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SECTION 5: SCHOOL COUNCILS, AFFILIATED COMMITTEES AND RELATED MATTERS

Part I - General

1. Purpose of this chapter

This chapter contains the administrative instructions issued by the Minister that apply, in general terms, to all school councils and affiliated committees. It also contains general advice and policy information to assist in the implementation of the legal requirements.

Legislative framework for School Councils and Affiliated Committees

Councils and their members are legally bound by the Education Act, 1972, as amended (the Act), the Education Regulations 2012, by administrative instructions issued by the Minister, the directions contained in the model constitutions published by the Minister and the approved constitutions of the council.

The Act

The Act means the Education Act 1972.

Other Legislation

Councils must also act within all other relevant laws, for example the State Supply Act, the Occupational Health, Safety and Welfare Act etc.

Regulations

Councils are bound by the Education Regulations 2012 as amended.

Constitutions

The Minister has published a range of model constitutions for school councils, governing councils and affiliated committees.

Administrative Instructions

The administrative instructions in this section have been approved and issued by the Minister under section 96 the Act. School councils and affiliated committees are bound by these instructions.

Mandated Instructions

The use of words and phrases such as “must”, ‘will’ or ‘the
council is to’ means that the statement is a requirement of the
Act, associated regulations, the model constitutions (or the
approved constitution of a council or committee) or policy or
is an administrative instruction issued by the Minister under
section 96 of the Education Act.

**Terms used in this chapter**

For the purposes of these administrative instructions:
‘the Act’ means the Education Act 1972 as amended

‘ADI’ means an authorized deposit-taking institution within
the meaning of the Banking Act (Cwth). A list of approved
ADIs can be found in the publication *Financial Management
in Schools*.

‘administrative instruction’ means administrative instructions
issued pursuant to section 96 of the Act

‘affiliated committee’ means a committee affiliated with the
council and the constitution of which is approved by the
Minister in accordance with section 86 of the Act.

‘chairperson’ means the presiding member of council as
referred to in section 84 (1)(a)(iii) & (iv) of the Act.

‘Chief Executive’ means the Chief Executive of the
Department for Education, and Child Development as
provided in section 11 of the Act.

‘council’ means both a school council and a school governing
council as established under Part 8 of the Act.

‘councillors’ are members of the council

‘department’ means the Department for Education, and Child
Development established pursuant to the Public Sector Act
2009

‘DECD’ means the Department for Education, and Child
Development

‘Director-General’ means the Chief Executive

‘financial year’ means the year ending 31 December.

‘governing council’ means a school council that is, under its
constitution, jointly responsible with the head teacher of the
school for the governance of the school and where a
Services Agreement has been signed by the Principal, Chairperson and Chief Executive.

‘Minister’ means the person to whom the administration of the Act is committed, pursuant to the Administrative Arrangements Act 1994

‘parent’ of a child is defined in the Act to include -
- a person who has legal custody or guardianship of the child; and
- a person standing ‘in loco parentis’ in relation to the child

but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent.

(The model constitution of the council qualifies parents of the school as parents of students attending the school and the parents of children enrolled, but not yet attending at the school).

‘principal’ means the head teacher of the school within the meaning of the Act.

‘school community’ means all parents, students and staff of the school and all other persons who have a legitimate interest in or connection with the school.

‘school council’ means a council which is not a governing council.

‘services agreement’ means the agreement signed by the principal, chairperson of the governing council and the chief executive to formalise the mutual obligations of the department and the school in relation to the local management and governance of the school.

### Part II  Operational Matters

#### 2. School councils and governing councils

**Councils**

Each government school providing courses of instruction in primary or secondary education must have a council which

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Education Act S 83

(1)
operates under a constitution approved by the Minister

School Councils may be established or dissolved only in accordance with Section 85 of the Education Act which requires a notice to be published in the Government Gazette to give effect to the Minister’s decision. This step will be actioned by state office.

**Interim councils**

The Minister may establish a council for a proposed new school until it is possible for a permanent council to be established, at which time the rights and liabilities associated with the interim council transfer to the new council.

An interim council for a school or schools resulting from an amalgamation of Partnership 21 sites that each had a governing council shall adopt a governing council model constitution, otherwise the interim council shall adopt a school council model constitution.

The membership of the interim council shall consist of the principals, two elected parent members, one elected staff member and, where appropriate, up to two students from each of the schools that were amalgamated.

An interim council for a proposed new school or schools shall adopt a school council constitution. The membership of such a council shall be proposed by the district superintendent and approved by the appropriate Executive Director, Schools and Children’s Services.

An interim governing council may establish a strategic plan that will enable the establishment of the new school or schools.

Where the principal, chairperson and Chief Executive sign a Services Agreement to enter into Partnerships 21, an interim council may adopt a governing council constitution and submit it to the appropriate Executive Director, Schools and Children’s Services for approval.

**Constitutions**

Each council must develop a proposed constitution using the appropriate model constitution, and submit it to the appropriate Executive Director, Schools and Children’s Services for approval.

The model constitution for a Governing Council and a School Council are published in a format that allows councils to insert
the name of the council and the membership configuration of
the council as determined by the council to meet the unique
needs of the local community.

These are the only areas in which a council can make
changes to the model constitution. However the council may:

- propose additional definitions
- propose additional functions.

In developing its proposed constitution a council must decide
upon and specify a number (within the guidelines) for each
category of membership and a total number of members. (A
request to vary the guidelines is a request to vary the model
constitution).

A council must adopt a school council constitution except
where the chairperson, principal and Chief Executive have
signed a Partnerships 21 Services Agreement in which case
the council shall adopt a governing council constitution.

**Not to establish another body corporate**

A council must not establish any other legal entity (e.g. a
company)

**Size of councils**

A school council or governing council must consist of at least
five members.

A school council with an approved constitution may not have more
than twenty-three members unless the Minister has approved of the
increased number.

There is no upper limit to the size of a Partnerships 21
governing council.

**Composition of a Partnerships 21 school(s) governing council**

The composition of the council is stipulated by the Act and the
model constitution and is to be detailed in the approved
constitution of the council.

**Ex Officio members**

The principal, or, in the event of the council serving two or more
schools, the principal of each of those schools. The principal(s)
has voting rights.
In the case where the membership of the governing council also comprises the membership of a children’s services centre established under the Children’s Services Act, the director of the pre-school shall be an ex-officio member of the governing council with voting rights.

**Elected members**

Parents that are elected by parents either at the annual general meeting, or by postal ballot.

Aboriginal parents that are nominated by an affiliated committee expressly established to meet the needs of Aboriginal parents and families shall be deemed to be elected parents.

This category must comprise the majority of members except for a school that is wholly or principally for adult students.

**Appointed members**

The council may appoint (up to three) community members as members of council, for example:

- community members from business or industry, significant groups within the community or parents from a diverse cultural and linguistic background and /or
- persons with specific skills and expertise or perspectives, and / or
- a nominee of the local municipal or district council and/ or the local House of Assembly member or his/her nominee

**Nominated members**

Staff of the school, elected by the staff of the school, according to the following ratios (except that the number may be less than the ratio provided that the staff agree to the lesser number)

<table>
<thead>
<tr>
<th>Total number of students across all campuses of a school or for each school</th>
<th>No of elected staff members</th>
</tr>
</thead>
<tbody>
<tr>
<td>60 or less</td>
<td>Nil</td>
</tr>
<tr>
<td>61 – 300</td>
<td>1</td>
</tr>
<tr>
<td>301 – 601</td>
<td>2</td>
</tr>
<tr>
<td>601 or more</td>
<td>3</td>
</tr>
</tbody>
</table>

Where there is more than one school, the student numbers for each school will determine the number of staff that may be nominated to the Council, by that school staff.
In the case where the constitution of a governing Council includes provisions under which the membership of the Council is such that it may also constitute the management committee of a registered children’s services centre under the Children’s Services Act 1985, there must be at least 1 staff representative from the staff of either the school or children’s service on the governing Council, irrespective of the number of students.

Students (up to two) elected by the Student Representative Council, or if one does not exist, the students of the school

Affiliated committees (up to three). A nominee from each affiliated committee can be a member of the governing council. (The council may ask an affiliated committee for an alternative nomination in order to comply with paragraph 7.3 of its constitution).

Composition of a non- Partnerships 21 school(s) council

The composition of the council is stipulated by the Act and the model constitution and is to be detailed in the approved constitution of the council.

Parents

A majority of the members are to be parents of the school, except in the case of a school that is wholly or principally for adult students.

Only parents can vote for the election of parent members to the school council. A council may resolve to fill a casual parent member vacancy by appointment.

Principal

The principal or, in the event of the council serving two or more schools, the principal of each of those schools, is an ex officio member with full voting rights.

Staff of the school

School staff are to be nominated to the school council. Nominated staff are elected by the staff of the school through an election conducted by the principal at a full staff meeting of the school.
The number of staff of the school that can be appointed to the council must comply with the ratio approved by the Minister as listed below:

<table>
<thead>
<tr>
<th>No of students</th>
<th>No of elected staff members</th>
</tr>
</thead>
<tbody>
<tr>
<td>60 or less</td>
<td>Nil</td>
</tr>
<tr>
<td>61 – 300</td>
<td>1</td>
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<tr>
<td>301 – 600</td>
<td>2</td>
</tr>
<tr>
<td>601 or more</td>
<td>3</td>
</tr>
</tbody>
</table>

In the case of a council that is formed for more than one school, the ratio is applied to each school as if it has its own council. For example: if one school has 65 students and the other 230, two staff members may be appointed by the school council.

**Affiliated committees**

One nominee for each affiliated committee of the council must be appointed to the school council. (An affiliated committee must operate in accordance with its own constitution that has been approved by the Minister).

**Members of the House of Assembly and local Government**

Nominees of members of the House of Assembly and/or elected local government councillor may be appointed.

In the case of 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 of the school council.

3. **Council elections**

The principal must be the returning officer for the nomination, election and appointment of councillors.

**Conditions which preclude a person from becoming a councillor**

Persons who:

- are undischarged bankrupts or who 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

are not eligible to be a candidate for election or nominated or appointed to a governing council.
Nomination to council

The principal shall call for nominations by the method generally used to communicate with the school community and nominations should be in writing on nomination forms approved by the council and the principal.

Election of councillors

Only parents can vote for the election of parents to council. Voting for a governing council can be by postal ballot or at a general meeting. School council elections have to be at a general meeting. Voting is by the ‘first past the post’ method.

Appointment of councillors

The principal will count the votes and in the case of an equality of votes the principal shall determine the issue by lot.

The principal must declare the candidates elected either at the AGM or by the method usually used to inform the school community, or both.

4. Constitution approval process

The appropriate Executive Director, Schools and Children’s Services has the delegated authority to approve school, governing councils and affiliated committee constitutions.

Steps to be taken to have a constitution approved are:

1. The council meets to consider the model constitution, seeks advice from the District Superintendent, if required to confirm that all criteria are met, and develops a draft constitution.

2. The council passes a resolution by simple majority to adopt the draft constitution.

3. The chairperson/principal forwards the proposed constitution to the District Superintendent, who endorses and forwards it to the appropriate Executive Director, Schools and Children’s Services.

4. The Executive Director, Schools and Children’s Services
   (a) approves the constitution and returns the original to the school.
   (b) does not approve the constitution and advises the council that specific changes to the model constitution have not been approved in which case the council meets to reconsider and goes through steps 1 to 4.
Council is formally constituted from the date of approval.

**Amendment of the constitution**

A constitution may be altered, modified or substituted by the Minister, or by the council by special resolution and approval by the Minister. 

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**5. Criteria for approval of constitutions and amendments**

The criteria for approval for council constitutions and amendments are:

1. Any alteration to a model constitution must comply with legislative and policy requirements.

2. Constitutions for governing councils of Aboriginal and Anangu schools should be based on the relevant approved model constitution developed for those schools.

3. Councils of schools with Aboriginal student enrolments (other than Anangu schools) should, depending on the numbers of those enrolments:
   - form a Yurrekaityarindi (or a name approved by the Aboriginal community) as an affiliated committee to the council, using the approved affiliated committee model constitution developed for that purpose and allow in the governing council constitution for two Aboriginal parents to be nominated in lieu of elected parents from that affiliated committee to the membership of the governing council, or
   - allow in the governing council constitution for (up to two) Aboriginal parents to be nominated to the membership of the governing council in lieu of elected parents, or
   - show how, in proposed committees formed by resolution of the council or by other means the ways by which the views of Aboriginal parents will be obtained and taken into account.

4. Councils of schools with significant numbers of a particular cultural group should include persons from that culture to ensure the Council is reflective of the school / pre-school community it represents and serves. The Council also needs to demonstrate that there are effective mechanisms in place for the Council and its subcommittees that provide opportunities to gain
information about the specific needs of groups within the school community. This can be through having a member on Council from an affiliated committee, and/or a member appointed from a significant community group and/or elected parent/s member/s who come from the cultural group and by developing policies and practices that ensure effective consultation and information gathering.

5. Councils of all schools, including those with significant numbers of a range of cultural groups should demonstrate what consultation and inclusive practices they have implemented that encourage and increase participation and engagement by persons from culturally diverse backgrounds reflective of the school / pre-school community it represents and serves.

6. Powers and functions of council

A council has all of the powers of a natural person that are capable of being exercised by a body corporate, including contractual ability. However these powers are subject to the Act, the council's constitution and administrative instructions.

Education Act S 83.3, 84.1. (e), 91, 92
Constitution section 4

The functions of councils are described in their constitutions.

Education Act S 84. (1). (b)
Constitution section 5

In carrying out its functions a governing council must act in accordance with its Services Agreement.

6A. Compliance with the Information Privacy Principles Instruction, as modified, by Government school and governing councils

- The State Government of South Australia is committed to protecting the privacy of personal information and, in doing so, State Government agencies must comply with a set of Information Privacy Principles (IPPs). These principles regulate the way personal information can be collected, used, stored and disclosed. The IPPs also provide a right for an individual to access and amend their personal information.

- There is a Privacy Committee of South Australia which administers the Information Privacy Principles Instruction for the State Government and provides advice to the State Government on issues relating to the protection of personal privacy. The Committee also oversees and reports on the implementation of the IPPs in South Australian Government agencies.
The Minister has determined that the Information Privacy Principles Instruction, as amended by Cabinet from time to time, will apply to all councils as if the councils were a public sector agency, with modification.

- The IPPs are consistent with governing councils’ Code of Practice and are designed to safeguard personal information. Requiring compliance with the IPPs, as modified, by way of an administrative instruction is designed to provide clarity and guidance to councils concerning the use of personal information to which they have access.

In the IPPs as modified, the ‘principal officer’ is to be read as a reference to each member of the council.

If a council makes a disclosure under IPP 10, a record must be kept and details of such provided to the Minister if required.

Please click here to access the latest version of the Information Privacy Principles Instruction (please note that the IPPs are contained in Premier and Cabinet Circular No 12 - PC012).

### 7. Affiliated Committees

Affiliated committees have their own constitution and are not committees of the council.

Each affiliated committee must operate under a constitution approved by the Minister. The Minister’s delegate for such approval is the appropriate Executive Director, Schools and Children’s Services.

The affiliated committee model constitution must be used in developing a draft constitution for the sending to the Minister for approval.

The establishment or disestablishment of an affiliated committee must be with the Approval of the district superintendent.

Affiliated committees and their members are legally bound by the Act, its approved constitution, the Education Regulations and administrative instructions published by the Minister.

The activities of an affiliated committee must be endorsed by the principal.
A constitution may be altered, modified or substituted by the Minister or by the affiliated committee by special resolution, and approval by the Minister.

Affiliated committees of school councils are entitled to representation on the school council and on the school finance advisory committee.

Affiliated committees of governing councils may nominate a member to be on the governing council and, if the affiliated committee’s account is a part of the consolidated account, on the school finance advisory committee.

8. General Meetings

Annual general meetings of the school

Frequency

The governing council chairperson, or the principal in the case of a school council, must call a general meeting of the school at least once in each year.

Annual report

A council must report to the school community annually at the Annual General Meeting (and for a governing council to the Minister) in a form determined by the Chief Executive.

Notice

In addition to traditional means of communication such as school assembly announcements and newsletters to parents, the meeting should be brought to the notice of the community at large, e.g. by notice on an external community bulletin board, if one exists, or by advertisement in a local or regional newspaper.

Pre-meeting and post-meeting formalities

Guidelines for principals and chairpersons regarding pre and post meeting formalities are provided in the appendix to this document.
Voting at the meeting

Persons eighteen years and over can attend and vote at a general meeting. However, only parents can participate in the election of council members. While persons nominated and elected at the meeting for a school council need not all be parents, care should be taken to ensure that the parent majority requirement eventuates. If at the time of the meeting other interest groups have yet to nominate their council representatives resulting in uncertainty about the eventual parent ratio, it may be prudent to elect only parent nominees.

First meeting of the school council

The principal must call and preside at the first meeting of council as soon as practicable after the declaration of the results of an election for the purpose only of;

1. Receiving the nominations from nominating bodies and determining the direct appointment of members of the community;

2. Electing office bearers including a chairperson, secretary and a treasurer.

9. Establishment of council committees

Finance advisory committee

A school council must establish a school finance advisory committee. The council determines the membership but it must include the treasurer as chairperson, principal or his/her nominee and representatives of any affiliated committee included in the consolidated account. Student representatives may be included, together with persons co-opted by the council.

Other committees

Where the council operates a canteen, Out of School Hours Care, School Watch or residential facilities the council must establish a committee in accordance with these Administrative Instructions.

Other committees may be established at the discretion of the council. An example could be a grounds committee.

The council must specify terms of reference for each of its committees. The terms of reference must be approved by
resolution of the council, documented and understood by committee members.

A council may delegate any of its powers and functions to a committee with the exception of approving the budget and entering into contracts. Committees should refer matters about contracts back to the council with their recommendations.

A council can remove any delegated power and function from a committee either temporarily or permanently.

10. Council meetings

**Format and procedures**

There is no set format for council meetings, but there should be a formal part of the meeting for the acceptance of apologies, accepting the minutes of the previous meeting, correspondence, reports and for debate and voting on motions and resolutions put to the meeting. Time should be allowed for open discussion, presentations, moving into subgroups, workshops, guest speakers, visits to areas of the school and other activities as the council deems appropriate to carry out its powers and functions.

Neither the Act, the Regulations nor the constitution prescribe council meeting procedures. This reflects the view that councils, as discrete legal entities, should be capable of conducting their affairs in a manner consistent with recognised meeting practices modified, where necessary, to suit local conditions. Each council should have a set of standing orders that guide how the formal part of the council meetings is conducted. It is important that all council members be made aware of the standing orders adopted for running the meeting so that they feel comfortable about participating.

Councils are advised to purchase and refer to a recognised book as a guide and authority on meeting procedures and standing orders. Examples of such books are:


Special Resolution to amend the constitution

A council or affiliated committee may amend their constitution in accordance with the Administrative Instructions and Guidelines Section 5 clauses 3 and 4.

A notice calling a meeting at which a special resolution is to be put must actually state that it is proposed to submit the special resolution. The notice of motion must be accompanied by the full precise wording of the resolution and any explanation of the resolution.

The constitution of a governing council can be altered only by a special resolution of the council. If a clause lays down the number of parents to be elected to the council as 14, a special resolution:

“That the number of parents elected to council be 12” would be out of order. The correct motion would be on the following lines:

“That clause 7.1. (vi) of the constitution be amended by deleting ‘14’ and inserting ’12’”.

The effect of such a change must be written down and accompany the proposed special resolution.

Procedurally, a special resolution to amend the constitution is a motion and not an amendment. The motion may thus be amended in the usual way, provided the amendment is not outside the scope of the resolution forwarded with the notice convening the meeting.

The one resolution can propose changes to more than one clause of the constitution. A resolution affecting several different clauses but which effectively amounts to a single change should always be dealt with by a single motion. This will ensure that any problems which could flow from some but not all of the alterations being adopted are avoided. However it is best to have separate resolutions for each different subject matter and thus the one resolution should preferably deal with several clauses only if they are related or dependent on each other.

Members desiring to propose additional new clauses beyond those in the draft special resolutions circulated will need to give at least 21 days notice. Similarly members desiring to introduce amendments to the circulated resolution beyond
the points covered by the circulated resolution (ie. beyond the options covered by acceptance or rejection or any intermediate position) will need to give at least 21 days notice.

**Proxy voting for special resolutions**

Voting by proxy is only allowed in the case of a special resolution.

Each councillor is entitled to appoint another councillor or in that councillor’s absence, the chairperson, as his/her proxy for voting on a special resolution if he/she will be absent for a meeting at which a special resolution will be discussed and voted on.

The councillor must complete a proxy voting form obtained from the secretary and hand or forward the completed form to the councillor appointed as proxy. Councillors are advised to appoint the designated chairperson as their proxy. In any event the councillor should inform the council chairperson of their absence and of the name of the councillor appointment as proxy.

The proxy voting form must contain the following:

- The name of the absent councillor;
- The name of the appointed councillor or in their absence, the chairperson (named by title only in case the chairperson is absent for the meeting and another councillor acts as chairperson);
- The date of the council meeting at which the special resolutions will be discussed and voted on;
- How the appointed councillor should use the proxy vote for each resolution – In favour of / against / abstain / use his/her discretion;
- The councillor’ signature and date of signing.

**Meeting agenda**

Items on the agenda should be related to the council's powers and functions.

Governing councils should apportion the majority of the meeting time to discussions or workshops designed to carry out the functions and powers of the governing council.
Items for the agenda should be received by the chairperson or secretary prior to the preparation of the agenda. The chairperson has the right to include these items on any council agenda, pass them on to a subcommittee or, if they do not relate to the powers and functions of the council, hand them to the principal for action.

Time should be given in the meeting for ‘Any other business’ when the chairperson should check with each councillor for any additional items.

The agenda should be circulated to all members prior to the meeting. This may also serve as a notice of meeting to the councillors.

Copies of the minutes of the previous meeting and reports of committees, affiliated committees, treasurer and principal should be distributed with the agenda. Reports and minutes circulated before the meeting can be taken as having been read.

**Minute taking**

Minutes of all proceedings of each meeting of council (and of its committees) must be kept. They should at least be a complete and accurate record of all resolutions (or failed resolutions) of the meeting. They should not be a word-for-word account of the meeting.

Minutes of a meeting must contain the following:

- a list of those present, starting with the chairperson.
- names of any guests or observers;
- apologies accepted by the meeting;
- in the case of a special resolution, the names of all proxy-holders present and the names of their respective proxy-donors;
- details of business transacted in the order it was actually dealt with (or in the order listed in the agenda). Motions and amendments should be recorded verbatim showing the names of the mover and seconder and the decision made. It is important that the exact wording of the resolutions is recorded. The chairperson or secretary can request that the mover put the resolution in writing to ensure the exact wording is recorded;
- any declaration of a conflict of interest by a member and the fact that he/she was not present during consideration.
of the matter must be recorded;

- copies of reports from the treasurer, principal, committees etc. should be referred to in the minutes and a copy of the report attached;

- copies of any document referred to in the minutes should be attached to the minutes;

- the topic of the guest speaker, presentation or workshop and any outcome of these should be recorded;

- results of any postal ballot;

- date, time and place of the next meeting;

- closing time of the meeting.

Minutes should be concise but unambiguous, and should be sufficiently clear to be followed by persons not present at the meeting.

10A. Mediation of disputes and independent legal advice

Dispute resolution process

There may be circumstances where a governing council is in dispute with the Department about a matter. When this occurs the governing council must participate in a prescribed scheme for the resolution of disputes, as required by their Constitution (section 24).

Where the governing council considers it is in dispute, the chairperson will ensure the dispute is minuted at a formal meeting of the council. At the next meeting, the governing council must move and pass a formal resolution by a majority of the councillors present, and eligible to vote, at a properly constituted meeting of the council, that independent mediation is required. The governing council must be operating within the scope of its designated role and function.

The chairperson must then write to the Department’s Chief Education Officer stating the issues of the dispute. The chairperson and Chief Education Officer will then jointly agree the appointment of an independent mediator. The Law Society of South Australia has a list of accredited mediators who can provide such a service. The cost of the mediation service will be met by the Department.

Once appointed, the independent mediator will convene a meeting of representatives of both the governing council and the Department to seek to assist them to identify the issues, explore options for, and if possible, achieve the expeditious
resolution of the dispute, in accordance with their professional conduct rules.

See also Part V – Appendices, Division 1A for a flowchart outlining the dispute resolution process.

**Independent legal advice**

Where there is a dispute the governing council may wish to seek independent legal advice. The Department is able to provide funds in order to pay for governing council’s independent legal advice in particular circumstances, subject to three criteria. The criteria for funding is that the governing council must:

- be in dispute with the Department. The Department will not fund legal advice for disagreements between members of a governing council; and

- pass a formal resolution by a majority of the councillors present, and eligible to vote, at a properly constituted meeting of the council, resolving that the council is in disagreement with the Department. The resolution must specify the questions upon which the Council is seeking legal advice; and

- be operating within the scope of its designated role and function.

Once the three criteria above are satisfied the governing council chairperson must write to the Department’s Chief Education Officer stating that the council is in dispute with the Department, and include the questions upon which the council is seeking legal advice.

It is not the role of the Department to consider whether the funding criteria are met, or to assess the governing council’s legal questions. The Department’s role is to forward the legal questions to the Crown Solicitor within 5 days of receipt, keep the Minister and Department’s Chief Executive appraised of the nature of the dispute and whether the Crown Solicitor has certified the provision of independent legal advice, and provide funding for the legal advice (if the Crown Solicitor deems this appropriate).

- The Crown Solicitor will determine the following:
  - whether the funding criteria has been met including whether the questions are of a legal nature; and
  - the independent legal practitioner (where appropriate).
• No costs or expenses in respect of any service provided by a legal practitioner to a governing council will be paid or reimbursed unless the Crown Solicitor, or a person authorised by the Crown Solicitor, has certified that:
  • the engagement of such a practitioner is necessary; and
  • such costs or expenses are reasonable, unless a court of competent jurisdiction has ordered payment or reimbursement of a specified sum.

In regard to seeking independent legal advice all governing councils must comply with Treasurer’s Instruction 10: Engagement of Legal Practitioners, as if the councils were a public authority for the purpose of the Public Finance and Audit Act 1987, with the following modifications; that Instructions 10.2, 10.6 and 10.8 will not apply to governing councils.

Further, the reference to “State” in Instruction 10.7 shall be taken to be a reference to a Governing Council.

• Please click here to access the latest version of Treasurer’s Instruction 10.

See also Part V – Appendices, Division 18 for a flowchart outlining the process for seeking independent legal advice.

Part III - General Management

Division 1. Finance, Property and Insurance

11. Financial operations

General

The Education Act and Regulations and Governing Council, School Council and Affiliated Committee Constitutions and Administrative Instructions impose certain controls on the conduct of school council and affiliated committee financial matters.
Funding of schools

Sources
The total funds available to the school council include the funds from the Minister, charges and fees, contributions and funds raised by council and affiliated committees.

School financial year
The financial year for schools is from 1st January to 31st December.

Government funding – Partnerships 21 schools
 Governing council schools receive their Government funding in the form of a global budget.

The global budget is the amount of resources a school is allocated in order to manage its educational program. It is a way of allocating resources to provide the greatest possible flexibility, within current industrial conditions, to site leaders. It enables them to resource their school operations and school priorities with flexibility, certainty and a longer term view.

The global budget does not identify individual input costs such as cleaning and salaries.

Council funds (e.g. from fundraising or the materials and services charge to parents) may be added to the global budget.

Government funding – non-Partnerships 21 schools
These schools receive the following grants. All other funding is done centrally.

School support grant
This grant comprises base and per capita components. The formula varies between pre-schools, primary and secondary schools (and these sections of R-12 schools) and is reviewed annually. Schools are advised of the adjustment.

Additional amounts are paid for bottled gas, and a freight and postage loading (country schools), where applicable. The grant is reduced by an audit component.

School Card
This means tested scheme assists low income families to meet the cost of books, stationery, excursions, equipment, fees for school activities and other educational expenses.
Foundation grants (establishment grants)

Foundation grants are available to provide equipment and/or materials for new schools or existing schools which experience significant upgrading.

Furniture grants

Funds may be allocated for additional or new furniture and replacement items.

Other Government assistance

The following types of grants may be made to approved schools:

- Disadvantaged schools program
- Country areas program
- Library resources grant
- Parental Involvement in Education (PIE)
- Special program grants. These grants are either transitional in nature and reflect current Government priorities (e.g. VET in schools, Early literacy-BST) or relate to the provision of a service to the community beyond schooling.
- Other specific grants from, for example, Local or Commonwealth Government

12. Materials and services charges

These charges are made up of two components – compulsory charges and voluntary contributions. “Materials and services” includes books, stationery, printing, photocopying, apparatus, facilities, computers, organised activities and other materials and services to be provided to or for students in connection with courses of instruction provided in accordance with the curriculum determined by the Chief Executive.

Compulsory Materials and Services Charge

The Act gives school councils the power to approve a compulsory materials and services charge for any calendar year payable in respect of each student enrolled at the school for the whole or part of that year. This charge must not exceed the amount, including the indexation factor, prescribed in the Act.

The Compulsory Materials and Services charge must only
include GST–free supplies.

The Compulsory Materials and Services Charge must be fixed by the principal, the basis on which the charge is determined disclosed to the council and approved by the school council.

All parents/caregivers and adult students must be issued with a written notice in the format prescribed in the appendix comprising of the EDSAS Tax Invoice and an attached schedule of charges completed by the principal, approved by resolution of the school council/governing council and signed by the chairperson.

The principal may, on application by a parent, caregiver or adult student, on financial hardship or other grounds, allow the payment of the charge by instalments (the last instalment must be paid before the end of term 3). Principals may also waive payment of the whole or part of the charge.

School Card applicants using the Income Assessment Form should be treated as a School Card holder until the Department advises the school otherwise.

For School Card holders, any amount above the School Card grant is a voluntary contribution.

Governing councils receive a disadvantaged student grant which brings the total funds allocated to School Card students in these schools up to the maximum compulsory charge. This gap cannot then also be requested from parents.

School councils can seek the difference between the School Card grant and the maximum compulsory charge as a voluntary contribution from parents.

A copy of the signed schedule of school charges and associated working papers (including the Compulsory Materials and Services Charge and the School Council Approved Voluntary Contribution) must be kept for audit purposes.

**Council Approved Voluntary Contributions**

This is an additional charge used to supplement and enhance the educational program of the school. It is not compulsory.

The school community must be advised of the specific elements and nature of all charges that are voluntary. Whilst the compulsory charge must only include GST–free supplies,
the voluntary charge can be used to provide both GST-free and taxable supplies to students. Detailed records must be kept by the school identifying the separate components.

Voluntary contributions made to approved building funds and library funds are tax deductible when paid to schools with Deductible Gift Recipient status. This status is achieved by application through the Australian Taxation Office.

The Council Approved Voluntary Contribution must be detailed on the Schedule of School Charges.

**Schedule of School Charges**

The charges schedule must be completed by the principal and approved by resolution of the governing (or school) council.

A copy of the signed Schedule of School Charges and associated working papers describing the process for fixing, approving and collecting school charges must be kept for audit purposes.

The format of the Schedule of School Charges must be used and only modified in the following ways:

- Add the school name, year and year level to the heading;
- Add information to explain details of the categories in the left-hand column relevant to the school.

Except for School Card students who in certain circumstances may also be required to pay, a refundable book deposit must be paid by each new student. The amount is determined by the Minister.

**Parent support, including fund raising**

The council is permitted to raise money for school related purposes. This does not mean that any activity can be conducted simply because it is profitable. The activity must have as its dominant purpose the raising of funds which would usually be the traditional type or modern variants e.g. fetes, raffles, competitions, quiz nights, etc. This also applies to council affiliated committees.

**Other income**

Income may be derived from the following sources:
- Interest on school funds invested
- Canteen profits
- A proportion of the fees paid by International Students to the department
- Book and stationery profit
Hire of school facilities
Donations
Sponsorships
Curriculum income
Miscellaneous income
The council must charge/pay GST tax on these incomes as appropriate.

13. School accounts

General

Any Authorised Deposit-taking Institution (ADI) or investment account can only be opened by a council, school or affiliated committee with an institution approved by the Chief Executive.

Apart from the council (consolidated) account, canteen account, accounts permitted under these administrative instructions or an affiliated committee account, no other accounts will be opened or be permitted to remain open without the permission in writing of the Chief Executive.

All funds acquired by the school and council must be lodged into the appropriate account.

All interest earned must be credited to the appropriate account in the name of the council, school fund or affiliated committee.

All money received at a school must be deposited into the appropriate account daily unless the amount received, together with amounts received on previous days and not deposited, does not exceed an amount from time to time determined by the Chief Executive. The amount currently determined by the Chief Executive is $500. In cases of extenuating circumstances, at a particular school, the Chief Executive may, if satisfied with security arrangements at the school, approve the retention of a higher amount.

The Materials and Services Charges are fees set by the school council and are a debt due to the council. Funds from these fees must be lodged in the council consolidated account or school council account.
Consolidated accounts

In any school, the school fund account and the school council account shall be consolidated into one account.

The consolidated account will be known as the [name of school] Governing Council (or Council) Incorporated Consolidated Account. This is referred to in these administrative instructions as the council (consolidated) account.

All sums of money which are payable to a council must be paid into the council (consolidated) account or an account under the control of the council.

Moneys in the council consolidated account will be under the control of the council which will be responsible to the Minister for its proper care and use.

Any committee affiliated with the council may seek the agreement of the council to conduct its accounting through the council (consolidated) account. Affiliated committees are encouraged to participate in the council (consolidated) account. However it is not compulsory for them to do so.

Where any affiliated committee who has agreed to participate in the council (consolidated) account indicates that they no longer desire to operate under such an account, then that committee shall seek the approval of the Chief Executive to discontinue the arrangement. Upon receipt of advice from the Chief Executive of his or her approval to the withdrawal of the affiliated committee from operating under such an account, that affiliated committee shall no longer be required to so operate and shall revert to operating an account in accordance with its constitution.

The principal should nominate a member of staff to operate and maintain the accounting functions of that account as required by the council and the Chief Executive.

A governing council is required to have a South Australian Schools Investment Fund (SASIF) account and allow the state office access to the account for the purpose of transferring the net monthly global budget balance to the site.

Other accounts

Money raised by an affiliated committee that is not handling its accounting through the council (consolidated) account must deposit it in an account in the name of the affiliated committee in accordance with its constitution.
The person responsible for maintenance of any other accounts under the control of the council (eg. Canteen, OSHC, School Watch or Residential Facilities) must submit to the council at least once per term, and in a form approved by the Chief Executive, a statement showing the activities of the account over the previous school term.

If a school canteen or an organisation affiliated with the school council ceases to function as such, its books, records and property shall be forwarded to the school council.

**Requirement to use DETE accounting systems**

Councils must maintain appropriate financial records using the accounting systems approved by the Chief Executive, together with details of any dealing with those moneys as the Chief Executive may require.

14. **Payments**

All payments from council, school and affiliated committee accounts must be either by cheque, credit card or Electronic Funds Transfer (Direct Debit).

Payment for minor purchases may be made by petty cash provided a record is kept of all payments and the petty cash float is created and maintained by the drawing of cheques.

**Payments made by cheque**

Payments made by cheque from an account must be crossed and marked “Not Negotiable” and signed by any two authorised signatories except those cheques drawn on the school fund account of a one teacher school where one signature will be sufficient.

**Cheque signatories**

At least three cheque signatories must be appointed in each case by:

- the council in respect of the council (consolidated) account or the school council account.

The signatories so appointed must include

- the treasurer of the council and, for a consolidated account, the principal.
- in respect of the school fund account the principal and a member appointed from the members of the school staff.
• the controlling committee in respect of the accounts of affiliated committees, and the school canteen. The signatories so appointed must include the treasurer of the committee.

Use of purchase (credit) cards and internet purchases.
The council may authorise purchase from its monies by a purchase (or credit) card or over the internet only in accordance with procedures issued by the Chief Executive from time to time.

15. Receipts
The principal, treasurer or person responsible for the maintenance of an account, shall ensure that receipts are issued in a form approved by the Chief Executive for all moneys received; provided that a school canteen and book store shall not be required to issue receipts for over-the-counter sales and that where minor amounts are received from students, transactions shall be recorded in such a manner as may be determined by the Chief Executive from time to time.

16. Investments
Funds excess to immediate requirements should be invested in higher earning accounts. Investments must only be of a kind approved by the Chief Executive and includes investment in the South Australian Schools Investment Fund (SASIF) account.

17. Audit and reporting
Councils and affiliated committees (and principals for the school fund account) must send a copy of the audited statement of accounts for the previous school financial year to the Chief Executive no later than 1st June each year.

The annual audits of schools are conducted by contract auditors and are managed, monitored and paid for by Internal Audit under the Site Audit Program. Prior to the end of each school financial year information is sent to all Principals advising them of the current Site Audit Program procedures including the appointment of a contract auditor.

The form of statement of accounts to be submitted to the Chief Executive will be set by the Chief Executive from time to time.
18. School budget

The school Finance Advisory Committee must prepare a preliminary budget showing:

- The anticipated income from all sources
- The proposed expenditure to be made
- Details of any funds held for special purposes

In developing the preliminary budget consideration must be taken of the school’s priorities.

In governing council schools the expenditure must include the total resources needed to implement the curriculum, Partnerships Plan, asset management plan and human resources plan.

The principal must consult with the Personnel Advisory Committee (PAC) in developing the human resources plan and in addition obtain the approval of the PAC for any variation to the staffing configuration.

For schools with a council (consolidated) account the preliminary budget must be accepted by a resolution of the council before the budget can be implemented.

Monitoring of the budget performance against the predicted revenue and expenditure must be done before each council meeting and reported to council through the treasurer. Schools will receive a monthly report from the department on the government funding forwarded to the school to assist them in this monitoring.

The council Finance Advisory Committee must seek the advice of affiliated committees in developing the budget and are advised to provide each affiliated committee a range of proposed purchase options for the expenditure of their funds.

19. Borrowing power of school councils

School and governing councils must comply with AIG Section 1.137 and Section 10 of the Financial Management in Schools manual.

Education Act S 92
AIG Section 1.137
Financial Management in Schools manual
Section 10
An overdraft facility based on $240 per student will be available to Partnerships 21 governing councils to assist with managing cash flow, subject to the submission of a three-year resource strategy that allows for the repayment of the overdraft. Partnerships 21 sites will be supported to complete a three-year resource strategy as part of their financial management.

20. Purchasing

Purchase of materials and equipment

A governing or school council is a "public authority" within the meaning of the State Supply Act and must comply with State Supply Board directions concerning the acquisition, distribution, management of goods and services and the disposal of goods and must comply with whole-of-government contracts.

Items purchased with funds provided by the Minister become the property of the Minister unless otherwise directed by the Minister.

Items purchased with funds provided by the council remain the property of the council.

21. Acquisition and disposal of real property

Councils must seek and act on advice about the process for obtaining the Minister’s written consent for the acquisition or disposal of real property from the Site Property Services of the department. Site Property Services will obtain the land valuations for any purchases or disposal of land and advise on what information and documentation is needed in seeking the Minister’s consent.

Real property can only be acquired by councils for educational related purposes.

Property on the Minister’s land, if not movable, is regarded as belonging to the Minister in regards to its sale, lease or disposal and must be dealt with according to the government’s procedures for the disposal of surplus real property.

Councils may request that the Minister cede to them any over-capacity buildings on site. The council will then be
responsible for the proper care maintenance, utilities costs and repairs to these buildings.

**Real property owned by the Minister**

The Minister’s property must be maintained in accordance with the approved site asset management plan and council must plan for the provision of resources to implement the asset management plan.

Any new construction or modification of existing built structures (including civil works) should be included in the asset management plan and requires Ministerial approval before any project is tendered, or before construction work commences.

All purchases and disposals of real property by South Australian government agencies is the responsibility of the Land Management Corporation in the Metropolitan area and the Crown Lands SA for real property outside the metropolitan area. The Minister's consent must be obtained first.

Councils must not negotiate disposal of the Minister’s land with any individual or agency but leave all dealings of land to the Site Property Service and the disposal agency (Land Management Corporation or Crown Lands SA) who will coordinate the development of a strategy for the disposal of the land.

**Council owned real property**

Any on-going costs for the repair and maintenance of the land and buildings acquired by the council is the responsibility of the council. The council must comply with standards appropriate to the building (eg for dormitory accommodation) and as issued by the Minister from time to time.

The council must keep appropriate records of the property and comply with any legislative requirements (eg. asbestos register, fire extinguisher register). The Minister may call for spot checks of compliance with legislation.

Councils must obtain the Minister's consent in writing before buying and selling real property.

Councils must obtain the Chief Executive’s consent and before any construction is undertaken on either the Minister's or the council’s land.
Council owned property must not be included in the Asset Management Plan of the school.

The council may seek approval to transfer property (excluding vehicles, boats, aircraft, campsites and canteens) to the Minister. If approval is given it then becomes the property of the Minister and is included in the Asset Management Plan of the school.

**Purchase of vehicles**

Government has mandated that all Government vehicles are leased through Fleet SA. Councils are not required to comply with this mandate if they use solely their own funds. However, councils are approved to use the mandated service if they so choose and are advised to contact Fleet SA for information regarding costs etc.

Councils may also purchase these vehicles at State Government pricing. Please contact Fleet SA to arrange such a purchase.

A council purchasing a vehicle with its own funds (i.e. through fundraising) for school use is responsible for all its maintenance, insurance, running and replacement costs and registration in the council’s name.

Councils sourcing passenger or light commercial vehicles with the Minister’s funds (or part Minister’s funds) for school use must comply with whole-of-government mandate. Currently passenger and light commercial vehicles are leased through Fleet SA.

A council may purchase a used departmental bus (yellow) if one is available, at an agreed price. Enquiries by the principal concerning the availability of buses may be directed to the Manager, Transport Services.

Councils must ensure that buses are fitted with a current certificate of inspection issued by the Department of Road Transport.

**22. Insurance cover**

**Insurance for council employees**

School and governing council employees who are injured in the course of their duties are eligible for workers
Councils employing staff must:

- register with WorkCover through the Occupational Health Services unit as an employer. The Workers Rehabilitation and Compensation Act requires employers to register with WorkCover and to pay a specific premium levied in accordance with industry classification percentages calculated against the value of wages paid to employees (aggregate remuneration);
- complete a departmental Reconciliation Statement which is sent to schools at the end of June each year;
- duplicate and retain a copy for the school's records;
- forward the original Reconciliation Statement to the Occupational Health Services unit, DETE, 4th Floor, 100 Waymouth Street, Adelaide, 5000 (Courier 11/7).

The department will then arrange the bulk payment of all levies due to WorkCover.

**Insurance for volunteers**

Under the Government's self-insurance arrangements uniform cover is available to volunteers who assist departments and approved statutory agencies. In schools the cover extends to persons who carry out volunteer duties at the direction of the principal or school council.

For the nature of the cover refer to Determination 27 Insurance Arrangements

If a school council has the South Australian Association of State School Organisation (SAASSO) Personal Accident Insurance policy for councillors and volunteers, it must be used first. Volunteers will not be able to claim on both schemes in relation to the same expense.

Any liability to a third party arising from the action or advice of a volunteer acting in accordance with the principal's or council's instructions is treated as if the action or advice were that of an employee.

Volunteers are not employees and, therefore, must not use Workers Compensation forms to report accidents or make claims.
A claim for out-of-pocket expenses from a volunteer should be submitted, in writing, as soon as possible to the principal who should forward it to the Legislation and Legal Services Unit, Department of Education, Training and Employment, 11th Floor, Education Centre, 31 Flinders Street, Adelaide 5000 (postal GPO Box 1152 ADELAIDE SA 5001 or internal Round11/13) for consideration. The claim should be accompanied by the following documents:

- receipts, statements etc from MediCare, private insurer or other initial claim source;
- a copy of the department's Accident/Injury Report (ED155M);
- a report from the principal setting out the circumstances of the injury and confirming that the claimant was a volunteer engaged in accordance with the management arrangements set out in AIG S1.119.

**Affiliated committees and any committees of the school council**

All members of school councils, committees of council and affiliated committees (except for the principal who is covered for personal injury and third party liability claims as an employee of the department) are volunteers and have the same insurance cover as above for volunteers.

**Departmental insurance**

Where schools/school councils are involved in activities on private property, it is possible that the owner may require evidence of adequate public risk insurance cover. As the Department of Education, Training and Employment is a self-insurer in accordance with Government policy, the principal/director should respond in writing as set out in AIG S1.119.

**Equipment and materials Insurance**

The department will NOT replace equipment and materials not owned by the Minister.

Insurance policies may be arranged by school councils through the South Australian Association of State School Organisations Inc.
23. Public liability

**Indemnity**

The Minister for Education and Children's Services indemnifies school councils against personal injury and property damage claims arising from the conduct of their affairs provided that the activity is not excluded from cover. Successful claims are funded through the Department in accordance with Government policy on self-insurance.

The indemnity is conditional on the strict observance by councils of the terms and conditions outlined below.

**Exclusions**

Claims arising from the following are not covered:

- operation by the school or council of mechanical amusement devices e.g. a carousel or bouncy castle at a council run gala day;
- gaming devices;
- the activities of private stall holders at an event conducted by the council;
- use of private aircraft, watercraft and hovercraft;
- motor vehicle and motor cycle competition sports;
- serious and wilful misconduct by the school council, its servants or agents.
- vehicles that normally require registration or statutory motor insurance under South Australian road traffic laws;
- death, bodily injury or property damage to employees of the council.

In addition, the Minister reserves the right to exclude other activities from the terms of the indemnity in the light of claims experience.

Equipment which is borrowed, hired or leased by the council from outside organisations or individuals should be insured by that organisation or individual.

The use of mechanical amusement activities as part of a council event where the operator hires a portion of school grounds must be adequately covered by the operator's public liability insurance.
Not to admit liability

The school council, its members, servants and agents must not without the written consent of the Minister, or his delegate, make any admission as to liability, promise or make any payment to a claimant or compromise a claim in any way.

Action to be taken following an incident that could result in a claim

A council's legal representative in any matter involving a liability claim will be the Crown Solicitor, or his/her delegate. The council should contact the Manager, Legislation and Legal Services Unit, DETE in the first instance.

If any member of a council is approached by a solicitor or lawyer about any incident the member must not answer any questions but refer them to the Crown Solicitor through the Legislation and Legal Services Unit.

Following an incident that could result in a claim, the council's chairperson or delegate must:

- ensure that a full written report is prepared and forwarded to the Manager, Legislation and Legal Services Unit, DETE. The names and addresses of eye witnesses (if any) must be noted;
- provide officers of the department or the Crown Solicitor with any information about the claim that they might request and ensure that any correspondence sent to the council by the claimant, his/her solicitor, or his/her insurer is promptly redirected;
- assist the Crown Solicitor or Legislation and Legal Services Unit in every way possible to negotiate, defend or settle any liability claim including the exercising of the council's legal right of recovery against any other party.

Risk and safety management

Councils must at all times comply with all statutory obligations, by-laws or regulations relevant to their sphere of activity. This includes the Education Act and Regulations, the Occupational Health, Safety and Welfare Act and the Health Act.

Affiliated committees

Similar liability cover to that available to school councils is extended to affiliated committees except that in this instance
the activity of the club or association must be approved, in advance, by the principal.

Affiliated committees must not engage in activities which are excluded under the school council's indemnity.

**Property cover**

Council owned property such as canteen fittings, equipment and stock are not covered by the government's "self-insurance" arrangements. School councils should consider acquiring insurance cover for these purposes.

The department does not fund the repair or replacement of school property in the event of accidental damage or loss. Protection against accidental damage or loss should be taken either through insurance or local budgeting arrangements according to the school's resources and priorities.

**Students**

When students who are involved with council employees or volunteers are injured at school, the council is not liable for damages unless it can be established at law that the council's employees or volunteers were negligent, that is, they failed to exercise the required duty of care and that failure resulted in the accident.

Parents should consider the merits of purchasing 24 hour accident insurance cover for their children.

**Division 2. Employment and Contractual Matters**

**24. Council employment of non-teaching staff**

The constitution allows school councils and governing councils to employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the Chief Executive.

Employment contracts must be entered into with case and must conform with the relevant award.

There must be a link between the employment of non-teaching staff and one or more of the powers or functions of the council under the constitution.

If no award is applicable, the provisions of the Premier and Cabinet, Human Resources Management Division – Conditions of Employment Manual for Weekly Paid

[AIG section 1.119](#)

[Constitution section 4.1.1](#)

[Constitution 4 and 5](#)

Employees should be followed wherever possible.

This is on the department web site.

Councils must use the Whole-of-Government Panel Contract for the provision of Clerical Temporary Staff Services. Details of this contract can be obtained from the Procurement Unit of DETE.

When entering into employment arrangements the school council becomes the legal employer in the full sense of the word and is therefore required to fulfil all the obligations of an employer. This places great responsibility – legal and moral – on the council to ensure that such arrangements are entered into professionally.

People employed by councils must be given all the support and the monitoring that would be expected in any other employment arrangement.

**Definitions**

A non-teacher

A **non-teacher** must not accept personal responsibility for any portion of the formal learning program or the wider school curriculum. They may have delegated to them a wide range of tasks that may include (according to their award) teaching duties, provided that a teacher assumes personal oversight, supervision and ultimate responsibility. They may be left in charge of students for short periods but responsibility for the students’ health, safety and welfare rests with the supervising or controlling teacher.

A casual employee

A **casual** employee is one engaged to work on short term and/or variable, unpredictable or irregular employment arrangements or often for less than 15 hours per week. Such employees do not have continuity of employment.

A **casual** employee is paid for each hour worked. A twenty (20) percent casual loading is also applied to the actual hours worked to compensate for the lack of sick and annual leave entitlements and payment for public holidays not worked.

**Terms and conditions of employment**

Non-teaching staff may be employed by the council to assist in carrying out the functions of the council under the powers and functions of the council as stated in the constitution and as may be determined by the Minister.
Councils are advised that it is preferable for DETE to employ staff identified by Council on a recharge basis rather than the Council employ them. This applies where the roles and duties described in the position are essentially covered by existing classifications / PIDs of DETE employees (Eg SSO, AEW, BSSO). It is particularly the case where it is proposed to increase the hours worked of an existing DETE employee.

Although governing council will be charged on-costs for such appointments, they will be saved the necessity of allowing for the employees long service leave, PAYE tax etc.

The DETE employment of such staff would be managed by the principal.

Before employing any non-teaching staff, the council must:

- clearly determine the tasks to done, the content of the work and the roles/duties of the person to be employed and the length of time of the employment;
- decide on which of a contract of service or a contract for service is more appropriate (see under Works and services below);
- through the principal, seek and act on advice from State Office about the most appropriate award and the appropriate tenure for the tasks;
- determine the time of the employment including the length of tenure and the starting and finishing dates after considering the council’s financial position and the ability of the school to sustain the generation of funds. (For governing council schools it is advisable to keep the extent of the tenure to within the term of the current service agreement. However, for canteen and Out of School Hours Care managers, the council may employ with a tenure that goes beyond the term of the services agreement.)
- develop a job and person specification for the position;
- develop a contract for the position using the standard contracts.

**Contract for employment**

Councils must use the standard contract of employment and give detailed descriptions in the schedule of the work to be done, location, hours of work and any conditions that may apply.
Filling the position

The position must be filled by the most suitable person who matches the skills, abilities, knowledge and experiences listed in the person specification. The selection must be based on merit with no favouritism, nepotism or patronage shown to any person. There must be no discrimination on the basis of race, age, physical impairment, sex, marital status, pregnancy, sexuality or intellectual impairment.

Short term positions (20 days or less)

For short term positions the council may invite applications from persons who have worked in the school before (e.g. as a paid employee or as a volunteer), persons who have worked in nearby schools, or persons who the principal or a member of council know who are able to fill the requirements of the position. The council may also use an employment agency or advertisement in the school newsletter or local press.

The school may develop a register of persons who are prepared to be employed for short term positions.

The applicants may apply by an expression of interest. They must supply the names of at least two persons who can be contacted as referees for them.

Selection of the most suitable person should be done by the council chairperson (or nominee) and the principal (or nominee). At least one of the referees for each applicant must be contacted to confirm that the applicant is suitable for work in the position and in a school.

The council chairperson and principal (or their nominees) must discuss the contract of employment with the successful applicant and give him/her a letter of appointment.

Long term positions (greater than 20 days)

In carrying out the selection for filling the position the council must:

- advertise the position and invite applications from interested persons with suitable qualifications (if required). This can be done in the local newspaper, the state newspaper, or in school newsletters. Where the position involves tasks normally done by ancillary staff, the personnel consultant, Ancillary Staffing section of the Department must be contacted for advice;
• forward information about the position, including the job and person specifications, to all persons who enquire about the position. The names, addresses and contact numbers of these people should be recorded;

• advise applicants to address the terms of the job and person specifications and to give the names and contact numbers of at least two persons who can provide referee comments; and

• conduct a selection process for all those who apply for the position.

The selection panel should consist of the council chairperson, the principal and the administration officer of the school or a representative from the appropriate council sub-committee e.g. the Out of School Hours Care (OSHC) committee.

Once an applicant has been short listed the panel should contact the referees of the applicant to confirm that the applicants are suitable for work in the position and for work in a school and

• to rank the applicants in order of merit

• confirm the successful applicant with the appropriate sub-committee

• notify the other applicants of the outcome

• discuss with the successful applicant the contract for the position and the length of tenure and if this is agreed to by the applicant, have him/her sign the contract. The contract should also be signed by the council chairperson and the principal

• give the successful applicant a letter of appointment.

Payment, taxation, leave, superannuation

The council must ensure that all conditions of payment for work done, payment of taxation, entitlement to leave, and cover for superannuation are allowed for and carried out.

Payment for work done should be according to the relevant award. Payment is based on the number of hours worked in a week. Advice on award coverage should be sought from the department’s Industrial Relations Unit for public sector awards (phone 8226 1169; fax, 8226 1708). In some instances payment may be made through the department and paid by the school on a recharge basis or deduction from the Global Budget.
Taxation must be deducted. Contact the Australian Taxation Office (phone 132866) for the latest details and rates.

Sick leave, annual leave, long service leave and superannuation payments may vary with the different awards. Advice on these should be sought from the department’s Industrial Relations Unit.

**WorkCover**

The council must register with WorkCover within 14 days of becoming an employer. The levy is currently paid by the department.

WorkCover must be notified of subsequent changes in employee numbers, remuneration or employment category (e.g. an increase or reduction in staff levels or an alteration to an existing employee’s working hours), or predominant activity.

At the end of the financial year a Reconciliation Statement must be completed as required. A copy is to be retained for the school’s records and the original Reconciliation Statement forwarded to the Occupational Health and Safety Unit, State Office, GPO Box 1152, Adelaide, 5001.

**Supervision**

The principal must supervise and promote the development of staff employed by the council.

**Grievance procedure**

Where the employee has any concerns or grievances he/she should discuss these with the principal to resolve the issues.

Where the concern or grievance is about health or safety issues, the school’s Occupational Health and Safety Representative should be a part of the discussions between the employee and the principal.

**25. Works and services**

**Contracts**

Councils may make contracts as necessary for, or incidental to, carrying out their functions under their constitution. Non-teaching staff can be employed under a contract of service (where they become employees of the council) or, alternatively, the work may be undertaken by an independent
contractor under a contract for services.

**Contract of service (Employee) v contract for services (Contractor)**

The decision to engage a person as a permanent or casual employee or to contract work out must be closely examined by the council.

Whatever method for achieving the work is preferred it is important to have a clear understanding of the difference between a contract of service and a contract for services. Failure to make a proper distinction could lead to financial and legal problems.

The following test is a useful guide to decision making:

1. Is the worker paid a wage or salary?
2. Is the work performed at the school and not away from it?
3. Does the worker work regular and/or defined hours?
4. Is the worker engaged to produce a certain result, the completion of which will terminate his/her relationship with the school council at this time?
5. Does the worker provide his/her own plant, equipment or materials as a means of accomplishing his/her work?
6. Does the worker have the right to subcontract or delegate his/her work?
7. Is the worker subject to, or does the council reserve the right to subject the worker to, detailed and direct control?

Positive answers to questions 1, 2, 3 and 7 and negative answers to questions 4, 5 and 6 would tend to indicate a contract of service.

All other things being equal, a positive answer to question 7 (the control test) usually indicates a contract of service, i.e. the worker is an employee.

While the potential for cost savings is a significant factor, other considerations may support a course of action contrary to what economics would indicate. For example, greater efficiency may be achieved by engaging a more experienced (but more expensive) contractor for service (who has access to expensive equipment) or there may be greater flexibility in employing a grounds person on a casual basis rather than in a permanent capacity.

**Liability of councils when entering contracts for service**

Councils entering into contracts are responsible for following up action in respect of such contracts where they consider
that the contract has not been carried out satisfactorily.

26. Advice for the employment of non-teaching staff

_Examples of when councils could be involved in a contract of service (ie. Employment) are:_

- Establishment, maintenance and control of residential facilities for the accommodation of students;
- Management of the school canteen;
- Conduct of Out of School Hours Care programs;
- Council owned and operated school buses;
- Developing community and parent liaison with the school;
- Provision of books and materials to students of the school;
- Administration of awards and scholarships;
- Clerical and management support;
- Management of land, buildings and equipment of the school;
- Maintaining a desired curriculum breadth and employing persons other than teachers to, under the supervision of a teacher, supply skills, knowledge or supervision not otherwise available at the school or curriculum based excursions or camps;
- Involvement in the organisation and conduct of sporting activities which involve school groups, conducted out of school hours. The activities of the employee must relate directly to junior sport and be conducted in accordance with the National Junior Sport Policy augmented by SA Guidelines for National Junior Sport Policy. Parents must be fully informed of the conditions applicable to the sporting activity and give their written consent (unless the student has reached the age of 18) before a student is allowed to participate.

Further advice on awards, employment conditions, selection processes and supervision are in the Appendix.  

Division 3. Selection of Principals

27. Role and responsibility of school principals

_Introduction_

The authority and responsibility of school principals in South Australia are derived from the Education Act and its subordinate regulations. Principals operate within the powers and functions delegated from the Chief Executive. They are accountable to the Chief Executive through the Executive Directors, Schools and Children’s Services for the
performance of their duties and responsibilities.

Principals have functions in council as specified in the council constitution.

Constitution section 6

28. Principal selection process

Introduction
There are two main ways in which principals are appointed to lead a school. One is by the placement of a person who is already a substantive principal and the other is through a selection process which involves advertising each vacancy.

Members of the school community take part in both forms of appointment but the type of involvement differs. The way in which the school community takes part in the placement process will be explained by departmental officers at the time.

DETE Merit selection policy and procedures’ (school sector, 1997), updated 2000

Role of the council nominee
The council nominee’s role on the selection panel is vitally important and it is essential that the person be well trained and able to participate fully in all phases of the process. Training activities and materials have been designed to ensure this happens. Training sessions for school communities and prospective council nominees are available.

SA Association of State School Organisations: phone number is (08) 8223 2266.

The chairperson of the panel has a responsibility to ensure that all panellists have the necessary knowledge to participate fully in the process. Once the panel is constituted the council nominee is responsible to the chairperson and is not to be in any sense a representative of the school council or any other group.

SA Association of School Parents Clubs

All panellists are to participate fully and contribute equally to the process. In addition, all panellists are to maintain confidentiality both during deliberations and indefinitely after the appointment has been made.

Panels make a recommendation and report to the Executive Directors, Schools and Children’s Services and Human Resources.

29. Volunteer council and parent organisations

A number of organisations provide additional support for school councils and affiliated committees.

SA Association of State School Organisations: phone number is (08) 8223 2266.
SA Association of School Parents Clubs: phone number is (08) 8852 6132.

Part IV - Other Matters

30. School closures - council's authority

Councils may recommend to the District Superintendent that the school be closed for a maximum of one school day or two half days each school year for events of local significance. Additionally, councils may approve up to three pupil-free days in each school year for activities relating to school management, planning or staff development, in accordance with AIG 1.79.

31. Crèche care facilities

Staff of the Licensing and Standards Unit, DETE provide administrative advice and guidance to organisations that intend providing child care, commonly known as "Crèche Care".

Councils and affiliated committees intending to provide child care and to charge for those services while the parents attend meetings etc, must comply with regulations made under the Children's Services Act.

The legislation does not apply where child care is provided without charge (i.e. volunteer care providers). However, to ensure that care is provided in a safe, secure and hygienic manner, advice should still be sought.

32. Common seal

The common seal may be:

- a metal dye, which is affixed to a document by mechanical impression;
- a metal stamp which is impressed by hand on a piece of warm wax affixed to the document; or
- a rubber stamp

and the cost of acquisition should be met from council funds.

The seal may be of any shape but it is usually circular. It should contain the name of the incorporated body, usually spaced around the circumference. The word "Incorporated" or the abbreviation "Inc." must follow the council name.
The seal is held by the council secretary who is responsible for the safe keeping of the seal and it may be used in any particular case after the council has authorised its use by a resolution recorded in the minutes. When used, the signatures or initials of two councillors, one of whom must be the principal or chairperson of the council, should be affixed near the seal.

Every use of the seal must be recorded in the minute book of the council.

The seal should be used on:

- any agreement or contract entered into by the council with other bodies or persons;
- bank forms for change of operators on the school council consolidated account; and
- any document which is binding on the council.

33. **Complaint against the principal or school staff**

Occasionally the council or an affiliated committee may receive a complaint against the principal or another member of the school staff.

In the case of a complaint against the principal it must be referred without comment to the Chief Executive. In the case of a complaint against another member of school staff (including council employees), it must be referred without comment to the principal.

In either case the complaint must not be debated.

The District Superintendent must inform the council or the committee, as the case may be, of any action taken against the principal in response to a complaint.

34. **Directions to school staff**

A council or an affiliated committee must not give directions to a teacher (or to the principal) in relation to the manner in which he/she carries out his/her duties as a teacher (or principal).

35. **Limitation on action in respect to the curriculum and discipline**

A council or affiliated committee must not interfere, or take any action that interferes with the provision, or the day-to-day
management of the provision, of instruction in the school in accordance with the curriculum determined by the Chief Executive, or in the administration of discipline in the school.

36. Recognition of long service

Certificate of service

It is the practice for the Minister to forward a certificate of appreciation to members of school councils and affiliated committees who retire after having served an aggregate of ten years or more as a council/committee member.

Procedure

Details of school councillors or committee members who are eligible for a certificate should be sent to the Manager, Public Relations Unit. The form, Request for Department of Education, Training and Employment Certificate of Appreciation, should be used for this purpose.

The form should contain the person’s full name (nicknames, abbreviations or initials are not acceptable), the name of the school council/committee on which the person has served and the total length of service. Certificates will be prepared by the Unit and forwarded to the Minister for signature.  

AIG Section 2. 73
Part V - Appendices

Division 1. Model constitutions and Code of Practice

37. Governing council model constitution

GOVERNING COUNCIL MODEL CONSTITUTION

1 NAME

The name of the Council is (name of the school) Governing Council Incorporated.

For example: Sunny Creek Primary School Governing Council Inc

2 INTERPRETATION

In this constitution, unless the contrary intention appears:

‘the Act’ means the Education Act 1972 as amended.

‘administrative instructions’ means administrative instructions issued pursuant to section 96 of the Act.

‘administrative unit’ - means the Department of Education, Training and Employment in which persons are employed in accordance with the Public Sector Management Act 1995.

‘adult’ means a person who has attained 18 years of age.

‘affiliated committee’ means a committee affiliated with the Council and the constitution of which is approved by the Minister in accordance with section 86 of the Act.

‘Chairperson’ means the presiding member of the Council as referred to in section 84(1)(a)(iii) & (iv) of the Act.

‘Chief Executive’ means the Chief Executive of the Department of Education, Training and Employment in accordance with section 11 of the Act.

‘Council’ means the (name of Governing Council Incorporated)

‘councillors’ are the members of the Council.

‘Department’ means the Department of Education, Training and Employment established pursuant to the Public Sector Management Act 1995.
'financial year' means the year ending 31 December or as varied by administrative instruction.

'general meeting' means a public meeting of the school community.

'Government school' means a school established under section 5 of the Act, for the purpose of providing courses of instruction in pre-school, primary or secondary education.

'majority' means more than half the total number.

'Minister' means the person to whom the administration of the Act is committed, pursuant to the Administrative Arrangements Act 1994.

'parent' in relation to the school means the parent of a child attending the school and the parent of a child enrolled, but not yet attending at the school.

'parent of a child' includes -

(a) a person who has legal custody or guardianship of the child; and

(b) a person standing in loco parentis to the child,

but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent.

'Principal' means the head teacher of the school within the meaning of the Act.

'Regulations' means regulations made under the Act.

'school community' means all parents, students and staff of the school and all other persons who have a legitimate interest in or connection with the school.

'Services Agreement' means the agreement signed by the Principal, Chairperson of the Council and the Chief Executive to formalise the mutual obligations of the Department and the school in relation to the local management and governance of the school.

'special resolution' of the Council means a resolution for the purposes of amending the constitution or to remove an office holder from office, passed by a duly convened meeting of the Council if -

(1) at least 21 days written notice has been given to all councillors specifying the intention to propose the resolution as a special resolution; and

(2) it is passed by a majority of not less than three quarters of councillors who vote in person or by proxy at that meeting.

'student' is a person attending the school, or enrolled but not yet attending the school.
3 OBJECT

The object of the Council is to involve the school community in the governance of the school to strengthen and support public education in the community.

4 POWERS OF THE GOVERNING COUNCIL

4.1 In addition to the powers conferred under the Act, the Council may:

4.1.1 employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the Chief Executive;

4.1.2 enter into contracts;

4.1.3 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;

4.1.4 purchase or take a lease or licence of premises for student residential facilities, and enter into any other agreements or arrangements for the establishment, management, staffing and operation of such facilities;

4.1.5 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.

4.1.6 do all those acts and things incidental to the exercise of these powers.

4.2 The Council's powers must be exercised in accordance with legislation, administrative instructions and this constitution.

5 FUNCTIONS OF THE COUNCIL

5.1 In the context of the Council's joint responsibility with the Principal for the governance of the school, the Council must perform the following functions:

5.1.1 involve the school community in the governance of the school by:

(i) providing a focus and a forum for the involvement of parents and the school community;

(ii) ascertaining the educational needs of the local community and the attitude of the local community to educational developments within the school; and

(iii) ensuring that the cultural and social diversity of the community is considered and particular needs are appropriately identified.

5.1.2 set the broad direction and vision of the school.

5.1.3 strategic planning for the school including:
(i) developing, monitoring and reviewing the objectives and targets of the strategic plan; and

(ii) considering, approving and monitoring human resource and asset management plans.

5.1.4 determine policies for the school including policies for the safety, welfare and discipline of students.

5.1.5 determine the application of the total financial resources available to the school including the regular review of the budget.

5.1.6 monitor and review the Services Agreement.

5.1.7 report to the school community and the Minister on:

(i) the strategic plan;

(ii) the finances of the school;

(iii) operational plans and the Council's operations.

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

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

5.3.1 facilities and services to enhance the education, development, care, safety, health or welfare of children and students;

5.3.2 residential facilities for the accommodation of students.

5.4 The Council may raise money for school related purposes.

5.5 The Council may perform other functions as determined by the Minister.

5.6 The Council may do all those acts and things incidental to the exercise of these functions.

5.7 The Council's functions must be exercised in accordance with legislation, administrative instructions and this constitution.

6 FUNCTIONS OF THE PRINCIPAL IN COUNCIL

The functions of the Principal in Council are undertaken in the context of the Principal's joint responsibility with the Council for the governance of the school.

6.1 The Principal is answerable to the Chief Executive for providing educational leadership in the school and for other general responsibilities prescribed in the Act and Regulations.

6.2 The Principal must also:

6.2.1 implement the Services Agreement, the strategic plan and school policies;

6.2.2 provide accurate and timely reports, information and advice relevant to the Council’s functions;

6.2.3 report on learning, care, training and participation outcomes;
6.2.4 supervise and promote the development of staff employed by the Council;

6.2.5 be responsible for the financial, physical and human resource management of the school;

6.2.6 be an ex-officio member of Council with full voting rights;

6.2.7 be the returning officer for the election, nomination and appointment of councillors;

6.2.8 chair the first meeting of the Council held for the purpose of receiving nominations from nominating bodies, the direct appointment of councillors by the Council and the election of office holders;

6.2.9 contribute to the formulation of the agenda of Council meetings.

7 MEMBERSHIP

7.1 The Governing Council must comprise insert number councillors including:

[The Governing Council to insert membership configuration as approved by the Minister and based upon administrative instructions]

7.2 The majority of councillors must be elected parents of the school.

7.3 At the time of election, nomination or appointment, persons who are on the staff of a Government school, employees of the Minister's administrative unit, and those appointed under the Act, Children’s Services Act 1985 and Technical and Further Education Act 1975 must not comprise the majority of elected parent members and must not comprise the majority of councillors.

7.4 In considering any nominations to the Council by a nominating body or direct appointments by the Council, the Council must observe the requirements of 7.3.

7.5 A person is not eligible for election, appointment or nomination to the Council, if the person:

7.5.1 is an undischarged bankrupt or is receiving the benefit of a law for the relief of insolvent debtors; or

7.5.2 has been convicted of any offence prescribed by administrative instruction.

8 TERM OF OFFICE

8.1 Elected parent councillors will be appointed for a term not exceeding two years, except in the case of the first Council only, where one-half (or, if the total number of councillors to be elected is odd, the highest integer that is less than one-half) of the parent councillors elected at the Annual General Meeting of the school will be elected for a term not exceeding one year.
8.2 A councillor nominated by an affiliated committee will be nominated for a term not exceeding two years, subject to the provisions that:

8.2.1 for the first Council only, where two or more affiliated committees each nominate a councillor, one will be appointed for a term not exceeding one year. The person so appointed must be determined by agreement between the affiliated committees, or on failure to agree, by lot.

8.2.2 the nomination may be revoked, in writing by the affiliated committee.

8.3 Any councillor nominated by the Student Representative Council or elected by the body of students will hold office for a term not exceeding one year or until the nomination is revoked, in writing by the nominating body.

8.4 A councillor elected by the staff of the school will hold office for a term not exceeding one year subject to being a member of the staff of the school.

8.5 Each councillor directly appointed by the Council, will serve for a period not exceeding two years.

8.6 Upon expiry of term of office, each councillor will remain incumbent until the position is declared vacant at the Annual General Meeting.

8.7 Councillors are eligible for subsequent re-election, re-nomination or re-appointment.

9 OFFICE HOLDERS AND EXECUTIVE COMMITTEE

9.1 Appointment

9.1.1 The office holders of the Council are the Chairperson, deputy Chairperson, Secretary and Treasurer who must be elected by the Council from amongst its councillors within one month of the Annual General Meeting.

9.1.2 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.

9.1.3 The Treasurer must not be a member of the staff of the school.

9.1.4 The Council may appoint an executive committee comprising the office holders and the Principal, which is to

(i) meet to carry out business delegated or referred by the Council; and

(ii) report to subsequent Council meetings.

9.2 Removal from office

9.2.1 The position of any office holder absent for three consecutive executive committee meetings without leave of absence automatically becomes vacant. Acceptance of an apology at the
executive committee meeting will be deemed a grant of such leave.

9.2.2 An office holder of the Council may be removed from office, but not from membership of the Council, by special resolution of the Council, provided that:

(i) at least 21 days written notice is given to all councillors and to the office holder concerned, of any proposed resolution, giving reasons for the proposed removal;

(ii) the office holder is given the right to be heard at the Council meeting;

(iii) voting on the special resolution is by secret ballot.

9.3 The Chairperson

9.3.1 The Chairperson must

(i) call and preside at the meetings of the Council and the executive committee;

(ii) in consultation with the Principal and Secretary, prepare the agenda for all Council meetings;

(iii) include on the agenda any item requested by the Principal;

(iv) facilitate full and balanced participation in meetings by all councillors and decide on the manner in which meetings are conducted and matters of order;

(v) 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.

9.3.2 The Chairperson must act as spokesperson on behalf of the Council unless an alternative spokesperson has been appointed by the Council. The spokesperson may only comment on Council matters.

9.3.3 In the Chairperson’s absence or inability to act, the deputy Chairperson must undertake any role or function normally fulfilled by the chairperson.

9.3.4 If the Chairperson and deputy Chairperson of the Council are absent or unable to preside at a meeting, a councillor elected by the Council must preside.

9.4 The Secretary

9.4.1 The Secretary must ensure that notices of meetings are given in accordance with the provisions of this constitution.

9.4.2 The Secretary is responsible for ensuring the maintenance and safekeeping of:

(i) the constitution and the code of practice of the Council;
(ii) official records of the business of the Council and a register of minutes of meetings;
(iii) copies of notices, a file of correspondence and records of submissions or reports made by or on behalf of the Council;
(iv) register of councillors;
(v) contracts or agreements entered into by the Council; and
(vi) copies of policies of the Council.

9.4.3 The Secretary must ensure that copies of this constitution and the code of practice are available for public inspection at the school during normal school hours, and that any copies requested are provided.

9.4.4 The Secretary must ensure the safekeeping of the common seal and must ensure a record is kept of every use of the common seal.

9.4.5 Prior to each meeting, the Secretary must ensure that a copy of the meeting agenda is forwarded to each councillor.

9.4.6 The Secretary must conduct the official correspondence of the Council.

9.4.7 The Secretary must ensure that the minutes of meetings are recorded and forwarded to each councillor prior to the next meeting.

9.5 The Treasurer

9.5.1 The Treasurer must be the Chairperson of the Finance Advisory Committee of the Council and preside at the meetings of this committee.

9.5.2 The Treasurer must:
(i) ensure that the Council’s financial budgets and statements are prepared;
(ii) submit a report of those finances to each Council meeting;
(iii) present the Council’s audited accounts to the Annual General Meeting.

10 VACANCIES

10.1 Membership of the Council ceases when the councillor:
10.1.1 dies; or
10.1.2 in the case of an elected councillor or a councillor nominated or appointed for a term, completes a term of office and is not re-elected, re-nominated or re-appointed; or
10.1.3 ceases to hold office in accordance with 8.2.2 and 8.3; or
10.1.4 in the case of a member nominated by the staff of the school, is no longer a staff member of the school; or
10.1.5 resigns by written notice to the Council; or
10.1.6 is removed from office by the Minister in accordance with section 97 of the Act; or
10.1.7 is declared bankrupt or applies for the benefit of a law for the relief of insolvent debtors; or
10.1.8 has been convicted of any offence prescribed by administrative instruction; or
10.1.9 is absent from three consecutive Council meetings without leave of absence approved by the Council. Acceptance of an apology at a Council meeting will be deemed a grant of such leave.

10.2 The Council may appoint a person to temporarily fill a casual vacancy in its membership until a councillor can be elected, nominated or appointed in accordance with this constitution.

11 MEETINGS

11.1 General Meetings of the school community

11.1.1 Subject to 13.2, all persons within the school community are eligible to attend general meetings of the school community and vote on any matters proposed for resolution.

11.1.2 The Chairperson of the Council must call and preside at general meetings of the school community, the timing to be agreed between the Council Chairperson and the Principal of the school.

11.1.3 At least 14 days written notice of the meeting must be given to the school community by the means generally used to communicate with the school community. The notice must specify the date, time and place of the meeting.

11.1.4 A general meeting must be held:

(i) at least once annually (the Annual General Meeting) to present reports, to elect parents to the Council and/or declare election results;

(ii) for any other reason relating to the affairs, functions or membership of the Council, determined by agreement between the Council Chairperson and the Principal.

11.1.5 The period between each Annual General Meeting must not exceed 16 months.

11.1.6 A general meeting must be held to elect councillors, to discuss the finances of the Council or for any other reason relating to the affairs or functions of the Council:

(i) at the request of the Chief Executive;

(ii) by the resolution of the Council;
(iii) at the request of 20 parents of the school or one half of the parents of the school, whichever is less.

11.1.7 A conference by telephone or other electronic means will be taken to be a general meeting of the school community provided that all procedures in this constitution relating to general meetings are complied with and each participating member is capable of communicating with every other participating member during the conference.

11.2 Council Meetings

11.2.1 The Council must meet at least twice in each school term.

11.2.2 Notice of meeting must be given at the previous Council meeting or by at least 7 days written notice distributed to all councillors or in an emergency by such other notice as the Council may determine.

11.2.3 A conference by telephone or other electronic means between the councillors will be taken to be a meeting of the Council provided that all procedures in this constitution relating to Council meetings are complied with and each participating member is capable of communicating with every other participating member during the conference.

11.3 Extraordinary Council Meetings

11.3.1 The Chairperson of the Council must call an extraordinary meeting of the Council by written request from at least 3 councillors.

11.3.2 Notice of meeting must be given by written notice to all councillors within reasonable time, setting out the time, date, place and object of the meeting.

11.3.3 The business of any extraordinary meeting must be confined to the object for which it is convened.

11.4 Voting

11.4.1 Voting must be by show of hands, or in the case of a meeting held pursuant to 11.1.7 and 11.2.3, by voices or in writing, but a secret ballot must be conducted for:

(i) a contested election; or

(ii) a special resolution to remove an office holder from office.

11.4.2 For the purposes of voting on a special resolution, each councillor is entitled to appoint another councillor as his/her proxy by notice in the form issued as an administrative instruction.
12 PROCEEDINGS OF THE COUNCIL

12.1 Meetings

12.1.1 If at the expiration of 30 minutes after the appointed time for the meeting there is no quorum present, the meeting must stand adjourned to such time and place as those councillors present determine.

12.1.2 The quorum for the Council meeting is a majority of the filled positions of the Council.

12.1.3 Except in the case of a special resolution, a decision of the majority of those councillors present and eligible to vote is the decision of the Council.

12.1.4 The Chairperson must have a deliberative vote only. In the event of an equality of votes, the Chairperson does not have a second or casting vote and the motion must be taken to be defeated.

12.1.5 The Council or any committee of Council may, at its discretion, allow non-members who have special interests or knowledge relevant to the Council to attend its meetings as observers and, if it agrees, take part in discussions on particular issues. Non-members cannot vote.

12.1.6 Where there are one or more vacancies in the membership of the Council, the Council is not prevented from acting by the requirement that the majority of its members must be elected parents of the school or by any other requirement of membership (except the requirement as to quorum).

12.1.7 The Council may from time to time determine procedures to facilitate and expedite its business.

12.2 Conflict of interest

In accordance with section 94 of the Act, a councillor who has a direct or indirect pecuniary interest in a contract or proposed contract with the Council must:

- disclose the nature of the interest to the Council as soon as the councillor becomes aware of the interest; and
- not take part in deliberations or decisions of the Council with respect to that contract.

A disclosure of such an interest must be recorded in the minutes of the Council.

If a councillor discloses an interest in a contract or proposed contract:

- the contract is not liable to be avoided by the Council on any ground arising from the fiduciary relationship between the councillor and the Council; and
• the member is not liable to account for the profits derived from the contract.

13 ELECTION OF COUNCILLORS

13.1 Eligibility for nomination for election

Subject to 7.5, all persons who are parents of the school are eligible to nominate for election as a councillor.

13.2 Eligibility to vote

Only parents of the school may vote to elect councillors.

13.3 Conduct of elections for parent councillors

The Principal must conduct elections of parent councillors by one of the following methods, as determined by the Council:

(i) an election at a general meeting of the school community; or
(ii) a postal ballot of the parents of the school.

13.4 Notice of election

13.4.1 The timetable for an election must be determined by the Council, in consultation with the Principal.

13.4.2 Notice of the date and time for an election must be specified by the Principal by the means generally used to communicate with the school community.

13.4.3 The notice must:

(i) fix the period during which nominations for election as councillors must be accepted and outline the process to be followed;

(ii) fix the date and time of the general meeting for the election (not being less than 14 days from publication of the notice); or

(iii) in the case of the postal ballot:

(a) fix the date by which ballot papers must be available and advise how they may be obtained; and

(b) fix the date by which ballot papers must be returned and advise how they must be lodged.

13.4.4 In consultation with the Council, the Principal must determine the form for nominations and the period during which nominations will be accepted.

13.4.5 A nomination for election as a councillor must be:

(i) in a form approved by the Principal; and
13.5 Election without ballot

If the number of persons nominated is the same or less than the number of vacancies to be filled by election, the Principal may declare that the vacancy or vacancies has or have been filled by the persons or person nominated.

13.6 Contested elections

13.6.1 If the number of persons nominated is greater than the number of vacancies to be filled, the ballot conditions apply.

13.6.2 The process for conducting the ballot for a contested election must be in accordance with administrative instructions.

13.7 Scrutineers

The Principal must permit such scrutineers, who are independent of the election, to be present at the counting of votes, as he or she thinks fit. A candidate in the election cannot be a scrutineer.

13.8 Declaration of election

13.8.1 The Principal must declare the candidate or candidates elected to fill the vacancy or vacancies:

(i) at a general meeting of the school community; or

(ii) in the form generally used to communicate with the school community.

13.8.2 The new Council comes into operation at the declaration of the election.

13.9 Further nomination for unfilled positions

After the result of an election has been declared and if the required number of elected parent councillor positions have not been filled, parents present at a general meeting may be invited to nominate and be elected by a further ballot to the remaining vacancies.

13.10 Nomination and appointment of councillors

13.10.1 As soon as is practicable after the declaration of the results of an election, the Principal must call and preside at the first Council meeting for the purpose only of:

(i) receiving the nominations from nominating bodies and determining the direct appointment of members of the community; and

(ii) electing office holders.
13.10.2 The first meeting of the Council must be adjourned to a date decided by the meeting if the purpose of the meeting cannot be achieved.

13.10.3 If upon the resumption of the meeting the appointment of community members or receiving nominations cannot be resolved, the Council may proceed to the election of office holders.

14 MINUTES

14.1 Proper minutes of Council meetings, the Annual General Meeting and general meetings of the school community must be entered into books kept for that purpose.

14.2 The minutes must be confirmed at the next respective annual, general or Council meeting and signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the subsequent meeting.

14.3 Upon reasonable notice, the books containing the minutes of any meetings must be made available for inspection by any councillor.

15 COMMITTEES

15.1 Committees

The Council may appoint committees, comprised of councillors or both councillors and non-councillors, which will meet as directed by the Council and report to the Council at subsequent Council meetings. Any committee must consist of at least three people and at least one of those must be a councillor.

15.2 Terms of reference

The Council must specify terms of reference for each of its committees.

15.3 Finance Advisory Committee

15.3.1 The Council must establish a Finance Advisory Committee to advise the Council on budgetary and financial matters, including the preparation of the preliminary budget showing:

(i) the anticipated income available for the ensuing twelve months (both from normal transactions and from fund-raising activities);

(ii) the proposed expenditure to be made;

(iii) details of any funds held for special purposes.

15.3.2 The membership must be determined by the Council and must include

(i) The Treasurer;
(ii) the Principal or nominee.

15.3.3 The Finance Advisory Committee must meet at least once each school term to examine receipts and payments and review the school budget.

16 DELEGATION

16.1 Subject to 16.2, the Council may delegate its functions or powers to its committees, and may delegate its functions or powers to another school council but only with the prior written consent of the Chief Executive.

16.2 The Council cannot delegate any of its functions or powers in relation to the approval of the school's budget and the annual financial statement.

16.3 Any conferral of delegation must be properly recorded in the minutes.

17 ACCOUNTS TO BE KEPT AND OTHER FINANCIAL MATTERS

17.1 The Council must ensure that proper accounts are kept of its financial affairs, and in controlling any account must ensure proper books and accounts are kept of all funds paid to that account, together with details of any dealing involving those funds.

17.2 All accounts must be operated on the basis of the designated financial year.

17.3 The accounts must be kept in accordance with provisions of the Act, Regulations, administrative instructions and this constitution.

17.4 The funds of the Council must only be expended for school related purposes.

17.5 The Council may transfer funds as it thinks fit to:
   17.5.1 an affiliated committee;
   17.5.2 another existing or proposed Government school.

18 AUDIT

18.1 The Council must arrange for any accounts under its control to be audited at least once in every year, as soon as possible after the end of the financial year, or at such other time as determined by administrative instruction.

18.2 The Council may arrange for accounts to be audited at such other intervals as the Council determines, by a person appointed by the Council.

18.3 The Council must make available for inspection at any time by the Chief Executive or the Auditor-General, any accounts under its control, including all relevant records and papers connected with an account.

18.4 The audit of any accounts under the control of the Council must be in accordance with the provisions of the Act, Regulations, administrative instructions and this constitution.
19  REPORTING TO THE SCHOOL COMMUNITY AND THE MINISTER

19.1 The Council must report to the school community at least once a year, at the Annual General Meeting called by the Chairperson.

19.2 At that meeting:

19.2.1 the Chairperson must report on:
(i) strategic and operational plans;
(ii) the proceedings and operations of the Council for the period since the date of the previous Annual General Meeting of the school community; and
(iii) the outcomes of those proceedings in relation to the functions of the Council;

19.2.2 the Treasurer must present an up-to-date statement of receipts and expenditure with respect to all accounts controlled by the Council, and a copy of the audited statement of receipts and expenditure of the Council for the year ended as at the designated financial year.

19.3 Where any statement has not been audited by the time the Annual General Meeting is held, the audited statement is to be subsequently made available for inspection, at the school, as determined at the meeting.

19.4 The Council must report to the Minister at least once a year, in accordance with administrative instructions.

20  THE COMMON SEAL

20.1 The Council must have a common seal. The common seal must be affixed only by resolution of the Council and in the presence of two Councillors one of whom must be the Principal or the Chairperson of the Council.

20.2 Every use of the seal must be recorded in the minute book of the Council.

21  RECORDS

21.1 The Council is responsible for the safe and proper storage of its records.

21.2 The Council must make the records available at any time to the Minister or to any person authorised by the Minister and allow those records to be removed by any such person.

22  AMENDMENT OF THE CONSTITUTION

22.1 This constitution may be altered, modified or substituted at the direction of the Minister, in accordance with section 88 of the Act.
22.2 This constitution may also be amended, altered, modified or substituted by the Council by special resolution and approval in writing by the Minister.

22.3 An amendment to the constitution has no effect until submitted to and approved by the Minister.

23 CODE OF PRACTICE
Members of the Council must comply with the code of practice issued as an administrative instruction.

24 DISPUTE RESOLUTION
The Council must participate in a scheme for the resolution of disputes between the Council and the Principal, as prescribed in administrative instruction.

25 PUBLIC ACCESS TO THE CONSTITUTION and CODE OF PRACTICE
The Council must keep available for public inspection a copy of its constitution (as in force from time to time) and the code of practice, at the school, during normal school hours.

26 DISSOLUTION
In accordance with section 85 of the Act, the Council may be dissolved.

27 PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS
The assets and income of the Council must be applied exclusively for school related purposes and no portion must be paid or distributed directly or indirectly to councillors in their role as a councillor, except for expenses incurred on behalf of the Council.
38. Membership for particular governing councils

For a school or group of schools where the students are not adult students

The Governing Council shall comprise the following members:

(i) the Principal of the school, or in the case of a Council serving two or more schools, the Principals of each school (ex officio);
(ii) staff members, nominated to the Council by election at a general staff meeting, in the ratio determined by the Minister;
(iii) one member nominated by each approved affiliated committee of the Council, up to a maximum of 3;
(iv) community members appointed by the Council (limit of 3);
(v) students, nominated by the student representative Council, or if there is no SRC, by the students, up to a maximum of 5.

For a school with principally adult students

The Governing Council shall comprise the following members:

(i) the Principal of the school (ex officio);
(ii) staff members, nominated to the Council by election at a general staff meeting, in the ratio determined by the Minister;
(iii) one member nominated by each approved affiliated committee of the Council, up to a maximum of 3;
(iv) community members appointed by the Council (limit of 3);
(v) students nominated by the student representative Council, or if there is no SRC, by the students, up to a maximum of 5.

Note: The students must represent the largest group of councillors and the combination of students, affiliated committee nominees and those appointed from the community must be the majority of councillors.

For a school with all adult students or a mix of continuing and adult students

The Governing Council shall comprise the following members:

(i) the Principal of the school (ex officio);
(ii) staff members, nominated to the Council by election at a general staff meeting, in the ratio determined by the Minister;
(iii) one member nominated by each approved affiliated committee of the Council, up to a maximum of 3;
(iv) community members appointed by the Council (limit of 3);
(v) continuing (non-adult) students and adult students nominated by the student representative Council, or if there is no SRC, by the students, in accordance with the distribution of continuing/re-entry students expressed as full time equivalents.
(vi) elected parents, the number being the minimum necessary to make elected parents of the school plus nominated students the majority of councillors.
For a multi-campus school with one principal and one service agreement

The Governing Council shall comprise the following members:

(i)  the Principal of the school (ex officio);
(ii) staff members, nominated to the Council by election at a general staff meeting in each campus, in the ratio determined by the Minister;
(iii) one member nominated by each of the approved affiliated committees, up to a maximum of 3;
(iv) community members appointed by the Council (limit of 3);
(v) students (up to 2), nominated by the student representative Council, or if there is no SRC, by the students;
(vi) elected parents, the number being the minimum necessary to
    - achieve the minimum size of 5 councillors in total, and
    - make the majority of councillors elected parents of the school.

For a preschool and school site – members to be also members of the management committee

The Governing Council shall comprise the following members:

(i)  the Principal of the school, or in the case of a Council serving two or more schools, the Principals of each school and the director(s) of the preschool(s);
(ii) staff members, nominated to the Council by election from the combined staff of the school and preschool, in the ratio determined by the Minister;
(iii) one member nominated by each of the approved affiliated committees, up to a maximum of 3
(iv) community members appointed by the Council (limit of 3);
(v) students, (up to two), nominated by the student representative council, or if there is no SRC, by the students;
(vi) elected parents, the number being the minimum necessary to:
    - allow at least two parents of children attending the preschool;
    - achieve the minimum size of 5 councillors in total, and
    - make the majority of councillors elected parents of the school or preschool.
39. **Governing Council Code of Practice**

The strength of community participation in local governance and decision making lies in the relationships that are established and maintained within a school community. The school community elects or nominates Councillors to the Council placing its trust in the Council's consultation and decision-making processes and the integrity and diligence of each Councillor.

Each individual, therefore, in fulfilling the roles and responsibilities of a Councillor

- must act honestly and in good faith;
- must use due care and diligence;
- must recognise that the primary responsibility of the Council is to the school, but will have regard for the interests of all students;
- must use the powers of the position for a proper purpose and act, at all times, in the best interests of the Council and the school as a whole;
- must recognise the responsibility and accountability of the Council to school community and the Minister;
- must not take improper advantage of the position;
- must ensure that there is no conflict or apparent conflict between his/her own interests and duties with those of the Council and may need to have regard to any benefit or interest that potentially may arise for members of their immediate families, to the extent that they know their interests, as well as their own.
- has an obligation to be independent in judgement and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Council;
- must not make improper use of information acquired;
- must keep confidential the information received in the course of his/her duties, and not disclose it, or allow it to be disclosed, unless that disclosure has been authorised, or if it is required by law;
- must not engage in conduct likely to bring discredit upon the school or the Minister;
- has an obligation to act lawfully and to comply with the principles of this code of practice.
CODE OF CONDUCT COMMENTARY

Context

Section 84(1)(e)(iii) of the Education Act, as amended, provides that members of a Council are to comply with a code of practice approved by the Minister. The code is a public document, and together with the constitution of a Council, is to be made available for public inspection. Thus, the community is aware of the obligation to comply with the code, and the actions of a Council are transparent and accountable.

When members accept appointment (through nomination, election or appointment) to a Council they undertake a duty of trust and loyalty to act honestly, in good faith, consider the needs of every child and student, and act in the best interests of the school. Although a Councillor may have been nominated by a group as specified in the legislation or in the constitution, that person is considered to have been elected or nominated to the Council, to provide a perspective in the course of making decisions in the best interests of the school regardless of other loyalties or allegiances.

Responsibility to the Minister

As members of the Council, individuals are responsible to the government through the Minister and ultimately the community for the manner in which they exercise their functions. The duties of a Councillor must be performed in an efficient and effective manner consistent with the legal requirements under the Education Act and the constitution of the Council or any other Act or law.

Hence, the code of practice forms part of the legal and regulatory framework under which the Council operates. Councillors are protected from personal liability through the immunity provided to those who act in good faith in exercising the powers and functions of a Council. This code underpins and is therefore an integral part of that immunity.

Duties of a Councillor

The code of practice embraces the values of honesty, integrity, enterprise, excellence, accountability, justice, independence and equal opportunity, and these values form the basis of actions and decisions when making decisions.

There are two broad categories of duties for a Councillor:

- a duty to act in good faith and in the best interests of the school; and
- the duty to act with care and diligence.

In undertaking the duties, a Councillor is required to:
• take reasonable steps to be informed of the functions of the Council and to ensure that the Council competently discharges those functions;

• take reasonable steps to be informed about the school, policies and activities and the circumstances and context within which the school operates;

• take reasonable steps through the processes of the Council to obtain sufficient information and advice on all matters to be decided by the Council;

• exercise an active discretion with respect to all matters to be decided by the Council;

• take reasonable diligence in attendance at and preparation for meetings.

**INTERPRETATION OF THE PRINCIPLES OF THE CODE OF PRACTICE**

**Students and the school, as a whole**

Each Councillor should endeavour to ensure that the school is constantly reviewed and the resources of the school are effectively allocated so as to protect and enhance the interests of the students, children and parents.

**Duties to others**

All Councillors must comply with the legal framework governing the school Council's operations. In making decisions about a range of matters, particular attention must be paid to Government and departmental policies, standards and guidelines and Ministerial directions particularly with respect to the curriculum of the school, the use of, and accountability for, resources.

The very nature of the school as part of the public education system and therefore, of services provided by government funding, requires Council decisions to be transparent and publicly justifiable in a political, social and, economic sense.

Although the Councillor owes a primary duty to the school community as a whole, the responsibilities imposed on schools under various Acts of Parliament clearly demand that the Councillor evaluate actions in a broader social context.

**Due diligence**

A Councillor should attend all Council meetings but where attendance at meetings is not possible, an apology must be provided.

In order to be fully effective, a Councillor should insist upon access to all relevant information to be considered by the Council. This information should be made available in sufficient time to allow proper consideration of all relevant issues.
Part of the duty of all Councillors should be to participate in the establishment of systems within the school to provide to them the necessary information on a regular and timely basis to enable reasoned judgements to be made. In relation to audit procedures, a Councillor should endeavour to ensure that relations between the Council and the auditors are open, unimpeded and constructive. Similarly, the auditors should have direct and unimpeded access to the Council.

**Conflict of interest**

A Councillor must not take improper advantage of the position of Councillor to gain, directly or indirectly, a personal advantage or an advantage for any associated person, which might cause detriment to the school.

The personal interests of a Councillor, and those of the Councillor’s family, must not be allowed to prevail over those of the school’s students, children and parents generally. A Councillor should seek to avoid conflicts of interest wherever possible. Full disclosure of any conflict, or potential conflict, must be made to the Council. In considering these issues, account should be taken of the significance of the potential conflict and the possible consequences if it is not handled properly. The *Education Act* directs the action of Councillors in the case of a conflict of interest (*Amendment Act* section 94 and section of the constitution).

**Use of information**

A Councillor must not make improper use of information acquired by virtue of the Councillor’s position as a Councillor. A Councillor nominated to the Council by other groups should recognise the particular sensitivity of the position and should be especially careful not to disclose matters that are confidential unless prior arrangement of the Council has been obtained.

**Professional integrity**

*For Councillors nominated by the staff of the school*

A staff member nominated to the Council by the staff of the school, should recognise that the position occupied is particularly sensitive. In exceptional circumstances it may be necessary for the Councillor to express disagreement with colleagues on the staff of the school. In any event, the Councillor should be prepared to implement the decisions of the Council and the instructions of the principal as a loyal member of the Council.

*For all Councillors*

If there is any doubt whether a proposed course of action is inconsistent with a Councillor’s honest duty then the course of action should not be supported. Independent advice should be sought as soon as possible to clarify the issue.
When a Council member feels so strongly as to be unable to abide by a decision of the Council, some or all of the following steps should be considered:

1. making the extent of the dissent and its possible consequences clear to the Council as a means of seeking to influence the decision;
   (a) asking for additional legal, accounting or other professional advice;
   (b) asking that the decision be postponed to the next meeting to allow time for further consideration and informal discussion;
   (c) tabling a statement of dissent and asking that it be minuted;
   (d) writing to the Chairperson, or all members of the Council, and asking that the letter be filed with the minutes;
   (e) if necessary resign and consider advising the Minister.
40. School council model constitution

1 NAME

The name of the Council is *(name of the school) Council Incorporated.*

For example: Sunny Creek Primary School Council Inc

2 INTERPRETATION

In this constitution, unless the contrary intention appears:

‘the Act’ means the *Education Act 1972* as amended.

‘administrative instructions’ means administrative instructions issued pursuant to section 96 of the Act.

‘adult’ means a person who has attained 18 years of age.

‘affiliated committee’ means a committee affiliated with the Council, and the constitution of which is approved by the Minister in accordance with section 86 of the Act.

‘Chairperson’ means the presiding member of the Council as referred to in section 84(1)(a)(iii) & (iv) of the Act.

‘Chief Executive’ means the Chief Executive of the Department of Education, Training and Employment in accordance with section 11 of the Act.

‘Council’ means the *(name of School Council Incorporated)*

‘councillors’ are the members of the Council.

‘Department’ means the Department of Education, Training and Employment established pursuant to the *Public Sector Management Act 1995*.

‘financial year’ means the year ending 31 December or as varied by administrative instruction.

‘general meeting’ means a public meeting of the school community.

‘Government school’ means a school established under section 5 of the Act, for the purpose of providing courses of instruction in pre-school, primary or secondary education.
‘majority’ means more than half the total number.

‘Minister’ means the person to whom the administration of the Act is committed pursuant to the Administrative Arrangements Act 1994.

‘parent’ in relation to the school means the parent of a child attending the school and the parent of a child enrolled, but not yet attending, at the school.

‘parent of a child’ includes -

(a) a person who has legal custody or guardianship of the child; and
(b) a person standing in loco parentis to the child

but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent.

‘Principal’ means the head teacher of the school within the meaning of the Act.

‘Regulations’ means regulations made under the Act.

‘school community’ means all parents, students and staff of the school and all other persons who have a legitimate interest in or connection with the school.

‘secondary school’ means a school that teaches students at the secondary level of education, whether or not it also teaches students at other levels of education.

‘secondary students’ means students receiving education at the secondary level.

‘special resolution’ of the Council means a resolution, for the purposes of amending the constitution or to remove an office holder from office, passed by a duly convened meeting of the Council if-

(1) at least 21 days written notice has been given to all councillors specifying the intention to propose the resolution as a special resolution; and

(2) it is passed by a majority of not less than three quarters of councillors as vote in person or by proxy at that meeting.

‘student’ is a person attending the school, or enrolled but not yet attending the school.

3 OBJECT
The object of the Council is to provide advice to the principal so as to strengthen and support public education in the community.

4 POWERS OF THE SCHOOL COUNCIL

4.1 In addition to the powers conferred under the Act, the Council may:

4.1.1 employ persons, except as teachers, as members of the staff of the school on terms and conditions approved by the Chief Executive;

4.1.2 enter into contracts;

4.1.3 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;

4.1.4 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;

4.1.5 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;

4.1.6 do all those acts and things incidental to the exercise of these powers.

4.2 The Council's powers must be exercised in accordance with legislation, administrative instructions and this constitution.

5 FUNCTIONS OF THE COUNCIL

5.1 The Council will perform the following functions:

5.1.1 ascertain the educational needs of the local community and the attitude of the local community to educational developments within the school and advise the principal on these matters;

5.1.2 express to the principal from time to time, its views in relation to the local community's perception of the school;

5.1.3 advise the Chief Executive of any improvements that the Council considers are necessary to the accommodation, grounds and equipment of the school;

5.1.4 determine, where the Minister has provided funds to the Council, with the agreement of the principal of the school, the application of the funds;

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

5.3 The Council may perform such functions as necessary to establish and conduct, or arrange for the conduct of:
5.3.1 facilities and services to enhance the education, development, care, safety, health or welfare of children and students;

5.3.2 residential facilities for the accommodation of students.

5.4 The Council may raise money for school related purposes.

5.5 The Council may perform other functions as determined by the Minister.

5.6 The Council may do all those acts and things incidental to the exercise of these functions.

5.7 The Council's functions must be exercised in accordance with legislation, administrative instructions and this constitution.

6 FUNCTIONS OF THE PRINCIPAL IN COUNCIL

6.1 The Principal is answerable to the Chief Executive for providing educational leadership in the school and for other general responsibilities prescribed in the Act and the Regulations.

6.2 The principal must also:

6.2.1 provide accurate and timely reports, information and advice relevant to the general educational policy of the school and to the Council's functions;

6.2.2 supervise and promote the development of staff employed by the Council;

6.2.3 be the returning officer for the election, nomination and appointment of councillors;

6.2.4 call and preside at the general meetings of the school community;

6.2.5 chair the initial meeting of the Council held for the purpose of receiving nominations from nominating bodies, the appointment of co-opted councillors by the Council and the election of office holders;

6.2.6 be an ex-officio member of Council with full voting rights; and

6.2.7 contribute to the formulation of the agenda of Council meetings.

7 MEMBERSHIP

7.1 The school Council must be comprised of at least 5 and not more than 23 members and must comply with the requirements of the Act, administrative instructions and this constitution.

7.2 The majority of councillors must be parents of the school, except in the case of a school that is wholly or principally for adult students.

7.3 The Council must include the Principal as an ex officio member and comprise the following categories of members:
[School Council to insert here the appropriate membership configuration from one of the four models provided by administrative instruction, or as otherwise approved by the Minister on approving the constitution.]

7.4 A person is not eligible for election, appointment or nomination to the Council, if the person:

7.4.1 is an undischarged bankrupt or is receiving the benefit of a law for the relief of insolvent debtors; or

7.4.2 has been convicted of any offence prescribed by administrative instruction.

8 TERM OF OFFICE

8.1 Elected parent councillors will be appointed for a term not exceeding two years, except in the case of the first Council only, where one-half (or, if the total number of councillors to be elected is odd, the highest integer that is less than one-half) of the parent councillors elected at the Annual General Meeting of the school community will be elected for a term not exceeding one year.

8.2 A councillor nominated by an affiliated committee will be nominated for a term not exceeding two years, subject to the provisions that:

8.2.1 for the first Council only, where two or more affiliated committees each nominate a councillor, one will be appointed for a term not exceeding one year. The person so appointed must be determined by agreement between the affiliated committees, or on failure to agree, by lot.

8.2.2 the nomination may be revoked, in writing by the affiliated committee.

8.3 Any councillor nominated by the Student Representative Council or elected by the body of students will hold office for a term not exceeding one year or until the nomination is revoked, in writing by the nominating body.

8.4 A councillor elected by the staff of the school will hold office for a term not exceeding one year subject to being a member of the staff of the school.

8.5 Each councillor directly appointed by the Council, will serve for a period not exceeding two years.

8.6 Upon expiry of term of office, each councillor will remain incumbent until the position is declared vacant at the Annual General Meeting.

8.7 Councillors are eligible for subsequent re-election, re-nomination or re-appointment.
9 OFFICE HOLDERS AND EXECUTIVE COMMITTEE

9.1 Appointment

9.1.1 The office holders of the Council are the Chairperson, Secretary and Treasurer who must be elected by the Council from amongst its councillors within one month of the Annual General Meeting.

9.1.2 The Treasurer must not be a member of the staff of the school.

9.1.3 The Council may appoint an executive committee comprising the office holders and the Principal, which is to

(i) meet to carry out business delegated or referred by the Council; and

(ii) report to subsequent Council meetings.

9.2 Removal from office

9.2.1 The position of any office holder absent for three consecutive executive committee meetings without leave of absence automatically becomes vacant. Acceptance of an apology at the executive committee meeting will be deemed a grant of such leave.

9.2.2 An office holder of the Council may be removed from office, but not from membership of the Council, by special resolution of the Council, provided that:

(i) at least 21 days written notice is given to all councillors and to the office holder concerned, of any proposed resolution, giving reasons for the proposed removal;

(ii) the office holder is given the right to be heard at the Council meeting;

(iii) voting on the special resolution is by secret ballot.

9.3 The Chairperson

9.3.1 The Chairperson must:

(i) subject to 6.2.5 and 13.10.1, call and preside at the meetings of the Council and the executive committee;

(ii) in consultation with the Principal and Secretary, prepare the agenda for all Council meetings;

(iii) include on the agenda any item requested by the Principal;

(iv) facilitate full and balanced participation in meetings by all councillors and decide on the manner in which meetings are conducted and matters of order;
(v) 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.

9.3.2 As spokesperson of the Council, the Chairperson may only speak with regard to Council matters and must not speak on behalf of the school on matters of school policy.

9.3.3 If the Chairperson of the Council is absent or unable to preside at a meeting a councillor elected by the councillors present at the meeting, must preside.

9.4 The Secretary

9.4.1 The Secretary must ensure that notices of meetings are given in accordance with the provisions of this constitution.

9.4.3 The Secretary is responsible for ensuring the maintenance and safekeeping of:
(i) the constitution of the Council.
(ii) official records of the business of the Council and a register of minutes of meetings;
(iii) copies of notices, a file of correspondence and records of submissions or reports made by or on behalf of the Council;
(iv) register of councillors;
(v) contracts or agreements entered into by the Council; and
(vi) copies of policies of the Council.

9.4.4 The Secretary must ensure that copies of this constitution are available for public inspection at the school during normal school hours and that copies requested are provided.

9.4.5 The Secretary must ensure the safekeeping of the common seal and must ensure that a record is kept of every use of the common seal.

9.4.6 Prior to each meeting the Secretary must ensure that a copy of the meeting agenda is forwarded to each councillor.

9.4.7 The Secretary must conduct the official correspondence of the Council.

9.4.8 The Secretary must ensure that the minutes of meetings are recorded and forwarded to each councillor prior to the next meeting.
9.5 The Treasurer

9.5.3 If the Council establishes a School Finance Advisory Committee, the Treasurer must be the Chairperson and must preside at the meetings of this committee.

9.5.2 If the Treasurer is absent or unable to preside at a meeting of the School Finance Advisory Committee a member elected by the members present at the meeting, must preside.

9.5.3 The Treasurer must:

(i) ensure that the Council’s financial budgets and statements are prepared;
(ii) submit a report of those finances to each Council meeting;
(iii) present the Council’s audited accounts to the Annual General Meeting.

10 VACANCIES

10.1 Membership of the Council ceases when the councillor

10.1.1 dies; or

10.1.2 in the case of an elected councillor or a councillor appointed or nominated for a term, completes a term of office and is not re-elected, re-nominated or re-appointed; or

10.1.3 ceases to hold office in accordance with 8.2.2 and 8.3; or

10.1.4 in the case of a member nominated by the staff of the school, is no longer a staff member of the school; or

10.1.5 resigns by written notice to the Council; or

10.1.6 is removed from office by the Minister in accordance with section 97 of the Act; or

10.1.7 is declared bankrupt or applies for the benefit of the a law for the relief of insolvent debtors; or

10.1.8 has been convicted of any offence as prescribed administrative instruction; or

10.1.9 is absent from three consecutive Council meetings without leave of absence approved by the Council. Acceptance of an apology will be deemed grant of such leave.
10.2 The Council may appoint a person to temporarily fill a casual vacancy in its membership until a councillor can be elected, nominated or appointed in accordance with this constitution.

11 MEETINGS

11.1 General Meetings of the school community

11.1.1 Subject to 13.2, all persons within the school community are eligible to attend general meetings of the school community and vote on any matters proposed for resolution.

11.1.2 The Principal of the school, must call and preside at, general meetings of the school community, the timing to be agreed between the Council Chairperson and the Principal of the school.

11.1.3 At least 14 days written notice of the meeting must be given to the school community by the means generally used to communicate with the school community. The notice must specify the date, time and place of the meeting.

11.1.4 A general meeting must be held:

(i) at least once annually (the Annual General Meeting) to present reports, to elect councillors and/or declare election results;
(ii) for any other reason relating to the affairs, functions or membership of the Council, determined by agreement between the Council Chairperson and the Principal.

11.1.8 The period between each Annual General Meeting must not exceed 16 months.

11.1.9 A general meeting must be held to elect councillors, to discuss the finances of the Council, or for any other reason relating to the affairs or functions of the Council:

(i) at the request of the Chief Executive
(ii) by the resolution of the Council
(iii) at the request of 20 parents of the school or one half of the parents of the school, whichever is less.

11.2 Council Meetings

11.2.1 The Council must meet at least twice in each school term.
11.2.2 Notice of meeting must be given at the previous Council meeting or by at least 7 days written notice distributed to all councillors or in an emergency by such other notice as the Council may determine.

11.3 Extraordinary Council Meetings

11.3.1 The Chairperson of the Council must call an extraordinary meeting of the Council by written request from at least 3 councillors.

11.3.2 Notice of meeting must be given by written notice to all councillors within reasonable time, setting out the time, date, place and object of the meeting.

11.3.3 The business of any extraordinary meeting must be confined to the object for which it is convened.

11.4 Voting

11.4.1 Voting must be by show of hands, but a secret ballot must be conducted for:

(i) a contested election; or
(ii) a special resolution to remove an office holder from office.

11.4.2 For the purposes of voting on a special resolution, each councillor is entitled to appoint another councillor as his/her proxy by notice in the form issued as an administrative instruction.

12 PROCEEDINGS OF THE COUNCIL

12.1 Meetings

12.1.1 The quorum for the Council meeting is a majority of the filled positions of the Council.

12.1.2 If at the expiration of 30 minutes after the appointed time for the meeting there is no quorum present, the meeting must stand adjourned to such time and place as those councillors present determine.

12.1.3 Except in the case of a special resolution, a decision of the majority of those councillors present and eligible to vote is the decision of the Council.
12.1.4 The Chairperson has a deliberative vote and, if councillors are evenly divided on any matter, a casting vote.

12.1.5 The Council or any committee of Council may, at its discretion, allow non-members who have special interests or knowledge relevant to the Council to attend its meetings as observers and, if it agrees, take part in discussions on particular issues. Non-members cannot vote.

12.1.6 Where there are one or more vacancies in the membership of the Council, the Council is not prevented from acting by the requirement that the majority of its members must be elected parents of the school or by any other requirement of membership (except the requirement as to quorum).

12.1.7 The Council may from time to time determine procedures to facilitate and expedite its business.

12.2 Conflict of interest

12.2.1 In accordance with section 94 of the Act, a councillor who has a direct or indirect pecuniary interest in a contract or proposed contract with the Council must:

(i) disclose the nature of the interest to the Council as soon as the councillor becomes aware of the interest; and
(ii) not take part in deliberations or decisions of the Council with respect to that contract.

12.2.2 A disclosure of such an interest must be recorded in the minutes of the Council.

12.2.3 If a councillor discloses an interest in a contract or proposed contract:

(i) the contract is not liable to be avoided by the Council on any ground arising from the fiduciary relationship between the councillor and the Council; and
(ii) the member is not liable to account for the profits derived from the contract.

13 ELECTION OF SCHOOL COMMUNITY COUNCILLORS

13.1 Eligibility for nomination for election

Subject to 7.4, all adults from the school community are eligible to nominate for election as a councillor.
13.2 Eligibility to vote

Only parents of the school may vote to elect councillors.

13.3 Conduct of elections for school community councillors

The Principal must conduct elections of school community councillors at a general meeting of the school community.

13.4 Notice of election

13.4.1 The timetable for an election will be determined by the Principal in consultation with the Council.

13.4.2 Notice of the date and time for an election must be given by the Principal by the means generally used to communicate with the school community.

13.4.3 The notice must:

(i) fix the period during which nominations for election as councillors must be accepted and outline the process to be followed; and

(ii) fix the date and time of the general meeting for the election (not being less than 14 days from publication of the notice).

13.4.4 In consultation with the Council, the Principal must determine the form for nominations and the period during which nominations will be accepted.

13.4.5 A nomination for election as a councillor must be:

(i) in a form approved by the Principal; and

(ii) received by the Principal at or before the time the nomination is due.

13.5 Election without ballot

If the number of persons nominated is the same or less than the number of vacancies to be filled by election, the Principal may declare that the vacancy or vacancies has or have been filled by the persons or person nominated.

13.6 Contested election

13.6.1 If the number of persons nominated is greater than the number of vacancies to be filled, the ballot conditions apply.
13.6.2 The process for conducting the ballot for a contested election must be in accordance with administrative instructions.

13.7 Scrutineers

The Principal must permit such scrutineers, who are independent of the election, to be present at the counting of votes as he or she thinks fit. A candidate in the election cannot be a scrutineer.

13.8 Declaration of election

13.8.1 The Principal must declare the candidate or candidates elected to fill the vacancy or vacancies, at a general meeting of the school community.

13.8.2 The new Council comes into operation at the declaration of the election.

13.9 Further nomination for unfilled positions

After the result of an election has been declared, and if the required number of elected school community councillor positions has not been filled, eligible candidates present at the Annual General Meeting may be invited to nominate and be elected by a further ballot to the remaining vacancies.

13.10 Nomination and appointment of councillors

13.10.1 As soon as is practicable after the declaration of the results of an election, the Principal must call and preside at the first Council meeting for the purpose only of

(i) receiving the nominations from nominating bodies and determining the appointment of members of the community; and

(ii) electing office holders.

13.10.2 The first meeting of the Council may be adjourned to a date decided by the meeting if purpose of the meeting cannot be achieved.

13.10.3 If upon the resumption of the meeting the appointment of community members or receiving nominations cannot be resolved, the Council may proceed to the election of office holders.

14 MINUTES
14.1 Proper minutes of Council, the Annual General Meeting and general meetings of the school community must be entered into books kept for that purpose.

14.2 The minutes must be confirmed at the next respective annual, general or council meeting and signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the subsequent meeting.

14.3 Upon reasonable notice, the books containing the minutes of any meetings must be made available for inspection by any councillor.

15 COMMITTEES

The Council may appoint committees, comprised of councillors or both councillors and non-councillors, which will meet as directed by the Council, and report to the Council at subsequent Council meetings. Any committee must consist of at least three people and at least one of these must be a councillor.

15.2 Terms of reference

The Council must specify terms of reference for its committees.

15.3 School Finance Advisory Committee

Where a Council has established a consolidated account, the Council must establish a School Finance Advisory Committee. In all other cases a School Finance Advisory Committee may be established where the Principal and the Council agree.

15.3.1 The Council must establish a School Finance Advisory Committee to advise the Council on budgetary and financial matters, including the preparation of the preliminary budget showing:

(i) the anticipated income available for the ensuing twelve months (both from normal transactions and from fund-raising activities);
(ii) the proposed expenditure to be made;
(iii) details of any funds held for special purposes.

15.3.2 The membership must be determined by the Council and must include:

(i) the Treasurer;
(ii) the Principal or nominee;
(iii) representatives of each affiliated committee; and
15.3.3 The membership may include student representation and persons co-opted by the Council.

15.3.4 The School Finance Advisory Committee must meet at least once each school term to examine receipts and payments and review the school budget.

16 DELEGATION

16.1 Subject to 16.2, the Council may delegate its functions or powers to its committees, but may only delegate its functions or powers to another council with the prior written consent of the Chief Executive.

16.2 The Council cannot delegate any of its functions or powers in relation to the approval of the school's budget and annual financial statement.

16.3 Any conferral of delegation must be properly recorded in the minutes.

17 ACCOUNTS TO BE KEPT AND OTHER FINANCIAL MATTERS

17.1 The Council must ensure that proper accounts are kept of its financial affairs, and in controlling any account must ensure proper books and accounts are kept of all funds paid to that account, together with details of any dealings involving those funds.

17.2 All accounts must be operated on the basis of the designated financial year.

17.3 The accounts must be kept in accordance with provisions of the Act, Regulations, administrative instructions and this constitution.

17.4 The funds of the Council must only be expended for school related purposes.

17.5 The Council may transfer funds as it thinks fit to:

(i) an affiliated committee;
(ii) another existing or proposed Government school.

18 AUDIT

18.1 The Council must arrange for any accounts under its control to be audited at least once in every year, as soon as possible after the end of the financial year, or at such other time as determined by administrative instruction.
18.2 The Council may arrange for accounts to be audited by a person appointed by the Council at such other intervals as the Council determines.

18.3 The Council must make available for inspection at any time by the Chief Executive or the Auditor-General, any accounts under its control, including all relevant records and papers connected with an account.

18.4 The audit of any accounts under the control of the Council will be in accordance with the provisions of the Act, Regulations, administrative instructions and this constitution.

19 REPORTING TO THE SCHOOL COMMUNITY

19.1 The Council must report to the school community at least once a year, at the Annual General Meeting of the school, called by the Principal.

19.2 At that meeting:

19.2.1 the Chairperson must report on:

(i) the proceedings and operations of the Council for the period since the date of the previous Annual General Meeting community; and

(ii) the outcomes of those proceedings in relation to the functions of the Council.

19.2.2 the Treasurer must present an up-to-date statement of receipts and expenditure with respect to all accounts controlled by the Council, and a copy of the audited statement of receipts and expenditure of the Council for the year ended as at the designated financial year.

19.3 Where any statement has not been audited by the time the annual meeting is held, the audited statement is to be subsequently made available for inspection at the school, as determined by the meeting.

20 THE COMMON SEAL

20.1 The Council must have a common seal. The common seal must be affixed only by resolution of the Council and in the presence of two councillors appointed by the Council.

20.2 Every use of the seal must be recorded in the minute book of the Council.
21 RECORDS

21.1 The Council is responsible for the safe and proper storage of its records.

21.2 The Council must make the records available at any time to the Minister or to any person authorised by the Minister in that behalf and allow those records to be removed from the school premises by any such person.

22 AMENDMENT OF THE CONSTITUTION

22.1 This constitution may be altered, modified or substituted at the direction of the Minister, in accordance with section 88 of the Act.

22.2 This constitution may also be amended, altered, modified or substituted by the Council by special resolution and approval in writing by the Minister.

22.3 An amendment to the constitution has no effect until submitted to, and approved by, the Minister.

23 PUBLIC ACCESS TO THE CONSTITUTION

The Council must keep available for public inspection a copy of its constitution (as in force from time to time) at the school during normal school hours.

24 DISSOLUTION

In accordance with section 85 of the Act, a council may be dissolved.

25 PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

The assets and income of the Council must be applied exclusively to school related purposes and no portion must be paid or distributed directly or indirectly to councillors in their role as councillors, except for expenses incurred on behalf of the Council.
41. Membership for particular school councils:

For a school or group of schools where the students are not secondary students

The Council will be constituted of the following members:

(i) The principal of the school, or if the Council has been established in relation to two or more schools, the principals of those schools.

(ii) Staff members elected at a general staff meeting of the school(s), the number being in accordance with the ratio approved by the Minister (see above).

(iii) Two members nominated by the student representative Council, or if there is not a student representative Council, elected by the secondary student of the school.

(iv) Members co-opted by a decision of the Council, subject to approval by the Chief Executive, where such members will be of assistance to the Council in carrying out its functions.

(v) A person nominated by the committee (if any) affiliated with the Council and constituted by the Minister under section 86 of the Act and, if there is more than one such committee, each committee is entitled to nominate a person for membership of the Council.

(vi) School community members elected at the Annual General Meeting, the number being at least that number needed to make parents the majority on the Council. The maximum number of parents who are school community members that may be elected is limited by the limitation on the number of members that may comprise the Council.

For a school or group of schools with secondary students

The Council will be constituted of the following members:

(i) The principal of the school, or if the Council has been established in relation to two or more schools, the principals of those schools.

(ii) Staff members elected at a general staff meeting of the school(s), the number being in accordance with the ratio approved by the Minister (see above).

(iii) Two members nominated by the student representative Council, or if there is not a student representative Council, elected by the secondary student of the school.

(iv) Members co-opted by a decision of the Council, subject to approval by the Chief Executive, where such members will be of assistance to the Council in carrying out its functions.

(v) A person nominated by the committee (if any) affiliated with the Council and constituted by the Minister under section 86 of the Act and, if there is more than one such committee, each committee is entitled to nominate a person for membership of the Council.

(vi) A member of the municipal or district Council for the area in which the school is situated nominated by the municipal or district Council.
(vii) The member of the House of Assembly for the district in which the school is situated or a person nominated by the member.

(viii) School community members elected at the Annual General Meeting, the number being at least that number needed to make parents the majority on the Council. The maximum number of parents who are school community members that may be elected is limited by the limitation on the number of members that may comprise the Council.

For a school or group of schools with a mix of continuing and adult re-entry students

The Council will be constituted of the following members:

(i) The principal of the school, or if the Council has been established in relation to two or more schools, the principals of those schools.

(ii) Staff members elected at a general staff meeting of the school(s), the number being in accordance with the ratio approved by the Minister (see above).

(iii) 4 councillors nominated by the student representative Council, or if there is not a student representative Council, elected by the students of the school and to be nominated / elected in accordance with the distribution of continuing / re-entry students expressed as FTEs.

(iv) At least two members nominated by particular community interests, eg another education provider such as the local TAFE college, significant employer, an organisation representing persons with a common cultural background etc.

(v) School community members elected at the Annual General Meeting of the school, subject to parents and adult students being in the majority on the Council and the limitation on the size of the Council.

For a school confined to adult re-entry students

The Council will be constituted of the following members:

(i) The principal of the school, or if the Council has been established in relation to two or more schools, the principals of those schools.

(ii) Staff members elected at a general staff meeting of the school(s), the number being in accordance with the ratio approved by the Minister (see above).

(iii) A person nominated by the committee (if any) affiliated with the Council and constituted by the Minister under section 86 of the Act and if there is more than one such committee, each committee is entitled to nominate a person for membership of the Council.

(iv) A member of the municipal or district Council for the area in which the school is situated nominated by the municipal or district Council.

(v) The Member of the House of Assembly for the district in which the school is situated or a person nominated by the Member.

(vi) Up to five members nominated by the student representative Council, or if there is not a student representative Council, elected by the secondary students of the school.
(vii) At least two members nominated by particular community interests, eg another education provider such as the local TAFE college, significant employer, an organisation representing persons with a common cultural background etc.
42. **Affiliated committee model constitution**

1 **NAME**

The name of the Affiliated Committee is *(insert name of the Affiliated Committee).*

**Examples:**
- Sunny Creek School Parent Club
- Sunny Creek School Aboriginal Parent Liaison Group;
- Parents and Friends of the Sunny Creek School

2 **INTERPRETATION**

*The following definitions must be included in the interpretation section; others may be added as the affiliated committee requires.*

In this constitution, unless the contrary intention appears:

'**the Act**' means the *Education Act 1972* as amended.

'**administrative instructions**' means administrative instructions issued pursuant to section 86 of the Act.

‘**Affiliated Committee**’ means the *(name of the Affiliated Committee)*, affiliated with *(name of the school <Governing> Council Inc)*, and the constitution of which is approved by the Minister in accordance with section 86 of the Act.

'**Council**' means the *(name of the school <Governing> Council Inc)* *eg Sunny Creek School Governing Council Inc*

‘**financial year**' means the year ending 31 December or as varied by administrative instruction.

‘**Government school**' means a school established under section 5 of the Act, for the purpose of providing courses of instruction in pre-school, primary or secondary education.

‘**majority**’ means more than half of the total number.

‘**member**’ means any person who is for the time being registered as a member of the *(name of the Affiliated Committee).*
'membership' means all persons who comprise the Affiliated Committee in accordance with this constitution.

'Minister' means the person to whom the administration of the Act is committed pursuant to the Administrative Arrangements Act, 1994.

'Regulations' means regulations made under the Act.

'register of members' means the register of members of the Affiliated Committee.

'school community' means all parents, students and staff of the school and all other persons who have a legitimate interest or connection with the school.

'special resolution' of the Affiliated Committee means a resolution, for the purposes of amending the constitution passed by a duly convened meeting of the members of the Affiliated Committee if-

1. at least 21 days written notice has been given to all members specifying the intention to propose the resolution as a special resolution; and
2. it is passed, at the meeting, by a majority of not less than three quarters of members as vote in person at that meeting.

Examples of other definitions that the Affiliated Committee may consider for inclusion:

'Chief Executive' means the Chief Executive of the Department of Education, Training and Employment in accordance with section 11 of the Act.

'Department' means the Department of Education, Training and Employment established pursuant to the Public Sector Management Act 1995.

'Executive Committee' means a committee comprised of the office holders and members elected from the membership of the Affiliated Committee.

'student' is a person attending the school, or enrolled but not yet attending the school.

'parent' in relation to the school means the parent of a child attending the school and the parent of a child enrolled, but not yet attending, at the school.

'parent of a child' includes -

(a) a person who has legal custody or guardianship of the child; and
(b) a person standing in loco parentis to the child.
but does not include a parent of the child where another parent or person has legal custody or guardianship of the child to the exclusion of that parent.

'Principal' means the head teacher of the school within the meaning of the Act.

3 RELATIONSHIP WITH THE COUNCIL

Must be prescribed in the constitution in accordance with s87 of the Act. The constitution of an Affiliated Committee must include the following clauses.

3.1 The (name of the Affiliated Committee) is affiliated with the (name of the Council), in accordance with section 86 of the Act.

For example:
The Sunny Creek School Parent Club is affiliated with the Sunny Creek School Governing Council Inc.

3.2 The Affiliated Committee may nominate a member to the Council.

3.3 The Affiliated Committee will maintain effective communication about its activities with the Council.

4 OBJECT

The constitution must include the following clause. Other objects may be added.

The object of the (name of the Affiliated Committee) is to support the involvement of the school community in the school.

5 FUNCTIONS OF THE AFFILIATED COMMITTEE

This section must be included and be made specific to the Affiliated Committee. Functions for an Affiliated Committee constitution, for example, may include:

5.1 The (name of the Affiliated Committee) will perform the following functions
5.1.1 Provide a means of contact between home and school.

5.1.2 Assist parents to gain skills to participate in the decision making of the school.

5.1.3 To develop and maintain an interest in the welfare of children at school.

5.1.4 Support the Principal and the school staff to enhance student learning.

The constitution must include the following clauses:

5.2 The Affiliated Committee must be responsible for the proper care and maintenance of any property owned by the Affiliated Committee.

5.3 The Affiliated Committee may raise funds for school related purposes.

5.4 The Affiliated Committee's functions must be exercised in accordance with legislation, administrative instructions and this constitution.

5.5 The Affiliated Committee may do all those acts and things incidental to the exercise of these functions.

6 MEMBERSHIP

Membership must be prescribed in the constitution in accordance with s87 of the Act.

For example, the constitution of an Affiliated Committee may include:

6.1 Eligibility

A person is eligible for membership if that person:

- is prepared and able to support the activities of the Affiliated Committee.
- is a member of the school community and interested in the welfare of students at the school.
- is parent or care-giver of an Aboriginal student of the school.
6.2 Membership register

Membership will be determined as those members whose names are recorded in the membership register for the current year.

6.3 Membership rights

Each member has the right to attend and vote at general meetings of the members.

6.4 Cessation

The following clauses must be included:

A member ceases to be a member, if the member:
- dies;
- resigns by written notice to the Secretary;
- is removed as a member in accordance with section 97 of the Act;

7 OFFICE HOLDERS AND EXECUTIVE COMMITTEE

Constitution must include an appropriate section outlining office holders and an executive committee. The following is suggested only - other options for titles may include President, Vice-President etc.

7.1 Office holders

The office holders are the Chairperson, Secretary and Treasurer who will be elected by the members at the Annual General Meeting.

7.2 Executive Committee

The members may appoint an Executive Committee comprising the office holders and insert number other members, which is to:
- meet to carry out business delegated or referred by a general meeting of the members; and
- report to subsequent general meetings of members.

7.3 The Chairperson
7.3.1 The Chairperson must call and preside at the general meetings of the members and the Executive Committee.

7.3.2 The Chairperson must facilitate full and balanced participation by members present at a meeting and decide upon the manner in which meetings are conducted and matters of order.

7.3.3 The Chairperson must report the proceedings and operations of the Affiliated Committee at the Annual General Meeting, for the period since the previous Annual General Meeting.

7.3.4 If the Chairperson is absent or unable to preside at a meeting, a member appointed by the members present at the meeting must preside.

7.4 The Secretary

7.4.1 The Secretary must give notice of meetings in accordance with the provisions of this constitution.

7.4.2 The Secretary must ensure that the minutes of meetings are recorded and available to members.

7.4.3 The Secretary is responsible for the maintenance and safekeeping of:

(i) official records of the business of the Affiliated Committee and a register of minutes of meetings;
(ii) copies of notices, a file of correspondence and records of other documents and reports made by or on behalf of the Affiliated Committee;
(iii) the register of members;
(iv) the constitution and providing copies as requested.

7.4.4 The Secretary must ensure that a copy of this constitution is available for public inspection at the school during normal school hours.

7.5 The Treasurer

7.5.1 The Treasurer must:

6 ensure that financial budgets and statements are prepared;
7 submit a report on the finances to each meeting of members;
8 present audited accounts to the Annual General Meeting.
8 MEETINGS

The constitution must, in accordance with s87 of the Act, include minimum requirements for general meetings of the members, the Annual General Meeting and meetings of the Executive Committee. The following are example clauses:

8.1 General meetings

8.1.1 General meetings of members will be held (monthly) or as determined by the members.

8.1.2 All members are eligible to attend general meetings and vote on any matters proposed for resolution.

8.1.3 The Chairperson must call and preside at general meetings of the members.

8.1.4 At least (14 days) written notice of the meeting must be given to members. The notice must give the date, time and place of the meeting.

Annual General Meeting

8.1.5 An Annual General Meeting must be held in each calendar year to:-

(i) present reports;
(ii) to elect and/or declare election results for office holders and the Executive Committee;
(iii) and for any other reason relating to the affairs, functions or membership of the Affiliated Committee, as determined by the Executive Committee.

8.2 Executive Committee Meetings

8.2.1 The Executive Committee must meet <at least twice in each school term>.

8.2.2 Notice of the meeting must be given at the previous meeting or by at least 7 days written notice distributed to all Executive Committee members or in an emergency by such other notice as the Executive Committee may determine.

8.3 Voting

8.3.1 Voting must be by show of hands.
9 PROCEEDINGS

9.1 Meetings

The constitution must, in accordance with s87 of the Act, include minimum requirements for the proceedings of meetings of the members, Annual General Meeting and meetings of the Executive Committee including provisions specifying the quorum of meetings. The following are example clauses:

9.1.1 The quorum for a general meeting is % of the members OR the Executive Committee plus x number of members.

9.1.2 If at the expiration of 30 minutes after the appointed time for the meeting there is no quorum present, the meeting must stand adjourned to such time and place as those members present determine.

9.1.3 Except in the case of a special resolution, a decision of the majority of those members present and eligible to vote is the decision of the Affiliated Committee.

9.1.4 The Chairperson must have a deliberative vote only. In the event of an equality of votes, the Chairperson does not have a second or casting vote and the motion will be taken to be defeated.

9.1.5 The Affiliated Committee may, at its discretion, allow non-members who have special interests or knowledge to attend its meetings as observers and, if it agrees, take part in discussions on particular issues. Non-members cannot vote.

9.1.6 The Affiliated Committee may from time to time determine procedures to facilitate and expedite its business.

9.2 Conflict of interest

9.2.1 A member who has a direct or indirect pecuniary interest in a contract or proposed contract with the Affiliated Committee:

- must, as soon as the member becomes aware of the interest, disclose the nature of the interest to the Affiliated Committee; and
- must not take part in deliberations or decisions of the Affiliated Committee with respect to that contract.

9.2.2 A disclosure must be recorded in the minutes of the meeting of the Affiliated Committee.
If a member discloses an interest in a contract or proposed contract the member is not liable to account for the profits derived from the contract.

10 ELECTIONS

Constitution must provide provisions relating to the procedures for electing office holders and an executive or management committee. The following headings are provided as a guide:

- Conduct of elections
- Eligibility to nominate and vote
- Notice of elections
- Nominations for elections
- Eligibility for nomination
- Election without ballot
- Contested election
- Counting of votes
- Scrutineers
- Declaration of election

11 MINUTES

The constitution must include minimum requirements for keeping proper records of the Annual General Meeting, general meetings and meetings of the Executive Committee. Clauses 11.1 and 11.3 are mandatory.

11.1 Proper minutes of the Annual General Meeting, general meetings and the Executive Committee meetings must be entered into books kept for that purpose.

11.2 The minutes must be confirmed at the next respective meeting and signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the subsequent meeting.

11.3 Upon reasonable request, the books containing the minutes of any meetings must be made available for inspection by any member.

12 TERM OF OFFICE
The constitution must include provisions relating to the term of office holders and executive committee, as appropriate - for example:

12.1 Elected office holders and members of the executive committee will be appointed for a term not exceeding one year and may stand for subsequent re-election.

13. DELEGATES

This is an optional area - not prescribed by the Minister or by the Act.

13.1 The delegates to the Council of the school, any other advisory and area association committees will be elected at the Annual General Meeting and will report to each meeting of the members.

13.2 Delegates who do not fulfil their obligations or who are no longer members of the Affiliated Committee, may have their delegate status revoked by the resolution of the members at a general meeting.

13.3 The revocation must be made in writing to the other body.

14 VACANCIES

The constitution must include provisions as to how the Affiliated Committee will handle casual vacancies, for example:

A casual vacancy among the officers, delegates or Executive Committee, members may be filled by election at a general meeting of the group. Any member so elected will hold office until the next Annual General Meeting.

15 ACCOUNTS TO BE KEPT AND OTHER FINANCIAL MATTERS

Must be prescribed in the constitution in accordance with s87 of the Act.

The constitution of an Affiliated Committee must include the following clauses.
15.1 The Affiliated Committee must ensure that proper accounts are kept of its financial affairs, and in controlling any account must ensure proper books and accounts are kept of all funds paid to that account, together with details of any dealings involving those funds.

15.2 All accounts must be operated on the basis of the designated financial year.

15.3 The accounts must be kept in accordance with provisions of the Act, Regulations, administrative instructions and this constitution.

15.4 The funds of the Affiliated Committee must only be expended for school related purposes.

15.5 The Affiliated Committee may transfer funds as it thinks fit to:
   (i) the Council;
   (ii) another existing or proposed Government school.

16  AUDIT

Must be prescribed in the constitution in accordance with s87 of the Act.

The constitution of an Affiliated Committee must include the following clauses.

16.1 The Affiliated Committee must arrange for any accounts under its control to be audited at least once in every year, as soon as possible after the end of the financial year, or at such other time as determined by administrative instruction.

16.2 The Affiliated Committee may arrange for accounts to be audited at such other intervals as the Affiliated Committee determines, by a person appointed by the Affiliated Committee.

16.3 The Affiliated Committee must make available for inspection at any time, by the Auditor-General, any accounts under its control, including all relevant records and papers connected with an account.

16.4 The audit of any accounts under the control of the Affiliated Committee will be in accordance with the provisions of the Act, Regulations, administrative instructions and this constitution.

17  REPORTING

Must be prescribed in the constitution in accordance with s87 of the Act.
The following clauses are provided as an example:

17.1 The Chairperson and Treasurer must report to members at the Annual General Meeting.

17.2 Reports presented at the Annual General Meeting must describe the operations, activities and finances of the Affiliated Committee.

18 RECORDS

Must be prescribed in the constitution in accordance with s87 of the Act.

The constitution of an Affiliated Committee must include the following clauses.

18.1 The Affiliated Committee is responsible for the safe and proper storage of its records.

18.2 The Affiliated Committee must make the records available at any time to the Minister or to any person authorised by the Minister in that behalf and allow those records to be removed by any such person.

19 AMENDMENT OF THE CONSTITUTION

Must be prescribed in the constitution in accordance with ss87&88 of the Act.

The constitution of an Affiliated Committee must include the following clauses.

This constitution may be altered, modified or substituted at the direction of the Minister, in accordance with section 88 of the Act.

This constitution may also be amended, altered, modified or substituted by the Affiliated Committee by special resolution, and approval in writing by the Minister.

An amendment to the constitution has no effect until submitted to and approved by the Minister.

20 PUBLIC ACCESS TO THE CONSTITUTION
The constitution of an Affiliated Committee must include the following clauses.

The Affiliated Committee must keep available for public inspection a copy of its constitution (as in force from time to time) at the school, during normal school hours.

21 DISSOLUTION

The Affiliated Committee must resolve by special resolution to cease its operations and dissolve.

The Affiliated Committee will cease if the school is closed and must follow any directions issued by the Chief Executive regarding the forwarding of the books, records and property of the Affiliated Committee.

Upon cessation its books, records and property must be forwarded to the Council.

22 PROHIBITION AGAINST SECURING PROFITS FOR MEMBERS

The assets and income of the Affiliated Committee must be applied exclusively to the promotion of its objects and no portion will be paid or distributed directly or indirectly to members except for expenses incurred on behalf of the Affiliated Committee.
43. **Council committees and terms of reference**

Council must ensure that committees are clear about their purposes and powers. The committees need to understand the scope and limitations of their tasks and responsibilities. They must appreciate their aims and functions in terms of the council and the school’s whole operation. To achieve this, committees should be given clear ‘terms of reference’ by the council.

Effective terms of reference need to state clearly what the task is, and what action the committee is authorised to take. The terms of reference should be in writing and embodied in the minutes of the council which recorded the appointing of the committee.

**Example of terms of reference**

*Terms of reference for the Information and Communications Technology (ICT) Committee of Sunny Creek School*

**Membership**

There will be a minimum of 7 members of the committee. The committee will consist of:

- 1 councillor
- principal or nominee
- ICT coordinator
- 1 parent volunteer
- 2 students nominated by the SRC
- 1 other staff member nominated by the staff
- other parent or school community volunteers or co-opted members

The committee shall elect a chairperson and secretary from within its members and will determine the frequency, place and time of its meetings.

**Tasks**

1. Recommend to council on the directions of ICT development in the school taking into account recent developments in ICT and its implications for student learning, record keeping and reporting;
2. Cost and recommend to council purchases or leases of any additions to current ICT equipment, programs and facilities in the school;
3. Cost and recommend to council purchases or lease of replacements for obsolete equipment and programs
4. Purchase of hardware, software and training programs up to a maximum of $2000 per line item from the ICT budget funds with the approval of the ICT coordinator to facilitate improved student learning, record keeping and reporting within the school.
Reporting

The committee is to report to council at each council meeting.

Persons serving on a committee should be given a copy of the terms of reference even if they have been previously circulated to the school community.

Subject to any limitations imposed by their terms of reference, committees are entitled to deal with matters on their own initiative as well as in response to specific references from the council.

While sitting on a committee members must represent the interests of the whole school, even if they were originally chosen because of their membership of a section of the school community.

Proceedings at committee meetings are generally characterised by a freedom from restraint, with discussion rather than debate. Persons may speak more than once and motions do not need to be seconded. The degree of formality exercised at committee meetings depends on the circumstances and is determined by the chairperson.
44. Model nomination and appointment forms

**XX GOVERNING / SCHOOL COUNCIL**

**NOMINATION FOR ELECTION FORM**

I………………………………………………………………………..(full name)
of………………………………………………………………………..(address)

Nominate

………………………………………………………………………..(full name)
of………………………………………………………………………..(Address)

To be elected as a member of XX Governing / School Council.

I………………………………………………………………………..(full name)
of………………………………………………………………………..(Address)

accept the nomination and hereby declare that:

- I have not been declared bankrupt and do not receive a benefit of a law for the relief of insolvent debtors
- I have not been convicted of any offence of dishonesty, or of a sexual nature involving a minor, or of violence against a person

I understand that should I be declared bankrupt, receive a benefit of law for the relief of insolvent debtors or be convicted of any of the offences listed my membership of XX Governing / School Council will cease.

Signed…………………………………………………..Date……………………
XX GOVERNING / SCHOOL COUNCIL
APPOINTMENT FORM

I…………………………………………………………………………………………….(full name)
of……………………………………………………………………………………………..(address)

accept appointment as a member of XX Governing / School Council and
and hereby declare that:

- I have not been declared bankrupt and do not receive a benefit of a law for the
  relief of insolvent debtors
- I have not been convicted of any offence of dishonesty, or of a sexual nature
  involving a minor, or of violence against a person

I understand that should I be declared bankrupt, receive a benefit of law for the
relief of insolvent debtors or be convicted of any of the offences listed my
membership of XX Governing / School Council will cease.

Signed……………………………………………………………..Date………………………

| XX GOVERNING / SCHOOL COUNCIL  |
| APPOINTMENT FORM |
45. Model postal ballot form for governing council elections

Sunny Creek Primary School Governing Council Inc.

Postal Ballot Form

Parent Councillor election to the governing council for 2002/3

There are six (6) vacancies for parent councillors on the Sunny Creek Primary School Governing Council for the term of office 2002,2003.

The following candidates have been nominated for these positions. Attached to this ballot form are candidate profiles/statements for your information about the candidates.

- Select the candidates you wish to elect to the governing council by placing a cross (x) in the box next to their name.
- You may select up to six (6) candidates. Selecting more than six will mean that your vote is informal and will not be counted.

Select six (6) from the following:

- Freda Huppatz
- Adrian Sepolt
- Jim Crawford
- Tran Nguyen
- Hilda Manfred
- Justine de Silva
- Adam Williams
- Clive Brown

- Do not place any other mark on the ballot paper.
- Place the completed ballot paper inside the pre-paid envelope provided and write your name and signature on the back of the envelope in the spaces provided.
- Return the envelope to the Principal, Sunny Creek Primary School either by:
  1) Post
  2) Delivery to the school

Completed ballot forms must be returned to the Principal by 4 pm. on 23rd. November 2001.
46.  **Model Proxy Voting Form**

Sunny Creek Primary School Council Inc.

**Special Resolution Proxy Voting Form**

I, Councillor_______________________________

appoint Councillor ____________________________ or in his/her absence, the chairperson, to be my proxy at the council meeting to be convened on ________ and to vote on my behalf on the Special Resolutions to be put in the following manner:

- Special resolution 1. In favour of / against / use his/her discretion *
- Special Resolution 2. In favour of / against / use his/her discretion *

(* delete which ones do not apply)

Signed: __________________________________ Date: _________________
47. **Pre and post annual meeting formalities**

Before the annual general meeting, the principal or, in the case of a Partnerships 21 schools, the chairperson should undertake the following responsibilities:

- Forward, as a matter of courtesy, a letter of appreciation to each retiring councillor advising him/her of the expiry of his/her term of office and pointing out, as the case may be, his/her eligibility to nominate or seek nomination for a further period of office or, in the case of a member elected from the floor of the annual general meeting, offer himself/herself for re-election.

- Remind the treasurer of school accounts, which may include affiliated committee accounts, of the need for them to produce an audited financial statements in the form required by the Chief Executive for the twelve month period for the school financial year immediately prior to the annual general meeting in respect of any school account for which they are responsible.

The principal should

- Arrange for the election of staff representatives and, where appropriate, elected/nominated representatives of students in accordance with the constitution.

- Seek the names of persons for consideration at the first council meeting who:
  - have been nominated as a representative of an affiliated committee, or
  - may be considered by the council members for appointment to council in accordance with the constitution

Following the annual general meeting the principal should:

- Arrange for the return to the council of such books, papers, funds, and council property that may be in the possession of retiring members.

- Alter school records to reflect the names and addresses of council members.

- Forward to the District Superintendent the names, addresses and contact details of the members of the new council and the names of the office bearers.

- Forward to the District Superintendent details of persons
who have retired after an aggregate of ten or more years of service and, as such, are eligible for a certificate of appreciation from the Minister for Education and Children’s Services. The procedures to be followed, including those applicable to members of affiliated committees such as parent clubs, are set out in paragraph 35 of the appendices to this document.

- Fix in consultation with members the date, time and location of the first council meeting and notify all members accordingly.

Part IV – Other matters. Para 35
Division 1A. Interim Dispute Resolution Process

**PROCESS FOR THE ENGAGEMENT OF INDEPENDENT MEDIATION BY A SCHOOL GOVERNING COUNCIL**

1.1 Chair to advise and Council to pass a formal resolution at the next meeting stating that independent mediation is needed.

1.2 Chair of GC writes to the Chief Education Officer stating the issues of dispute.

1.3 Chair and Chief Education Officer jointly agree to the appointment of the independent mediator.

1.4 The cost of mediation is met by the department.

The Law Society of South Australia may be contacted to provide a referral service of mediators.

The independent mediator convenes a meeting of both parties and seeks to assist them to identify the issues, explore options for, and if possible achieve the expeditious resolution of the dispute, in accordance with their professional conduct rules.
Division 1B. Process to seek funds for independent legal advice

INDEPENDENT LEGAL ADVICE

Governing Councils are bound by the Government of South Australia’s Treasurer’s Instruction 10: Engagement of Legal Practitioners, as modified. Instructions 10.2, 10.6 and 10.8 will not apply to governing councils. Further, the reference to ‘State’ in Instruction 10.7 shall be taken to be a reference to a Governing Council.

Governing councils must comply with Treasurer’s Instruction 10, as modified, as if they were public authorities for the purposes of the Public Finance and Audit Act 1987.

Click here for Treasurer’s Instruction 10.

FUNDING INDEPENDENT LEGAL ADVICE

The Department (DECD) is able to provide funds in order to pay for a governing council’s independent legal advice in particular circumstances.

FUNDING CRITERIA

1. The governing council determines that it is in dispute with DECD. The Department will not fund legal advice for disagreements between members of a governing council.

2. The governing council has passed a formal resolution by a majority of the councilors present, and eligible to vote, at a properly constituted meeting of the council, resolving that council is in disagreement with the Department.

3. The resolution must specify the questions upon which the council is seeking legal advice.

4. The governing council must operate within the scope of its designated role and function.

THE CROWN SOLICITOR WILL DETERMINE

1. Whether the above funding criteria are met, including whether the questions are of a legal nature.

2. The independent legal practitioner (where appropriate).

No costs or expenses in respect of any service provided by a legal practitioner to a governing council will be paid or reimbursed unless the Crown Solicitor, or a person authorised by the Crown Solicitor, has certified that:

1. the engagement of such a practitioner is necessary.

2. such costs or expenses are reasonable unless a court of competent jurisdiction has ordered payment or reimbursement of a specified sum.

DECD (DECD) ROLE

1. The Department will forward the governing council’s questions to the Crown Solicitor within 5 days of receipt. The Department will only act as a channel to facilitate this process and has no role in assessing the governing council’s questions or application for legal advice.

2. To keep the Minister and the DECD Chief Executive apprised of the nature of the dispute and whether the Crown Solicitor has certified the provision of independent legal advice.

3. To provide funding for the legal advice when directed by the Crown Solicitor.

Contact | Chief Education Officer, Department for Education and Child Development | Phone: (02) 6041

VERSION: MARCH 2002 V1_20/01/2014 Section 5 Page - 120
## Division 2. Schedule of School Charges

### 48. Form of the Schedule of School Charges

#### SCHEDULE OF SCHOOL CHARGES

<table>
<thead>
<tr>
<th>Categories and details</th>
<th>Compulsory Materials and Services Charge</th>
<th>School Council Approved Voluntary Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>GST - free only</strong></td>
<td></td>
</tr>
<tr>
<td>Course Materials</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lease or hire of curriculum related goods</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excursions, performances and presentations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Curriculum related activities and instruction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Itemised Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SUMMARY OF CHARGES**

<table>
<thead>
<tr>
<th>Charges</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compulsory Materials and Services Charge</td>
<td></td>
</tr>
<tr>
<td>School Council Approved voluntary Contribution</td>
<td></td>
</tr>
<tr>
<td>Textbook deposit</td>
<td></td>
</tr>
<tr>
<td>Donation to approved building or library fund</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
</tr>
</tbody>
</table>
FIXED BY PRINCIPAL
________________________ / /
(signature)

SCHOOL COUNCIL RESOLUTION DATE / /

SCHOOL COUNCIL CHAIRPERSON
________________________ / /
(signature)
### Examples of completed Schedules of School Charges

**SCHEDULE OF SCHOOL CHARGES**  
**EXAMPLE – XYZ PRIMARY SCHOOL (YEAR 6)**

<table>
<thead>
<tr>
<th>Categories and details</th>
<th>Compulsory Materials and Services Charge</th>
<th>School Council Approved Voluntary Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ GST - free only</td>
<td>$ GST – free</td>
</tr>
<tr>
<td>Course Materials – refer to pages 2, 4 &amp; 5</td>
<td>90</td>
<td>10 calculator</td>
</tr>
<tr>
<td>Lease or hire of curriculum related goods – refer to p 3 &amp; 4</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Excursions, performances and presentations – refer to p 3 &amp; 4</td>
<td>20 Zoo visit, in-school drama</td>
<td>10 food</td>
</tr>
<tr>
<td>Curriculum related activities and instruction – refer to pages 3 &amp; 4</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Facilities – refer to pages 3 &amp; 4</td>
<td>20</td>
<td>20 technology levy</td>
</tr>
<tr>
<td>Administrative Services – refer to pages 3 &amp; 4</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Other Itemised Charges (not listed above)</td>
<td>N/A Covered in above charges</td>
<td>10 magazine</td>
</tr>
<tr>
<td>School Magazine</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL** $161 $20 $30

**SUMMARY OF CHARGES**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compulsory Materials and Services Charge</td>
<td>161</td>
</tr>
<tr>
<td>School Council Approved voluntary Contribution</td>
<td>50</td>
</tr>
<tr>
<td>Textbook deposit</td>
<td>N/A</td>
</tr>
<tr>
<td>Donation to approved building or library fund</td>
<td>20</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$231</td>
</tr>
</tbody>
</table>

**FIXED BY PRINCIPAL**  
_____________________________________________ / / (signature)

**SCHOOL COUNCIL RESOLUTION DATE**  
/ /

**SCHOOL COUNCIL CHAIRPERSON**  
_____________________________________________ / / (signature)
### SCHEDULE OF SCHOOL CHARGES

**EXAMPLE – XYZ SECONDARY SCHOOL (YEAR 12)**

<table>
<thead>
<tr>
<th>Categories and details</th>
<th>Compulsory Materials and Services Charge</th>
<th>School Council Approved Voluntary Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ GST - free only</td>
<td>$ GST – free</td>
</tr>
<tr>
<td><strong>Course Materials</strong></td>
<td>130 includes consumable stationery</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Lease or hire of curriculum related goods</strong> – refer to p 3 &amp; 4</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Excursions, performances and presentations</strong> – refer to p 3 &amp; 4</td>
<td>10 study skills workshop</td>
<td>40 aquatics</td>
</tr>
<tr>
<td><strong>Curriculum related activities and instruction</strong> – refer to pages 3 &amp; 4</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td><strong>Facilities</strong> – refer to pages 3 &amp; 4</td>
<td>15 grounds levy</td>
<td>30 technology</td>
</tr>
<tr>
<td></td>
<td>20 technology</td>
<td>10 library levy</td>
</tr>
<tr>
<td></td>
<td>10 library levy</td>
<td></td>
</tr>
<tr>
<td><strong>Administrative Services</strong> – refer to pages 3 &amp; 4</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td><strong>Other Itemised Charges</strong> (not listed above) School Magazine</td>
<td>N/A covered in above charges</td>
<td>11 magazine</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$215</strong></td>
<td><strong>$80</strong></td>
</tr>
</tbody>
</table>
Division 3. Other Functions of Councils

50. School canteen

Responsibility

The school council is responsible for the operation of the school managed canteen, including the maintenance and repair of fixtures and fittings, disbursement of its profits and the recoupment of its losses.

A canteen management committee must be established where a school operates a canteen. The composition of the committee is at the discretion of the council, but it should include the principal or his/her nominee, together with the canteen supervisor.

Before a council considers licensing a contractor to operate the canteen, or leasing the canteen to a contractor the council must discuss their proposals with the Manager, Site Property Services.

The council must ensure that the canteen complies with all relevant legislation including the Food Act 1985.

Purpose of canteen

Canteens supply a service to students and can be a means of raising additional funds. They should operate wholly and solely for the purpose of food and drink sales and not for the sale of stationery, clothing and other general merchandise.

Policy document

It is recommended that each school operating a canteen prepare a policy statement containing:

- the objectives of the canteen - these should fit the school's ethos
- how the policy will be implemented and terms of reference
- duties of the canteen committee
- job and person specifications for paid workers and unpaid workers
- finance, including insurance of stock and cash
- meetings
- canteen rules.
**Employment of canteen workers**

The council must employ canteen workers in accordance with the administrative instructions AIG Section 5.23.

**Financial and accounting matters**

The council must operate a separate school canteen account in the name of the school canteen.

Detailed advice on canteen accounting, including budgeting, stock control, bank accounts, insurance and employment considerations, is contained in Section 12 of the Financial Management in Schools manual.

The person responsible for the maintenance of the school canteen account must submit to the school council at least once each school term, in a form approved by the Chief Executive, a statement showing the profit or loss on canteen transactions over the previous school term.

The council or school canteen committee must appoint an auditor and have the canteen account books audited annually as soon as possible, but no later than 30th March following the end of the designated financial year for schools in accordance with provisions set by the Chief Executive.

A statement of accounts must be presented at the Annual General Meeting of council and forwarded to the Chief Executive by 1st June each year.

### 51. School Watch

**Operating conditions**

Participants in the School Watch program must observe the procedures and guidelines set down for the operation of the program.

The council to establish a School Watch committee comprising the principal or another member of council, together with other volunteer members.

The size of the committee will not exceed 10. Volunteer members may be students attending the school, parents of students and/or representatives of the local community.

The tasks assigned to the committee are to be consistent with the aims, objectives and procedures expressed in the School Watch handbook and associated literature.

The functions of the committee, and the reporting and approval mechanisms which it must observe, must comply with the council’s overall management responsibilities, must be properly documented and understood by all members.
52. Out of School Hours Care (OSHC)

Operating conditions – where an OSHC Service is sponsored by a DETE School Council

The council must:

1. be the legal operator of the service, i.e., the incorporated body under whose auspices the service operates;
2. ensure that the conditions of service and funding requirements are met;
3. employ, manage and support the staff according to the administrative instructions set out in clause 25;
4. ensure that the Department of Education, Training and Employment Out of School Hours Care Standards are met;
5. make school facilities and resources available to the service in consultation with and agreement of the principal;
6. manage OSHC funds as part of the school’s consolidated account, or if a separate OSHC account has been approved ensure that regular financial reports are presented to the council and that the OSHC account is audited annually;
7. establish an OSHC committee, which includes the principal (or nominee) or another member of council, and a parent users of the service and a OSHC staff member to undertake oversight the service;
8. ensure that the OSHC committee reports regularly to the council on the overall operation of the service; and nominates liaison person to ensure liaison between the OSHC service and the school regarding day-to-day issues;
9. ensure that the OSHC committee and staff maintain school property in a clean and sound condition, and make good any damage to departmental property caused specifically by the service;
10. participate in state and Commonwealth quality assurance processes as required.

53. Playgroups

Operating conditions

For Playgroups in Child Parent Centres that choose to operate as a sub-committee of councils.

The council must comply with the following requirements:

- support the playgroup, recognising its importance in providing a venue for parents and children to learn together;
- make available to the activity, equipment/specialist areas etc of the school within the context of other priorities, to be done in consultation with and the agreement of the principal;
- ensure that the needs of the playgroup in terms of space, facilities, safety and hygiene are met;
- establish a Playgroup Committee that includes a member of council, to undertake day-to-day management of the activity, and in particular, for recommending to council on the budget and the extent of parental contributions, and the activities of the playgroup;
- ensure that the committee operate a separate playgroup account in the name of the playgroup. Where the council operates a council (consolidated) account the playgroup account may be a part of the consolidated account;
- ensure that the playgroup accounts are audited annually;
- ensure that the playgroup committee reports to each meeting of the council on the operation of the activities;
- ensure liaison between the playgroup committee and the council as required, through a nominated liaison person;
- ensure that the playgroup committee maintains school property in a clean and sound condition and that it makes good any damage caused specifically by the program.

The Playgroup Association of South Australia is funded via DETE to provide a comprehensive range of support services, including insurance policy cover, to member Playgroups. Membership is strongly recommended for all Playgroups.

Playgroups operating within CPC’s are covered by the Minister for insurance purposes. Further information can be gained from the Preschool / Centre Based Care and Early Learning Team in State Office or the Playgroup South Australia on 83442722.

54. **Play Centres**

In remote areas where the number of eligible children is insufficient to establish or maintain a preschool service, the department may, where possible, provide support for a children’s service in that area through the establishment of a Play Centre. For details, schools should contact Early Childhood Services, telephone (08) 8226-9836, or the relevant departmental district office.

55. **Gifts and bequests to councils**

Councils should only accept gifts and bequests that are consistent with the functions of a school council and that do not place unnecessary restrictions or burdens on the council. Councils can refuse a gift or bequest.
Administration of Awards and Scholarships

If the council chooses to administer awards and/or scholarships then the discharge of this function by the council is subject to the following conditions:

- The scholarship or award must relate to students, staff and members of the specific school.
- In the event of the school council being asked to accept a gift or bequest of real property for the purpose of an award or scholarship, the council must not accept or dispose of the real property unless the Minister has consented to the transaction in writing, pursuant to Section 84(2) and Section 91 of the Act. In seeking Ministerial consent the council will need to:
  - show how the acquisition relates to school purposes;
  - show that the council can support the acquisition in the long term
  - show that the council can meet all ongoing maintenance costs.

Real or personal property donated for the purpose of an award or scholarship will not be regarded as property of the Minister and, as such, reinstatement or replacement will be the responsibility of the school council.

If for the purpose of administering an award or scholarship it becomes necessary to open a bank account then that account shall carry the name of the particular award or scholarship and shall not be deemed to be a bank account in the name of the school and in consequence the monies shall not be held for and on behalf of the Minister. The school council shall in operating such an account report its existence to the Chief Executive and shall observe such conditions as to operation and audit as may be determined.

Should a school council no longer wish to administer an award or scholarship it may invite the Minister to administer the award or scholarship in terms of Regulation 76.

56. Residential facilities for the accommodation of students

Councils may, with the approval of the Chief Executive, purchase or take a lease or licence and manage, or arrange for the management of, student residential facilities or enter into any other agreement for the establishment, staffing and operation of such facilities.

The terms and conditions associated with local school council management of residential facilities are that the council:

- must seek and follow the advice of the department’s South Australian Rural Student Accommodation Program Reference Committee (SARSAP);
establish a sub committee of which at least one person shall be a member of the council and one member shall be the principal or his/her nominee, the nominee to be a member of the teaching staff;

cомply with the terms and conditions for the employment of non teaching staff which are currently in accordance with Administrative Instructions;

select House Parents and ensure police checks occur prior to employment of House Parent;

terminate the services of the House Parent, should he/she commit a serious breach of any of the terms and conditions, or is guilty of any improper conduct such as to render him/her unsuitable, taking into account principles of natural justice and equity;

clearly define employment conditions, duties and responsibilities of the House Parent and insert them in the schedule of the Standard Contract of Service/Employment (refer to the appendix). Both parties must sign the Standard Contract of Service/Employment as the contractual agreement for employing the House Parent;

be responsible for the overall operations and management of the accommodation facility;

in negotiation with the department, set the criteria to determine the level of boarding fees, and to set the level of the fees;

to comply with the terms of the accommodation lease;

to select students in accordance with the SARSAP Reference Committee’s selection criteria or criteria negotiated with the Committee;

be responsible for the management of the House parent and ensure he/she is properly carrying out his/her duties to provide regular reports to the SARSAP Reference Committee;

to ensure that students/parents complete forms properly and that the students sign behavioural agreements;

terminate a boarding arrangement with a student, or a student’s parents, taking into account the recommendation of the House Parent;

in consultation with the House Parent and students develop house rules and promulgate these in writing;

pay utility costs in accordance with the lease;

develop and promulgate in writing, contingency plans for absences of House Parents;

communicate to students that responsibility for the insurance of student property lies with the student and that the school council is not to be held responsible for loss or breakage of student property;
• manage the acquisition and disposal of property in accordance with the instructions under the State Supply Act and published in the Administrative Instructions;

• ensure that volunteers are managed in accordance with the requirements specified in the Administrative Instructions.

In 2001 the South Australian Rural Student Accommodation Program (SARSAP) provided hostel style student accommodation for rural and remote students who wished to access specialist curriculum courses. Four hostels are located adjacent to schools offering specialist curriculum in aquaculture and agriculture. These are located in Burra, Lucindale, Cowell and Cleve. A SARSAP Reference Committee chaired by the Assistant Director, Country has whole of program oversight.

While Section 83(1)(e) of the Act, as amended, may imply that councils can exercise broader powers than those mentioned, the provisions of both the Act and Section 5 of the constitution must be read in the context of the services which Government schools are established to provide. Section 83(1)(e) exists to give school councils the means to carry out the functions specifically referred to in the Act and the constitution, or otherwise determined by the Minister in accordance with Section 84(1)(g) of the Act.
Division 4. Volunteer Insurance Cover

57. Determination # 27; PSM Act Insurance arrangements

Nature of the insurance cover

Uniform cover is provided to identified volunteers on the basis outlined below. The provision of this cover represents Government policy, but there is no contractual commitment entered into by the Government.

Benefits for personal accident, injury or illness are generally in line with the philosophy underlying the Workers Rehabilitation and Compensation Act, but modified where appropriate to reflect the circumstances of volunteers. Benefits are paid on an out-of-pocket basis after other entitlements have been used. That is, volunteers are required to first claim on Medicare, private health cover, personal insurance, superannuation, employment sick leave entitlements, compulsory third party bodily injury insurance, etc., and the Government then meets any non-recompensable expenditure with regard to:

- Medical costs;
- Reasonable rehabilitation costs;
- Costs of lost or damaged apparel or other personal effects.

Lump sums for death or serious disability are paid on the same basis as the WorkCover schedule.

Weekly income is paid to volunteers who can demonstrate a loss of income. Benefits take account of actual lost income up to the WorkCover ceiling of twice the State Average Weekly Earnings. For long-term incapacities, benefit reductions in line with WorkCover rules apply.

In special circumstances where volunteers necessarily incur costs as a result of incidents arising out of their volunteer involvement, additional benefits may be paid if considered appropriate by the Treasurer.

All benefits, except weekly income benefits for long-term incapacities, are payable regardless of age.

Any liability to a third party arising from the action or advice of a volunteer acting in accordance with department or agency instructions is treated as if the action or advice were that of an employee.
Division 5. **Standard Contracts and Letters of Appointment**

Councils must use the standard contract forms when determining any agreement for services by a contractor or for employing any person. If any change to the standard contract is contemplated, councils must seek the advice of the Crown Solicitor’s Office through the Legislation and Legal Services Unit.

The standard contracts must not be altered but only have the relevant information added to them.

The model letter of appointment may be altered but the essential elements of it should be retained.
58. **Standard Contract For Services involving intellectual services**

 *(School Council Letterhead)*

**CONTRACT FOR SERVICES**

AN AGREEMENT made on the ____________ day of ________________ 20___

BETWEEN: THE 
(name of school council) of 
(address of school council) in the state of South Australia, therein after called ‘the Council’

AND: (the party identified in Item 1 of Schedule A) therein after called ‘the Contractor’

**RECITALS:**

(A) The Council has selected the Contractor to provide certain services

(B) The Contractor has agreed to provide those services in all respects upon the terms and conditions of this agreement.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

   1.1 In this agreement unless the context otherwise requires:

      1.1.1 “*Agreement*” means this agreement and the Schedules of this agreement;

      1.1.2 “*Contractor*” means the person named in Item 1 of Schedule A;

      1.1.3 “*Contractor’s Staff*” means the persons named in Item 2 of Schedule A or such other persons approved in writing by the Council’s Representative from time to time;

      1.1.4 “*Intellectual Property Rights*” means any patent, copyright, trademark, tradename, design, trade secret, know how or other form of confidential information, or any right to register such rights and any other form of intellectual property right whether arising before or after the execution of this Agreement;

      1.1.5 “*Council’s Representative*” means the person named in Item 3 of Schedule A;

      1.1.6 “*Services*” means those services to be provided by the contractor to the council as described in Schedule B to this Agreement;

      1.1.7 “*Term*” means the period specified in Item 4 of Schedule A;
1.1.8 words denoting the singular include the plural and vice versa;
1.1.9 headings are for convenience only and do not affect the interpretation;
1.1.10 words denoting individuals include corporations and vice versa;
1.1.11 words of one gender include the other gender;
1.1.12 reference to a clause, subclause or schedule is a reference to a clause, subclause or schedule of this Agreement;
1.1.13 if there is any inconsistency between any term of this agreement and the Schedules then to the extent of the inconsistency the Agreement shall prevail.

1.2 The law governing the interpretation of the Agreement is the laws for the time being in force in the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

1.3 If any provision of this Agreement is found by a Court to be invalid or unenforceable then the Council and the Contractor request the Court to sever the provision from this Agreement.

2. THE ENGAGEMENT OF THE CONTRACTOR

2.1 The Council engages the Contractor who accepts the engagement for the term set out in Item 4 of Schedule A to undertake and to perform the Services described in Schedule B.

2.2 This Agreement does not restrict the Contractor’s ability to engage in any other business, occupation or activity providing that in doing so the performance of the Services are not detrimentally affected.

2.3 The Contractor’s engagement is a sole engagement. During the Term the Council will not without the prior consent of the Contractor engage any other person whether as a contractor to or as an employee of the Council, to undertake or assist or interfere in any way with the performance of the Service unless the Contractor fails to rectify any breach of its obligations after written notice from the Council to do so as required by clause 12 or as a result of clause 13.

2.4 The parties acknowledge nothing in this Agreement creates or infers a relationship between the parties of partnership or employer/employee.

3. THE SERVICES AND STANDARDS

3.1 The Contractor will complete the Services to the Council in accordance with the time frames described in Schedule B to this Agreement.

3.2 The Contractor will meet with the Council’s Representative at the times specified by the Council’s Representative during the Term and will comply with the directions of the Council’s Representative regarding the performance of the Services.

3.3 During the Term the Contractor will devote such of its time and ability as is appropriate and reasonably necessary for the proper performance of the Services.
3.4 The Contractor agrees to ensure that the Services will be provided to the highest professional standards.

3.5 The Contractor warrants that it, and any of its employees, agents and sub-contractors which it is permitted by the Council to engage, are competent and have the necessary skills to perform the obligations contained in this Agreement.

3.6 The contractor will provide written reports to the Council’s Representative providing such information as the Council’s Representative requires on the performance and progress of the services if and when required.

3.7 If requested by the Council’s Representative, the Contractor will document all consultative processes (including the names and responses of all parties consulted) and keep an up to date record of its progress in providing the Services and will provide these records to the Council upon demand.

3.8 The Contractor may not vary the scope of the Services without prior written consent of the Council.

4. PROVISION OF ADDITIONAL SERVICES

4.1 The Council may, from time to time, seek to amend the Services or request the Contractor to provide additional services by providing the following information in writing to the Contractor:

4.1.1 the scope of the additional services; and

4.1.2 the date by which the additional services are to be completed.

4.2 If any such amendment would reasonably have the consequence of materially changing either the fees which the Contractor could reasonably charge for any such amended services or the costs and expenses which the Contractor may incur given the fees charged or costs and expenses which may be incurred in the provision of the services, then any such amendment shall not take effect unless the Council and the Contractor agree in writing the amount of the consequent variation to the Contractor’s fees or costs and expenses.

5. COMPLIANCE WITH LAW

In performing the Services the Contractor must comply at its own expense with the provisions of any legislative and other requirements of the Commonwealth, State or Local Government particularly occupational health and safety and equal opportunity requirements.

6. PAYMENTS TO THE CONTRACTOR

6.1 Subject to the Contractor performing the Services satisfactorily, the Council will pay the Contractor:

6.1.1 the amount specified in Item 5 of Schedule A for the Services provided during the Term (“the Fee”)
6.1.2 in the manner specified in Item 5 of Schedule A, provided that the Contractor has complied with the conditions specified in Item 5 of Schedule A.

6.2 The Contractor is engaged on the basis of the Fee being an agreed fee for the Services inclusive of all expenses and disbursements which may be required. It is the responsibility of the Contractor to make all necessary income tax, goods and service tax, superannuation and "WorkCover" payments from any funds received from the Council for the provision of the Service.

7. RETURN OF THE COUNCIL’S CONTRACT MATERIALS

On the expiration or earlier termination of this Agreement, the Contractor must deliver to the Council all material:

7.1 provided to the Contractor by the Council pursuant to this Agreement; and

7.2 brought into or required to be brought into existence by the Contractor for the purpose of performing the Services including but not limited to, documents, software, equipment, information and data stored by any means.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in all reports, works, matters or things arising out of or in connection with the performance of the Services shall vest in the Council.

8.2 The Contractor warrants that in providing the Services it is not infringing the Intellectual Property Rights of any person.

8.3 The Contractor indemnifies and will keep indemnified the Council against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the performance of the Services by the Contractor, its employees, agents, or sub-contractors infringes the Intellectual Property Rights of any person.

8.4 The Contractor will disclose all Intellectual Property Rights arising out of or in connection with the provision of the Services to the Council and will do all such acts and things and sign all such documents as the Council requires to give effect to this clause.

8.5 The indemnity referred to in subclause 3 shall survive the expiration or earlier termination of this Agreement.

9. IIDEMNITY AND INSURANCE

9.1 The Contractor indemnifies and will keep indemnified the Council from and against any cost, loss, expense or liability of any kind howsoever suffered or incurred by the Council in respect of any loss of life, personal injury or disability, loss or damage to property, or any loss whatsoever arising out of:
9.1.1 any negligence or wrongful act or omission by the Contractor, or the Contractor’s Staff in connection with or incidental to this Agreement;

9.1.2 arising out of any breach of this Agreement by the Contractor; or

9.1.3 arising out of the presence of the Contractor’s Staff or any other person present at the request of the Contractor at any location where the Services are performed.

9.2 The Contractor must maintain in force at its own expense during the Term upon terms and with an insurer acceptable to the Council:

9.2.1 public liability insurance for not less than ten million dollars ($10,000,000.00) in respect of any one claim; and

9.2.2 professional indemnity insurance for not less than two million dollars ($2,000,000.00) in respect of any one claim arising during or in consequence of the performance of its Services.

9.2.3 the insurance policies must carry an endorsement from the insurer acknowledging the indemnity given by the Contractor under this Agreement.

9.3 Upon request from the Council’s Representative, the Contractor must supply the Council with a copy of all policies specified in clause 9.2 and certificates of currency of such policies.

9.4 The Council does not represent that the minimum levels of insurance expressed in this clause limit the liability of the Contractor with respect to this Agreement.

9.5 The Contractor acknowledges and agrees that it is the Contractor’s responsibility to assess and consider the risks and scope of the insurances required by this Agreement.

9.6 The Contractor must register itself, and if applicable, ensure any of its sub-contractors register with “WorkCover” and pay all levies pursuant to the Worker’s Rehabilitation and Compensation Act. Alternatively the Contractor must take out and maintain for the Term a personal accident and illness policy of insurance through an insurer approved by the Council. The Contractor (and any sub-contractors) must maintain such registration at all times during the Term and shall produce evidence of such registration to the Council upon request to do so.

9.7 The indemnity referred to in subclause 9.1 shall survive the expiration or earlier termination of this Agreement.

10. THE CONTRACTOR’S STAFF

10.1 The Contractor will ensure that the Contractor’s Staff are aware of and comply with this Agreement and are sufficiently qualified, skilled and experienced to provide the Services.
10.2 The Council may require the contractor to withdraw any of the Contractor's Staff from the provision of the Services by providing the Contractor with notice in writing in which case the Contractor must immediately comply with such notice and replace them with a person acceptable to the Council.

10.3 The Contractor acknowledges and agrees that there is no contract of any nature in existence between the Council and any other persons employed or engaged by the Contractor for the purposes of this Agreement that constitutes any relationship of employer and employee, principal and agent, or partnership, between the parties.

10.4 No party has any authority to bind the other party in any manner whatsoever except with the express approval in writing of the other party.

10.5 The Contractor will not represent itself, and must ensure that its employees, agents and sub-contractors do not represent themselves as being employees or agents of the Council.

11. CONFIDENTIALITY

11.1 The Contractor acknowledges that all information obtained in connection with or incidental to the Services is confidential to the Council.

11.2 Subject to clause 11.3, the Contractor shall not divulge such information to any person (except the Contractor’s Staff and then only on a “need to know” basis) without the Council’s prior written consent.

11.3 The obligation imposed by subclause 1 will not extend to information which:

11.3.1 was rightly in the possession of the Contractor prior to the commencement of negotiations which led to the formation of this Agreement;

11.3.2 is already public knowledge or becomes so at a future date (otherwise than as a breach of this clause); or

11.3.3 is trivial or obvious.

11.4 The Contractor must immediately notify the Council if it becomes aware of any disclosure or distribution of information in breach of this clause, and must provide the Council with all reasonable assistance in connection with any proceedings which the Council may institute against such persons in respect of such disclosure or distribution.

11.5 It is acknowledged by the Contractor that the Council may disclose confidential information:

11.5.1 to Parliament, or a Parliament or Cabinet committee or sub-committee

11.5.2 to any agency, instrumentality, Minister or Officer of the State of South Australia to whom it is customary for the Council to disclose the confidential information (whether or not the Council is legally obliged to); or
11.5.3 for the purposes of prosecuting or defending any legal proceedings.

11.6 The obligations as to confidentiality under this clause will survive expiry or termination of this Agreement.

12. NON PERFORMANCE BY THE CONTRACTOR

12.1 If the Contractor fails to perform any of its obligations under this Agreement and the Contractor is given notice in writing specifying the obligation which the contractor has failed to perform and requiring the failure to be rectified within such time as the Council sets out in the notice then the Council may:

12.1.1 Suspend payment of any sums due to the contractor until such failure is rectified; and/or

12.1.2 Rectify the failure itself whether by the use of the Council’s employees or other contractors and deduct the cost of such rectification from all sums due to the Contractor; and/or

12.1.3 Terminate this Contract;

12.1.4 Pursue all or any other legal remedies available to the Council as a consequence of failure by the Contractor to comply with its obligations under this Agreement.

13. TERMINATION

13.1 The Council may terminate this Agreement immediately upon giving notice in writing to the Contractor if:

13.1.1 the Council reasonably forms the opinion that the Contractor will be unable to perform its obligations pursuant to this Agreement; or

13.1.2 as in clause 12.1; or

13.1.3 the Contractor suffers or is in the Council’s reasonable opinion in jeopardy of becoming subject to any form of insolvency administration; or

13.1.4 the Contractor’s Staff are not available to the Contractor for the performance of the whole or any part of the Services.

13.2 The Council may terminate this Agreement without cause upon giving the Contractor fourteen (14) days notice in writing.

13.3 Any termination of this Agreement by the Council is without prejudice to any rights, remedies or actions the Council may have against the Contractor which may have arisen prior to the date of termination.

13.4 If the Council terminates this Agreement under subclause 13.2 it will pay the Contractor for that part of the Services authorised by the Council and performed by the Contractor to the Council’s satisfaction prior to the Contractor receiving the Council’s notice.

14. REPRESENTATIVE
Each party may appoint a representative, known as its Representative Officer, to administer the day to day operation of the Agreement. The representative may be varied from time to time by written notice to the other party. The Council’s Representative, or other persons as the Council Representative may nominate from time to time, may exercise all the powers and functions of the Council under this Agreement, except that only the Council may exercise the power to vary this Agreement or make an agreement to provide additional services pursuant to clause 3.

15. ASSIGNMENT AND SUB-CONTRACTING

The Contractor must not assign or sub-contract or otherwise transfer its rights and obligations under this Agreement without the Council’s prior written consent.

16. WAIVER

16.1 A waiver of any provision of this Agreement must be in writing.

16.2 No waiver by one party of one breach of a term or condition of this Agreement shall operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.

16.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party.

17. NOTICES

17.1 Any notice of amendment or termination pursuant to the provisions of this Agreement to be given by the parties must be in writing and delivered by Certified or registered mail. Other notices shall be in writing and may be served by delivery, mail or facsimile transmission to the following addresses and numbers:

17.1.1 To the Council
   As specified in Item 6 of Schedule A.

17.1.2 To the Contractor
   As specified in Item 7 of Schedule A

17.2 All such notices and communication shall be effective and be deemed to have been received in the following circumstances:

17.2.1 if delivered, upon delivery;

17.2.2 if posted, upon posting;

17.2.3 if sent by facsimile transmission, upon receipt of the receiver’s answer back code.

18. ENTIRE AGREEMENT AND MODIFICATIONS

18.1 This Agreement constitutes the entire agreement of the parties in respect of the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations in respect of this subject matter. No Other Agreement, whether collateral or otherwise, will be
taken to have been formed between the parties by reason of any promise, representation, inducement or undertaking given or made by one party to the other prior to the date of this Agreement.

18.2 No addition or modification of any provision of this Agreement shall be binding upon the parties unless made by written instruction signed by the parties.

EXECUTED AS AN AGREEMENT

The COMMON SEAL of the (insert name of school council)

was affixed in the presence of

…………………………………..  …………………………
(Print name of Chairperson)  (Signature of Chairperson)

and …………………………………… …………………………..
(Print name of school principal) (Signature of Principal)

on behalf of (insert name of school council)

in the presence of:

………………………………………….   Dated………………………
Witness signature.

…………………………………………
(Print name of Witness)

(If Contractor is an incorporated body, for e.g. a company or incorporated association:)

THE COMMON SEAL of

……………………………………………………....   )
Was affixed in the presence of:    )
……………………………………………………...   )
Director        )
……………………………………………………..   )
Witness  ) Dated………………………

OR
(If Contractor is a person, partnership, sole trader or other unincorporated body:)

…………………………………………………….   )
SIGNED by the said…………………………………… ) ) …………………………….

in the presence of

……………………………………..
Witness (Signature)

(Print name)……………………………………….   Dated  ………………………..
SCHEDULE A

Item 1. – The Contractor
Name: ……………………………………………………….

Address: ………………………………………………………

……………………………………………………

……………………………………………………

Item 2. – The Contractor’s Staff
Name: ………………………………………………………

Item 3. - The Council’s Representative
Position: ………………………………………………………

Address: ………………………………………………………

……………………………………………………

……………………………………………………

Phone: (08) ………………………………………………………
Fax: (08) ………………………………………………………

Item 4. - The Term
The period commencing on the ……. day of ………………… 20…… and expiring
on the ……. day of ………………. 20……

Item 5. – The Fee and Manner of Payment
The Fee: ……………………………………………………….($………….) per hour/day/etc
Manner of Payment: ………………………………………………………………………
………………………………………………………………………………………………

Item 6. – Council’s Contact for the Purpose of the Service of Notices
Name of Person to whom notices are to be addressed:
………………………………………………………………………………………….
Position: …………………………………………………………………………………
Address: …………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
Phone: …………………………………………………………………………………
Fax: …………………………………………………………………………………

Item 7 – Contractor’s Contact for the Purpose of the Service of Notices
Name of Person to whom notices are to be addressed
…………………………………………………………………………………………
Position: …………………………………………………………………………………
Address: …………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
Phone: …………………………………………………………………………………
Fax: …………………………………………………………………………………
SCHEDULE B

The Services:

[Insert details of the services to be performed; for example, evaluate a particular system or program by doing the following:

- Interview persons x, y and z of a particular section of the community,
- Attend meetings with the reference group on dates a, b and c,
- Prepare a draft report by date m, and a final report by date n.

Note: be as specific about dates and detail as possible]
59. Standard Contract For Services not involving intellectual services

(School Council Letterhead)

CONTRACT FOR SERVICES

AN AGREEMENT made on the ____________ day of ________________ 20___

BETWEEN: THE (name of school council) of (address of school council) in the state of South Australia, therein after called ‘the Council’

AND: (the party identified in Item 1 of Schedule A) therein after called ‘the Contractor’

RECITALS:

(A) The Council has selected the Contractor to provide certain services

(B) The Contractor has agreed to provide those services in all respects upon the terms and conditions of this agreement.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

1.1 In this agreement unless the context otherwise requires:

1.1.1 “Agreement” means this agreement and the Schedules of this agreement;

1.1.2 “Contractor” means the person named in Item 1 of Schedule A;

1.1.3 “Contractor’s Staff” means the persons named in Item 2 of Schedule A or such other persons approved in writing by the Council’s Representative from time to time;

1.1.4 “Council’s Representative” means the person named in Item 3 of Schedule A;

1.1.5 “Services” means those services to be provided by the contractor to the council as described in Schedule B to this Agreement;

1.1.6 “Term” means the period specified in Item 4 of Schedule A;

1.1.7 words denoting the singular include the plural and vice versa;
1.1.8 headings are for convenience only and do not affect the interpretation;
1.1.9 words denoting individuals include corporations and vice versa;
1.1.10 words of one gender include the other gender;
1.1.11 if there is any inconsistency between any term of this agreement and the Schedules then to the extent of the inconsistency the Agreement shall prevail.

1.2 The law governing the interpretation of the Agreement is the laws for the time being in force in the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

1.3 If any provisions of this Agreement is found by a Court to be invalid or unenforceable then the Council and the Contractor request the Court to sever the provision from this Agreement.

2 THE ENGAGEMENT OF THE CONTRACTOR

2.1 The Council engages the Contractor who accepts the engagement for the term set out in Item 4 of Schedule A to undertake and to perform the Services described in Schedule B.

2.2 This Agreement does not restrict the Contractor’s ability to engage in any other business, occupation or activity providing that in doing so the performance of the Services are not detrimentally affected.

2.3 The Contractor’s engagement is a sole engagement. During the Term the Council will not without the prior consent of the Contractor engage any other person whether as a contractor to or as an employee of the Council, to undertake or assist or interfere in any way with the performance of the Service unless the Contractor fails to rectify any breach of its obligations after written notice from the Council to do so as required by clause 10 or as a result of clause 11.

2.4 The parties acknowledge nothing in this Agreement creates or infers a relationship between the parties of partnership or employer/employee.

3 THE SERVICES AND STANDARDS

3.1 The Contractor will complete the Services in accordance with the time frames described in Schedule B to this Agreement.

3.2 The Contractor will meet with the Council’s Representative at the times specified by the Council’s Representative during the Term and will comply with the directions of the Council’s Representative regarding the performance of the Services.

3.3 During the Term the Contractor will devote such of its time and ability as is appropriate and reasonably necessary for the proper performance of the Services.

3.4 The Contractor agrees to ensure that the Services will be provided to the highest professional standards.
3.5 The Contractor warrants that it, and any of its employees, agents and sub-contractors which it is permitted by the Council to engage, are competent and have the necessary skills to perform the obligations contained in this Agreement.

3.6 The Contractor may not vary the scope of the Services without prior written consent of the Council.

4. **PROVISION OF ADDITIONAL SERVICES**

4.1 The Council may, from time to time, seek to amend the Services or request the Contractor to provide additional services by providing the following information in writing to the Contractor:

4.1.1 the scope of the additional services; and

4.1.2 the date by which the additional services are to be completed.

4.2 If any such amendment would reasonably have the consequence of materially changing either the fees which the Contractor could reasonably charge for any such amended services or the costs and expenses which the Contractor may incur given the fees charged or costs and expenses which may be incurred in the provision of the services, then any such amendment shall not take effect unless the Council and the Contractor agree in writing the amount of the consequent variation to the Contractor’s fees or costs and expenses.

5. **PLANT EQUIPMENT AND MATERIALS**

5.1 The Contractor shall supply at its own expense all plant equipment and materials required by the Contractor for the performance of the Services.

5.2 The Contractor’s plant equipment and materials must meet all relevant and applicable Australian Standards.

5.3 The Contractor must ensure that its plant equipment and materials are maintained in a safe and good working condition.

6 **COMPLIANCE WITH LAW**

In performing the Services the Contractor must comply at its own expense with the provisions of any legislative and other requirements of the Commonwealth, State or Local Government particularly occupational health and safety and equal opportunity requirements.

7 **PAYMENTS TO THE CONTRACTOR**

7.1 The Council will pay the Contractor:

7.1.1 the amount specified in Item 5 of Schedule A for the Services provided during the Term (“the Fee”)

7.1.2 in the manner specified in Item 5 of Schedule A, provided that the Contractor has complied with the conditions specified in Item 5 of Schedule A.
7.2 The Contractor is engaged on the basis of the Fee being an agreed fee for the Services inclusive of all expenses and disbursements which may be required. It is the responsibility of the Contractor to make all necessary income tax, goods and service tax, superannuation and “WorkCover” payments from any funds received from the Council for the provision of the Service.

8 INDEMNITY AND INSURANCE

8.1 The Contractor indemnifies and will keep indemnified the Council from and against any cost, loss, expense or liability of any kind howsoever suffered or incurred by the Council in respect of any loss of life, personal injury or disability, loss or damage to property, or any loss whatsoever arising out of:

8.1.1 any negligence or wrongful act or omission by the Contractor, or the Contractor’s Staff in connection with or incidental to this Agreement;

8.1.2 arising out of any breach of this Agreement by the Contractor; or

8.1.3 arising out of the presence of the Contractor’s Staff or any other person present at the request of the Contractor at any location where the Services are performed.

8.2 The Contractor must maintain in force at its own expense during the Term upon terms and with an insurer acceptable to the Council public liability insurance for not less than ten million dollars ($10,000,000.00) in respect of any one claim arising during or in consequence of the performance of its Services. The insurance policy must carry an endorsement from the insurer acknowledging the indemnity given by the Contractor under this Agreement.

8.3 Upon request from the Council’s Representative, the Contractor must supply the Council with a copy of all policies specified in subclause 8.2 and certificates of currency of such policies.

8.4 The Council does not represent that the minimum levels of insurance expressed in this clause limit the liability of the Contractor with respect to this Agreement.

8.5 The Contractor acknowledges and agrees that it is the Contractor’s responsibility to assess and consider the risks and scope of the insurances required by this Agreement.

8.6 The Contractor must register itself, and if applicable, ensure any of its sub-contractors register with “WorkCover” and pay all levies pursuant to the Worker’s Rehabilitation and Compensation Act. Alternatively the Contractor must take out and maintain for the Term a personal accident and illness policy of insurance through an insurer approved by the Council. The Contractor (and any sub-contractors) must maintain such registration at all times during the Term and shall produce evidence of such registration to the Council upon request to do so.
8.7 The indemnity referred to in subclause 8.1 shall survive the expiration or earlier termination of this Agreement.

9 THE CONTRACTOR’S STAFF

9.1 The Contractor will ensure that the Contractor’s Staff are aware of and comply with this Agreement and are sufficiently qualified, skilled and experienced to provide the Services.

9.2 The Council may require the contractor to withdraw any of the Contractor’s Staff from the provision of the Services by providing the Contractor with notice in writing in which case the Contractor must immediately comply with such notice and replace them with a person acceptable to the Council.

9.3 The Contractor acknowledges and agrees that there is no contract of any nature in existence between the Council and any other persons employed or engaged by the Contractor for the purposes of this Agreement that constitutes any relationship of employer and employee, principal and agent, or partnership between the parties.

10 NON PERFORMANCE BY THE CONTRACTOR

10.1 If the Contractor fails to perform any of its obligations under this Agreement and the Contractor is given notice in writing specifying the obligation which the contractor has failed to perform and requiring the failure to be rectified within such time as the Council sets out in the notice then the Council may:

10.1.1. Suspend payment of any sums due to the contractor until such failure is rectified; and/or

10.1.2. Rectify the failure itself whether by the use of the Council’s employees or other contractors and deduct the cost of such rectification from all sums due to the Contractor; and/or

10.1.3 Terminate this Contract;

10.1.4 Pursue all or any other legal remedies available to the Council as a consequence of failure by the Contractor to comply with its obligations under this Agreement.

11 TERMINATION

11.1 The Council may terminate this Agreement immediately upon giving notice in writing to the Contractor if:

11.1.1 the Council reasonably forms the opinion that the Contractor will be unable to perform its obligations pursuant to this Agreement; or

11.1.2 as in clause 10.1; or

11.1.3 the Contractor suffers or is in the Council’s reasonable opinion in jeopardy of becoming subject to any form of insolvency administration; or
11.1.4 the Contractor’s Staff are not available to the Contractor for the performance of the whole or any part of the Services.

11.2 The Council may terminate this Agreement without cause upon giving the Contractor fourteen (14) days notice in writing.

11.3 Any termination of this Agreement by the Council is without prejudice to any rights, remedies or actions the Council may have against the Contractor which may have arisen prior to the date of termination.

11.4 If the Council terminates this Agreement under subclause 11.2 it will pay the Contractor for that part of the Services authorised by the Council and performed by the Contractor to the Council’s satisfaction prior to the Contractor receiving the Council’s notice.

12 REPRESENTATIVE

Each party may appoint a representative, known as its Representative Officer, to administer the day to day operation of the Agreement. The representative may be varied from time to time by written notice to the other party. The Council’s Representative, or other person as the Council Representative may nominate from time to time, may exercise all the powers and functions of the Council under this Agreement, except that only the Council may exercise the power to vary this Agreement or make an agreement to provide additional services pursuant to clause 3.

13 ASSIGNMENT AND SUB-CONTRACTING

The Contractor must not assign or sub-contract or otherwise transfer its rights and obligations under this Agreement without the Council’s prior written consent.

14 WAIVER

14.1 A waiver of any provision of this Agreement must be in writing.

14.2 No waiver by one party of one breach of a term or condition of this Agreement shall operate as a waiver of another breach of the same or of any other term or condition contained in this Agreement.

14.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party.

15 NOTICES

15.10 Any notice of amendment or termination pursuant to the provisions of this Agreement to be given by the parties must be in writing and delivered by Certified or registered mail. Other notices shall be in writing and may be served by delivery, mail or facsimile transmission to the following addresses and numbers:

15.1.1 To the Council
As specified in Item 6 of Schedule A.

15.1.2 To the Contractor
As specified in Item 7 of Schedule A
15.11 All such notices and communication shall be effective and be deemed to have been received in the following circumstances:

15.2.1 if delivered, upon delivery;
15.2.2 if posted, upon posting;
15.2.3 if sent by facsimile transmission, upon receipt of the receiver’s answer back code.

16 ENTIRE AGREEMENT AND MODIFICATIONS

16.10 This Agreement constitutes the entire agreement of the parties in respect of the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations in respect of this subject matter. No Other Agreement, whether collateral or otherwise, will be taken to have been formed between the parties by reason of any promise, representation, inducement or undertaking given or made by one party to the other prior to the date of this Agreement.

16.11 No addition or modification of any provision of this Agreement shall be binding upon the parties unless made by written instruction signed by the parties.

EXECUTED AS AN AGREEMENT

The COMMON SEAL of the (insert name of school council)

was affixed in the presence of

……………………………………………………………... (Print name of Chairperson)   (Signature of Chairperson)

and …………………………………………... (Print name of school principal)   (Signature of Principal)

on behalf of (insert name of school council)

in the presence of:

……………………………………………………………... Dated………………………
Witness signature.

……………………………………………………………... (Print name of Witness)

(If Contractor is an incorporated body, for e.g. a company or incorporated association:)

THE COMMON SEAL of

……………………………………………………………... )
was affixed in the presence of:  
……………………………………………………..   )  
Director  )  
……………………………………………………...   )  
Witness  )  
Dated…………………………..  

OR  
(If Contractor is a person, partnership, sole trader or other unincorporated body:)  

SIGNED by the said…………………………………… )  )  
in the presence of  
…………………………………………………….  
Witness (Signature)  

(Print name)……………………………………….   Dated  ……………………….
SCHEDULE A

Item 1. – The Contractor
Name: .................................................................
Address: .................................................................

Item 2. – The Contractor’s Staff
Name: .................................................................

Item 3. - The Council’s Representative
Name: .................................................................
Position: .................................................................
Address: .................................................................

Phone: (08) .................................................................
Fax: (08) .................................................................

Item 4. - The Term
The period commencing on the …… day of 20…… and expiring on the ……… day of 20……

Item 5. – The Fee and Manner of Payment
The Fee: .................................................................($……….)$per hour/day/etc
Manner of Payment:

........................................................................................................
........................................................................................................

Item 6. – Council’s Contact for the Purpose of the Service of Notices

Name of Person to whom notices are to be addressed:

........................................................................................................

Position: ......................................................................................

Address: .....................................................................................

.................................................................................................

.................................................................................................

Phone: .......................................................................................  

Fax: ............................................................................................

Item 7 – Contractor’s Contact for the Purpose of the Service of Notices

Name of Person to whom notices are to be addressed

........................................................................................................

Position: ......................................................................................

Address: .....................................................................................

.................................................................................................

.................................................................................................

Phone: .......................................................................................  

Fax: ............................................................................................


SCHEDULE B

The Services:

[ Insert details of the services to be performed; for example;

- Provide maintenance and repair services for the following equipment

- provide gardening and landscape services as follows;
  1.
  2.
  3.

Note: be as specific about dates and detail as possible]
60. Standard Contract Of Services/Employment

(School Council Letterhead)

CONTRACT OF SERVICES/EMPLOYMENT

AN AGREEMENT made on the _____________day of ________________ 20___

BETWEEN; THE (Name of School Council)                     of
     (address of School Council)

herein after known as “the Council” on the one part

AND ( the party identified in Item 1 of the Schedule)
     (address of the employee)

herein after known as “the employee” as the other part.

WHEREAS:

(A) The Council has agreed to employ the Employee under the provisions of its Constitution on the terms and conditions as are herein after contained and the Employee has agreed to be so employed.

(B) This Agreement is a contract of service and the Council is required by virtue of the provisions of the Income Tax Act, 1936 (Commonwealth) to make PAYE income tax deductions from the Employee’s salary.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION:

1.1. In this agreement unless the context otherwise requires:

   1.1.1 “Agreement” means this agreement and the Schedules of this agreement;
   1.1.2 “Employee” means the person named in Item 1 of the Schedule;
   1.1.3. “Services” means those services to be provided by the contractor to the council as described in Item 2 of the Schedule;
   1.1.4 “Term” means the period specified in Item 3 of the Schedule;
   1.1.5 words denoting the singular include the plural and vice versa;
   1.1.6 headings are for convenience only and do not affect the interpretation;
1.1.7 words of one gender include the other gender;
1.1.8 reference to a clause, subclause or schedule is a reference to a clause, subclause or schedule of this Agreement;
1.1.9 if there is any inconsistency between any term of this agreement and the Schedules then to the extent of the inconsistency the Agreement shall prevail.

1.2 The law governing the interpretation of the Agreement is the laws for the time being in force in the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

1.3 If any provision of this Agreement is found by a Court to be invalid or unenforceable then the Council and the Contractor request the Court to sever the provision from this Agreement.

2. SERVICES:
The Employee shall perform the duties specified in Item 2 of the Schedule to this Agreement.

3. THE TERM OF EMPLOYMENT:
The Employee shall be employed for the period specified in Item 3 of the Schedule to this Agreement unless the employment is lawfully terminated earlier.

4. PAYMENT OF SERVICES:
The Employee shall be paid at the rate and in the manner specified in Item 4 of the Schedule.

5. THE SERVICES AND STANDARDS:
5.1. During the period of employment the Employee shall:
5.1.1 Obey and comply with all lawful orders and directions given to him/her from time to time by the Council or any person authorised by the Council to do so;
5.1.2 Use his/her best endeavours to undertake and perform such responsibilities as he may from time to time be directed to undertake and perform;
5.1.3 Devote the whole of his time and attention during ordinary hours of business and also at other times as may be necessary to the duties and responsibilities described in Item 2 of the Schedule;
5.1.4 The Employee must not at any time during his appointment and employment or at any time thereafter, otherwise than in the discharge of his duties or with the prior consent of the Council, divulge to any other persons information which he may acquire or have acquired in the course of his employment by the Council.
5.1.5 The Employee shall attend at such times and places as the Council may require and shall render the services for which the Employee is engaged to the best of his skills and ability.
5.1.6 The Council may vary the times and venues specified for attendance or performances and shall give to the Employee reasonable notice of such variation.

6. COPYRIGHT:
Copyright of all material prepared or made by the Employee in the course of or in connection with the performance of duties under this Agreement shall be exclusively with the Council.

7. TERMINATION:
7.1 Without prejudice to any other lawful powers, privileges and rights which the Council may have, the Council may terminate this Agreement if the Employee:

7.1.1 shall, in the opinion of the Council, become physically or mentally incapable of effectively performing the duties specified in Item 2 of the Schedule provided that this power shall not apply with respect to temporary disability for a short term through sickness, injury or physical or mental incapacity none of which conditions is likely to endure or recur;

7.1.2 is guilty of any wilful breach or continued neglect of any of the terms of this Agreement or any of the duties which he may from time to time be required to carry out in the course of his employment; or

7.1.3 absents himself from duty without permission being granted by the Council.

7.2 Upon any such termination as in 6.1 the Employee shall be paid any arrears of salary and of any allowance to which he was entitled at the date of such termination and he will accept the same in full discharge of all claims arising from his service under this Agreement.

7.3 Without prejudice to any other lawful powers, privileges and rights which the Council may have and not withstanding the provisions of clause 6.1 of this Agreement the Council may terminate this Agreement without notice for refusal of duty, wilful and serious neglect of duty, disobedience of instructions or orders or misconduct and in such cases salary shall be payable to the Employee up to the time of dismissal only.

7.4 Notwithstanding anything elsewhere contained in this Agreement either party may terminate the employment at any time on giving to the other party no less than fourteen (14) days prior notice in writing expiring on a day upon which a payment of salary pursuant to this Agreement is payable. The employment of the Employee shall terminate at the expiration of such notice and he shall not be entitled to any compensation or damages in respect of or arising out of such termination.

8. NOTICES:
8.1 Any notice of termination pursuant to the provisions of this Agreement to be given by the parties must be in writing and delivered by Certified or registered mail. Other notices shall be in writing and may be served by delivery, mail or facsimile transmission to the following addresses and numbers:

8.1.1 To the Council
   As specified in Item 6 of the Schedule.

8.1.2 To the Employee
   As specified in Item 1 of the Schedule.

8.2 All such notices and communication shall be effective and be deemed to have been received in the following circumstances:

8.2.1 if delivered, upon delivery;
8.2.2 if posted, upon posting;
8.2.3 if sent by facsimile transmission, upon receipt of the receiver’s answer back code.

9. REPRESENTATIVES:
   Any act or thing which may be done by the Council under or pursuant to this Agreement may be done by the Council or the Principal, or any delegate or employee acting on his/her behalf.

EXECUTED AS AN AGREEMENT

The COMMON SEAL of the (insert name of school council) was affixed in the presence of

.................................................. ..................................................
(Print name of Chairperson) (Signature of Chairperson)

and .................................................. ..................................................
(Print name of Principal) (Signature of Principal)

and .................................................. ..................................................
(Print name of Employee) (Signature of Employee)

in the presence of

.................................................. Dated..................................
Witness Signature
(Print name of witness)
THE SCHEDULE

Item 1 – The Employee
Name: ………………………………………………………………………
Address: ………………………………………………………………………
……………………………………………………………………
……………………………………………………………………
Phone: ......................... Fax: .........................

Item 2 – Duties
[Insert the duties of the service in detail, listing the type of work to be done, the skills required, the location of the work to be done, the hours of work and any conditions that apply. Be as specific about detail as possible.]

Item 3 – Term of Employment
The period commencing on the ...............day ..............20.... and expiring on the .............. day of ..............20.....

Item 4 – Payment and Manner of Payment

Item 5. – The Council
Name. ………………………………………………………………………
Address ………………………………………………………………………
……………………………………………………………………

Item 6. – Council Contact for the Purpose of Notices
Name. ………………………………………………………………………
Position: ………………………………………………………………………
Address. ………………………………………………………………………
……………………………………………………………………
Phone. ......................... Fax. .........................
61. Model letters of appointment

Casual employees

Sunny Creek Primary School Council Inc.  (Council letter head)

Name (of successful applicant)
Address

Letter of Appointment – (name of position)

Dear (Name of successful applicant)

On behalf of the Sunny Creek Primary School Council I am pleased to inform you that you have been appointed to the position of ______(title of position)_______.

This position is (permanent/temporary for a fixed term/casual) and you will be employed according to the ___(name of award)_____Award. As such the appropriate current rate of pay is $____ per hour.

(optional) There will be a probationary period of ______ weeks at the end of which your appointment will be reviewed.

As a casual employee you are being paid a loading of 20% in lieu of annual leave and sick leave. This loading has been included in the rate of pay stated above.

You are entitled to benefit from the compulsory employee superannuation contributions which will be paid into the _____________ fund as prescribed by the award.

Long service leave will accrue under the Long Service Leave Act and will be available after 10 years of service – pro-rata payments being available after 7 years of service.

The starting date for employment to the position is _________ and the completion date is__________

The hours of duty per week are _______ and the starting time each day is _______ with a finishing time of ________. The lunch break will be between _______ and _____ (or other arrangements as agreed).

The school is a non-smoking area and the Council is an equal opportunity employer. We are required to observe the regulations as specified under Occupational, Health, Welfare and Safety Legislation.

The Principal is responsible for your supervision and development. He/she will also be responsible to discuss your role and your work performance with you on a regular
basis. If you have any problems with this letter or with any aspect of the position please contact the Principal.

I welcome you to the school and hope that you will enjoy your association with us.

Yours sincerely

Chairperson of Council

* Delete as appropriate.
Permanent employees

Sunny Creek Primary School Council Inc.  (Council letter head)

Name (of successful applicant)
Address

Letter of Appointment – (name of position)

Dear (Name of successful applicant)

On behalf of the Sunny Creek Primary School Council I am pleased to inform you that you have been appointed to the position of ______(title of position)_______.

This position is (permanent/temporary for a fixed term/casual) and you will be employed according to the ___(name of award)_____ Award. As such the appropriate current rate of pay is $_____ per hour.

(optional) There will be a probationary period of ______ weeks at the end of which your appointment will be reviewed.

* As a permanent part time employee you are entitled to pro-rata annual leave and sick leave which will be calculated according to the provisions of the award.

You are entitled to benefit from the compulsory employee superannuation contributions which will be paid into the _____________ fund as prescribed by the award.

Long service leave will accrue under the Long Service Leave Act and will be available after 10 years of service – pro-rata payments being available after 7 years of service.

The starting date for employment to the position is _________ and the completion date is__________.

The hours of duty per week are ________ and the starting time each day is _______ with a finishing time of _________. The lunch break will be between ______ and ____ (or other arrangements as agreed).

The school is a non-smoking area and the Council is an equal opportunity employer. We are required to observe the regulations as specified under Occupational, Health, Welfare and Safety Legislation.

The Principal is responsible for your supervision and development. He/she will also be responsible to discuss your role and your work performance with you on a regular basis. If you have any problems with this letter or with any aspect of the position please contact the Principal.
I welcome you to the school and hope that you will enjoy your association with us.

Yours sincerely

Chairperson of Council

* Delete as appropriate.
62. Advice on Awards, selection processes and supervision

Award and employment conditions

Each of the positions to which councils are likely to consider employment is covered by different awards. Each award has different terms and conditions built into it and therefore each employment arrangement must be treated separately. Some of the awards in which councils are likely to be involved are: Caretakers and Cleaners Award, Child Care Workers Award, Delicatessens Award, School services Officers Award (Government Schools Award).

It is important that the council consults the appropriate award to ensure it is being applied accurately in each situation.

Where a person is employed to undertake activities that they were doing in a previous employment situation they are entitled to the same conditions and remuneration as in their previous situation (e.g. the council can not employ a person who has previously been employed by DETE as an SSO, at a lower salary if the duties are the same as they were doing as an SSO).

Governing Councils need to carefully analyse their global budgets to calculate whether they can afford to employ a person and for what length of tenure. Principals should use the Global Budget Management Tool to analyse the school’s three year cash flow and advise the council. Governing Councils are advised to only make the tenure of employment to the end of the current term of the service agreement. They may include a clause for a review of performance and extension of tenure.

Councils should note that continuing employment beyond the contract date for cessation of employment without negotiating a new contract may imply permanency of position.

The Department does not provide ongoing employment for excess/redundant school council employees. Employees must be advised prior to engagement that ongoing employment cannot be guaranteed and is subject to the need for the position and availability of funds. In some cases in may be necessary to engage employees subject to a yearly (or other) review, Even if it appears that there may be an ongoing requirement.

If the council decides to meet a need by extending the hours of an existing departmental employee, such action is an independent arrangement from the employee’s contractual obligations with the department i.e. any such extension constitutes a new employment contract between the council and the employee.
The selection process for filling positions

When filling any position where the task is the same as that done by school ancillary staff, (i.e. provide support in areas such as secretarial, curriculum delivery, resource centre, laboratory, finance, special education, grounds maintenance, facilities maintenance and stores), the council should first contact the Ancillary Staffing section of Department’s Human Resources section to see if there are any suitable persons requiring placement or in the Ancillary Staff Temporary Employment Pool. The pool has been established to fill temporary non-teaching school based vacancies for periods from one month up to 12 months under the provisions of the School Services Officers (Government Schools) Awards and the Government Services Award.

The chairperson of the selection panel must:

• acknowledge the receipt of applications for the position;

• advise applicants whether they have been short listed or not;

• advise short-listed applicants whether they will be required for an interview and the time, place, format and length of any interview as well as the names of the members of the interviewing panel. It is strongly recommended that short-listed applicants are interviewed. Short-listed applicants must be given adequate notice of any interview;

• conduct any interview within merit selection and equal opportunity principles;

• contact at least one of the referees for each of the short-listed applicants for the suitability of the applicant for the duties of the position and for work in a school. Preferably all members of the panel, but at least two, should be present for discussions with any referee;

• advise short-listed applicants of the time line for the final decision on employment;

• advise all applicants of any delay in the selection process;

• check with the police that the successful applicant does not have a police record (e.g. for paedophilia, theft, fraud, violence)

• check with the appropriate sub-committee that the successful applicant meets the needs of the sub-committee before advising the applicant of his/her success;

• together with the principal, discuss with the successful applicant the terms of the contract and agree on a starting date;

• organise with the council chairperson and the principal for the signing of the contract for employment and the letter of appointment;

• advise all of the applicants and the council of the outcome of the selection process. Applicants may be provided with feedback on their applications and interview, if applicable;
• complete appropriate documentation of the selection process and store it at the worksite for a period of 2 years.

The signatories of the contract for employment should be the council chairperson and the principal. The signatories should be appointed by council and their appointment minuted.

When a contract has been entered into with the successful applicant it should be entered into the minutes of the council along with the name of the successful applicant and a copy of the contract filed with the secretary.

The letter of appointment can be vary from the Model Letter of Appointment in the appendix, but must contain the following elements:

- name of employee and school council
- type of employment arrangement (i.e. casual, temporary for a fixed term, permanent)
- probation period (where applicable)
- date employment to commence
- date employment to cease
- title of the position
- award/agreement applicable
- rate of pay/wages per week/hour (as the case may be)
- hours of duty per week, daily commencement and finishing times or other arrangements as agreed
- any restrictions on times of taking leave.

The form of the Standard Contract for Employment (see Appendix # 74) should not be changed. If the council wishes to make a change to the substance of the contract they must seek approval for their proposed changes from the Director, Human Resources.

**Supervision of employees**

The principal has the function of supervising all council employees at the school. As such the principal must:

- welcome the employee to the school and provide him/her with an induction program;
- provide suitable working conditions and have an expectation of the employee of reasonable and achievable work loads;
- provide clear instructions of the work to be done, the standard of work expected and time lines for completion;
- check that the employee knows how to use the equipment and is aware of OHS&W policies and practices;
monitor the performance of the employee and provide regular feedback on his/her performance;

maintain a roster to delineate when the employee is responsible to which employer where the employee is a dual employee of both the Department and the council;

resolve any complaints or grievances of the employee. For advice see the Department’s ‘Grievance Resolution Policy for Employees’ and ‘Grievance Procedures for Employees’, especially appendices A (Mediation Guidelines), C (Dispute Avoidance and Settlement Procedures) and D (Disciplinary policy and Procedures – Non-teaching Staff. These are on the Legal and General CD Rom.