APPENDIX F Information regarding incorporation

The *School Education Act 1999 (WA)* provides that an incorporated council (or board) may apply to undertake the additional functions to:

- obtain funds for the benefit of the school;
- employ persons other than public service officers (e.g. a canteen manager)
- manage or operate facilities at the school (such as a canteen, swimming pool, residential accommodation for students, school farm or horticultural centre).

Where a school has an active Parents and Citizens' Association (P&C) it should not be necessary for a council to undertake these functions. Where a school does not have an active P&C, alternative strategies to undertake these functions (e.g. outsourcing) should be investigated before considering incorporation of the council. Councils should be fully aware that incorporation places additional administrative burden, cost and legal responsibility on members.

Before considering seeking approval for incorporation a principal should:

1. seek advice from the Leadership Institute on the range of options available to a school for undertaking additional functions
2. obtain professional advice (e.g. legal and financial) and familiarise themselves with the *Associations Incorporation Act 2015* .

The following is a brief overview of the issues.

Incorporated councils:

- are a separate legal entity that can sue and be sued
- do not have protection against liability provided by section 137 of the School Education Act
- are not covered for personal liability under the Department of Education's General Liability and Professional Liability insurance coverage with RiskCover.

Additional responsibilities to meet the obligations of the Associations Incorporation Act include (but are not limited to):

- Holding an Annual General Meeting (AGM) once every calendar year within 6 months after the end of the financial year (Associations Incorporation Act s 50).
- Maintaining true and correct records of all financial transactions (Associations Incorporation Act s 66).
- Presenting financial accounts to members at each AGM in accordance with the requirements of the association's financial reporting tier (Associations Incorporation Act ss 68, 71, 74).
- Maintaining a register of members, record of office holders and copy of the rules and making these records available to members to inspect upon request (AIA ss 53, 58 & 35).
- Disclosing and managing the material personal interests of members when considering matters before the council (Associations Incorporation Act ss 42 and 43).
- Members and officers must discharge their duties under the Associations Incorporation Act including the duty of care and diligence, duty to act in good faith and for proper purpose, duty not to misuse their position or information obtained and the duty not to allow the association to trade when insolvent.
- Submitting an annual information statement to the Department of Mines, Industry Regulation and Safety (Consumer Protection) within six months after the end of the association's financial year (Associations Incorporation Act s156).

In practice, an incorporated council that has been approved to undertake an additional function such as operating a school canteen:

- has an agreement with the school for the use arrangements of the canteen;
- issues employment contracts to employees and processes pay including superannuation from its own bank accounts;

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- makes arrangements for employees to comply with Department of Education requirements for a National Police History Check and a Working With Children Check.
- has appropriate accountability and financial reporting processes in place
- engages its own volunteers (separately from the school's process)
- has appropriate insurance which should extend to cover employees and employer's liability (workers' compensation cover), volunteer, personal accident, and general liability (including personal injury liability and professional negligence)
- seeks its own financial and legal advice.

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