relevant to the functions exercisable by the Council and an appreciation of the object, values, functions and activities of the university.

The Governance Committee is charged with identifying and advising Council of the appropriate balance of skills, knowledge and experience that should exist in the Council as a whole, and any related professional development requirements and strategies. It is the responsibility of the Nominations Committee (as outlined in clause 34 of the UTS By-law) to recommend suitable persons to Council for nomination to the NSW education minister and for appointment by the Council.

6. Roles and responsibilities of Council members

Role of Chancellor

Section 10 of the UTS Act establishes the position of Chancellor.

By way of Council resolution COU/15-5/103.4, Council adopted the following Chancellor Qualities and Skills Statement and Chancellor Role Statement.

Chancellor Qualities and Skills Statement

An effective Chancellor of UTS:

- understands and appreciates the importance of university teaching and learning, research and scholarship and social responsibilities, and has a strong sense of the distinctive attributes and potential of UTS
- understands and is committed to the unique responsibilities of universities as ongoing public institutions including aspects such as academic freedom and its role in public discourse
- appreciates the principles and practices of good corporate governance, and, in particular, the respective and mutually dependent roles of governance and management, and possesses the qualities and skills to work effectively with Council and the Vice-Chancellor
- understands the external environment in which universities operate, including their interactions with government, the public sector, the professions and industry
- supports and champions the development and achievement of the university's strategic objectives as determined by the Council, and is strongly committed to social justice
- acts with integrity, impartiality and objectivity
- has a high standing in the community with an appropriate range of connections and networks that can be leveraged to the benefit of the university
- knows how to Chair and manage the work of a board effectively and fairly, assisting and encouraging all members to contribute fully and to fulfil their fiduciary responsibilities to the full extent of their respective abilities
- demonstrates strong leadership and collegiate skills and has the capacity to push hard for key decisions to be made in a timely manner, and
- has sufficient time, energy, and commitment to effectively perform the role of Chancellor.

Chancellor Role Statement

1. The Chancellor is the Chair of the governing body of the University — the University Council. The position is honorary and is traditionally filled by a person who is not an employee of the University. It is customarily filled by a person who has a high level of public esteem and who is thus well placed to represent the University in public, governmental and civic occasions.
2. The Chancellor has a key role in ensuring that the Council of UTS works effectively to fulfil its responsibilities under the UTS Act as the governing body of the University. This entails:
 - (a) ensuring that a strategic and effective approach is taken to the development of agendas for Council meetings, and that Council's decisions are based on soundly prepared and effectively presented information and analysis
 - (b) effective chairing of Council meetings (and Council sub-committees as determined by the Chancellor)
 - (c) a very strong commitment to encouraging and assisting Council, its committees, and the Vice-Chancellor and senior executives of the University to work fairly, with integrity, respecting confidentiality within transparent process and in an atmosphere of mutual trust and respect in an informed fashion; in particular, ensuring that Council functions as a cohesive, accessible, effective, enquiring and informed body with a paramount fiduciary duty of loyalty to act in the best interests of the University.
3. The Chancellor works cooperatively with the Vice-Chancellor and the senior executives of the University, providing counsel and strategic advice, encouraging free, trusting and frank communication on all issues concerning the wellbeing of the University, and promoting the aims, ethos, independence, morale and spirit of the University, and encouraging high standards.
4. In consultation with the Vice-Chancellor, the Chancellor provides a high level bridge to governments, the business community, the professions and the wider community, promoting the aims of the University and guiding the University to respond to the interests and concerns of society.
5. The Chancellor presides on important ceremonial occasions such as graduation ceremonies, public lectures or seminars, sharing that responsibility as the Chancellor judges appropriate, and facilitating the visibility and accessibility of the Council within the University community and in particular to staff, students and graduates of the University.
6. On appropriate occasions, the Chancellor expresses the values of the University.

Rule G2 of the UTS General Rules prescribes the procedure for election of the Chancellor.

Role of Deputy Chancellor and Pro-Chancellors

Section 11 of the UTS Act provides for Council to elect a Deputy Chancellor who has the functions of the Chancellor in the absence of the Chancellor, during a vacancy in the office of Chancellor or during the inability of the Chancellor to act.

The election of the Deputy Chancellor is conducted in accordance with Rule G2 of the UTS General Rules.

Every two years Council also elects up to three Pro-Chancellors who have delegated authority to act for the Chancellor in the context of the university's graduation ceremonies or, when specifically requested by the Chancellor, to assist with ceremonial or courtesy functions in the university.

Role of Council members

A Council member has a duty to the university as a whole. That duty obliges each member to act in good faith in the best interests of the university as a whole and for a proper purpose (clause 1 of Schedule 2A to the UTS Act).

The members of Council are drawn from the categories prescribed by the UTS Act. Each member brings their own unique experience, judgement and interests to Council, including the particular interests some may have in particular sections of the university and community.

It is helpful to Council decision-making to be informed of the various interests but when taking a decision each member must seek to produce the greatest benefit to the university. Members of Council are appointed or elected in order to contribute their respective insights and expertise to the deliberations of Council in the interests of the university. While each member contributes their insights and expertise to the Council debate, when it comes to decision-making, each is bound by the duty owed to UTS as a whole.

Nominated or elected members are not representatives of their nominators or electors. They become subject to the higher duty owed to the whole university, although, in the case of elected members, the discharge of that duty includes bringing to the Council the interests and concerns of the section of the university that elected them. The duties of a member of Council would be undermined if the member placed the interest of a section of the university over the interests of the university as a whole.

The members of the Council, like members of any institution's governing board, must exercise their powers in good faith for the benefit of the institution. They are under a fiduciary duty to UTS as a whole.

In addition to the duty to carry out their functions in good faith in the best interests of the university as a whole, and for a proper purpose, Schedule 2A to the UTS Act provides that members of Council must also observe the following duties.

A member of the Council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions. (clause 2)

A member of the Council must not make improper use of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University. (clause 3)

A member of the Council must not make improper use of information acquired because of his or her position:

- (a) to gain, directly or indirectly, an advantage for the member or another person, or
- (b) to cause detriment to the University. (clause 4)

The duty under clause 2 of Schedule 2A, to act honestly and exercise a reasonable degree of care and diligence, includes reviewing Council papers and their attachments, participating in the meetings of Council, making decisions, and reviewing the affairs of Council carefully, based on a reasonable understanding of the material provided to Council.

A simple way to think about the duty above is: what would a reasonable person in the position of each Council member need to know in order to either make a reasonable decision in relation to any issue before Council, or receive sufficient information to monitor the operations of UTS?

For example, if a reasonable person would need all the information contained in the Council papers, and their attachments, then both the papers and their attachments should be read and considered. However, it is also important to appreciate that the information in the papers and attachments could be insufficient for the purpose of making the decision required and, in that case, even more information would be required to discharge the Council member's duty.

Members might also note that the obligation on Council members to review and consider relevant material, and request more information if necessary, is contained in the Council's Code of Conduct, item 9 'prepare for participation in meetings by becoming acquainted with the relevant materials' and item 11 'seek additional information on any matter in order to be able effectively to carry out their duties'.

Schedule 2A to the UTS Act also provides that:

- If:
- (a) a member of the Council has a material interest in a matter being considered or about to be considered at a meeting of the Council, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council.

In accordance with Council resolution COU/05/002.4, each meeting agenda contains the item 'Declaration/recording of any relevant material interest'. Disclosures made by members under clause 5(1) are recorded in a register that is available for inspection by any person.

The duty of disclosure also applies to members of committees of Council.

Conflicts of interest

What is a conflict of interest?

Conflicts of interest arise when the interests or loyalties of any member are in competition or are incompatible with the best interests of the university. If a conflict of interest exists, there is a risk that a member may act or make decisions influenced by their wider interests or loyalties rather than in the best interests of the university.

Members are appointed with a wide diversity of skills and experience. Accordingly, they may have multiple professional, personal and domestic interests such that it may be impossible to avoid conflicts altogether. Conflicts of interest that do arise, whether real, potential or perceived, need to be recognised, disclosed and effectively managed.

Where a member becomes aware of a conflict of interest, a declaration of that conflict of interest should be made immediately on Council's declaration of interest form and lodged with the University Secretary. Committee members should also raise any potential conflict of interest with their committee chair in the first instance and at the earliest possible opportunity.

Recognising a conflict of interest

The interests of a member may include the interests of an associate of the member including their spouse, de facto partner, parent, child, sibling, business partner, friend and even any other person personally known to the member (other than through the university) (clause 5(10)).

A conflict of interest is more easily recognised where a member obtains a direct or indirect financial benefit, for example payment of professional fees to a member by the university (in a capacity other than member) or the offer of an employment contract to a member's spouse. It may be harder to recognise a personal or non-financial conflict where a member may be influenced by external factors such as competing loyalties to a professional organisation, other directorships or even by their own personal situation or religious/moral values.

A member has a material interest if a determination of Council may result in detriment being suffered by or a benefit accruing to the member or an associate of a member (clause 5(9)).

Conflicts of interest involving members may also arise outside the context of matters directly before Council. Members are governed by their overriding duty to act in the university's best interests and, as such, members must immediately disclose any real, potential or perceived conflicts of interest to the university on the Council's declaration of interest form and lodge it with the University Secretary.

Managing a conflict of interest

Council and committee members are obliged to declare any conflicts of interest when they are appointed to Council or a committee, or at any time that they become aware of a conflict of interest. They must also declare any conflicts of interest on an annual basis. A declaration of interest form must be completed and lodged with the University Secretary.

In accordance with resolution number COU/11-3/33, the existing framework for the declaration of conflicts of interest includes:

UTS Council Code of Conduct

Council has adopted a Code of Conduct for Council and committee members.

Annual declaration of interest form

In order to comply with Schedule 2A of the UTS Act, as set out above, interests of members of Council, its committees and associates of the member that have the potential to conflict with UTS interests must be disclosed. On appointment to Council or a committee, and prior to the start of each calendar year, members must complete the declaration of interest form and must lodge it with the University Secretary. If there is nothing to report, a nil entry on the declaration of interest form must be completed. The University Secretary will provide a report to Council at the start of each calendar year informing Council that the process for managing conflicts of interest has been followed by all Council and committee members.

Declaration of interest at meetings

All Council and committee members are required to declare any new or changed interests that have not previously been recorded on the annual declaration of interest form, including those of associates, prior to, or at the commencement of, each Council and committee meeting. A declaration of interest form must be completed or updated and lodged with the University Secretary as soon as possible once the interest is identified. The form must be completed immediately after the meeting at which such disclosure is made.

Declarations of interest register

The University Secretary maintains a register of all declarations of interest made at Council and committee meetings and otherwise. The details contained in those declarations are recorded in the declarations of interest register and are open for inspection by all Council members in accordance with Schedule 2A. Members should be aware that the register is also open to others in accordance with Schedule 2A. Declarations of interest disclosed on the annual declaration of interest form will carry forward as standing declarations of interest unless the University Secretary is advised that the interest has ceased or changed.

Once a disclosure of such a material interest has been made and recorded, the conflict is managed by the member not being present during any deliberation or decision of Council or the committee regarding the matter, or as otherwise determined by Council or the particular committee.

Where chairs of Council committees, or individual members whose circumstances are not otherwise covered by the above mechanisms, have a current or potential conflict of interest, they should raise that conflict with the Chancellor who may make a determination or, if appropriate, bring the matter to the Governance Committee for its consideration.

Any conflict of interest declaration is not complete until Council's declaration of interest form is completed and lodged with the University Secretary, except when made at a Council meeting or Council committee meeting on the basis that the form will be completed immediately after the meeting at which such disclosure is made.

Code of Conduct

Council has adopted a Code of Conduct (Code) for Council and external committee members (members) that summarises the standard of conduct and responsibilities of members. The Code provides an ethical framework for members, in the context of their duties and liabilities under the law, and embodies the principles covering appropriate conduct. Members who are also university members of staff are also subject to the university's Code of Conduct.

Members must:

1. act with loyalty to the university
2. exercise their powers as a member in the interests of the university as a whole and only for proper purposes
3. act honestly with due care, skill and diligence
4. attend meetings of Council and/or committees (as applicable)
5. avoid conflicts of interest with the university and declare any conflicts of interest whether of a general or commercial nature. In particular, members must disclose any interest in any company, institution or other entity where those interests may lead to a conflict of interest. Where any conflict of interest occurs, members must refrain from participating in the debate and from voting on the matter concerned and otherwise comply with the duties set out in Schedule 2A of the University of Technology Sydney Act, as amended or replaced from time to time
6. not use the university's property or information to gain an advantage for the member or another person or cause detriment to the university
7. not use opportunities presented by the holding of office as a member that is not in the interests of the university as a whole
8. observe confidence in relation to confidential information obtained in the course of duties as a member
9. prepare for participation in meetings by becoming acquainted with the relevant materials
10. have appropriate knowledge of the financial and other resources of the university and the manner in which they are expended
11. seek additional information on any matter in order to be able effectively to carry out their duties
12. act at all times in the best interests of the university
13. represent the university appropriately in the community
14. not speak publicly on behalf of the university except with the express authority of the Council, the Chancellor or the Vice-Chancellor.

This Code provides general guidelines and understanding to members of what is expected of them as Members. If there are any problems or questions relating to the Code, members may discuss these with the Chancellor or, in appropriate cases, with the full Council or other relevant committee.

Removal from office for breach of duty

Section 21G of the UTS Act provides for the Council to remove a member of Council from office for breach of a duty set out in Schedule 2A. The removal may be effected only at a meeting of the Council of which notice (including notice of the motion that the member concerned be removed from office for breach of duty) was duly given.

The removal from office may be effected only if the motion for removal is supported by at least a two-thirds majority of the total number of members, for the time being, of the Council. The motion for removal must not be put to the vote of the meeting unless the member concerned has been given a reasonable opportunity to reply to the motion, either orally or in writing.

The UTS Act provides that Council may remove the Chair or Deputy Chair from office by a no-confidence motion passed in accordance with section 11A if it considers it in the best interests of the university to do so.

Liability of Council members

Clause 5 of Schedule 1 to the UTS Act provides that:

No matter or thing done or omitted to be done by:

- (a) the University, the Council or a member of the Council, or
- (b) any person acting under the direction of the University or the Council,

shall, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member of the Council or a person so acting personally to any action, liability, claim or demand.

UTS holds a number of insurance policies to protect its interests. They cover many areas, such as workers compensation, directors and officers liability, and occupiers liability. Directors and officers liability insurance provides, in addition, protection for members of Council representing the university on other bodies.

Reimbursement of Council members

The university's delegations and clause 10 of Rule G1 of the UTS General Rules provide:

If a member of the Council incurs out of pocket expenses while engaged on University business, the University Secretary may authorise the payment of the whole or any part of the expenses so incurred to that member.

7. Induction and professional development of Council members

The Governance Committee has oversight of the UTS Council induction and professional development program.

Council induction program

The purpose of the Council induction program is to familiarise members of Council and its committees with:

- the role, duties and responsibilities of the Council and its members
- UTS governance and the structure, functions and activities of the university
- significant issues for, and external influences on, the university.

The program includes:

- governance orientation, including meeting the Chancellor and the Vice-Chancellor
- financial orientation, including capital development, budget, accounting, financial planning, management reporting, controlled entities, part-owned entities and commercial activities
- an information pack, including Council members' roles and responsibilities, the UTS Council Code of Conduct, strategic planning, risk management and other protocols.

Council professional development program

The purpose of the Council professional development program is to build Council expertise and knowledge in areas identified by the Council from time to time, for example:

- governance, structure, functions, activities and plans of the university
- significant issues, external influences and emerging issues for the university
- financial/business/commercial analysis
- community expectations.

The program includes:

- Council lunch and Council meeting presentations
- annual Council retreat
- external seminars, conducted by appropriate bodies
- external speakers series
- opportunity to participate in Australian Institute of Company Directors' courses.

8. Relationship between Council and UTS management

As UTS's governing body, Council has an established communication channel with management, which is through the University Secretary. In accordance with Council resolution COU/11-7/115, members wishing to seek information from UTS management should approach the University Secretary in the first instance.

Council appoints the Vice-Chancellor and determines his or her remuneration.

The current UTS Senior Executive positions are: Vice-Chancellor, Provost and Senior Vice-President, Deputy Vice-Chancellor and Vice-President (Corporate Services), Deputy Vice-Chancellor and Vice-President (Education and Students), Deputy Vice-Chancellor (Innovation and Enterprise), Deputy Vice-Chancellor and Vice-President (International), Deputy Vice-Chancellor and Vice-President (Research), and Deputy Vice-Chancellor and Vice-President (Resources). The role of Vice-President, Advancement and University Secretary report to the Vice-Chancellor.

The power to control and manage UTS's affairs is, generally speaking, exercised by the Vice-Chancellor who is responsible for the administration of the university. The UTS Act makes the Vice-Chancellor 'the chief executive officer of the university' and, by implication, must be taken to confer on the Vice-Chancellor the powers needed to perform the functions of chief executive officer.

In addition, the Vice-Chancellor holds such powers of the Council as the Council may delegate under section 17 of the UTS Act. Other legislation, both Commonwealth and state (for example the *Independent Commission Against Corruption Act 1988* (NSW) and the *Educational Services for Overseas Students Act 2000* (Cwth)) casts specific responsibilities on the Vice-Chancellor together with the powers needed to discharge those responsibilities.

The dividing line between the powers exercised by Council and the powers that the Vice-Chancellor holds and exercises is not always easy to draw. Clause 11 of Rule G1 of the UTS General Rules states:

- (1) The Vice-Chancellor, as the chief executive officer of the University, is to be the principal academic and administrative officer of the University and is responsible to the Council for implementing the decisions of the Council.
- (2) Subject to the Act, the By-law, the Rules and the resolutions of the Council, the Vice-Chancellor is to be responsible for:
 - (a) promoting the interests and furthering the development of the University; and
 - (b) conducting the academic, administrative, financial and other business of the University; and
 - (c) exercising general supervision and control in relation to the members of the staff of the University and the welfare and discipline of students.

For the efficient functioning of the university, Council must acknowledge the Vice-Chancellor's prerogative to discharge their responsibilities, whether personally or by officers of the university performing their respective duties.

The Council is not involved in matters of administration. It does not have the information, experience or time to deal with administrative issues, although it is properly concerned with the policy that is governing administration. If the Council were to devote its attention to administering the university, it would be trespassing upon the responsibilities of the Vice-Chancellor to the prejudice of its own capacity to deal with strategy and policy. In particular instances it may be difficult to determine whether an administrative matter raises an issue of policy for Council to consider: Council may need to consider the question. Usually, however, the distinction is clear-cut and no problem arises.

The division of powers and functions between the Council and the Vice-Chancellor is effected by mutual recognition of their responsibilities and a practical assessment of the needs of each for assistance from the other.

Council's membership is drawn from diverse sources. The Council meets from time to time, and its members are not continually engaged in the affairs of the whole university and none of them, except the Vice-Chancellor, possesses a general knowledge of all aspects of the university's activities, its resources, its strengths and weaknesses, its role and effectiveness in higher education in Australia and internationally, and its prospects of development.

While Council values the expertise and diversity of its members, it is largely dependent on the Vice-Chancellor to develop policies and strategies for Council's consideration. To reach appropriate decisions, the Council needs information on a variety of issues and is largely dependent on the Vice-Chancellor's administration for the provision of that information.

Just as the Council is dependent on the Vice-Chancellor, so the Vice-Chancellor is dependent on Council for advice and approval. As the Council is the ultimate governing authority, the Vice-Chancellor must keep the Council informed about the major aspects of the affairs of the university, must satisfy its reasonable inquiries, must discuss and agree on policies and strategies, and must execute the Council's resolutions.

The Vice-Chancellor's openness in accounting to Council must be matched by Council's acknowledgement of the Vice-Chancellor's prerogative as chief executive officer to administer the affairs of the university. The system works smoothly when the Council, reposing confidence in its Vice-Chancellor, sees its function as being to review, advise, approve and propose strategy and policy in pursuit of UTS's goals and to raise matters of general university concern.

9. Academic governance and management

As discussed above, the Vice-Chancellor, by virtue of Rule G1 of the UTS General Rules, is the chief academic and administrative officer of the university.

The Academic Board is established by section 15 of the UTS Act. It has a unique role and status. Clause 13(1) of Rule G3 of the UTS General Rules provides that the Academic Board 'constitutes the primary forum in the University for the discussion and resolution of academic issues and matters. The Board and the Vice-Chancellor are the principal sources of advice to the Council on all academic matters'.

Clause 13(2) provides that 'subject to the By-law, the Rules and the resolutions of the Council, Academic Board has a responsibility to assess the quality of, and provide direction to, the academic work of the University, including teaching, learning, scholarship, research and research training'.

Clause 14 of Rule G3 provides that, in particular, the Academic Board:

- (a) Shall report to, or advise Council or the Vice-Chancellor, on any aspect of:
 - (i) the academic goals, objectives, principles, directions, priorities and profile of the University, including advice on how these provide a basis for financial, capital or human resource planning
 - (ii) the quality and standards appropriate to all aspects of the academic work of the University, and in particular to teaching and learning and the support thereof, and to research and research training.
- (b) Shall determine the accreditation of proposed or existing award courses on their academic merit and the removal of the accreditation of award courses.
- (c) Shall undertake initiatives and institute measures to promote the communication of academic issues and matters and the coordination of academic work and activities across the whole University.
- (d) Shall determine academic policies.
- (e) Shall determine the standards governing all aspects of academic administration, including, but not limited to, the admission of students and the examination and assessment of students work.

- (f) Shall set the conditions for the granting of fellowships, scholarships and prizes within the University.
- (g) Shall recommend to Council those students who, having satisfied all academic requirements for an award course, are considered eligible to graduate; and shall assure the validity of such recommendations by appropriate means.
- (h) Shall determine the structures and functions of faculty boards, noting that a faculty board's authority to act on specific matters will continue to require Council's delegated authority.

In essence, the effective governance of the university requires that Council and Academic Board develop ways to enable Council to fulfil its role of acting as the governing authority while Academic Board directs the academic affairs of the university. A key mechanism is set out in clause 16 of Rule G3, which states:

- (1) If the Council does not accept, without amendment, a recommendation from the Board relating to teaching, scholarship or research within the University, the Council must seek further advice from the Board before making a final decision.
- (2) This clause does not apply if, in the judgment of the Chair of the Board and the Chancellor:
 - (a) the matter is one of urgency on which it is necessary for an immediate decision to be made by the Council; or
 - (b) the area of difference between the Council and the Board is not one of principle or major significance.

10. Council meetings and business cycle

The Standing Orders for UTS Council provide that Council shall meet in ordinary session not less than six times in each year. Clause 6A of Schedule 1 to the UTS Act allows a meeting of Council to be called or held using any technology consented to by all the members of Council. This includes meeting by teleconferencing or videoconferencing and the use of electronic business papers.

The standing orders deal with notice of meetings, quorum, minutes, conduct of meetings, closed session, attendance at Council meetings and the operation of committees of the Council.

In line with Council resolution COU/05/002.2, papers for each meeting are circulated where possible one week before the meeting. Late or tabled papers, other than highly confidential or 'for information' papers, are accepted for discussion and decision only in exceptional circumstances. Council has adopted a template as the model for use in all papers.

Where members receive their Council papers electronically, and have been provided with a UTS login number and password and/or an electronic device to access papers online, members are advised that the reference material and papers have the same standing as if they were hard copies.

Motions are dealt with in accordance with Council's standing orders and generally accepted meeting practice. In particular:

- there must be a formal mover and seconder of motions
- an amendment to a motion may be put — it may be accepted by the mover and seconder of the original motion in which case the amendment becomes the motion or, if not, the amendment is put to the vote
- a foreshadowed motion may be put — a motion which will be put to the vote contingent on the outcome of the vote on the original motion.

It is expected that members will give notice of motions. This should be one week prior to a meeting or as soon as possible after the receipt of papers if related to a listed item. It has been the expectation of Council that any motion put by a member will have been considered and, if necessary, commented on by the Vice-Chancellor. When the period of notice is not sufficient to allow for such management review the matter may be held over.

Council minutes are confined to a record of the resolution and amendments adopted or rejected at the meeting, followed by a Secretariat notation as to the action to be taken to implement a resolution. This action taken is picked up in the report that is made to each meeting of Council on action taken for the implementation of Council resolutions.

The decisions of Council are binding on all members.

Council has conferred on the executive of Council (comprising the Chancellor, Vice-Chancellor and University Secretary) the power to dispose of urgent business between Council meetings. The executive of Council then reports any exercise of the power to the following meeting of Council.

In order to fulfil its primary responsibilities, Council has adopted an annual cycle for dealing with business items. The annual business cycle is provided to Council members at the first Council meeting each year. Information about the business cycle can be obtained from the Executive Officer to Council.

11. Role and operation of Council committees and groups

Material usually reaches Council from the Vice-Chancellor or from its committees. Committees must filter the issues that need to be referred to Council. It is likely that, from time to time, administrative matters will be submitted for the attention of committees: more frequently in the case of committees dealing with aspects of university life than in the case of committees dealing with the resources and structure of the university.

There may well be a need to monitor the terms of reference of committees to ensure that their work is directed chiefly to consideration of issues that might engage the attention of Council. Committee chairs and support officers should settle the meeting agenda to keep the committee within its terms of reference.

If a person wishes to raise a purely administrative issue with the committee, or a member of the committee raises such an issue, the issue should be diverted to, or taken up with, the appropriate officers of the university. If the matter cannot then be resolved to the committee's satisfaction, it may be that there is some question of principle or policy that should be decided upon and perhaps passed on to Council.

Council's current committees are as follows.

Academic Board — as discussed above, the constitution, functions and powers of the Academic Board are determined by Council in accordance with section 15 of the UTS Act and set out in Rule G3 of the UTS General Rules. The Academic Board and the Vice-Chancellor are the principal advisers to the Council on academic matters. Subject to the UTS By-law, the UTS Rules and the resolutions of Council, Academic Board has a responsibility to assess the quality of, and provide direction to, the academic work of the university, including teaching, learning, scholarship, research and research training.

Audit and Risk Committee — advises Council on UTS's annual internal audit plan, the effectiveness of the internal audit function, liaison with the external auditor and the effectiveness of UTS management's responsiveness to the findings and recommendations of both internal and external auditors; and reviews and passes comments to Council and to the Finance Committee on the annual financial statements and other relevant documents.

Commercial Activities Committee — advises Council on all matters concerning the university's commercial activities related to the university's core business of teaching, learning and research including policy and governance frameworks in accordance with the requirements of Division 3 of Part 4 of the UTS Act, and takes action as appropriate to assess, approve, monitor and report on UTS commercial activities.

Finance Committee — advises Council on matters relating to the distribution and supervision of university finances and acts on behalf of Council in areas of delegated authority.

Governance Committee — advises Council on matters relating to the university's governance framework; oversees the conduct of Council's Governance Review Framework; identifies and advises Council of the appropriate balance of skills, knowledge and experience that should exist in the Council as a whole and any related development requirements and strategies; oversees the development and operation of Council's induction and professional development program; reports to Council on UTS governance; and considers and advises Council on proposed amendments to the UTS Act, By-law and Rules as may be required for the university in accordance with sections 28 and 29 of the UTS Act.

Honorary Awards Committee — advises Council on policy relating to all types of honorary awards and recommends nominations for honorary awards and titles.

Nominations Committee — recommends to Council candidates whom Council may nominate to the minister for appointment as Council members or appoint as Council members.

Physical Infrastructure Committee — advises Council on strategic capital development and management matters within the context of the capital works budget (as approved by Council on the recommendation of the Finance Committee) and acts on behalf of Council in areas of delegated authority.

Remuneration Committee — advises Council on the Vice-Chancellor's and the Provost's performance.

Council also has one liaison group:

Student/Council Liaison Group — is a forum for students, members of Council and senior management to discuss matters of UTS policy and governance relevant to the student body.

Council regularly reviews the membership of its committees and seeks feedback from members who are qualified and willing to serve.

12. Council's monitoring and evaluation of its performance

It is good governance practice for governing bodies and their committees to have in place a sound performance review process. The Governance Committee is responsible for overseeing the conduct of Council's review of its performance.

Council has established a Governance Review Framework under which the effectiveness of Council's performance is reviewed externally every four years. Internal reviews comprise a governance systems review, which is conducted every four years, and a Council evaluation survey, which is conducted every four years.

These reviews are complemented with four yearly self-reviews of each Council committee and four yearly self-reviews of individual Council member's performance. Additionally, the Chancellor conducts annual one-on-one performance discussions with each Council member. Council committees assess their performance against their forward plan annually.

13. Assistance and information for Council members

The University Secretary is responsible for facilitating the Council's governance processes and providing guidance to Council members on their responsibilities under the UTS Act, By-law and Rules.

The University Secretary:

- ensures that members of Council and its committees are provided with the information necessary for them to fulfil their responsibilities
- ensures that the agenda papers are prepared and forwarded to members of Council and its committees in accordance with the Council's standing orders
- ensures the smooth operation of Council and its committees
- provides guidance to the Chancellor and members of Council and its committees on their responsibilities under the law, the standing orders and the UTS Rules to which they are subject
- is responsible for providing legal advice to, or obtaining it for, the Council and advising Council on all matters of governance and procedure
- alerts the Council if any proposed action would exceed Council's powers or be contrary to law
- regularly reviews the Council's Standing Orders and procedures.

The Executive Officer to Council is responsible for:

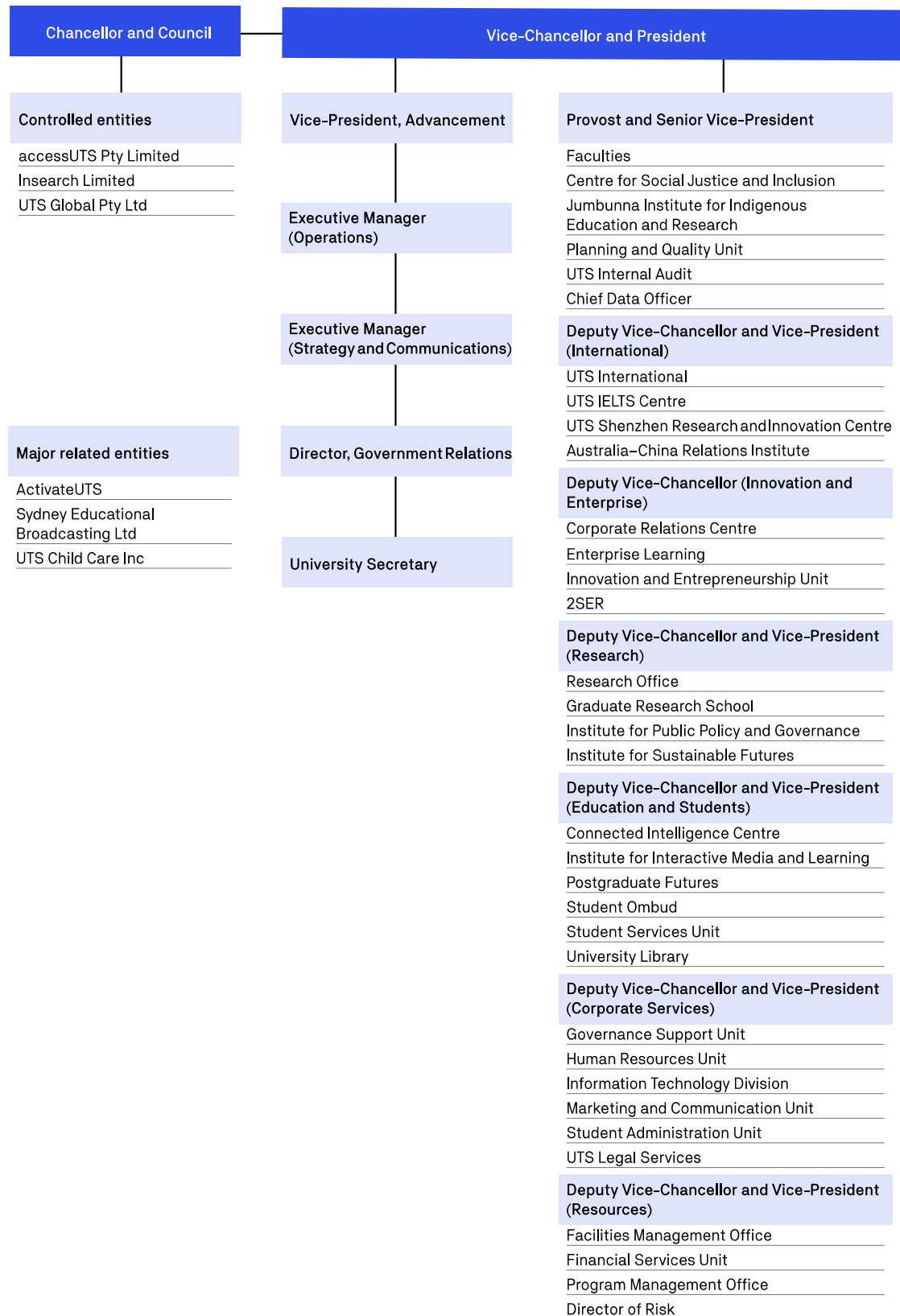
- preparing the Council agenda and coordinating reports
- arranging for the distribution of agenda papers
- liaising with Council members concerning attendance arrangements, including parking and catering
- recording the proceedings of the meetings and preparing the minutes
- disseminating decisions made by the Council to the staff and students of the university as appropriate
- maintaining official files in relation to Council's agendas, minutes, membership and correspondence.

Council members are invited to contact any of the following for advice, assistance and further information:

Mr Bill Paterson
University Secretary and Director, Governance Support Unit
telephone (02) 9514 1251

Executive Officer to Council
telephone (02) 9514 1240

Appendix 1: UTS organisational structure



Appendix 2: UTS committee structure

