



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

Introduction

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).

The Non-Government School Regulation (NGSR) *Guide to the Standards and Other Requirements* for Non-Government Schools (*the Guide*) requires that a school's governing body 'Conflict of Interest' is aware of its obligations and demonstrates its capacity to manage and properly discharge the duty owed under the regulations and to the members of its Association.

The Child Side Playgroup and School (CSS) 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. (SWLCA) trading as Child Side Playgroup and School.

Scope and Application

This policy applies to all GC members, including the ex-officio, invited and co-opted members of the Child Side Playgroup and School Governing Council.

The use of the word child/children in this policy refers to students in the context of the school environment.

The use of the word Educator/Educators in this policy refers to registered teachers in the context of the school environment.

Related Legislation/ Guidelines

- Associations Incorporation Act 2015 (The Act)
- Australian Charities and Not-for-Profit Commission Governance Standards
- School Education Act 1999 [Part 4 – Non-Government Schools]
- School Education Regulations 2000
- Guide to the Registration Standards and other Requirements for Non-Government Schools.

Related Policies/Guidelines/Documents

- South West Learning Community Association Inc. Constitution
- CSS Privacy Policy
- CSS Code of Conduct Policy – Governing Council Members
- Governing Council Member Code of Conduct Agreement
- Governing Council Member Conflict of Interest Disclosure
- Communication Procedure – CSS Concerns, Complaints and Disputes Policy
- Governing Council Charter and Resource File
- CSS Whistleblower Protection Policy
- CSS Staff Who Are Parents Policy

Definitions

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.

Policy Statement

CSS will maintain and enforce a *Governing Council Conflict of Interest Policy* because conflicts of interest commonly arise, and do not need to present a problem to the school if they are openly and effectively managed.

CSS GC has a responsibility to ensure that ethical, legal, financial or other conflicts of interest are 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 CSS GC 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.

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.

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 (stated in the *GC Conflict of Interest Disclosure*) to ensure that proper disclosure occurs.

Governance Standard 5 requires charities to take reasonable steps to make sure that the following duties apply to Responsible People and that they follow them. The duties can be summarised as follows:

- *to act with reasonable care and diligence*
- *to act honestly and fairly in the best interests of the charity and for its charitable purposes*
- *not to misuse their position or information they gain as a Responsible Person*
- *to disclose conflicts of interest*
- *to ensure that the financial affairs of the charity are managed responsibly, and*
- *not to allow the charity to operate while it is insolvent.*

Generally, the duties mean that Responsible People should act with standards of integrity and common sense.

The 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.

Confidentiality of Disclosures

The Act requires that all conflicts of interest that are of a material personal nature **must** be disclosed at the next general meeting of the South West Learning Community Association Inc., 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.

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 *Governing Council Conflict of Interest Practice and Procedures Guidelines*)

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.

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 reckless, 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** and the **Governing Council Conflict of Interest Disclosure** 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

Policy Review

All policies are reviewed and amended in accordance with the *CSS Policy on Policies* and the *CSS Policy, Guidelines, Procedures and Frameworks Register*.

The *CSS Governing Council Conflict of Interest Policy* and associated guidelines will be reviewed annually; provided that an earlier review is undertaken whenever a matter or other information becomes evident regardless of indicators or not, there has been a policy or procedural failure.

Appendices

Appendix 1	Governing Council Conflict of Interest Practice and Procedures Guidelines
Appendix 2	Governing Council Member Conflict of Interest Disclosure (Fillable section of the Governing Council Conflict of Interest Disclosure)

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
4	Feb 2025	26 Feb 2025	Format changes separated policy and guidelines Reviewed against AISWA guidelines	JM	February 2026

Governing Council Conflict of Interest Disclosure Practice and Procedures Guidelines

“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

Why have a conflict of interest policy?

The reasons for the ‘conflict of interest’ rules are quite clear. Members of the governing body of the association who are given legal immunities (by virtue of being a governing body member and the limited liability status of the association they represent) are required by the law to ‘earn’ that immunity.

Schools are in receipt of significant amounts of ‘public money’ and need to assure the government and the members that it is being used efficiently and effectively. It is possible that potential service providers who could offer better value to the school may be overlooked if governing bodies use ‘people they know’ for these services. Indeed, a school may find itself in a worse position financially if favours are being given to certain persons by virtue of their presence on a governing body.

A declared conflict of interest does not necessarily preclude a service provider who wishes to be considered. However, a transparent process, that is well documented, not only assures an observer that a fair process was followed but also that the best provider was ultimately selected. It also enables the governing body to demonstrate that it has acted in the best interest of the association if its actions or decisions are challenged by the members of the association.

In the interests of transparency and to avoid any accusation of bias, it is recommended that this exemption is not used to allow a governing body member, with an obvious conflict that is a material personal interest in a matter, to take part in any discussions or vote on that matter. For example, a governing body member who is a teacher at the school should be required to remove themselves

from the meeting and to take no part in any discussion or vote on any matter that could benefit them, a close family member or a friend.

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 *Governing Council Member Conflict of Interest Disclosure* document. (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**

An electronic copy of their annual declaration is maintained in **GC Member Compliance and Accountability Documentation** file for their records.

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 **Child Side School Governing Council Conflict of Interest Register** should be amended to reflect these changes and the GC informed within a timely manner.

When a material personal interest need not be declared

A governing body member need not declare a material personal interest nor have to disclose the nature and extent of the interest at the next general meeting of the association, if the interest only exists because the person is an employee of the school or is a class of person for whose benefit the association was established, or the member has something in common with all or most of the members of the association.

Governing Council Meetings

Individuals who have declared a conflict of interest will be asked to leave the meeting when an issue related 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

School Employees and Conflicts of Interest

Some school employees have the authority and opportunity to make decisions that could significantly affect the school's finances or present the employee with an opportunity to gain an advantage for themselves, family member, or friends. Some examples of this type of situation may include:

- The Principal is deciding which company to use to provide some stationery for the school and has a family member who owns a stationery store.
- A CC Educator is determining the class lists for the next year, and they have a child in a class that they would like to be taught by a particular Educator.

CSS has established a ***Conflict of Interest Statement*** as a part of the ***Code of Conduct – School Staff*** to give guidance for those occasions or circumstances when they find themselves in a position that could involve a conflict of interest. The ***CSS Staff Who Are Parents Policy*** also provides guidance and direction in this area.

Hiring of relatives or friends of School Staff or 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 considered 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 above 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

Any governing body members who have deliberately or recklessly turned a blind eye to an obvious conflict of interest may find that their 'limited liability' protection is no protection. That is, all governing body members are vulnerable to civil suit if they act (or knowingly allow others to act) in a way that is against the law, in breach of their duties as a governing body member or against the rules of the association. In certain circumstances they could be found to be personally liable, and their personal finances could be under real threat. This scenario cannot be overstated, it is a remote one, but it is nevertheless a real possibility.

Further, the Act imposes significant monetary penalties on any governing body member who fails to declare a material personal interest, does not leave a meeting where it is being considered, participates in discussion or deliberates about the issue or votes on the issue.

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.

Who can pursue a conflict claim?

Any person (inside or outside of a governing body) who has a grievance can investigate the matter through the courts or State Administrative Tribunal, and it does not matter that the school claims privacy of information if there is a matter of public interest to be pursued. If it is alleged that the governing body or a member of the governing body has breached or acted contrary to its obligations and not declared a conflict of interest, the governing body will immediately seek legal advice.

Governing Council Member Conflict of Interest Disclosure

This document will be maintained by the Governing Council and the information provided used to establish the GC Conflict of Interest Register.

Board Member name (Full Name)			
Date of Appointment to GC			
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 (including financial, non-financial, personal, employment interests)			
Who (Name)	Your relationship	Interest and the relationship of interests	

I declare that I am aware of The Associations Incorporation Act 2015 and have read specifically sections 42 and 43.

Date of Disclosure:

Signed:

Associations Incorporation Act 2015: Excerpt Sections 42 and 43

Part 4 Management

Division 2 Matters of material personal interest

42. Disclosure of material personal interest

(1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must, as soon as the member becomes aware of the interest, disclose the nature and extent of the interest to the management committee.

Penalty: a fine of \$10 000.

(2) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a management committee meeting must disclose the nature and extent of the interest at the next general meeting of the association.

Penalty: a fine of \$10 000.

(3) Subsections (1) and (2) do not apply in respect of a material personal interest —

(a) that exists only because the member —

(i) is an employee of the incorporated association; or

(ii) is a member of a class of persons for whose benefit the association is established,

or

(b) that the member has in common with all, or a substantial proportion of, the members of the association.

(4) If a member of the management committee of an incorporated association discloses a material personal interest in a contract or proposed contract in accordance with this section, and the member has complied with section 43(1) or the member's interest is not required to be disclosed because of subsection (3) —

(a) the contract is not liable to be avoided by the association on any ground arising from the fiduciary relationship between the member and the association; and

(b) the member is not liable to account for profits derived from the contract.

(5) A disclosure of a material personal interest required by subsection (1) or (2) must give details of —

(a) the nature and extent of the interest; and

(b) the relation of the interest to the activities of the incorporated association.

(6) The details referred to in subsection (5) must be recorded in the minutes of the meeting of the management committee at which the disclosure is made.

43. Voting on contract in which management committee member has a material personal interest

(1) A member of the management committee of an incorporated association who has a material personal interest in a matter being considered at a meeting of the management committee must not —

(a) be present while the matter is being considered at the meeting; or

(b) vote on the matter.

Penalty: a fine of \$10 000.

(2) Subsection (1) does not apply in respect of a material personal interest —

(a) that exists only because the member belongs to a class of person for whose benefit the association is established; or

(b) that the member has in common with all, or a substantial proportion of, the members of the association.

(3) If there are not enough management committee members to form a quorum to consider a matter because of subsection (1) —

(a) one or more committee members (including those who have a material personal interest in the matter) may call a general meeting; and

(b) the general meeting may pass a resolution to deal with the matter.