

Legal Framework of School Councils

All government schools in Victoria are governed by a school council. Each school council is a legal entity on its own right, a body corporate constituted under Part 2.3 of the *Education and Training Reform Act 2006*.

A school council is, in the vast majority of cases, composed of three possible categories of membership:

- a mandated elected parent category
- a mandated elected Department of Education and Early Childhood Development (DEECD) employee category (the principal is automatically one of these members) and
- an optional community member category whose members are co-opted by a decision of school council because of their special skills, interests or experiences. DEECD employees are not eligible for membership of this category.

A school council is regulated by the *Education and Training Reform Act 2006*, the Education and Training Reform Regulations 2007 and the individual school's constituting Order.

The constituting Order which is an Order of the Minister for Education specifies the school council membership size and configuration of the particular school council, the objectives, powers and functions of school councils, accountability and the role of the executive officer. Councils are between 6 and 15 members in size.

Legal liability

The Crown must indemnify a school council member (or former member) against any liability in respect of any loss or damage suffered by the council or any other person in respect of anything necessarily or reasonably done, or omitted to be done by the member or former member in good faith:

- in the exercise of a power or the performance of a function of a member, or
- in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function of a member.

Provided a school council member acts in accordance with the above paragraph and has not engaged in behaviour that would implicate the member in a criminal offence:

- the member will not be liable for the debts and liabilities of the school council, and
- the Department will assume responsibility, on the member's behalf, for the payment of all costs, including damages arising from any legal proceedings.

Provisions of the Corporations Law do not apply to school councils and, consequently, the laws that in certain situations hold directors liable for the debts of companies do not apply to hold school council members liable for the debts of school councils.

On the other hand, a school council is a corporate body, legally distinct from its members. It is liable for its debts, actions and decisions unless the Minister or Secretary has agreed to accept liability on its behalf.

For further information on the legal framework for operation of school councils, see section 2.2 of the Victorian Government Schools Reference Guide at <http://www.education.vic.gov.au/management/governance/referenceguide/default.htm>.