

NZFC Member’s Interests and Conflicts: identification, disclosure and management

Version dated	Changes made
This version dated October 2024	Conflicted roles added to s2
September 2023	Updated post meeting with MCH, Treasury and TVNZ.
Older versions removed from this table	

1. Introduction

- (a)

As the governing body of a Crown entity supporting the New Zealand screen sector, when acting as a Member of the NZFC’s Board, Members must act reasonably, in good faith and for a proper purpose.
- (b)

If the Board’s decision-making processes are (or are perceived to be) unfair or improper, trust and confidence in the NZFC is undermined and NZFC decisions are vulnerable to challenge.
- (c)

NZFC’s decision-making processes can be undermined if the Board makes a decision where:

(i)

a Member has a conflict by virtue of having a personal interest in the decision that could, or could reasonably be perceived to, influence that Board Member’s decision; and

(ii)

the conflict has not been appropriately identified and managed.

2. What is an interest¹?

- (a)

A conflict of interest exists when the responsibilities a Member has in relation to the NZFC could be affected by some other interest the Member may have.
- These “other” interests can take various forms. They may be

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financial

¹
[Managing conflicts of interest: A guide for the public sector — Office of the Auditor-General New Zealand \(oag.parliament.nz\)](https://oag.parliament.nz/Managing-conflicts-of-interest-A-guide-for-the-public-sector-Office-of-the-Auditor-General-New-Zealand)

any situation where a Member stands to gain or lose financially from a decision they are asked to make.

- **non-financial**

any situation where a Member is not affected financially by a decision but is affected in some other way that may create bias or the appearance of bias

- **conflict of roles**

any situation where a Member is a decision-maker for two different organisations about the same matter.

- **predetermination**

any situation where a Member is making a decision about something and there is a risk that people will think the Member made up their mind before they considered all of the evidence. Suggestions of predetermination usually arise because of something a Member has previously said or done.

(b) Section 62 of the Crown Entities Act 2004 requires that Members disclose their interests when they are “interested” in an NZFC matter.² Section 62(2) of the Act states a person is interested in a matter if they:

- (i) may derive a financial benefit from the matter;
- (ii) are the spouse, partner, child or parent of a person who may derive a financial benefit from the matter;
- (iii) may have a financial interest in a person to whom the matter relates;
- (iv) are a partner, director, officer, Member or trustee of a person who may have a financial interest in a person to whom the matter relates; or
- (v) are otherwise directly or indirectly interested in the matter.

(c) Helpfully, section 62(3) clarifies that a person *does not* have an interest in a matter:

- (i) if their interest is so remote or insignificant it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities; or
- (ii) only because they have past or current involvement in the relevant sector, industry or practice (e.g. the screen sector).

Please refer to the Crown Entities Act section 62 for a full understanding of when interests must be disclosed. The Office of the Auditor General also provides a guide for the public sector.

3. When does an interest become a conflict?

(a) A Member’s interest may result in a conflict of interest that is either an *actual* conflict or a *perceived* conflict. Before becoming either an actual or perceived conflict, an interest may also be a *potential* conflict. These are described below.

² Section 62 uses the word “matter”, which in this context means the performance of NZFC’s functions or exercise of powers, or any arrangement, agreement or contract the NZFC has entered into or proposes to enter into.

- (b) An *actual* conflict arises when there is a conflict between a Member's duties and responsibilities and their interest. An actual conflict of interest is usually financial in nature and is generally disqualifying, i.e., requiring recusal, unless it is minor, trivial or remote.
- (c) A *perceived* conflict includes situations where it could appear to a reasonable person that an interest could be viewed as a conflict. Perceived conflicts of interest are usually non-financial in nature, for example, arising from a relationship which an objective third party would perceive as likely to affect the impartiality of a decision maker.
- (d) A *potential* conflict is a situation which, while not an actual conflict right now, could eventuate into an actual or perceived conflict in the future. For example, a Member has a personal relationship with a film maker, but that film maker has no immediate plans to apply for NZFC funding.
- (e) Potential and perceived conflicts of interest do not necessarily eventuate to actual conflicts. Nevertheless, even when they do not turn into actual conflicts of interest, mismanaged potential and perceived conflicts can undermine the trust and public confidence in the NZFC. It is therefore important that potential and perceived conflicts are identified and managed appropriately.

4. **Disclosing an interest**

- (a) Under the Crown Entities Act 2004, all Members are under an ongoing statutory duty to disclose interests.
- (b) Members must disclose an interest to the NZFC as soon as practicable after they realise it exists.
- (c) It is expected that all Members will be asked to complete a Conflicts of Interest Declaration by the Ministry of Culture and Heritage prior to appointment as a Member. A copy of the declaration form should be provided to the Chief Executive and Chief Operating Officer of the NZFC, and any relevant interests will be recorded by the Executive Assistant to the Chief Executive in the Board Interests Register.
- (d) When disclosing a conflict of interest, Members must include details of the nature of the interest and its monetary value (if any). If the monetary value cannot be quantified, Members must disclose the extent of the interest (e.g. "my husband is a film director and the film they are currently working on will soon be the subject of an application for NZFC funding").
- (e) Following appointment as a Member, any relevant interests must also be disclosed to the Chair of the NZFC Board (the Chair).³ This can be done by:
 - (i) providing a copy of the Conflicts of Interest Declaration form for the Ministry of Culture and Heritage to the Chair as soon as practicable; and
 - (ii) notifying the Chair in writing at any time after that, as soon as practicable after becoming aware of any additional interests following the first Board meeting.

³ If the Chair is unavailable or also has a conflict of interest, Members must inform the deputy or temporary Chair. If neither is available, Members must inform the Responsible Minister.

- (f) Prior to each Board meeting, the agenda will be provided to Members so they can alert the Chair to any interests in relation to matters on the agenda.
- (g) At each Board meeting, Members will be asked to provide any updates on their conflicts of interest. Any updates will be recorded by the Executive Assistant to the Chief Executive in a Board Interests Register, which is maintained by NZFC staff.
- (h) Disclosure is an ongoing obligation. If the nature of a Member's interest alters, or the extent of the interest changes, they must disclose the change to the Chair as soon as practicable after becoming aware of it.⁴

5. **Conflict of interest management**

- (a) The Crown Entities Act section 66 states that if a Member has an interest, they cannot:
 - (i) vote or take part in any discussion or decision of the Board or any committee relating to the matter, or otherwise participate in any NZFC activity relating to the matter;
 - (ii) sign any document relating to entry into a transaction or initiation of the matter; and
 - (iii) be counted toward the quorum for a Board meeting during which a discussion or decision relating to the matter occurs or is made.
- (b) The Act contemplates that, typically, relevant Interests will require the Board member's recusal from decision-making on matters to which the conflict relates.
- (c) In the event a Member cannot take part in any discussion or decision of the Board or any committee relating to the matter, they will remove themselves from the meeting for the duration that the matter is discussed and/or decided on, and may return to the meeting and be involved in the remainder of the meeting provided it does not relate or overlap with any further discussion or decision-making on the matter.
- (d) However, the Chair may provide written notice to the Board stating they permit a Member to deviate from the s 66 restrictions, despite their conflict. The Chair may give this permission at their sole discretion, if they believe it is in the public interest to do so. The permission may be subject to conditions set by the Chair and can be revoked at any time by providing notice to the Board.
- (e) If permission is granted by the Chair for a Member with a conflict of interest to participate in any discussion or decision of the Board, the NZFC's annual report must include:
 - (i) a statement as to the interest to which the permission relates;
 - (ii) a statement of who gave the permission; and
 - (iii) any conditions or amendments to, or revocation of, the permission.

⁴ Ibid.

- (f) The permission and any conditions will be recorded in NZFC's Board Interests Register.
- (g) If the Board (or any individual Member) becomes aware that a Member has not complied with their obligations, the Board or Member must notify the Chair as soon as practicable.
- (h) In addition to disclosing and managing conflicts of interest, Members must act with honesty and integrity and not pursue their own interests at the expense of the NZFC's interests.⁵

6. Applying for NZFC funding

- (a) For the purposes of this section, "NZFC funding" includes any funding from the NZFC as part of a NZFC funding strand, programme or initiative. This includes devolved funds (e.g. Seed funding); NZFC discretionary funding (e.g. production finance), funds administered by the NZFC (e.g. NZSPG); and funds administered in partnership with other agencies (e.g. the Premium Fund).
- (b) The conflicts most likely to arise for a Member in relation to NZFC funding are (but are not limited to):
 - (i) a Member having an interest in an application made to the NZFC for funding; or
 - (ii) other applications for limited discretionary NZFC funding that are, in effect, competing with a funding application in which the Member has an interest; or
 - (iii) a Member seeking NZFC support to attend a market or similar; or
 - (iv) a Member seeking NZFC support and/or funding for a new initiative (i.e. where the NZFC has no existing relevant fund).
- (c) The conflict identification and management process described in this section is designed to ensure that a Member comprehensively identifies the relevant interest in a timely manner to enable the NZFC to properly manage the conflict so that:
 - (i) neither the Member nor the application is placed at any advantage or disadvantage; and
 - (ii) other applicants are not placed at a disadvantage, by virtue of the Member's interest.
- (d) The process described here is not necessarily exhaustive and should be viewed as a guide. Each conflict must be considered in the context of all the relevant circumstances and may warrant the adoption of additional measures or an alternative approach as determined by NZFC on a case-by-case basis.
- (e) The Member must pro-actively and promptly identify and declare the conflict to the Chair and Chief Executive as soon as practicable after becoming aware of the interest. When the Chair and the Chief Executive have determined how to manage the conflict, the Chair will notify the Member and the Chief Executive will inform the relevant NZFC

⁵ For further information see Te Kawa Mataaho – Public Service Commission's "[A Guide on integrity and conduct](#)" (20 March 2023).

department and provide reminders around protocols of transparent and fair management. The Member should seek to co-operate fully with the conflict management procedure. The Member's principal responsibility is to adhere to the procedure established for the management of the conflict and to keep the NZFC advised of any change in circumstances. The Member should not themselves seek to assume responsibility for the management of the conflict within NZFC.

- (f) All NZFC funding applications in which a Member has an interest must be put forward to the Board for consideration, even if that programme does not usually require approval from the Board (e.g. a NZSPG application). In this instance, the interested Member must:
 - (i) absent themselves from all Board, or other, discussions and decisions concerning their funding application;
 - (ii) not receive the relevant papers (e.g. relating to their applications and any application competing for the same or similar contestable funding); and
 - (iii) not discuss any such application or project with another Member.
- (g) When any Member is seeking NZFC funding or NZFC support for an initiative or project:
 - (i) The Member's non-Board interaction in respect of that initiative or project with NZFC staff will only be directly with, or in the presence of, either the Chief Executive or Chief Operating Officer, and written record of any such engagement must be maintained by NZFC staff;
 - (ii) otherwise, the Board Member is not to be contacted by any other NZFC staff, and is not to contact any other NZFC staff, in respect of the relevant interest, project or initiative.
- (h) If any such interaction of the kind referred to in (f)(ii) of this section occurs, each of the NZFC staff and the Member should separately provide a written record of the interaction promptly after the interaction to the Chief Executive and Chief Operating Officer.
- (i) This protocol does not apply to:
 - (i) Administrative contact between the Member and NZFC staff relating only to general Board matters (such as arranging travel bookings, etc);
 - (ii) The Member's normal participation in Board meetings in respect of which the Member does not have an interest; and
 - (iii) any other interactions between the Member and NZFC staff in the ordinary course that are not related to, associated with, or referring to, in any way, the relevant project or initiative.
- (j) If a Member believes the application or project in which they have an interest is being unfairly prejudiced by the actions of NZFC staff, they should raise this with the Chair. The Board will undertake an assessment as the Board sees fit.
- (k) In the event that the Member's application for NZFC funding or support is successful, the Member and the Chair will agree a conflict of interest management plan. The

management plan will address how the Member will interact with NZFC staff during the film closing and production processes.

7. Applying for screen sector, media or arts related government funding from other agencies and Member's dealings with sector participants

- (a) Members may be interested in an application for screen sector, media or arts funding or investment from government agencies other than NZFC. This could include (but is not limited to) funds administered by:
 - (i) Manatū Taonga — Ministry for Culture and Heritage
 - (ii) Hīkina Whakatutuki — Ministry for Business Innovation and Employment
 - (iii) Toi Aotearoa — Creative New Zealand (Arts Council of New Zealand)
 - (iv) Irirangi Te Motu — NZ On Air
 - (v) Te Māngai Pāho
 - (vi) Whakaata Māori – Māori Television
 - (vii) Te Reo Tātaki — Television New Zealand
 - (viii) Radio New Zealand.
- (b) Members may also, in the ordinary course, have dealings with other sector participants while not acting in their capacity as a NZFC Board member.
- (c) Due to a Member's position on the NZFC Board, a Member may have, or may be perceived to have, influence in respect of other government agencies or sector participants.
- (d) If a Member has an interest in a matter involving another government agency or sector participant (e.g. an application for funding from another government agency or a transaction with another sector participant), that interest may also create a conflict of interest, whether potential, perceived or actual as it relates to NZFC or the Member's position as a NZFC Board member.
- (e) A Member must disclose any such interest to the Chair and Chief Executive as soon as practicable after becoming aware of the interest. This means if a Member anticipates applying for funding from another agency, they should disclose this intention before commencing the application. A management plan will be developed accordingly if the conflict is able to be managed.
- (f) A management plan may involve the NZFC co-ordinating with the other relevant agencies or sector participants. It is recommended that the Member also takes appropriate steps to identify the interest to the other government agency or sector participant as soon as practicable after becoming aware of the interest.

8. Providing professional services to the NZFC

- (a) Generally, Members should not provide professional services to the NZFC. This is because Members should not use their Member position to pursue their own interests and appropriate procurement processes must be adhered to. If NZFC staff or the Board wish to procure a Member's professional services (because, for example, the Member is uniquely positioned to provide specialist services, such as legal advice relating to the NZFC) the Member, and the procuring party, must disclose the conflict of interest following the process as outlined in clause 7.4 of this Governance Manual. This process should be followed before a contract for services is entered into to ensure the conflict is appropriately managed. If the conflict cannot be appropriately managed, the procurement will be unable to proceed.