



# Non-Government Schools Not-For-Profit Good Governance Principles Series

July 2021

# Preface

The Non-Government Schools Not-for-Profit Advisory Committee (Advisory Committee) has established a set of 10 [Guiding Principles](#) to assist schools in meeting not-for-profit requirements under the *Education Act 1990 (NSW) (Act)*. This document illustrates what each principle may look like in practice, aided by case studies.

While it is acknowledged that the vast majority of NSW non-government schools meet the legal obligations under the Act to operate not-for-profit, there are a number of schools that do not meet these obligations. For these schools and proprietors, it is an all too common finding that poor governance arrangements, leading to a lack of transparency and accountability, are at the core of compliance issues.

Resolving compliance issues cannot be done effectively and sustainably without also improving governance arrangements. The Advisory Committee also considers that good governance arrangements allow schools and proprietors to manage their affairs with suitable oversight and accountability which is critical in making sure a school operates on a not-for-profit basis.

These guiding principles are not intended as a prescriptive list and proprietors/schools should consider their own circumstances when developing and reviewing governance arrangements. Proprietors should also ensure they have read and understood the [Not-for-Profit Guidelines for Non-Government Schools](#), [Advisory Committee Newsletters](#) and [Information Sheets](#) which provide specific advice on how to meet not-for-profit legal obligations.

**Carolyn Walsh**

**Chair**

**July 2021**



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# Glossary

In this document:

<b>Asset</b>	means an economic resource that may depreciate in value over time.
<b>Board (also known as school governing body)</b>	means anybody responsible for making decisions that affect the whole, or a substantial part, of a school's operations. Schools may be required to substantiate that individual persons are or are not members of the school board if requested to do so. In these documents the governing body is referred to as the 'school board'.
<b>Board member</b>	means a member of the governing body of the school, sometimes also referred to as a 'director'.
<b>Charity</b>	means an organisation registered under the provisions of the Charities Act 2013 (Cth).
<b>Income</b>	means money, or other forms of consideration received periodically from the provision of property, goods or services, investments, gifts, donations, grants, financial assistance or any other gain obtained from the use of a school's assets or its proprietor's assets.
<b>Independent member</b>	means a board member who is not an employee of the school, does not have a relationship with the proprietor and is not involved in the day-to-day operations of the school.
<b>Independent expert advice</b>	means advice sought from a suitability qualified professional and that the professional and employing organisation has no existing or prior relationship to the proprietor/school.
<b>Minister</b>	means the NSW Minister for Education and Early Childhood Learning.
<b>Not-for-profit (NFP) requirements</b>	means the obligation of non-government schools in receipt of financial assistance from the NSW Government to not operate for profit within the meaning of Part 7, Division 3 of the Education Act 1990.
<b>Proprietor</b>	means the legal entity designated, in the school's certificate of registration, as the proprietor of the school.

**Reasonable market value**

means the price that a knowledgeable and willing third entity would pay for property, goods or services in an arm's length transaction from the seller.

**Related Entity (also known as Related Party)**

means a person or a legal entity that is related to a proprietor or school either as a result of office, membership, management, control or influence or a personal/familial relationship and includes but is not limited to:

a) a person or close member of that person's family is a related entity if that person:

- (i) has control or joint control over the proprietor or school;
- (ii) has significant influence over the proprietor or school;
- (iii) is a member of the key management personnel of the proprietor or school.

b) an entity is a related entity to a proprietor or school if any of the following conditions apply:

- (i) the entity and the proprietor or school are members of the same group;
- (ii) the entity is an associate or joint venture of the proprietor or school;
- (iii) the entity and the proprietor or school are joint ventures of the same third party;
- (iv) the entity is a joint venture of a third entity and the proprietor or school is an associate of the third entity;
- (v) the entity is controlled or jointly controlled by a person identified in (a);
- (vi) a person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or parent of the entity);
- (vii) the entity, or any other member of a group of which it is part, provides key management personnel services to the proprietor or school or to the parent of the proprietor or school.

c) an employee of the proprietor, school or an entity identified in (b).

**Responsible person**

means:

- (a) the proprietor, and if the proprietor is a corporation, each director or person concerned in the management of the school;
- (b) a member of the school governing body; or,
- (c) the principal of the school.

**School**

means a non-government school registered under Part 7 of the Education Act 1990 (NSW).

Further terms relevant to not-for-profit (NFP) compliance but not used in this document, are defined in the Education Act NSW 1990 and the [Not-For-Profit Guidelines for Non-Government Schools](#).

# Background

Non-government schools in NSW receive financial assistance (funding) from the NSW Department of Education (Department) for the benefit of students at the school. Under the [Education Act 1990 \(NSW\)](#) (Act), to receive funding, a non-government school must not operate for-profit. This means that the income and assets of the school must be used for the education of students and the operation of the school only. The not-for-profit requirements are contained in section 83C of the Act<sup>1</sup>.

It is important that proprietors/schools establish governance systems that assist in meeting not-for-profit requirements under the Act. Good governance arrangements allow proprietors to manage their affairs with suitable oversight and accountability, which is critical in making sure a school operates on a not-for-profit basis.

To support schools to improve governance arrangements, the Advisory Committee has established a set of 10 guiding good governance principles to assist schools in meeting the not-for-profit obligations. The principles are summarised below and expanded upon throughout this resource. These principles have been developed to suit the specific NSW non-government schools NFP regulatory environment, and broadly align with other key governance best practice resources such as the [Australian Institute of Company Directors](#) (AICD) Not-for-Profit Governance Principles (2019) and the [Australian Stock Exchange \(ASX\) Corporate Governance Principles and Recommendations \(2019\)](#). Proprietors/schools should also ensure they are aware of their obligations related to governance which are regulated by other organisations such as the [NSW Education Standards and Accreditation Authority](#) (NESAA), the [Australian Charities and Not-for-Profit Commission](#) (ACNC) and the [Australia Securities and](#)

[Investments Commission](#) (ASIC).

## **Good Governance Principle 1: Act ethically, responsibly and in the best interest of the school**

All members of a proprietor/school board (board) and school executive should behave ethically and responsibly, setting the organisational culture and tone for the school. Board decisions should be made in the best interests of the school and its students.

## **Good Governance Principle 2: Compliance with the law and governing documents**

Boards must be aware of and must meet the requirements of all Australian legislation that applies to non-government school governance and any other legislation applicable to the school (that is, ACNC regulation if the school is a registered charity). Board members must also meet the requirements under the school's governing documents, such as their constitution.

## **Good Governance Principle 3: Board structure and suitability of board members**

Boards should be of an appropriate size and have a suitable mix of qualifications, skills and experience to effectively govern a non-government school. Board members should be of good character and must meet the fit and proper requirement as a Responsible Person under NSW and Commonwealth legislation. Where practicable, the role of the chair should be independent and separate from that of the role of the Principal/Chief Executive Officer (CEO) of the school.

## **Good Governance Principle 4: Timely and full disclosures of conflicts of interest and related entity transactions**

<sup>1</sup> This definition differs from the not-for-profit requirement that proprietors/schools may also need to meet for example, under ACNC regulation if they are registered as a charity.

Board members must make sure they make timely and full disclosures of all conflicts of interest and related entities. The proprietor or governing body must ensure there are policies and procedures for managing potential and actual conflicts of interest and related entities, which are properly documented and easily accessible.

### **Good Governance Principle 5: Clear processes for management and oversight**

Boards should operate on an informed basis. Appropriate processes and structures should be put in place to ensure boards are provided with timely, relevant and accurate information to guide decision making. Each board member should exercise independent judgment and have input to decisions. Board decisions should be appropriately documented. Appropriate policies and processes to guide the financial and operational management of the school (including any board functions delegated to school management) should be well documented and accessible.

### **Good Governance Principle 6: Integrity in reporting**

Boards should establish and maintain rigorous and independent reporting processes to maintain their integrity as a governing body. All board level decisions should be accurately reported and records maintained per legal requirements.

### **Good Governance Principle 7: Assessment of board performance**

The performance of the board (including the chair, board members and members of any subcommittees) should be regularly assessed and timely action should be taken to address any identified issues. Performance requirements should be properly documented and accessible. Board roles and appointments should be clearly documented (that is, there should be role descriptions and letters of appointments that clearly outline board member duties and responsibilities).

### **Good Governance Principle 8: Manage risk**

Boards should have appropriate risk management and internal control systems in place. These should be reviewed on a regular basis to ensure their effectiveness.

### **Good Governance Principle 9: Responsible management of finances**

Boards must ensure all school financial affairs are managed responsibly. This includes implementing clear processes that enable appropriate financial management, reporting and maintenance of records as per legal requirements. It is a responsibility of the board to inspect financial statements and identify any inconsistencies or concerns. Boards are also responsible for ensuring the proprietor/school does not operate while insolvent.

### **Good Governance Principle 10: Accountability to stakeholders**

Boards should always take reasonable steps to be transparent and accountable to their stakeholders. Stakeholders of non-government schools include (but are not limited to) company members, school employees, parents, students and alumni. Boards should keep stakeholders appropriately informed of their key decisions and the school's activities. At the same time, stakeholders must be given adequate opportunities by the board to voice any concerns or questions they have in relation to how the school is being managed.

In addition to establishing good governance arrangements, it is important that proprietors/schools read and understand the [Not-for-Profit Guidelines for Non-Government Schools](#), as well as other resources such as the [Advisory Committee Newsletters](#) and [Information Sheets](#) which provide specific advice on how to meet not-for-profit legal obligations under the Act.

For assistance with implementing good governance arrangements, proprietors/schools should contact their relevant sector representative the [NSW Association of Independent Schools](#) and [Catholic Schools NSW](#).

# Good Governance Principle 1 – Act ethically, responsibly and in the best interest of the school

This section explores **Good Governance Principle 1: Act ethically, responsibly and in the best interest of the school**. The principle states that:

*‘All members of a proprietor/school board (board) and school executive should behave ethically and responsibly, setting the organisational culture and tone for the school. Board decisions should be made in the best interests of the school and its students.’*

The board is a key decision maker for the school, setting the strategic direction for the school. The school board plays a leading role in setting the ethical and organisational cultural tone of the school. Board members are expected to model a high standard of ethical conduct and practice. It is critical that careful consideration is given to whether decisions are open and transparent, whether appropriate governing policies are in place and adhered to and whether decisions that are taken are in the best interests of the school and its students.

The key elements of this principle, outlined in the following sections, are:

- Ethical and responsible behaviour.
- Making decisions that are in the best interests of the school and students.

## Ethical and responsible behaviour

There are a number of key activities board members should undertake to actively promote ethical and responsible behaviour, these include:

- Developing, understanding and implementing a code of conduct.
- Participating in regular ethics and governance training.

## Code of Conduct

This is a key policy document that clearly outlines the board’s expectations for governance standards, individual board member behaviour and consequences for unacceptable behaviour. A school board code of conduct should:

- Articulate the key values of the board and school.
- Be designed for the specific circumstances of the school.
- Outline key legislation and legal requirements for board members to make:
  - [Conflict of interest disclosures](#) in a timely and full manner.
  - [Related entity transactions disclosures](#) in a timely and full manner.

Detailed information on these can be found in **Good Governance Principle 4: Timely and full disclosures**.

- Signal behaviours that are permitted, prohibited and the consequences for misconduct.
- Identify critical resources/people/organisations to assist in dealing with issues of unacceptable behaviour.
- Provide the board with a framework to identify and manage potential challenges it may face.

When appointed, all board members should be provided a copy of the school’s code of conduct to read and requested to sign the document. These documents should be retained as part of the school’s official records.

School boards should:

- Routinely undertake a review of the



- code of conduct (every 2-3 years).
- Promote avenues to report and welcome reports of any potential breaches of the code of conduct; these should be investigated promptly and with due diligence.
- Report behaviour that violates applicable laws to relevant authorities (for example, violations of the fit and proper requirement for responsible persons should be reported to the NESA).

**Ethics and Governance Training**

School board members should regularly participate in relevant governance, business management and ethics training or professional development. It is good practice for the board to maintain a current [register of all training](#) completed by its board members and note when board members must renew their training.

As a responsible person, each board member must meet the requirements for governance training. NESA provides a list of registered training providers (see <https://rego.nesa.nsw.edu.au/governance-training> for further details).

**Making decisions that are in the best interests of the school and its students**

School boards are expected to make decisions in the best interests of the school and its students. This is also a legal requirement under section 83C(2)(a) of the Act, which states that for a school to

operate on a not-for-profit basis all school income/assets must only be used for the operation of the school.

Factors that can help boards demonstrate accountability for decisions include:

- Aligning board decisions with the school’s strategic plan.
- Carefully preparing for board meetings by reading all papers thoroughly (along with previous board papers and related policies) and making note of any questions or concerns to raise at the meeting.
- All board members actively contributing to discussions with key issues, considerations and decisions recorded in the minutes.
- Seeking out appropriate and, wherever possible, independent advice when making significant or challenging decisions.
- Providing suitable financial training to all board members so they can fully interrogate financial reports.
- All board members have a duty to ensure that the income and assets of the school are managed responsibly. Detailed information on best practice in financial management can be found in **Good Governance Principle 9: Responsible management of finances**.

Detailed information on best practice in reporting board decisions can be found in **Good Governance Principle 6: Integrity in reporting**.

**Case studies**

**Case study A – Acting in the best interest of the school**

Northside School currently caters for K-6 students. The proprietor solely operates the school. The Board has a current 5-year strategic plan, which includes proposals to set up a secondary school campus. At a recent board meeting, one board member mentioned that 2 side-by-side residential properties, within walking distance of the school, would be listed by their vendors for sale on the open market.

Several board members wanted to submit offers to purchase the 2 properties. Other board members, conscious of their legal responsibility to use the school income for the operation of the school, queried whether the properties:

- Had been, or could be, rezoned for school purposes.
- Were suitable for use/development as a secondary school.
- Were appropriate to purchase, considering the current financial position of the school.

After some discussion, the Board resolved to:

- Contact the council to discuss the process, cost, timing and likelihood of rezoning the two properties for school use.
- Seek 2 independent market valuations of the sites.
- Ask an independent builder with suitable expertise for a report on the suitability of the site for a secondary school campus.
- Ask the board members if there are any conflicts of interest regarding the properties and to declare those perceived or actual conflicts.
- Commission a financial report to ensure the school has the funds to complete the project without jeopardising current educational standards in the school.

After receiving this advice, the Chair reconvened the Board to consider the next steps for the 2 properties as a potential site for a secondary campus.

The Board at Northside School acted responsibly in delaying the decision to purchase the properties until board members could be fully informed of all necessary factors.

### **Case study B – Failure to practice appropriate ethical and responsible behaviour**

The Cosmos College appointed a new Board member to the Board. The board member was given an appointment letter that did not contain details of her duties and responsibilities.

At her first meeting, the new board member asks if the Board has a code of conduct. The Chair recollects a code of conduct was developed some years ago, however is not sure where it is stored and makes no commitment to locate or provide it to the new member.

When the new board member suggests the Board develop a new code of conduct, the Chair puts off discussion for a future, unspecified meeting. The board member asks for the form to make any conflict of interest and related entity disclosures and is advised that it will be provided in the future. The new board member also discovers there is no record of the training undertaken by current board members.

The Board did not practice appropriate ethical and responsible behaviour as it:

- Did not provide a detailed outline of the roles and responsibilities to the new board member.

- Does not have an up-to-date code of conduct and does not require its board members to make a formal commitment to comply with the code.
- Did not provide the code of conduct, conflict of interest or the school related party transaction register to the new board member when requested. It is not clear if the board updates the related party transaction register (it is good practice to include updates to the register as a standing agenda item, refer to **Good Governance Principle 6: Integrity in Reporting** for further information). It is also a NESAs requirement to maintain proper conflicts of interest and related transaction registers and policies.
- Does not keep records of the training board members have completed.



# Good Governance Principle 2 – Compliance with the law and governing documents

This section explores **Good Governance Principle 2: Compliance with the law and governing documents**. The principle states that:

*‘Boards must be aware of and must meet the requirements of all Australian legislation that applies to non-government school governance and any other legislation applicable to the school (that is, ACNC regulation if the school is a registered charity). Board members must also meet the requirements under the school’s governing documents, such as their constitution.’*

Compliance with the law and governing documents is required for effective governance. The 2 key elements of this principle, outlined in the following sections, are:

- Meeting legislated governance obligations
- Meeting obligations in the school’s governing documents.

## Meeting legislated governance obligations

‘Legislated governance obligations’ refers to the legal obligations of the school proprietor and board members that concerns the running of the school. These legal requirements often have significant implications for the school/proprietor and for board members individually so it is critical that board members understand and have effective processes in place to meet these legal obligations.

Board members should regularly review and, if necessary, seek independent help to understand their governance obligations under the relevant laws, including (but not limited to):

- *Education Act 1990 (NSW)(Act)*
- *Education Regulation 2017 (NSW)*
- *Australian Education Act 2013 (Cwth)*
- *Australian Education Regulation 2017 (Cwth)*
- *Australian Charities and Not-for-profits Commission Act 2012 (Cwth)*
- *Corporations Act 2001 (Cwth).*

Under section 83C of the Act, to receive funding, a non-government school must not operate for-profit. This means that the income and assets of the school must be used for the operation of the school and the education of students. Board members are responsible for ensuring the NFP requirements are met by the school. The school board must make sure that all financial transactions comply with the following requirements under the Act:

- That any payment for services, property or goods is at reasonable market value.
- The use of school income and assets is for the operation of the school only.
- That any payment for services, property or goods is reasonable in the circumstances, having regard to the fact that financial assistance is provided to the school.
- That school board members are not paid for their role on the board.

## Implementing policies and procedures for proper governance

To comply with legislated governance requirements boards should implement and follow good governance practices. This includes:

- Adopting and maintaining clear and appropriate policies and procedures aligned with these requirements.

- Making clear, well documented decisions. More information can be found in **Good Governance Principle 6: Integrity in reporting**.
- Maintaining all relevant documentation for legally required periods.

Detailed information on how boards can meet their obligations to operate not-for-profit under the Act can be found in the [Not-For-Profit Guidelines for Non-Government Schools](#), [information sheets](#) and [newsletters](#).

Detailed information on how boards can meet their legal governance requirements for registration and accreditation can be found in the [NSW Education Standards Authority \(NESAs\) Registered and Accredited Individual Non-government Schools \(NSW\) Manual](#).

### **Maintaining appropriately detailed financial records**

Maintaining appropriately detailed financial records allows boards to demonstrate compliance with the law. This includes:

- Details of financial administration and capital expenditure, including records of audited annual financial statements.
- Evidence that financial transactions and decisions are transparent, at arm's length and of reasonable market value.
- Evidence that conflicts of interest between board members and related entities are being appropriately managed and mitigated in relation to school operations.

For further information on management of finances see **Good Governance Principle 9: Responsible management of finances**.

Schools/proprietors are required to maintain records to meet other legislative/regulatory requirements (for example, for NESAs, Commonwealth Department of Education, Skills and Employment (DESE), Australian Taxation Office (ATO), ACNC

and ASIC) and as part of internal school management practices. In many cases these records can be used to demonstrate compliance with the not-for-profit requirements under the Act.

For further guidance on record retention for good governance, see **Good Governance Principle 6: Integrity in reporting**.

### **Requirements to share information of not-for-profit compliance**

If a school/proprietor is subject to a not-for-profit investigation under section 83H of the Act or directed to provide information under section 83I of the Act, the board may be required to provide documentation to demonstrate that the school/proprietor is compliant with its legal obligations to operate not-for-profit.

Boards should ensure their schools' record retention policies enable them to provide reasonable assistance in response to such requests. Failure to provide these records can result in legal action being taken against the school by the NSW Minister for Education.

### **Meeting obligations in the school's governing documents**

Governance responsibilities and obligations of the school board should be clearly set out in the school's governing documents, i.e. the school's constitution, policies and procedures. This helps schools to operate effectively and promotes compliance with the not-for-profit requirements of the Act.

Board members should regularly review and confirm that they understand, and always follow, their obligations under the school's governing documents. To ensure this happens, board performance assessment measures should be included in the school's governing documents (see **Good Governance Principle 7: Assessment of board performance**).

## Case studies

### Case study A – Effective compliance with governing documents

Excalibur School is a secondary metropolitan school. Excalibur Ltd is the proprietor. An extension to the main school building is required to accommodate additional students. A quote was obtained from a construction contractor which was to be considered by the Board at its next meeting. The quote appeared to meet the requirements of the build and was within expected price range.

During the Board meeting, when considering the proposal, a recently appointed board member questioned the use of a quote against the procurement policy expectation of a tender process, in line with the school's procurement policy. The other board members were not aware that the school had a procurement policy and it was agreed to defer the decision, allowing time for board members to ensure the decision met the requirements of the school's procurement policy. A tender process was arranged and executed in line with the policy which also allowed the Board to evidence that the cost of the work was at reasonable market value. All records in relation to the tender were kept. The Board also resolved to arrange annual training so that all members would all be familiar with the school's policies.

The Board practiced effective compliance with its governing documents as:

- The procurement decision was deferred until all board members ensured the decision met the requirements of the school's procurement policy.
- Appropriate evidence of reasonable market value was obtained.
- Annual board member training was arranged to ensure members were familiar with school policies.

### Case study B – Ineffective compliance with the law

The proprietor of Beech School is Elm Ltd. For-profit activity was suspected at Beech School and as a result, the school was put under investigation under section 83H of the Act. Initial findings from the investigation suggested that the school appeared to have been making payments that were above reasonable market value to a related entity. An information direction was sent to the school under section 83I of the Act, legally requiring the school to provide evidence that the board had:

- Independently verified payments were not above reasonable market value before it had entered into the arrangement.
- Formally disclosed the related entity on its audited related party transaction register at the time of entering into the arrangement.

The Board was unable to provide the required documents as it had not sought verification that payments were at market value, and had not documented the transaction in the related party transaction register.

Rather than responding that it did not have the required documents, and making efforts to resolve the issues, the school board determined not to respond. As a result, the Minister declared the school non-compliant with the NFP requirements of the Act, and conditions were placed on funding.

The Board did not practice good governance in relation to compliance with the law and governing documents as:

- The Board did not implement policies and processes that allowed the school to meet NFP legal requirements.
- The school did not have the required documentation to evidence compliance with section 83C.
- The school/proprietor did not respond to an information direction which it was legally obligated to do under section 83I of the Act.



# Good Governance Principle 3 – Board structure and suitability of board members

This section explores **Good Governance Principle 3: Board structure and suitability of board members**. The principle states that:

*'Boards should be of an appropriate size and have a suitable mix of qualifications, skills and experience to effectively govern a non-government school. Board members should be of good character and must meet the fit and proper requirement as a 'responsible person' under NSW and Commonwealth legislation. Where practicable, the role of the chair should be independent and separate from that of the role of the Principal/CEO of the school.'*

Effective board structure and member composition supports boards to make sound decisions, manage risk and meet their legal obligations, including the requirement to operate NFP. The key elements of this principle are:

- Board composition (mix of skills & experience).
- Board independence (school executive and related entities).

## Board Composition

School boards should manage their composition to include a diverse mix of skills/capabilities, experience and knowledge. Management of composition includes:

- Determining skills required.
- [Assessing capabilities of board members](#).
- Identifying gaps in capabilities and encouraging professional development.
- Recruiting on a skills/capabilities basis.

- Managing board size.
- Meeting character requirements.

## Determining skills required

This refers to which skills/capabilities the board should look for in individual board members and how these capabilities combine to create an effective school board.

Assessing the right mix of skills requires careful consideration but does not need to be complex. An assessment should include asking:

- What capabilities are required for the board to undertake its current responsibilities?
- What capabilities are required over the next 3 – 5 years to effectively drive the strategic priorities of the school?

Core activities of the school board include (but are not limited to) driving the business and financial operations of the school, ensuring all legal and regulatory obligations are met and overseeing risk management activities. Therefore skills/capabilities in the areas of financial management, legal, risk management, education and governance are important for school boards.

## Assessing Capabilities

It is good practice for boards to create and maintain a board skills matrix to assess current and potential members against established criteria. This can also help the board identify gaps in the boards' skills/capabilities. Resources are available on how to create a skills matrix including guides from the [AICD](#), [ASX](#) and [governance professionals](#).

## Professional Development

Boards should initially consider whether



gaps in skills/capabilities can be addressed through professional development of current members. Until a board has an adequate mix of skills, experience and qualifications, they should seek independent external advice on relevant matters to ensure sound decision making.

Many organisations offer professional development tailored to the non-government school and NFP environment. A minimum number of hours of governance professional development for responsible persons is a NESAs requirement for non-government school registration. Details of requirements and approved training providers are on the [NESAs website](#).

### **Recruiting new members**

Recruiting new members with the required skills may be considered where boards cannot address capabilities/skill gaps through professional development. School boards should establish a clear process for appointing new board members, including eligibility requirements.

Appointing board members from a variety of backgrounds should be considered to promote diversity of thought in the boardroom and assisting with improvements in the strategic decision making and problem-solving capabilities of the board.

Board appointments should be made according to skill/capabilities, experience, and qualification requirements. Advertisements for new board members should list the skills/capabilities, experience and qualification requirements for the role. Other skills/capabilities can be listed as preferred but not essential.

Boards should follow open and transparent recruitment practices. There are a number of ways schools can source potential candidates, for example advertising on online job boards, via the school newsletters, via other local community organisation networks or through current board

member recommendations. Note that recommendations from current board members must be open and transparent; candidates must meet role requirements and participate in an interview process. Details of recommendations should be appropriately documented in board minutes.

### **Board size**

Boards should be an appropriate size. The [ASX Corporate Governance Council's Corporate Governance Principles and Recommendations](#) states that a "board should be of sufficient size so that requirements of the business can be met and changes to the composition of the board and its committees can be managed without undue disruption. However, it should not be so large as to be unwieldy."

The AICD also provides a detailed [guide](#) to determining the correct board size for organisations.

### **Character requirements**

School boards must ensure that members are of good character. This includes meeting the fit and proper/responsible person requirements of the NSW Department of Education, [DESE](#), [NESAs](#) and [ACNC](#).

Fit and proper/responsible person criteria includes having appropriate experience and expertise. Individuals' criminal history, financial management history and debts are also considered. Before appointing new members, due diligence should be undertaken to confirm that the person is a fit and proper person including:

- [Police checks](#).
- Requiring applicants to complete a fit and proper person declaration.
- Requiring applicants to complete a form detailing their skills, experience and motivations for joining the board.

Fit and proper declarations are required to be made by all board members on an annual basis by NESAs.

## Board Independence

Board members must ensure that board decisions are in the best interest of the school and students to ensure compliance with NFP legal obligations. Board independence is a key way to reduce the risk of making decisions that can lead to for-profit activity.

Board independence has a number of benefits including:

- Encouraging objective discussions and decision making.
- Promotion of a broader range of ideas.
- Less opportunity for conflicts of interest and related entity transactions.

Further information on acting in the best interest of the school can be found in **Good Governance Principle 1: Act ethically, responsibly and in the best interests of the school.**

It is best practice to formalise the independent role and the process that ensure independent decision making of the board in the school's governing documents (school constitution and other relevant policies and processes).

A majority of independent board members should be maintained to promote compliant decision making and

the Chair should be independent (where possible).

For NFP purposes, an independent board member can be described as “a non-executive director who is not a member of management and who is free from any business or other relationship that could materially interfere (or could reasonably be perceived to materially interfere) with the independent exercise of that director’s judgment.”<sup>2</sup>

Board member independence of roles within the school is recommended as dual roles (that is, members that are also teachers, principals or other school executives) have the potential to cause conflicts of interest in decision making. Boards are responsible for the strategic oversight of the school whereas the principal and school executive oversee day to day operations. Members of the school executive typically report to and seek advice from the school board. If they are also a board member, they are then put in a position to manage themselves which can cause conflict.

Where it is not possible for a board member to be independent, they should ensure that their decisions are made in the best interest of the school in line with their board responsibilities and adhering to conflict of interest policies.

## Case studies

### Case study A – Effective management of board structure and suitability of candidates

Hillside School is a small regional school. The proprietor of Hillside School is Greengrass Ltd. One board member is due to resign in the coming months and a new member will be appointed to replace them.

The Board has established a recruitment panel and advertised the role openly on online job boards (Seek and AICD) and in the local newspaper. The role description outlining the required skills and experience is part of the advertisement.

Prior to advertising, the recruitment panel reviewed the board skills matrix and assessed the areas of skills and experience that will be required. The resigning

<sup>2</sup> Per the AICD definition of an independent director.

member contributes significant financial management knowledge and experience to the Board and has been identified as a critical capability in the new member. The Board has also decided to send 3 current members for additional financial management training to boost the skills of the Board overall.

When reviewing the applications, the recruitment panel assess each candidate against the skill/capability requirements. Two applicants have the required skills and experience and are interviewed. After interviews, the panel selects a preferred applicant and prepares a report on the recruitment process with recommendations for approval of the Board. The Board votes to approve the appointment. The new member will start one month before the current board member resigns to allow for an organised handover and transfer of knowledge. The new member is provided with a letter of appointment that clearly outlines their role, responsibilities and expectations.

The Board effectively managed their board structure and suitability of board members by:

- assessing the skills required
- recruiting an experienced member to maintain the balance of skills and experience
- training additional board members to ensure the board is not overly reliant on one person's knowledge and to broaden the board's capacity.

### **Case study B – Ineffective processes to ensure independence of the board**

The proprietor of Little Green Fingers School is Leaf Ltd. The school principal is also the Chair of Leaf Ltd board. The Board occasionally needs to make decisions that conflict with the interests of the principal's role and this can cause real and perceived conflicts.

The principal's role concerns educational leadership, rather than the business operations of the school, which are looked after by the school's business manager.

The principal and school's business manager recently completed an annual review of staff salaries and prepared a meeting paper for the Board with the new contracts in advance of the meeting. The principal's salary was increased significantly and his contract terms included:

- 10 years with no review
- full payout if terminated in advance
- annual wage increases of 10% for the principal but not for any other staff.

No evidence or rationale was provided for the new salary levels and terms.

During the meeting, the Board is given an opportunity to raise objections to the terms in the contracts and vote whether to approve them. Two board members raise concerns over the pay increase for the principal, as well as the terms, however,

this is not recorded in the minutes.

The Board does not have any measures in place to manage the conflict between the two roles held by the principal. Related entity and conflict of interest declarations are not made during board meeting and the principal/Chair was not asked to leave the room or abstain from voting on the matter. The principal is therefore able to vote to approve the terms of his own contract.

The Board **did not** effectively manage the independence of its role as it:

- failed to ensure board members were independent from other roles in the school
- did not put processes in place to effectively manage the conflicting interest of the principal as a board member.

Failing to manage their board structure and suitability of board members meant the school also faced compliance action for breaching their NFP obligations, as the terms of the principals' contract were above reasonable market value.

**Case study C – Ineffective processes to manage board structure and ensure suitability of independent board members**

Care Ltd runs Moonrise Disability Services (Moonrise) which has recently established Rise and Shine School, a school for students with disabilities. Care Ltd is the proprietor of Rise and Shine School and has one board that oversees both businesses (see diagram below):



The Board decided to use school funds to construct a new building with classrooms and a program centre. The program centre is used for students' extra-curricular programs and for Moonrise's weekend program for its service users. There is no agreement in place for Moonrise to use the school's facility and they do not pay any rent to Rise and Shine School.

Due to the lack of independence in the Board (board members oversee both Rise and Shine School and Moonrise), decisions were made that were not in the best interest of Rise and Shine School but that provided advantageous circumstances for Moonrise to deliver services.

The Board **did not** effectively manage their board structure and suitability of board members as they failed to ensure board members were independent.

Failing to manage the suitability of their board members meant the school also faced compliance action for breaching its NFP obligations in relation to the program centre being used by Moonrise at no charge.

# Good Governance Principle 4

## – Timely and full disclosure of conflicts of interest and related entity transactions

This section explores **Good Governance Principle 4: Timely and full disclosures of conflicts of interest and related entity transactions**. The principle states that:

*'Board members must make sure they make timely and full disclosures of all conflicts of interest and related entities<sup>3</sup>. The proprietor or governing body must ensure there are policies and procedures for managing potential and actual conflicts of interest and related entities, which are properly documented and easily accessible.'*

Timely, full and transparent disclosures of conflicts of interest and related entities are crucial for school boards to meet the legal obligations to operate on a NFP basis. The key elements of this principle, outlined in the following sections, are:

- Timely, full and transparent disclosures of conflicts of interest and related entities.
- Policies and procedures to manage conflicts of interest and related entities.

### Timely and full disclosures of conflicts of interest and related entities

Conflicts of interest and related entities are a common potential hazard for NFP compliance which can be controlled with good management practices.

Poor management of these transactions

can lead to:

- Use of school income and assets that is not for the operation of the school.
- Payment/s for services, property or goods at more than reasonable market value.
- The activities above can lead to a school breaching its legal obligation to operate NFP. This may result in compliance action being taken against the school.

### Conflicts of interest

Conflicts of interest occur when an individual's personal interests conflict with their responsibility to act in the school's best interests. While this principle relates to board members, it is important to understand that, under the Act, conflicts of interest must be managed for all 'responsible persons'<sup>4</sup> at the school, not just board members.

'Personal interests' refers to a board members own interests, interests of their family, friends, or other organisations with which they are involved. It also includes a conflict between a member's duty to the school or other roles. Board members should disclose all conflicts of interest.

Conflicts of interest may be unavoidable so effective management is critical for meeting the school's best interests.

In making full and timely disclosures, school boards should:

<sup>3</sup> 'Related entity' refers to any person or legal entity that is related to a proprietor or school either as a result of office, membership, management, control or influence or a personal/familial relationship.

<sup>4</sup> The Education Act defines a 'responsible person' as: the proprietor of the school and, if the proprietor is a corporation, each director or person concerned in the management of the school, or a member of the governing body of the school, or the principal of the school.

- Promote a culture of disclosure.
- Have a conflict of interest policy which is read and understood by all board members.
- Keep an up-to-date [conflicts of interest register](#).
- Add disclosures of conflicts of interest as a standing item for all board meetings.
- Manage all identified conflicts in a timely manner.
- Ensure that all identified conflicts are managed fully and transparently for the duration of the conflict.

### Related entity transactions

A 'related entity'<sup>5</sup> means any person or legal entity that is related to a proprietor or school either as a result of office, membership, management, control, influence or a personal/familial relationship. Further details are found in the [Not-for-Profit Guidelines for Non-Government Schools](#).

Schools are required to fully disclose all related entity transactions in an independently audited [related entity transaction register](#). Further details on this requirement are found in the [NESA Registered and Accredited Individual Non-Government Schools \(NSW\) Manual](#).

Schools may at times be unclear as to what comprises a related entity. If in doubt it is best practice to declare and note the related entity relationship and/or transaction. Schools benefit from considering the need to disclose related entity transactions through the prism of reducing risk and harm to the school. These risks include not acting in the best interest of the school resulting in for-profit activity.

Related entity transactions need to be appropriately disclosed and managed so

that they do not lead to for-profit activity. It is crucial that schools ensure terms of the transactions be considered 'arms-length'. Any interested entity should be able to access an up-to-date register and schools should ensure its policies and procedures are easily accessible.

## Policies and procedures to manage conflicts of interest and related entities

### Conflicts of interest

Schools boards should implement policies and procedures to ensure conflicts of interest (actual, potential and perceived)<sup>6</sup> are properly managed.

An effective conflict of interest policy should include:

- Definitions of actual, perceived or potential conflict of interests.
- A conflict of interest declaration process for all board meetings.
- A transparent process for recording conflicts of interest.
- A plan for the board to manage conflicts of interest if and when they arise. For example:
  - Excusing board members from relevant discussions when an actual, potential or perceived conflict is identified.
  - Board members not voting on matters where they have a conflict of interest.
- A plan and timeline for reviewing the policy.

### Related entity transactions

Schools should exercise great care when considering entering into a related entity transaction and thoroughly discuss whether or not to go ahead.

<sup>5</sup> The Education Act refers to related entity. A related entity is the same as a related party. A related entity transaction is the same as a related party transaction.

<sup>6</sup> A real conflict of interest: You are being influenced by a conflicting interest; A perceived conflict of interest: You could be influenced by a conflicting interest; A potential conflict of interest: You could appear to be influenced by a conflicting interest.

Should a school determine it will enter into a transaction with a related entity, it is crucial that the board:

- Demonstrates it obtained independent valuations to ensure reasonable market value.
- Ensures that it negotiated terms as it would for an 'arm's length' transaction (that is, if the parties were independent of one another).
- Document whether or not there were other options, and if so, why it did not proceed with other options.
- Abides by all relevant school policies and procedures (that is, procurement, anti-fraud, conflict of interest and/or staff delegation's policies).
- Implements and documents a plan for the ongoing management of the transaction. A plan that is proportionate to the relationship and transaction, for example, a construction contract as opposed to a stationery contract.

- Updates and makes readily accessible, the related entities transactions register. The register is also subject to independent audits.

[The Not-for-Profit Guidelines for Non-Government Schools](#) includes detailed information on how schools can manage related entity transactions.

Non-government schools must also meet registration requirements for managing related entity transactions. Details of all registration related requirements can be found in the NESAs [Registered and Accredited Individual Non-Government Schools \(NSW\) Manual](#).

Related entities and related entity transactions are also defined by the Australian Accounting Standards Board (AASB) in its [AASB 124 Related Party Disclosures](#).

## Case studies

### Case study A – Effective management of conflicts of interest and related entity transactions

Building Great Minds is a small regional school. The proprietor of Building Great Minds is Regional Kids Ltd. Regional Kids Ltd does not operate any other businesses or schools and has a small board of 5 members. The school requires a new cleaning contractor, and proposals have been received by the only 2 commercial cleaning companies in town (Bob's Cleaning and Sunshine Cleaning Services). Bob's Cleaning is owned by the brother of the Board Secretary (Secretary).

At the opening of the board meeting, the Chair's first standing order of business is to call for any conflict of interest declarations. The Secretary declares his conflict of interest with the cleaning contract proposal. When the cleaning contract discussion is due to start, the Secretary excuses himself from the decision-making process and leaves the room. Another member acting temporarily as the Secretary records the board member's conflict of interest in the minutes and notes that he left the room.

The services and prices in both proposals are similar. The board papers include a report with independently verified references for both companies. Sunshine

Cleaning Services references note a record of not completing the cleaning at times required under contracts.

The Board discuss the 2 bids and decide to award the contract to Bob's Cleaning. The acting Secretary records the reasons for the board's decision in the minutes and updates the related party transaction register to include the cleaning contract.

The Board also agrees to a plan for the ongoing management of the contract that includes the Secretary excusing himself from any involvement in the contract and its discussions, and a signed declaration that he will he not disclose any board discussions to his brother. The Board designates a three-person ad-hoc committee that will manage any strategic decisions relating to the contract and report back to the Board. The day-to-day management of the contract will be done by the school administrative staff.

Shortly after the meeting, the minutes and updated related entity transactions register are emailed to all of the board members so that they can confirm the accuracy of the record.

The Board has practiced effective management of conflict of interests and related entity transactions as the:

- Chair called for declarations of conflict of interests at the start of the meeting.
- Conflicted board member excused themselves from discussion and left the room.
- Conflict of interest was recorded in the board minutes.
- Related entity transaction register was updated to note the related entity relationship between the contractor and the board member.
- The Board implemented a plan for the ongoing management of the contract to ensure no involvement from the conflicted board member.

### **Case study B – Ineffective management of conflicts of interest and related entities**

The proprietor of Happy Kids School is Happy Kids Ltd. Happy Kids Ltd also operates a for-profit child care centre, Sunny Kids Centre. One board manages Happy Kids School and Sunny Kids Centre. The CEO of Sunny Kids Centre, Mr Bear, is also the Chair of the Happy Kids Ltd Board.

Happy Kids School is co-located with Sunny Kids Centre on land owned by Sunny Kids Centre.

The Board does not have strongly embedded disclosure practices as:

- Conflict of interest policy is outdated and not easily accessible to board members.
- Related entity transaction register is not regularly monitored or updated.
- Board members are not expected to abstain from discussions or voting on



matters where they have a conflict of interest.

- Board meetings do not require members to make conflict of interest declarations as a standing item.

A recent board meeting included a paper to renew the rental agreement between Happy Kids School and the Sunny Kids Centre. The paper did not include any evidence on independent market valuations of the rental agreement. The Board accepted the new rental price with little discussion.

The Board did not practice appropriate processes for the timely and full disclosure of related entities and conflicts of interest as:

- As a transaction with a related entity, the Board should have ensured it can demonstrate the rental payments are at reasonable market value.
- The Board does not have appropriate conflicts of interest and related entity transaction policies and processes in place.

As the Board did not demonstrate the rental agreement terms were at (or below) reasonable market value, it has potentially breached its NFP obligations. As a Board of 2 entities that have an ongoing significant related entity transaction (that is, the lease of the school site), the Board should have:

- An up-to-date conflict of interest policy that it requires all board members to understand.
- Maintained a related entity transaction register that is up-to-date and easily accessible.
- Ensured that the staff preparing the paper understood the importance of seeking independent advice.
- At least considered creating a subcommittee of members not affiliated with the child care centre to manage and report on the relationship.
- A detailed, well documented plan for rental agreement that focuses on ensuring the transaction is priced and managed in the best interests of the school.

# Good Governance Principle 5 – Clear processes for management and oversight

This section explores **Good Governance Principle 5: Clear processes for management<sup>7</sup> and oversight**. The principle states that:

*'Boards should operate on an informed basis. Appropriate processes and structures should be put in place to ensure boards are provided with timely, relevant and accurate information to guide decision making.*

*Each board member should exercise independent judgment and have input to decisions. Board decisions should be appropriately documented. Appropriate policies and processes to guide the financial and operational management of the school (including any board functions delegated to school management) should be well documented and accessible.'*

School board members are responsible for overseeing, managing and holding school executive to account. Ensuring that boards have clear processes for management and oversight is an essential component of school board governance arrangements, and allows boards to improve decision making and meet their legal obligations, including the obligation to operate NFP. The key elements of this principle are:

- Oversight and management of school operations.
- Guiding financial and operational management.

## Oversight and management of school operations

The board has a responsibility to stay informed of the school's operations. Having accurate and current information on the school will allow the board to make informed decisions that are in the best interest of the school.

Clearly defining the roles and responsibilities of the board, the school executive and how they will work together is an important first step to ensure suitable oversight and management of school operations. A delegations policy can be utilised to define the functions of the board and executive. This allows both groups to be clear on what is required of them and the information needed to perform their respective roles and responsibilities.

Subgroups/subcommittees can be used where required/appropriate to strengthen oversight but are not decision-making groups themselves. These can be useful where the school is undertaking a large project (for example, construction of a new sports centre) or where there is a lack of expertise among the board for a particular issue. The delegation policy will outline any membership requirements of subcommittees and provide guidance on appointment processes.

There should also be a clearly outlined schedule of reports and updates that the school executive is required to provide the board with qualitative and quantitative information including budget, enrolments and complaints reports. Relevant

<sup>7</sup> 'Management' is used in this Good Governance Principle to describe the role that board members have overseeing, managing and holding the school executive accountable. It does not refer to the day-to-day running of the school which is the responsibility of the school executive.

executive staff should attend board meetings to answer any queries about these reports (see **Good Governance Principle 9: Responsible management of finances** for information on management of financial reporting).

It is critical that each board member exercise independent judgement when providing input to decisions of the board as this contributes to having clear oversight and management. Board members should review any materials required to make a decision before meetings and request any additional information needed to make an informed decision and not simply follow the majority. Board discussions should be clearly documented in meeting minutes including any dissenting views (see **Good Governance Principle 6: Integrity in reporting** and **Good Governance Principle 3: Board structure and suitability of board members**).

## Guiding financial and operational management

Establishing appropriate policies and procedures can assist boards in their

financial and operational management. In addition to a delegations policy, boards should implement the following:

- Compliance calendar – this allows boards to track when compliance obligations fall due, prepare for these key decisions and assists in meeting regulatory obligations.
- Policy review process – implementing a regular review process for all policies, procedures and employee contracts and ensures that the board has proper oversight of school operations.
- Transparent and easily accessible systems for document / record management (that is, cloud based document storage systems).
- Financial management policy – outlining the minimum standards and practices for management and reporting of finances as well as who has authorisation of financial transactions and the approvals process for large transactions (see **Good Governance Principle 9: Responsible management of finances** for detailed information on financial management processes).

## Case studies

### Case study A – Ineffective process for management and oversight

Sadie Ltd is the proprietor of Kids First College and operates one school only. The school needs to recruit external management services for management and assigns the task to one board member who selects a company to provide the services and negotiates the terms. The Board did not consult its procurement processes or follow its delegations policy. Additional quotes are not obtained and the price is not independently assessed for reasonable market value. Other board members are not consulted during the negotiations and a copy of the contract is not provided to members before it goes to the board meeting for approval. One board member objects to the process for engaging the contract and the terms of the contract but this is not recorded in the minutes.

The Board **did not** follow clear processes for management and oversight as they failed to:

- Stay within its strategic role and overstepped by engaging in the day to day operations of the school.

- Follow its procurement policy (multiple quotes were not obtained for the services) or delegations policy.
- Ensure all board members were provided with appropriate information to make a decision on the arrangement (they were not provided with the contract ahead of the meeting).
- Properly record board discussions and decisions in the board meeting minutes.

Failing to following clear processes for management and oversight meant the school also faced compliance action for breaching its NFP obligations by paying above reasonable market value for the external management services.

### **Case study B – Effective processes for management and oversight**

Queeny Ltd is the proprietor that operates Prince School, a growing metropolitan primary school. The strategic plan for Prince School includes a 3 year plan to start a secondary school based on projected enrolment growth and current expressions of interest.

The Board has well-established roles and responsibilities clearly outlined in the school's governing documents, however they currently do not have board members with the required skills or knowledge to properly oversee the expansion plan. The Board consults the delegations policy and establishes a subcommittee to outline and oversee the expansion plan. The subcommittee is provided with clear terms of reference.

The subcommittee includes 2 board members with finance expertise, Prince School's Chief Finance Officer (CFO), and 2 independent people with professional construction and project management experience. The subcommittee gathers information and makes recommendations for the Board to approve.

The subcommittee provides regular updates at board meetings, prepares reports and reviews independent advice including cost benefit analyses on alternative expansion options. All information is provided to the Board in advance of the meeting to allow members time to review and ask any questions regarding the proposal.

The subcommittee provides the Board with a proposed expansion plan to build a second story on the school building to accommodate a secondary school. All relevant documents are provided to the Board in advance of the meeting, including the multiple quotes that were obtained for the construction costs and details of the alternative plans, that is, purchasing additional land and buildings at a separate site and why building a second story is the preferred option.

The Board had clear processes for management and oversight and implemented them by:

- Following its procurement and delegations policies.
- Seeking external independent advice.
- Having clear delineation of the role and responsibilities of board members and the subcommittee.

# Good Governance Principle 6 – Integrity in reporting

This section explores **Good Governance Principle 6: Integrity in reporting**. This principle states that:

*‘Boards should establish and maintain rigorous and independent reporting processes to maintain their integrity as a governing body. All board level decisions should be accurately reported and records maintained per legal requirements.’*

Integrity underpins high-quality information that school boards need to effectively govern. The 3 key elements of this principle, outlined in the following sections, are:

- Rigorous and independent reporting processes.
- Accurate reporting of board decisions.
- Maintaining records in line with legal requirements.

## Rigorous and independent reporting processes

Rigorous reporting processes rely on information that is clear, consistent and complete.

A key function of a school’s board is to make decisions regarding the strategic direction, high level activities, compliance obligations and the overall performance of the school. Boards routinely receive the information they need to make decisions through board papers.

These papers are typically prepared by people other than board members (that is, school executive staff, board sub-committees etc). Board papers should be prepared drawing on the advice of

relevantly qualified professionals (either within the school executive or from independent and external professionals for example, auditors or accountants).

Board members have an obligation to exercise due diligence when reviewing board papers, ensuring they have access to sufficient and appropriate information to assist them in their decision making.

When making certain decisions, school boards may need to access external independent and expert advice. This includes legal advice, independent financial advice (from auditors<sup>8</sup>) or other types of independent professional advice (for example, advice from an independent governance professional regarding board operational matters).

Independent advice is important as it reduces the risks of conflicts of interest and helps board members critically evaluate issues.

## Accurate reporting of board decisions

Board decisions, which are recorded in the minutes of board meetings, should present an accurate and clear record of the board’s work. Accurate reporting of board decisions:

- Ensures future board members understand the rationale and process for past decisions.
- Enables boards to answer questions about their current decisions.
- Provides an important record in the event of a subsequent incident.

<sup>8</sup> Auditors are required by law to be independent from the school. The ASIC website sets out the legislation and standards of independence requirements to which auditors must comply.

## Board Minutes

Board minutes may not need to be a full transcript of the meeting but should contain:

- Key discussion points for each agenda item including information or advice relied upon and risks considered.
- Reports considered by the board whether from internal or external parties.
- [Reported conflicts of interest](#) and whether relevant board members excused themselves in situations where they had an actual or perceived conflict of interest.
- Rationale for decisions and details of any dissenting views.

Minutes are generally prepared and maintained by a board secretary. They should be reviewed by the board at the subsequent meeting and signed by the chair, before being included in the official governance records of the school. Board members should have ready access to all minutes and associated documents.

Advice on best practice in reporting board decisions is available from organisations such as the ACNC and the [Australian Institute of Company Directors \(AICD\)](#).

## Maintaining records in line with legal requirements

Non-government schools are required to lodge annual financial returns and information about their governing body or board members to a range of agencies.

Board members must ensure records are kept, stored and can be provided to meet their obligations under the not-for-profit provisions of the Act. Keeping appropriate records also enables schools to meet relevant requirements that are monitored and enforced by other agencies and authorities including:

- NSW Department of Education (DOE)
- NSW Education Standards Authority (NESAs)

- Department of Education, Skills and Employment (DESE)
- Australian Charities and Not-for-Profits Commission (ACNC)
- Australian Securities and Investments Commission (ASIC).

[The Non-Government Schools Not-for-Profit Guidelines](#) provides detailed information on the records each school must keep in order to meet its not-for-profit and reporting obligations. If a school is not able to produce these records when requested, the NSW Minister for Education may initiate compliance action.

The ACNC also provides a useful [checklist](#) that schools can use to check their record keeping practices.

## Privacy

Schools must meet their obligations under the *Privacy Act 1988 (Cwth)* and *Health Records and Information Privacy Act 2002 (NSW)* when collecting and storing the following types of information:

- personal information
- sensitive information
- health information.

## Case studies

### Case study A – Appropriate integrity in reporting

The East School is considering entering into a lease for a vacant piece of land next to the school to further the delivery of the school's agriculture syllabus. The block of land is owned by a community organisation and one member of the school's board is also on the Board of this community organisation, making this a related entity transaction.

The Board is aware of the risks of entering into related entity transactions and carefully prepares for the upcoming meeting where it will consider whether the school should enter into the lease.

Two weeks before the meeting, the school's board members receive the agenda and papers for discussion, including:

- A report from an independent financial advisor on whether the school can fund the lease.
- Confirmation that the site is zoned for the intended use of the land.
- An independent report from a suitably qualified professional that evaluates the merits of this piece of land against other available properties, taking into account 3 independent valuer's assessments of the property's market value.
- NSW Department of Education Not-for-Profit Guidelines for Non-Government Schools.
- The full proposed lease agreement with clearly expressed terms and rental fees.
- Updated related party transactions register in line with the requirements set by NESAs.

During the board meeting, the board member who also sits on the board of the community organisation excuses herself from the decision-making process. The Secretary records the board member's conflict of interest in the meeting minutes and notes that she left the room.

After extensive discussion, 5 of the remaining 6 board members agree that entering into the lease, and agreeing to the terms therein, is in the best interests of the school's students. One board member disagrees with the terms of the lease, but accepts that the land under consideration is the best of the available options. The Secretary records that board member's dissent and the reasons for the Board's decision in the minutes.

Shortly after the meeting, the minutes and updated related party transactions register are emailed to all of the board members so that they can confirm the accuracy of the record and suggest relevant amendments. The minutes, with any relevant amendments are then signed by the Chair and stored electronically, with the accompanying discussion papers, at the school. These records can be easily accessed by members of the Board. In line with the school's policy, the records will be archived after seven years.

The Board practiced appropriate integrity in reporting:

- Board members received an agenda and information relevant to the issue (papers/reports) with enough time before the meeting to enable an informed decision to be made.
- Minutes contained an appropriate level of detail including the Board's discussion, documents used, dissenting views, conflicts of interest and the final decision made.
- Board members had an appropriate opportunity to review the minutes and suggest amendments.
- The minutes are kept in a readily accessible location for an appropriate time before being archived.

### **Case study B – Lack of appropriate integrity in reporting**

Little Buddies College is looking for an external provider to operate the school's canteen services. The proprietor of the College is Little Buddies College Ltd. A proposal has been submitted by a catering business whose owner is the cousin of a school board member.

The proposal is added to the agenda for the upcoming school board meeting that is 3 days away. No details of alternative catering businesses, the proposed service agreement, report on the market value of the canteen or updated related party register are distributed to board members.

At the board meeting, the board member who is the cousin of the catering business owner declares that she may have a conflict of interest but continues to participate in the discussion about whether the school should accept the application. The Secretary notes the board member's declaration.

Although the board has a procurement policy which requires consideration of at least 3 providers when making decisions about services at the school, the Board does not refer to this policy and no alternative providers are considered. The Secretary records the decision, but does not record any details of the reasons for that decision, any dissenting views, or the agreed terms of the service agreement.

After the meeting, the minutes are signed by the Chair without being emailed to all board members to confirm their accuracy. Minutes are then stored electronically at the school, and are accessible by members of the Board. In line with the school's policy, the minutes will be archived after 7 years.

The Board did not practice appropriate integrity in reporting:

- There was insufficient time and inappropriate documentation for the Board to make an informed decision. The Board should have received, at an appropriate time before the meeting, papers/reports that outlined:
  - an independent market valuation of the school canteen
  - independent financial advice on whether the school could afford to outsource the canteen service



- alternative proposals, in line with the school's procurement policy
- the full service agreement
- updated related party register.
- The minutes should have contained a summary of the board's discussion.
- The board member with the conflict of interest should have excused herself from the decision-making process.
- Board members were not given the opportunity to review the minutes for accuracy ahead of them being signed by the Chair.



# Good Governance Principle 7 – Assessment of board performance

This section explores **Good Governance Principle 7: Assessment of board performance**. This principle states that:

*'The performance of the board (including the chair, board members and members of any subcommittees) should be regularly assessed and timely action should be taken to address any identified issues. Performance requirements should be properly documented and accessible. Board roles and appointments should be clearly documented (that is, there should be role descriptions and letters of appointments that clearly outline board member duties and responsibilities).'*

School boards should ensure that their performance is assessed on a regular basis both collectively as a board and for individual members. Performance assessment should identify strengths and opportunities for enhancement. Board members should be encouraged and supported to foster new skills through professional development. The key elements of this principle are:

- Board members are provided with a letter of appointment.
- Development of key performance indicators.
- Regular assessment of board performance.

## Board members are provided with a letter of appointment

All board members should be provided with a letter of appointment to sign at the beginning of their term on the board. The letter of appointment is a valuable opportunity for the board to welcome new

members, reiterate the duties and role of the new member and provide essential documents. The following should be considered for inclusion in the letter of appointment:

- Welcome and induction overview, including (but not limited to) information on:
  - Start and end date of appointment.
  - Requirements to report all conflicts of interest.
  - Non-remuneration terms.<sup>9</sup>
  - Details of insurance policies for board members.
  - The induction process.
  - Board meetings (times, locations etc).
- Responsibilities of school board members such as:
  - Role of the board member.
  - Relevant legal obligations of the board, including the obligations to operate NFP under the Act.
  - Fit and proper requirements of individual board members (see the [NESA fit and proper person requirements](#) for further information).
  - The requirement to abide by a code of conduct.
  - The governing documents of the board, key policies and other relevant documents.
  - Information on how to access board papers, minutes and all other related documents.

<sup>9</sup> Under NFP legal requirements, board members cannot be remunerated for the performance of their duties as a board member. However, schools may reimburse a member for a payment made in connection with the operation of the school.

- Expectations for board members:
  - The time commitment requirements (new board members should be provided with a schedule of board meetings and events).
  - Professional learning requirements and arrangements.
  - Procedures to assess board performance and the performance of members including KPIs.
  - The relationship between the board and the school executive.
  - Confidentiality obligations (new board members should be provided with a document outlining their confidentiality obligations to sign).

## Development of key performance indicators

Key performance indicators (KPIs) are measures that allow a board to monitor progress made by the board towards the achievement of core and strategic objectives. The core objectives of the school should be defined by the board with reference to the governing documents of the school. Strategic objectives should be detailed in the school's strategic plan.

One useful tool for designing effective KPIs is the SMART criteria that create specific, measurable, attainable, relevant and time-based KPIs.

High-level KPIs measuring the overall delivery of core and strategic objectives can be complemented with more precise KPIs measuring a range of specific factors that contribute to overall success. For example:

- Educational outcomes of students.
- Enrolment growth at the school.
- Compliance with legislation and government reporting requirements.
- Ensuring the school remains financially viable.
- Delivery of key operational initiatives

including school infrastructure.

KPIs should be designed by the school board in consultation with the board members, principal, and staff. Additionally, the board may engage an external consultant that can provide KPI expertise and guidance covering the design phase through to evaluation.

## Regular assessment of board performance

It is good governance practice to regularly review the performance of the board and individual board members. Annual assessments provide the opportunity for the board to reflect on strengths and opportunities for improvement. An assessment framework should be developed by the board to clearly establish the purpose, scope, method and outcomes of the assessment. Assessment may include:

- Analysing performance of the overall board against KPIs.
- Board members self-assessment of skills and performance.
- Board members peer assessments.
- An internal assessment of the board's development maturity and capabilities.
- Performance interviews with board members and executives.

Independent assessment is a good way to get an objective assessment of a board's performance. Independent assessments are conducted by external consultants. The findings and recommendations of an independent assessment also provide practical steps that a board can take to improve governance and board performance. Benchmarking performance is also a useful way to compare performance across years / with other schools. If an annual independent assessment of board performance is not possible, the board should consider rotating between internal and independent assessment.

The findings of an annual assessment

should be reviewed by the board and an action plan should be developed to address the findings of the assessment. Where the assessment finds that the board needs to develop a capability, the board should consider how this gap will be addressed.

Professional development of existing board members and recruitment of new board members may be used to address the capability gap (see **Good Governance Principle 3: Board structure and suitability of board members** for further information).

Individual board members should also reflect on the results of individual performance reviews and develop a professional development plan. The plan should address any gaps in knowledge and experience, allowing the board member to become a more effective contributor to the board.

The [Not-for-Profit Governance Compliance Self Check Tool](#) can also assist boards in assessing board performance against NFP requirements.

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## Case studies

### Case study A – Ineffective management of board performance

The Board of Time to Shine School has recently appointed a new board member named Kay.

The Chair of the board invites Kay to the next board meeting. Kay sends an email to the Chair asking if there are any documents to review before the meeting. The Chair informs Kay that all the documents needed will be provided at the meeting.

Kay attends the board meeting. The board discusses the need to engage a marketing consultant to promote the school. Kay has marketing experience and offers to provide marketing services. Kay is unaware of the NFP requirements under section 83C of the Act, the need to record and manage related entity transactions, and has not declared any conflicts of interest. The board doesn't want to waste time getting quotes and agree to hire Kay to lead the school marketing campaign.

Time to Shine School and Kay did not implement appropriate process when inducting a new board member. This could have been improved by:

- Providing Kay with a suitable letter of appointment and induction process which included information on requirements:
  - For boards to operate NFP under section 83C of the Act.
  - To declare and manage all conflicts of interest.
  - For recording and managing related entity transactions

Time to Shine School is now at risk of investigation and compliance action for a breach of NFP requirements contained in section 83C of the Act.

## Case study B – Effective assessment of board performance

Ace Ltd is the proprietor of Northeast College. Ace Ltd does not operate any other schools or businesses. Each year the Chair of Ace Ltd conducts an informal in-house review process which includes interviewing board members to collect their feedback on how they feel the board is operating and any suggestions to improve performance. The process is not documented and the Chair agrees to some of the ideas and implements some changes.

Other board members are concerned that some ideas to improve the school are not actioned by the Chair and that there is no objective process to monitor the delivery of new initiatives. The Board meets to discuss these concerns and decides to engage an external consultant to conduct an independent assessment of the board's performance. An independent consultant works with the Board to design and conduct an assessment that measures the maturity of the Board and the capabilities of each board member. The assessment also reviews the Board's compliance with NFP obligations contained in section 83C of the Act.

The findings of the review are provided to the Board. The Board considers the report findings and develops an action plan to address each of the recommendations. The action plan details the:

- Steps the Board will take to address each of the recommendations.
- Person(s) responsible for delivering on the recommendation.
- Time-frame in which the recommendation will be delivered.

The Board works together to deliver the agreed actions within the deadlines they have set. The action plan is included as a standing item for each meeting of the Board so that the Board is updated on the progress made to deriving the action.

The board members agree that the external review and action plan have helped improve board performance and have strengthened their compliance with section 83C of the Act. The Board can see the value of conducting an external review annually however, due to budget restraints, the Board agrees to rotate between an external and internal review each year.

The Board effectively assessed board performance as they:

- Independently assessed the board's performance and made recommendations for improvements.
- Assessed against specific performance indicators, including NFP legal obligations.
- Participated in an open board discussion to develop an action plan (with identified timeframes) to address recommendations.

Made the action plan a standing board meeting item to regularly update progress.

# Good Governance Principle 8 – Manage risk

This section explores **Good Governance Principle 8: Manage risk**. The principle states that:

*'Boards should have appropriate risk management and internal control systems in place. These should be reviewed regularly to ensure their effectiveness.'*

Managing risk is an essential part of school governance. Having effective risk management processes in place allows school boards to improve decision making, appropriately plan, make financially sound decisions and minimise the risk of not meeting their legal obligations, including a school's obligation to operate on a NFP basis under the Act.

The key elements of this principle, outlined in the following sections, are:

- [Embedding oversight of risk into board operations](#).
- Encouraging board members to seek information about managing risk.
- Regular review of the school's risk management framework.

## Embedding oversight of risk into board operations

School boards are responsible for ensuring their schools meet all legal and compliance obligations. Embedding oversight of risk into the board's operations is an important step in ensuring board decisions do not trigger non-compliance with the school's obligation to operate on a NFP basis under the Act. An important first step to embedding risk management into board operations is to adopt a suitable risk management framework. Australia Risk Management Standard AS/ISO 31000:2018 is a robust risk management framework implemented by many public and private

organisations and is a useful tool to assist in managing all types of risks including financial, safety, project and operational risks, etc.

## Risk Management Framework

A risk management framework provides school boards with a structured, clear approach to identifying, assessing and managing risk. It outlines clear duties and expectations for responsible persons and establishes processes to assess and manage risk. It should be easily accessible by board members, senior school executive staff and other stakeholders and should be reviewed at least annually.

Key factors included in a risk management framework are:

- Risk identification and setting a risk appetite.
- Risk measurement and assessment.
- Risk mitigation.
- Risk reporting and monitoring.
- Timing and process for reviewing (at least annually).

The risk framework should be used by the school board when making key decisions to ensure those decisions do not place the school or their students at risk.

In order to meet registration and accreditation requirements under the Act, school boards must have policies and procedures in place that manage risk. Details on these risk management requirements can be found in the [NESA Registered and Accredited Individual Non-government Schools \(NSW\) Manual](#).

Establishing and maintaining [conflict of interest](#) and [related entity transaction](#) policies and registers is an important part of managing risk in relation to complying with legal requirements.

**Good Governance Principle 4: Timely**

**and full disclosures** provides detailed information on how boards can meet these obligations.

## Encouraging board members to seek information about managing risk

“The role of the board is to understand the organisation’s risk, to make decisions based on this understanding and to oversee a framework that manages risk on an ongoing basis.”<sup>10</sup> Seeking information about managing risk will help board members effectively identify and address that risk. Board members should:

- Expand their governance skills by learning more about risk and its management.
- At a minimum, one school board member should have experience, qualifications and/or skills in risk management. Independent and expert advice should be sought if none of the current board members have that expertise.
- Be aware of the internal controls in place at the school to minimise risk, including the risk of fraud or mismanagement. These controls could include policies, appropriate delegations or other forms of IT based checks and balances.
- Seek independent and expert advice on how to manage risk to the school.

The AISNSW has modules on risk management that Board members could be encouraged to complete as part of their induction.

The ACNC also includes managing risk as part of their Governance Standards.

Professional learning in risk management is also a NESA requirement.

## Regular review of the school’s risk management framework

Completing regular reviews of the risk management framework allows boards to assess the effectiveness of their risk management processes within the current environment and adjust where required.

Timing of reviewing risk management processes depends on the operational needs of the school. At minimum, an annual review is recommended. The board may also review the processes if a significant change or a new major risk arises at the school.

The review can be completed by the board itself or through an audit and risk committee.<sup>11</sup> It is recommended that external independent advice is sought to inform the review. Importantly, individuals responsible for the review should be appropriately experienced, qualified and/or skilled.

## Case studies

### Case study A – Effective risk management

Cherrytree School is considering purchasing land next to the school, where it plans to build new facilities to support increases in enrolments. The land is owned by a relative of one of the board members, making it a related party transaction.

<sup>10</sup> <https://aicd.companydirectors.com.au/resources/not-for-profit-resources/not-for-profit-governance-principles/principle-5-risk-management>

<sup>11</sup> A Risk Committee is a sub committee of the school board that has the principal responsibility for overseeing implementation of risk management processes and policies at the school. Membership should include at least one person with experience qualifications and/or skills in risk management.

The Board uses the risk management framework to identify and manage the risks associated with the purchase. The framework allows the Board to highlight the following:

- The related party transaction increases the risk of the school being non-compliant with its obligation to operate on a NFP basis under the Act. To mitigate the risk, it is recommended that:
  - Details of the relationship are recorded in the school's related party transaction register.
  - The Board member related to the land owner excuses themselves from the decision-making process and all correspondence/reports on the matter
  - Independent valuations of the land are obtained to confirm market value.
  - An independent financial viability assessment of the plans to expand the school is completed; this includes analysis of enrolment projections, competing school sites in the area, future land releases, likely land purchase, construction and any other associated costs and considerations.
  - Identify all development issues (council zoning limits etc) and establish plans to mitigate any risks.

The Board practiced appropriate risk management as they used a sound risk management framework and processes to identify and consider the risks associated with the purchase.

The Board (minus the related party) can now make an informed decision, having identified and mitigated or resolved all financial and other risks associated with the purchase.

### **Case study B – Ineffective risk management**

Southside School has a new board, as 5 of the 6 previous members retired recently. The new Board has been serving for approximately 12 months. The Board decides to hire a contractor for ongoing maintenance work and building upgrades around the school. At a board meeting the Board discusses:

- What works need to be done.
- The budget available.
- When the works need to be completed.

During the meeting one board member suggests a friend, who runs a local company, to complete the work. The board member obtains a quote from their friend and presents it at the next meeting. The board members all vote to proceed with appointing this company to complete the works and signs a 5 year contract with the company. No conflict of interest or related party declarations are made.

While the board has an established risk management framework and procurement policy, these are not considered in the discussion. No risks are



considered, specifically reputational or operational risks, for example student safety while the works are completed, and whether the contractor is qualified and insured. All board members are yet to complete any risk management training.

The Board **did not** effectively manage risk, as it failed to:

- Use its risk management framework to identify and manage the risks associated with the contract (including risks associated with related party transactions).
- Identify how its decisions increased the risk of not meeting the school's obligation to operate on a NFP basis under the Act.
- Ensure board members completed training in risk management and understood their obligations.
- Assess and address other risks (not directly related to NFP operation) such as:
  - student safety while the works were completed
  - reputation and stakeholder risks
  - whether the contractor is qualified and has appropriate insurances.

Failing to manage their risk meant the school also faced compliance action for breaching their NFP obligations with the related party transaction.



# Good Governance Principle 9

## – Responsible management of finances

This section explores **Good Governance Principle 9: Responsible management of finances**. This principle states that:

*'Boards must ensure all school financial affairs are managed responsibly. This includes implementing clear processes that enable appropriate financial management, reporting and maintenance of records as per legal requirements. It is a responsibility of the board to inspect financial statements and identify any inconsistencies or concerns. Boards are also responsible for ensuring the proprietor/school does not operate while insolvent.'*

Ensuring a school operates in a way that meets NFP requirements rests solidly on the board's responsible management of school's finances. The key elements of this principle are:

- Clear financial management processes.
- Regular review of financial information.
- Financial reporting processes are legally compliant.

### Clear financial management processes

School boards make significant financial decisions on behalf of the school they represent so it is critical that they put in place robust processes to manage their financial operations. In order to meet NFP legal obligations, boards must ensure that school income (including assets) is used only for the operation of the school and for the education of its students.

As part of putting in place clear financial management processes a school board

should:

- Be aware of its financial responsibilities, including reporting requirements, to all regulatory bodies and spending in line with funding requirements.<sup>12</sup>
- Ensure external advice (for example, auditors) is independent, clear and accurate.
- Ensure all board members are aware of their collective responsibility in relation to insolvency.
- Ensure all members have an ability to interpret financial statements, in addition to at least two members with strong financial management skills/ experience.

School boards need to be confident there are transparent and robust management processes in the day-to-day management of school finances to ensure the right information is provided to the board.

The board's oversight should include:

- Regularly reviewing financial management policies and processes (for example, delegations, fraud prevention, conflicts of interest and procurement) and compliance.
- Having confidence that the school's senior finance staff have the skills, qualification and experience to undertake the role to a high standard.
- Budget approval, closely examining financial reports prepared by the school and having the confidence in the integrity of the reports (questioning whether cash flow projections are realistic).
- Regularly reviewing the school's

<sup>12</sup> These include the department, ATO, NESAs, ACNC, and DESE.

finances to ensure the schools budget supports its strategic plan.

- Being aware of the schools' internal financial controls<sup>13</sup> to protect against misuse of the school's income. Controls can include proper authorisations and segregation of duties, for example, staff responsible for accepting school fee payments do not also bank the deposits.
- Good governance policies including conflict of interest, document retention, code of ethics and whistleblower policies.

Good financial management at a school involves the board and the school executive developing a relationship based not only on trust but also on critical assessment of the information provided to the board.

## Regular review of financial information

The board is ultimately responsible for the school's financial activities including its viability, and as such should receive regular and structured financial information including cashflow and budgets versus actual expenses and income of the school. In addition to verifying that the school is meeting its budget targets, the board should look beyond periodic financial reports to consider how the school's current financial performance compares with that of previous years, and how its financial future appears.

All board financial decisions should be made in accordance with the school's strategic plan, a plan which should be reviewed and assessed regularly. The board should set and review key performance indicators (KPIs) centred around the priorities of the strategic plan.

All board decisions should refer directly to one, or more KPIs. (More information on setting KPIs can be found in **Good Governance Principle 7: Assessment of board performance**).

All board members should feel confident they are making decisions based on sound advice. Given the complexity of the financial decisions, boards can also benefit from seeking independent advice to specific activities (note that independent financial advice is a requirement in some circumstances).

At board meetings all members should be actively encouraged to interrogate financial information. It is good practice to have the school's independent auditor present the annual audit report so that board members can ask questions. Additionally, the Chief Financial Officer (CFO), or the most senior financial school staff member should regularly report to the board and be available to answer questions.

Some schools may benefit from having a separate financial/audit subcommittee that reports back regularly to the board. Membership of a subcommittee can include independent external people with financial expertise that can help improve the integrity of financial decision making of the board. For schools with small boards or that oversee less complex financial decisions, a subcommittee approach may not be the most suitable. Instead, the board should implement other robust processes to ensure the integrity of its financial reports and decision making.

Another good practice is to have a standing agenda item on assessing the financial health of the school. To assist the board in this assessment, financial reports should include financial health ratios such as liquidity ratios,<sup>14</sup> solvency ratios,<sup>15</sup>

<sup>13</sup> Financial controls are processes in place to detect and prevent errors, theft or fraud, or non-compliance with regulatory requirements.

<sup>14</sup> Does the school have sufficient cash assets (or assets that can quickly be turned into cash) to meet its current debts, with a margin of safety?

<sup>15</sup> Does the school have sufficient assets (outside of cash assets) to meet all its debt obligations and still be able to remain in operation?

management ratios,<sup>16</sup> and balance sheet ratios.<sup>17</sup>

## Financial reporting processes are legally compliant

School boards are legally obligated to report on financial information to a variety of jurisdictions. It is good practice for boards to maintain a comprehensive compliance calendar which sets all key reporting requirements (both specific reporting obligations with due dates and passive compliance requirements). The calendar should include all dates and all actions required by the school and the board.

Boards should pay close attention to the specific requirements for financial reporting as these may vary and compliance action may be taken if boards do not provide the required information. For example, if a board does not respond to an information direction request under their NFP legal obligations, the Minister may declare the school a non-compliant school and recover state funding.

Boards should also ensure financial decisions are accurately and transparently recorded and that records are maintained for legally required periods (refer to **Good Governance Principle 6: Integrity in Reporting** for further information on board documentation).

## Case studies

### Case study A – Effective processes for the responsible management of finances

Smart Kids Academy is a medium-sized metropolitan school. The proprietor of Smart Kids Academy is Smart Kids Ltd. Smart Kids Ltd does not operate any other businesses or schools and has a board of 7 members.

All board members of the school participate in annual financial management training and 4 of the 7 members have qualifications and professional experience in financial management.

At the next board meeting, the board is due to review the school's audited financial statements. Annual financial reports have been prepared by an independent ASIC certified auditor. The report is circulated to board members along with a cover paper prepared by the Chief Financial Officer (CFO) 2 weeks before the board meeting. The CFO and the auditor will attend the board meeting to provide feedback on the report and answer any questions members may have.

At the meeting, a board member notes that while the school is identified as a 'going concern', financial viability is dependent on loans not being recalled and the continuation of government funding. The comments are noted in the minutes and the board agrees to review its financial position at its next meeting with a view to reducing these potential financial risks. The board asks the CFO to draft a report on options to increase the liquidity position of the school over the next 3 years while ensuring all legal requirements, including NFP requirements, are met. The report will be considered by the board at a future meeting to decide on future steps.

The board has good practices in place for the responsible management of its finances as:

<sup>16</sup> Does the school manage its cash flow well?

<sup>17</sup> Does the school manage its assets efficiently to ensure the ongoing financial health of the school?

- All board members are trained in financial management annually.
- Several members have appropriate financial skills and qualifications.
- Financial reports have met the school's legal obligation to be completed by an independent ASIC certified auditor.
- The CFO and auditor attend the board meeting so members are provided with the opportunity to ask questions and seek clarification on the information contained in the report.
- Action is taken by the board on the information contained in the report to improve the financial viability of the school while being conscious of the school's obligations to operate NFP.

### **Case study B – Ineffective processes for the responsible management of finances**

Western Region College is a medium-sized regional school. The proprietor of Western Region College is Academics Ltd. Academics Ltd does not operate any other businesses or schools and has a board of 5 members.

The Chair of Academics Ltd has engaged his cousin's IT company which will provide services for the school. There is no record of board consideration or approval of the engagement in the board minutes. The IT services company does not specialise in educational software. The school does not have a formal contract with the company and did not seek quotes from other companies. The company has so far been paid \$85,000.

The Board has not entered the transaction into the related party transactions register and the company has not made a declaration of the relationship. The school also does not have a procurement policy resulting in decisions being made without proper processes in place.

The Board has not practised good financial management as:

- An undeclared related entity has been engaged to provide services to the school.
- There is no evidence of independent market testing, no board consideration of engagement and no formal contract between the provider and the school to formalise the terms of services to be provided.
- The Board does not have a procurement policy to ensure due process is followed when considering engaging contractors for the school.

# Good Governance Principle 10 – Accountability to stakeholders

This section explores Good Governance Principle 10: Accountability to stakeholders. The principle states that:

*'Boards should always take reasonable steps to be transparent and accountable to their stakeholders. Stakeholders of non-government schools include but are not limited to, company members, school employees, parents, students, alumni, government funders and regulators. Boards should keep stakeholders appropriately informed of their key decisions and the school's activities. At the same time, stakeholders must be given adequate opportunities by the board to voice any concerns or questions they have about how the school is being managed.'*

'A key indicator of a successful school board is a strong collective and individual sense of accountability.'<sup>18</sup>

Accountability of school boards is the processes through which boards meet the expectations of their stakeholders and transparent board operations enables boards to demonstrate this accountability. Implementing processes to ensure accountability for decision making helps to establish trust and engagement with stakeholders. It also ensures schools meet their regulatory requirements, including the requirement to operate NFP under section 83C of the Act. The key elements of this principle are:

- Understanding who the school stakeholders are and responding appropriately.
- Following an established framework for engagement

- Transparent processes for seeking and responding to feedback

## Understanding and responding to school stakeholders

An essential part of a school board's governance is understanding who the stakeholders in a school are and what are the responsibilities towards them.<sup>19</sup>

Stakeholders in a school typically refers to anyone invested in the welfare and success of the school including (but not limited to):

- Students and their families.
- Teachers and other school staff.
- Government regulators and funders (that is, the department, NESAs, DESE and ACNC).
- Alumni.

Part of schools being accountable to funders and regulators includes meeting all legal and reporting requirements. This includes ensuring records and processes demonstrate schools are meeting the requirement to operate not-for-profit under the Act. More information is available in **Good Governance Principle 9: Responsible management of finances.**

Boards can demonstrate accountability to stakeholders by:

- Ensuring they meet their identified roles and responsibilities.
- Completing all reporting requirements on time and to the required standards (financial reports, annual reports etc).
- Holding annual general meetings.
- Ensuring board recruitment and

<sup>18</sup> Gilchrist, D., Knight, P (2015). Research into developing highly effective school boards for independent public schools. Curtin University. Retrieved from: <https://www.education.wa.edu.au/dl/69o64e>

<sup>19</sup> The stakeholders and responsibilities discussed here do not override the legal obligations of a board.

election processes are open and transparent (see **Good Governance Principle 3: Board structure and suitability of board members** for more information).

- Implementing policies and processes for the transparent management of complaints and feedback.
- Considering the impact on all relevant stakeholders as part of board decision making processes.

### Following an established framework for engagement

Boards should establish a stakeholder engagement framework, which clearly outlines the stakeholders and the processes through which the board will engage with each group.

The framework should include a communications process, which specifies:

- What information is provided to stakeholders (rationale for withholding any information).
- When it is communicated.
- How it is communicated (that is, regularly scheduled newsletters, board updates on the school's webpage and/or through open annual general meetings).
- Accessibility of communication (using a diverse range of approaches to ensure equitable participation of all stakeholder groups (that is, developing communications that meet the needs of people with a disability and/or from other cultural and language backgrounds).

Schools need to keep stakeholders informed regarding the purpose and strategic direction of the school, school development, and incidents (including any breaches of their NFP requirements under section 83C).

Boards that engage with stakeholders to establish their strategic plan can benefit from this greater input. Boards should consider the views and interests of the stakeholders as it can lead to better and more balanced decision making in pursuing the organisations purpose.<sup>20</sup>

### Transparent processes for seeking and responding to feedback

Boards must have effective, clear and accessible policies for managing stakeholders' feedback, including complaints.<sup>21</sup> These will assist the board in their role as they will provide an opportunity to learn and improve on current processes. Effective complaints handling procedures can help the board to identify and resolve issues before they escalate, saving the school time and money.

Policies and processes for managing stakeholder complaints and feedback should be easily accessible on the school's website. The policy should clearly outline:

- How complaints/feedback should be submitted (to who, what information to include, where follow up is sought from the individual, etc).
- The process that takes place once a complaint/feedback is submitted.
- Timeframes for responding.
- Who will deal with the complaint.
- Potential outcomes.

Stakeholder feedback policies should also include processes for the board/school to seek feedback on certain school strategic matters (where appropriate). For example, this may include issuing a survey to students and their families concerning future infrastructure demands to meet student needs.

Not all feedback will require action from the board but it is good practice for

<sup>20</sup> <https://aicd.companydirectors.com.au/resources/not-for-profit-resources/not-for-profit-governance-principles/principle-8-stakeholder-engagement>

<sup>21</sup> Note that Schools are also subject to the mandatory Whistleblower policy requirements for companies under the [Treasury Laws Amendment \(Enhancing Whistleblower Protections\) Act 2019 \(Act\)](#).

boards to maintain a feedback register as it is a useful resource to inform future decisions of the board.

Annual General Meetings (AGMs) provide a good opportunity for boards to report to their stakeholders on the previous year's activities. Stakeholders should be informed in advance of when the AGM will occur and details of the meeting,

including to what extent they are able to participate (that is, as observers, able to ask questions, or participate in discussions on particular matters).<sup>22</sup> Documentation should be made available to attendees prior to the meeting including an agenda and any relevant reports to be discussed (that is, annual financial statements).

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## Case studies

### Case study A – Ineffective stakeholder accountability processes

Eagle Ltd is the proprietor of Eagle School and does not operate any other schools or businesses. Eagle School is a medium sized school that has been operating for 5 years. The Board does not have an established framework for communicating with stakeholders. The only form of communication is a 'news' section on the school's website which details school events such as the swimming carnival, and student achievements. Annual General Meetings are only attended by Eagle Ltd board members. There is no accessible or clear complaints management policy. The school's website does include a link to a 'complaints and feedback form' but it does not include details about who the complaint goes to, or how it is dealt with.

The Board has noticed a drop in enrolment and an increase in students withdrawing from the school. Parents who have withdrawn their children have said they are unhappy with the lack of communication on key strategic matters for the school. It is noted several parents have submitted complaints about some of the school operations and have not received a response.

The Board does not have good stakeholder accountability processes in place, as they failed to:

- Understand their responsibilities to stakeholders.
- Establish and use a framework for engaging with stakeholders.
- Create a clear and transparent complaint and feedback process.
- Notify stakeholders of the AGM.
- Provide regular updates to stakeholders regarding the strategic direction of the school.

<sup>22</sup> Generally, participation at the school AGM will be limited to the school/ proprietor's members (or as otherwise specified in the school's constitution). Other key stakeholders can observe but may not typically be able to actively participate.



## Case study B – Effective stakeholder accountability processes

Albatross Ltd is the proprietor of 2 schools. The Board has recently decided to rebrand the schools and has conducted a survey on a small group of parents, students and teachers to help them develop several options. Once the options have been developed, they plan to do a presentation to notify all relevant stakeholders (students, parents, teachers and other staff) of the options.

The Board follows its framework for engaging with stakeholders and sends out a newsletter advising them of the expected changes. It also includes details of a meeting they are holding to discuss the options for rebranding, where stakeholders can provide feedback on the proposals.

At the meeting, the Board Secretary notes all feedback received from stakeholders and this information is considered at the next board meeting when deciding on the preferred rebranding for the school. After the Board agrees to the preferred option, the Chair updates the school website, to inform stakeholders of the outcome and provide details for the transition to the new branding for the school.

The Board practised good accountability to stakeholders as they provided:

- Regular updates to stakeholders.
- Followed their engagement and communications frameworks.
- Provided transparent and timely communications to stakeholders regarding the outcome of the board decision.
- A forum where stakeholders could directly engage with the Board and provide feedback.



## Further information

If you require further information or would like to receive notification of newsletters and advice, please email relevant contact details (name/position and email address) to [NGS-Compliance@det.nsw.edu.au](mailto:NGS-Compliance@det.nsw.edu.au).

You may wish to share this information with board members, Diocesan representatives, senior staff, financial administrators and auditors.

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