



## **POLICY AND RULES ON CONFLILCT OF INTEREST AND ON DECLARATIONS OF INTEREST AND OF GIFTS**

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## Registrar/Deputy Vice-Chancellor Research and Innovation

# POLICY AND RULES ON CONFLICT OF INTEREST AND ON DECLARATION OF INTEREST AND OF GIFTS

Against the background of the dream to be an internationally recognised university in Africa, distinguished for engaged scholarship, social responsiveness and an ethic of care, the council of the North-West University (NWU) has adopted this policy and set of rules on conflict of interest and declarations of interest and of gifts on 19 March 2020.

## 1 INTERPRETATION AND APPLICATION

- 1.1 This policy must be interpreted and applied in a manner consistent with the –
- 1.1.1 Constitution of the Republic of South Africa, 1996;
  - 1.1.2 Higher Education Act, 101 of 1997 ("the Act");
  - 1.1.3 Prevention and Combating of Corrupt Activities Act, 12 of 2004;
  - 1.1.4 King IV Report on Corporate Governance in South Africa;
  - 1.1.5 Statute of the North-West University, 2017.
- 1.2 The following documents must be interpreted and applied in a manner consistent with this policy:
- 1.2.1 the Code of Conduct for Council Members;
  - 1.2.2 the NWU Code of Ethics;
  - 1.2.3 the NWU Financial Policy;
  - 1.2.4 The Constitution of the Students' Representative Council of the North-West University (SRC Constitution);
  - 1.2.5 Other codes of conduct that might be developed.

## 2 DEFINITIONS

In this policy – "**conflict of commitment**" involves a perceptible reduction of an employee's or a student leader's time and energy devoted to the activities of the university to which the employee is committed to participate in terms of the current task-performance agreement between the employee and the university;

"**conflict of interest**" means the existence of a private or personal interest sufficient to influence the objective exercise of a person's official duties whereby the person is placed in a position to make or influence an official decision which may serve private or personal interests above those of the NWU;

"**family member**" refers to parent, brother, sister, child or spouse, and includes a person living with the person concerned as if they were married, a relationship resulting from birth, marriage or adoption, a person residing with, and a person who is dependent on the person concerned;

"**gift**" means a token bestowed upon a person without expectation of tangible compensation, and in regard of which no direct or indirect contractual obligation exists, including gifts related to cultural and hospitality practices, and those related to sporting events;

"**gratification**" means money, whether in cash or otherwise, any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any similar advantage, any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation or any right or privilege;

**"technology transfer"** includes the process of finding partners, licensees or buyers and negotiating with them the fee that needs to be paid in whatever form as well as term for any right to exploit such results. This process requires careful management and various skills to optimize the income to the university and its employees;

**"university member"** refers to a member of the council, a member of a council committee who is not a member of council, an employee, a student or a student leader, of the NWU;

**"student leader"** refers to a student who is a member of the Student Representative Council (SRC), member of the Student Campus Council (SCC), member of a House Committee or a member of the management structure of an Academic Student Association (ASA), or of a recognised or patroned student leadership structure, and who executes an assigned function or manages a portfolio within such structure.

### **3 PURPOSE**

The purpose of this policy is –

- 3.1 to protect the credibility and integrity of the NWU, its council members, employees, student leaders and students in order that all university members can perform at the highest levels of competence, integrity and security so that public trust and confidence remain ensured;
- 3.2 to maintain a reasonable balance between the possible competing interests of university members in their commitment and dedication to the NWU on the one hand, and on the other their personal affairs and interests;
- 3.3 to ensure that the NWU implements sufficient measures that would enable all university members to adhere to all relevant aspects of best business-practice and legislation, and to manage these throughout the University with balance, fairness and transparency.

### **4 POLICY STATEMENT**

It is the policy of the NWU that –

- 4.1 a consistent and constructive set of guidelines must exist to prevent conflicts of interest in order to promote good governance;
- 4.2 the business practices and policies of the NWU must prevent all possible conflicts of interest in accordance with relevant legislation and the value system of the university;
- 4.3 no university member may be allowed to influence the decisions of the NWU or its associated or subsidiary companies in any way that may adversely affect the university or its affiliates;
- 4.4 university members may not compete directly or indirectly with the business of the university;
- 4.5 all interests must be disclosed openly, and any resulting conflict be managed appropriately in the best interest of the university;
- 4.6 clear guidelines on the acceptance and declarations of gifts by university members must exist.

### **5 RULES FOR THE MANAGEMENT OF DECLARATIONS OF INTEREST**

#### **5.1 Rules applicable to council members and members of council committees**

- 5.1.1 The registrar must provide the Council Executive Committee, in its capacity as council membership committee, with a quarterly report on transactions between the NWU and companies in which council and council committee members have an interest.
- 5.1.2 For purposes of compliance with the provisions of section 27(7)-(7E) of the Act, which are for convenient reference reflected in Annexure 1 to this policy, the registrar must keep a central register, and have such register available at every meeting of the council for the purposes of informing the procurement processes of the university.
- 5.1.3 Every member of council, person who is not a member of council but serves as a member of a council committee, and a person to whom council has delegated a function must be made aware by the

registrar of the statutory requirements regarding the declaration of interests and the revelation of possible and potential conflicts of interest and of the consequences thereof.

## **5.2 Rules applicable to employees**

For convenient reference, the provisions of section 34(4)-34(7) are reflected in Annexure 2 to this policy.

### **5.2.1 Rules for declarations of interest in accordance with subsection 34(4) of the Act**

- 5.2.1.1 Upon appointment to the university, an employee must make a full declaration in writing in the manner prescribed by the registrar regarding anything that may raise a conflict or a possible conflict of interest with the university, and such declaration must be updated annually.
- 5.2.1.2 Every employee must disclose all possible conflicts of interest to the relevant line manager as well as the relevant next level of management as part of the ongoing performance management process.
- 5.2.1.3 Line managers must ensure appropriate structuring and management of annual performance management processes to avoid possible conflicts of commitment, and must report any potential conflict-of-interest situations to the relevant next level of management.
- 5.2.1.4 The university has the discretion to require an employee to alter or limit participation in outside activities for the purposes of eliminating possible conflict of commitment or conflict of interest.
- 5.2.1.5 The registrar must keep a central register containing the information contemplated in 5.2.1.1 to 5.2.1.3.
- 5.2.1.6 The information referred to in 5.2.1.4 must be utilised –
  - 5.2.1.6.1 for compliance reporting to relevant management and governance structures;
  - 5.2.1.6.2 to inform procurement processes at the NWU, for which purpose the Purchases and Payment Office must have appropriate processes in place to monitor the register intended in 5.2.1.4 in instances where the university acquires goods and services.
- 5.2.1.7 **An employee who becomes aware of any instance of conflict of interest, must inform the relevant management structures thereof without delay.**

### **5.2.2 Rules for the management of a contractual relationship between an employee and the university in accordance with subsection 34(5) of the Act**

- 5.2.2.1 In order to obtain council approval and to ensure ongoing oversight in regard to business concerning research and innovation between an employee and the university –
  - 5.2.2.1.1 the DVC Research and Innovation must establish an internal process, involving all relevant role-players in a committee to ensure rigour in the identification, drafting and submission of applications of employees to conduct business with the university;
  - 5.2.2.1.2 following the process contemplated in 5.2.2.1.1, the DVC Research and Innovation may make a submission to the University Management Committee (UMC) containing comprehensive information in regard to the nature of the application and the proposed grounds for council approval;
  - 5.2.2.1.3 upon scrutiny of the DVC's submission, the UMC may recommend approval of the application to the audit, risk and compliance committee of the council (ARCC) who must make a recommendation to council
- 5.2.2.2 In order to obtain council approval and to ensure ongoing oversight in regard to any other business between an employee and the university –
  - 5.2.2.2.1 a functionary of the university who is not involved directly or indirectly in an employee's interests who proposes to conduct business with the university may make a submission to the UMC containing comprehensive information in regard to the nature of the business proposal and the proposed grounds for council approval, and
  - 5.2.2.2.2 upon scrutiny of the submission, the UMC may make an appropriate recommendation to the ARCC.
- 5.2.2.3 Upon receipt of a recommendation by the UMC made in accordance with 5.2.2.1 or 5.2.2.2, the ARCC must request the Internal Audit Department to scrutinise the application or proposal recommended by the UMC before it is submitted to council for approval.
- 5.2.2.4 The UMC must annually submit a report to the last meeting of the ARCC of the particular year

containing comprehensive information on the past year's management of the business relationship between an employee and the university, thereby ensuring full disclosure of said business relationship to the full council.

### **5.2.3 Procurement principles concerning the implementation of the prohibition of contracting provided for in subsections 34(6) and (7) of the Act**

- 5.2.3.1 No employee with a job grade of director or higher may approve or conduct business within his or her reporting line with any entity wherein such employee holds a direct or indirect economic interest.
- 5.2.3.2 Conducting business contemplated in 5.2.3.1 may not be ratified by another line manager in a higher reporting position within the same reporting line.
- 5.2.3.3 Where business with an entity of the nature referred to in 5.2.3.1 is proposed by a functionary in another reporting line, the procedures provided for in 5.2.2 must be followed.
- 5.2.3.4 No employee with a job grade of director or higher may approve or conduct business with a supplier to the NWU if the said employee stands in any kind of business relationship with such supplier.
- 5.2.3.5 Conducting business contemplated in 5.2.3.4 may not be ratified by another line manager in a higher reporting position within the same reporting line.
- 5.2.3.6 Where business with an entity of the nature referred to in 5.2.3.4 is proposed by a functionary in another reporting line, the procedures provided for in 5.2.2 must be followed.

### **5.2.4 Interests of employees in non-university matters**

An employee may maintain interests in non-university matters for personal gain, provided that such interests do not give rise to conflict of commitment or conflict of interest.

### **5.2.5 Rules in regard to economic interests by employees in technology-transfer projects of the NWU**

- 5.2.5.1 Employees may not influence the commercial decisions of the university or its associated or subsidiary companies in such a way that it may lead to reduced income for the university or its associated or subsidiary companies.
- 5.2.5.2 Employees who have economic interests in technology-transfer projects of the university may not participate in technology-transfer negotiations with those organizations in which they have such interests.
- 5.2.5.3 The employees mentioned in 5.2.5.2 may not enter into any contractual arrangements between the said technology-transfer project and the university.

### **5.2.6 Rules in regard to directors appointed by the NWU to represent the university in boards of directors that concerns shareholding by the university**

Where an employee is appointed either in such employee's personal or official capacity to serve as a director on any board on behalf of the university, the appointee must prior to the appointment present proof of an understanding of the fiduciary duty involved in such an appointment.

## **5.3 Rules applicable to student leaders**

### **5.3.1 Rules in regard to a declaration of a conflict of interest by student leaders**

- 5.3.1.1 The Executive Director Student Life, in liaison with the Registrar, must annually oversee a process of declaration of interest by student leaders.
- 5.3.1.2 A central register of such declarations must annually be consolidated by the office of the Executive Director Student Life, and submitted to the Registrar.
- 5.3.1.3 A student leader who develops a new, undeclared conflict of interest must without delay declare such in accordance with the process contemplated in 5.3.1.1.
- 5.3.1.4 Anyone who becomes aware of any undeclared instance of conflict of interest of a student leader must without delay inform the student leadership structure concerned thereof, which must forthwith report the matter to the Executive Director of Student Life for further processing.

## **6 RULES FOR THE DECLARATION OF GIFTS**

- 6.1 No university member may receive gifts, gratifications, personal benefits or hospitality in exchange for favours
- 6.2 Where a gift or other personal benefit is received by a university member from a non-member –
  - 6.2.1 the recipient must declare receipt of the gift in writing to the member's line manager or the structure of the university to which the member belongs;
  - 6.2.2 Where the value of a gift or other benefit exceeds the amount of R500, receipt thereof must be declared and captured in a register kept by the relevant line manager or secretariat of the structure concerned.
  - 6.2.3 In appropriate circumstances the minutes of meetings of a structure in which a university member serves may serve as the record or register of gifts.

### **Annexure 1**

#### **Provisions of section 27 of the Higher Education Act, 101 of 1997 pertaining to conflict of interest of members of a university council, members of council committees who are not also council members, and persons to whom a council has delegated functions**

##### **27 Council of public higher education institution**

**(7)** A member of a council or a member of a committee of a council or a person with delegated functions in terms of section 68 (2)—

- (c) must before he or she assumes office, and annually for as long as he or she continues to hold such office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;
- (d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council; and
- (e)
  - (i) may not have a conflict of interest with the public higher education institution concerned;
  - (ii) may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned;
  - (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of the existence of a conflict or possible conflict of interest.

**(7A)** Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.

**(7B)** A member referred to in subsections (7) (e) and (7A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

**(7C)** In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68 (2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on the matter but must refer the matter for decision by council, having noted the member's or the employee's interest in the matter.

**(7D)** A member of the council or a member of a committee of the council who contravenes subsection (7) (c), (d) or (e), (7A) or (7B), after Council has followed a due process, may be—  
(a) suspended from attending a meeting; or

(b) disqualified as a member of the council or a member of a committee of the council.

**(7E)** The council must—

(a) having regard to the provisions of subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing;

(b) determine rules and procedures in terms of section 32 for an annual declaration—

- (i) by each member of the council, each member of a council committee and each person who exercises functions of the council in terms of delegated authority;
- (ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and
- (iii) of the financial interests and fiduciary roles of the members of his or her immediate family.

## Annexure 2

### **Provisions of section 34 of the Higher Education Act, 101 of 1997 pertaining to conflict of interest of employees of a university**

#### **34 Appointment and conditions of service of employees of public higher education institutions**

(4) An employee must in writing –

- (a) (i) before he or she assumes office; and
- (ii) whenever a new interest arises,

declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and

- (b) notify the public higher education institution concerned of any conflict or possible conflict of interest before such public higher education institution procures any goods or services from the employee or an organisation within which the employee holds an interest.

(5) An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion, and takes a decision, that –

- (a) the goods, product or service in question are unique;

- (b) the supplier is a sole provider; and
- (c) it is in the best interest of the institution.

(6) An employee may not on behalf of the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which the employee or any relative has a direct or indirect financial, personal, fiduciary or other interest.

Contracting referred to in subsection (6) relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gain that does not form part of the employment relationship contemplated in subsection (1).