



# RELATED PARTY TRANSACTIONS POLICY

## Marist Schools Australia Ltd

### Related Party Transactions for Marist Schools Australia Ltd

#### 1. Preamble

Marist School Australia Limited (MSA Ltd) is a not-for-profit public company limited by guarantee. It is a charity registered with the Australian Charities and Not-for-Profits Commission (ACNC), with the purpose of advancing education and advancing religion.

MSA Ltd was established with the aim to strengthen the governance of the Education Ministry, previously conducted by the Trustees of the Marist Brothers. MSA Ltd operates, manages and operates the Colleges which are registered non-government schools (and include registered school boarding premises) all of which are located in and operating in Australia. MSA Ltd is focused on ensuring that MSA Ltd and in particular the Colleges follow all principles of good governance so as to ensure compliance with Australian legislation including the Education Legislation and provide a safe environment for our students.

#### 2. Purpose of this Policy

Related Party relationships and Related Party Transactions are likely to occur regularly, particularly for registered charities. It is recognised that these transactions are a source of risk for registered charities, particularly those that operate registered non-government schools.

This Policy aims to assist with the good governance of MSA Ltd and the Colleges, including to ensure processes are followed by the Board of Directors, other Responsible Persons and employees of MSA Ltd, to ensure that MSA Ltd and the Colleges satisfy their compliance obligations, particularly in relation to effective financial reporting by the disclosure of all Related Party Transactions and compliance with the “not-for-profit” requirements under the Education Legislation.

The purposes of this Policy are to provide the Board of Directors, other Responsible Persons and employees of MSA Ltd with:

- (a) Guidance on identifying Related Parties and Related Party Transactions for all Responsible Persons and employees of MSA Ltd.
- (b) A process for declaring and managing proposed and concluded Related Party Transactions and guidance on the expectations and commitments of MSA Ltd in relation to Related Party Transactions, including guidance for the disclosure of Related Party Transactions.
- (c) Guidance on recognising proposed transactions which, if entered into by MSA Ltd and which relate to a specific College (or more than one of them) would cause one or more of the Colleges to contravene the Education Legislation including to cause a College to cease operating on a “not-for-profit basis” within the meaning of the Education Legislation.
- (d) A process for recording and ensuring effective and compliant disclosure of Related Party Transactions in the financial reports of MSA Ltd and in the financial reports of each of the Colleges.

### **3. Scope**

This Policy applies to all Responsible Persons of MSA Ltd, as defined in the MSA Ltd Responsible Persons Policy and to all employees of MSA Ltd.

- the Directors and the Member of MSA Ltd (including the MASMC Ltd Members and the MASMC Ltd board of directors, Trustees of the Marist Brothers and the Provincial and the Provincial Council)
- Members of MSA Board Committees
- the National Director MSA and other members of Executive Management with decision making authority over the finances, management or operations of MSA;
- Principals, Deputy Principals, Business Managers and other College executives and College staff with decision making authority over the finances or management of the College;
- Any other person who by their conduct assumes a position of authority over the governance or management of MSA Ltd and/or the Colleges, including school boarding premises.

All Responsible Persons and employees of MSA Ltd must identify, report, and declare Related Party Transactions, so they can be monitored and reviewed. This Policy identifies the role of those persons and provides them with a guide when they are required to identify, declare and manage Related Party Transactions.

This Policy should be read in conjunction with the MSA Ltd Conflicts of Interest Policy and the MSA Ltd finance policies.

#### **4. Financial Reporting Requirements**

As the governing body for MSA Ltd, the Board of Directors is ultimately responsible for the compliance of MSA Ltd with Australian Law including the ACNC Act and the reporting requirements of the Australian Accounting Standards Board (AASB).

As a company registered with ASIC, a charity registered with the ACNC and as the proprietor of registered non-government schools in Australia, MSA Ltd is required to prepare and have audited annual financial reports for each College that comply with the Australian law including the Australian Accounting Standards as issued by the AASB, including from 1 July 2023, AASB 124 *Related Party Disclosures* (AASB 124). MSA Ltd is defined as a large charity under the ACNC Act and has the option to prepare consolidated financial statements encompassing all of its operations. The ACNC has the discretion whether to allow or to not allow the submission of the consolidated financial statements.

AASB 124 aims to ensure that an entity's financial statements contain the disclosures necessary to draw attention to the fact that the financial affairs may be affected by the existence of related parties and transactions with or commitments to related parties.

The Board of Directors have resolved to adhere to the reporting requirements under AASB 124 Related party Transactions prior to the mandatory reporting commencement date of 1 July 2023, as the Board of Directors considers it imperative for the company to adopt a best practice approach in relation to reporting related party transactions from the date of its incorporation.

More particularly, as the Board of Directors have the responsibility to ensure that the Company's financial statements provide accurate, complete and transparent accountability to the Member of MSA Ltd and to regulators, the Board of Directors seek to fulfil their obligations by adopting a best practice approach in relation to reporting related party transactions including adhering to the AASB 124 reporting requirements ahead of the mandatory commencement date.

The Board of Directors are aware that this level of disclosure is aimed to inform third parties when assessing the operations, risks, opportunities and viability of MSA Ltd and whether it has met its compliance obligations under the Education Law.

The definition of a Related Party is set out in section 9.2 of this Policy.

#### **5. ACNC Governance Standard 5**

As a registered charity, MSA Ltd is required to meet the ACNC Governance Standards, as amended from time to time. The Board of Directors, individually and collectively, are responsible for ensuring that MSA Ltd meets the ACNC Governance Standards. The ACNC Governance Standards set core, minimum governance standards that all charities must meet.

Governance Standard 5 requires MSA Ltd to take reasonable steps to make sure that the following duties apply to Responsible Persons and that they follow them. The duties include:

- (a) to act with reasonable care and diligence;
- (b) to act honestly and fairly in the best interests of the charity and for its charitable purposes;
- (c) not to misuse their position or information they gain as a Responsible Person;
- (d) to disclose conflicts of interest;
- (e) to ensure that the financial affairs of the charity are managed responsibly; and
- (f) not to allow the charity to operate while it is insolvent.

In addition, Responsible Persons should act with standards of integrity and common sense.

It is expected that compliance with this Policy and the Conflict of Interest Policy will assist the Board of Directors in ensuring that MSA Ltd complies with Governance Standard 5, as well as compliance with all registration obligations pursuant to the Education Legislation and as set out in **Schedule 2**.

## **6. Registration Requirements**

### **6.1 General Principles**

- (a) MSA Ltd operates, manages and conducts the Colleges which are registered non-government schools and registered school boarding premises operating in Australia. Ensuring the good governance and compliance of the Colleges with Australian Legislation is a fundamental responsibility and one of the primary purposes of MSA Ltd.
- (b) Registered non-government schools (and in some cases registered school boarding premises) are required *not to operate for profit* as defined under the Education Legislation in the relevant jurisdictions. MSA Ltd is cognisant that this is a stricter standard than what is applied to other registered charities that do not operate non-government schools and registered school boarding premises.
- (c) It is recognised that Related Party Transactions cause conflicts of interest and that Related Party Transactions have the potential to cause financial risk, compliance risk and reputational risk for MSA Ltd and the Colleges.
- (d) It is generally a requirement for the operators of registered non-government schools and registered school boarding premises in the relevant jurisdictions to have in place and implement policies and procedures regarding identifying Related Parties and identifying, declaring and managing Related Party Transactions.
- (e) Given that the Colleges operate in different state jurisdictions as well as being incorporated and regulated at the Federal level, so as to ensure compliance with the

Education Legislation in all jurisdictions, MSA Ltd has adopted in this Policy the strictest standards found in all of these jurisdictions.

- (f) Additional requirements for Related Party Transactions in regards to Colleges registered in NSW are set out in **Schedule 3**. Additional requirements for Related Party Transactions for Colleges registered in Victoria are contained in **Schedule 4**. Additional requirements for Colleges registered in Queensland are contained in **Schedule 5**. Colleges registered in jurisdictions that do not have additional requirements are required to adhere to this policy and any compliance requirements, Ministerial Orders and/or minimum standards for registration that apply from time to time, including in regards to any related party transactions.

## 7. Interpretation

- (a) The following definitions are used in this document:

**“ACNC”** means the Australian Charities and Not-for-profits Commission established under the ACNC Act.

**“ACNC Act”** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth) as amended from time to time.

**“ASIC”** means Australian Securities and Investments Commission.

**“Colleges”** means the Registered Non-Government Schools (including in some cases school boarding premises and the Registered School Boarding Premises) located in and operating in Australia which are listed in Part 1 of Schedule 1 and such other colleges as the Company may establish or acquire and govern, manage and conduct (from time to time) being educational institutions offering primary and secondary schooling.

**“College foundations, funds and trusts”** means those charitable foundations, funds and trusts operated by the Colleges for the purpose of charitable fundraising and listed in Part 2 of Schedule 1.

**“Corporations Act”** means the Corporations Act 2001 (Cth) as amended from time to time.

**“Directors”** means collectively the Board of Directors of MSA Ltd.

**“Education Legislation”** means the laws of Australia applicable to MSA Ltd including the Colleges, including separately as Registered Non-Government Schools, school boarding premises and as Registered School Boarding Premises under MSA Ltd’s proprietorship, from time to time including the Australian Education Act 2013 (Cth), the Australian Education Regulation 2013 and the Education Acts (by whatever name) and Regulations made under those Acts, applicable in the states and territories in which the Colleges operate, as amended from time to time. The Education Legislation governs registration, regulation and funding of the Colleges. The Education Legislation includes legislative instruments made under Acts and Regulations such as Ministerial Order 1359 which applies to the Colleges located in and operating in Victoria, the Education and Training Reform Act 2006 (Vic) in so far as it applies to the Colleges including separately as the Registered Non-Government Schools and as the Registered School Boarding Premises

located in and operating in Victoria and other instruments, ministerial orders, guidelines and registration requirements applicable in the states and territories in which the Colleges operate, as amended from time to time.

**“Executive Management”** means the National Director MSA (who is the Chief Executive Officer appointed pursuant to clause 25(b) of the MSA Ltd Constitution), Regional Directors, MSA Head of Business and all other members of the MSA executive, as determined by the National Director MSA from time to time.

**“Institute”** means the Catholic Religious Institute known as the Marist Brothers (also known as the Marist Brothers of the Schools).

**“MASMC Ltd”** means Marist Association of St Marcellin Champagnat ACN 653 757 870.

**“MASMC Ltd Members”** means the members of MASMC Ltd ABN 32 653 757 870.

**“Member”** and **“Member of the Company”** means the sole Member of MSA Ltd. On incorporation of MSA Ltd, the sole Member of the Company is MASMC Ltd.

**“Marist member schools”** means non-government Catholic Schools which are not governed by MSA Ltd which receive paid education services provided by MSA Ltd.

**“Marist Schools Australia”** or **“MSA”** is the executive office operated by the Company to support the Colleges in a manner that fulfils the Marist mission and vision of the Company in its work and activity in Catholic education. Spirituality, faith formation, contemporary educational practice, human resource leadership, financial planning and management, administration, child safeguarding, and compliance support are key features of MSA's support for the Colleges. Marist member schools are supported by MSA through a range of paid programmes, resources and activities. The Executive Management of the Company is comprised of key positions of leadership and responsibility who are engaged in Marist School Australia.

**“Province”** means the Australian Province of the Institute until 8 December 2022 after which time the Province will be the Marist Brothers Star of the Sea Province for Australia, New Zealand and countries in the Asia Pacific region of the Institute.

**“Provincial”** is the leader of the Province.

**“Provincial Councillor”** means a member of the leadership team of the Province, for the time being (by whatever name then called).

**“Related Party Transaction”** is defined in AASB 124 as a transfer of resources, services or obligations between a reporting entity and a related party as defined under AASB 124 and set out in section 9.2 of this Policy, regardless of whether or not a price is charged.

**“Responsible Persons”** means the Responsible Persons as defined in the Responsible Persons Policy, and in any case, includes:

- (i) MSA Ltd and any person who is concerned in, or takes part in, the management of MSA Ltd or each person that exercises decision making authority within or over MSA Ltd, including Executive Management,

- (ii) each person with decision making responsibility in the governance structure of MSA Ltd including decision making involving managing the operation of each College or its finances. This includes Directors of MASMC Ltd , as well as any other persons or entity vested with reserve powers in accordance with the Constitution which constitute decision making responsibility in the governance structure,
- (iii) each member of the governing body of MSA Ltd, being the Board of Directors of MSA Ltd,
- (iv) the principal or head of each College, deputy principals and each of the Colleges' business manager(s); and/or
- (v) any other person who by the person's conduct assumes a position of authority over the governance or management of MSA Ltd and/or the College(s) including making management decisions such as members of any Committees established by the Board of Directors of MSA Ltd in accordance with the Constitution;

**“Secretary”** means any person appointed for the time being to perform the duties of a Secretary of MSA Ltd as set out in clause 25(a) of the MSA Ltd Constitution.

**“Trustees of the Marist Brothers”** means Trustees of the Marist Brothers ARBN 064 875 510, a body corporate pursuant to the provisions of the Roman Catholic Church Communities' Lands Act 1942 (NSW).

- (b) This Policy should be read in conjunction with the MSA Ltd Constitution, as well as the policies and legislation listed in **Schedule 2** as amended from time to time. In particular, this Policy should be read in conjunction with the relevant Financial Management Policy & Framework, Conflicts of Interest Policy, Delegations Policy and Matrix, and the Responsible Persons Policy. Where this Policy is inconsistent with any relevant Australian legislative provision, the legislation prevails to the extent of the inconsistency.
- (c) Expressions used in this Policy but not defined have the same meanings as they are given in the MSA Ltd Constitution.

## 8. Principles

To maintain good governance in the operation of the Colleges and to ensure compliance with its reporting requirements and the Education Legislation, MSA Ltd, as the operator of registered non-government schools and registered school boarding premises in Australia is committed to the following Principles:

- (a) that all Related Party Transactions are conducted as if the parties were independent , in accordance with the ‘arm’s length’ principle detailed in section 9.1of this Policy;
- (b) that the Colleges are not operated ‘for profit’ as defined under the Education Legislation including in accordance with the specific legislative requirements in the relevant jurisdiction in which a College operates, including any additional requirements as set out in **Schedules 3 to 5** inclusive, and further that:
  - (i) the Colleges are not established to generate profit or gain, and are established to operate at all times as not-for-profit;

- (ii) the assets, income and property received or generated by a College is only used for the operation and conduct of that College and not for any other purpose; and
  - (iii) the College and MSA Ltd as the governing authority of the College is not party to any prohibited agreement, arrangement or other such payment, pursuant to the Education Legislation, and.
- (c) that all processes concerning Related Party Transactions are transparent and documented,
  - (d) that the approval of the Board of Directors (or appointed Delegate where appropriate, in accordance with the MSA Ltd Delegation Policy and Delegations Matrix) is sought and granted before MSA Ltd enters into any Related Party Transactions or associated payments;
  - (e) that relevant policies, practices and procedures that apply to Responsible Persons and staff for the Colleges are not inconsistent with and comply with this Policy;
  - (f) MSA Ltd is committed to maintaining compliance with the Australian legislative framework, as well as ensuring all decisions are made in the best interests of MSA Ltd including for each separate the College.

## **9. Explanation of concepts used in this Policy**

### **9.1 Arm's Length Principle**

The phrase 'arm's length' refers to a relationship between parties where:

- (a) neither of the parties bears the other any special duty or obligation;
- (b) each party is independent and unrelated, uninfluenced by the other, and
- (c) each party acts in its own interests.

A transaction between related parties will be considered by MSA Ltd to be conducted in accordance with the arm's length principle if the related parties have dealt with each other as if they were unrelated, so the dealings involve genuine bargaining.

The terms of any Related Party Transaction must be such that they might reasonably have been agreed between arm's length parties and are reasonable in all the circumstances.

In regards to the Colleges, the price or benefit paid by a College for a Related Party Transaction must be for *reasonable* market value or *less than* market value, *required* for the operation of the College and otherwise reasonable *in the circumstances* for a registered non-government school receiving government funding.

### **9.2 Related Party Definition**

AASB 124 defines related parties for a registered charity as including:

- (a) A person (or a close member of that person's family) is related to MSA Ltd if that person:



- (i) has control or joint control of MSA Ltd;
  - (ii) has significant influence over MSA Ltd; or
  - (iii) is a member of the key management personnel (as defined in AASB 124) of MSA Ltd;
- (b) an organisation is related to MSA Ltd if that organisation is connected to MSA Ltd and has control or significant influence over MSA Ltd, such as a parent entity;
  - (c) an organisation is related to MSA Ltd if that organisation is connected to MSA Ltd and MSA Ltd has control or significant influence over that organisation, such as a subsidiary entity;
  - (d) any organisation and the charity that are members of the same group (for example, fellow subsidiaries);
  - (e) a member (or a close member of their family) of the key management personnel of MSA Ltd (the people with authority and responsibility for planning, directing and controlling the activities of the charity directly or indirectly);
  - (f) an associate (an entity over which MSA Ltd has significant influence) or joint venture (a joint arrangement whereby MSA Ltd with another entity or other entities have joint control of the arrangements and have rights to the net assets of the arrangement).

For the purposes of AASB 124:

- (i) Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.
- (ii) Joint control is the contractually agreed sharing of control over an economic activity.
- (iii) Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.
- (iv) Significant influence is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. Significant influence may be gained by share ownership, statute or agreement.

**Schedule 1 Part 3 lists potential categories of the related parties of MSA Ltd.**

### **9.3 Related Party Transactions and Financial Benefit**

A Related Party Transaction is defined in AASB 124 as a transfer of resources, services or obligations between a charity and a related party of the charity regardless of whether a price is charged.

**Related Party Transactions** can include:

- (a) purchases, sales, donations;
- (b) receipt of goods, services or property;
- (c) leases;
- (d) transfers of property including intellectual property;
- (e) loans;
- (f) guarantees;
- (g) provision of employees on a paid or complementary basis.

A Related Party Transaction includes a transaction through which a person exercising decision making authority and/or acting on behalf of MSA Ltd delivers a financial or non-financial (or non-tangible) benefit to a related party of MSA Ltd and its Colleges.

Those benefits can flow directly or indirectly from a third party. The giving of a financial benefit may or may not involve the payment of money.

The definition of 'financial benefit' under the Corporations Act is wide-ranging and is given a broad interpretation.

A financial benefit is generally considered to include an advantage, profit, reward or gain that has a monetary value such as receiving money, finance, goods, services, discounts, business contracts or jobs. Giving a financial benefit may include buying, selling or leasing an asset from or to a party, supplying or receiving services from a party and taking up or releasing an obligation of a party.

## **10. Related Party Procedures**

### **10.1 Processes and Procedures**

Prior to MSA Ltd entering into a proposed transaction which is or could be a transaction with a Related Party of MSA Ltd which is a Related Party Transaction as described in section 9.3 of this Policy (proposed Related Party Transaction) the Responsible Person or other employee of MSA Ltd with delegated power or authority who is proposing and/or negotiating the proposed Related Party Transaction will follow the following processes before MSA Ltd enters into the proposed Related Party Transaction:

- (a) approval for the proposed Related Party Transaction must be sought and granted either directly from the Board of Directors or from the appropriate delegate including the National Director MSA (who cannot be a Related Party of MSA Ltd involved in the proposed Related Party Transaction) under a valid instrument of delegation made in accordance with the Delegations Policy and Matrix. When seeking approval of a proposed Related Party Transaction the processes and procedures in clause 10.2 must be adhered to and the terms of this Policy must be taken into consideration;
- (b) the process surrounding the negotiation, approval of the proposed Related Party Transaction and the steps involved which result in MSA Ltd entering into the proposed Related Party Transaction must at all times be transparent and documented with appropriate evidence setting out the terms of the dealing and in particular, the 'Register of Related Party Transactions' is updated by the National Director MSA (or delegate) with the details of the proposed Related Party Transaction;
- (c) the Related Party Transaction and associated payments are to be conducted at all time in accordance with the arm's length principle as set out in section 9.1;
- (d) where a Related Party Transaction is approved, the National Director MSA (or appropriate delegate) is responsible for ensuring that all aspects of the transaction comply with the Education Legislation (including in the relevant jurisdictions, section 83C of the *Education Act 1990* (NSW) and Education and Training Reform (ETR) Regulation 7) the ACNC Legislation and the AASB Standards;
- (e) the National Director MSA (or delegate) will maintain the Register of Related Party Transactions, ensuring all such transactions are captured and recorded fully in the register; and
- (f) approved Related Party Transactions must only proceed in accordance with all Policies, practices and procedures that have been set out by MSA Ltd, including this Policy, the Financial Management Policy, Conflict of Interest Policies, Delegation Policy and Delegations Matrix and the Board of Directors Code of Conduct.

## **10.2 Processes and procedures for monitoring or approving Related Party Transactions**

Responsible Persons and the employees of MSA Ltd who are proposing and/or negotiating the proposed Related Party Transaction, the National Director MSA and the Board of Directors will follow the following processes and procedures:

- (a) the Responsible Person or employee of MSA Ltd with authority (including a person acting under delegated authority) to make the relevant decision must inform the National Director MSA of the proposed Related Party Transaction, the details of the parties and their relationship to each other and any evidence of arm's length dealings and proposed terms of agreement between the parties;
- (b) the National Director MSA must review the proposed Related Party Transaction and may seek external legal, market or financial based advised (where considered to be appropriate and/or relevant) in determining whether to proceed with the transaction;

- (c) where it is determined that the proposed Related Party Transaction:
- (i) has not been conducted in accordance with the arm's length principle in section 9.1 of this Policy;
  - (ii) is a transaction which is not arm's length in the manner described in section 9.1 of this Policy,
  - (iii) is a transaction which will cause a College or more than one of the Colleges to operate on a for profit basis within the meaning of the Education Legislation,
  - (iv) is a transaction which falls within the definition of a "prohibited transaction" under the Education Legislation as applicable to the relevant College(s) and.ir under this Policy,
  - (v) is a transaction which may cause MSA Ltd to be in breach of ACNC Governance Standard 5,
  - (vi) is a transaction which may cause MSA Ltd or a College to be in breach of the registration requirements under the Education Legislation, or
  - (vii) otherwise does not comply with the Education Legislation (including in the relevant jurisdictions, section 83C of the *Education Act 1990* (NSW) and ETR Regulation 7)), the ACNC Legislation, the AASB Standards and/or this Policy, or
  - (viii) more than one of the above,
- the proposed Related Party Transaction must not be approved;
- (d) where the National Director MSA has the delegated authority to approve the Proposed Transaction, the National Director MSA may approve the Proposed Transaction; and
- (e) where the National Director MSA does not have the delegated authority to approve the Proposed Transaction, the National Director MSA will inform the Board of Directors of the proposed Related Party Transaction to obtain the approval of the Board of Directors before proceeding.

## **11. Related Party Transaction Register**

Information about Related Party Transactions entered into by MSA Ltd and the relationship with the Related Party involved in the transaction or affiliated entity must be reported to the National Director MSA (or delegate) and recorded in the Register of Related Party Transactions by the National Director MSA (or delegate).

The Register of Related Party Transactions is maintained up to date at all times.

Records of Related Party Transactions are retained by MSA Ltd and all involved in the transaction for at least 7 years before they are archived or destroyed.

The Related Party Transaction Register is available for external audit as and when required and in any case on at least an annual basis, with audit reports retained for 7 years before archiving or being destroyed.

### 11.1 Sample Register

**Responsible Person:** Responsible Person 1

Item	Name of Transacting Party (if different from person above, i.e. Responsible Person 1)	Relationship between Responsible Person and transacting party	Description of Transaction	Amount of transaction and outstanding balance (if any)	Date transaction approved by delegated authority and basis for approval
1	Related Company Pty Ltd	Responsible Person X is a Director of Related Company Pty Ltd	Related Company Pty Ltd has supplied the Colleges with sporting equipment on 1/1/2021	Contract for \$80,000 paid in full on 1/1/2021	Related Company Pty Ltd awarded the Contract in accordance with a tender process and transaction conducted in accordance with the 'arm's length' principle where the Responsible Person X was not involved in discussions or decisions
2	Joe Smith	Joe Smith is Responsible Person X's Brother	Joe Smith is an employed teacher at Marist College Y	Joe Smith is employed full time as an accredited teacher pursuant to the VCMEA 2018	17/11/2019 Joe Smith was employed following the standard recruitment process and responsible Person X was not involved in any part of the recruitment process and/or decision making process.

## **12. Roles and Responsibilities**

### **12.1 Approval Authority**

The Board of Directors are responsible for the development, implementation and review of this Policy. Recommendations for any changes, amendments and updates must be approved through the Audit and Risk Committee.

### **12.2 Responsible Officer**

The responsible officer for this Policy is the National Director MSA or delegate.

## **13. Review**

This Policy should be reviewed when there are changes to financial reporting requirements, funding arrangements, amendments to relevant legislation or to School registration requirements (particularly the non-for-profit requirements) and/or to the relevant non-government school registration Guidelines.

In any case, this Policy should be reviewed at least every 3 years for compliance with AASB 124.

<b>Version</b>	2
<b>Approved by</b>	Board of MSA Ltd
<b>Policy Owner</b>	National Director
<b>Date Approved</b>	October 2022
<b>Next Review Date</b>	October 2023

## Schedule 1

### Part 1

#### Colleges

- (a) Sacred Heart College, Adelaide SA, ABN 52 010 674 805:
  - (i) Registered Non-Government School
  - (ii) associated school boarding premises
- (b) Newman College, Churchlands WA, ABN 34 822 196385
- (c) Assumption Catholic College, Kilmore VIC, ABN 85 917 803 177:
  - (i) Registered Non-Government School
  - (ii) associated Registered School Boarding Premises, registered under the Education and Training Reform Act 2006 (Vic) and the Education and Training Reform Regulations 2017 as amended from time to time
- (d) Lavalla Catholic College, Traralgon VIC, ABN 74 453 482 885
- (e) Red Bend Catholic College, Forbes NSW, ABN 70 721 984 562:
  - (i) Registered Non-Government School
  - (ii) associated school boarding premises
- (f) Marcellin Catholic College, Bulleen VIC, ABN 77 413 001 496
- (g) Marist College Bendigo, Bendigo VIC, ABN 48 218 856 996
- (h) Marist College Canberra, Pearce ACT, ABN 62 466 078 521
- (i) St Joseph's College, Hunters Hill NSW, ABN 75 236 399 077:
  - (i) Registered Non-Government School
  - (ii) associated school boarding premises
- (j) St Gregory's College, Campbelltown NSW, ABN 18 940 977 322:

- (i) Registered Non-Government School
  - (ii) associated school boarding premises
- (k) Marist College Ashgrove, Ashgrove QLD, ABN 13 937 359 780:
  - (i) Registered Non-Government School
  - (ii) associated school boarding premises.
- (l) The John Berne School, Lewisham NSW, ABN 68 159 188 251



## Part 2

### Colleges foundations, funds and trusts

College	Foundation Name	ABN	Year Established	Related DGRs
Marist College Ashgrove	Marist College Ashgrove Foundation Limited	25062503959	1993 (per ACN registration)	Building Fund; Education Fund; Library Fund
Assumption College Kilmore	Assumption College Kilmore Foundation Limited	89 143 773 540	2000	ASSUMPTION COLLEGE KILMORE SCHOLARSHIP FUND
Marist College Canberra	Marist College Canberra Foundation Limited (Trustee Company for 2 Funds as per below)	43 146 337 804	2010	See below
	The Trustee for the Br Mark May Bursary Fund	33 992 563 028	2010	DGR Status and registered charity with ACNC
	The Trustee for the Capital Appeal Fund	14 214 146 980	2010	DGR Status and registered charity with ACNC
Marcellin College	Marcellin College Foundation Limited	604 346 465	2015	The Trustee for St Marcellin Champagnat Bursary Fund
Sacred Heart College	Sacred Heart College Foundation Inc	30551347147	1996	Annual Gift Giving
St Gregory's College	St Gregory's College Foundation Limited	26 050 210 065	1990	St Gregory's College Foundation Building fund St Gregory's College Scholarship Fund St Gregory's College Foundation Library fund
St Joseph's College	SJC Foundation Ltd	22003768858	1989	Building Fund, Scholarship Fund, Indigenous Fund, Indigenous Scholarship Fund, Benevolent Fund
	Trustee of SJC Foundation Education Fund	78070968023	1989	Non-DGR
	SJC Foundation Ltd	75903579127	1989	Ancillary Fund

## Part 3

### Related Parties of MSA Ltd

- (a) Organisations, companies or entities that own, control or have significant influence over MSA Ltd and its Colleges, including but not limited to, MASMC Ltd (ABN 35 653 757 870) (as the sole member of MSA Ltd which accordingly has a controlling interest), the Institute and the Trustees of the Marist Brothers ABN 91 064 875 510 (which is controlled by the Provincial and the Provincial Councillors) (note: the Provincial and 3 Provincial Councillors comprise 4 of the 6 MASMC Ltd Members).
- (b) Any organisations under control of or affiliated with a related party of MSA Ltd, including Australian Marist Solidarity Ltd and Marist180 Ltd (each of which have as their members the Provincial Council) and the College foundations, funds and trusts (which have as their members either the Provincial Council or some lay persons and some members of the Provincial Council).
- (c) Key management personnel which have a significant influence over MSA Ltd and/ or any of the individual Colleges including all members of the Board of Directors, the National Director MSA and other members of Executive Management, the College Principals, the College Business Managers and any other persons who are Responsible Persons of MSA Ltd.
- (d) The Provincial who has significant influence over MSA Ltd given that the Provincial appoints and removes the sole Member of MSA Ltd.
- (e) A close member of the family of any individual listed in paragraph (c) and (d). Close members of the family of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity. They may include:
  - (i) the individual's domestic partner and children;
  - (ii) children of the individual's domestic partner; and
  - (iii) dependants of the individual or the individual's domestic partner.
- (f) Other organisations affiliated with MSA Ltd from time to time, including religious organisations, parishes and the Marist Brothers Province of Australia.
- (g) Any organisation acting jointly with a related party of MSA Ltd.
- (h) The individual Colleges being separate reporting entities within MSA Ltd (the economic entity).

## Schedule 2 – Relevant Legislation and Related Documents and Policies

### Education Legislation – Registration requirements

- (a) **Victoria:** Education and Training Reform Act 2016, in particular Schedule 4 of the Education and Training Reform Regulations 2017, including all Governance; Enrolment; Curriculum and Student Learning; Student welfare; Staff employment and School infrastructure matters and further including the minimum registration standards and relevant Ministerial Orders, particularly Ministerial Order1359.
- (b) **New South Wales:** Education Act 1990, in particular the registration requirements in section 47 of the Act and more generally as set out in Part 7 and the Education Regulation 2017.
- (c) **Western Australia:** School Education Act 1999, in particular the registration requirements in section 159(1) of that Act, Regulation 131A of the School Education Regulations 2000 and more generally as set out in Part 4 of the School Education Act 1999.
- (d) **Australian Capital Territory:** Education Act 2004 (chapter 4) Education Regulation 2005 (Part 3)
- (e) **South Australia:** Education and Early Childhood Services (Registration and Standards) Act 2011 (SA), incorporating the following:
  - a. Education and Care Services National Law (South Australia)
  - b. Education and Early Childhood Services (Registration and Standards) Regulations 2011 (SA)
  - c. Education and Care Services National Regulations 2011
- (f) **Queensland:** The Education (Accreditation of Non-State Schools) Act 2017 (the 'Act') and the Education (Accreditation of Non-State Schools) Regulation 2017 determine the operations of the NSSA Board.

### Other Relevant Legislation

*Australian Charities and Not-for-profits Commission Act 2012 (Cth)*

*Corporations Act 2001(Cth)*

*Child Protection legislation, including –:*

- (a) *Child Protection (Working with Children) Act 2012 (NSW)*
- (b) *Working with Children (Risk Management and Screening) Act 2000 (QLD)*
- (c) *Working with Children (Criminal Record Checking Act 2004 (WA)*
- (d) *Working with Vulnerable People (Background Checking) Act 2011 (ACT)*
- (e) *Child Safety (Prohibited Persons) Act 2016 (SA)*

(f) *Worker Screening Act 2020 (VIC)*

**Documents and Policies of MSA Ltd, including:**

- (a) MSA Ltd Constitution
- (b) Board of Directors Code of Conduct
- (c) Conflict of Interest Policies and Register
- (d) Delegations Policy and Delegations Matrix
- (e) Audit and Risk Committee Charter
- (f) Nominations Policy
- (g) Financial Management Policy & Framework

### Schedule 3 – NSW Jurisdictional requirements

Section 83C of the Education Act 1990 (NSW) requires all registered non-government schools to operate on a “not-for-profit” basis within the meaning of the Act, in order to be eligible to receive funding from the NSW Government. The Federal government may also take into account whether a school complies with section 83C when determining if the school is compliant with the Federal registration requirements.

The Not-For-Profit Guidelines for Non-Government Schools (June 2019) in NSW provide the general guidelines for satisfying the NSW Government Department of Education that the School does not operate for profit.

Section 7 of the Guidelines provide that:

*Schools/proprietors may be required to demonstrate their compliance with section 83C of the Act if they are subject to an investigation under section 83H or if they receive a direction under section 83I of the Act.*

*In general, schools/proprietors should be able to demonstrate compliance by ensuring the following types of policies and business records are kept and made available if requested by the Department:*

- *implementation of appropriate financial controls and governance systems to manage the financial affairs of a school;*
- *evidence that financial transactions and decisions are transparent, at arm’s length and of reasonable market value;*
- *evidence that conflicts of interest between personnel and related entities are being appropriately managed in relation to school operations; and,*
- *records of audited annual financial statements*

*Schools/proprietors may be required to maintain records to meet other legislative/regulatory requirements (e.g. for the ATO, ACNC, ASIC and NESAs) 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.*

In regards to the Colleges that operate in NSW, the Board of Directors is cognisant of the fact that it is a NESAs school registration requirement that all related entity transactions carried out by a non-government school be disclosed and recorded in the school’s audited Related Party Transactions register.

For the purposes of the registration requirements in NSW, a related entity is defined as:

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).

MSA Ltd must, when acting as the governing authority of a College registered in NSW, ensure that all transactions with related entities (are defined in this section) are for *reasonable market value* and are disclosed and recorded in the Related Party Register for that College.

## Schedule 4 – Victoria Jurisdictional requirements

In Victoria, a registered non-government school must be not-for-profit as defined under the Education and Training Reform Act (ETR Act) and the Education and Training Reform Regulations 2017 (ETR Regulations).

Regulation 7 of the ETR regulations provides that, for the purposes of the ETR Act, ETR Regulations and the prescribed Minimum Registration Requirements, a not-for-profit school is a school that satisfies the following criteria:

- (i) the school is not established for the purpose of profit or gain;
- (j) the proprietor of the school does not conduct the school for the purposes of the proprietor's or any other person's profit or gain;
- (k) no part of the profit or gain made in the conduct of the school is or may be distributed to any person or entity;
- (l) all money and property received by the school or the proprietor of the school for the conduct of the school are applied solely toward the conduct of the school in accordance with the school's not-for-profit purpose;
- (m) the school is not a party to a prohibited agreement or arrangement;
- (n) the proprietor of the school is not a party to a prohibited agreement or arrangement;

The Guidelines to the Minimum Standards and Other Requirements for Registration of Schools in Victoria provide that:

- (a) *A prohibited agreement or arrangement means an agreement or arrangement made between two or more of the following parties –*
  - i. *the school*
  - ii. *the proprietor of the school*
  - iii. *another person or entity*
- (b) *where the purpose of the agreement or arrangement:*
  - i. *is to pay or divert any profit or gain made in the conduct of the school to the proprietor or any other person or entity (other than a payment made in good faith for goods provided or services to the school), or*
  - ii. *involves a prohibited payment by the school or the proprietor of the school (as the case requires) to another person or entity and the payment:*
    - A. *is excessive compared to the reasonable market value of the charges, fees, rates or costs currently prevailing in the community for payment*

*for that purpose (other than a payment made in good faith for that purpose), or*

- B. involves a gift, loan or similar payment for a purpose unconnected to the conduct of the school (other than payments made to a bank in connection with the conduct of the school), or*
- ii. is otherwise not a payment made in good faith for the benefit of the school or reasonably required for the conduct of the school.*

**Notes:**

*Prohibited payments under paragraph (b)(i) may include excessive fees or remuneration or other expenses paid to members of the school's governing body, or excessive rents, fees, or other charges paid to any other person or body.*

*Prohibited payments under paragraph (b)(ii) may include loans, guarantees, or indemnities payable for the recipient's own use or benefit. For example, a payment to benefit an enterprise conducted by the payment recipient where that enterprise is unconnected to the conduct of the school.*

*Prohibited payments under paragraph (b)(ii) may include 'sham' arrangements that have the effect of transferring payments from the school to the recipient for their own purpose or benefit, and which deliver no benefit or service to the school.*

*Proprietor in relation to a school, means a person, body, or institution who establishes, owns or controls one or more registered schools, and includes the legal entity specified in the school's registration as the proprietor of the school.*

MSA Ltd must not, when acting as the governing authority of a College registered in Victoria, enter into a prohibited agreement or arrangement, or make a prohibited payment, as defined in Regulation 5 of the ETR Regulations and set out in the relevant registration Guidelines. All transactions must be on commercial terms.



## Schedule 5 – Queensland Jurisdictional requirements

In Queensland, a registered non-government school must operate on a not-for-profit basis as required under the *Education (Accreditation of Non-State Schools) Act 2017*.

Section 7 of the *Education (Accreditation of Non-State Schools) Act 2017* provides that a school is “operated for profit” if any profits made from the school’s operation are used for any purpose other than a purpose for advancing the school’s philosophy and aims, as stated in the school’s statement of philosophy and aims.

Section 8 of the *Education (Accreditation of Non-State Schools) Act 2017* provides that:

- (1) *a prohibited arrangement is a contract or arrangement in relation to a school—*
  - (a) *entered into by a school’s governing body or proposed governing body and another entity not dealing with each other at arm’s length; and*
  - (b) *that is not, or will not be, for the benefit of the school.*
- (2) *For subsection (1)(b), a contract or arrangement is not, or will not be, for the benefit of the school if the contract or arrangement is for property, goods or services—*
  - (a) *at more than reasonable market value; or*
  - (b) *that is not required to advance the school’s philosophy and aims, as stated in the school’s statement of philosophy and aims.*
- (3) *Subsection (2) does not limit subsection (1)(b).*

MSA Ltd must not, when acting as the governing authority of a College registered in Queensland, enter into a prohibited arrangement, as defined in Section 8 of the Education (Accreditation of Non-State Schools) Act 2017. All transactions must be on commercial terms.