



NORTH-WEST UNIVERSITY
YUNIBESITI YA BOKONE-BOPHIRIMA
NOORDWES-UNIVERSITEIT
INSTITUTIONAL OFFICE

Conflict of Interest Policy

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Policy owners	IR and DVC:RIT
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Conflict of Interest Policy

1 Preamble

As a pre-eminent university in Africa, driven by the pursuit of knowledge and innovation, with a unique institutional culture based upon the values the University espouses, the North-West University has adopted this Conflict of Interest Policy on 20 June 2014.

2 Policy statement

It is the policy of the North-West University to provide a consistent and constructive set of guidelines in line with Sections 27(7) and 34 of the Higher Education Act (Act 101 of 1997, as amended) in order to implement a conflict-of-interest policy that aims to promote good governance.

3 Background and problem statement

The University has the obligation to protect the integrity of all processes and to provide an environment in which the best interest of the University is to be served.

Conflicts of interest can arise naturally from council members' and employees' engagement with private affairs or affairs of other institutions and organisations. Hence it is important to make provision for managing any possible conflicts of interest and to align North-West University business practice and policies with the Higher Education Act (101 of 1997) and the value system of the North-West University.

It is important that any potential conflicts of interest be disclosed openly, and any resulting conflict be managed appropriately in the best interest of the University.

4 Purpose and applicability

The purpose of this policy is

- To protect the credibility and integrity of the North-West University, its council members and staff members in order that all members can perform at the highest levels of competence, integrity and security so that public trust and confidence remain ensured;
- To maintain a reasonable balance between the possible competing interests of members of the University in their commitment and dedication towards the North-West University, and their involvement with own or other affairs;
- To ensure that the North-West University implement sufficient measures that would enable all council members and employees to adhere to all relevant aspects of best business-practice and legislation, and to manage these throughout the University with balance, fairness and transparency.

This policy is applicable to

- Council members and members of Council committees;
- All NWU employees, fixed term contract workers and post-doctoral researchers;
- Honorary staff.

5 Guidelines and Definitions

The following guidelines and definitions are used for the purposes of interpretation and establishing a procedure to manage conflicting interests and the requirements of legislation.

5.1 Council member, Council committee member, University member

A Council member is a member of the NWU Council as described by the NWU statute.

A Council committee member is either a Council member or an external specialist member co-opted to serve on a Council committee.

It is a requirement that Council members and Council committee members subscribe to the NWU Council Code of Conduct.

A University member is either an employee or a Council member or a Council committee member.

5.2 Economic interest

This refers to and includes University member's interest (directly or indirectly) in obtaining any direct or indirect financial benefit, shareholding, management position or board membership and any other fiduciary relationship (liability to protect and perform) with an organization other than the NWU. It includes anything of monetary value or in kind, but is not limited to, salary, commission, fees, subsidies, grants, honoraria, equity interests, intellectual property rights, royalties or gifts.

Economic Interest excludes any and all monetary income which an employee received from the University, including project allowances, profit sharing, royalties, internal teaching and research awards, publications, prize money, etc.

Directly – means **in person** and not via an entity for example a private company, trust or CC, where one holds vested or yet unvested interests.

Indirectly – means **via a company, trust, close corporation, partnership or sole proprietorship**, where one holds vested or yet unvested interests, excluding shares in the JSE listed companies not exceeding 5 (five) percent of such listed company.

Direct – personal involvement of University member for possible financial gain in the business entity or person conducting business with the university.

Indirect – involvement of, including but not limited to, a spouse, child or life partner of the relevant University member for possible financial gain in the business entity conducting business with the University, where a conflict of interest or potential conflict of interest may arise.

5.3 Conflict of interest

"A situation in which a person, such as a public official, an employee, or a professional, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.

"A conflict between professional obligations and personal and/or business interests arises if the individual tries to perform that duty while at the same time achieving personal gain. The appearance of a conflict of interest is present if there is a potential for the personal and/or business interests of an individual to conflict with professional duties of the employee and the interest of the university. This may be a financial interest, but it could also be a personal interest, for example to provide a special advantage to a spouse, life partner or child."

The test whether conflict of interest exists, is to ask whether the extent of the possible divergence between University members' private interests and their professional obligation to the University is of such a nature that an independent observer might reasonably question whether the member's professional actions or decisions are determined or influenced by considerations of personal gain, financial or otherwise. It includes an action, omission or situation which may or may not appear to compromise the objectivity of a member's design, conduct or reporting of a project.

A University member will have a conflict of interest, direct or indirect through a family member or associated legal entity of the individual member (e.g. company, closed corporation or trust), has an external economic interest that affects or provides an incentive to affect or may affect the said member's conduct and responsibilities at the NWU.

In other words, a council member or employee holding equity, being a director, being in a managerial position, being in any controlling position for or not for economic interest in a company or other legal entity which has commercial ties with the University either as vendor, supplier, subcontractor, licensee, licensor, grantor, research assignor or assignee, would be regarded as being in a conflict-of-interest situation.

The principle of conflict of interest does not constitute the question of council or staff members who might not be doing their job satisfactorily (Conflict of Commitment), but whether they are in a position to make or influence a decision which could affect their personal interests in contrast with those of the NWU.

5.4 Conflict of commitment

Employees are expected to satisfy all the requirements of their employment, and should not permit outside activities to interfere with the performance of their NWU obligations. Conflict of Commitment is usually easily defined and recognized, since it involves a perceptible reduction of the employee's time and energy devoted to NWU activities. Time allocated to external activities should be recognized and defined in the individual employee's task-performance agreement with the University.

5.5 Task-performance agreement process

Employees and their respective line managers agree annually in advance on the tasks and output required from employees in order to achieve the overall objectives of the University. Any potential conflict of commitment and conflict of interest need to be resolved through acceptable arrangements in the task-performance agreement process and declared accordingly.

5.6 Technology transfer

Amongst others, the North-West University has an obligation to commercialise its research results. 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 personnel.

5.7 Fiduciary

Relating to, or involving a confidence or trust.

5.8 Recuse

To *recuse*, is to disqualify oneself as a judge in particular case, or to remove oneself from participation.

6 Policy and rules

6.1 Underlying principles

The following principles underlie the policy:

- 6.1.1. University members should not be in a position to influence the decisions of the NWU or its associated or subsidiary companies in any way that it may adversely affect the Institution or its affiliates.
- 6.1.2 University members should not directly or indirectly compete with the core business of the University.

6.2 Policy details and rules applicable to Council members and members of Council Committees

- 6.2.1 Every member of the NWU Council or committee member of any Council Committee of the NWU must make a full declaration of his/her business, financial interests and fiduciary roles; as well as those of his/her family members as required by the Higher Education Act (S27 of the Act 101 of 1997 as amended) and as per this policy. This declaration is to be done upon appointment to Council or to the relevant council committee, and needs to be updated annually.
- 6.2.2 A central register needs to be kept by the Institutional Registrar to inform procurement processes at the NWU so as to be referred to when the University wishes to acquire goods and services, and has this register available at all meetings of the NWU Council.
- 6.2.3 A Council member or member of any Council Committee of the NWU must withdraw from any meeting containing an agenda item in which he/she has a direct or indirect financial, personal or other interest.
- 6.2.4 A Council member or member of any Council Committee of the NWU must inform the chairperson of a meeting in writing and before the commencement of a meeting, of a conflict or possible conflict of interest contained in the agenda of that particular meeting. If confirmed, the member needs to recuse him-/herself from the meeting for the particular item.

6.3 Policy details and rules applicable to staff members

6.3.1 In accordance with Subsections 34(4), 34(5) and 34(6) of the Higher Education Act (Act 101 of 1997 as amended), every staff member must make a full declaration in writing of his/her business, financial interests and fiduciary roles as well as those of family members on appointment to the University.

6.3.2 This disclosure must be updated annually during the task-agreement performance process, both to the relevant manager and the Deputy Vice-Chancellor: Research, Innovation and Technology.

Line managers have the obligation both to see to appropriate structuring and management of annual task-agreement processes in order to avoid possible conflicts of commitment, and to report any potential conflict-of-interest situations to the relevant next line of management. Line managers are compelled to report any potential conflict of interest situations.

The information captured during the task-agreement process needs to be recorded on a central register in order to inform procurement processes at the NWU; and needs to be referred to when the University wishes to acquire goods and services.

6.3.3 No staff member may conduct business, be it directly or indirectly, with the University that might entail a possible conflict of interest with the University, unless and only if the NWU Council approves the business on any of the following grounds contained in S34(5) of the Higher Education Act:

6.3.3.1 The goods, products or services in question are unique.

6.3.3.2 The supplier is a sole provider.

6.3.3.3 The business is in the best interest of the University.

Each case has to be evaluated on its merits.

When reporting in terms of this policy, employees must apply in writing to the DVC: Research, Innovation and Technology and fully motivate the requirements set out in paragraph 6.3.3.1, 6.3.3.2 and 6.3.3.3.

The DVC: Research, Innovation and Technology may provisionally approve (or disapprove) the application in terms of this policy and make a recommendation to the Council for their approval and/or ratification.

6.3.4 No staff member may contract him-/herself or any entity in which he/she has a direct or indirect financial or personal interest on behalf of the University. In this regard, the aim would be at receiving any direct or indirect personal gain not forming part of the employment relationship the said staff member has with the University.

6.3.5 Should a potential conflict-of-interest situation arise, the NWU should be represented by employees who are not directly or indirectly involved in the conflict-of-interest situation to ensure objectivity and to protect the affected employee(s) from undue transactions.

6.3.6 No employee with a job grade of director or higher may approve or conduct business within his/her reporting line with any entity wherein such employee holds a direct or indirect economic interest. This prohibition cannot be ratified by another line manager in a higher reporting position. This prohibition does not exclude other reporting lines within the University to do business with the entity, provided that the business is not approved by the employee who holds the interest.

6.3.7 Should a staff member fail to disclose a conflict of interest, any other staff member may inform the relevant management structures of a conflict of interest of which the person became aware.

6.3.8 Staff members may have economic interests in non-university matters for personal gain, provided that such activities do not lead to possible conflict of commitment or a conflict of interest. Should any possibility of a conflict of interest emerge, employees need to disclose the potential conflict-of-interest situations. In such cases the University, at its sole discretion, may decide to alter or limit the participation of employees in such outside activities to eliminate the possible conflict of interest always subject to the limitations introduced on employees doing business with the University in terms of Section 34 of the Act.

6.3.10 Employees who have economic interests in technology-transfer projects of the University are not allowed to participate in technology-transfer negotiations with those organizations in which they have such interests.

6.3.11 No employee may be appointed on any board on behalf of the University - neither in his/her personal nor in ex-officio capacity - as a director, without proving to the University that he/she understands the legal liability (fiduciary duty) of such an appointment.

7 How to deal with conflict-of-interest situations

Possible instances of conflict of interest need to be managed in ways to eliminate or reduce the identified conflicts. Conditions that might be utilised to manage possible conflicts of interest may include, but are not limited to the following mitigations:

- a. Public disclosure of such interest, including to sponsors and other stakeholders;
- b. Monitoring of the process, project / programme, by independent reviewers;
- c. Modification of the legal structure of the relationship;
- d. Modification of the conditions of employment and/or responsibilities of affected employees (e.g.5/8 or contract appointment with a modified task-agreement process, rather than a full-time appointment);
- e. Disqualification of affected employees from the project or involvement in the business;
- f. Withdrawal of the project or business plan by the NWU;
- g. Divestiture from the interest by affected employees; and
- h. Severance from the relationship which causes the actual or potential conflict of interest situation.

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