

## Submission from the NZ Society of Authors

1. A Writers' Support Fund was established in 2001 by CLL with the purpose of assisting New Zealand writers in the writing of books of non-fiction through the provision of an annual CLL Writer's Award.<sup>1</sup>
2. The Writers' Support Fund was funded from the annual deduction of up to 2% of domestic licensing revenue, deducted for the first time in 2001.
3. The Writers' Support Fund was established for a number of reasons but primarily because the sampling system to establish how funds were to be distributed was noted by statisticians as unfair to writers.<sup>2</sup>
4. The Writers' Support Fund was renamed the Cultural Fund in 2008 and the purpose changed to 'provide funding for the cultural development of the industry'.<sup>3</sup> The Writers Awards continued to be paid from this fund.
5. A review of the Cultural Fund in 2014 resulted in the establishment of a Contestable Fund and the disestablishment of the Writers Awards.
6. The abolition of the Writers Awards and the instigation and wording of the Contestable Fund has resulted in funds being directed away from writers to write books of non-fiction, and towards organisations.<sup>4</sup>

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<sup>1</sup>See attached *Guidelines for the Copyright Licensing Ltd Writers' Support Fund and the Granting of the CLL Writer's Award* from 2002

<sup>2</sup> Each year, a representative sample of licensed institutions in each licensed sector (universities, schools, businesses etc.) is asked to provide data on the material being copied. The institutions are statistically chosen to be representative of the copying carried out over the term of each licence and to account for variations such as size, enrolments and location. There is a Statisticians Report on file at CLNZ that will give more detail about why the system is unfair to writers.

<sup>3</sup> Ref: CLL Annual Report 2008

<sup>4</sup>The Book Council for Talking Books podcast interviews and PANZ for the Taipei Book Exhibition Authors Programme Management.

New Zealand Society of Authors is making this submission to the Board of CLNZ because writers have been disadvantaged by this change.

We believe, with open and full consultation with the NZ Society of Authors and mandated writers, the Writers' Awards would not have been discontinued.

#### *The success of the Writers Awards*

The writers' awards went towards compensating writers for the sampling system that is weighted in favour of Publishers. They provided much-needed support for non-fiction writers and did a lot to raise CLNZ's profile and build greater awareness of its service. Applications averaged around seventy a year. These awards have made possible a large number of books that would otherwise not have been written and published.

#### *The Process*

The board set up the Cultural Fund Working Group to review CLNZ's annual Writers Awards and Research Grants in July 2013 (3 months prior to the stakeholder's survey).

The group was provided with a background paper stating that CLNZ was not constrained either by its Constitution or any policy on how the Cultural Fund operated or whether it needed to exist in the future. The group set out funding and operating criteria to be considered and asked CLNZ staff to take a "blank page" approach to considering future investment in cultural activity and to report back.<sup>5</sup>

Tony Simpson, an NZSA appointee on the board, reported to NZSA National Council seeking its views on management of the Fund in the future. National Council responded<sup>6</sup> that a motion had been passed and that their preference was to retain the

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<sup>5</sup> Ref: Cultural Fund Review Working Group minutes dated 12 July 2013. Attached.

<sup>6</sup> Email from previous NZSA CEO Maggie Tarver to Tony Simpson 6 September 2013

Writers Awards, increase the value of the Research Grants and introduce a midcareer writer's award of \$10,000. Tony Simpson in his written report<sup>7</sup> advised "your views for retaining and extending the status quo basis have been passed on to Paula."

In January 2014 the CLNZ Review Working Group convened again. After considering the results of the survey, it recommended that the Cultural Fund define its focus "more clearly" as follows: to encourage the development of current and future writers, publishers and educators; to help grow the sector; and develop awareness of CLNZ and its service. It also recommended changes to the current awards for writers. These were to be discussed directly with NZSA. The ensuing discussion on 3<sup>rd</sup> April 2014 with NZSA's CEO was mainly concerned with the changes to the Research Grants which were increased from two at \$3,500 to four at \$5,000. There was no collaborative conversation about the shape of the Contestable Fund.

There was an opportunity for the CLNZ Chair and Chief Executive to discuss the disestablishment of the Writers Awards and the establishment of the Contestable Fund with the NZSA National Council late March 2014 – just one month before it was publicly announced. Both travelled to Wellington to meet with the National Council about the desired changes to the Board at CLNZ. They did not share information about the changes to the Cultural Fund even though this would have been an opportunity to discuss with the Council what decisions had been made and what weight had been given to their preferences.

#### *Our concern with the Contestable Fund*

The criteria encourage organisations to apply and discourage writers. There is a single reference to writers.

The Contestable Fund received five applications, one from a writer. One of the two successful applicants, The Book Council, received an investment of \$4,000. The other

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<sup>7</sup> Written report to NZSA National Council dated 15 September 2013

successful applicant was PANZ who manage the Taipei Authors' Programme. It received an investment of \$20,000. This is four times the amount the Contestable Fund guidelines state will, in general, be considered.<sup>8</sup>

However, concern pre-dated the announcement of the recipients. Jenny Robin Jones wrote a letter to the Board asking some questions about the new use of the Cultural Fund including; why had the original purpose of the Fund been abandoned, why had the use of the funds been broadened, and under whose authority was it to be used to help grow the sector? Paula Browning replied on behalf of the Board. Both letters are attached.

In Paula Browning's reply to Jenny Robin Jones she asserts that the Fund has always been known as the Cultural Fund since its establishment in 2001. This is incorrect. It was called the Writers' Support Fund or the Writers Fund in the CLL Annual Reports from 2001 to 2007 and in all marketing and publicity during this time. It became known as the Cultural Fund in 2008.

*In response to justifications made for the disestablishment of the Writers Awards*

1. Recipients manuscripts were not published

We were advised that the Writers Awards needed review partly because publication of manuscripts written by the recipients of the awards did not always eventuate.

However Paula Browning wrote telling us of the 21 recipients, 16 have published books so far and one is about to be published. That's more than an 80% success rate.

A non-fiction manuscript can sometimes take many years to write before it is published and it is likely more of the manuscripts will be published. One recipient, Christine Cole Catley, died before finishing her manuscript.

2. The Cultural Fund had not been a reviewed in 13 years.

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<sup>8</sup> Ref: Guidelines for Contestable Funding "In general, funding per application of up to \$5,000 will be considered..."

There have been ongoing changes to how the Cultural Fund is spent. Some examples; a second Writers Award in 2004; the instigation of the Research Grants in 2008; the instigation of the Educational Publishing Awards in 2010; \$5,000 given to the Michael King Writers Centre in 2004; an awards ceremony for the Writers Award some years and not others; the payment of \$65,000 to Digital Publishing Forum in 2009 and \$50,000 to Digital Publishing NZ in 2011; contributions to PANZ and NZSA for a New Zealand presence at the Frankfurt Book Fair in 2012 and 2013. Over and above this there was a review of the Writers Awards in 2007 and, more significantly, there was a rewording of the purpose of the Fund when it changed from the Writers Fund to the Cultural Fund in 2008.<sup>9</sup>

So was there a need for a review? Clause 10.1 (b) of the Copyright Licensing Limited Constitution enables the Board to make decisions at its absolute discretion about how the Cultural Fund can be spent as long as it is conducive to the interest of Rightsholders and it is for Cultural and / or social purposes. The Board is not constrained by the existence of the Writers Awards.

### 3. The Sampling System has changed.

It is good news that a new pilot licensing scheme has been agreed with Universities New Zealand for the 2015/2016 academic years and that this will enable the universities to provide access to content for their students utilising new technologies. However there will still be other students and licensees using old technology and the old sampling system. We want to ensure that distribution of money from the Cultural Fund benefits authors fairly in relation to publishers and at this time the distribution of licensing income favours publishers, so it is not unreasonable that the Cultural Fund favours writers.

### 4. The needs of the Rightsowners CLNZ now represents has changed.

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<sup>9</sup> Ref: Annual Report 2007 note about Writers Awards compared to Annual Report 2008 note about Cultural Fund

It is true both publisher and writer needs have changed with the global technological changes that have forever altered the industry. However we do not agree that this is a justification to disestablish the Writers Awards. Until there is a new statisticians report showing writers are not disadvantaged by the way writer and publisher licensing income is distributed, there are still valid reasons for the Writers Awards to continue.

5. The CLNZ Stakeholders survey pointed to a need for change

The CLNZ Stakeholders Survey is important as the results have informed the disestablishment of the Writers Awards and the establishment of the Contestable Fund.

The CLNZ media release of 29 April 2014 states the Stakeholders Survey raised an important question about the Cultural Fund that needed investigating and consequently a Cultural Fund Review Working Group was established. However this is not true. The board set up the Cultural Fund Working Group to review CLNZ's annual Writers Awards and Research Grants in July 2013 and then decided to do the survey.

The media release went on to say the survey revealed

- A significant number of writers and publishers from all corners of the sector are feeling under-supported.<sup>10</sup>
- The current awards offered by CLNZ are not accessible to most.
- For those that did fit the criteria, they found the application process to be time consuming and costly.

What questions were asked, how many responded and was there an opportunity for the respondents to support the continuation of the Writers Awards? These are some of the questions that have gone unanswered.

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<sup>10</sup> In 2007 the NZSA conducted a survey of authors' which showed there was a strong feeling of a lack of support for non-fiction writers, and this is why the CLNZ/NZSA Research Grants began the following year.

One method by which the survey was distributed to stakeholders was via the NZSA e-news list on 9 October 2013. CLNZ's invitation to participate in the survey used language such as "stakeholder survey" and "services" which was not calculated to make authors think the survey would be particularly relevant to them and there was no indication at all that the survey might concern the Writers Awards and their future. Paula Browning advised, of the 182 authors who responded, 148 identified themselves as NZSA members<sup>11</sup>. We would still like to know how many responses in total i.e. authors, book artists and publishers.

It is highly relevant and would be helpful for NZSA to know more about the survey.

### *Summary*

We are not against change - we have just supported Governance changes allowing the new makeup of the CLNZ Board. But dropping the Writers Awards was an unneeded and unjustifiable change.

There has been a significant shift away from the Cultural Fund supporting writers to write, and yet there has been no significant changes to the sampling systems nor a new statistician's report showing writers are no longer disadvantaged by the system.

We have been thorough and detailed in this submission in order to respond to the dismissive argument that the Board can, constitutionally, make any change that they want, and to reply to the suggestion that the Writers Awards were a 'problem' because some writers did not deliver.

We have also been detailed in order to provide information that was unknown to NZSA's representatives on the Board and was not a part of the Cultural Fund Review Working Group's Background Paper. This means this information was unlikely to be

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<sup>11</sup> Approximately 10% of membership

known by the majority of the board when ‘defining and articulating the changes to the Cultural Fund, including the establishment of the Contestable Fund’.

To summarise:

The NZSA did not want the Writers Awards disestablished.

There were sound reasons for setting up the Writers Awards which are still valid.

We do not believe the Writers Awards would have been disestablished if there had been full and transparent consultation.

The Contestable Fund, as it is currently constituted, is not an adequate substitute for the Writers Awards.

As joint shareholders in the company we would welcome the re-establishment of the awards as the fairest approach to ensuring the rights and interests of both shareholders are served equitably.

We would like to meet with the Board to establish a mutually agreeable Communications Policy.



Letter to the Copyright Licensing NZ Board from Jackie Dennis, Chief Executive Officer of NZ Society of Authors

I started at the NZ Society of Authors early 2014 and was new to the literary sector at that time having worked as a music publisher, then a producer of film and television.

In the process of putting this submission together I have asked a few questions in order to make sense of some of the reasoning I have been given for the Cultural Fund changes, to be well informed about CLNZ current issues, and to put together a factual and informed Submission. They have been left unanswered.

Paul Browning wrote [3<sup>rd</sup> Feb]

“Please do not mistake my not responding as a lack of transparency. As I have mentioned many times during both our email and phone discussions on this matter, the Board (including representatives of NZSA) were instrumental in defining and articulating the changes to the Cultural Fund, including the establishment of the Contestable Fund. It is my professional view that given the nature of the matters raised by you that I should consult with the Board at the next meeting to discuss the matter.”

*These are the questions that I have asked:*

1. We have been advised that there have been changes to the sampling system and this justifies the abolition of the Writers Awards. We are interested to know what percentage of the money received is based on *actual* use now, and once Universities New Zealand use new technologies in the 2015 / 2016 academic year.
2. We have been advised the value of the Cultural Fund has dropped due to negotiations with the Universities. However reading the Annual Financial Reports the 2% of licensing revenue has been steadily increasing every year. What do you expect the 2% amount to be for the 2014 financial year?
3. Has the resolve of the licensing dispute with Universities New Zealand resulted in an increased license fee per student?

What is sensitive about these questions that prevented Paula answering?

Over and above this I had asked for a copy of the survey and was denied so I then asked for just the questions in the survey. I have been told that I cannot see the survey because the introduction to the survey expressly stated that responses were anonymous and for CLNZ's use. This is disingenuous as I asked for the questions alone. These questions shaped the responses that informed a significant change to the CLNZ Cultural Fund distribution. So I ask, why are the questions being withheld?

Without seeking it, I have been assured that CLNZ is acting transparently and yet at the same time emails go unanswered and information is withheld. This is baffling and unsatisfactory and I look forward to your response.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jackie Dennis', with a stylized flourish at the end.

Jackie Dennis  
Chief Executive Officer

To the Directors of Copyright Licensing New Zealand

From Gordon McLauchlan, a foundation director and former chair of the present company.

1. Like many senior writers I have been surprised and disappointed by the actions of the Copyright Licensing New Zealand directors in stopping the Writers Awards and replacing it with a Contestable Fund, the precise purpose of which remains unclear because of the shoddy language in which it is wrapped. This new fund also provides little if any support for new writing.
2. It is important to remember that Copyright Licensing Limited is fundamentally a collection and distribution agency on behalf of authors and publishers, owned half by the New Zealand Society of Authors (PEN NZ Inc) and half by PANZ.
3. It became a limited liability company as an attempt by PANZ to take control of the agency and its collection and distribution process with the authors as recipients and without any control over the system of collection or distribution. The half ownership by authors was forced on publishers by government intervention because it was deemed to be just and was consistent with the partnership in other Western countries. Unfortunately, the company status was allowed to continue even though in Australia and the UK and, I understand, in most other western countries, the agencies are statutory organisations.
4. Once the agency was fully established with a steady income, the board decided in 2001 to use its allowable two per cent of funds to establish writers' grants: first, one \$30,000 grant, and in subsequent years two awards of \$35,000. These were established at the time for a number of reasons but primarily because the sampling system was noted by

statisticians as unfair to writers. Could the board explain what changes to the sampling system have been made that make the system newly fair to writers? The grants were also considered the best way to encourage non-fiction books for the benefit of both writer and publishers. The scheme was mooted by a publishers' director.

5. The writers' awards were conspicuously successful. Applications averaged between fifty and sixty a year, up to sixty-eight in 2013. In a small market like New Zealand, it is impossible for any author to research and write a major work of nonfiction and receive even a living wage from standard royalties, given the time required. These grants made possible a large number of books that would otherwise not have been written and published. Any suggestion that the grants failed because publication did not always eventuate could be made only by someone unfamiliar with creative processes and the publishing industry, and we understand was not raised during any formal discussion concerning abandoning the grants. There is nothing in the guidelines of the new Cultural Fund that will contribute towards the writing and publishing of new books, except that it aims to make grants to other "organisations" to do so. Furthermore, most writers did not know the grants were even at risk. It is clear that a full consultation process with authors should have taken place before such a dramatic change was made.
6. In the company constitution, Clause 10 refers to the power of the board to use "not exceeding two per cent of its revenue for cultural and/or social purpose or for other purposes as the Board may in its absolute discretion think conducive to the interest of the Rightsholders represented by the Company."

7. We would challenge that the “CLNZ Cultural Fund Guidelines for Contestable Funding” considers options for funding “conducive to the interests of the Rightsholders represented by the Company”. Indeed it is difficult to decipher the meaning of this document, which contains the worst sort of bureaucratic and business jargon. This ill-becomes an organisation owned and operated by writers and publishers.
8. It says: “The Cultural Fund invests in people and projects that: encourage the development of current and future writers, publishers and educators [which may mean educational writers or teachers]; help to grow the sector” [which is, of course, meaningless].

The document continues: Each year a portion of the revenue allocated to the Cultural Fund will be made available in a contestable fund that will prioritise support for **strategic projects** that clearly demonstrate **publishing and/or education sector growth and development** and that:

- “Give organisations an opportunity to support individual (or groups of) writers or educators to develop their professional skills and/or develop new works.
- “underpin export market development of New Zealand publishing
- “enhance the profile of New Zealand publishing and/or published content in an online environment, including to international export markets
- “enable New Zealanders and/or New Zealand businesses to compete effectively in the domestic and international marketplace for creative works [bone carving, perhaps, or ceramic pots?]
- “demonstrate collaboration between organisations

- “are not solely reliant on revenue from this fund to achieve the project outcomes

- “have clearly defined and measurable project outcomes.”

9. Amid this sad claptrap, there is a single reference to writers.

10. It seems the board has lost sight of the basic function of the agency to collect and distribute revenue from copyright among publishers and writers, and use the two per cent -- once called “The Writers’ Support Fund” and now “The CLNZ Cultural Fund” -- in the interests of writers and, consequently, also publishers. No matter what the company’s constitution says about the independence of the board, it is ethically wrong to move against the direct interests of Rightsholders who own the company, especially when the consultation with writers was inadequate.

11. I understand that only five applications were received for grants from the contestable fund, one from an author. The first grant to a Book Council project has enraged many writers. The council is funded mostly by Creative New Zealand. Does this mean literature (which gets 8 per cent of the CNZ allocations) is going to subsidise Government-funded agencies? The benefits from the Taipei Book Fair are dubious and it is understood the project was on budget with sufficient funding from government and non-government agencies before the CLNZ grant was made. And again, does this mean that writers – who have notoriously low incomes – are to subsidise government and other non-government agencies and privately owned marketing organisations?

12. When CLL was set up as a joint organisation, I made a compromise in the face of some very bitter opposition from a leading publisher that the organisation should stay as a company rather become a statutory

organisation, the form sensibly adopted by most Western nations. I regret now making that concession.

13. Every organisation must remain aware that as the world and industry changes business must adapt accordingly. But change is destructive when a board makes drastic and, in my opinion erratic, moves without the widest consultation and consideration, and does not take its stakeholders with it. The CLNZ board can take it for granted that if writers' opinions continue to be ignored and the board persists with these absurd grants, we will seek to take our case to the public through the media.

6<sup>th</sup> February 2015.

Dear Jackie –

I understand the Society of Authors (SoA) is asking Copyright Licensing New Zealand (CLNZ) to reinstate the annual 2 x \$35,000 Writers' Awards.

I support SoA on this. I won a CLNZ award in 2013, to write the book *Terrain*, published this year by Penguin. I would have struggled without the award. The travel and motel and helicopter costs were expensive. Non-fiction books are usually expensive. You don't just sit in a room to bring them on, you have to go out, and research, visit venues etc.

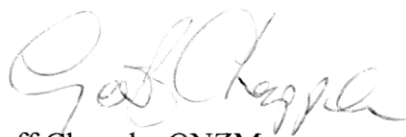
I have benefited from a CLNZ award, and I've also done my bit to support them, serving on CLNZ's judging panel 2006-2010. Our panel of those years supported, amongst other books, *Rita Angus: An Artist's Life* by Jill Trevelyn (Montana non-fiction winner) *Civilisation: Twenty Places on the Edge of the World* by Steve Braunias (NZ Post non-fiction winner) *The Hungry Heart: Journeys with William Colenso* by Peter Wells (NZ Post short list), and Martin Edmond's *Zone of the Marvellous*, all great books that enhanced NZ's reputation for creative non-fiction.

Yet the new Contestable Fund seems to exclude non-fiction writers. Last year I suggested to a writer shortlisted in the 2013 year that he should apply again in 2014. I told him Jill Trevelyn reached the short list one year, refined her idea, tried again the next and was successful. I'd done exactly the same. That writer's reply was: No, he wouldn't apply. He'd looked at the new criteria and decided it wasn't worth it.

I think he's right. I read the eligibility criteria. They're directed to publishers and market-oriented book events and have a corporate gloss. I checked later to see who'd won grants. I'd make two observations there (1) the awards totalled \$24,000 versus the \$75,000 we used to award in main prizes, and (2) the reduced amount went to the so-called "strategic projects" and not to non-fiction writing.

CLNZ set up its Cultural Fund originally to give back to writers some of the money it gained from the photocopying of their works. Writers often do not get the copyright fees CLNZ gathers. I have at least one book, *1981: The Tour*, I know is routinely photocopied for social studies programmes within secondary schools. I've never yet got CLNZ money for this, but nor have I minded. I figured the sampling process was probably crude, and that CLNZ money not returned to writers was nonetheless helping support writers by way of the generous Writers' Awards.

That's no longer the case. Writers write the books. They are the primary source of the work that gets photocopied. I believe they are badly served by this new format.



Geoff Chapple, ONZM  
110 Calliope Road  
Devonport.



28.01.2015

Summer Hill  
NSW  
Australia.

### **To Whom It May Concern**

I note with concern and dismay that Copyright Licensing New Zealand recently discontinued its Writers Awards and replaced them with a contestable fund. These generous awards, instituted in 2001 and first granted the following year, were one of the very few available exclusively to writers of non-fiction and as such were of inestimable benefit to practitioners in that often neglected field. They have borne magnificent fruit over the years: biographies of Rita Angus, C K Stead and Bill Pearson; books on William Colenso and on Maori carvers of the twentieth century; and much else besides.

I was the recipient of one of these awards in 2007 and the money so given allowed me to take the best part of a year off from my job at the time, taxi driving, and so write *Zone of the Marvellous*, subtitled *In Search of the Antipodes*. The book has gone through three printings so far and continues to sell. The award also gave me the opportunity to elaborate a method which I intend to use again, when I can find the time and money, to write a similarly structured history of trans-Tasman connections in the arts. I do not yet know how I will fund the writing of that book; the disappearance of the CLNZ award takes one more option out of what is already a very restricted field.

As I understand it, one of the reasons the Writers Awards were established was because the sampling system for the licensing income was noted by statisticians to be unfair to writers. The setting up of a fund for writers was a way around this and the Writers Awards were paid from this fund. The sampling system has not changed much since 2001; nor has the situation in which most writers find themselves. I urge that CLNZ reconsider this decision and restore these valuable awards so that they may again support that without which no other part of the literary world can exist: the writers themselves.

Yours faithfully

Martin Edmond

The CLNZ Writers' Award for non-fiction, a few thoughts from a recipient...

When this award existed in its original form it was unique and as a recipient it provided enough support to allow me to leave my day job and start writing full time; a life changer.

The strengths of the award were:

1. It provided enough money to concentrate on one large project without the requirement to live away from home, something which is part of most other substantial writing awards and fellowships, Michael King, Sargeson, and the university based residencies. For someone like myself with both family and community commitments this was an important factor.
2. The size of the award allowed a continuity of work moving from research to analysis to writing without the pauses I had needed with previous books where I had to stop work to earn some money. This made for a more coherent end result. This ability to research, analyse and write uninterrupted was probably the major attraction of the size of the sum awarded. Smaller research grants are available from a number of sources. Awards of enough money to produce a book from start to finish are very rare.
3. The requirements of the application ensured that things like cost of images had to be accounted for. This meant that I budgeted for and could engage a professional photographer. The book produced contains at least twice as many images as it would have had without the budgeted funding provided by the award. It is a much better book as a result.
4. The size of the award allowed independent scholars to compete with academics from tertiary institutions where the research component can be made part of the paid work programme. It also allowed money for access to journals which must be paid for by those outside academic institutions. It also funded travel and accommodation for research at realistic levels.

I personally would like to see the award reinstated in its previous form. As it stood it filled a large gap in the funding of non-fiction for the reasons set out above.

David Veart  
CLNZ Award recipient 2012