Conflict of Interest Policy

Purpose:	To ensure that Learning Co-operative (Co-op) effectively identifies, discloses and manages any actual, potential or perceived conflicts of interest in order to protect the integrity of the school and manage risk.
Scope:	Responsible Persons (as defined in the Education & Training Reform Regulations 2017) and others as required, including but not limited to Board Members (Directors) and the Coordinator (Principal).
Implemented by:	Coordinator (Principal), Board Chairperson
Approved by:	Learning Co-operative Board
Communicated via:	Board induction, Enrolment Pack
Reviewed:	Annually (or as legislative changes arise or improvements are identified)

Overview

The Board will ensure that all Responsible Persons, Members and Employees are aware of their various 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 Co-op.

Definition of a Responsible Person

Responsible Person is defined in the Education and Training Reform Regulations 2017 (ETR) as:

- if the proprietor is an individual, that person; or
- if the proprietor is a body, that body and any person who is concerned in, or takes part in, the management of the body; or
- each person with responsibility in the school governance structure for managing the school or its finances, including each member of the governing body of the school; or
- the Coordinator (Principal) of the school; or
- any other person who by the person's conduct assumes a position of authority over the governance or management of the school.

At Co-op this means the following:

- Co-ordinator
- Finance Officer
- Board Members

Due to Co-op's highly collaborative decision-making processes, in addition to the Responsible Persons above, all Members and Employees of Co-op have an active obligation to consider and disclose any additional conflicts of interest that may arise for them from time to time in relation to work they may be involved in.

Definition of Conflict of Interest

The Australian Charities and Not-for-profits Commission (ACNC) defines a conflict of interest as occurring when a person's personal interests conflict with their responsibility to act with the best interests of the charity.

Personal interests include the direct interests of an individual as well as those of family, close friends, or other organisations a person may be involved with or have an interest in (for example, as a shareholder). Personal interests may be financial or non-financial, and can be identified as:

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.

It also includes a conflict between a Board Member's duty to the Co-op and another duty that the Board Member has (for example, to another organisation).

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

1. **Actual conflict** – an individual is being influenced by a conflicting interest;
2. **Potential conflict** – an individual could be influenced by a conflicting interest;
3. **Perceived conflict** – a third party could reasonably believe an individual has been influenced by a conflicting interest.

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 school and must be managed accordingly. While an individual may believe there is no danger of making a decision based on their own personal interests, instead of the school's best interests, this does not mean the conflict of interest should be disregarded. It is important that the conflict is taken seriously.

Conflict of interest is commonly 'positive' (e.g. motivated by financial/personal gain) but can also be 'negative' (e.g. motivated to avoid a detrimental consequence for another person).

Conflict of Interest within a Co-operative

A co-operative is a democratic organisation, designed intentionally to be organised and managed by its members to deliver a common benefit to its members. As such, many Responsible People within Learning Co-operative will have the same shared conflicts. This, alongside the collaborative decision-making practices at Co-op, mitigates the risk that Responsible Persons will act against the best interests of Co-op with regards to those conflicts. Some individuals may have unique individual conflicts and those will be treated with a different level of control and oversight.

Policy

This policy has been developed to provide clarity when conflicts of interest arise, and to proactively prevent conflicts of interest causing problems to Co-op as they will be openly and effectively managed. It is the policy of Learning Co-operative as well as the responsibility of the Board to ensure that ethical, legal, financial or other conflicts of interest are managed so they do not conflict with Co-op's obligations.

Co-op will manage conflicts of interest by ensuring:

- a statutory declaration of the school's not-for-profit status executed by the chair of the school governing body is completed and on file
- it retains copies of agreements, guarantees, contracts or arrangements with third parties that are related entities or any person or for-profit or not-for-profit organisation affiliated with Co-op
- it maintains a register outlining details of any related entity and/or affiliated organisation or

person and the relationship between the school and that entity or person.

- that any loan agreement and/or arrangement for the delivery of services to the school and its students are on commercial terms and do not constitute a prohibited agreement or breach not-for-profit requirements.

At Learning Co-operative, Responsible Persons will:

- avoid individual personal conflicts of interest where possible
- identify and disclose any conflicts of interest when they arise
- carefully manage any conflicts of interest by following this policy, and
- respond to any breach, as determined by the Board.

Responsibility of the Board

The Board is responsible for:

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

Co-op must ensure that its Responsible Persons are aware of their responsibilities under the ETR and the ACNC governance standards, and ensure that they comply with their legal obligations, including any disclosure requirements.

Identification and disclosure of conflict of interest

All Responsible Persons must disclose any actual, perceived or potential conflicts of interest:

- at the time they are appointed to their role within Co-op whether or not they have material conflicts to disclose;
- where their circumstances have changed since their last disclosure was submitted and the person has an actual, perceived or potential conflict of interest in undertaking their duties.
- prior to a board meeting beginning based on the agenda items to be covered.
- prior to any substantial information being shared about an opportunity to provide services to Co-op that would result in pecuniary or non-pecuniary gain, if there is potential interest from the Responsible Person in providing those services.

Once an actual, potential or perceived conflict of interest is identified, it must be entered into the school's Conflict of Interest Register, as well as being raised with the Board. The register of interests must record information related to a conflict of interest, including a summary of the conflict of interest and if a Conflict-of-Interest Management Plan is in place.

Information disclosed is subject to the school's Privacy Policy.

Action required for management of conflicts of interest

Conflicts of Interest of Board Members

Once the conflict of interest has been appropriately disclosed, the Board must discuss and determine if a Conflict of Interest Management Plan is required, and if the conflicted Board Member should be excused from discussions, debate and/or voting for that particular matter.

It is important for the Board to focus on managing conflicts of interest in substance rather than in form. Excluding a conflicted Board Member from a debate and voting may not necessarily be a cure for a systemic, unmanaged conflict of interest where the Board may nevertheless be accustomed to act in accordance with the wishes and expectations of the conflicted Board Member. 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 Learning Co-operative and the relatedness of the Responsible Persons. Whenever any form of conflict exists in relation to a proposed transaction, decision or arrangement for the School, the Board must, in each instance, consider the substance, purpose and rationale of such proposed items to ensure that the main driver in the decision making is to achieve Co-op's strategic and operational goals and is in the best interest of Co-op.

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

What should be considered when deciding what action to take

In deciding what approach to take, the Board will:

- consider whether the conflict needs to be avoided or simply documented;
- consider whether the conflict will realistically impair the disclosing person's capacity to impartially participate in decision-making;
- consider alternative options to avoid the conflict;
- consider the school's philosophy, vision, values, financials and strategic plan;
- consider if there is the possibility of an appearance of improper conduct that might impair confidence in, or the reputation of, the school if no action is taken; and

- at all times make decisions that are solely for the purposes of the Learning Co-operative and in the best interest of the School.

The approval of any action with a noted conflict requires the agreement of at least a majority of the Board (excluding any conflicted Board Member/s) who are present and voting at the meeting. The action and result of the voting will be recorded in the meeting minutes and in the register of interests.

Conflicts of interest of Members or Employees

Identification of a conflict of interest for Members or employees may give rise to different considerations than for the Board. When considering whether they have conflicts of interest, Members and Employees should consider the following questions:

- 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 that others in Learning Co-operative won't?
- Will the matter affect my earning capacity or financial situation more or less than others in Learning Co-operative?
- Will it have an impact on the value of any shares or property that only I own?
- 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 a decision under consideration by Learning Co-operative?
- 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 or entity, would any benefit or loss they receive be expected, under normal circumstances, to flow through to me?
- Will the matter have a direct or indirect financial or other material impact on a member of my family?

If in doubt, raise the potential conflict of interest with the Coordinator (Principal) and Chairperson.

Where the Chairperson or Coordinator (Principal) is subject to a conflict of interest

In circumstances where a conflict of interest involves the Coordinator (Principal) or the Chairperson, a Board Member not conflicted in the same matter will prepare and propose to the Board the Conflict-of-Interest Management Plan and the procedure will be determined subject to a simple majority decision by the Board, excluding any conflicted Board Members.

The Board member assigned to prepare the Conflict-of-Interest Management Plan will be nominated by a majority decision of the remaining non-conflicted Board members.

Conflict of Interest Management Plans

If the Board determines that a plan is required for a Board Member, Member or Employee, the Chairperson or Coordinator (Principal) will prepare and propose to the Board a Conflict-of-Interest Management Plan.

The Board will consider any input the individual may have in relation to the proposed Conflict-of-Interest Management Plan; however, the individual is obliged to follow the Conflict-of-Interest Management Plan that is approved by the Board.

Conflict-of-Interest Management Plans will ensure conflicts are managed and resolved based on strategies that consider the following matters (as appropriate in the circumstances and in the best interests of the School):

- adequate disclosure and documenting of all information surrounding the conflict-of-interest;
- placing restrictions on the individual's involvement in the matter or access to specific information;
- documenting an alternative process/pathway/action for the specific circumstances;
- monitoring the conflict by appointing an independent/non-conflicted party in the process;
- restricting the individual from participation in the matter; or
- the individual relinquishing or ceasing to have the private interest that is creating the conflict.

Conflict-of-Interest Management Plans should be reviewed by the Board annually or as needed during the period of the conflict. Once a conflict has ceased, it should be documented in Board minutes and the Conflict-of-Interest Register.

Compliance with this policy

If the Board has a reason to believe that a person subject to the 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 or failed to follow the requirements set out in this policy or the relevant Conflict-of-Interest Management Plan, the Board may take action against them. This may include seeking to terminate their relationship with the Learning Co-operative.

If a person suspects that another individual has failed to disclose a conflict of interest, this policy or an active Conflict-of-Interest Management Plan, they must notify the Board.

Where a conflict is documented with a Related Party, any financial transactions between the entities must be reported to the Board.

Related Resources & Policies

Responsible Persons Register

Related Party Register

Conflict-of-Interest Register

Conflict-of-Interest Declaration Form

Conflict-of-Interest Management Plan Template

ACNC governance standards
https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/governance-standards

ACNC Managing Conflicts guide https://www.acnc.gov.au/tools/guides/managing-conflicts-interest

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