



national film and video foundation
SOUTH AFRICA

an agency of the
Department of Arts and Culture

NATIONAL FILM AND VIDEO FOUNDATION

CONFLICT OF INTEREST POLICY

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APPROVAL

The signatories hereof, confirm their acceptance of the content and authorize the adoption thereof.

Signature: Chairperson - Audit Committee

Date

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1. Introduction

Members of the Council, Committees and Advisory Panels are subject to various legal obligations in terms of the National Film and Video Foundation (NFVF) Act) and the PFMA where conflicts of interest arise. Further policy documents have been developed to clarify the role and obligations of members of Council, committees and advisory panels. The Council's Charter, Terms of Reference for Executive Committee of Council and Terms of Reference for Funding Advisory Panels guide the functions of the various committees.

The aim of this Policy is to:

- 1.1 provide examples of the types of Conflicts of Interest that may arise for individuals serving on the Council, Committees and Advisory Panels to enable such individuals to recognize Conflicts of Interest; and
- 1.2 set out the procedures for the disclosure and reporting of Conflicts of Interest in accordance with the requirements imposed by the NFVF Act and the PFMA.

2. Definitions

- 2.1 For the purposes of this Policy, the following words and phrases shall have the following meaning:
 - 2.1.1 "**Advisory Panel**" means a panel established by the Council in terms of section 11 of the NFVF Act;
 - 2.1.2 "**Chairperson**" means, as the context requires –
 - 2.1.2.1 in relation to an Advisory Panel, the Member of the Council who acts as the chairperson of the Advisory Panel at meetings of that Panel in terms of section 11(4) of the organisation;
 - 2.1.2.2 in relation to a Committee, the Member of that Committee who has been designated as the chairperson in terms of section 10(3) of the NFVF Act, where applicable;

- 2.1.2.3 in relation to the Council, the chairperson appointed by the Minister in terms of section 6(4)(a) of the NFVF Act;
- 2.1.3 “**Committee**” means a committee nominated by the Council in terms of section 10 of the NFVF Act;
- 2.1.4 “**Conflict of Interest**” means any instance in which a reasonable person may perceive a risk or possibility that a Member’s Private Interests or the interests of a Related Person may impede that Member’s ability to perform his or her duties and obligations as a Member of the Council, a Committee or an Advisory Panel in a fair and unbiased manner;
- 2.1.5 “**Constitution**” means the Constitution of the Republic of South Africa, Act 108 of 1996 as amended from time to time;
- 2.1.6 “**Council**” means the council referred to in terms section 6(1) of the NFVF Act through which the organisation’s acts;
- 2.1.7 “**Member**” means, as the context indicates, a member of the Council, a member of an Advisory Panel, or a member of a Committee;
- 2.1.8 “**Minister**” means the Minister of Arts and Culture or any other member of the Cabinet who assumes executive responsibility for the organisation for the purposes of the NFVF Act;
- 2.1.9 “**NFVF Act**” means the National Film and Video Foundation Act 73 of 1997;
- 2.1.10 “**this Policy**” means this policy in relation to Conflicts of Interest arising in respect of Members, as amended from time to time;
- 2.1.11 “**Private Interest**” means a financial or non-financial interest of a Member outside of his or her employment or involvement at the organisation;
- 2.1.12 “**PAJA**” means the Promotion of Administrative Justice Act 3 of 2000;
- 2.1.13 “**PFMA**” means the Public Finance Management Act 1 of 1999;

2.1.14 **“Related Person”** means a spouse, partner, member of the immediate family, or a business partner, of a Member and as defined in the Related Party Policy of the organisation; and

2.1.15 **“Organisation”** means the National Film and Video Foundation.

3. Purpose and Application of the Policy

This Policy applies to all Members. The Policy does not replace or alter the legal requirements that are imposed on Members by the NFVF Act and the PFMA, as well as the common law. The purpose of this Policy is to provide further detail in relation to Members’ existing legal obligations in respect of Conflicts of Interest in order to ensure that decisions taken by the Council, Committees and Advisory Panels are taken properly and so as to avoid the potential for legal challenges.

4. Legal requirements

4.1 Members are subject to various legal obligations in respect of conflicts of interest. In particular, the NFVF Act and the PFMA impose requirements on Members of the Council and Members of Advisory Panels must adhere to the requirements imposed on them in terms of the NFVF Act.

4.2 The National Film and Video Foundation is an organ of state. The decisions of the Council, through which the organisation acts, and, in some instances, the decisions of Committees and Advisory Panels, are administrative action. In terms of section 33 of the Constitution, any person who is affected by a decision of the Council, a Committee or an Advisory Panel e.g. a person who applies to the organization for funding, has a right to just administrative action. As such, any decision taken by the organisation must be lawful, reasonable, and procedurally fair.

4.3 Where a decision taken by the Council or, in some instances, by a Committee or Advisory Panel, does not comply with the requirements that it be lawful, reasonable and procedurally fair, the decision may be reviewable. On this basis, a person who is affected by a decision of the Council, a Committee or Advisory Panel may institute proceedings in the High Court to challenge the decision and to have that decision set aside.

4.4 One of the requirements for procedural fairness is that persons taking decisions must not be biased. Where bias exists or there is a reasonable

suspicion of bias, the decision will not have been taken in a procedurally fair manner. The decision may be reviewed and set aside on this basis. Another basis on which an administrative decision may be challenged and set aside is where it was taken for an ulterior motive or purpose.

4.5 Given that the organisation's decisions may potentially be challenged, the Members of the Council, Committees, and Advisory Panels together with the employees must seek to ensure that the organization and its component bodies make decisions that are lawful, reasonable and procedurally fair. For this reason, no Member may participate in making any decision of the Council, a Committee or an Advisory Panel in respect of a matter in which he or she has a material Conflict of Interest, as this may expose the organization to legal challenges.

4.6 **Members of the Council**

4.6.1 In terms of section 8(5) of the NFVF Act, a Member of the Council is not allowed to vote or participate in proceedings at any meeting of the Council, if he or she has any interest in the matter before the Council that precludes him or her from performing his or her functions in a fair, unbiased, and proper manner.

4.6.2 The Council is the accounting authority of the organisation for the purposes of the PFMA. On this basis:

4.6.2.1 In terms of sections 50(1)(a) and (b) of the PFMA, Members of the Council must:

4.6.2.1.1 exercise the duty of utmost care to ensure reasonable protection of the assets and records of the organisation; and

4.6.2.1.2 act with fidelity, honesty, integrity, and in the best interest of the organisation in managing its financial affairs.

4.6.2.2 In terms of section 50(2) of the PFMA, Members of the Council may not:

4.6.2.2.1 act in a way that is inconsistent with the responsibilities assigned to them in terms of the PFMA; or

- 4.6.2.2.2 use the position or privileges of the position, or confidential information obtained by virtue of the position for personal gain or to improperly benefit another person.
- 4.6.2.3 In terms of section 50(3) of the PFMA, a Member of the Council must:
- 4.6.2.3.1 disclose to the organisation any direct or indirect personal or private business interest that that Member or any spouse, partner or close family member may have in any matter before the Council; and
- 4.6.2.3.2 withdraw from the proceedings of the Council when that matter is considered, unless the Council decides that the Member's direct or indirect interest in the matter is trivial or irrelevant.
- 4.6.2.4 In terms of section 83(1) (a) of the PFMA, willful or negligent failure by a Member of the Council to comply with these requirements constitutes financial misconduct under the PFMA. In terms of section 83(4) of the PFMA, financial misconduct is a ground for dismissal or suspension or any other appropriate sanction.

4.7 **Members of an Advisory Panel**

In terms of section 11(10) of the NFVF Act, a Member of an Advisory Panel is prohibited from voting or participating in proceedings at any meeting of the Advisory Panel, if he or she has any interest in the matter before the Advisory Panel that precludes him or her from performing his or her functions in a fair, unbiased, and proper manner.

5. Identifying Conflicts of Interest

- 5.1 It is recognized that Conflicts of Interest will always arise. This Policy does not provide that Conflicts of Interest may not occur. Instead, this Policy aims to assist Members to identify Conflicts of Interest so that they may be reported and dealt with in the manner provided for in clause 6.

- 5.2 Conflicts of Interest will include but are not limited to –
- 5.2.1 where a Member is a shareholder or member in a business or organization that submits an application to the organisation for funding;
 - 5.2.2 where a Related Person is a shareholder or member in a business or organization that submits an application to the organisation for funding;
 - 5.2.3 where a Related Person submits an application for a bursary;
 - 5.2.4 where a Member is a director of a business or organization that submits an application to the organisation for funding;
 - 5.2.5 where a Member is a shareholder, member or director of a business or organization that is nominated for an award adjudicated by the organisation, a Committee or an Advisory Panel;
 - 5.2.6 where a Related Person e.g. the co-owner of a business in which the Member has an ownership interest or the partner of a Member, is nominated for an award adjudicated by the organisation, a Committee or an Advisory Panel; or
 - 5.2.7 where a Member has advised or assisted an applicant for funding with his or her application.
- 5.3 A Member's Private Interest or the interests of a Related Person in relation to a matter will be a Conflict of Interest, which must be disclosed and dealt with in accordance with clause 6, even where, in fact, the Conflict of Interest would not influence the Member's decision on that particular matter. For example, a Member of an Advisory Panel may subjectively feel that she will not be influenced in making a decision on an application for funding submitted by her sister. The Member may be of the view that she will not be biased in favour of her sister. However, the relationship between the Member and the applicant will be a Conflict of Interest for the purposes of this Policy (and the NFVF Act and PFMA). Accordingly, it must be reported and dealt with in the manner provided for in this Policy.

- 5.4 As dealt with in further detail in clause 6, not all Conflicts of Interest will require a Member to recuse him or herself from the meeting or proceedings at which a particular matter is to be discussed. Instead, only material Conflicts of Interest will require recusal. However, all Conflicts of Interest must be reported.
- 5.5 Members are not required to take exhaustive steps to establish whether they have a Conflict of Interest. For example, a Member is not obliged to obtain comprehensive details from each of his or her family members in relation to their business affairs. Instead, Members are expected to act reasonably and to report those Conflicts of Interest of which a reasonable person would have been aware. For example, where a Member's spouse is a director of a company which applies to the organisation for funding, the Member will be expected to report this as a Conflict of Interest if the application comes before the Council, Committee or Advisory Panel, as the case may be. A reasonable person would be aware of his or her spouse's business affairs. By contrast, a Member may not be aware if his or her siblings' own shares in a listed company that applies to the organisation for funding. However, in all instances, where a Member is, *in fact*, aware of a Conflict of Interest e.g. that his or her sibling holds shares in a particular company that applies to the organisation for funding or that the Member's pension fund holds shares in a company that applies to the organisation for funding, that Conflict of Interest must be reported. The decision as to whether a particular Conflict of Interest is material or not will be made in accordance with the processes detailed in clause 6.

6. Procedure for disclosing a Conflict of Interest

- 6.1 A Member of a Committee or Advisory Panel who becomes aware at any stage prior to a meeting of the Committee or Advisory Panel that he or she has a Conflict of Interest in relation to a matter to be discussed at that meeting, must disclose the Conflict of Interest in writing to the Chairperson of the Committee or Advisory Panel, as the case may be, as soon as reasonably possible.
- 6.2 The Chairperson of the Committee or Advisory Panel, as the case may be, will make a determination as to –
- 6.2.1 whether a Conflict of Interest is material and warrants the recusal of the relevant Member; and

- 6.2.2 to the extent that the Chairperson determines that the Conflict of Interest is material and warrants the recusal of the Member from the meeting, the steps to be taken by the Member. In making a determination as to the steps to be taken by the Member, the Chairperson must take into account the requirement in terms of the NFVF Act that Members of Advisory Panels who have a Conflict of Interest.
- 6.3 The Chairperson will notify the Member in writing of his or her determination in terms of clause 6.2.1 and clause 6.2.2, where applicable, prior to the meeting in question.
- 6.4 A Member of a Committee or Advisory Panel who becomes aware of a Conflict of Interest at a meeting of the Committee or Advisory Panel that he or she has a Conflict of Interest in relation to any matter to be discussed at that meeting, must immediately raise the issue and disclose the Conflict of Interest to the Chairperson of that meeting.
- 6.5 The Chairperson –
- 6.5.1 may request any additional details from the Member as may be required to make a determination as to whether the Conflict of Interest is material or not;
- 6.5.2 will make a determination as to –
- 6.5.2.1 whether the Conflict of Interest is material and warrants the recusal of the relevant Member;
- 6.5.2.2 to the extent that the Chairperson determines that the Conflict of Interest is material and warrants the recusal of the Member from the meeting, the steps to be taken by the Member. In making a determination as to the steps to be taken by the Member, the Chairperson must take into account the requirement in terms of the NFVF Act that Members of Advisory Panels who have a Conflict of Interest may not be present at the venue where the matter in question is to be discussed;
- 6.5.3 may adjourn the meeting in order to obtain additional details as contemplated in clause 6.5.1 or making the determinations contemplated in clause 6.5.2.

- 6.6 A Member may in the circumstances contemplated in clause 6.1 or clause 6.4 request the Chairperson to keep the details of the Conflict of Interest confidential and must indicate why the details of the Conflict of Interest are regarded as confidential information. The Chairperson must make a decision on the request and notify the Member in question. Where the Chairperson decides that there are grounds for the details of the Conflict of Interest to be kept confidential, the Chairperson shall provide limited details of the Conflict of Interest and his or her determination as to the steps to be taken by the Member, for inclusion in the minutes, as contemplated in clause 6.12.
- 6.7 Where the Chairperson of a Committee or Advisory Panel at any stage prior to a meeting of the Committee or Advisory Panel becomes aware that he or she has a Conflict of Interest in relation to a matter to be discussed at a meeting, he or she must, in writing, disclose the Conflict of Interest to the Chairperson of the Council as soon as reasonably possible. The Chairperson of the Council shall make a determination in relation to the Conflict of Interest and notify the Member accordingly as contemplated in clauses 6.2 and 6.3, read with the necessary changes. Where the Chairperson of the Council determines that a material Conflict of Interest exists, he or she shall direct that another Member shall act as the Chairperson of the Committee or Advisory Panel at the meeting in question.
- 6.8 Where the Chairperson of a Committee or Advisory Panel at a meeting of the Committee or Advisory Panel becomes aware that he or she has a Conflict of Interest in relation to any matter to be discussed at that meeting, he or she must immediately raise the issue and disclose the Conflict of Interest at the meeting. The Members of the Committee or Advisory Panel other than the Chairperson shall vote on whether the Conflict of Interest is material or not. To the extent that the majority of the Members of the Committee or Advisory Panel decide that the Conflict of Interest is material, the meeting shall not proceed in relation to the matter in respect of which the Chairperson has identified a Conflict of Interest and shall be tabled for discussion at the next meeting of the Committee or Advisory Panel. The matter must be reported to the Chairperson of the Council who must designate another qualified Member as the Chairperson of the Committee or Advisory Panel for the meeting at which the matter in question is to be discussed.

- 6.9 Where a Member of the Council at any stage prior to a meeting of the Council becomes aware that he or she has a Conflict of Interest in relation to any matter to be discussed at that meeting, he or she must disclose, in writing, the Conflict of Interest to the Chairperson and other Members of the Council as soon as reasonably possible. The Members of the Council with the exception of the conflicted Member must make a determination by way of a round robin resolution in relation to the Conflict of Interest and notify the Member accordingly as contemplated in clauses 6.2 and 6.3, read with the necessary changes. Where the conflicted Member of Council is the Chairperson of the Council, the next most senior Member shall act as the Chairperson of the Council at the meeting in question during the discussion of the matter in respect of which the Conflict of Interest exists.
- 6.10 Where a Member of the Council at a meeting of the Council becomes aware that he or she has a Conflict of Interest in relation to any matter to be discussed at that meeting, he or she must immediately raise the issue and disclose the Conflict of Interest at the meeting. The Members of the Council shall vote on whether the Conflict of Interest is material or not. Where the conflicted Member of Council is the Chairperson of the Council, the meeting shall not proceed in relation to the matter in respect of which the Chairperson has identified a Conflict of Interest and shall be tabled for discussion at the next meeting of the Council. The next most senior Member shall act as the Chairperson of the Council at the meeting in question during the discussion of the matter in respect of which the Conflict of Interest exists.
- 6.11 Any written disclosure by a Member of a Conflict of Interest in terms of this clause 6 must set out all relevant details in respect of the Conflict of Interest. The written disclosure may be sent to the Chairperson of the Council, Committee or Advisory Panel or to the Members of Council, as the case may be by way of email, fax or hard copy.
- 6.12 Relevant details in respect of a Member's Conflict of Interest and the determination made by the Chairperson or the Members of Council, as the case may be, must be recorded in the minutes of the meeting of the Council, Committee or Advisory Panel, as applicable.
- 6.13 Where a Member of Council, an Advisory Panel or a Committee is him or herself of the view that a Conflict of Interest is material, the Member should indicate as such when making the disclosure referred to in clause 6.1, 6.4, 6.7, 6.8, 6.9, or 6.10, as the case may be. In such cases, it will

not be necessary for the Chairperson or the remaining Members of the Council, Advisory Panel or Committee to make a determination in relation to materiality. The relevant Member must not attend the meeting or must excuse him or herself from the meeting during the discussion of the matter in respect of which the Conflict of Interest exists. This must be recorded in the minutes of the meeting.

7. Annual Review

This Policy shall be reviewed annually and any changes made thereto must be approved by Council.