



SCHOOL COUNCIL LIABILITY & LEGAL PROCEEDINGS POLICY

Policy & Guidance

- As a body corporate, School Councils are separate legal entities that can sue or be sued in their own name.
- The Department must indemnify individual members of School Councils for any legal liability, other than criminal charges brought by police, if they acted in good faith and in the exercise of their powers or functions. The indemnity may be funded from Department central funding or school budgets or locally raised funds, but is usually funded from Department central funding.
- The Department may also (and often does) decide to indemnify School Councils (as a body corporate separate to the School Council members) for claims of common law negligence and employment disputes (including for claims of discrimination).
- A School Council (as a corporate entity) will not usually be indemnified for other types of School Council liability, such as GST and taxation, or functions that are not directly related to the administration of a school.
- If indemnified, School Councils will remain responsible for funding an indemnity for their School Councils from school budgets or locally raised funds. However, the Department may decide to centrally fund that indemnity in some circumstances.
- The Principal, as Executive Officer of the School Council, must contact the Department's Legal Division for support and advice with respect to any legal support in a claim for an indemnity by the School Council or a School Council member, or whenever responding to a legal claim, dispute, summons or subpoena to a School Council member.
- School Councils should not commence legal proceedings without appropriate consent from the Department (the Executive Director or Legal Division) or, where required, the Minister. If School Councils are unsure how to proceed in a legal matter, the principal, as executive officer of the School Council may contact the Legal Division at legal.services@edumail.vic.gov.au or 03 9637 3146.
- Individual members and former members of a School Council are not expected to be found to be personally liable for the debts and liabilities of a School Council where they have acted in good faith and in the exercise of their powers or functions.
- The Department may decide to indemnify School Councils (this is different to School Council members) in claims of common law negligence, and in relation to employment disputes (including discrimination claims), for the costs of defending the claim (that is any settlement sum required to be paid and legal representation) where the School Council was acting:
 - in the exercise of their powers or functions
 - in good faith according to their role and duties under applicable legislation, policies, guidelines and directions
- The Department usually will not indemnify School Councils or provide legal representation for School Council liability where School Councils were, or should have reasonably been, able to adopt appropriate measures of oversight and where the claim would not ordinarily be expected to give rise to personal liability for a School Council member. For example, School Council's will not usually be indemnified by the Department for legal matters involving:
 - GST and taxation
 - breach of contract
 - breach of copyright law, patents, trademarks, or designs
 - land use objections

- The Department will usually not indemnify a School Council or provide legal representation in relation to the exercise of School Council functions that are not directly related to the administration of a school, particularly where they are conducted in a manner that raises funds that can be used to pay for insurance, for example, for the provision of outside school hours care.
- The Department (which includes schools) will indemnify a person who is or has been a member of a School Council against any liability for any loss or damage suffered by the council member or any other person, whether in negligence, defamation, contract or otherwise. The indemnity is for anything necessarily or reasonably done or omitted to be done where the member acted in good faith in the:
 - exercise of a power or performance of a member's function, or
 - reasonable belief that the member's liability act or omission was in the exercise of the member's function or power
- The Department will not usually indemnify School Council members or provide legal representation about matters where criminal charges are brought by police on the basis that, in those circumstances, it is expected that there will be a reasonable basis to form the preliminary view, on the balance of probabilities, that the School Council member would not have been acting in good faith in the exercise of a School Council power or function, or the reasonable belief that they were exercising a School Council power or function, and that an indemnity should not be provided.
- School Council is responsible for all of its employees.
- The Department usually will indemnify individual School Council employees in claims of common law negligence. The Department may indemnify individual School Council employees for other legal claims in similar circumstances to when their departmental counterpart is indemnified.
- The Department is unlikely to indemnify a School Council employee in exceptional circumstances, for example, when the School Council employee was:
 - under the influence of illicit drugs or alcohol
 - engaging in an alleged criminal offence
 - engaging in outrageous behaviour that was not related to their employment
- If a School Council member receives:
 - a legal claim (such as a writ statement of claim or letter of demand from a law firm, court or tribunal order, claim for unfair dismissal, discrimination or breach of privacy)
 - a notice of breach or notice of dispute under contract
 - a witness summons or a subpoena
 the Principal, as Executive Officer of the School Council, should immediately notify the Department's Legal Division and forward the relevant documents to it requesting legal representation.

Note: School Council members should not directly or indirectly incur legal costs before contacting the Legal Division.

Commencing Legal Proceedings

A School Council should not commence legal proceedings or any action against any person in any court or tribunal without first obtaining written approval from the Executive Director, Legal Division.

A School Council must not commence legal proceedings in any court or tribunal, or before any person acting judicially, such as a mediator or arbitrator, without the written consent of the Minister, against any of the following:

- the Crown
- the State
- any Minister
- any officer or employee of the State in respect of duties performed in his or her official capacity, or any authority or public body within the meaning of the Financial Management Act 1994 (Vic)
- School Councils do not require consent of the Department or Minister to enforce judgments in their favour.

If School Councils are unsure how to proceed in a legal matter, the Principal, as Executive Officer of the School Council, is able to contact the Legal Division or telephone for guidance.

Purpose

- This policy is to assist the Principal of Footscray North Primary School to understand the extent of legal liability for School Councils and School Council members and sets out the processes for seeking assistance with legal claims *and Training Reform Regulations 2007* (the Regulations) and Government policy.

Definitions

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

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

Implementation

- The school notes the above.
- Please refer also to the school's *School Council Elections Policy*, *School Council Meetings Policy* and the *School Council Subcommittees Policy*.

Evaluation

- This policy will be reviewed as part of the school's three-year review cycle or if guidelines change (latest DET update mid-June 2020).

School Council Approval No Longer Required

The Principal may wish to ensure School Council is informed about its contents

Reference:

<https://www2.education.vic.gov.au/pal/school-council-liability>