



HIGHVIEW COLLEGE

BOARD CONFLICT OF INTEREST POLICY

Person Responsible - Board

(Ratified Annually)

Developed by	Board Governance Sub-Committee	2017
Updated	Board Governance Sub-Committee	2018
Reviewed by	Caretaker Board Chair, Stephen Norris	26 January 2019

Purpose

The purpose of this policy is to help Directors of Highview College Board to effectively identify, disclose and manage any actual, potential or perceived conflicts of interest in order to protect the integrity of Highview College and the Highview College Board and to manage risk.

Objective

The Highview College Board aims to ensure that Directors 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 Highview College Board.

Scope

This policy applies to the Directors of Highview College Board.

Definition of Conflicts of Interests

A conflict of interest occurs when a Director's personal interests conflict with their responsibility to act in the best interests of Highview College. 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 Director's duty to Highview College and another duty that the Director has (for example, to another school, business or charity).

A conflict of interest may be actual, potential or perceived and may be financial or non-financial:

- **Actual** – where a Director is likely to gain a personal advantage for themselves and/or a relative or a friend because of their position as a Director,
- **Potential** – where a process has been set in train that, *in the future*, may create a conflict of interest,
- **Perceived** – where others may reasonably perceive a conflict, and that perception may create a risk for the organisation with regard to reputation or financial assets.

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

Policy

This policy has been developed because conflicts of interest commonly arise, and do not need to present a problem if they are openly and effectively managed. It is the policy of Highview College Board that ethical, legal, financial, personal or other conflicts of interest be avoided and that any such conflicts (where they do arise) do not conflict with their obligations.

Highview College Board will manage conflicts of interest by requiring Directors 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 Board

The Board is responsible for:

- establishing a system for identifying, disclosing and managing conflicts of interest
- monitoring compliance with this policy, and
- reviewing this policy on an annual basis to ensure that the policy is operating effectively

Under the Corporations Act 2001, Directors must:

1. Exercise their powers and discharge their duties with a reasonable degree of care and diligence (section 180)
2. Act in good faith in the best interest of the company or a proper purpose (section 181)
3. Not use their position to obtain an advantage for themselves or a third party, or cause detriment to the company (section 182)
4. Not improperly use information gained through their position as a director to obtain an advantage for either themselves or a third party, or to cause detriment to the company (section 183)

Highview College Board must ensure that its Directors disclose any actual or perceived material conflicts of interests as required by the ACNC Governance Standard 5.

Assessment of Conflicts of Interest

Once an actual, potential or perceived conflict of interest is identified, as per the endorsed COI Checklist, it must be entered into the Highview College *standing register* of interests, as

well as being raised with the Highview College Board. Where all of the other Directors share a conflict, the Highview College Board should refer to the ACNC Governance Standard 5 to ensure that proper disclosure occurs.

The register of interests must be maintained by the Company Secretary, recording all information related to a conflict of interest, as per the endorsed appendices.

When the agenda for each board meeting is published, new or additional conflicts of interest should be declared to the Chair, before the meeting. Disclosed conflicts of interest will be listed on the minutes of each Board meeting.

Management of Conflicts of Interest

Managing the conflict of interest requires an assessment of the risks involved and then taking appropriate steps to mitigate them as per proposed action of: register, restrict, recruit, remove, relinquish or resign.

Conflicts of Interest of Directors

Once the conflict of interest has been appropriately disclosed, the Highview College Board (excluding the Director disclosing and any other conflicted Director) must decide whether or not those conflicted Directors should:

- be excluded from further discussion about the issue and not vote, or
- participate in any discussion, but not to vote, or
- not receive further information relating to the topic

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

What should be considered when deciding appropriate action

In deciding what approach to take, the Highview College Board will consider whether:

- the conflict needs to be avoided or simply documented
- the conflict will realistically impair the disclosing Director's capacity to impartially participate in decision-making
- alternative options are available to avoid the conflict
- Highview College's objects and resources are at risk, and
- there is a possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, Highview College

The approval of any action requires the agreement of at least a majority of the Highview College Board (excluding any conflicted Director/s) who are present and voting at the

meeting. The action and result of the voting will be recorded in the minutes of the meeting and in the register of interests.

In extreme circumstances, such as where a Director, does not accept that he/she has a conflict of interest, then the Chairperson has the authority to make the final decision, which is to be respected and abided by.

Monitoring of Conflict of Interest

Monitoring of conflict of interests needs to occur periodically and when circumstances change to ensure the chosen management strategy remains relevant until conflict of interest is resolved. If changes to the situation are significant, the complete management process may need to be restarted, by commencing with a formal identification of the current situation and any conflicts of interest that may apply before adopting a revised management strategy. Formal records should be kept of all reassessments and decisions made and actions taken by the Company Secretary.

Compliance with this Policy

If the Board has a reason to believe that a person subject to the policy has failed to comply with it, it will investigate the circumstances. If it is found that this person has failed to disclose a conflict of interest, the Board may take action against them. This may include seeking to terminate their relationship with the Highview College Board.

With regard to conflict of interest being breached affecting the outcome of a decision or process the offending Director will be expected and will be asked to step down from their position on the Board.

If a person suspects that a Director has failed to disclose a conflict of interest, they must alert the Highview College Board Chair who will discuss with the person in question **prior** to the next meeting, and notify the Highview College Board and the Company Secretary, who maintains the register of interests.

Contacts

For questions about this policy, contact the Highview College Board Chair:
boardchair@highview.vic.edu.au

Appendices

Appendix A – Identifying Conflicts of Interest

Appendix B – Disclosing & Managing Conflicts of Interest

APPENDIX A – IDENTIFYING CONFLICTS OF INTEREST

Stage 1 - 'Assessing' Conflict of Interest

This checklist is designed to assist the Board when faced with a situation in which a Director might have an actual, perceived or potential conflict of interest.

In assessing whether a Director has an actual, reasonably perceived or potential conflict of interest, it may be helpful for the Director to ask his/herself the following questions. The test when assessing these situations is to ask 'Could this conflict with my public duty to serve the public interest?'

What is the situation?	YES	NO
Would I or anyone associated with me benefit from or be detrimentally affected by my proposed decision or action?		
Could there be benefits for me in the future that could cast doubt on my objectivity?		
Do I have a current or previous personal, professional or financial relationship or association of any significance with an interested party?		
Would my reputation or that of a relative, friend or associate stand to be enhanced or damaged because of the proposed decision or action?		
Do I or a relative, friend or associate of theirs stand to gain or lose financially in some covert or unexpected way?		
Do I hold any personal or professional views or biases that may lead others to reasonably conclude that I am not an appropriate person to deal with the matter?		
Have I contributed in a private capacity in any way to the matter the Board is dealing with?		
Have I made any promises or commitments in relation to the matter?		
Have I received a benefit or hospitality from someone who stands to gain or lose from my proposed decision or action?		
Am I a member of an association or do I have particular ties and affiliations with organisations or individuals who stand to gain or lose by my proposed decision or action?		
Could this situation have an influence on any future employment opportunities outside my current official duties?		
Could there be any other benefits or factors that could cast doubts on my objectivity?		
Do I still have any doubts about my proposed decision or action?		
Could my involvement in this matter cast doubt on my integrity or on Highview's integrity?		
If I saw someone else doing this, would I suspect that they might have a conflict of interest?		
If I did participate in this action or decision, would I be happy if my colleagues and the public became aware of my involvement and any association or connection?		

Would I feel concerned if my actions were highlighted in the media?		
Is the matter or issue one of great public interest or controversy where my proposed decision or action could attract greater scrutiny by others?		

Should I seek help?	YES	NO
Am I confident of my ability to act impartially and in the public interest?		
Do I feel a need to seek advice or discuss the matter with an objective party?		
Does this person know more about these things than I do?		
Is all the relevant information available to ensure a proper assessment?		
Do I know what my agency's code of conduct requires in relation to conflicts of interest?		
Do I need to discuss any issues regarding this matter with the Chair?		
Do I understand the possible penalties that may apply if I proceed with an action or decision with an unresolved conflict of interest?		

Remember - Seeking and following advice by suitably qualified persons is evidence of good faith but does not transfer the responsibility from the individual to decide whether or not they have a conflict of interest.

Can I now make a decision?	YES	NO
Have I assessed whether I need to obtain appropriate independent legal and other impartial advice?		
Am I comfortable with my decision to seek (or not seek) advice, and with advice that I have been given?		
If I disagree with any advice given, am I able to state a defensible case to those who made the assessment?		
Am I able to determine the best option to ensure impartiality, fairness and to protect the public interest?		
Does this option ensure openness and transparency in my proposed decision or action?		
Have I identified and documented the facts and circumstances governing my evaluation of, and decision on, how I should handle the situation?		
Does my decision allow me to act and be seen to act in a fair, impartial and objective manner?		

An important step is to recognise whether or not a conflict of interest is *pecuniary* (a *material* personal interest). If there is any doubt, independent legal advice should be sought because there can be legal consequences.

Checklist for identifying a pecuniary interest	YES	NO
Does the matter fall within the legislated definition of a pecuniary interest?		
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?		
Will the matter affect my earning capacity or financial situation?		
Do I have a second job or private business that may be affected by the matter?		
Do I have any debts owing to a person who will be affected by the matter?		
Have I accepted hospitality, sponsored travel or other benefits from a person who will be affected by the matter?		
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?		
By nature of my relationship with this individual, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?		

Stage 2 - Managing conflicts of interest

The six major options for managing conflicts of interest are:

1	REGISTER	Where details of the existence of possible or potential conflicts of interest are formally registered.
2	RESTRICT	Where restrictions are placed on the member's involvement in the matter.
3	RECRUIT	A disinterested third party is used to oversee part or all of the process that deals with the matter.
4	REMOVE	Where a member chooses to be removed from the matter
5	RELINQUISH	Where a member relinquishes the private interest that is creating the conflict.
6	RESIGN	Where a member resigns from their position with Highview College.

Detailed record keeping is essential. The following should be clearly recorded in formal documents:

1	REGISTRATION	of relevant private interests, if required
2	DISCLOSURE	of the conflict of interest

3	DIRECTIONS	given about handling the conflict of interest
4	DECISIONS	and arrangements made for resolving the conflict of interest
5	STEPS TAKEN	in implementing the chosen management strategy

These records will enable the Highview College Board to demonstrate in an accountable manner, that a specific conflict of interest has been appropriately identified and managed.

Remember: Employees called on to wear two or more (official) hats may find that they have difficulty resolving tensions between their different roles. Given the potential for perceived conflict, it is important that there be an open discussion of the way in which the individual will discharge their responsibilities.

Stage 3 - Monitoring the management of conflicts of interest

Ongoing monitoring and regular reviews of conflicts of interest, allow changes to be made to the management strategy and the way in which it is implemented before problems have an opportunity to arise.

To ensure the chosen management strategy remains relevant until conflicts of interest are resolved, it is important to regularly review and assess the:

- original situation that has given rise to declaring the conflict of interest
- initial determinations and management decisions
- strategy put in place to manage the conflict of interest
- actions taken in implementing the management strategy
- changes in the situation that may have an impact on the management strategy
- perceptions held by others that the conflict of interest is having an improper influence on the matter
- reassessments and management decisions made about the continued management of the conflict of interest
- changes made to the management strategy and its implementation.

CONFLICT OF INTEREST WHEEL

Stage 1: ASSESSMENT

Identify any actual, potential and perceived conflict. Refer to COI Policy Checklist.

IDENTIFY

Stage 2: MANAGEMENT

Assess the risks and take appropriate steps to mitigate them.

REPORT

RECORD

any action taken, and reasons for taking action.

REVIEW

Stage 3: MONITORING

Periodically and when circumstances change.

MITIGATE

Recruit

Relinquish

Register

Remove

Restrict

Resign

APPENDIX B – DISCLOSING & MANAGING CONFLICTS OF INTEREST

This form is to be used by a Director to disclose and formally record conflicts of interest and makes provision for the ongoing management of conflicts of interest to be recorded.

CONFLICT OF INTEREST DECLARATION

Board Director (Name)	
Position	
Matter under Consideration	
Expected role/duties to be performed by the Director in dealing with this matter	
Private interests identified which have the potential to impact on the Director's ability to carry out, or be seen to carry out, their official duties impartially and in the public interest	

The conflict of interest has been identified as an (please check the appropriate boxes)

	YES	NO
Actual conflict of interest		
Perceived conflict of interest		
Potential conflict of interest		
Pecuniary interest		
Non-pecuniary interest		

I hereby declare that the above details are correct to the best of my knowledge and I make this conflict of interest declaration in good faith.

Signature (Director)		Date	
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I hereby declare that I have received and appropriately noted this conflict of interest declaration.

Signature (Board Chair)		Date	
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MANAGEMENT OF DISCLOSED CONFLICT OF INTEREST

The following is the action which will be taken to resolve/manage the disclosed/identified conflict of interest:

1	REGISTER	
2	RESTRICT	
3	RECRUIT	
4	REMOVE	
5	RELINQUISH	
6	RESIGN	

Signature of Director	
Signature of Board Chair	

STATEMENT OF ADJUSTMENT TO CONFLICT OF INTEREST RESOLUTION MANAGEMENT

Adjustment to action taken to resolve or manage conflicts of interest:

The above action adjustment has been agreed to resolve the conflicts of interest declared by (insert Director's name) on (insert date).

Signature (Director)

Date / / .

Signature (Board chair)

Date / / .

STATEMENT OF FINALISATION OF CONFLICT OF INTEREST

The conflict of interest declared by (insert Director's name) on (insert date) has now been resolved and no further action is required.

Signature (Director)

Date / / .

Signature (Board Chair)

Date / / .