



Independent review of

Government School and Preschool Governance in South Australia

Issues paper





About the reviewer

The Honourable Bronwyn Pike is a former South Australian teacher and Victorian Minister for Education. Ms Pike has also worked as an educator in the Northern Territory and at the Royal Melbourne Institute of Technology before moving into other roles. These included appointments as the Director of the Unit of Justice and Social Responsibility in the Uniting Church and the Board Director of Greenpeace Australia. She continues her work in education as the President Elect of the Australian College of Educators. Ms Pike's experience means she has engaged in issues related to local governance from a range of relevant perspectives over the course of her career including her strong and successful leadership of the Victorian public education system as Minister. The Victorian system shares with South Australia a proud history of parental involvement in local governance.

Introduction from the reviewer

Participation on a public school or preschool governing council gives parents and interested community members an opportunity to work together with the principal or preschool director to influence the broad direction of a school or preschool. Members share a common interest in working together in the best interests of the school or preschool and their communities. Education is a shared enterprise and there is considerable evidence that the active engagement of parents and community members enhances the quality of teaching and learning of our children and young people.

The *Royal Commission 2012-2013 Report of Independent Education Inquiry* (IEI Report), delivered by former Supreme Court Justice, the Honourable Bruce DeBelle AO QC, considered issues relating to local governance in schools, and identified that there is a lack of clarity concerning the role of public school governing councils. In recognition of this observation, the IEI Report contained a recommendation that a review be conducted of the powers and functions of governing councils with the intent of determining whether these councils should have wider powers of governance or are actually advisory bodies (IEI Report Recommendation 24).

In response to this recommendation, on 6 December 2013, the Minister for Education and Child Development, the Honourable Jennifer Rankine MP, announced the independent review and released the review's Terms of Reference. The Minister has determined that this review will also consider governance arrangements for public preschools in South Australia; while schools and preschools are currently covered by a mix of legislative provisions, they share similar governance and operational issues.

Accordingly, this paper is comprised of four parts. Part 1 provides the policy context for parent involvement in public school and preschool governance. Parts 2 and 3 set out the current arrangements for governance in public schools and preschools, with matters and issues affecting both outlined in Part 4. Each part contains a number of consultation questions for your consideration. Respondents may choose to provide comments in response to all or some of these questions.

I have been commissioned to undertake this review and will consult widely to provide clear recommendations to the Minister about how local governance arrangements can be enhanced and supported in South Australian public schools and preschools.

Public forums and stakeholder consultations will be held across metropolitan and regional areas. In addition, people can engage with the review through the *YourSAy* website.

The review will be completed later this year with a report being provided to the Minister.

I would encourage all interested governing councils, parents, community members and stakeholder organisations to participate in the review process – your feedback will be critical in developing a strengthened governance model for public schools and preschools in this State that underpins and supports parental involvement in their child's education and effective local decision-making.



Hon Bronwyn Pike

Lead Reviewer

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CONSULTATION

Governing councils, parents, school and preschool staff, members of the wider community and stakeholder organisations are encouraged to comment on the consultation questions included in this Issues Paper.

This feedback will inform the development of strengthened governance arrangements for South Australian public schools and preschools.

The consultation questions are based on the Terms of Reference for the review. You may wish to provide comments in response to all or some of these questions, or provide additional comments that you consider relevant to strengthening governance in public schools and preschools.

The closing date for submissions to the Issues Paper is 5pm, Friday 1 August 2014.

Submissions to the Issues Paper can be lodged in the following ways:

- Downloading and completing the Feedback Form and submitting by email to edlawreform@sa.gov.au
- If you wish to make a submission in another format, please download and attach the Cover Sheet to your submission.

Mailed submissions should be typed or hand written clearly.

Mail to:

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The Issues Paper, Feedback Form and Cover Sheet are available here .

Hard copies of the Issues Paper, Feedback Form or Cover Sheet can be provided on request. Please email edlawreform@sa.gov.au

You can also provide your comments during the consultation by attending a public forum in your area – a schedule of public forums is available here .

In addition, you can engage with the review via the YourSAy website at <http://saplan.org.au/yoursay>.

Enquires about the review can be directed to edlawreform@sa.gov.au or by calling (08) 8226 2603.



TERMS USED IN THIS PAPER

Term in paper	Further detail/information
AIG Section 5	Administrative Instructions and Guidelines (Schooling Sector) Section 5: School Councils, Affiliated Committees and Related Matters. This document sets out instructions issued by the Minister for governing councils, school councils, and affiliated committees in accordance with section 96 of the <i>Education Act 1972</i> .
Associations Incorporation Act	<i>Associations Incorporation Act 1985</i> which provides for the incorporation, administration and control of not-for-profit associations.
Children's Services Act	<i>Children's Services Act 1985</i> which provides for the incorporation and governance arrangements of stand-alone public preschools established before 1 January 2012.
the department	Department for Education and Child Development.
Director-General	Refers to the position established in the <i>Education Act 1972</i> as the Director-General of Education. This position is held by the Chief Executive of the Department for Education and Child Development.
Director of Children's Services	Refers to the position established in the <i>Children's Services Act 1985</i> . This position is held by the Chief Executive of the Department for Education and Child Development.
Education Act	<i>Education Act 1972</i> , which amongst other things, sets out requirements for governance in South Australian public schools, as well as the establishment of some public preschools which are referred to as <i>school-based preschools</i> in this paper.
Education Regulations	<i>Education Regulations 2012</i> , which detail a range of matters relating to public schools, but are discussed in this paper in the context of the role and duties of school principals.
EECS Registration and Standards Act	<i>Education and Early Childhood Services (Registration and Standards) Act 2011</i> which transferred responsibility for registration of early childhood services from the Director of Children's Services to the Education and Early Childhood Services Registration and Standards Board from 1 January 2012.
Governing council	From 2001, school councils were given the option to become governing councils under a new model of local school management. Governing councils were established to provide an increased focus on community partnerships, resource flexibility, local decision-making and local accountability for quality learning standards and improvement in learning outcomes. Preschools also moved to a governing council model at this time.



TERMS USED IN THIS PAPER

Term in paper	Further detail/information
IEI Report	Refers to the <i>Royal Commission 2012-2013 Report of Independent Education Inquiry</i> delivered by the Honourable Bruce M Debelle AO QC. In conducting his inquiry, Justice Debelle was given the powers of a Royal Commission to review the events and circumstances surrounding the non-disclosure to the school community of allegations of sexual assault committed by an out of school care service employee at a metropolitan school in 2010 against a child in the care of the service.
Integrated services – preschool and child care	Integrated services combine a public preschool operated by the department and a child care centre in a shared facility. The preschool and child care centre operate as two separate legal entities. The public preschool is incorporated under the <i>Children's Services Act 1985</i> and operates in accordance with the model preschool constitution approved by the Director of Children's Services. While the child care centre may also be incorporated under the <i>Children's Services Act 1985</i> , generally they are incorporated under the <i>Associations Incorporation Act 1985</i> .
Minister	Minister for Education and Child Development.
Model constitution	Under section 89 of the <i>Education Act 1972</i> the Minister has published model constitutions for use by governing councils and school councils in schools. Under the <i>Children's Services Act 1985</i> , the Director of Children's Services has approved a model constitution for use by preschools. The respective model constitutions set out the powers and functions of councils and the roles and functions of the office holders.
Public preschool governance	In the context of this paper, the following models of preschool management are described: • where a preschool governing council is jointly responsible with the preschool director for the governance of a stand-alone preschool established under the <i>Children's Services Act 1985</i> • where, under interim governance arrangements, new public preschools establish an advisory group to ensure the preschool community is involved in the governance of the preschool, with a focus on supporting children's development and learning • where a governing council of a school is responsible for the governance of a school-based preschool established under the <i>Education Act 1972</i>.

TERMS USED IN THIS PAPER

Term in paper	Further detail/information
Public school governance	In the context of this paper, this describes the model of school management which involves the principal, staff, parents and the wider school community. In practice, councils are described as either having a role advising the principal (school council), or are jointly responsible with the principal for the governance of the school (governing council). Both governing councils and school councils are required to operate in accordance with relevant model constitutions that reflect their different functions and responsibilities. The majority of public schools in South Australia now operate with governing councils.
School council	All public schools in South Australia must have a governing body which may operate either as a governing council or a school council. In practice, school councils are described as having a role advising the principal. School councils must elect to become a governing council. It is understood there are 13 school councils still operating.
School-based preschools	Public preschools established under the <i>Education Act 1972</i> .
Stand-alone preschools	Public preschools established under the <i>Children's Services Act 1985</i> .

TERMS OF REFERENCE FOR THE INDEPENDENT REVIEW OF GOVERNMENT SCHOOL AND PRESCHOOL LOCAL GOVERNANCE IN SOUTH AUSTRALIA

The independent review of government school and preschool local governance will examine and provide a written report to the Minister for Education and Child Development concerning:

- the nature and function of a governing council as currently established under part 8 of the *Education Act 1972*, including its legal status, roles and responsibilities, particularly in regard to the employment of staff;
- the most effective legal and operational system for future governance of government schools to ensure an ongoing productive relationship between a school governing body and the school's leadership team;
- how to effectively represent and engage with parents of a school and the wider school community in the best interests of children, families and the wider school community;
- the perceived ambiguity of the current operation of local school governance under the provisions contained in part 8 of the *Education Act 1972* and operational policy which pertain to governing councils;
- the most effective legal and operational system for future governance of government preschools;
- the current support provided to government school and preschool local governance by the department and other entities and ways to enhance this in the future;
- matters related to the authority of governing councils in regards to communication with the school's or preschool's parent body;
- the matters raised in the Independent Education Inquiry Report, specifically recommendation 24; and the current dispute resolution practice, the proposed interim dispute resolution process and best practice models for future use where there is a dispute between a school or preschool governing council and the department; and
- any other matters considered relevant to building an improved model of local government school and preschool governance underpinned by appropriate legislative provisions.



PART 1 – PARENT AND COMMUNITY INVOLVEMENT IN PUBLIC SCHOOL AND PRESCHOOL GOVERNANCE

Importance of parent and community participation in schools and preschools

Research from Australia and overseas shows that children achieve better outcomes from their education when schools, families and the community work together to support children's learning¹.

The *Family-School Partnerships Framework*² (the Framework) was developed by key government and non-government stakeholders to encourage positive, sustainable and effective partnerships between all members of the school community including teachers, families and students. The principles of the Framework are equally as applicable to preschools.

The Framework emphasises that schools need to recognise the primary role of the family in education, and that it is important for families and schools to work together in partnership. Effective partnerships are based on mutual trust and respect and shared responsibility for the education of children and young people, acknowledging the different roles that each fulfils. Regardless of the social or cultural background of the family, high levels of parental and community involvement strongly correlates with improved student learning, attendance and behaviour.

The Framework has identified seven key dimensions to supporting successful partnerships between families and schools. One such dimension, *consultative decision-making*, emphasises that

parents are entitled to participate in decisions concerning their own children and that they can have meaningful roles in the school decision-making processes. This approach creates a sense of shared responsibility among parents, community members, teachers and school leaders.

Participation in formal school and preschool governance is an important way that parents and communities can contribute to decision-making within their school or preschool. Governing councils provide an effective liaison between the school or preschool's leaders and their education communities. Involvement on a governing council also provides a forum for the exchange of information and ideas between parents, the site leader, staff and interested community members. It provides the opportunity for all parties to have access to the contemporary educational research and resources to ensure the teaching and learning is continually improving in our schools and preschools.

Principles of good governance

The Victorian Department of Education and Early Childhood Development, in its document *Making the Partnership Work*³, emphasises that good governance by a school council will strengthen the community's confidence in the council and will help to ensure the council's reputation is maintained and enhanced.

¹ Department of Education, Employment and Workplace Relations (2011). *Strengthening family and community engagement in student learning resource*. Australian Government. Available: http://www.familyschool.org.au/files/4013/8993/8930/Strengthening_family_and_community_engagement_in_student_learning_resource.pdf

² Department of Education, Employment and Workplace Relations (2008) *Family-Schools Partnership Framework: A guide for schools and families*. Canberra. Available: www.familyschool.org.au/files/9413/7955/4757/framework.pdf This Framework was prepared by the Australian Council of State School Organisations, Australian Parents Council, the Australian Government, State and Territory government and non-government school authorities and schools' principals associations, and was approved by the then Ministerial Council on Education, Employment, Training and Youth Affairs in 2008.

³ State of Victoria (Department of Education and Early Childhood Development) (2009). *Making the Partnership Work*. Available: <http://www.education.vic.gov.au/Documents/school/principals/management/partnershipwork.pdf>

The document details the following characteristics of an effective school council, that it:

- focuses on improving student learning outcomes
- leads school community conversations about key issues and challenges in education
- is actively involved in the development of the school strategic plan
- promotes meaningful parent and community participation and actively seeks the views of its school community
- has a clear understanding of its role and responsibilities
- includes members who represent the diverse views of the school community
- has clear and consistent processes for decision-making
- maintains high ethical standards
- has members who have developed mutual trust and respect for one another
- evaluates and communicates with the school community about its activities.

Further, in an effective school, the council processes are characterised by a mutual sharing of information, knowledge and ideas. There should be a focus on discussion in which all school community members are able to exchange information, share experiences, honestly express perspectives, pose questions, clarify viewpoints, explore relevant research and develop a shared vision and way forward.

For the council to operate effectively and efficiently, good partnerships need to be developed between the site leader, chairperson and all members of a council. The council should also consult with the broader school and preschool community to ensure that they are aware of the community's views. One way for the council to communicate with their school or preschool community is to provide meeting dates, agendas and reports via the newsletter or website.

South Australian initiatives to support parent and community engagement with public schools and preschools

The following initiatives have been introduced over recent years in the interests of strengthening wider engagement of communities, parents and services with public schools and preschools in South Australia:

- Commencing in 2014, the department is establishing *Education and Child Development Local Partnerships*⁴ across the State. These partnerships are designed to bring together local school and preschool leaders to work collaboratively to improve the educational, health and wellbeing outcomes for children in their local area through the sharing of expertise and resources. The partnerships can also link with parents, non-government organisations, local government agencies and local businesses in the development of strategies to improve children's educational and development outcomes. The partnerships will support local decision-making and enhance the involvement of parents and the community in this decision-making.

⁴ Available: <http://www.dccd.sa.gov.au/aboutdept/pages/ccdlp/ccdlpmodelintro/?reFlag=1>

- The department has developed *Numeracy + Literacy: A Numeracy and Literacy Strategy from Birth to 18⁵* – a strategy which recognises that children’s numeracy and literacy skills are enhanced when families, communities, teachers and leaders work together. This strategy will provide information and assistance to parents so they can support their children in learning, which will include the development of online and other resources for parents on numeracy and literacy, and courses and workshops for parents to support their children’s numeracy and literacy development.
- The *GreatStart⁶* website supports parents with everyday ideas for learning from birth, acknowledging the importance of the first five years of life.

CONSULTATION QUESTIONS

- Do you believe that your school or preschool governing council effectively represents you as a parent? If not, how do you think this could be improved?
- How can a school or preschool governing council ensure all parents in the school or preschool community have an opportunity to present their views and participate in decision-making?
- What are your views on the way your school or preschool governing council shares information in relation to the operation of, and decisions made by, the council? What type of information would you like to receive?
- Are you satisfied with the information your school or preschool provides you about participation on its governing council? Do you believe all parents are actively encouraged to be involved in governance at your school or preschool?
- Are there barriers to participation on your school or preschool’s governing council? How can schools and preschools better attract people willing to participate on councils?
- What are your views on how a school and preschool governing council can best contribute to the school or preschool community? For example should councils have certain tasks they undertake to support the engagement of parents and the wider community in the school and preschool?

⁵ Available: www.decd.sa.gov.au/portal/aboutdept.asp?group=reports&id=numeracyliteracy

⁶ Available: www.greatstart.sa.edu.au/

PART 2 – SCHOOLS

Public school governance in South Australia

Under the Education Act, public schools in South Australia must have a governing body which may operate either as a *governing council* or a *school council*.

Both governing councils and school councils are bodies corporate and are required to operate under a constitution approved by the Minister. The Minister has issued a model constitution on which all governing and school councils' constitutions are based.

Councils' powers and functions are set out in their constitutions, subject to any specific limitations imposed on those powers by the Education Act. Councils are also bound to act in accordance with administrative instructions issued by the Minister.

Prior to 2001, all councils were school councils. However since amendments were made to the Education Act in late 2000, councils have had the option to become a governing council. The majority of public schools now operate with a governing council⁷.

Under its constitution, the object of a governing council is to 'involve the school community in the governance of the school to strengthen and support public education in the community'. The governing council is jointly responsible with the principal for the governance of the school, subject to some limitations which are discussed in this paper.

Under its constitution, the object of a school council is to 'provide advice to the principal so as to strengthen and support public education in the local community'.

Under the Education Act, a school council may only move to a governing council model if the move is supported by the council itself, the principal and the Chief Executive, and is approved by the Minister. The Minister cannot direct a school council to become a governing council.

The model governing council and school council constitutions are available here .

Public school governance legislative and constitutional framework

In the context of a governing council's joint responsibility with the principal for the governance of a school, the following functions of a governing council are included in its constitution, to:

- involve the school community in the governance of the school by:
 - providing a focus and a forum for the involvement of parents and the school community
 - ascertaining the educational needs of the local community and the attitude of the local community to educational developments within the school
 - ensuring that the cultural and social diversity of the community is considered and particular needs are appropriately identified
- set the broad direction and vision of the school
- undertake strategic planning for the school including:
 - developing, monitoring and reviewing the objectives and targets of the strategic plan
 - considering, approving and monitoring human resource and asset management plans

⁷ Currently, it is understood that only 13 schools still operate with a school council, with one of these councils in the process of becoming a governing council.



- determine policies for the school including policies for the safety, welfare and discipline of students
- determine the application of the total financial resources available to the school including the regular review of the budget
- monitor and review the Site Learning Plan
- report to the school community and the Minister on:
 - the strategic plan
 - the finances of the school
 - operational plans and the council's operations.

The governing council must be responsible for the proper care and maintenance of any property owned by the council.

The governing council may perform such functions as necessary to establish and conduct, or arrange for the conduct of:

- facilities and services to enhance the education, development, care, safety, health or welfare of children and students
- residential facilities for the accommodation of students.

The governing council may raise money for school-related purposes and perform other functions as determined by the Minister.

The functions of a school council as set out in its constitution include:

- ascertaining the educational needs of the local community and the attitude of the local community to educational developments within the school and advising the principal on these matters
- expressing to the principal from time to time its views in relation to the local community's perception of the school
- advising the Chief Executive of any improvements that the council considers are necessary to the accommodation, grounds and equipment of the school
- determining with the agreement of the principal of the school, how funds should be used where the Minister has provided these funds to the council
- conducting residential facilities for the accommodation of students
- conducting facilities and services to enhance the education, development, care, safety, health or welfare of children and students
- taking responsibility for the care and maintenance of any property owned by it
- raising money for school-related purposes.

Under their constitutions, the powers of governing councils and school councils as incorporated bodies are the same.

The Education Act provides personal liability protection to members and former members of governing councils and school councils or committees established by these councils.

An overview of the powers and functions of school councils in the legislation of all Australian jurisdictions and New Zealand is provided in Appendix 1.



CONSULTATION QUESTIONS

- In your view, are the current powers and functions set out in the model governing council constitution appropriate for a governing council? Should the scope of these powers and functions be changed? If so, in what way?
- Do you think the role and function of governing councils needs to be clearer or better defined? If so, in what way?
- Has your governing council or school council encountered any challenges in applying the requirements of their constitution? If so, what have they been? What would help improve this?
- Do you think the operation of a governing council in a school could be improved? If so, in what way?
- What factors are important in establishing positive relationships with the principal, other governing council members, the wider parent community and other community members?

Roles and responsibilities of governing council and school council office holders and committees of council

The office holders of a governing council and school council are the chairperson, secretary and treasurer, who are elected by the council from amongst its councillors. The governing council model constitution provides for a deputy chairperson, whereas the school council constitution does not.

The chairperson

In the case of a governing council, the chairperson must not be a member of the staff of the school or a person employed in an administrative unit for which the Minister is responsible.

The chairperson of a governing council or school council must:

- call and preside at the meetings of the council and the executive committee
- with the principal and secretary, prepare the agenda for all council meetings, indicating any item requested by the principal
- facilitate participation in meetings by all councillors, decide on the conduct of meetings and matters of order
- report at the annual general meeting on the proceedings and operations of the council for the period since the date of the previous annual general meeting
- generally act as spokesperson on behalf of the council, only commenting on council matters.

The secretary

The secretary of a governing council or school council must provide notifications of meetings in line with the provisions of their constitutions.

The secretary is responsible for ensuring the maintenance and safekeeping of:

- the common seal and a record of each use
- the constitution of the council, which must be available for public inspection
- various official documents, registers, reports and records relating to council business
- copies of council contracts and policies.

The secretary must forward the meeting agenda to councillors prior to each meeting and record and forward the minutes before the next meeting.

The secretary is responsible for the official correspondence of the council.

In the case of a governing council, the secretary must ensure the maintenance and safekeeping of the code of practice, which must be available for public inspection. Secretaries of school councils do not have any role in relation to codes of practice, as such councils are not required to abide by a code of practice.

The treasurer

The treasurer of a governing council or school council must:

- not be a school staff member
- be chair of the council's Finance Advisory Committee (which all governing councils must establish, and which school councils must establish if the school council has established a consolidated account)
- ensure preparation of the council's financial budgets and statements and submit a financial report to each council meeting
- present the council's audited accounts to the annual general meeting.

Committees

A governing council or school council can appoint an executive committee. This committee is made up of the officer holders and the principal, and deals with matters delegated or referred by the council and provides a report to subsequent council meetings.

A council's Finance Advisory Committee must meet at least once each term to advise the council on budgetary and financial matters, including the preparation of the preliminary budget showing:

- the anticipated income available for the next 12 months and proposed expenditure
 - details of any funds held for special purposes.
-

The Finance Advisory Committee's membership is decided by the governing or school council, and must include the treasurer and the principal, or principal's nominee. In the case of a school council, the membership of this committee must also include a representative from each affiliated committee, and may include student representation and persons co-opted by the school council.

A governing or school council can also establish other committees, made up of councillors or a mix of both councillors and non-councillors, to meet and report to the council as the council decides. Any committee must have at least three members, one of which must be a councillor.



CONSULTATION QUESTIONS

- ✦ What are your views on the current roles and responsibilities of governing council or school council office holders?
- ✦ Should the scope of these roles and responsibilities be modified? If so, in what way?
- ✦ What are your views on the current operation of council committees? What is working well? Could any areas be improved?
- ✦ Could further support be provided to office holders? If so, in what way?

Composition of governing councils and school councils

The membership of governing councils and school councils is set out in their respective constitutions, but this must fit within parameters determined and published by the Minister in AIG Section 5. These parameters are available here . Governing and school council members participate in councils in a voluntary capacity.

A governing or school council must have at least five members. There is no upper limit to the size of a governing council, however a school council cannot have more than 23 members without the Minister's approval.

The principal is an ex-officio⁸ member of a governing or school council. The principal, or, if the council is

serving two or more schools, the principal of each of those schools, has voting rights.

The majority of the councillors in a governing or school council must be parents of children attending the school.

A governing council may also appoint up to three community members to the council. These could be, for example: representatives from business or industry; significant groups within the community; parents from a diverse cultural and linguistic background; persons with specific skills and expertise or perspectives; a nominee of the local municipal or district council; or the local House of Assembly member or their nominee.

⁸ Ex-officio: is an automatic appointment, eg. to a committee, council or board, due to a persons' position.

However, in the case of school councils for high schools or other schools with secondary components, eg area schools, the local House of Assembly member or his/her nominee, and an elected local government councillor nominated by the local municipal or district council have a right to membership on the school council.

Membership of a governing council also includes:

- a maximum of three staff of the school (depending on the size of the school)
- up to two students
- a nominee from each affiliated committee of the governing council (up to a maximum of three members).

At the time of election, nomination or appointment to a governing council, members who are also staff of a public school, employees of the department, and those employed under specified legislation⁹ must not make up the majority of elected parent members or the majority of councillors.

Membership of a school council also includes:

- a maximum of three staff of the school (depending on the size of the school)
- a nominee from each affiliated committee of the school council.

A person is not eligible to become a councillor on a governing council or school council if they:

- are an undischarged bankrupt or are receiving the benefit of a law for the relief of insolvent debtors
- have been convicted of any offence of dishonesty, or of a sexual nature involving a minor, or of violence against a person.

Depending on the category of membership, councillors on a governing or school council can be appointed for a maximum of one or two years.

Governing and school councils must meet twice each term.

CONSULTATION QUESTIONS

➤ What are your views on the current membership structure of a governing council or school council? Do you think it is working well? If not, how do you think it could be improved?

➤ What are your views on the current size of a governing council or school council?

➤ What are your views on the current tenure of governing council or school council members?

⁹ Education Act 1972, Children's Services Act 1985 and Technical and Further Education Act 1975

Role of the Minister, Chief Executive and principal in relation to governing councils and school councils

Role of the Minister

Under the Education Act, the Minister is responsible for establishing and dissolving governing councils and school councils.

The Minister publishes model constitutions for these councils, which are available here [🔗](#).

A governing or school council will need the Minister's approval if they wish to operate under a constitution that varies from the relevant model constitution. In practice, the name of the council and membership configuration are the only areas in which a council can make changes. The Minister may direct a governing or school council to amend its constitution, after giving the council an opportunity to respond to the amendments.

The Minister is also responsible for approving the code of practice with which the members of a governing council must comply. School councils do not have codes of practice.

The Education Act allows the Minister to issue binding administrative instructions to governing and school councils. The Minister has issued a range of administrative instructions and guidelines to guide governing and school councils in the exercise of their powers and functions. These instructions and guidelines are available here [🔗](#).

The Minister has the power to prohibit or restrict the exercise of a specified power or function by a governing or school council, where the Minister believes it is necessary as a matter of urgency. The Minister may also remove a member of a governing or school council from office where there is reasonable cause.

A governing and school council needs the Minister's written consent to borrow money or to deal with real property.

Under their constitutions, governing and school councils must provide an annual report to the Minister.

Role of the Chief Executive

The Chief Executive of the department, as the Director-General under the Education Act, may approve an application by a governing or school council to impose a materials and services charge for each student which is greater than a specific amount (referred to as the standard sum in the Education Act, being \$219 and \$290 for primary and secondary students respectively). The Chief Executive must also make services available to councils for the recovery of unpaid materials and services charges.

The Chief Executive (or Auditor-General) may at any time inspect or audit accounts kept by a governing or school council.

Role of the principal of the school

The principal of a school is an ex-officio¹⁰ member of the governing council or school council.

Where a school has a governing council, the principal is jointly responsible with the council for the governance of the school. However, neither a governing nor school council is able to give directions to the principal in relation to the manner in which the principal carries out their duties. In addition, the council must not interfere with the provision of instruction in the school in accordance with the curriculum determined by the Chief Executive, or the administration of discipline in the school.

¹⁰ Ex-officio: is an automatic appointment, eg. to a committee, council or board, due to a persons' position.

The Education Act stipulates that any complaint received by a governing or school council against the principal must be passed on, without comment, to the Chief Executive, and any complaints against school staff must be passed on, without comment, to the principal.

Further, regulation 42 of the Education Regulations sets out the specific duties of school principals, including responsibility for:

- the school's educational leadership
- day-to-day management of the school's operations
- student welfare and development, including establishing and maintaining an environment favourable to learning, acceptable conduct, self-control and discipline and respect for others and their property
- oversight of the delivery of the school's curriculum
- informing and ensuring consultation with the school community about rules for student discipline and administering such discipline
- promoting professional development of staff and encouraging them to participate in development of school policy and problem resolution
- conducting regular staff meetings
- informing the school council of relevant policies
- fostering community participation in school programs and educational developments
- the care and management of school property.

A principal of a school is answerable to the Chief Executive, as the Director-General under the Education Act, as their employer.



CONSULTATION QUESTIONS

- ✎ What are your views on the current roles of the Minister, Chief Executive and principal in relation to school governance?

Employment and contractual responsibilities of governing councils and school councils

Employees of council

The constitutions of governing councils and school councils allow them to employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the department's Chief Executive.

Employment contracts must conform with the relevant award. Non-teaching staff can be employed to assist in carrying out the functions of the council outlined in its constitution. It is the principal's responsibility to supervise and promote the development of any staff employed by the

council. Where the employee has any concerns or grievances they should discuss these matters with the principal.

As the legal employer, the governing or school council is responsible for ensuring that the correct calculation and payment of wages, taxation, leave entitlements and superannuation occurs, and appropriate WorkCover requirements are met.

Non-teaching staff can be employed under a *contract of service*, where they become an employee of the governing or school council. AIG Section 5 (clause 26) provides a number of examples where councils could employ staff under a contract of service. Some of these examples include the establishment, maintenance and control of residential facilities for the accommodation of students; management of the school canteen; conduct of out of school hours care (OSHC) programs; and management of land, buildings and equipment of the school.

AIG Section 5 provides a standard contract form that governing and school councils are required to use when employing non-teaching staff.

Contractors of council

A governing or school council may also engage an independent contractor to carry out a function under its constitution. Such work may be undertaken under a *contract for service*. AIG Section 5 also provides a standard contract form that councils are required to use when employing an independent contractor. Councils entering into a contract for services are responsible for ensuring that the work undertaken by the contractor is carried out satisfactorily.

Other responsibilities of council

Governing or schools councils may also have responsibility for operating a canteen, OSHC service or a residential facility for the accommodation of students.



CONSULTATION QUESTIONS

- What are your views on the current scope of the roles and responsibilities of governing councils or school councils with regard to the operation of a canteen, out of school hours care service, residential facility for the accommodation of students or in relation to other areas of council responsibility?
- Should governing councils or school councils have employment responsibilities? If no, why not? If yes, what further support could be provided to support these councils in fulfilling their responsibilities as employers?
- Has your governing council or school council encountered any issues as an employer of staff or contractors? If so, what have they been?

PART 3 – PRESCHOOLS

Public preschool governance in South Australia

The majority of public preschools are currently established in two ways in South Australia. They are either *children's services centres* established under the Children's Services Act, or they are established by the Minister under section 9 of the Education Act.

Preschools established under the Children's Services Act are often referred to as *stand-alone preschools*. Those established under the Education Act are commonly referred to as *school-based preschools*.

Governance arrangements for preschools established under the Children's Services Act

Around three quarters of South Australia's public preschools are registered under the Children's Services Act which has the effect of giving these preschools a legal identity by making them a body corporate.

Stand-alone preschools have a model constitution which is approved by the Director of Children's Services (the Chief Executive of the department). This sets out the preschool's objects and purposes, powers, functions, membership and rules relating to meetings.

The constitution requires that the preschool appoint a governing council to manage the preschool. While the Children's Services Act was not amended as the Education Act was in late 2000, to provide for preschools to move to a governing council model, in practice many preschools have done so. At that time, with the advent of a new model of local management for preschools, most stand-alone preschools elected to change the name of their governing body from a *management committee* to a *governing council*. This change was reflected in their constitution, however the Children's Services Act still refers to these bodies as management committees.

The preschool constitution sets out the functions of the preschool governing council, its membership, rules relating to meetings and the roles of key office holders. Constitutions may be varied with the agreement of the Director of Children's Services. In practice, amendments to the preschool constitution relate to the name of the preschool and the composition of the governing council.

On 1 January 2012 a substantial portion of the Children's Services Act was repealed¹¹, including all of the Director of Children's Services' previous regulatory functions except from their powers relating to amending a service's constitution and the associated governance arrangements of a stand-alone preschool with existing registration. The practical effect of this is that no new stand-alone preschools have been able to be incorporated under the Children's Services Act from this time.

A copy of the model constitution for stand-alone preschools is available here [!\[\]\(7afb21ee181a5b369dd24fa18bacd262_img.jpg\)](#).

¹¹ Due to the commencement of the EECS Registration and Standards Act.



Governance arrangements for recently established public preschools

Governance arrangements for new stand-alone public preschools are currently being developed by the department. As an interim governance arrangement, new public preschools will establish an advisory group to ensure the preschool community is involved in the governance of the preschool, with a focus on supporting children's development and learning. Terms of reference will also be developed to support the operation of the advisory group, which will be informed by the current model preschool constitution.

This is an interim governance arrangement; governance arrangements for all public preschools, both existing and new, will be determined by the department following consideration of the relevant recommendations contained in the report resulting from this independent review of government school and preschool governance.

Governance arrangements for preschools established under the Education Act

The Minister has a general power under section 9 of the Education Act to establish public schools that provide preschool education (s9(1)(b)).

These types of preschools are based in schools and operate as a program of the school, and currently account for around one quarter of the public preschools in South Australia. These school-based preschools are governed by the governing council of the school under that council's constitution; school-based preschools do not have their own constitution or their own governing council as is the case with stand-alone preschools.

However the governing councils of schools can establish sub-committees to provide advice on specific programs within their school, and in some cases a preschool sub-committee has been established to represent the views of the preschool and provide preschool-specific advice.

Governance arrangements for integrated services – public preschool and child care

Integrated services combine a public preschool operated by the department and a child care centre in a shared facility. The preschool and child care centre operate as two separate legal entities. The public preschool is incorporated under the Children's Services Act and operates in accordance with the model preschool constitution approved by the Director of Children's Services. While the child care centre may also be incorporated under the Children's Services Act, generally they are incorporated under the Associations Incorporation Act. The Corporate Affairs Commission must approve the constitution of an association seeking incorporation under the Associations Incorporation Act and it must conform with this Act's requirements (noting that this Act refers to constitutions as *rules of the association*).

On a day-to-day operational basis the preschool and child care programs operate in unison. While the preschool and child care centre each have their own governing body, in most of these centres there is common representation on the governing body of each legal entity and their meetings are generally held concurrently.

The department provides and maintains the shared facility, with the child care centre contributing to the cost of utilities. The department is the employer of the staff of the preschool, with the child care centre employing the child care staff. The department's site leader, however, manages all staff at the site, ie those employed by the department and the child care centre. The child care centre operates the child care service for the purposes of the Family Assistance Law¹².

Currently, the governance of integrated services sites is not streamlined; the preschool and child care centre each require separate governance arrangements as they are established as separate legal entities. The department is keen to consider and develop a modern governance model that supports the operation of integrated services sites.

Governance arrangements for Children's Centres for Early Childhood Development and Parenting

Stand-alone preschools can also operate within a Children's Centre for Early Childhood Development and Parenting (children's centre). These preschools are co-located with a number of other services in the children's centre, which can include playgroup, crèche, occasional care, long day care and health and family support services. While co-located, these preschools are still established under the Children's Services Act and operate in accordance with the model preschool constitution approved by the Director of Children's Services (governance arrangements as discussed above). The children's

centres have also established governance groups and structures to enable collaboration and the provision of input into the decision-making that supports the operation and objectives of the children's centre as a whole.

Public preschool governance legislative and constitutional framework

The powers and functions of a stand-alone preschool as set out in the preschool constitution include:

- dealing with real or personal property and administering property on trust
- opening and operating bank accounts
- investing money
- borrowing money
- giving security for loans
- appointing others to transact business on behalf of the preschool
- employing staff, except as teachers, in addition to those employed by the Director of Children's Services
- entering into contracts necessary to further the objects of the preschool and in line with departmental policies and procedures.

The functions of the governing council of a stand-alone preschool as set out in the preschool constitution include:

- involving the preschool community in the governance of the preschool

¹² The Australian Government Department of Education indicates that the Family Assistance Law is the basis for family assistance, including the approval of child care services, the payment of Child Care Benefit and Child Care Rebate, the payment of Maternity Immunisation Allowance and other matters. The Family Assistance Law includes a number of Acts, Schedules and Consolidated Disallowable Instruments that can be accessed via: <https://education.gov.au/family-assistance-law>

- setting the broad direction, vision and strategic planning for the preschool, including developing, monitoring and reviewing the objectives and targets of the strategic plan, as well as:
 - oversight of human resource and asset management plans
 - deciding how the financial resources allocated to the preschool will be expended and regular budgetary review
 - monitoring and reviewing the Site Learning Plan
 - reporting to the preschool community and the Minister on specific matters
- setting parent contribution fees
- determining policies for the preschool, including safety, welfare and behaviour management of children, noting that preschools are required to comply with the department's policies and guidelines
- appointing officers and employees as required to carry out the objects of the preschool, such as gardeners and cleaners
- establishing sub-committees as necessary to further the objectives of the preschool
- performing other functions as necessary to meet the objects of the preschool
- raising money for preschool-related purposes.

Preschools are also required to comply with any rules, guidelines and policies prescribed by the Minister.



CONSULTATION QUESTIONS

- ✎ In your view, are the current functions as set out in the model preschool constitution appropriate for a stand-alone preschool governing council? If no, what should be changed?
- ✎ Do you think the role and function of a preschool governing council needs to be clearer or better defined? If so, in what way?
- ✎ Has your preschool governing council encountered any challenges in applying the requirements of the constitution? If so, what have they been? What would help improve this?
- ✎ What are your views on the current governance arrangements for stand-alone preschools that are located within an integrated preschool and child care service or a Children's Centre for Early Childhood Development and Parenting? What has worked well? Could any areas be improved?
- ✎ Do you think the operation of a preschool governing council could be improved? If so, in what way?
- ✎ What factors are important in establishing positive relationships between the preschool director, other governing council members and the wider parent community?
- ✎ What are your views on the current governance arrangements for school-based preschools? What has worked well? Could any areas be improved?

Roles and responsibilities of stand-alone preschool governing council office holders and committees of council

The office holders of the preschool governing council are the chairperson, deputy chairperson (if required), secretary and treasurer who must be elected by the governing council. The preschool constitution specifies the roles and functions of the office holders.

The chairperson

The chairperson must not be a member of the staff of the preschool or a person employed in an administrative unit for which the Minister is responsible.

The chairperson must:

- call and preside at the meetings of the council and the executive committee
- with the preschool director and secretary, prepare the agenda for all council meetings and general meetings of the preschool, indicating any item requested by the preschool director
- facilitate participation in meetings by all councillors, decide on the conduct of meetings and matters of order
- report at the annual general meeting on the proceedings and operations of the council for the period since the date of the previous annual general meeting
- generally act as spokesperson on behalf of the council.

Chairpersons have a deliberative vote only; they do not have a casting vote if votes are equal.

The secretary

The secretary must:

- provide notifications of meetings in line with the preschool constitution
- forward the meeting agenda to each councillor prior to each meeting
- record and forward minutes before the next meeting
- conduct the official correspondence of the council.

The secretary is responsible for ensuring the maintenance and safekeeping of:

- the constitution and the code of practice of the council
- the common seal and a record of each use
- various official documents, registers, reports and records relating to council business
- council contracts
- copies of preschool policies.

The treasurer

The treasurer must not be a preschool staff member.

The treasurer must ensure that:

- monies received are paid into the authorised preschool account
- preschool accounts are paid by the authorised signatories
- records are kept of all financial transactions and that they are available for inspection when required
- major or unusual expenditures receive appropriate approvals
- the preschool's financial budgets and statements are prepared and a report submitted to each council meeting
- the preschool's audited accounts are presented to the annual general meeting.

The treasurer must also chair the council's Finance Advisory Committee if the preschool has one.

Committees

The council can appoint an executive committee made up of the office holders and preschool director, to deal with matters delegated or referred by the council and report to council meetings.

The council can also establish sub-committees for specific purposes. These sub-committees can be made up of councillors and non-councillors and need to meet and report to the council as the council decides.



CONSULTATION QUESTIONS

- What are your views on the current roles and responsibilities of preschool governing council office holders?
- Should the scope of these roles and responsibilities be changed? If so, in what way?
- What are your views on the operation of preschool governing council committees? What is working well? What could be improved?
- Could further support be provided to office holders? If so, in what way?

Composition of stand-alone preschool governing councils

A stand-alone preschool governing council must consist of between five and 25 councillors who are 'members' of the preschool. Preschool governing council members participate in councils in a voluntary capacity.

To be considered a member of a preschool, a person must agree to support the objects of the preschool and:

- be a parent of a child currently enrolled at the preschool, or enrolled at the preschool in the preceding or following year
- be an employee of the preschool and/or staff member of the preschool who is employed by the Director of Children's Services
- have applied for membership and been accepted as a member by a majority vote of a general meeting.

The membership of a preschool governing council includes:

- members of the preschool who are parents of children enrolled at the preschool (these members must form the majority of the council)
- the director/s of the preschool employed by the Director of Children's Services

- a staff member elected by the employees at the preschool (one such member only)
- a representative nominated by any other program or service regularly provided by the preschool (one such member only).

The preschool governing council may also include up to three individuals appointed by the governing council from the local community who have specific skills and expertise or perspectives that will contribute to the effectiveness of the governing council and preschool.

Preschool governing council members are elected at the annual general meeting and may hold office for up to two years, with the exception of the staff representative who may only be on the council for one year. In practice, parents at the preschool usually hold office for the year that their child attends the preschool program.

The preschool governing council meets at least eight times a year, no greater than 90 days apart. The annual general meeting is held at least once a year and not more than 16 months apart.

CONSULTATION QUESTIONS

- What are your views on the current membership structure of a stand-alone preschool governing council? Do you think it is working well? If no, how do you think it could be improved?

- What are your views on the current size of a preschool governing council?
- What are your views on the current tenure of preschool governing council members?

Role of the Minister, Chief Executive and preschool director in relation to stand-alone preschool governing councils

Role of the Minister

Under the Children's Services Act, there is a right of appeal to the Minister against a decision of the Chief Executive, in his or her capacity as the Director of Children's Services under the Children's Services Act, to cancel the registration of a stand-alone preschool, and the Minister must establish appeal boards for the purposes of investigating such appeals.

The Minister also has the power to issue rules, guidelines and policies to preschools.

Under the preschool constitution, a preschool governing council must report to the Minister at least once a year, in accordance with administrative instructions.

Role of the Chief Executive

As of 1 January 2012, nearly all of the Chief Executive's functions under the Children's Services Act were repealed¹³, however the Chief Executive retains the power to direct a preschool to make amendments to its constitution. The Chief Executive must also approve any amendment a preschool proposes to make to its constitution in order for it to take effect.

Under the preschool constitution, the Chief Executive (or Auditor-General) may at any time inspect any accounts under the control of the governing council, and the Chief Executive can require the governing council to provide other information concerning the operations of the preschool.

Under the preschool constitution, the Chief Executive may direct a preschool to be dissolved if proper reason exists.

Role of the preschool director

In accordance with the preschool constitution, the preschool director is an ex-officio¹⁴ member of the governing council.

Under the preschool constitution, the preschool director has a joint responsibility with the governing council for the governance of the preschool.

The preschool constitution dictates that the preschool director is answerable to the Chief Executive for providing educational leadership in the preschool.

Under the preschool constitution, the preschool director must also supervise and promote the development of staff employed by the governing council.



CONSULTATION QUESTIONS

- What are your views on the current roles of the Minister, Chief Executive and preschool director in relation to stand-alone preschool governing councils?

¹³ Due to the commencement of the EECS Registration and Standards Act

¹⁴ Ex-officio: is an automatic appointment, eg, to a committee, council or board, due to a persons' position.

Employment and contractual responsibilities of stand-alone preschools and their governing councils

Employees of a stand-alone preschool and preschool governing council

The preschool constitution allows a stand-alone preschool to employ staff, except as teachers, in addition to those staff in the preschool who are employed by the department's Chief Executive.

A preschool governing council can appoint non-teaching staff to carry out the objects of a preschool as set out in clause 3 (Object and Establishment) of its constitution. Where an employment arrangement is entered into, the governing council is responsible for ensuring that the correct calculation and payment of wages, taxation, leave entitlements and superannuation occurs, and that appropriate WorkCover requirements are met. Generally however, preschool governing councils do not directly employ staff.

Contractors of a stand-alone preschool

The preschool constitution allows a stand-alone preschool to enter into a contract with an independent contractor that is in accordance with the objects of the preschool and in line with departmental policies and procedures.

In practice, preschools are likely to engage an independent contractor to undertake functions such as cleaning, gardening and sometimes book-keeping, rather than directly employing the staff.

Individual preschools generally draft contracts for employees and contractors.

CONSULTATION QUESTIONS

- What are your views on the current scope of the roles and responsibilities of stand-alone preschools and their governing councils with regard to the employment of staff or contractors?
- Should stand-alone preschools and their governing councils have employment responsibilities? If no, why not? If yes, what further support could be provided to support preschools and their governing councils in fulfilling their responsibilities as employers?
- Has your stand-alone preschool or its governing council encountered any issues as an employer of staff or contractors? If so, what have they been?

PART 4 – MATTERS RELATING TO GOVERNING COUNCILS IN SCHOOLS AND PRESCHOOLS

Support provided to governing bodies in schools and preschools

The department provides advice and support to all governing bodies in schools and preschools¹⁵ on governance-related matters on request, for example in relation to procedural, financial or legal matters. This support is provided by staff who are located in central and local education offices. While this support may include training of councillors, it is understood that this training currently occurs on an ad hoc basis.

The department also provides advice and support to governing bodies in schools and preschools on specific operational matters, for example in relation to a school's management of its OSHC service. The department has developed resources that are available on the department's OSHC website and departmental officers provide training to these governing bodies on OSHC related matters.

The department has developed the Site Governance Guidelines document to assist governing bodies by providing advice on the structure, membership, roles and functions of councils and their committees, meeting procedures and constitutions.

The AIG Section 5 document, which applies only to governing councils, school councils and affiliated committees in schools, contains relevant administrative instructions issued by the Minister as well as general advice and policy information to support these councils and committees in meeting their legal responsibilities.

The department's Site Governance website¹⁶ provides governing bodies as well as affiliated committees, with information, resources and links to the key documents that guide their operation; including to the relevant legislation, model constitutions, model code of practice, Site Governance Guidelines document and AIG Section 5.

The department has also developed The Gold Book website¹⁷ to provide information to governing bodies on the financial policies and instructions that are mandatory for schools, preschools, canteens and OSHC services.

The department's Policy A-Z website¹⁸ provides links to the policies, procedures, guidelines and other education related information that are relevant to schools and preschools.

¹⁵ In this part, these governing bodies can include a governing council and school council in a school or a governing council in a preschool.

¹⁶ Available: www.decd.sa.gov.au/sitegovernance/

¹⁷ Available: www.decd.sa.gov.au/goldbook/

¹⁸ Available: www.decd.sa.gov.au/policy/pages/OSPP/47427/



Support is also available to governing bodies in schools and preschools from the following key organisations:

- South Australian Association of School Parents' Clubs (SAASPC) – SAASPC promotes the interest of parents in the education and welfare of children at preschool and school, and also advocates for parents on educational matters¹⁹.
- South Australian Association of State School Organisations (SAASSO) – SAASSO is a parent body for public education in the state and provides support, advice, training and advocacy for public school governing councils²⁰.

CONSULTATION QUESTIONS

- What are your views on the current support that is provided to school and preschool governing councils by the department, SAASPC, SAASSO or any other entities?
- Can the support and information provided to school and preschool governing councils be enhanced in the future to ensure that council members understand and are best able to fulfil all of their governance responsibilities?
- In your view, what types of support/information/resources would best support the successful operation of school and preschool governing councils? Is there a specific role here for the department?
- How can school and preschool governing councils learn from each other?

¹⁹SAASPC website available: www.saaspc.org.au

²⁰SAASSO website available: www.saasso.asn.au

Resolution of disputes – school governing councils

Resolution of disputes by mediation

Recommendation 22 of the IEI Report considered a mediation process should be established to resolve disputes between the department and the governing council of a school.

Mediation is a process whereby parties in dispute are encouraged by an independent and neutral person (the mediator) to negotiate an outcome that is acceptable to each party. Mediation is more cost-effective than litigation or arbitration. A mediator cannot impose a decision upon the parties and it may be the case that an agreement is not able to be reached.

On 23 December 2013, the Minister issued an administrative instruction to the governing councils of schools in accordance with section 96 of the Education Act to address Recommendation 22. The instruction specifies an interim process for the engagement of mediation services where the governing council of a school is in dispute with the department. It was deemed to be an interim process, as it was intended to be the subject of consultation through this review.

This interim process is set out in AIG Section 5 (clause 10A and division 1A). This process is available here .

Other dispute resolution processes

A dispute resolution model can also include conciliation, expert determination and arbitration processes. A general description of these terms is provided below.

Conciliation

The conciliation process is similar to mediation but is more commonly used by tribunals or government agencies. Conciliation involves the independent and neutral person (the conciliator) being more involved in the process by providing expert advice, making suggestions and introducing other factors that may result in parties being encouraged to reach an agreement.

Expert determination

Expert determination is another process to resolve a dispute between parties that is based on the decision of an independent person (the expert). Parties agree to be bound by the decision of the expert. It is not an arbitration process, however it is often an effective way of resolving disputes which are technical in nature.

Arbitration

Arbitration is a formal dispute resolution process where the parties refer their dispute to an independent and neutral person (the arbiter) for determination. Arbitration is similar to a court hearing. The disputing parties are present, commonly accompanied by their lawyers, and the dispute is determined by an impartial arbitrator who may be appointed by the court. The benefit of using arbitration over going to court is that it is more cost-effective and efficient and the rules of arbitration are not as rigid as the rules of court. However arbitration involves the parties submitting to a legally binding outcome. Arbitration requires a contractual or legislative base to work from.

Other governing council disputes

Disputes may also occur between a governing council and principal or between other councillors. If such disagreements could not be resolved within the council, the Education Director would seek to assist the parties to resolve the matter.

Resolution of disputes – preschool governing councils

Under its constitution a stand-alone preschool governing council is required to participate in a scheme for the resolution of disputes between the governing council and the preschool director. While such a scheme has not been formalised at this time, the Education Director seeks to assist parties to resolve a dispute where the matter is not able to be resolved within the council. The Education Director would also seek to assist in the circumstance where a disagreement exists between other preschool governing councillors.

CONSULTATION QUESTIONS

Schools

- What are your views on the interim dispute resolution process that specifies the engagement of mediation services where the governing council of a school is in dispute with the department?
- What are your views on a future dispute resolution model also including other processes where there is a dispute between the governing council of a school and the department?

- What are your views on how other governing council disputes could be handled?

Preschools

- What are your views on establishing a dispute resolution model for preschool governing councils that is consistent with that established for governing councils in schools?

Seeking independent legal advice – governing council of a school

If the governing council of a school is in dispute with the department, there may be a need for a governing council to access independent legal advice.

Recommendation 23 of the IEI Report considered that provision should be made to establish a fund from which the governing council of a school can draw funding to enable the council to obtain independent legal advice when it is in dispute with the department, and that the decision whether it is necessary or appropriate for the council to obtain funding should be made by the person who holds the office of Crown Solicitor.

On 23 December 2013, the Minister issued an administrative instruction to the governing councils of schools in accordance with section 96 of the Education Act to address Recommendation 23. The instruction specifies the process by which the governing council of a school can seek legal advice

when in dispute with the department. The funding for any such legal advice will be drawn from existing departmental resources and will be automatic once the Crown Solicitor approves that the required criteria is met for the engagement of an independent legal practitioner.

This process is set out in the AIG Section 5, clause 10A and division 1B. This process is available here [🔗](#).

Seeking independent legal advice – governing council of a stand-alone preschool

Currently there is not a formal process in place by which a stand-alone preschool governing council can seek independent legal advice if in dispute with the department.



CONSULTATION QUESTIONS

Schools

- ✎ What are your views on the current process that specifies how the governing council of a school can seek independent legal advice when in dispute with the department?

Preschools

- ✎ What are your views on developing a process by which stand-alone preschool governing councils can seek independent legal advice if in dispute with the department?
- ✎ What modifications might be required to apply the process developed for schools, to preschools?

Any other matters

You may have some additional feedback based on your experience with school or preschool governance, or general comments in relation to ways that the governance arrangements in South Australian schools and preschools could be strengthened.



CONSULTATION QUESTIONS

- Do you have any other suggestions about how public school and preschool governance could be strengthened?

APPENDIX 1

Overview of powers and functions of school councils in jurisdictions' legislation – Australia and New Zealand

Australia

School councils, also known as school boards or school associations, exist in all Australian jurisdictions, but are not compulsory in the legislation of Victoria, New South Wales, Northern Territory or Queensland, the exception being those Queensland schools now operating under an

independent public schools model.

The powers and functions held by school councils vary, and an overview of the functions of school councils included in the legislation of other Australian jurisdictions is provided in the following tables.

Australian Capital Territory

Legislation	<i>Education Act 2004</i> Part 3.4 School boards of government schools
Governance	Each government school has a school board.
Functions	• Establish strategic directions and priorities for the school • Monitor, review and report on school performance • Develop, maintain and review curriculum • Develop and review education policies • Establish budgetary policies and approve the school budget • Establish policies for the use of school assets and management of financial risk • Develop relationships between school and community • Make recommendations to Director-General on issues affecting the school • Encourage parent participation in their children's learning. The Board must also nominate a member to be part of a selection panel established to make recommendations to the Director-General about the appointment of the school principal.
Powers	The school board of a government school may ask the parents of a student enrolled at the school, or anyone else, to make a financial contribution to the school.
Specific limitations	The Director-General: • May provide the board with written directions about its functions • Is not required to accept or act in accordance with a recommendation of the board or carry out a policy decided by board.



New South Wales

Legislation	<i>Education Act 1990</i> Part 6 Government Schools Section 36 School Councils
Governance	The regulations may provide for the establishment of school councils at government schools. A school council is to be constituted in such manner, and has such functions, as are prescribed by the regulations. While the Education Regulations are silent on school councils, the majority of NSW schools have a school council.

Northern Territory

Legislation	<i>Education Act 1979</i> Part 9 School Councils *Note - the Northern Territory Government has announced it intends to reform the Education Act and recently released a discussion paper for consultation.
Governance	The Minister may establish a school council for a government school at the request of an interested body involved in the management of a government school or from the community served by a government school. The Act also provides for school management council, comprising the principal, to operate concurrently.
Functions of governing body	• Examine how educational policies are implemented and provide advice to the head teacher • Identify the particular educational needs of the community served by the school and advise the Chief Executive Officer • Consider and advise the head teacher and Chief Executive Officer on initiatives in community education and means for improving links between the school, parent organisations, other associations and the community in general • Assess the school's needs in relation to buildings, facilities and equipment, and the needs of students and teachers and other staff are make recommendations to the Chief Executive Officer • Within the scope of its functions and powers, determine how money allocated to the school is to be spent, and spend it accordingly • Determine and regulate how the school grounds may be used for the benefit of the local community • Exercise general control of the school's building and grounds, including, with consent of the Chief Executive Officer, controlling the conduct of work being carried out • Control the manner in which repair and maintenance services are being rendered for the school • Advise the Chief Executive Officer in relation to the job description for the head teacher • Advise the head teacher in relation to the job descriptions for teaching and ancillary staff • Employ, with the consent of the Chief Executive Officer, such persons as the school council thinks fit. • Fundraising activities. If however, a school management council also exists for the school, this council can exercise a number of these functions to the exclusion of the school council.

Northern Territory

Powers	A school council can acquire, hold, dispose of or deal with property, and can sue or be sued. A school council has power to do such things as are necessary or convenient to be done for, or in connection with, the performance of its functions. A school council may make by-laws, including for the purpose of the: • Protection of school property from trespass, damage or misuse • Regulation or prohibition of access to and use of school property • Regulation of the conduct of persons or the use of vehicles on school property. A school council may also make rules.
Specific limitations	The Minister may: • Enter into discussions with school council and give directions regarding the manner in which the functions of the school council are to be performed. A school council must comply with the directions. • Determine terms of reference for the school council. This may include a determination that the school council shall not enter into an agreement involving the payment by the council of an amount in excess of an amount specified by the Minister, unless approved by the Minister. The Minister may cause to be prepared and published for the guidance of school councils, guidelines, not inconsistent with the Act, for or in relation to the exercise of powers and the performance of functions conferred or imposed by the Act upon school councils. These guidelines, which must be adopted by school councils, may be made for and in relation to such matters as: • Regulating the constitution or establishment of committees to be affiliated with a school council for the purposes of aiding the school council in the exercise of its powers and the performance of its functions • Regulating the calling of meetings of school councils and of affiliated committees of school councils and of meetings of citizens and teachers • Regulating proceedings and voting at meetings of school councils, affiliated committees of school councils and meetings of citizens and teachers Regulating a school council's provision of meals or refreshments for the staff or students of the government school for which it is established and the charges it may make • Regulating the manner in which a school council shall cause proper accounts to be kept of any moneys received by it and dealings with those moneys and of the auditing of those accounts (subject to section 71H)

Northern Territory

Specific limitations

- Prohibiting a school council, or a member of a school council when acting in that capacity, from giving instructions to teachers concerning their professional duties
- Prohibiting, except with the approval of the Chief Executive Officer in each particular case, a member of a school council from being financially interested, either directly or indirectly, in works or services executed or rendered for the government school for which it is established and authorised by the school council
- Regulating the conduct of inquiries and investigations into complaints against teachers, including the head teacher.

If, in the opinion of the Minister, the school council is not complying with the requirements of the Act in so far as those requirements are applicable to that school council, the Minister may abolish the school council.

Queensland

Legislation	<i>Education (General Provisions) Act 2006</i> Chapter 6 School Councils
Governance	The Chief Executive may, by notice in the gazette, establish a school council for a State school.
Functions	• Monitoring the school's strategic direction • Approving: - plans and policies of the school of a strategic nature - other documents affecting strategic matters, including the annual estimate of revenue and expenditure for the school • Monitoring the implementation of the plans, policies and other documents affecting strategic matters • Advising the school's principal about strategic matters. The council must perform its functions in a way that achieves the best learning outcomes for the school's students.
Specific limitations	A school council may not: • interfere with the management by the school's principal of the day-to-day operations of the school and its curriculum • make operational decisions about the use of teaching or learning resources at the school • make decisions about the individual teaching style used, or to be used, at the school • make a decision that is contrary to law or a written policy of the department. A school council may not: • have control of funds • enter into contracts • acquire, hold, dispose of or deal with property • sue or be sued. A school council must not establish a committee or subcommittee. The Minister may give a school council a written direction about a matter relevant to the performance of its functions if the Minister is satisfied it is necessary to give the direction in the public interest, and the council must comply with the direction. In accordance with the <i>Public Sector Ethics Act 1994</i>, the Chief Executive must ensure a code of conduct is prepared that applies to school councils.

South Australia

Legislation	<i>Education Act 1972</i> Part 8 School Councils (noting that the following information pertains to governing councils only)
Governance	Each government primary and secondary government school must have a council. The same body may be the council for two or more government schools.
Functions	In context of the council's joint responsibility with the principal for the governance of the school they perform the following functions: • Involving the school community in the governance of the school by: – providing a focus and a forum for the involvement of parents and the school community – ascertaining the educational needs of the local community and the attitude of the local community to educational developments within the school – ensuring the cultural and social diversity of the community is considered and particular needs are appropriately identified • Setting the broad direction and vision of the school • Strategic planning for the school, including: – developing, monitoring and reviewing the objectives and targets of the strategic plan – considering, approving and monitoring human resource and asset management plans • Determining policies for the school including policies for the safety, welfare and discipline of students • Determining the application of the total financial resources available to the school including the regular review of the budget • Monitoring and reviewing of the Site Learning Plan • Reporting to the school community and Minister on: – the strategic plan – school finances – operational plans and the council's operations • The council may perform such functions as necessary to establish and conduct, or arrange for the conduct of: – facilities and services to enhance the education, development, care, safety, health or welfare of children and students – residential facilities for the accommodation of students. The council: • Must be responsible for the proper care and maintenance of any property owned by the council

South Australia

Functions	• May raise money for school related purposes • May perform other functions as determined by the Minister • May do all those acts and things incidental to exercising its functions • Must exercise its functions in accordance with the legislation, administrative instructions and their constitution. Under section 106A of the Act, councils are responsible for approving the amount of materials and services charges for students at the school. If an amount above the standard sum (\$219 for primary students, \$290 for secondary students) is proposed, the council must poll parents, and if the higher amount is endorsed by a majority of parents, seek the approval of the Chief Executive (or delegate) for approval of that amount.
Powers	In addition to the powers conferred under the Act, the council may: • Employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the Chief Executive • Enter into contracts • Construct any building or structure for the benefit of the school or make any improvements to the premises or grounds of the school, with the approval of the Chief Executive • Purchase or take a lease or license of premises for student residential facilities, and enter into any other agreements or arrangements for the establishment, management, staffing and operation of such facilities • Establish and conduct, or arrange for the conduct of, facilities and services to enhance the education, development, care, safety, health or welfare of children and students • Do all those acts and things incidental to the exercise of these powers. The council's powers must be exercised in accordance with legislation, administrative instructions and their constitution.
Specific limitations	• A council may only acquire or dispose of real property, or borrow money with the Minister's written consent. The Treasurer is able guarantee loan repayments, which can be paid out of the Consolidated Account • Councils are prohibited from taking any action that interferes with the provision of instruction in the school and the administration of discipline in the school • A council must not give directions to the principal or other members of the staff (other than council employees) relating to how they carry out their duties • If a council receives a complaint against the principal or other member of the school staff, it must be passed on, without comment: – if against the principal, to the Chief Executive of the department – if against another member of staff, to the principal.

Tasmania

Legislation	<i>Education Act 1994</i> Part 3 Division 2 School Associations
Governance	State schools must have a school association.
Functions	• Participate in the formulation and development of: - a set of beliefs, values and priorities for the school - the school policies and code of conduct • Provide advice and recommendations to the principal in relation to the general operations and management of the school • Participate on the selection panel in respect of any advertised permanent vacancy for the position of principal • Foster cooperation among teachers, students, members of the school association, parents and the community • Provide advice and recommendations to the Secretary on any matter relating to policy • Approve the school budget • Any other function the Minister determines.
Powers	A school association may: • Do anything necessary or convenient to perform its functions • Carry out trading activities not relating to education for the benefit of the school • Provide, or assist in the provision of, financial or other resources or services for the benefit of the school.
Specific limitations	A school association must exercise its powers in accordance with any instructions issued by the secretary.

Victoria

Legislation	<i>Education and Training Reform Act 2006</i> Part 2.3 Government School Councils
Governance	The Minister may by Order constitute a council to exercise and discharge, in relation to a government school or group of government schools, powers, duties and functions that may from time to time be conferred or imposed on the council by or under the Act. If there is no school council constituted in relation to a school, the Minister may exercise or discharge in respect of the school or any program (including a preschool program) offered by the school, any power, duty or function that would be conferred or imposed by or under the Act on any such council constituted in relation to that school.
Functions	The objectives of a school council with regard to any school in relation to which it is constituted are to: • Assist in the efficient governance of the school • Ensure that its decisions affecting students of the school are made having regard, as a primary consideration, to the best interest of the students • Enhance the educational opportunities of students at the school • Ensure the school and the council complies with any requirements of the Act, the regulations, a Ministerial Order or a direction, guideline or policy issued under the Act. The functions of a school council with regard to any school in relation to which it is constituted are to: • Establish the broad direction and vision of the school within the school's community • 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 • Raise funds for school-related purposes • Regulate and facilitate the after hours use of the school premises and grounds • Exercise a general oversight of the school buildings and grounds and ensure that they are kept in good order and condition • Provide for the cleaning and sanitary services that are necessary for the school • Ensure that all money coming into the hands of the council is expended for proper purposes relating to the school • Provide meals and refreshments for the staff and students of the school and make charges for those meals or refreshments

Victoria

Functions

- 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
- Generally stimulate interest in the school in the wider community
- Perform any other function or duty or to exercise any power conferred or imposed on the council either by or under the Act or the regulations; or by a Ministerial Order or direction issued by the Minister under the Act.

A school council must, in accordance with any Ministerial Order, prepare a school plan that sets out the school's goals and targets for the next four years and the strategies for achieving those goals and targets. The school plan must be signed by both the president of the school council and the principal and approved by the secretary.

In every government school there must be observed in accordance with this section a ceremony at which the students acknowledge their role as citizens of Australia. The school council at each government school must, in accordance with the guidelines issued by the Minister, determine the form of any ceremony and the intervals at which the ceremony must take place.

Victoria

Powers

For the purpose of meeting its objectives or performing its functions or duties a school council may:

- Enter into contracts, agreements or arrangements
- Establish trusts and act as trustee of them
- Charge fees to parents for goods, services or other things provided by the school to a child of the parent
- 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.

A school council may also:

- Employ teachers (for a fixed period not exceeding one year or on a casual basis), teacher aides, or any other staff for the purpose of performing its functions and duties
 - Employ any person to enable the council to do anything it is authorised to do in relation to the use of school buildings and grounds for activities when they are not required for ordinary school purposes
 - Conduct programs in or use, or allow third parties to conduct programs in or use, school buildings or grounds for the purposes of educational, recreational, sporting or cultural activities for students, the local community or young person, when the buildings or grounds are not required for ordinary school purposes
 - With the approval of the Minister, carry out, or enter into contracts in relation to the, construction and improvements to school buildings or the school grounds. A school council may obtain and accept offers or tenders for any such work approved by the Minister that it proposes to carry out
 - Sell equipment, goods or other similar personal property acquired for use in any school in relation to which it is constituted. If the proceeds from the sale of property are under a specified amount, the school council may keep those proceeds. If the proceeds from the sale of property are equal to or more than the specified amount, the school council may still keep those proceeds, if the person appointed by the Secretary has given approval to the school council to do so
 - Use, for any purpose, any funding provided to the school that is not provided for a specified purpose
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Victoria

Powers

- Ask the parents of a student enrolled at the school, or anyone else, to make a financial contribution to the school. A school council may use voluntary contributions for any purpose for any school in relation to which it is constituted unless the contribution is provided for a specified purpose
- Form a sub-committee to assist the council
- Delegate all or any of its powers, duties or functions to another person or body
- Sue and be sued and may hold land
- Offer preschool programs.

In the case of a vacancy in the position of principal in a school, the secretary must, in accordance with any Ministerial Order, take into account the recommendation of the school council of the school (if one exists) when deciding on a person to employ to fill the vacancy.

Specific limitations

A school council does not have the power to do any of the following:

- Employ a teacher with no date fixed for the termination of that employment
- Purchase or acquire for consideration any land or building
- Unless authorised by or under the Act, the regulations or a Ministerial Order:
 - licence or grant any interest in land, including school lands or buildings
 - enter into hire purchase agreements
 - obtain loan or credit facilities
- Form or become a member of a corporation
- Provide for any matter or thing outside of Victoria 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
- Purchase a motor vehicle, boat or a plane.

The secretary may appoint a person to carry out, in accordance with any Order made by the Minister, an effectiveness and efficiency review of the operations, or specified operations, of a school council and to report the results of the review to the secretary.

The Minister may by Order dissolve the council.

Western Australia

Legislation	<i>School Education Act 1999</i> Part 3 Division 8 Parent and community involvement
Governance	A government school is to have a council unless it is exempted by the Minister. Exemptions may be made based on the size or nature of the school, or because the functions of the council can be provided by some other means. Two or more government schools may operate under one council, with the Minister's approval.
Functions	The functions of a council are to: • Take part in: - Establishing, and reviewing from time to time, the school's objectives, priorities and general policy directions - Planning of financial arrangements necessary to fund those objectives, priorities and directions - Evaluating the school's performance in achieving them • Promote the school in the community • Take part in formulating codes of conduct for students at the school • Determine, in consultation with students, their parents and staff of the school, a dress code for students when they are attending or representing the school • Undertake such other functions prescribed by the regulations. The council's role further extends to: • Advising the principal on a general policy concerning the use in school activities of prayers, songs and other material based on religious, spiritual or moral values as part of general religious education and allowing time for special religious education in the school • Approving a determination made by the principal in relation to a materials and services charge or contribution, or the fee for an extra cost optional component of the curriculum • Approving a determination made by the principal in relation to the items that are to be supplied by a student for the student's personal use in the school's educational program • Approving the principal entering into an agreement or arrangement allowing persons to undertake advertising or sponsorship in connection with the educational activities in the school.

Western Australia

Functions	With the approval of the Minister, a council may also take part in the selection of, but not the appointment of, the school principal or any other member of the teaching staff; and carry out any other additional function prescribed by the regulations. With the approval of the Minister, an incorporated council may perform the following additional functions: • Obtain funds for the benefit of the school • Employ certain persons • Manage or operate facilities at the school (eg a canteen, a swimming pool, residential accommodation for students, a school farm or horticultural centre.
Powers	A council may do all things necessary or convenient to be done for or in connection with the carrying out of its functions.
Specific limitations	A council cannot: • Intervene in the control or management of a school, unless the council is an incorporated council performing an additional function approved by the Minister for performance by such councils • Intervene in the educational instruction of students • Exercise authority over teaching staff or other persons employed at the school • Intervene in the management or operation of a school fund. The Minister may give directions in writing to a council with respect to the performance of its functions, either generally or in relation to a particular matter, and the council is to give effect to any such direction. The direction may require a council to comply with a specified instruction or class of instructions issued by the Chief Executive to persons performing functions in the department. If in the opinion of the Minister the conduct of an unincorporated council is incompetent, inadequate or improper or the council is in breach of the Act, and the council fails to comply with a notice issued by the Minister in relation to remedying the situation, the Minister may, by order published in the Government Gazette, dismiss the council. A council that is an incorporated association under the <i>Associations Incorporation Act 1987</i> may, if the council is in breach of the School Education Act or the conduct of the council is incompetent, inadequate or improper, be wound up by the Supreme Court on the application of the Minister.

New Zealand

It is a requirement of New Zealand's *Education Act 1989* that every state school in New Zealand have a board of trustees.

The board is the employer of all the school's staff and is responsible for overseeing the management of curriculum, property, finance and administration.

The board is required to perform its functions and exercise its powers in such a way as to ensure

that every student at the school is able to attain his or her highest possible standard in educational achievement.

The board must prepare and maintain a school charter which sets out the board's long-term strategic plan and annual targets. The board must monitor and report annually to the school community and the Ministry of Education on progress towards those goals and targets.

Links to Relevant Legislation

South Australia

Children's Services Act 1985

www.legislation.sa.gov.au/LZ/C/A/CHILDRENS%20SERVICES%20ACT%201985.aspx

Education Act 1972

www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20ACT%201972.aspx

Education and Early Childhood Services (Registration and Standards) Act 2011

[www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20AND%20EARLY%20CHILDHOOD%20SERVICES%20\(REGISTRATION%20AND%20STANDARDS\)%20ACT%202011.aspx](http://www.legislation.sa.gov.au/LZ/C/A/EDUCATION%20AND%20EARLY%20CHILDHOOD%20SERVICES%20(REGISTRATION%20AND%20STANDARDS)%20ACT%202011.aspx)

Education Regulations 2012

www.legislation.sa.gov.au/LZ/C/R/Education%20Regulations%202012.aspx

Australian Capital Territory

Education Act 2004

www.legislation.act.gov.au/a/2004-17/default.asp

New South Wales

Education Act 1990

www.legislation.nsw.gov.au/maintop/view/inforce/act+8+1990+cd+0+N

Northern Territory

Education Act 1979

<http://notes.nt.gov.au/dcm/legislat/legislat.nsf/d989974724db65b1482561cf0017cbd2/977b0db7022de83169257b-dd00163eb5?OpenDocument>

Queensland

Education (General Provisions) Act 2006

https://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_E.htm

Tasmania

Education Act 1994

www.thelaw.tas.gov.au/browse/index.w3p;a=;aa=;as=;berr=;endl=;fltr=;fltron=;s=;startl=?filter=OR&act=act&filter_on=education

Victoria

Education and Training Reform Act 2006

www.legislation.vic.gov.au/

Western Australia

School Education Act 1999

www.slp.wa.gov.au/legislation/statutes.nsf/main_mrttitle_878_homepage.html

New Zealand

Education Act 1989

www.legislation.govt.nz/act/public/1989/0080/latest/whole.html?search=ta_act_E_ac%40ainf%40anif_an%40bn%40rn_25_a&p=1#DLM175959

Enquires about the review can be directed to
edlawreform@sa.gov.au or by calling (08) 8226 2603.