



Board Related Party Transaction Policy

(OHA)PPIBRPT2023:1

Purpose:	Ohana College (College) is committed to conducting its business in accordance with the College’s Code of Conduct, Conflicts of Interest Policy and the principles of good governance to ensure that it complies with the government funding eligibility criteria in the Education (Accreditation of Non-State Colleges) Act 2017.		
Scope:	Ohana College Board of Directors (‘Board’) and Staff		
Status:	Approved	Supersedes: RPT2020-1.0	
Authorised by:	Board	Approval Date: 20 July 2023	
Authorities & References:	<i>Corporations Act 2001 (Cth)</i> <i>Education (Accreditation of Non-State Schools) Act 2017 (Qld)</i> <i>Education (Accreditation of Non-State Schools) Regulations 2017 (Qld)</i> Code of Conduct Policy Conflicts of Interest Policy Fraud and Corrupt Conduct Policy		
Reviewed:	Annually	Next Review: July 2024	
Policy Owner:	Board	Point of Contact: CEO	

Introduction

In the usual course of business, boards will be required to consider obtaining goods and services. From time to time, staff will be able to assist with the provision of such goods and services through their own connections or businesses. Consideration must be given to ensuring that board members and staff do not obtain any benefit by virtue of their relationship with the organisation.

Pursuant to the *Education (Accreditation of Non-State Schools) Act 2017 s10(c)*, to continue to be eligible for government funding, the College cannot enter into any “prohibited arrangement” in relation to the operation of the College. The College must ensure that it has appropriate protocols in place for managing relationships with related parties.

Definitions

Approver - For the purpose of this policy, the relevant approvers are:

- a) the Chief Executive Officer for transactions with a value of up to (but not including) \$50,000; or
- b) the board for transactions with a value that is equal to or greater than \$50,000.

Prohibited Arrangement – A contract or arrangement in relation to the College:

- a) entered into by a College’s governing body or proposed governing body and another entity not dealing with each other at arm’s length; and
- b) that is not, or will not be, for the benefit of the College.

A contract or arrangement is not, or will not be, for the benefit of the College if the contract or arrangement is for property, goods or services:

- a) at more than reasonable market value; or
- b) that are not required to advance the College’s philosophy and aims, as stated in the College’s statement of philosophy and aims¹.

Reasonable Market Value - Reasonable market value can be broadly defined as the amount that a knowledgeable and willing third party would pay for a specific good or service in an arm’s length transaction from the seller.

It is generally expected that a reasonable business person would seek to:

- a) maximise the price received for supplying property or services, taking into account their business strategy, economic and market circumstances;
- b) minimise the costs associated with acquiring property or services; and
- c) be adequately rewarded for any activities carried out.

¹ *Education (Accreditation of Non-State Schools) Act 2017 s8*

Related Party – An entity with which there is a direct or indirect connection with the College governing body, that could reasonably be expected to compromise the independence of the governing body when making financial decisions².

Related Party Transaction is any transaction (other than a Prohibited Arrangement) between the College and a related party. The term Related Party Transaction, as used in this policy, is very broad and encompasses virtually all transactions or arrangements under which the College provides a financial benefit to a Related Party. In determining whether a transaction is a Related Party Transaction, a broad interpretation should be given to who is a Related Party and to the types of transactions which may be caught.

The following should be considered in assessing whether a transaction is a Related Party Transaction:

- a. Is the transaction or arrangement with a Related Party?
- b. Is there a financial benefit being received by the Related Party?

Principles

In order to ensure that the College conducts its business in accordance with the *Education (Accreditation of Non-State Schools) Act 2017*, its Board Code of Conduct, the Board Conflicts of Interest Policy and the principles of good governance, College policy is that:

- a. All contracts and arrangements with another entity in relation to the College should be conducted on an arm's length basis;
- b. The process surrounding contracts, arrangements and transactions must be transparent and fully documented;
- c. Board approval must be obtained for all 'Related Party Transactions' and payments recognising that the board can delegate this approval in respect of a class of transactions and on such terms and conditions as the board sees fit; and
- d. The College may reimburse directors for reasonable expenses incurred as a necessary part of conducting College business, however reimbursed expenses should be supported by appropriate documentation. Directors who also hold a paid role within the College, such as the principal or a teacher, are to be remunerated exclusively in relation to their employment within the College and not their position on the College governing body.

What is a Financial Benefit?

The concept of 'financial benefit' is very wide and extends to advantages and benefits given indirectly through other entities, informal and non-binding arrangements and benefits other than for cash.

² *Education (Accreditation of Non-State Schools) Act 2017 s10(d)*

Transactions between the College and a Related Party for which reasonable remuneration has been approved in accordance with this policy are excluded from the definition of 'financial benefit'.

A financial benefit includes (but is not limited to) the following:

- a. a party providing finance or property to a Related Party;
- b. buying or leasing an asset from or selling an asset to a Related Party;
- c. supplying or receiving services from the Related Party;
- d. taking up or releasing an obligation of the Related Party; and
- e. provision of a direct or indirect benefit to the Related Party.

Procedures

1. Where the College proposes to enter into a transaction which may be considered to confer a financial benefit on a related party, the following procedure applies:

- a) The relevant responsible officer must inform the College's Company Secretary about the proposed transaction, including:
 - i. the proposed parties;
 - ii. how they are related;
 - iii. details of the proposed transaction;
 - iv. evidence that conflicts of interest with a related party are being appropriately managed in relation to the College operations; and
 - v. evidence of compliance of dealing with each other at arm's length;
- b) The College's Company Secretary will review the transaction, and consider whether or not to take external legal advice in considering the transaction;
- c) The College's Company Secretary will inform and advise the board of the proposed transaction and obtain the relevant approval;
- d) Proper records will be kept minuting the course of conduct.

2. Approval for the College to undertake the transaction

- a) Where the transaction is considered not to be at arm's length, the relevant approver will determine whether an exemption applies so as to permit the Related Party Transaction to proceed, and together with the College's Company Secretary, ensure that if the transaction proceeds, it is carried out in a manner that is compliant with the College's Code of Conduct and other relevant policies;
- b) The College's Company Secretary will maintain a Register of Related Party Transactions: and
- c) Where Approval is obtained, the transaction must proceed in accordance with any procedures and conditions required by the Board.

3. Approval exemption for a proposed Related Party Transaction

All proposed Related Party Transactions will require **approval** unless an **exemption** applies to that transaction. The relevant approvers must determine whether the proposed Related Party Transaction meets the conditions for Approval and, where those conditions are not met, whether an Exemption applies to that transaction.

4. Does the proposed Related Party Transaction meet the conditions for approval?

The relevant approver may approve a proposed transaction where they determine that the transaction meets the following criteria:

- a. the transaction is at arm's length;
- b. the transaction is in the best interests of the College;
- c. the transaction is assessed by the Chief Financial Officer (Business Manager) not to carry any significant risk issues (commercial or reputational) for the Company;
- d. the transaction is in the ordinary course of the College's business; and
- e. if publicly disclosed, there is not anticipated to be any material criticism or adverse comment in respect of that transaction.

5. Does an exemption apply to a proposed Related Party Transaction?

The relevant approver may approve a proposed transaction where they determine that an Exemption applies to the proposed Related Party Transaction.

For the purpose of this policy, an Exemption applies where one or more of the following conditions apply to the proposed Related Party Transaction, as determined by the relevant approver:

- a. The transaction involves conferring a Financial Benefit that constitutes reasonable remuneration for expenses;
- b. The transaction is comprised of conferring benefits that are provided to all members of the same category of Key Personnel (by reference to level of seniority or nature of appointment, as appropriate); and
- c. The transaction is comprised of providing Financial Benefit to a Related Party under a Court order.