

# Conflict of Interest Policy

## Section 1 - Introduction

(1) One of the aims of the University's [Code of Conduct](#) is to maintain public trust and confidence in the integrity and professionalism of our graduates, the teaching and learning, research and research training, and community service activities of the University, and the facilities and services that make up the University experience. Acting ethically and with integrity includes a requirement that all persons engaged with or undertaking University business identify, and appropriately manage, conflicts of interest.

(2) The objective of this Policy is to help employees and others engaged in University business to identify, disclose and manage actual, perceived (or apparent), or potential conflicts of interest between their interests and their University duty or responsibilities. In addition, the Policy addresses the disclosure requirements of the [Australian Accounting Standards](#) in relation to Related Party Disclosures in the University's annual financial statements.

(3) This Policy draws on the guidelines contained in the [Independent Commission Against Corruption](#), Managing Conflicts of Interest in the Public Sector Toolkit.

## Section 2 - Policy Scope

(4) This Policy applies to all University staff, conjoints, students, volunteers, and members of advisory and governing bodies, in all campuses and locations of the University and at all times while engaged in University business or otherwise representing the University.

## Section 3 - Policy Intent

(5) The intent of this Policy is to support those involved in University activities in the exercise of their duties, studies and endeavours with integrity. The objectives are to identify, disclose and manage conflicts of interest and related party transactions in a transparent manner in order to minimise risk, including reputational risk, to the University; minimise risk to individuals; protect the interests of students enrolled in academic programs within the University; avoid legal issues; and comply with relevant [Australian Accounting Standards](#).

(6) Conflicts of interest can arise in many situations. It is not unusual or wrong to have a conflict of interest. Actual, potential or perceived (or apparent) conflicts of interest may arise in decision making or in actions, and need to be managed. The purpose of this Policy is to assist in the avoidance of conflicts of interest where possible, and to provide measures which may be used for the appropriate management of issues or situations where conflicts of interest arise.

## Section 4 - Relevant Definitions

(7) In the context of this document:

- a. close family members are those individuals that may be expected to influence, or be influenced by, Key management Personnel (KMPs), in their dealings with the University or its controlled entities. Typically this

includes spouses and children, but may extend beyond that.

- b. a conflict (or actual conflict) of interest arises when an official's private-capacity interests could adversely affect the proper performance of their official function or duty (OECD, 2004, Guidelines on managing conflict of interest). A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage – whether financial or otherwise.
- c. governing bodies means the University Council.
- d. Key Management Personnel (KMPs) are those responsible for planning, directing and controlling the activities of the University either directly or indirectly. In its financial statements the University classifies members of the Council and the Executive Committee as KMPs.
- e. a perceived (or apparent) conflict of interest exists where it could be reasonably perceived by a disinterested third party that a person's private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- f. a potential conflict of interest arises where a person has private interests that could conflict with their official duties in the future.
- g. a related party is a KMP or entity that is a subsidiary, associate or joint venture partner of the University. For the purposes of this policy a related party is also an entity that is controlled or jointly controlled by a KMP or their close family, or where a KMP or close family member has significant influence over the entity, or is a member of the KMP for the entity. A related party may also be an entity that provides KMP services to the University.
- h. reportable gift or benefit means:
  - i. any item, travel, hospitality, entertainment or other token of appreciation with a value of more than \$100; or
  - ii. a series of any items listed in (i) from a single source within a calendar year (January 1 to December 31), where the value of the gifts collectively is more than \$100.
- i. Statement of Interests means the written declaration of relevant personal interests, and possibly those interests of other persons closely related to an individual.

## Section 5 - Policy Provisions/Principles

### Identifying Conflicts of Interest

(8) A conflict of interest exists where there is a divergence between the individual interests of a person and their professional responsibilities such that an independent observer might reasonably conclude that the professional actions of that person are unduly influenced by their own interests ([Australian Code for the Responsible Conduct of Research](#) (ACRCR), Section 7). Conflicts of interest may be actual, perceived, or potential. (ICAC, 42). They may arise through decision-making or actions. In all cases, the following tests can be applied to determine if there is a conflict of interest:

- a. public duty versus private interest;
- b. potential for benefits now or in the future;
- c. perception of how a decision or action may be viewed by others; the risk to individual and to the University;
- d. proportionality:
  - i. would it appear fair and reasonable to an independent person?
- e. presence of mind:
  - i. what would be the consequences if the issue is ignored?
  - ii. what would be the perception if questioned publicly?
- f. promises:

- i. what commitments have been made?
- ii. does an individual stand to gain or lose from the action or decision?

(9) Generally the level of risk associated with the conflict of interest will increase with an increasing level of leadership or authority and where multiple functions are assigned to one individual.

(10) The Checklist for Assessment of Areas of Potential Conflicts of Interest can be used to help identify conflicts of interest.

(11) Specific areas of high risk to be considered include:

- a. financial and economic interests, for example shareholding in or directorship of a company dealing with the University by the person concerned or by a partner or immediate member of their family;
- b. family or private businesses that may have dealings with the University or which may be in competition or conflict with the University;
- c. family or other relationships with contractors, students, or other staff also working in the University;
- d. paid outside employment, being a member of a Committee or Advisory Board, employment by a company dealing with the University or in a role related to an aspect of government policy or operations which affects a matter under consideration by the University;
- e. future employment prospects or plans;
- f. affiliations with, or membership of, other organisations and associations (e.g. non profits, political, trade unions, professional organisations) that may be dealing with the University or in competition or conflict with the University;
- g. obligations to professional, community, ethnic, family, or religious groups in a personal or professional capacity; and
- h. enmity or competition with another individual or group.

## **Prejudicial Relationships**

(12) Relationships (familial, closely personal, sexual, commercial or involving private affiliations) may lead to a conflict of interest or be prejudicial to professional conduct. Such relationships may be either current or in the recent past, or may have developed between colleagues, or a staff member and a student, as a consequence of an initial professional association.

(13) Any relationship between staff members and between staff (whether academic or administrative) and students can be prejudicial where a staff member uses his or her position to the detriment or benefit of a student, other staff member, or the University.

(14) Staff must recognise their professional and ethical responsibilities to protect the interests of students, to avoid or manage conflicts of interest, respect the trust involved in the staff/student relationship and to accept the constraints and obligations inherent in that relationship.

(15) A staff member shall not take part in any matter in relation to any student who is a member of their immediate family, or is currently or has recently been involved in a close personal relationship with that staff member.

(16) The staff member must declare his/her interest and make arrangements to avoid taking part in any of these matters; such arrangements shall be approved by the Head of School or Director; or, if the Head of School or Director is the person involved, then by the Pro Vice-Chancellor of the Faculty or Head of the Division and, if the Pro Vice-Chancellor is the person involved, then by the relevant Deputy Vice-Chancellor.

## Responsibilities

### General Responsibility

(17) It is the responsibility of all those covered by the scope of this policy to be aware of their obligation to identify, disclose and appropriately manage conflicts of interest which may arise at any time during the course of duty or while on University business. This includes an assessment of private and personal interests and whether they conflict or have the potential to conflict with official duties, and the disclosure of actual, potential or perceived conflicts of interest.

(18) When confronted by an actual, potential or perceived conflict of interest, those covered by the scope of this Policy, must formally disclose the conflict of interest and its nature. This must be in a form appropriate to the situation, either in writing, by email or by advice to a line manager or Chair of a meeting. A record of declared actual and potential conflicts of interest will also be maintained in a manner appropriate to the situation. For example, if a disclosure is made during a meeting, this disclosure and the action taken by the Chair to manage the situation should generally be minuted. It is preferable in such circumstances that the person concerned does not remain in the room, even if silent, while the matter related to the disclosure is debated and decided. ([ACRCR](#), Section 7.1.3)

(19) In addition, Key Management Personnel are required to disclose details of financial and non-financial transactions and outstanding balances between the University and its controlled entities and them, their close family members and entities controlled or jointly controlled by them or their close family members. Transactions in common with the general public are excluded from these disclosures.

(20) It is the responsibility of line managers to ensure that staff are aware of this Policy and to facilitate compliance by those they supervise.

(21) Where a line manager, Chair of a governance body or other relevant person or body becomes aware of an actual, potential or perceived conflict of interest that has not been declared, they should discuss the matter with the individual, encourage full disclosure and take action applicable to the situation. If appropriate, a formal disclosure and management strategy as identified in Clauses 36 and 38 must then be put in place.

(22) While all conflicts of interest must be disclosed, on rare occasions, there may be an ethically acceptable reason for not disclosing the specific nature of the conflict, for example if this would breach another person's privacy. In such cases, the individual must still declare that a conflict of interest exists and the line manager or Chair of a Committee must be satisfied that the conflict can be managed without its nature being disclosed. [5.4.6 National Statement on Ethical Conduct in Human Research 2007]

### Declarations

(23) A Statement of Interests Declaration is required for all members of the University's governing bodies and the Senior Executive upon their appointment and annually prior to 30 November. Part 1 of the Statement of Interests Declaration is to be used.

(24) A Key Management Personnel Certificate and details of related party transactions is required for all Key Management Personnel upon their appointment, resignation and annually prior to 30 November. The University of Newcastle considers members of its Council and Executive Committee to be KMPs. Part 2 of the Statement of Interests Declaration is to be used.

(25) Making a statement of interests declaration does not remove the obligation on those covered by this Policy to disclose an actual or potential conflict of interest should one arise, or to take appropriate action to resolve or manage the conflict of interest

## **Conflict of Interest - Disclosure at University Governance Meetings**

(26) All meetings of governing bodies will commence with a declaration by those present that no conflict of interest exists in any matter before the meeting. Where a conflict of interest is disclosed, the Chair will decide, based on the matter under consideration and the nature of the conflict, the appropriate course of action. This may include the person being stood down from the discussion or not participating in voting or resolutions. The interest that is disclosed, the nature of the conflict and the manner in which it is managed will be minuted.

(27) It is best practice to request a declaration of conflicts of interest at all University meetings. Such declarations are required at University meetings where there are decisions involving personal or confidential information, and where natural justice and procedural fairness issues are paramount, such as staff or student misconduct matters, allegations of research misconduct, and meetings involving tenders.

### **Areas of High Risk**

(28) Directors, Heads of School, and their equivalents or above, who are responsible for areas and processes where there is a high risk of a conflict of interest arising are required to ensure that specific procedures are put in place to manage the risks posed by potential conflicts of interest.

(29) These areas include, but are not limited to:

- a. research activities, including disclosure to funding bodies and for individuals responsible for carrying out any part of an investigation of an allegation of research misconduct;
- b. procurement processes, tenders and contracts;
- c. staff recruitment, selection, appointment, re-classification, termination, tenure, promotion, staff development, conditions of service;
- d. student admission, enrolment, withdrawal, suspension, appeals and graduation processes;
- e. collection and use of personal information;
- f. exercising financial and other delegations; and
- g. sponsorships to or from the University.

### **Gifts and Benefits**

(30) Staff and members of University governing bodies must not solicit nor accept gifts or benefits either for themselves or for another person which might in any way be seen to directly or indirectly compromise or influence them in their official capacity.

(31) Gifts of money, including gift or store vouchers, are not acceptable. As an exception, gifts of nominal value (less than \$100 as a guide) used for promotional purposes by the donor may be accepted. Individuals must, however, be satisfied that they cannot be compromised by the acceptance.

(32) Individual gift(s) in excess of a value of \$100, as well as multiple gifts from the same source totalling in excess of \$100, must:

- a. preferably be gift(s) to the Faculty/Division of the University; and
- b. be declared in the Gifts and Benefits Register as outlined in Clause 35. If an individual has any doubt in relation to a particular matter, direction should be sought from the relevant Pro Vice-Chancellor or Head of Division.

### **Register of Related Parties, Conflicts of Interest, Gifts and Benefits**

(33) The University will maintain a related party and conflict of interest record for all persons who are required to complete a Statement of Interests Declaration or Key Management Personnel certificate.

(34) Declarations made by Council members who are not University employees, will be held by the University Secretary. Declarations made by University employees will be held by Human Resource Services.

(35) The University will also maintain a Gifts and Benefits Register for all staff to report any gifts and benefits individually or cumulatively in excess of \$100. The [Disclosure of Reportable Gifts or Benefits Form](#) should be used in these circumstances.

## **Management of Conflict of Interest**

(36) Appropriate management of a conflict of interest may include:

- a. restricting the involvement and access to information of those concerned in matters in which they have, or are perceived to have, a conflict of interest;
- b. re-assignment of persons from matters in which they have an actual or potential conflicts of interest;
- c. involvement of third parties who do not have an interest to participate in the matter;
- d. relinquishment of assets or private interests; or
- e. resignation from the position which has placed the person in an unmanageable conflict of interest situation.

(37) The most appropriate strategy will depend on an assessment of the nature of the conflict, the complexity of the situation and the subtleties and severity of the case.

(38) In the area of research ethics review, management measures may include requiring that:

- a. the information be disclosed to research participants;
- b. a person other than the researcher make the initial approach to participants;
- c. the information be disclosed in any report of the research;
- d. the research be conducted by another researcher; or
- e. the research not be conducted.

[Section 5.4.3 of the National Statement on Ethical Conduct in Human Research 2007, updated 2018]

## **Concerns**

(39) Where a member of staff or a student has concerns or perceives that a conflict of interest exists, the matter should be discussed with the relevant line manager, supervisor or senior staff member. If the matter cannot be raised or resolved in this way, contact should be made with the Complaints Office and the matter dealt with in accordance with the provisions of the [Complaint and Grievance Policy](#).

(40) Where the conflict of interest concern involves fraud or corruption the individual should report the matter immediately using the provisions of either the [Public Interest Disclosures Policy](#).

## **Consequences for Non-compliance**

(41) Non-compliance with the provisions of this Policy, including refusal to take any reasonable action as directed to resolve a conflict of interest, is a serious matter. Depending on the severity and implications of the breach, action may be taken under misconduct provisions of the relevant enterprise agreements, or student disciplinary proceedings, and sanctions may include a warning, counselling, or disciplinary action.

(42) Breaches of this Policy may also result in referral to, and action being taken by, a statutory authority and/or agency.

## Review and Oversight

(43) Information contained in the standing [Statement of Interest Declarations](#) will be provided to the Nominations and Governance Committee in camera at the first meeting of each year.

(44) Information on the Gifts and Benefits Register will be provided to the Risk Committee at the first meeting of each year.

(45) Information held may be used for University purposes including audit, reporting, compliance monitoring and other purposes required by government, legislation or University workplace agreements, rules, policies or procedures.

## Privacy Management

(46) Information arising from conflict of interest disclosures, Statement of Interests Declarations, Key Management Personnel certificates and declarations of reportable gifts and benefits will be managed in accordance with the University's [Privacy Management Plan](#).

## Section 6 - Further Information

(47) Further information may be obtained by contacting:

- a. the relevant PVC or Head of Division or Unit;
- b. the University's Legal Office;
- c. the office of the [NSW Ombudsman](#).

## Section 7 - Appendices

(48) Checklist for Assessment of Areas of Potential Conflicts of Interest

(49) [Statement of Interests Declaration](#)

(50) [Disclosure of Reportable Gifts or Benefits Form](#)

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	11th July 2019
<b>Review Date</b>	11th July 2020
<b>Approval Authority</b>	University Secretary
<b>Approval Date</b>	11th July 2019
<b>Expiry Date</b>	16th November 2020
<b>Responsible Executive</b>	Daniel Bell University Secretary
<b>Enquiries Contact</b>	Daniel Bell University Secretary <hr/> Legal and Governance Services

## Glossary Terms and Definitions

**"Graduate"** - (Noun) Has the same meaning as in section 3(2) of the University of Newcastle Act 1989.

**"University"** - The University of Newcastle, a body corporate established under sections 4 and 5 of the University of Newcastle Act 1989.

**"Council member"** - A person who is a member of the University Council as described in Section 8B of the University of Newcastle Act, 1989.

**"Risk"** - Effect of uncertainty on objectives. Note: An effect is a deviation from the expected, whether it is positive and/or negative.

**"Level of risk"** - Magnitude of a risk or combination of risks, expressed in terms of the combination of their consequence and likelihood.

**"Asset"** - Any tangible or intangible item (or group of items) that the University owns or has a legal or other right to control and exploit to obtain financial or other economic benefits.

**"Confidential information"** - All information which is disclosed to a party by, or on behalf of, the other party, or which is otherwise acquired by a party from the other party, or any adviser engaged by the other party, which: (a) is by its nature confidential; (b) is designated by the other party as being confidential; or (c) the party knows or ought to know is confidential, but does not include information which: (d) is or becomes public knowledge other than through a breach of confidentiality; (e) was already in the possession of a party and not subject to an obligation of confidentiality; (f) is lawfully received from a third party; or (g) is independently developed by a party.

**"Course"** - When referring to a course offered by the University, a course is a set of learning activities or learning opportunities with defined, assessed and recorded learning outcomes. A course will be identified by an alphanumeric course code and course title. Course types include core courses, compulsory courses, directed courses, capstone courses and electives. For all other uses of this term, the generic definition applies.

**"Personal information"** - Has the same meaning as in the Privacy and Personal Information Protection Act 1998 (NSW).

**"Student"** - A person formally enrolled in a course or active in a program offered by the University or affiliated entity.

**"Student misconduct"** - Academic misconduct, non-academic misconduct and/or research misconduct.

**"Disciplinary action"** - When used in relation to staff of the University, this is as defined in the applicable and current Enterprise Bargaining Agreement, or the staff member's employment contract. When used in relation to students of the University, this refers to the range of penalties that may be applied under the Student Conduct Rule.

**"Procurement"** - The overarching activities, processes and systems undertaken to acquire goods and services for the University.

**"Program"** - When referring to learning, a program is a sequence of approved learning, usually leading to an Award. For all other uses of this term, the generic definition applies.

**"Senior staff"** - Deputy Vice-Chancellor, Pro Vice-Chancellor, Global Innovation Chair, Global Innovation Professorial Fellow, Head of School, Director or equivalent.

**"Staff"** - Means a person who was at the relevant time employed by the University and includes professional and academic staff of the University, by contract or ongoing, as well as conjoint staff but does not include visitors to the University.

**"Supervisor"** - Staff members with direct supervisory responsibility for other staff within the workplace (a Supervisor may also be member of Senior Management, with duties as an Officer as defined in the Work Health and Safety Act 2011, or any replacing legislation).

**"Third party"** - A person or group other than the University or any of the University's partner institutions.

**"University business"** - Work that the University has directed to be undertaken which is required, essential, and beneficial for the functions of the University. This includes, but is not limited to, attending meetings, conferences or fieldwork, but does not include activity that is not location specific, e.g. email management, writing papers. University business may be undertaken by staff and non-staff.