

# Muhammadiyah Australia College

## CONFLICT OF INTEREST POLICY



Approved:	21/09/2021
Approved by:	Board of Directors
Next review:	September 2022

# CONFLICT OF INTEREST POLICY

## 1. Purpose

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The purpose of this Conflict of Interest Policy (**Policy**) is to assist the Responsible Persons of **Muhammadiyah Australia College Ltd. ACN 626 804 877 (Company)**, the owner and operator of Muhammadiyah Australia College (**College**), to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of the Company and manage risk.

## 2. Objective

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The Company aims to ensure that Responsible Persons 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 Company.

## 3. Scope

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This Policy applies to Responsible Persons of the Company.

Under the school registration requirements of the Victorian Registrations & Qualifications Authority (**VRQA**) relating to school governance, the Company must have in place a conflict of interest register for all responsible persons as defined in the *Education and Training Reform Regulations 2017 (Vic)* (**ETR Regulations**) and a plan detailing how any conflict of interest or duty will be managed.

For Australian Charities and Non-for-profits Commission (**ACNC**) purposes the reference to responsible persons of the Company is limited to the Directors. The meaning of Responsible for the purposes of this Policy is broader in accordance with school regulation requirements to include, in accordance with the Responsible Persons Policy:

1. a Director of the Company;
2. each member of a Board Committee;
3. the Principal and any other person who is concerned in, or takes part in, the management of the Company;
4. any person with responsibility in the Company governance structure for managing the Company or its finances; and

5. any other person or body who by their conduct assumes a position over the governance and management of the Company.

#### 4. Definition of conflict of interest

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A conflict of interest occurs when a person's personal interests conflict with their responsibility to act in the best interests of the Company. This results in a situation where the Responsible Person may be tempted to make decisions for reasons other than the best interests of the Company. Personal interests include direct interests as well as those of family, friends or other organisations a person may be involved with or have an interest in (for example, as a shareholder). It also includes a conflict between a person's duty to act in the best interests of the Company and another duty that the Responsible Person has (for example, to another charity or any other entity). Personal interests may be financial or nonfinancial and can be identified as follows:

1. **Pecuniary interests** exist where there is financial gain or loss involved, even if money does not specifically change hands.
2. **Non-pecuniary interests** exist when no financial component exists but an interest exists due to relationships, social or cultural ties or involvement in an outside organisation.

A conflict of interest may be actual, potential or perceived and can be identified as follows:

1. **Actual conflict** – a real conflict exists between a person's private interests and the interests of the Company.
2. **Potential conflict** – a person's private interests do not currently conflict with those of the Company, but could potentially conflict in the future.
3. **Perceived conflict** – a third party could reasonably believe a conflict exists.

A conflict of interest can also be positive (e.g. motivated by financial/personal gain) or negative (e.g. motivated by harm or detriment to another person).

These situations present the risk that a person will make a decision based on, or affected by, these influences, rather than in the best interests of the Company and must be managed accordingly.

For the remainder of this Policy, these three categories of conflict will all be considered equivalent. No special treatment will be accorded to one type of conflict above another.

#### 5. Policy

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This Policy has been developed because conflicts of interest commonly arise, and do not need to present a problem to the Company if they are openly and effectively managed. It is the policy of the Company, as well as a responsibility of the Board, 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 Company.

The Company will manage conflicts of interest by requiring Responsible Persons to:

1. avoid conflicts of interest where possible;
2. identify and disclose any conflicts of interest;
3. carefully manage any conflicts of interest; and
4. follow this Policy and respond to any breaches.

## **6. Responsibility of the Board of the Company**

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The Board is responsible for:

1. establishing a system for identifying, disclosing and managing conflicts of interest across the Company;
2. monitoring compliance with this Policy; and
3. reviewing this Policy on an annual basis to ensure that the Policy is operating effectively.

The Company must ensure that its Responsible Persons are aware of their responsibilities under the ETR Regulations and the ACNC governance standards, particularly Governance Standard 5, and ensure that they comply with their legal obligations, including any disclosure requirements.

The Company must ensure that its Responsible Persons appreciate the manner in which the ETR Regulations interact with Governance Standard 5. In particular, the Responsible Persons must have a particular understanding of the governance requirements under the ETR Regulations that are specific to Victorian school operations and introduce a not-for-profit concept that is narrower and with a higher compliance threshold than the general not-for-profit requirement for charity registration and income tax exemption purposes.

Whereas a charity would be operating on a not-for-profit basis if it applies all its income and property to its charitable purposes, the ETR Regulations under clause 17 of the minimum standards for registration of schools require:

- the College to be a not-for-profit school; and

- the Company as the proprietor of the College to have sufficient controls in place to ensure that school property and assets are not distributed or used for the profit or gain of another person or entity.

In broad terms, when making decisions in relation to the College governance and approving transactions particularly when such transactions are with related parties, the Responsible Persons must at all times apply the following principles of the meaning of not-for-profit school under ETR Regulations:

1. no part of the profit or gain made in the conduct of the College may be distributed to any person or entity, even if such person or entity has the same objectives as, or shares a common purpose with, the Company;
2. all money and property received by the College or the Company as proprietor of the College for the conduct of the College must **only** be applied solely towards the conduct of the College in accordance with the its 'not-for-profit' status; and
3. the College, or the Company as the proprietor of the College, must not enter into a prohibited agreement or arrangement being, in effect, an agreement or arrangement the purpose of which is to pay or divert any profit or gain made in the conduct of the College to the Company or any other person or entity (other than a payment made in good faith for the provision of goods or services to the College), or is otherwise not on reasonable market terms, not bona fide or otherwise not entered into for the purposes and for the benefit of the College.

Accordingly, under the ETR Regulations, it is not sufficient that Responsible Persons act in the best interests of the Company; Responsible Persons must also act specifically in the best interests of the College specifically being focused to not make any decision, take any action or fail to take action in a manner that will prejudice the not-for-profit status of the College.

To this end, in keeping with good governance and the legislative requirements that apply to the Company, it will ensure that any payment or other benefits provided by the College, must be:

1. in a bona fide transaction for property, goods or services required for the operation of the College;
2. at no more than reasonable market value for the property, good or services;
3. reasonable in the circumstances, having regard to the fact that financial assistance is provided to the Company in relation to the operation of the College; and
4. otherwise not a prohibited agreement or arrangement.

The above requirements must be forefront of mind of all Responsible Persons of the Company, particularly in circumstances in which the Company has affiliation or shares common values with other not-for-profit entities and where any of the Company's

Responsible Persons are officers of, or otherwise affiliated with, such other not-for-profit entities.

This policy must be applied and interpreted in accordance with the Company's Related Party Transactions Policy.

## **7. Conflict of Interest Disclosure Statement**

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All Responsible Persons must complete a Conflict of Interest Disclosure Statement in the form at Appendix A of this Policy:

1. at the time they are appointed to their role with the Company whether or not they have material conflicts to disclose; and
2. at the start of every school year thereafter whether or not they have material conflicts to disclose; and
3. where their circumstances have changed since their existing Conflict of Interest Disclosure Statement was submitted and the person has an actual, perceived or potential conflict of interest in undertaking their duties.

All Responsible Persons in office at the time of adoption of this Policy must complete a Conflict of Interest Disclosure Statement.

The Company must ensure that Conflict of Interest Disclosure Statements are retained for at least seven years before archiving or disposing.

## **8. Identification and disclosure of conflicts of interest**

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Once an actual, potential or perceived conflict of interest is identified, it must be entered into the Company's Register of Interests (to be maintained in the form at Appendix B of this Policy) and disclosed to the Chair of the Board.

The Conflict of Interests Disclosure Statements will be used to update the Register of Interests. The Register of Interests will formally be tabled at every Board meeting. The Register of Interests must be maintained by the Company and record information related to a conflict of interest (including the nature and extent of the conflict of interest and any steps taken to address it). Each entry in the Register of Interests must be maintained for seven years following the date of the entry in the register before archiving or disposing.

## **9. Confidentiality of disclosures**

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The Conflict of Interest Disclosure Statements and the Register of Interests should remain confidential and only be accessed by the Directors of the Company.

## **10. Action for management of conflicts of interest - Directors and Committee members**

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Directors and Committee members must raise any actual, perceived or potential conflicts of interest in regard to items on the agenda of a meeting of the Board or a Board Committee on which they serve. Any conflict of interest raised must be recorded in the minutes of the Board of Board committee meeting by the relevant minute taker.

Once the conflict of interest has been appropriately disclosed, the conflicted Director or Committee member should not be present in the room during the debate and voting for that particular matter. The Board or Board Committee (as applicable) may determine that in the circumstances of the actual, perceived or potential conflict, it is appropriate that the conflicted Director or Committee remain for part of the debate if it is considered that the conflicted person can assist in and contribute to the debate and provide explanation or context. Under no circumstances, however, should a conflicted Director or Committee member be permitted to vote, or be present during the voting, in any matter in respect of which they are conflicted.

In addition, it is important for the Company to focus on managing conflicts of interest in substance rather than solely in form. Excluding a conflicted Director or Committee member from a debate and voting may not alone be a cure for a systemic, unmanaged conflict of interest where the Board or Board Committee may nevertheless be accustomed to act in accordance with the wishes and expectations of the conflicted person. It is also important to acknowledge that some conflicts may be inherent and permanent due to the unique nature of the structure and governance of the Company and the role that a Director or Committee member may be holding in related or affiliated organisations of the Company. In these circumstances, the Board or Board Committee must consider strategies and mechanisms in addition to exclusion to ensure that it is acting independently and free of influence or conflict that may result in the Board or Board Committee not acting in the best interests and for the purposes of the Company. In this context, this Policy must be implemented in conjunction with the Related Party Transactions Policy and the Board or Board Committee must in each instance consider the substance, purpose and rationale for a proposed transaction where any form of conflict exists. The Board or Board Committee must ensure that the decision making that will be implemented in each and every concerned case can clearly evidence that the main driver in the decision making is the educational purposes and the best interest of the Company and not those of any other party.

In exceptional circumstances, such as where a conflict is very significant or likely to prevent a Director or Committee member from regularly participating in discussions, it may be prudent for the Board or Board Committee (as applicable) to consider whether it is appropriate for the conflicted person to resign from the Board or Board Committee, but having regard to the limitations imposed by the structure and governance of the Company and the principles set out above.

In deciding what approaches to take in addition to exclusion when a Director or Committee member has a conflict of interest, the Board or Board Committee (as applicable) will consider:

1. whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making on a regular basis;
2. the most adequate option to manage and ensure any considerations and decision making of the Board or a Board Committee (as applicable) would be undertaken in a manner that the integrity of the Board or Board Committee decisions are not compromised;
3. the Company's objects and resources;
4. the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the Company;
5. at all times making decisions that are solely for the purposes of, and in the best interest of, the Company and the school operated by the Company; and
6. where the Board or Board Committee (as applicable) is unable to reach a decision based on the above factors, independent corporate governance or legal advice.

The approval of any additional action requires the agreement of at least a majority of the Board (excluding any conflicted Director(s) or Committee member(s)) who are present and voting at the meeting. In the event that the conflicted person's non-participation would result in the total number of persons present and voting at the meeting falling below the number required to constitute a quorum, the Directors or Committee members (as applicable) must instead determine to postpone discussion and voting on the matter to a subsequent meeting at which a quorum could be achieved; no discussion or voting on the substance of the matter or any additional action shall be permitted. The action and result of the voting will be recorded in the minutes of the meeting and in the Register of Interests. The Chair of the Board must complete and sign a Review by Board Statement in respect of each conflict.

In the event that the conflicted person is the Chair of Board (or another Director that is chairing a particular meeting, as applicable), the other Directors or Committee members (as applicable) present and voting at the relevant meeting shall elect from among their number a person to act as the chair for the purposes of the meeting and to complete and sign the Review of Board Statement.

#### **11. Action for management of conflicts of interest – Responsible Persons other than Directors and Committee members**

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Responsible Persons (other than Directors and Committee members) must disclose any actual, perceived or potential conflicts of interest that may in any way affect their ability to act in the best interests of the Company.

In determining whether a conflict of interest exists in relation to a matter, Responsible Persons should consider the following:

1. Is there a realistic expectation that I will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
2. Will the matter affect my earning capacity or financial situation?
3. Will it have an impact on the value of any shares or property that I own?
4. Do I have a second job or private business that may be affected by the matter?
5. Do I have any debts owing to a person who will be affected by the matter?
6. Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by a decision under my authority?
7. Is there a realistic expectation that someone in a personal or business relationship with me will, directly or indirectly, gain a financial or other material benefit or suffer a financial or other material loss?
8. By nature of my relationship with this individual or entity, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?
9. Will the matter have a direct or indirect financial or other material impact on a member of my family?

If in doubt, Responsible Persons (other than Directors and Committee members) should raise the potential conflict of interest with the Principal (or the Board Chair, in the case of the Principal).

Once a Responsible Person (other than a Director or Committee member) discloses a conflict of interest, the Principal will prepare and propose to the Board a Conflict of Interest Management Plan (**Conflict Management Plan**).

The Principal will consider any input the Responsible Person (other than a Director or Committee member) may have in relation to the proposed Conflict Management Plan, however the Responsible Person (other than a Director or Committee member) is obliged to follow the Conflict Management Plan approved by the Board.

There may be circumstances in which a conflict of interest involves the Principal. In such a situation, the Principal will work with the Board to develop a Conflict Management Plan.

Conflict Management Plans will ensure conflicts are managed and resolved based on the following strategies:

1. **Record and disclose** – ensure all information surrounding the conflict of interest has been disclosed and documented appropriately.
2. **Restrict** – restrictions are placed on the Responsible Person's involvement in the matter or the scope of the work is reformulated or there is a restriction on access to certain information.
3. **Recruit and monitor** – a non-conflicted third party is used to oversee part or all of the process that deals with the matter.
4. **Remove** – the Responsible Person removes themselves, or is removed, from the matter. For example, in a situation in which a job applicant is related to a member of the recruitment panel for that position, a Conflict Management Plan might be for that panel member to step down from their position during the selection process for that position only.
5. **Relinquish** – the Responsible Person relinquishes the private interest that is creating the conflict. Where relinquishing the interest is not possible (e.g. relationship with family) and the conflict cannot be managed by using one of the other options above, the employee may consider removing themselves from the process.

## 12. Compliance with this Policy

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If a person suspects that a Responsible Person has failed to disclose a conflict of interest, they must notify the Board as soon as practicable. If the Board has a reason to believe that a person subject to this Policy has failed to comply with it, the Board will investigate the circumstances.

If it is found that a person has failed to disclose a conflict of interest, the Board may take appropriate action as determined by the Board. Any final decision must be agreed to by a majority of the Board (excluding the conflicted Director(s) (if any)).

## 13. Review

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This Policy will be reviewed by the Board at least every three years and sooner if circumstances require it, and may be revised to improve existing procedures or reflect changes in any applicable legislation. The Chair of the Board is responsible for ensuring that:

1. this Policy, and any related documents, are updated when necessary to reflect changes in the law or when otherwise appropriate; and
2. the current updated version of this Policy is provided to all Responsible Persons.

## **RELATED POLICIES**

MAC Responsible Persons Policy

MAC Related Party Transactions Policy

**APPENDIX A**

**Muhammadiyah Australia College Conflict of Interest Disclosure Statement**

I, \_\_\_\_\_  
(full name)

of \_\_\_\_\_,  
(address)

hereby declare I have (tick whichever is applicable):

- no conflicts of interest to declare
  
- a conflict of interest considered to be:  
Actual  Potential  Perceived

Please provide a brief outline of the nature of the conflict if applicable (details may be included privately in a separate confidential envelope if appropriate).

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Please detail the arrangements proposed to resolve/manage the conflict if noted above (attach separately if appropriate).

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I, \_\_\_\_\_, hereby agree to: (full name)

- update this disclosure throughout the period of my tenure as a responsible person on an annual basis or until such time as the conflict ceases to exist, or at such a time a conflict arises;
- comply with any conditions or restrictions imposed by the Company to manage, mitigate or eliminate any actual, potential or perceived conflict of interest and/or commitment.

*Signed:* .....

*Date:* .....

**Review by Board of Muhammadiyah Australia College**

I, \_\_\_\_\_ hereby confirm: (*full name of Chair of the Board*)

the Board has reviewed the Conflict of Interest Disclosure Statement (and Conflict Management Plan, if applicable) and has taken the following action in relation to this matter:

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*Signed:* .....

*Date:* .....

