General guidance on conflicts of interest in New Zealand standards development committees

Purpose of this document
This document is intended to facilitate the smooth operation of the standards development process under the Standards and Accreditation Act 2015 (the Act), by providing clear guidance on identifying, disclosing, and managing conflicts of interest in standards development committees.

This document should be read alongside the Standards Development Committee Handbook. If you have any questions about this document or conflicts of interest generally, please contact a Standards Advisor at Standards New Zealand.

Users of this guidance
The guidance in this document would be useful for the following parties:

- Individuals who are being proposed to participate on standards development committees.
- Members of standards development committees.
- Chairs of standards development committees.
- The New Zealand Standards Executive (the Executive).
- The Standards Approval Board (the Board).

Why do conflicts of interest need to be managed?
Impartiality and transparency of the standards development process are essential to maintaining the integrity of New Zealand Standards. If left unchecked, conflicts of interest could undermine the quality and integrity of New Zealand Standards and public confidence in the standards system. It is therefore vital that conflicts of interest in standards development committees are effectively identified, disclosed, and managed to ensure standards being developed or adopted are robust.

Most statutory boards and committees exercising public functions are subject to conflict of interest procedures. The new requirements in the Act are designed to bring standards development committees in line with other public entities and international best practice. They also, however, recognise New Zealand’s unique context for standards development, allowing a degree of flexibility for how conflicts of interest are managed to reflect the small size of our standards development community.

Managing conflicts of interest is only one of several elements in the standards development process that help ensure standards produced are robust and the process is transparent. The Act also provides for these things by ensuring that standards development committees are balanced and representative, and by requiring consideration of whether committee decisions are consensus-based and include public consultation. These requirements reflect common international practice of other national standards bodies as well as ISO and IEC guidance and WTO expectations.
Identifying conflicts of interest

GENERAL RULE: If you have an interest in an outside matter that other people might reasonably think could affect your impartiality on the standards development committee’s work, there may be a conflict of interest.

What does the Act say?

The test for conflicts of interest in the Act is whether a person is “personally interested” in a matter of the standards development committee.

This means that the first step in making an assessment of whether a conflict of interest exists is to identify whether a member has a personal interest in the work of the standards development committee.

Section 4(2)(a) of the Act states that a person is personally interested in a matter if he or she:

(i) may derive a financial benefit from the matter; or

(ii) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or

(iii) may have a financial interest in a person to whom the matter relates; or

(iv) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or

(v) has some other (direct or indirect) personal interest that could materially influence him or her, or would reasonably appear to any person to be likely to have a material influence on him or her, in the exercise of his or her responsibilities under this Act in relation to the matter.

However, section 4(2)(b) goes on to say that a person is not personally interested in a matter:

(i) merely because he or she receives insurance cover, remuneration, or other benefits authorised under this Act; or

(ii) only because he or she has past or current involvement in the relevant sector, industry, or practice; or

(iii) if his or her personal interest is the same or substantially the same as

(A) the benefit or interest of most other people in the industry that he or she represents; or

(B) the benefit or interest of the general public.

NOTE: Just because you have identified a conflict of interest does not necessarily mean that there is a problem, or that you can’t be a standards development committee member. The important thing is to identify potential conflicts of interest so they can be managed appropriately.
What does this mean?

Determining whether someone is personally interested in a matter is a two-step process. The first step is to establish whether the person is personally interested under one of the definitions in section 4(2)(a). If they are, the second step is to ask whether any of the exceptions in section 4(2)(b) apply.

Taken together, this means that even if a committee member has some kind of direct or indirect interest in the matter under section 4(2)(a), they are not personally interested in that matter for the purposes of the Act if one of the exceptions applies.

For example, if a committee member stands to derive some kind of financial benefit from the work of the committee, they are not considered to be personally interested in the matter if most other people in the industry will also derive the same or a substantially similar financial benefit.

Key terms explained

What is a “financial benefit” or “financial interest”? A financial conflict of interest is one where the decision or act could reasonably give rise to an expectation of financial gain or loss to the conflicted person. A financial interest may take many forms and need not involve cash changing hands directly. It could, for instance, relate to effects on the value of land or shares that the person owns, or effects on the turnover of a business that the person is involved in.

Financial benefits or interests may include:

- a shareholding or directorship in a company that stands to gain directly or indirectly from the outcome of the work of the committee
- a remunerative relationship, for example employment, consulting with a business or other organisation that may use the standard being developed by the committee
- property ownership or other investments that may be affected by the committee’s work
- beneficial interests in trusts
- gifts and hospitality from organisations interested in the committee’s work
- debts.

What does “material influence” mean?

This category of personal interests is broad and covers all other direct and indirect interests that are not necessarily financial in nature. This includes all the types of interest listed above and may also include:

- professional or legal obligations
- holding another office
- membership of another organisation
- family or close personal relationships
- personal beliefs or commitments that may suggest predetermination.
Some examples of conflicts of interest include:

<table>
<thead>
<tr>
<th><strong>Personal affiliation</strong></th>
<th>A member’s spouse might work for a large industrial company that will gain financially from the development of the standard</th>
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<tbody>
<tr>
<td><strong>Social affiliation</strong></td>
<td>A member might be related to a person on the Standards Approval Board</td>
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<tr>
<td><strong>Professional affiliation</strong></td>
<td>A member might have just become a member of an industry board which is a major opponent of the development of the standard</td>
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<tr>
<td><strong>Legal obligations</strong></td>
<td>A member might be a director of a large pharmaceutical company and owe particular legal duties to the company and its shareholders</td>
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<tr>
<td><strong>Financial obligations</strong></td>
<td>A member might be in a joint business partnership with another committee member and/or the members have been contracted by a major business interested in the development of the standard</td>
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<tr>
<td><strong>Gifts</strong></td>
<td>An industry organisation might buy tickets to an All Blacks vs France rugby game for some of the committee members</td>
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<tr>
<td><strong>Hospitality/invitation</strong></td>
<td>The members reviewing a standard might be invited to a building site by a firm that uses that standard</td>
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<tr>
<td><strong>Personal belief</strong></td>
<td>A member reviewing a standard on aluminium alloys might hold a strong, public opinion on the environmental degradation caused by aluminium smelting</td>
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Not all such interests will meet the threshold of “personal interest”, however. Only interests that could “materially influence” the committee member, or “would reasonably appear to any person to be likely to have a material influence” over the committee member are relevant.

There is no bright-line test for what kinds of interests could have a material influence over a committee member. As a general statement, however, an interest could be considered to have a material influence if there is a reasonable risk that it will influence the committee member’s opinion or encourage him or her to act favourably (or disfavourably) in relation to a particular matter.

Another way of considering it is to ask the following question:

“Does the interest create an incentive for the committee member to act in a way that may not be in the best interests of the public and/or relevant industry affected by the standard?”

In many cases, it is the appearance of bias or influence, rather than proof of actual influence, that is important. This is why the second limb of the test asks whether the interest “would reasonably appear to any person to be likely to have a material influence” over the committee member. Again there is no bright-line test, but it is useful to ask the following types of questions:

“Would the reasonable, informed observer think that the impartiality of the committee member might have been affected?”

OR

“Is there, to a reasonable, fair-minded and informed observer, a real danger of bias on the part of the committee member, in the sense that he or she might unfairly regard with favour (or disfavour) the matter under consideration?”
When is an interest “the same or substantially the same as the interest of most other people”?

Because New Zealand is a small country, it is not unusual for individuals with valuable expertise and knowledge of an industry and who are involved with a standards development committee to also have some kind of personal interest in the outcome of the committee’s work.

To accommodate this and allow a degree of flexibility in how conflicts of interest are managed, the Act provides that if a person has an interest that is the same or substantially the same as the interest of most other people in the industry they represent, the person is not considered to be “personally interested” in the matter.

To give an example, a person might work for a manufacturing company that makes widgets. They get involved in a standards development committee representing manufacturers from the relevant industry. The person’s employer stands to derive a financial benefit from the work of the committee because they make widgets that will meet the new standard. The committee member is therefore interested in the matter by virtue of their employment with the company. However, anyone else who works for a manufacturing company in that industry will also derive a financial benefit from the work of the committee because those companies too will be able to make widgets that meet the new standard. Provided the company doesn’t have a particular advantage which makes their interest more significant than other companies’, the person’s interest is therefore the same as most other people in the part of the industry they represent.

How is this exception applied?

This exception will be considered on a case-by-case basis and it is not enough that only some other people in the industry or part of the industry might have the same or a similar interest; it must be the case that most other people in the industry or part of the industry have the same or a similar interest.

However, the interest does not have to be the same as all other people in the industry, and can also apply across particular sectors or parts of the industry rather than the industry as a whole. So in the example above, the comparison was between the person as a representative of manufacturers in the industry and other manufacturers, not other people in different parts the industry as well, for example, retailers, distributors, service providers etc.

If there is any doubt about whether an interest is the same or substantially the same as most other people, committee members should discuss the matter with a Standards Advisor or the committee chairperson.

Further examples of conflicts of interest

(A) Roger is a director of a company Hard As Steel Ltd, a major steel producer in the Waikato. Because of his expertise in steel manufacturing, Roger wants to be involved in a standards development committee looking to develop a new standard for a particular type of steel product. The new standard could benefit Hard As Steel Ltd as they have the exclusive licence in New Zealand for a technology required to produce steel products that will meet the standard.

Roger stands to derive a financial benefit from the work of the committee by virtue of his directorship in Hard As Steel Ltd as his company has a material market advantage in the industry in relation to the proposed standard. Roger should therefore disclose the directorship to the Executive as an initial disclosure when he submits his application to be on the committee. [See section 4(2)(a)(i)]
(B) Sally is a businesswoman who has worked for various plumbing companies for over 20 years. Because of her expertise in the industry, Sally has become involved in a standards development committee that is developing a new standard for plumbing and draining systems. The committee has been in place for 6 months and is close to finalising its new standard. Sally’s husband Richard is a civil engineer and has just been offered a new job at a company that specialises in installing drainage systems.

Because Richard stands to derive a financial benefit from the new job, Sally has become personally interested in the matter. She should therefore declare her relationship with her husband and her husband’s job to the committee chairperson and the Executive as an ongoing disclosure as soon as practicable. [See section 4(2)(a)(ii)]

(C) Nick is a food scientist and has been encouraged by his employer to get involved in a standards development committee that is updating the standard for examination of butter and margarine products. In his spare time, Nick loves to play golf and plays every Sunday with his uncle Graham. Graham happens to be a product manager at a large dairy company. The company would prefer not to see the relevant standard change too much because it could lead to significant additional costs in its product development process.

Although Nick would not derive a financial benefit himself from the work of the standards development committee, given Graham’s interest in the matter and his close relationship with Nick, other people might think the relationship could have a material influence over Nick’s opinions on the committee’s work. Nick should therefore disclose the nature of his relationship with his uncle to the Executive as an initial disclosure. [See section 4(2)(a)(v)]

(D) John is an electrical engineer who occasionally consults for companies that make electrical products, including electrical wiring. John is a member of a standards development committee that is developing a standard for insulated electric cables.

John could potentially benefit from the new standard as some of the companies he consults for might want to make cables that meet the new standard and could engage him to advise on the specifications of the standard. However, it is also the case that any other electrical engineer working in the industry could equally advise on the new standard. Provided John is not advocating for any particular company’s perspective in a way that will benefit him, John’s interest is the same or substantially similar to most other electrical engineers in the industry. John is therefore not “personally interested” in the matter for the purposes of the Act and does not have to declare the fact that he consults for certain companies. [See sections 4(2)(a)(i), 4(2)(b)(iii)(A)]

(E) Rachael is a researcher at a medical supplies company. She is involved in a standards development committee that is developing a new standard for measuring wear of hip-joint implants used in surgery. The company Rachael works for owns valuable intellectual property rights in a new design for hip-joint implants which could be used as the basis for the new standard.

Although Rachael’s interest is the same as other people in the medical supplies field in the sense that they might also sell hip-joint implants, the company Rachael works for clearly has a particular interest in the standard due to their IP rights in the new implant design. Rachael’s interest is therefore not the same or substantially the same as most others in the industry and she should declare her interest. [See sections 4(2)(a)(i), 4(2)(b)(iii)(A)]
Disclosing conflicts of interest

Initial disclosures

Before a person can be proposed to be a member of a standards development committee, the person must disclose any interests they have in matters that relate to the work of the proposed committee.

Initial disclosures are made to the Executive and must include the nature and extent of any interests (including the monetary value if possible) that the person has at that time or is likely to have in matters relating to the work of the proposed standards development committee.

The Executive then advises the Standards Approval Board (the Board) of the nature and extent of the proposed member’s interests when referring the membership proposal to the Board for approval. The Board has regard to these interests when approving or declining the membership proposal.

Note that a person who is personally interested in the work of the standards development committee is disqualified from being, or acting, as the chairperson of the committee.

If the person is successfully appointed to the committee, the Executive discloses the details of the person’s interests to the chairperson of the committee and records the details in an interests register.

Ongoing disclosures

The Act also requires that committee members must disclose any personal interests that may arise or that they become aware of during the course of their involvement with the committee. These ongoing disclosures must be made as soon as practicable after the member becomes aware of the interest. This is a continuing duty that applies throughout the member’s participation on the committee. The chairperson of the committee should include an agenda item on conflicts of interest at every meeting to facilitate disclosure.

Ongoing disclosures are made to the chairperson of the committee and the Executive and must include the nature and extent of any interests, including the monetary value if possible. The Executive then records the details of the interest in the interests register.

YOUR PERSONAL INFORMATION WILL BE PROTECTED: Any personal information that you provide in the course of an initial or ongoing disclosure will be handled safely and securely and be protected from disclosure to third parties to the fullest extent possible. All personal information will be handled in accordance with the Privacy Act 1993 and will be received “in confidence” to protect as far as possible against disclosure of the information under the Official Information Act 1982.

IF IN DOUBT, DISCLOSE THE INTEREST: It is better to err on the side of openness if you think there may be a conflict of interest. If in doubt, disclose your interest or discuss it with the chairperson of the committee or a Standards Advisor.
Managing conflicts of interest

Assessing the conflict of interest

Conflicts of interest will vary in their nature, size and seriousness. No two situations will be the same so each conflict needs to be assessed on a case-by-case basis to determine how to manage it. Although common factors will appear regularly, the decision about how to treat some conflicts will be the subject of discretionary judgement by the Executive, committee chairperson and/or the Board when it considers committee membership proposals.

Factors we consider when we assess conflicts include:

- the nature or size of the committee member’s other interest
- the nature or significance of the particular work being undertaken by the committee
- the degree to which the committee member’s other interest could affect, or be affected by, the committee’s work
- the nature or extent of the committee member’s current or intended involvement in the committee’s work
- the practicability of any options for avoiding or mitigating the conflict.

Nature of the personal interest:

- The nature of the personal interest will generally follow the categories of personal interest outlined in section 4(2)(a) above.

- The nature of a conflict of interest can also be:
  - actual: where the conflict already exists
  - potential: where the conflict is about to happen, or could happen
  - perceived: where others might reasonably think that an individual has a conflict.

Size and seriousness of the conflict of interest:

- Conflicts of interest can vary in size and seriousness. It may be helpful to classify the conflict as “material” or “immaterial”.

- The seriousness of a conflict is a question of degree. This may depend on the directness and significance of the conflict:
  - “Directness” relates to how closely the two interests concern each other.
  - “Significance” relates to the magnitude of the potential effect of one on the other.
Options for managing conflicts of interest

The existence of a conflict of interest does not necessarily create a problem. In some cases where the conflict of interest can safely be regarded as remote or insignificant, it may be enough that the interest has been recorded in the interests register and no further action is required. In other cases, further steps may be necessary. It is possible that declaration of a sizeable or significant interest might warrant the member resigning from the committee.

Depending on the assessment of the conflict, options for managing the situation include:

- simply disclosing the interest and recording it in the interests register
- discussing with committee members about whether they agree to the member’s involvement
- re-assigning certain tasks or duties to another member
- imposing additional oversight over the member with the interest
- withdrawing or imposing restrictions on the member’s involvement in the matter, eg excluding the member from committee discussions on a particular topic
- excluding the member from voting – the member may be required, or may choose, to be excused from voting on an issue where they have a conflict of interest
- relinquishing the interest – the member relinquishes the personal interest that created the conflict
- withdrawing – the member might withdraw from participating on the committee. This option should only be considered if the conflict of interest cannot be resolved in any other workable way.
- being a member only, not the chair.

As noted above, the decision about how to treat conflicts of interest is a matter for the Executive, chairperson and/or Board’s discretionary judgement. Some types of conflict might not be able to be dealt with by a firm rule one way or another, since the seriousness of the intersecting interests may be a question of degree. Each assessment will be a case of balancing the risk associated with the member’s continued participation in the work of the committee.
Appendix 1 – Conflicts of Interest in context

The following diagram briefly walks through the process of developing and approving standards, identifying where conflicts of interests need to be identified, disclosed, and managed.

Interested parties approach the Executive to propose the development of a Standard

The Executive considers the request and may agree to put together a committee

The Executive asks for nominees for the committee

The Executive recommends the committee to the Board, identifying any nominee with a conflict of interest and recommending a chairperson who is free of any conflict of interest

The Board approves or declines the recommended committee (giving reasons if declining)

Once approved, the Executive appoints members to the committee

The committee works to develop the standard

Once the standard has been developed, the Executive recommends the draft standard to the Board for approval

The Board approves or declines the draft standard

Nominees must disclose to the Executive the nature and extent (including the monetary value, if quantifiable) of any interests that the person has at the time, or is likely to have, in matters relating to the work of the proposed committee

The Board has regard to the nature and extent of the interests when approving or declining membership proposals. A committee chairperson cannot have any personal interests

The Executive discloses the nature and extent of members’ interests to the chairperson of the committee and records the interests in an interests register

During the course of the committee’s work, members who are personally interested in a matter relating to the work of that committee must, as soon as practicable after they become aware of any interest, disclose details of the nature and extent (including monetary value, if quantifiable) of the interests to the chairperson of the committee and the Executive

The chairperson of the committee and the Executive make a decision together on how the conflict should be managed. The nature, size, and seriousness of the conflict will dictate how the conflict is managed