





national film and video foundation
SOUTH AFRICA
an agency of the Department of Sport, Arts and Culture

CONFLICT OF INTEREST POLICY
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DOCUMENT CONTROL

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CEO: Makhosazana Khanyile	Process Owner	
HOD Human Resources: Thobela Mayinje	Process Reviewer	

APPROVAL

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



31 March 2023

Signature: Chairperson - Audit Committee

Date



31 March 2023

Signature: Chairperson - Council

Date

1. Introduction

Members of the council, committees, advisory panels, employees and independent contractors as well as funding applicants are subject to various legal obligations in terms of the National Film and Video Foundation Act 73 of 1997 (NFVF Act) and the Public Finance Management Act 1 of 1999 (PFMA) where conflicts of interest arise. These categories of persons are also bound by the relevant policies and procedures of the NFVF, as updated from time to time. 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, advisory panels, employees, independent contractors and funding applicants;
- 1.2 enable individuals serving in the capacities mentioned in clause 1.1 to recognise conflicts of interest; and
- 1.3 set out the procedures for the disclosure and reporting of conflicts of interest following the requirements imposed by the NFVF Act and the PFMA.

2. Definitions

For purposes of this policy, words and phrases shall have the meanings assigned to them as follows:

- 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 –
 - 2.1.3 in relation to the council, the chairperson appointed by the minister in terms of section 6(4)(a) of the NFVF Act;
 - 2.1.4 in relation to a committee, a member of that committee who has been designated as the chairperson in terms of section 10(3) of the NFVF Act, where applicable;

- 2.1.5 in relation to an advisory panel, a 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 NFVF Act;
- 2.1.6 “**Committee**” means a committee constituted by the council in terms of section 10 of the NFVF Act;
- 2.1.7 “**Conflict of Interest**” means any instance in which a reasonable person may perceive a risk or possibility that a member’s private interests or those of a related person (whether natural or juristic) may impede that member’s or an employee’s ability to perform his or her duties and obligations as a member of the council, a committee, an advisory panel or as an employee in a fair, unbiased and proper manner;
- 2.1.8 “**Constitution**” means the constitution of the Republic of South Africa, as amended from time to time;
- 2.1.9 “**Council**” means the council referred to in terms section 6(1) of the NFVF Act through which the NFVF acts;
- 2.1.10 “**Juristic person**” means, an association of natural persons that has the capacity to perform various legal acts and includes legal entities such as associations, companies, close corporations, societies; statutory bodies and trusts;
- 2.1.11 “**Member**” means, as the context indicates, a member of the council, a member of an advisory panel, or a member of a committee;
- 2.1.12 “**Minister**” means the minister of Sport, Arts and Culture or any other member of the cabinet who assumes executive responsibility for the NFVF;
- 2.1.13 “**NFVF**” means the National Film and Video Foundation, established in terms of section 2 of the NFVF Act;
- 2.1.14 “**this Policy**” means this policy in relation to conflicts of interest arising in respect of members, employees and independent contractors, as amended

from time to time;

- 2.1.15 **“Private Interest”** means a financial or non-financial interest of a member outside of their employment or involvement with the NFVF;
- 2.1.16 **“PAJA”** means the Promotion of Administrative Justice Act, 3 of 2000;
- 2.1.17 **“PFMA”** means the Public Finance Management Act, 1 of 1999; and
- 2.1.18 **“Related Person”** means a spouse, partner, member of the immediate family, businesses in which they have an interest in or a business partner of a member, and employees.

3. Purpose and Application of the Policy

The purpose of this Policy is to provide further detail in relation to members’ existing legal obligations in respect of conflicts of interest to ensure that decisions taken by the council, committees, advisory panels and independent contractors are arrived at through diligent processes and in the best interests of the NFVF in order to avoid any prospects of legal challenges arising from such decisions. This policy applies to all members and employees of the NFVF, independent contractors as well as funding applicants. The policy does not replace or alter the legal requirements that are imposed on members, employees and independent contractors by the NFVF Act, the PFMA, and the common law.

4. Identifying Conflicts of Interest

- 4.1 It is recognised that conflicts of interest may always arise from time to time. In recognition thereof, this policy aims to aid members and employees to identify possible conflicts of Interest so that they may be reported and dealt with in the manner prescribed in clause 6.
- 4.2 To ensure that conflicts are identified, funding applicants are also required to declare any conflict(s) especially where a related person and/or financial interests between the applicant and members or employees exist.
- 4.3 Conflicts of Interest will include but are not limited to instances where a –

- 4.3.1 Member is a shareholder, director or member in a business or organisation that applies to the NFVF for funding;
- 4.3.2 Related person is a shareholder or member in a business or organisation applies to the NFVF for funding;
- 4.3.3 Related person applies for a bursary;
- 4.3.4 Member is a shareholder, member or director of a business or organisation that is nominated for an award adjudicated by the NFVF, a committee or an advisory panel;
- 4.3.5 Related person is appointed as a service provider to, or renders a service on behalf of the NFVF;
- 4.3.6 Related person has a financial or incentive interest in the outcome of the business affairs of the NFVF;
- 4.3.7 Related person has a financial interest or any kind of interest in relation to a service provided to the NFVF; or
- 4.3.8 Member has advised or aided someone in applying for funding from the NFVF.
- 4.4 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 showed and dealt with in accordance with clause 6, even where, in fact, the conflict of interest may not influence the member's decision on that particular matter. For example, a member of an advisory panel may subjectively feel that they will not be influenced in deciding on an application for funding submitted by their sibling. The Member may be of the view that they will not be biased in favour of their sibling. However, the relationship between the member and the applicant will be considered a conflict of interest for purposes of this policy (and the NFVF Act and PFMA). Accordingly, it must be reported and dealt with in the manner prescribed in this Policy.
- 4.5 As per further details given under clause 6, not all conflicts of Interest will require a member to recuse himself/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.

- 4.6 Members do not have to take exhaustive steps to establish whether they have a conflict of interest or not. Once they become aware of such a conflict, members must ensure that they follow the procedure to declare such conflict immediately as prescribed under clause 6. The following guidelines must be considered:
- 4.6.1 Once the administration team has received and found any conflicts that have been declared by applicants; they must be escalated to the head of department; and
- 4.6.2 The head of department must notify all other affectable heads of departments in writing, and they in turn must ensure that declarations that include employees are referred to the relevant panel chairperson(s) before applications are sent out for reading.
- 4.6.3 The chief financial officer and the head of operations will provide assistance if so, required by the panel chairpersons to determine whether a conflict is material or not.
- 4.6.4 The decision as to whether a particular conflict of interest is material or not will be made by the processes detailed in clause 6.

5. Legal requirements

- 5.1 Members are subject to various legal obligations in respect of conflicts of interest. In particular, the NFVF Act and the PFMA impose requirements that members of the council and advisory panels must adhere to.
- 5.2 The NFVF is an organ of state. The decisions of the council, through which the NFVF acts, and in some instances, the decisions of committees and advisory panels, are administrative actions which include but may not be limited to awarding tenders, rulings on matters that fall within their respective jurisdictions, as well as evaluation of NFVF funding applications etc.
- 5.3 Administrative action is defined as any decision taken, or any failure to take a decision, by an organ of state when exercising a power in terms of the constitution or exercising public power or performing a public function in terms of enabling legislation.

- 5.4 In terms of section 33 of the constitution, everyone has the right to administrative action that is lawful, reasonable and procedurally fair. All decisions that amount to administrative action will be measured against this standard. Furthermore, everyone whose rights have been adversely affected by administrative action is entitled to be given the reasons thereof in writing.
- 5.5 Where a decision taken by the council or, in some instances, by a committee or advisory panel, does not follow the requirements that it be lawful, reasonable and procedurally fair, the decision may be reviewed. On this basis, a person who is affected by a decision of the council, a committee or advisory panel may, within 30 (thirty) days from the date on which action was taken or made known by the Council and after having given the prescribed notice, appeal the decision to the minister and thereafter institute proceedings in the high court to challenge the decision in order to have it set aside if they so choose.
- 5.6 Administrative actions may be challenged on the basis that they are unlawful, unreasonable and procedurally unfair. The NFVF operates within the law and all decisions taken under its auspices are lawful only if the person or persons doing so have the authority to make such decisions. If the NFVF take decisions that are outside the provisions of the law or if the person or persons making decisions on behalf of the NFVF pertaining to a particular matter are not legally authorised to do so, their acts will be deemed unlawful.
- 5.7 Another basis on which decisions made by the NFVF can be challenged is if it can be shown that they are unreasonable. When taking decisions, the NFVF must:
- 5.7.1 carefully consider the information available to it and make a rational decision from the facts and information before it;
- 5.7.2 be procedurally fair. The following factors will be evaluated to decide whether a decision was procedurally fair, and where such decision was not procedurally fair it may be reviewed and set aside:
- 5.7.2.1 Decision makers must not be biased. Where bias exists, or a reasonable suspicion of bias, the decision will not be independent and impartial.
- 5.7.2.2 Decision makers cannot take a decision that adversely affects someone without consulting them first; and

- 5.7.2.3 Decision makers cannot make decisions with an ulterior motive or purpose.
- 5.8 Given that the NFVF's decisions may potentially be challenged, the members of the council, committees, and advisory panels together with the NFVF's employees must seek to ensure that the NFVF 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 NFVF to legal challenges.
- 5.9 **Members of the Council**
- 5.9.1 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 they have any interest in the matter before the council that precludes them from performing their functions in a fair, unbiased, and proper manner.
- 5.9.2 The council is the accounting authority of the NFVF for purposes of compliance with the PFMA. On this basis:
- 5.9.2.1 In terms of sections 50(1)(a) and (b) of the PFMA, members of the council must:
- 5.9.2.1.1 Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the NFVF; and
- 5.9.2.1.2 Act with fidelity, honesty, integrity, and in the best interest of the NFVF in managing its financial affairs.
- 5.9.2.2 In terms of section 50(2) of the PFMA, members of the council may not:
- 5.9.2.2.1 Act in a way that is inconsistent with the responsibilities assigned to them in terms of the PFMA; or
- 5.9.2.2.2 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 natural or juristic person.

- 5.9.2.3 In terms of section 50(3) of the PFMA, a member of the council must:
- 5.9.2.3.1 Disclose to the NFVF 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
- 5.9.2.3.2 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, which decision shall be recorded in writing or reflected in the minutes of the meeting.
- 5.9.2.4 In terms of section 83(1) (a) of the PFMA, wilful or negligent failure by a member of the council to follow these requirements constitutes financial misconduct under the PFMA. In terms of section 83(4) of the PFMA, financial misconduct is a ground for dismissal, suspension or any other appropriate sanction.

5.10 **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 they have any interest in the matter before the panel that precludes them from performing their functions in a fair, unbiased, and proper manner.

6. **Procedure for disclosing a Conflict of Interest**

Members of the Council

- 6.1 Where a member of the council at any stage prior to a meeting of the council becomes aware that they have a conflict of interest in relation to any matter to be discussed at that meeting, they must disclose such conflict of interest to the chairperson and other members of the council in writing as soon as reasonably possible.
- 6.2 Members of the council, except for the conflicted member must make a determination by way of a round robin resolution in relation to the conflict of interest and thereafter notify the affected member accordingly as contemplated in clauses 6.3 and 6.4, read with the necessary changes. Where the conflicted member of council is the chairperson of the council, the deputy chairperson shall act as the chairperson of the

council at the meeting convened for purposes of discussing the identified conflict of interest.

- 6.3 The chairperson of the council or the deputy chairperson, as the case may be, will:
 - 6.3.1 Notify the member of the council's determination as to whether a conflict of interest is material and warrants the recusal of the conflicted member;
 - 6.3.2 Advise on the steps to be taken by the affected member where it has determined that the conflict of interest is material and warrants recusal from the meeting. 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 section 8(5) of NFVF Act; and
 - 6.3.3 Give the member a written notification of the determination in terms of clause 6.3.1 and clause 6.3.2, where applicable prior to the continuation of the meeting in question.
- 6.4 Where a member of the council becomes aware, at/ during a meeting of council that they have a conflict of interest in relation to any matter being discussed at such meeting, they must at once raise the issue and disclose the conflict of interest to the chairperson at the meeting.
 - 6.4.1 The chairperson may request any additional details from the member as may be required to enable council to make a determination as to whether the conflict of interest is material or not;
 - 6.4.2 The chairperson will request that:
 - 6.4.2.1 The council determine whether the conflict of interest is material and warrants the recusal of the conflicted member;
 - 6.4.2.2 The council, having determined that the conflict of interest is material and calls for the recusal of the member from the meeting, should then advise on 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 requirements in terms of section 8(5) of the NFVF Act;
 - 6.4.2.3 The meeting be adjourned to obtain additional details as contemplated in clause

6.4.1 or making the determinations contemplated in clause 6.4.2 should it become necessary.

6.5 Where the chairperson of the council at any stage prior to a meeting of the council becomes aware that they have a conflict of interest in relation to a matter to be discussed at a meeting, they must, in writing, disclose the conflict of interest to the deputy chairperson of the council as soon as reasonably possible. The deputy chairperson of the council shall communicate the determination in relation to the conflict of interest and notify the chairperson accordingly as contemplated in clauses 6.3, read with the necessary changes. Where it has been determined that a material conflict of interest exists, the deputy chairperson shall act as the chairperson of the council at the meeting in question or direct another member to do so.

Where the chairperson of the council becomes aware of the existence of a conflict of interest on their part during a meeting of the council in relation to any matter being discussed at that meeting, they must at once raise the issue and disclose the conflict of interest in the meeting. Members of the council shall then take a vote that excludes the chairperson on whether the conflict of interest is material or not. To the extent that the majority of the members 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 council where the deputy chairperson will assume the role of chairing the meeting.

6.6 Where both the chairperson and deputy chairperson are conflicted, the meeting shall be adjourned, and the members of council shall decide how to proceed.

6.7 Where any member of the council is of the view that a fellow member is conflicted, they shall advise the chairperson and the affected member in writing prior to the meeting and request that members make a determination in terms of the provisions under clause 6 as to the perceived conflict of Interest. Should the member bring to introduce the perceived conflict of interest during a meeting of the council, the chairperson shall request for the affected member be recused, to allow the remaining members to make a determination as to the conflict of interest in terms of clause 6 and communicate it to the affected member accordingly.

6.8 Any written disclosure of a Conflict of Interest by a member in terms of clause 6 must

set out all relevant details in respect of such conflict of interest. The written disclosure may be sent to the chairperson of the council or to the members of council, as the case may be by way of email, fax or hard copy.

- 6.9 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.
- 6.10 Where a member of council is of the view that a conflict of Interest is material, they should indicate as such when making the disclosure. In such cases, it will not be necessary for the chairperson or the remaining members of the council to make a determination in relation to materiality. The conflicted 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.

Members of a Committee or Advisory Panel

- 6.11 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 they have a conflict of interest in relation to a matter to be discussed at that meeting, must disclose such conflict of interest in writing to the chairperson of the committee or advisory panel, as soon as reasonably possible. The conflict of interest will be dealt with as per clause 6 (above) with the necessary changes.
- 6.12 Where the conflict of interest or perceived conflict of interest relates to the chairperson of the committee or advisory panel, as the case may be, the members shall vote for one amongst them to chair the meeting.
- 6.13 In making a determination as to the steps to be taken in respect of the conflicted member, the chairperson must take into account the requirements in terms of section 8(5) of the NFVF Act, read with the necessary changes, as well as section 11(10) of the NFVF Act which deals with matters relating to members of advisory panels or committees in conflict-of-interest situations.

Employees

- 6.14 Although not exhaustive, employees of the NFVF must refrain from the following, which the NFVF deems to be likely to result in conflict of interest:
- 6.14.1 **Close relationships** with people in entities which the NFVF does business with and in direct reporting hierarchies within the NFVF (for example related persons or friends reporting to one another). Such relationships include related persons, close friendships or even common societies' memberships (for example for leisure, sport, investment clubs or joint property ownerships). It follows therefore that employees must declare and recuse themselves from and should not be involved in the hiring decision, supervision, management or career planning of their related persons or close friends;
- 6.14.2 **Activities that compete significantly for resources allocated for day-to-day functions of the NFVF such** as time and facilities. This includes using NFVF resources to do non NFVF work for financial gain or no financial gain, as well as holding of positions and membership outside the NFVF (for example directorship, trusteeship or public office) requiring the employee to participate in engagements consistent with such memberships or positions that encroach into their NFVF working schedule. Employees may not be engaged, take part directly or indirectly, whether as an employee, director, consultant, trustee or in any role, in activities of any business/entity without NFVF's written approval.
- 6.14.3 **Any indirect or direct provision of services or goods to NFVF by a NFVF employee on a commercial basis** for example additional compensation in excess of their normal job-related remuneration. As such, no NFVF employee or related persons, partners or other business associates or their employees will be allowed to render any service or supply goods to the NFVF.
- 6.14.4 **Directly or indirectly hold investments or financial interest** in any businesses contracting or looking to do business with the NFVF within the employee's area of influence.
- 6.14.5 Engaging in conduct that might result in them becoming exposed to prospects of **Undue influence** either in their personal capacity or through related persons as well as close friends and associates. **Undue influence** inducing situations can arise from

among others, the employee's ability to access or being privy to valuable confidential information, being recipients or dispensers of gifts, favours or entertainment value that might place an obligation upon them to reciprocate or receive offers of business or other opportunities in a manner that compromises their integrity

- 6.15 Employees must ensure that potential conflict creating situations are declared for interviews, evaluation and adjudication of tenders, administration of any funding that is granted by the NFVF if not taking part as a member of any council committees or evaluation panel meetings. To this end, recusals shall be reported and recorded in writing to the chairperson of the relevant committee or panel for determination of whether such a conflict is material or not.

- 6.16 Where conflict of interest or the potential thereof arises or cannot be avoided, alternatively, when the employee wants to make a case for working within a situation that is a potential conflict of interest, the following procedure applies:
 - 6.16.1 The employee must declare the conflict of interest immediately and in writing to their line manager, in instances where the employee is not acting as a member of a committee;

 - 6.16.2 Employees must obtain prior written consent from their line manager to take part in such work. Any line manager who is approached regarding a conflict-of-interest situation and is uncertain whether consent should be granted or not should consult their more senior line manager and/or the head of HR.

 - 6.16.3 The decision to approve work under conflict of interest will be communicated by the line manager in writing;

 - 6.16.4 Any consent granted must be resubmitted and reviewed annually;

 - 6.16.5 Consent pertaining to actual or potential conflict of interest will only be granted if:
 - 6.16.5.1 There was a prior request and approval in writing which was supported by a written risk mitigation plan and relevant controls;

 - 6.16.5.2 It can be responsibly managed without prejudice to the entity; and

- 6.16.5.3 If it is not in conflict with any material interest of the NFVF.
- 6.17 clauses 6.15, 6.16 and 6.17 above are only applicable in instances where an employee is not sitting as a voting member of the council, committees or advisory panels.
- 6.18 The NFVF will also keep an annual register of gifts received by members and employees that are over R350 as stipulated in the employees' code of conduct and ethics manual from time to time.

7. Compliance

All employees, independent contractors, council members, committee members and advisory panels shall sign a declaration annually:

- 7.1 Confirming that they have read and understood this policy; and
- 7.2 Listing their pecuniary interests in other entities or directorships/participation in the governance structures of other entities to the head of human resources and their line manager or the chairperson of council and the company secretary, which must be signed by the employee, independent contractor or member and the line manager or chairperson.

8. Misconduct

The NFVF may take action against any category of persons mentioned in 1.1 who is found in breach of this policy.

9. Annual Review

This policy shall be reviewed every 3 (three) years and any changes made thereto must be approved by council.