



**cogta**

Department:  
Cooperative Governance and Traditional Affairs  
**PROVINCE OF KWAZULU-NATAL**

Tel. +27 33 395 2638 Fax. +27 33 394 5669  
Postal. Private Bag X 9078, Pietermaritzburg, 3200  
Office. Natalia Building, 330 Langalibalele Street,  
Pietermaritzburg 3201

## **PROVINCIAL POLICY FRAMEWORK ON CONFLICT OF INTEREST FOR LEVELS 1-12 FOR IMPLEMENTATION WITHIN THE DEPARTMENT OF COGTA**

**MR T TUBANE  
ACTING HEAD OF DEPARTMENT  
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS**

ADOPTION DATE 23/05/2016



## KWAZULU-NATAL PROVINCIAL ADMINISTRATION

### PROVINCIAL POLICY FRAMEWORK ON CONFLICTS OF INTEREST

This Provincial Policy Framework was approved by the Premier of the Province  
of KwaZulu-Natal on 05/02/2014.

Signed:

  
Honourable E S Mchunu

Premier: Province of KwaZulu-Natal

## TABLE OF CONTENTS

---

1.	Introduction	3
2.	Purpose	3
3.	Objectives	3
4.	Applicability	4
5.	Definition of Terms	4
6.	Authorisation	5
7.	Policy provisions	6
8.	Gifts, hospitality and other benefits	8
9.	Remunerative Work outside the Public Service	9
10.	Disciplinary Action	9
11.	Roles and Responsibilities	9
12.	Financial Implications	10
13.	Monitoring, Evaluation and Review	10
14.	Implementation Date	11
	Annexure A	12

## 1. INTRODUCTION

- 1.1 The KwaZulu-Natal Provincial Administration (hereinafter referred to as the Administration) does not currently have a provincial policy framework regulating conflicts of interest of its employees. It is necessary to restrict the business interests of employees of the Administration to prevent conflicts of interest from arising. Considering that the various departments of the Administration have daily contact with private sector suppliers and service providers concerning tenders, contracts and agreements and to ensure consistent and uniform practice in this regard, it has been deemed necessary for such a policy framework to be developed.
- 1.2 The Public Service Anti-corruption Strategy approved by Cabinet requires government departments to put measures in place to manage amongst, other things, conflicts of interests.

## 2. PURPOSE

The purpose of this Policy Framework is to establish measures and standards for managing conflicts of interest in the Administration that may arise as a result of -

- (a) the financial interests of Employees;
- (b) Employees holding -
  - (i) a position in any company, close corporation or partnership that does business with the Administration; or
  - (ii) a private interest or share in any contract, agreement, tender, asset or investment emanating from, or connected with, the State, any national or provincial Government department, any municipality or any public entity; or
- (c) the relationship of Employees with suppliers or service providers in companies, bodies or organisations that do business with the Administration and the Employee's relationship with suppliers or service providers to whom he/she is related and with whom the Administration does business.

## 3. OBJECTIVES

The objectives of this Policy Framework are to:-

- (a) institute measures to manage conflicts of interest in the Administration and to protect public servants from any allegations of conflicts of interest;

- (b) restrict the business interests of employees to prevent conflicts of interest; and
- (c) promote good governance and ethical conduct in the public service thereby ensuring that the public interest is served.

#### 4. APPLICABILITY

- (a) This Policy Framework applies to all employees at all levels (Salary Levels 1-16) who are employed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), as amended in the Administration as defined in paragraph 5 below; and
- (b) where members of the services or educators are not excluded from the provisions of the Public Service Act, 1994, those provisions shall apply only in so far as they are not contrary to the laws governing their employment.

#### 5. DEFINITION OF TERMS

For the purposes of this Policy Framework, unless the context indicates otherwise, the following definitions are set out for the terms indicated:

**“Act”** means the Public Service Act, 1994 (Proclamation 103 of 1994) as amended.

**“Administration”** means the Office of the Premier: KwaZulu-Natal and the KwaZulu-Natal Provincial Departments as defined and listed in Schedule 2 to the Public Service Act, 1994, and includes a provincial government component.

**“conflict of interest”** means a conflict or potential conflict between the public position and duties and the private position or interests of a public servant in which the public servant has private capacity interests which may reasonably be perceived, or expected, to improperly influence the performance of the official duties and responsibilities of that public servant.

**“corruption”** means any offence in terms of Chapter 2 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.

**“department”** means the Office of the Premier, KwaZulu-Natal, or a provincial department or a provincial government component.

**“employment”** means appointment in the public service for which the appointee receives remuneration or is rewarded for performance of work.

**“family”** means a group of two or more people related by marriage, blood relation or adoption.

**“gift”** means an irrevocable and charitable token which is bestowed voluntarily without any expectation of tangible compensation and for which no direct or indirect contractual obligations are imposed.

**“gratification”** means gratification as defined in section 1 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 contained in **Annexure A**.

**“hospitality”** means any food, drink, entrance to events, accommodation or entertainment provided free of charge or heavily discounted and for which no direct or indirect contractual obligations are implied.

**“influence peddling”** means the practice of using -

- (a) one’s status and influence attached to one’s position or appointment in government; or
- (b) one’s contact or connections with any persons in a position of authority,

to obtain favours or preferential treatment for oneself or any other person, body or organisation, including any company, close corporation or partnership, usually in return for a benefit or value, including payment in money or in kind.

**“insider information”** means any confidential information, classified or not, to which a public servant has access by virtue of his/her official position or in the exercise or performance of his/her official powers, duties and functions and which is not in the public domain or has not been made available to the general public.

**“private benefits”** means, but is not limited to, a favour, donation, grant and or sponsorship that directly or indirectly benefits or affords value to a public servant.

**“public servant”** means any permanent, temporary or contract employee in the Administration or a provincial department or government component.

**“remunerative work”** means any work performed by a public servant outside his/her employment in the Public Service for which a benefit, reward or payment for services rendered is made.

## 6. AUTHORISATION

The authorisation of this Policy Framework is in accordance with:-

- (a) Prevention and Combating of Corrupt Activities Act 12 of 2004
- (b) Public Service Act, 1994 as amended.
- (c) Public Service Regulations, 2001
- (d) Public Finance Management Act 1 of 1999
- (e) Promotion of Access to Information Act 2 of 2000
- (f) Promotion of Administrative Justice Act 3 of 2000
- (g) Protected Disclosures Act 26 of 2000

## 7. POLICY PROVISIONS

### 7(1) Principles guiding this Policy Framework:

- (a) Respect for human dignity, equality and the advancement of human rights and freedoms and the recognition of the supremacy of the Constitution and the rule of law.
- (b) A high standard of professional ethics which must be promoted and maintained.
- (c) Services must be provided impartially, fairly, equitably and without bias.
- (d) Transparency must be fostered by providing the public with timely, accessible and accurate information.

### 7(2) Duty to avoid conflicts of interest

- (a) Employees must, at all times, act in good faith in the best interest of the Administration;
- (b) Employees may not misappropriate opportunities proposed to, or pursued by the Administration;
- (c) Employees may not engage in influence peddling or the passing on of insider information;
- (c) Employees may not compete improperly with the Administration; and
- (d) Employees must exercise powers for the purpose for which they were conferred.

### 7(3) Types of conflict of interest

- (a) *Apparent or perceived conflicts of interest* exist when it appears that a public servant's private interest may improperly influence the performance of his/her duties, but this is not in fact the case.
- (b) *Potential conflicts of interest* arise where a public servant has private interests that could conflict with his/her official duties in the future.
- (c) *Actual conflicts of interest* exist where a conflict interferes with the employee's ability to discharge his/her public duty in a proper manner because of private capacity interests held by the employee.

#### 7(4) Manifestations of conflict of interest

- (a) A conflict of interest may arise when a public servant:
  - (i) obtains or holds a private position (for example, director, member or partner), interest or share in any company, close corporation or partnership; and/or
  - (ii) holds a private interest or share in any contract, agreement, tender, asset or investment emanating from, or connected with, the Administration or a business interest in the form of amongst others partnerships, shareholdings, board membership and/or investments in private entities that have associations with a department to which the public servant is attached or with which he/she has a direct substantial relationship.
- (b) Receipt by an employee of money, gifts, hospitality or favours from a private entity that has business interests in the Administration or the department in which he/she is employed may constitute a conflict of interest.
- (c) When a public servant represents the Administration or a department in a decision-making process in which an individual or business entity associated with the public servant is the subject of the discussion, a conflict of interest may exist.
- (d) A public servant may not use information obtained from his/her official position to benefit a private entity to the disadvantage of the -
  - (i) Administration or department; or
  - (ii) potential competitors in the private sector in exchange for a gratification.

#### 7(5) Consequences of conflicts of interest

- (a) A conflict of interest may be viewed as *misconduct* or abuse of public office and must be dealt with in terms of the **Disciplinary Code and Procedures for the Public Service**;
- (b) A conflict of interest may be construed as *corruption* which is a criminal offence if there is an element of gratification involved and an employee may be prosecuted criminally as a result;
- (c) **Failure to disclose a financial interest(s)** constitutes **misconduct** and material non-disclosure and must be dealt with accordingly.



#### 7(6) Managing conflicts of interest

- (a) Disclosure of financial interests and assets
  - (i) Senior managers (Salary Levels 13-16) are required to disclose their financial interests and assets in the prescribed format by 30 April annually or on appointment as the case may be and whenever their financial interests change in terms of the **Financial Disclosure Framework**.
  - (ii) All employees (Salary Levels 1-12) including those employed on an Occupational Specific Dispensation (OSD) in the Administration are required to disclose their financial interests and assets in the prescribed format by 30 April annually or on appointment as the case may be and whenever their financial interests change.
  - (iii) The Head of a Department must ensure that all financial disclosure forms are scrutinized for possible conflicts of interest.
  - (iv) Information relating to disclosures must be treated as sensitive information and must be classified in terms of the Minimum Information Security Standards (MISS) and access to this information must be protected and restricted.
- (b) Declaration of relatives doing business with government
  - (i) Employees are required to declare whether they have relatives who are doing business with government particularly the Provincial Administration.
  - (ii) Employees are required to declare whether their spouses are doing business with government, particularly the Provincial Administration.

#### 8. GIFTS, HOSPITALITY AND OTHER BENEFITS

The acceptance of gifts, hospitality and other benefits must be controlled in accordance with the **Provincial Policy Framework for the Acceptance of Gifts, Rewards, Awards, Sponsorships, Donations and Hospitality** read in conjunction with this Policy Framework.

## 9. REMUNERATIVE WORK OUTSIDE THE PUBLIC SERVICE

Remunerative work outside the public service must be controlled in terms of the **Provincial Policy Framework on Remunerative Work outside the Public Service** read in conjunction with this Policy Framework.

## 10. DISCIPLINARY ACTION

- (a) A conflict of interest in contravention of the provisions of this Policy Framework is considered serious misconduct and the employee concerned must be dealt with in terms of the **Disciplinary Code and Procedures for the Public Service** and/or prosecuted criminally as the case may be.
- (b) Failure by an employee to complete and submit a financial disclosure form constitutes misconduct and must be dealt with in terms of the **Disciplinary Code and Procedures for the Public Service**.
- (c) Where an employee commits an act of misconduct that constitutes a criminal offence this must be reported to the South African Police Services and the employee may be prosecuted criminally.

## 11. ROLES AND RESPONSIBILITIES

The success of this Policy Framework depends on the consideration and cooperation of all employees. All employees share the responsibility of adhering to and enforcing the Policy Framework in their respective departments. The specific roles and responsibilities are as follows:-

### 11.1 Accounting Officers

Accounting Officers must ensure that all financial disclosure forms are scrutinized for possible conflicts of interest.

### 11.2 Heads of Branches in Provincial Departments

Heads of Branches must ensure that all employees within their branches complete and submit financial disclosure forms.

### 11.3 Human Resource Components of Provincial Departments must:

- (a) check all financial disclosure forms against the relevant databases for possible conflicts of interest;

- (b) ensure that the content of this Policy Framework is communicated to all line managers and employees in the department;
- (c) customise departmental policy within the framework of this policy, if necessary; and
- (d) ensure that new areas of review which are of a transversal nature are brought to the attention of the Chief Directorate: Strategic Human Resource Management in the Office of the Premier.

11.4 The Office of the Premier: Strategic Human Resource Management Chief Directorate must ensure that this Provincial Policy Framework on Conflicts of Interest in the Administration is:

- (a) compiled in line with national legislation;
- (b) approved by the Premier and the Provincial Cabinet;
- (c) reviewed in line with currently applicable amended national legislation and includes input from departmental human resource components; and
- (d) consistently applied by provincial departments.

## 12. FINANCIAL IMPLICATIONS

The Accounting Officer must ensure that funds are available for the implementation of this Policy Framework.

## 13. MONITORING, EVALUATION AND REVIEW

- (a) Monitoring and evaluation are crucial elements of this Policy Framework and must be done on an on-going basis. Each department is responsible for the initial monitoring and evaluation of the implementation of this Policy Framework and must report quarterly to the Office of the Premier.
- (b) The Office of the Premier is responsible for the administration of the system utilized for the monitoring of financial disclosures and the collation of reports for the provincial departments as this pertains to conflicts of interest within each department.
- (c) The Office of the Premier in consultation with the Public Service Coordinating Bargaining Council (PSCBC) must amend and review this Policy Framework annually and may propose any amendment considered necessary or appropriate to fulfill the purpose, objectives and principles upon which this Policy

Framework is based.

**14. IMPLEMENTATION DATE**

This Policy Framework comes into effect on 01 APR 2014.