

THE UNIVERSITY OF CAPE TOWN
BREMNER BUILDING
LOVERS WALK
RONDEBOSCH

Our Ref: A/6

19 August 2011

Adv I Malale, MP
The Chairperson
Portfolio Committee on Higher Education and Training

For attention: Mr Anele Kabingesi

By email to: akabingesi@parliament.gov.za

Dear Advocate Malale

Higher Education Laws Amendment Bill, B14- 2011

1. The Council of the University of Cape Town has considered the Higher Education Laws Amendment Bill, B14- 2011 (and as published in the Government Gazette of 15 April 2011 under Government Notice 228 of 2011).
2. The Council gave particular attention to clauses 1 and 2 of the Bill which seek to amend sections 27 and 34 of the Higher Education Act, 1997. The Council supports what it sees as the main object of these proposed changes as set out in the memorandum, but believes that as drafted the provisions of the bill will have damaging and unintended consequences.

In support of this position the Council draws attention to the following provisions of the Institutional Statute of the University of Cape Town, as published in the Gazette under Government Notice 1199 of 20 September 2002.

“21. *Financial and other interests of council members*

- (i) *Any member of the council or a committee of the council who has a direct or indirect financial or personal interest in any matter to be discussed at a meeting, must, before or during such meeting, declare such interest, and comply with such other rules and policies as the council may adopt.*
- (ii) *After such declaration such member of the council or a committee of the council must excuse himself or herself from the meeting and any subsequent meeting at which the matter is to be discussed, and is not entitled to receive papers relating to the matter.”*

3. We support the provisions in the proposed section 27(7)(c), but believes this should go further and require the declaration of **any personal interest** as well, and should be redrafted.
4. We support the provision in the proposed section 27(7)(d) but believe this should be redrafted.
5. We do **not** support the provision in the proposed sub-sub-section 27(7)(e)(i). Were this to be enacted it would not be possible.
 - for a member of another university or higher education institution to serve on the Council;
 - for many qualified and employed people whose services are invaluable to Councils to serve on them.

The Council draws attention to the fact that conflicts of interest do arise, and the proper procedure is to require:

- disclosure; and
 - recusal.
6. The Council supports the provisions of the proposed sub-sections 27(7)(e)(ii), 27(7)(e)(iii) and 27(7)(e)(iv).
 7. We do not support the proposed sub-sections 34(4) and 34(5) for the reasons set out below, but we believe that provisions regulating financial relations and business transactions between a member of staff and the public higher education institution that are not part of the employment relationship are necessary.

The provisions contained in the Bill, however, would have the following consequences which the Council believes are unintended and would be damaging:

- (a) A university may be precluded from using a patented product in which a staff member has a financial interest as this could involve indirect conduct of business.
- (b) Key individuals would not take employment in public higher education institutions, especially if the proposed sub-section is interpreted to include the interests of spouses.

The University of Cape Town recognises that doing business with an entity in which a Council member or a staff member or a student has a direct or indirect financial interest (including an indirect through a family member) has inherent dangers. As a result the Council not only requires both the declaration of any such direct or indirect personal interest and recusal where there is any interest, but has also set rules (as the provision in the UCT Institutional Statute quoted above allows it to do) which require that any transaction with a member of Council or staff, or an entity in which a member has an interest (direct, indirect or personal) must be

- shown to be exceptional and in the interests of the University (e.g. there is no one or no entity better qualified to do this); **and**
- may not be approved under delegated authority but must be referred to the Council for decision.

8. Accordingly, we propose an alternative to the provisions of clause 2 of the Bill which we believe will achieve the main object (eliminating nepotism and other forms of similar corruption) while avoiding what we believe are unintended and potentially damaging consequences.
9. We submit for your Committee's consideration alternative proposed provisions to replace those in clauses 1 and 2 of the Bill. These are set out in the attached schedule.

Yours sincerely

Hugh Amoore
Registrar

Enclosure

Schedule of proposed provisions.

Schedule 1

Proposed alternative provisions to those included in the Higher Education Laws Amendment Bill, B14- 2011

1. S 27 of the Higher Education Act, 1997 is hereby amended by the insertion for subsection (7) of the following subsections.

“(7) ~~[The]~~ A member of a Council must be a person[s] with knowledge and experience relevant to the objects and governance of the public higher education institution concerned. [;]

(7bis) A member of a council or a committee of a council

- (a) must participate in the deliberations of the council, or the committee of the council, in the best interests of the public higher education institution concerned;
- (b) who has a direct or indirect financial or personal interest in any matter to be discussed at a meeting of the council must, before or during such meeting declare such interest, to the council or the committee concerned, and comply with such other rules as the council may adopt;
- (c) may not place himself or herself under any direct or indirect financial or other obligation to any entity or third party that might in any way influence him or her from acting in the interests of that entity or third party in relation to any matter before the council or a committee of the council;
- (d) must, after having declared an interest in terms of sub-section (b) above excuse himself or herself from the meeting and any subsequent meeting at which the matter is to be discussed, is not entitled to receive papers relating to the matter, and may not exercise a vote on the matter in a committee or in the council; and
- (e) who contravenes any of the above provisions shall be guilty of an offence and if convicted shall be liable to [a fine? imprisonment?] and/or disqualification from holding office as a member of a council or a committee of a council.”

2. S 34 of the Higher Education Act, 1997 is hereby amended by the insertion for subsection (4) of the following subsections

“(4) A member of staff of a public higher education must declare any direct or indirect financial or personal interest in any entity that tenders, or is approached, or may be approached, to contract with that public higher education institution in writing to the registrar of that public higher education institution.

(5) A council, or a committee of a council, or an officer of a public higher education institution must, before contracting with an entity in which a member of staff has a direct or indirect financial or personal interest, or before contracting for services outside of an employment relationship with a member of staff, take steps to satisfy itself/himself/herself that no conflict of interest would arise, and that the transaction is in the best interests of the public higher education institution.

(6) A member of staff of a public higher education institution may not, on behalf of that public higher education institution, contract with himself or herself or any entity in which he or she has a direct or indirect financial or personal interest.”