

## SCHOOL COUNCIL LEGAL FRAMEWORK POLICY

### Rationale

- Government School Councils are established for the purposes of the Education and Training Reform Act 2006 (the Act) and operate under the Act, their constituting Orders, the Education and Training Reform Regulations 2007 (the Regulations) and Government policy.
- A Ministerial Order made under section 2.3.2 of the Act constitutes a School Council as a body corporate and specifies the functions of the Council and the powers it requires to perform its functions.
- A School Council, in its capacity as a body corporate, is a separate legal identity to its members.
- As a body corporate the Council is capable of entering into and pursuing legally enforceable arrangements, provided those arrangements are within the scope of the Council's authorised objectives, functions and powers. Conversely the council as a body corporate is capable of being sued and possibly prosecuted.
- Council members are the governing body of the body corporate.
- When entering into legally enforceable arrangements, or relationships with potentially legal implications, Councils have the option of ensuring that the Council as a body corporate, rather than the Council membership or a Council member representing the council, is the relevant party. The affixing of the common seal of the body corporate is a formal indication that the body corporate is the relevant party in an arrangement or contract.
- Council members are entitled to statutory indemnity for liability for loss sustained by the council or any other person in the circumstances set out in section 2.3.32 of the Act.
- The overarching objective of a School Council is to assist in the efficient governance of the school or group of schools for which it is constituted.
- Details of the objectives, functions, powers and duties of a School Council are set out in sections 2.3.4 to 2.3.32 of the Act, and below.
- Councils are required to comply with policies, guidelines, advice and directions issued under the Act by the responsible Minister.
- The requirements for the conduct of Council Meetings, the keeping of financial and other records, the payment and collection of money and the custody and use of the council's common seal are set out in Part 3 of the Regulations.

### Purpose

- To highlight the statutory basis and legal environment of School Council.
- To ensure Tarneit Rise Primary School Council operates in accordance with the Education and Training Reform Act 2006 (the Act) the Education and Training Reform Regulations 2007 (the Regulations) and Government policy.

### Definitions

#### Legal liability

#### Key Terms

Indemnify: To indemnify another party is to compensate that party for loss or damage that has already occurred, or to guarantee through a contractual agreement to repay another party for loss or damage that occurs in the future.

Liability: Being legally responsible for something. To have a legal obligation to do (or to not do) something

## Implementation

- School Council will operate within the following directions:
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| Objectives | <ul style="list-style-type: none"> <li>• assist in the efficient governance of the school</li> <li>• ensure that its decisions affecting students of the school are made having regard, as a primary consideration, to the best interest of the children</li> <li>• enhance the educational opportunities of students at the school</li> <li>• ensure the school and the Council complies with any requirements of this Act, the regulations, a Ministerial Order or direction, guideline or policy issued under this Act.</li> </ul>  |
| Functions  | <ul style="list-style-type: none"> <li>• establish the broad direction and vision of the school within the school's community</li> <li>• arrange for the supply of goods, services, facilities, materials, equipment and other things or matters that are required for the conduct of the school including the provision of preschool programs</li> <li>• raise funds for school related purposes</li> <li>• regulate and facilitate the after-hours use of the school premises and grounds</li> <li>• exercise a general oversight of the school buildings and grounds and ensure that they are kept in good order and condition</li> <li>• provide for the cleaning and sanitary services that are necessary for the school</li> <li>• ensure that all money coming into the hands of the Council is expended for proper purposes relating to the school</li> <li>• provide meals and refreshments for the staff and students of the school and make charges for those meals or refreshments</li> <li>• inform itself and take into account any views of the school community for the purpose of making decisions in regard to the school and the students at the school</li> <li>• generally stimulate interest in the school in the wider community</li> <li>• perform any other function or duty or to exercise any power conferred or imposed on the Council by or under the Act or the regulations or a Ministerial Order or direction issued by the Minister under this Act.</li> </ul>  |
|            | <ul style="list-style-type: none"> <li>• enter into contracts, agreements or arrangements</li> <li>• establish trusts and act as trustee of them</li> <li>• subject to section 2.2.4 and in accordance with any Ministerial Order, charge fees to parents for goods, services or other things provided by the school to a child of the parent</li> <li>• do any other thing that is necessary or convenient to be done for, or in connection with, meeting its objectives or performing its functions or duties</li> <li>• do anything conferred on it by or under the Act or Regulations or Ministerial Order</li> </ul> <p>Important: A School Council does not have power -</p> <ul style="list-style-type: none"> <li>• to employ a teacher with no date fixed for the termination of that employment</li> <li>• to purchase or acquire for consideration any land or building unless authorised by or under this Act, the regulations or a Ministerial Order to: <ul style="list-style-type: none"> <li>▪ license or grant any interest in land, including school lands or buildings</li> <li>▪ enter into hire purchase agreements</li> <li>▪ obtain loan or credit facilities</li> <li>▪ form or become a member of a corporation</li> <li>▪ provide for any matter or thing outside of Victorian unless it is related to an excursion by students from a school in relation to which the council is constituted or the professional development of staff of that school</li> <li>▪ purchase a motor vehicle, boat or a plane.</li> </ul> </li> </ul> |

- The composition of the School Council will be in accordance with the Constituting Order, in conjunction with the School Council Composition and Elections Order (Ministerial Order No. 52) which:
  - specifies, in Schedule 1, the total number of members and the number of members in each membership category of the Council
  - specifies, in Schedule 2, the range of configurations of Council membership size and composition from which the initial configuration for Schedule 1 may be chosen or to which Schedule 1 may be changed by subsequent Order
  - prescribes the term of office of Council members
  - regulates the filling of casual vacancies, the conduct of the election process for Council membership and the election complaints process.

- The School Council will consist of between 6 and 15 people from different categories.  
**(Schedule 1 specifies the number of members in each of the three membership category.)**  
**The largest membership will be in the parent or community category.**

Department employee member category

Mandatory category with no more than one third of Council membership

Elected by Department employees at the school

The Principal is a member of the Department employee member category and is the Council's executive officer and, as an ex officio Council member, is not subject to the election process or appointment to Council.

Parent member category

Mandatory category with more than one third of Council membership

Elected by parents of students currently at the school.

Note 1: 'Parent' includes a guardian or person with parental responsibility for the student.

Note 2: Parents who are Department employees employed at the school attended by their child are members of the Department employee category and not the parent category. Community member category

Note 3: Optional category with members co-opted at a Council meeting, usually at the first meeting of the newly elected Council:

- Have the same rights and responsibilities as elected members
- Cannot be Department employees
- Bring special skills, interests or experience to the council including:
  - members from parent clubs
  - student representatives
  - accountants.

Note 4: May have a Nominee member category.

- The office bearers will comprise
  - President and other office bearers elected by Council members
  - Executive Officer - School Principal
  - Vice President - to preside in the absence of the President (optional)
  - Treasurer/Convenor of the finance subcommittee - preferably parent or community member (optional)
  - Minute taker – may participate in proceedings only if a Council member
- Office bearers will be elected by Council members at the first Council meeting (other than a special meeting to co-opt community members) after the declaration of the poll.
- Office bearers will hold office as office bearers until they resign as an office bearer or until they cease to hold office as a council member or until the next election of office bearers, whichever occurs first.
- To change its membership size and composition the Council will:
  - select an option from Schedule 2 of the constituting Order
  - pass a resolution with the support of at least 75% of the total membership
  - submit a Schedule 9: Change of Size or Configuration form to the Department
  - await receipt of a copy of the Ministerial Order amending schedule 1 of the constituting Order.

Note: The Council may approve a change to its total number of members and/or its composition only once in any 12 month period.

- For the purposes of School Council membership and the election process, Department employees are persons employed for eight hours or more per week on either an ongoing basis or for a fixed term of at least ninety days:
  - by the Department under the Public Administration Act 2004
  - as teachers, principals, assistant principals and other staff in the teaching service under the Education and Training Reform Act 2006 and/or

- by a School Council of a Government school.

Note: A person who works at the school as an employee of a contractor, e.g. a parent employed by a company to manage the school canteen, is not a Department employee.

- A casual vacancy arises (Clause 5R, Order No. 52) when a Council member:
  - dies
  - becomes bankrupt
  - becomes of unsound mind
  - delivers a letter of resignation to the school office or President
  - is sentenced for any indictable offence
  - is a registrable offender within the meaning of the Sex Offenders Registration Act 2004
  - ceases to be eligible for election or co-option to their membership category
  - is absent from three consecutive School Council meetings without prior special leave being granted by the School Council and subject to a School Council decision
  - in the Department employee member category takes leave from employment with the Department for more than six months
  - in the Parent member category becomes a Department employee during their term of office where that causes the school council to be in breach of its Constituting Order
  - is found to have been ineligible for election or cooption to Council.
- A casual vacancy will be filled by the Council co-opting a person who is eligible for election to the membership category in which the vacancy has arisen. The co-opted member serves the unexpired portion of the vacating member's term of office.
- If a student has completed the normal school year (applicable to their year level) and ceases to be enrolled at the school, the student's parent who has been elected to the parent member category may continue to be a member of the Council until the next Council election.
- DET will indemnify School Council members against liability when they act in good faith.
- The State of Victoria is not responsible for payment of a School Council's liabilities in the absence of a written agreement with the school council under section 2.3.2 (12) and (13) of the Education and Training Reform Act 2006.
- A School Council is liable for its actions and decisions including payment of money under
  - service agreements for the day to day operations of the school
  - any agreement that seeks to resolve actual or threatened litigation (i.e. settlement agreement)
  - court orders against school councils (including judgments for damages or compensation or any other legally enforceable remedy including infringement notices and fines)
  - contracts of employment, and statutory obligations to employees as an employer.
- **The Department will usually indemnify School Councils** in claims of common law negligence, and in relation to employment disputes, for the cost of settlement and legal representation.
- The Department will take into account the impact of payment upon the school's operations and any insurance cover for the School Council, and will likely indemnify School Councils if the Department is satisfied that:
  - the School Council acted in good faith and according to its role and duties under applicable legislation, policies, guidelines and directions; and
  - the School Council has insufficient funds to pay the claim.
- **The Department will not usually indemnify School Councils** or provide legal representation for school Council liability for:
  - GST and taxation
  - breach of contract
  - breach of copyright law, patents, trademarks, or designs
  - land use objections
  - defamation; and
  - criminal charges.
- These matters are generally considered to be within the School Council's control, and are matters over which School Councils should adopt appropriate measures of supervision. School Councils will

usually be expected to meet any liability for these matters from their global budgets or locally raised funds.

- If a School Council is unable to meet its liability in these matters, to request indemnification and/or representation it must contact the Legal Division with a full briefing on the matter.
- Individual School Council Members former members of a School Council are not liable for the debts and liabilities of a School Council.
- **The Department will indemnify** a person who is or has been a member of a School Council against any liability for any loss or damage suffered by the council or any other person for anything necessarily or reasonably done or omitted to be done when they act in good faith in the
  - exercise of a power or performance of a member's function, or
  - reasonable belief that the member's liability act or omission was in the exercise of the member's function or power.
- A School Council is responsible for all of its employees.
- **The Department will indemnify** individual school council employees in claims of common law negligence, other than in exceptional circumstances. Exceptional circumstances include, for example when the:
  - employee was drunk or under the influence of illicit drugs, or
  - the behaviour
  - was clearly unacceptable or inappropriate
  - was entirely unrelated to the employment
  - would implicate the employee in a serious criminal offence.
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  - employee was drunk or under the influence of illicit drugs, or
  - the behaviour
  - was clearly unacceptable or inappropriate
  - was entirely unrelated to the employment
  - would implicate the employee in a serious criminal offence.
- Any School Council, School Council member or School Council employee that receives an indemnity for legal costs is required to fully cooperate with the State and in accordance with reasonable legal advice and follow any reasonable directions throughout the legal proceedings to the extent that this does not prejudice their legal rights. Failure to cooperate may result in the indemnity being withdrawn.
- If a School Council receives a legal claim (such as a writ, court or tribunal order, claim for unfair dismissal, discrimination or breach of privacy) and it believes that it is likely to lead to formal legal proceedings, the School Council should immediately notify the Department's Legal Division and forward the relevant documents to it requesting legal representation.

Note: School Councils should not directly or indirectly incur legal costs before contacting the Legal Division. If a School Council receives correspondence threatening legal proceedings the school council should forward the request to the Executive Director, Legal Division.
- A School Council must not commence legal proceedings or any action against any person in any court or tribunal without first obtaining written direction from the Executive Director, Legal Division, in any court or tribunal, or before any person acting judicially, such as a mediator or arbitrator, without the written consent of the Minister, against any of the following:
  - the Crown
    - the State
    - any Minister
    - any officer or employee of the State in respect of duties performed in his or her official capacity, or any authority or public body within the meaning of the Financial Management Act 1994.
- School Councils do not require special consent to enforce judgments in their favour.

- If unsure how to proceed in a legal matter the school will contact Legal Services Division in writing by email if the matter is not urgent or by fax 9367-2750 or telephone on 9637-3146 in urgent cases.
- Please refer also to the school's School Council Elections Policy, School Council Meetings Policy, the School Council Operations Policy and the School Council Subcommittees & Working Parties Policy.

**Evaluation**

- This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update late August 2017).

| <u>Ratification Date</u> | <u>Review Date</u> | <u>Policy Number</u> | <u>Version Number</u> | <u>Date Produced</u> |
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Reference:  
[www.education.vic.gov.au/school/principals/spag/governance/pages/legalframework.aspx](http://www.education.vic.gov.au/school/principals/spag/governance/pages/legalframework.aspx)