



Child Side Playgroup and School Governing Council

The role of the Governing Council is to oversee and where required, strategically manage the business of the South West Learning Community Association and in particular, the operation and function of the Child Side School and Playgroup.

Governing Council Conflict of Interest Policy

1. Purpose

The purpose of this policy is to help Governing Council members of the Child Side Playgroup and School Governing Council to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity and manage risk of the South West Community Learning Association Inc. trading as Child Side Playgroup and School.

2. Objective

The Child Side Playgroup and School Governing Council aims to ensure that Governing Council (GC) members are aware of their obligations to disclose any conflicts of interest that they may have, and to comply with this policy to ensure they effectively manage those conflicts of interest as representatives of the South West Community Learning Association Inc. trading as Child Side Playgroup and School.

3. Scope and Application

This policy applies to all Governing Council members; including the ex-officio members of the Child Side Playgroup and School Governing Council.

4. Definition of Conflicts of Interest

Members of a school's governing body are deemed, by law, to have a 'fiduciary' (trust) relationship with the governing body on which they sit. That means that they have:

- a duty to act honestly
- a duty not to make improper use of information acquired by virtue of their position or to gain directly or indirectly an advantage for themselves or others or the association
- a duty to avoid any actual or potential conflict between the obligations owed by the governing body or governing body member and their personal interests
- a duty to use reasonable care and diligence in exercising their powers.

Governing body members are not to "improperly use their position" to "gain an advantage for themselves or someone else ..." or to allow any improper use of their position to "cause detriment to the association" (s.46 Associations Incorporation Act 2015).

What is a 'conflict of interest'?

The *Associations Incorporation Act 2015* (**the Act**) does not use the term 'conflict of interest'; rather it refers to "matters of material personal interest".

Conflict of Interest – A conflict of interest occurs when a person has a personal interest or may be seen to have a relationship with a person or group that has an interest that could cause them to not be completely unbiased when discussing, considering or making a decision on an issue.

Matter of Material Personal Interest – whilst not defined is best described as a conflict of interest in which the person or a close associate could materially benefit from a particular decision being made.

5. Related legislation, policies and guidelines, documents

- SW Learning Community Association Inc. Constitution
- Associations Incorporation Act 2015 (The Act)

- Australian Charities and Not-for-Profit Commission Governance Standards
- Privacy Act
- Privacy Policy
- Code of Conduct Policy
- Governing Council Member Code of Conduct
- Communication Procedure
- Grievance Policy
- Governing Council Charter and Resource File
- Whistleblower Protection Policy

6. Policy Statement

This policy has been developed because conflicts of interest commonly arise, and do not need to present a problem to the school if they are openly and effectively managed. It is the policy of the Child Side Playgroup and School Governing Council as well as a responsibility of the GC, that ethical, legal, financial or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with the obligations to the South West Community Learning Association Inc. trading as Child Side Playgroup and School.

The Child Side Playgroup and School Governing Council will manage conflicts of interest by requiring GC members to:

- avoid conflicts of interest where possible
- identify and disclose any conflicts of interest
- carefully manage any conflicts of interest, and
- follow this policy and respond to any breaches.

6.1 Responsibility of the Governing Council

The Governing Council is responsible for:

1. establishing a system for identifying, disclosing and managing conflicts of interest,
2. monitoring compliance with this policy, and reviewing this policy on an annual basis, following the annual general meeting, to ensure that the policy is operating effectively,
3. ensuring GC Members are aware of the *Associations Incorporation Act 2015* specifically in relation to sections 42 and 43.

6.2 Identification and Disclosure of Conflicts of Interest

All GC members should declare any conflict of interest they have before the matter that presents them with a conflict of interest is considered, discussed or voted on by the Governing Council.

All conflict of interest must be entered routinely into the ***Child Side School Governing Council Conflict of Interest Register***, and also in the minutes of the meeting at which the conflict of interest is declared and at any subsequent meetings at which the matter is considered.

The information to be recorded should include:

- The nature and extent of the conflict of interest.
- The conflict of interest relationship to the activities of the association.
- How the conflict of interest disclosure, was managed at each meeting.

Where all of the other GC members share a conflict, the GC should refer to ACNC Governance Standard 5 (excerpt provided in the GC Charter and Resource file) to ensure that proper disclosure occurs.

Child Side School Governing Council Conflict of Interest Register must be maintained by the GC Chair or their delegated person and record information related to a conflict of interest.

6.3 Confidentiality of Disclosures

The Act requires that all conflicts of interest that are of material personal nature **must** be disclosed at the next general meeting of the South West Learning Community Association, identifying the governing body member and the extent and nature of the interest. This disclosure must be made even if the person is no longer a member of the governing body.

7. Action Required for Management of Conflicts of Interest

Once the conflict of interest has been appropriately disclosed, the GC member disclosing and any other conflicted GC member/s must leave the meeting and **should not**:

- participate in any discussion or debate about the issue
- participate in discussion to reach a consensus decision about the issue, or
- 'vote'* on the matter.

The minutes of the meeting should accurately reflect all actions associated with each declaration. (See Code of Practice and Procedures)

This does not apply if the disclosed conflict exists only because the GC member has in common with all, or a substantial proportion of, the members of the South West Learning Association Inc.

If there are not enough GC members to form a quorum to consider a matter because one or more members have an interest in the matter, the Governing Council may call a general meeting of the association; and the general meeting may pass a resolution to deal with the matter.

In exceptional circumstances, such as where a conflict is very significant or likely to prevent the GC member from regularly participating in discussions, it may be worth the GC considering whether it is appropriate for the person conflicted to resign from the GC.

*vote: The Child Side School and Playgroup Governing Council have as common practice in reaching agreements through consensus rather than voting. In the rare occasion when consensus cannot be reached, a vote will be called for.

8. Compliance with this Policy

The penalties for breaching the fiduciary duties are described under the *Associations Incorporation Act 2015*. There are significant risks, including significant financial penalties, for governing bodies and/or individual governing body members if they breach their duties under either Act, especially if the breach is determined to be recklessness, intentional dishonesty, or a dereliction of any or all of the duties to act in good faith, to act in the best interests of the association and to act for a proper purpose.

If the GC has a reason to believe that a person subject to the **Governing Council Conflict of Interest Policy** has failed to comply, it will investigate the circumstances.

If it is found that this person has failed to disclose a conflict of interest, the GC may take action against them. This may include seeking to terminate their relationship with the School.

If a person suspects that a GC member has failed to disclose a conflict of interest, they must discuss their concern with the person in question **and** notify the Chair of the GC and or the Principal.

Penalties as described in the Act:

- Failure to disclose material personal interest at the time of a GC Meeting - Penalty: fine \$10,000
- Failure to disclose material of personal interest to the next general meeting of the Association - Penalty: fine \$10,000

Appendices

Appendix 1	Governing Council Conflict of Interest Code of Practice and Procedures
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Version Management

VERSION	DATE REVIEWED	DATE RATIFIED	CHANGES MADE	AUTHOR OF CHANGES	FUTURE REVIEW DATE
1	31 July 2019	31 July 2019	Policy formulated	JM	July 2020
2	18 Nov 2019	27 Nov 2019	Addition of reference to the WA Associations Incorporation Act 2015. 'Action Required for Management of Conflicts' changed to comply with sections 42 and 43 of the WA <i>Associations Incorporation Act 2015</i> .	JM	November 2020
3	12 Feb 2020	29 July 2020	Changes based on advice and direction received from Meredith Wilke (Lawyer) NGSR	JM	November 2020

Governing Council Conflict of Interest Code of Practice and Procedures

“For the purposes of the law, the conduct of a member of a school governing body is judged in the same way as that of a director of a company.

Members of school governing bodies are deemed by the law to have a ‘fiduciary’ (trust) relationship with the governing body on which they sit. That means that they have:

- a duty to act honestly*
- a duty not to make improper use of information acquired by virtue of their position or to gain directly or indirectly an advantage for themselves or others or the association*
- a duty to avoid any actual or potential conflict between the obligations owed by the Governing body or Governing body member and their personal interests*
- a duty to use reasonable care and diligence in exercising their powers.*

Governing body members are not to “improperly use their position” to “gain an advantage for themselves or someone else ...” or to allow any improper use of their position to “cause detriment to” the Association. An additional duty upon Governing body members is not to make improper use of information acquired by virtue of their position in order to gain (directly or indirectly) an advantage for themselves or others or the association or cause detriment to the association.” AISWA Governance Guidelines

Disclosure of Conflicts of Interest

Annual Declarations

All CG Members are required to disclose their personal and financial conflicts of interest annually at the beginning of school each year and new GC members, after the AGM meeting. They will be provided with information to assist them which will include the ‘Associations Incorporation Act 2015’ specifically in relation to sections 42 and 43.

They are required to complete and sign a *Conflict of Interest Disclosure*. (Copy included in this document). This information is kept on file and collated to form the **Child Side School Governing Council Conflict of Interest Register**

All GC members will receive a copy of their annual declaration for their GC files.

All GC Members are required to inform the GC Chair if the details in their declaration have changed. Depending on the extent of the change, the GC Chair may request a new declaration be provided. The conflict of interest register should be amended to reflect these changes and the GC informed within a timely period.

Governing Council Meetings

Individuals who have declared a conflict of interest will be asked to leave the meeting when an issue relative to their conflict arises.

The meeting minutes will accurately reflect the time at which the individual/s vacates the meeting and the time at which the individual/s returns to the meeting.

The GC Chair should ensure that this is managed by verbally stating “*Let the minutes reflect that at (state time), (name the individual/s) has left the meeting under conflict of interest rules*” and when the individual returns “*Let the minutes reflect that at (state time), (name the individual/s) has returned to the meeting under conflict of interest rules*”

In the case where the majority of GC members share the same conflict; this fact will be declared and recorded in the meeting minutes and the GC Chair will guide discussion and decision making with the declaration in mind.

Before Meeting Declarations

All GC Members are formally asked as a part of a standing order, to declare any potential conflicts at the beginning of each GC meeting. If any conflicts are declared at this time, the GC member disclosing and any other conflicted GC member/s must leave the meeting at the point in the meeting where the identified issue is to be dealt with.

These declarations and actions of the conflicted member/s should be recorded in the meeting minutes in full including:

- The nature and extent of the conflict of interest.
- The conflict of interest relationship to the activities of the association.
- How the conflict of interest disclosure, was managed at each meeting.

During Meeting Declarations

All GC members must also declare potential conflicts, at any time during the procedure of a meeting, when a matter in which they may have an interest is being discussed.

These declarations and actions of the conflicted member should be recorded in the meeting minutes in full including:

- The nature and extent of the conflict of interest.
- The conflict of interest relationship to the activities of the association.
- How the conflict of interest disclosure, was managed at each meeting.

Managing Disclosed Conflicts

The GC will examine ***Child Side School Governing Council Conflict of Interest Register*** annually to determine the extent of the declared conflicts.

The ***Child Side School Governing Council Conflict of Interest Register*** will be tabled at the South West Learning Community Learning Association AGM and subsequent general meetings if this register has been altered between each AGM.

If a person suspects that a GC member has failed to disclose a conflict of interest, they must discuss their concern with the Chair of the GC and or the Principal

If a suspicion is raised about the business dealings of a GC member as they relate to present or past GC deliberations, he or she should be asked by the GC through the Chair, to explain specifically those dealings and any potential conflicts.

The GC will, at their discretion seek legal advice if it thinks that a member of the GC may be at risk of encountering a potential, real or perceived conflict of interest.

Managing Other Potential Conflicts

Hiring of relatives or friends of Governing Body Members

While the GC is the employer of all Child Side School staff, it is acknowledged that the Principals/s are responsible for the employment of all staff* including contract, casual, tenured and relief staff.

It is understood and accepted that it is common practice to consider the School Community and Local Community as a forum to seek suitable employees, service providers and contractors.

These decisions will remain at the discretion of the Principal/s and the GC expects that the Principal/s will treat all engagements on their merits and in the best interests of the School and the School Community. The GC requires that all such decisions be declared to the GC and recorded in meeting minutes.

The GC is at liberty to question decisions if it is felt that potential issues or conflicts may arise as a result of any engagement. GC members who are associated with the individuals or providers in question should be asked to leave the meeting as described in 'Managing Disclosed Conflicts'

*The Principal/s is not responsible for the employment of the Principal/s.

The School Receiving and Accepting Gifts

The Australian Taxation Office defines a gift as:

- 1. There is a transfer of money or property*
- 2. The transfer is made voluntarily*
- 3. The donor does not expect anything in return for the gift*
- 4. The donor does not materially benefit from the gift.*

However, if donors are seeking tax deductions for their donations, certain rules apply. These rules should be a consideration before a gift is accepted by the School.

The School occasionally receives gifts in the form of monetary donations, services in kind and or goods. These 'gifts' are recorded in the **Gift Register** and moneys received may deposited into a dedicated bank account the 'Gift Recipient Account' if the gift has not been designated for a specific purpose (for example toward the purchase of specified equipment or resources).

It is acknowledged that the Principal/s is responsible for receiving and managing gifts on behalf of the School and that they are required to report to the GC upon the receipt of gifts.

The GC is at liberty to question any decision to accept gifts if it is felt that potential issues or conflicts may arise as a result of any acceptance. GC members who are associated with donors in question should be asked to leave the meeting as described in 'Managing Disclosed Conflicts'.

The GC requires that:

1. all gifts received by the School should be declared to the GC along with the details of the donor/s of the gift. This information is recorded in the GC meeting minutes;
2. any gift offered to the school with conditions attached must be brought to the GC before being accepted; and
3. no gifts will be accepted if they are in exchange for services, favourable consideration or for the benefit or advantage of individuals over others.

Managing Breaches of the Policy

"The reasons for the 'conflict of interest' rules are quite clear. Members of organisations who are given legal immunities (by virtue of the limited liability status of the organisations they represent) are required by the law to 'earn' that immunity." AIWSA Governance Guidelines

If the GC has a reason to believe that a person subject to the **Governing Council Conflict of Interest Policy** has failed to comply, it will investigate the circumstances.

If it is found that this person has breached the policy, the GC may take action against them which could include seeking to terminate their relationship with the School.

The Principal and or the GC Chair (or nominated GC representative/s) will manage all potential breaches. Legal advice and other specialized outside support may be sought to assist with this.

Conflict of Interest Disclosure

This document will be maintained by the Board and used to establish the GC Conflict of interest register.

Board Member name (Full Name)			
Date of Appointment			
Current Interests <i>such as: current and previous paid work</i>			
	Date (Year)	Organisation	Your Role
Current and former trusteeships <i>The trustee acts as the legal owner of trust assets, and is responsible for handling any of the assets held in trust, tax filings for the trust, and distributing the assets according to the terms of the trust.</i>			
Current and former directorships <i>A Director acts as a member of the board of people that manages or oversees the affairs of a business. Committee Office holder memberships</i>			
Current and former membership of other organisations.			
Relevant interests of family or friends <small>(including financial, non-financial personal interests)</small>		Interest and the Relationship of interests (if any) to the organisation's activities or proposed activities.	
Who (Name)	Your relationship		

Date of Disclosure:

Signed: