

Factsheet | A legal overview of schools in Western Australia

Under the *School Education Act 1999 (WA)* (“Act”), a ‘school’ means either a government school or a non-government school. In this factsheet, we look at the differences between government and non-government schools in terms of establishment, governance, and management and operations.

Establishment

Government school

A school established by the Minister for Education and Training (“Minister”) under section 55 of the Act.

Non-government school

A school registered under s 160 of the Act.

A person must not establish or conduct a school for the education of children unless the school is registered: Act s 154(1).

A school does not include a community kindergarten; a child care service as defined in the *Education and Care Services National Law (Western Australia)*; or other prescribed establishments (Act s 154(2)).



Governance

Government school	Non-government school
<p>A government school is to have a Council (unless exempted): Act s 125 (1). The Council may be incorporated or unincorporated.</p>	<p>The governing body of a school is the person or body that has the ownership, management or control of the school: Act s 160(1)(a).</p>
<p>A Council's functions include:</p> <ul style="list-style-type: none"> ▪ establishing and reviewing the school's objectives, priorities and general policy directions; ▪ planning of financial arrangements; ▪ evaluating the school's performance; ▪ promotion of the school in the community; ▪ taking part in the formulation of student codes of conduct; ▪ determining dress codes (in consultation with students, their parents and staff); and ▪ other prescribed functions. <p>(Act s 128).</p> <p>Refer also to the constitution/rules (if incorporated) or terms of reference (if unincorporated).</p>	<p>The governing body of the school will be accountable for the following:</p> <ul style="list-style-type: none"> ▪ strategic direction; ▪ processes to plan for, monitor and achieve improvements in student learning; ▪ management of the school's financial resources; and ▪ compliance with all written and other laws. <p>(Act s 160(1)(f)).</p> <p>Refer also to the constitution. The governing body is to have a constitution that is satisfactory for the purposes of the Act: Act s 160(1)(b).</p>
<p>A Council cannot:</p> <ul style="list-style-type: none"> ▪ intervene in the control or management of a school (unless an exception applies); ▪ intervene in the educational instruction of students; ▪ exercise authority over teaching staff or other persons employed at the school; or ▪ intervene in the management or operation of a school fund.¹ <p>(Act s 132)</p>	<p>The day-to-day management and control of the school by the principal will be separate from the overall governance of the school by its governing body: Act s 160(1)(e).</p>

¹ Each government school is to have a General Purposes Fund and a fund for donations, bequests and new capital works or the benefit of the school generally: Act ss 109, 110.

Management and operations

Government school

The chief executive officer (Director General) of the Department of Education is responsible for determining, implementing and monitoring:

- (a) the standard of educational instruction in government schools; and
 - (b) the standard of care provided to students in those schools.
- (Act s 61)

They also determine the curriculum in government schools: Act s 67.

Each government school is to have a principal. Their functions are listed in s 63A of the Act, and include educational leadership, and responsibility for the day to day management and control of the school.

Teacher's functions are also listed in the Act. They include the fostering and facilitation of learning, student supervision and administrative duties to meet organisational requirements: Act s 64.

Other matters relating to the management and operation of government schools are set out in Part 3 of the Act, such as Enrolment (Division 4); Suspension and exclusion (Division 5); Finance (Division 6); and Other management provisions (Division 7).

Since 2009, government schools have been able to apply to become 'independent public schools'. Whilst the same legislative considerations under the Act will continue to apply, schools granted 'IPS' status enjoy increased flexibilities and responsibilities to make local decisions across a range of school operations.

The principal and Chair of an IPS will sign a Delivery and Performance Agreement with the Director General covering topics such as performance and accountability expectations, and the centralised provision of resources and support for the school: <https://www.education.wa.edu.au/independent-public-schools>

Non-government school

Whilst there is variation across non-government schools on account of their different ownership, ideologies, methods and resources, the Minister may determine standards for non-government schools about matters including:

- curriculum
 - staff to student ratios;
 - the days, and hours per day, of instruction;
 - staff;
 - facilities
 - the number of children in each year level;
 - the enrolment and attendance procedures;
 - Health and safety.
- (Act s 159).

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L A W Y E R S

Do you have any questions?

If you would like help on any of the topics covered in this factsheet, please contact David McMullen. He would be pleased to hear from you.



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