

# MINISTERIAL INSTRUCTION

## NO 12 FOR SCHOOL ASSOCIATIONS

### Statement

This Ministerial Instruction outlines the process a school association must follow in order to apply for approval to undertake a restricted activity.

Date published: July 2017

# Ministerial Instruction No 12 for School Associations

I, Jeremy Rockliff, being the Minister for Education and Training, make the following instruction, for the purpose of Section 115(3) of the Education Act 2016.

## 1. Purpose

1.1 The purpose of this Ministerial Instruction is to issue instructions that a school association must follow in order to undertake any restricted activity. Restricted activity refers to:

- a. employing any person;
- b. holding or otherwise dealing with real property;
- c. borrowing money from any person or organisation;
- d. loaning money to any person or organisation;
- e. entering into contracts with a contract price or value of more than \$5,000.

## 2. Scope

This Instruction applies to all school associations of State schools, including all committees of school associations as defined by the Act and the model constitution.

This Instruction comes into effect on 10 July 2017.

## 3. Instructions

- 3.1. A school association must not undertake a restricted activity unless that activity is approved in writing by the Secretary (subject to any condition that the Secretary determines).
- 3.2. A restricted activity being undertaken by a school association on 9 July 2017 will be taken to have been approved by the Secretary until 31 December 2017. During which time the school association must seek approval for the restricted activity.
- 3.3. Application
  - a. Before employing any person a school association must apply to the Secretary. The application must include:
    - i. Background and reasons for needing to employ a person; and
    - ii. A copy of the proposed employment arrangement/contract of the person/s being employed; and
    - iii. A copy of the workers compensation insurance cover held by the school association; and
    - iv. Information as to how the employee is to be managed including the work health and safety requirements.
  - b. Before holding or otherwise dealing with real property a school association must apply to the Secretary. The application must include:
    - i. Background and reasons for needing to own or deal with real property. This should include the future plans for the property, or proceeds of any sale/leasing arrangements; and

- ii. A copy of the relevant ownership papers (e.g. certificate of titles); and
- iii. Information relating to the management of the real property (e.g. lease agreements, insurances etc.); and
- c. Before borrowing money from, or loaning money to, any person or organisation, a school association must apply to the Secretary. The application must include:
  - i. Background and reasons for needing to borrow money, or loan money. This should include whether the loan is a short-term or long-term arrangement; and
  - ii. A copy of the relevant loan agreements.
- d. Before entering into contracts with a contract price or value of more than \$5,000, a school association must apply to the Secretary. The application must include:
  - i. Background and reasons for needing to enter into a contract. This should include why the School could not enter into the contract; and
  - ii. A copy of the proposed contract, purchase order or quote (e.g. school uniform clothing order); and
  - iii. A copy of any legal advice sought on the contract.
- e. All applications made under section 3.3 must include a risk assessment of undertaking the restricted activity.
- f. Applications must be made in writing addressed to the Secretary, Department of Education.
- g. Where applicable applications should identify if there is a time by which a decision by the Secretary has to be made.

#### 3.4. Assessment of application

- a. On receipt of the application, the Secretary is to assess the application and determine whether to approve or not approve the application.
- b. When assessing the application, the Secretary may;
  - i. Request further information from the school association;
  - ii. Request further information from the Principal of the school;
  - iii. Request advice from Learning Services on the application;
  - iv. Seek any legal or other advice on the application that the Secretary deems necessary to make a decision.
- c. The Secretary, in assessing an application, will take into consideration the following;
  - i. The information provided on application;
  - ii. The history of the school association operations;
  - iii. Whether the arrangement is in the best interest of the school community;
  - iv. Whether all legislative and indemnity requirements will be met; and

- v. Whether conditions need to be applied.

## 4. Definitions

### Real Property

Includes land, trees growing on the land, and anything affixed to the land (called 'fixtures') such as buildings and other improvements. It also includes a leasehold interest in land created by a weekly, monthly or other periodic tenancy, or a lease for fixed period, whether or not the leasehold interest is created by a written agreement. A thing that is not affixed to land, such as an item of equipment, is not real property

## 5. Details

|                                  |   |
|----------------------------------|---|
| Minister Authorisation:          | Jeremy Rockliff   |
| Date authorised:                 | 10 July 2017  |
| Contact Officer Business Unit:   | Legal Services Unit   |
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## 6. History of Changes

| Effective date  | Last update date | Policy version no. | Notes                                |
|-----------------|------------------|--------------------|--------------------------------------|
| 10 July 2017    | -                | 1                  | New <i>Education Act 2016</i> .      |
| 6 February 2018 |                  | 2                  | Business Unit email contacts updated |