



Incorporated Community Playgroups Guide

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Introduction

If you are a member of an incorporated playgroup committee and not sure what that means or what you need to do, this guide is designed to provide broad information to help you understand what it means for your playgroup to be incorporated. The main reason that playgroups become incorporated is to allow them to sign venue leases or in rare cases own property. Having a venue lease typically allows playgroups more access and control over venues which includes the capacity to run multiple playgroup sessions on different days. Whilst there are a range of venue hire policies amongst local governments, an unincorporated playgroup will often have to book and pay for specific access on an hourly basis and with new sessions requiring new bookings and additional fees. Becoming a legal entity via incorporation can provide long term security and growth opportunities for playgroups but also comes with responsibilities. This guide is intended to provide useful information to any playgroup that is currently incorporated, considering becoming incorporated or questioning whether it should stay incorporated. Playgroup WA Development Officers are also happy to talk through your specific situation.

This guide is only intended to provide general information and cannot provide legal advice on specific issues for playgroups. For more in-depth advice and information please contact the Associations Branch at the Department of Mines, Industry Regulation and Safety.

The Department also has a comprehensive guide for incorporated organisations on its website and groups are encouraged to visit this site for more information about operating your playgroup: Introduction to incorporated associations | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au)

Please note: As an incorporated group your Playgroup is considered to be an Association under the Associations Act 2015. Throughout this document the term 'Playgroup' will be used in place of the word 'Association'.

What is an Incorporated Playgroup?

The purpose of incorporation is to create a legal entity that is separate from the individual members. In practical terms for Playgroups incorporating means:

- The Playgroup becomes a body corporate with perpetual succession (it may exist forever, until legally dissolved);
- The name of the Playgroup is protected and will end with the word 'Incorporated' or 'Inc.';
- Members or officers of the Playgroup are generally not liable to contribute towards the payment of debts or liabilities of the playgroup; and
- The Playgroup may sue or be sued in its own corporate name.



What does being 'incorporated' mean for our Playgroup?

- As an incorporated organisation your Playgroup is considered a legal entity;
- Becoming incorporated allows Playgroups to enter into contracts, sign leases and employ staff as a separate entity, rather than under the name of individual members;
- Additionally, an Incorporated Playgroup will continue to exist and be recognised in law even when the members change, until the organisation is deregistered or wound up;
- Being incorporated also means that you need to comply with certain requirements outlined in your Playgroup's constitution;
- Being incorporated requires you to file an Annual Information Statement through Associations Online (for more information about this go to AGM Reporting on page 11 of this guide); and
- There are some other benefits including being able to apply for grants that require incorporated status.

What is the Constitution or Rules?

Your Playgroup will have (or need to have) a set of rules that govern how you operate. This is often referred to as your 'Constitution' or 'Rules'. Throughout this document the term 'constitution' will be used when referring to 'constitution' or 'rules'.

The constitution sets out a range of things including:

- The purpose of your organisation;
- Who can be a member;
- Committee positions and responsibilities;
- What committee positions are required to be filled to be compliant;
- How often the committee needs to meet;
- Timing and notice of meetings; and
- How decisions are made.

It is important that committee members have access to the constitution, are aware of the responsibilities outlined in it and most importantly comply with it. The Playgroup members should also have access to the constitution. This might be something that you could include on the Playgroup's Facebook group or in welcome emails.



It is important that you keep a copy of the Playgroup's constitution along with your Certificate of Incorporation as you will need to use and refer to these at different times. These documents will need to be handed onto the next committee. Your Playgroup's Incorporation Number is on the Certificate of Incorporation.

If you are unable to locate your constitution you may order a copy through Associations Online at https://associations.commerce.wa.gov.au/associations/public/publicHomePage.jspx

Model Rules

The Associations Incorporation Act 2015 came into effect from 1 July 2016, replacing the previous Act of 1987. The new Act outlines regulations that govern not-for-profit incorporated organisations, including Playgroups. All Playgroups were to review and revise their constitution to address all the matters set out in Schedule 1 of the Act by 1 July 2019. A helpful resource for this process is the Schedule 1 checklist which can be accessed at the following link:

https://www.commerce.wa.gov.au/publications/associations-rules-checklist

If your Playgroup's constitution did not address a matter listed in Schedule 1 after 1 July 2019, the relevant provision of the Model Rules would automatically apply until action is taken to correct your constitution. You can find the Model Rules at this link:

https://www.commerce.wa.gov.au/publications/model-rules-associations-2016

It is important to update your constitution if you are aware that does it not comply with all of the Schedule 1 requirements, as this prevents any confusion about which constitution applies to your Playgroup.

What if we want to change our constitution?

If your Playgroup wants to alter its constitution this may only be done by Special Resolution. The Playgroup's current constitution will outline the steps required. If your Playgroup is considering altering the constitution, we recommend you speak with your Playgroup WA Development Officer as they may be able to provide some additional advice and support throughout this process.

Playgroups can also contact Department of Mines, Industry Regulations and Safety to get advice around altering their constitution.

If you are updating your Playgroup's constitution, you may find it helpful to use a template which includes the changes from the Associations Incorporations Act of 2015. This template can serve as a helpful guide as you work to revise your Playgroup's constitution. You can access a template constitution at the following link: Playgroup Constitution Template.



What is the Committee?

Most Playgroups refer to their managing body as 'the committee'. The committee is a group of elected members of the Playgroup dedicated to the running and management of the Playgroup. Committee members are elected at the Annual General Meeting (AGM), by way of nomination and are voted onto the committee. For more information regarding this process please see Annual General Meeting (AGM) on page 10 of this guide.

Committee Members

The constitution will advise how and when committee members can be appointed and how many committee members are required. The constitution will include key office bearer positions such as President, Treasurer, Secretary as well as ordinary committee members.

Office bearer positions, have a specific role description within the constitution and include a set of specific responsibilities they are accountable for. Playgroups can build upon these role descriptions to meet the needs of the Playgroup if it still complies with the constitution. Ordinary committee members don't hold an office bearing position. Ordinary committee members can still undertake specific tasks, can vote, and participate fully in the committee processes.

Note: Individuals can only hold one Office Bearer position on the committee at a time.

The <u>Incorporated Playgroups Committee Roles Sample</u> document outlines the roles and responsibilities for committee members. These roles can be adjusted to suit the Playgroup's needs and constitution.

Committee Powers and Responsibilities

The committee is authorised to exercise the powers and functions of the Playgroup and to manage its affairs. Committees will need to hold regular meetings, (adhering to their constitution in terms of number of meetings, quorums and notice of meetings) to manage the affairs of the Playgroup.

Key points

- The management of an Incorporated Playgroup's affairs is the responsibility of the management committee. This includes tasks such as paying bills, making decisions about how the Playgroup operates, enrolling new members, promoting the Playgroup to new members, organising venue bookings, and setting fees;
- The committee is responsible for the management and expenditure of the Playgroup's funds. It is important expenditure of funds are discussed and agreed upon at General Meetings and outcomes documented. Here is an Expenditure of Playgroup Funds Policy Sample document you may wish to utilise;
- The committee must comply with the requirements of the Act, the constitution and any other legal obligations of the Playgroup;



- Individual committee members have a duty to act in good faith and in the best interests of the Playgroup;
- The committee also has a duty of care to ensure that the activities of the Playgroup are conducted with reasonable care, skill and diligence; and
- Individual committee members are obligated to disclose conflicts of interests to the Playgroup. The committee is responsible for documenting and managing these conflicts (for more information about this please see 'What is a conflict of interest' below).

Meetings

Meetings should be held with everyone present at the same time either in person or via video technologies such as Zoom or other instantaneous technologies. Meetings should not be conducted on Messenger or "WhatsApp" groups. Meeting processes are designed to provide accountability to the members, transparency around processes and decisions, and provide protection for the committee members about what has happened and why.

How often does our committee need to meet?

Your constitution will advise how often committee meetings need to be held. This will vary from group to group.

What is a quorum?

A quorum is the number of people who need to be in attendance for a meeting to proceed. The constitution will outline what the quorum is for committee meetings as well as other meetings such as the Annual General Meeting and Special General Meetings. The constitution will also advise what happens if you don't have the required number of people present for meetings.

What is a conflict of interest?

Committee members need to be mindful of being in a position where there is a conflict between their duties and responsibilities to the Playgroup, and their personal interests. This is referred to as a 'conflict of interest' and The Act requires conflicts be disclosed to the committee as soon as it arises. Not disclosing conflicts of interests may raise the question of whether their actions, judgment and decision making can be unbiased and in the best interests of the Playgroup.

If a member discloses a conflict of interest, the Act requires the committee to:

- » Record the disclosure in minutes;
- » The committee member who is in conflict is not to be part of the discussion or vote. If quorum is not met the committee must call a Special General Meeting to pass the resolution; and
- » The committee member to disclose interest at the next general meeting.



Examples of conflicts of interests may be:

- » When a committee member has a family web design business, and the Playgroup is looking at paying them for setting up the Playgroups webpage;
- » The Playgroup is organising their end of year celebrations and a committee member has a catering business or is a face painter and is going to charge for their services;
- » The purchasing officer owns a toy store and uses Playgroup funds to purchase items for Playgroup from their store; and
- » A spouse of a committee member taking on paid employment with the Playgroup.

If you are unsure if there is a potential conflict or have questions, please contact your Playgroup WA Development Officer.

Committee meetings

Your Playgroup's constitution will advise if there are specific things that need to happen at committee meetings. Meetings should have some element of structure to them and the outcomes of meetings and decisions made should be recorded. Meetings need to:

- Follow an agenda (which is to be prepared and send out to members prior to the meeting as per your Playgroup's constitution);
- Have a minimum quorum present;
- Follow the constitution;
- Have minutes of meetings to record what happened including any decisions made, and any actions required to be completed (and by whom);
- Include a financial report from the Treasurer;
- Approve expenditure and payments; and
- Provide opportunities for all committee members to have some input and to vote on issues.

The committee may decide that some decisions such as small petty cash purchases or paying utilities bills can occur outside meetings, but this will need to be discussed and agreed by the committee.

The committee may also want or need to put in place a process for making urgent decisions between meetings.

Meetings don't have to be long, challenging processes. They can be friendly, informative, and fun. The meetings provide an opportunity for sharing information about the operation of the Playgroup and about future plans.



Agenda

Agendas should be prepared for all meetings, as they provide information about what is to be covered at the meeting, including the date, time and location of the meeting and allow members to prepare for the discussions listed on the agenda.

It is important to follow the guidelines outlined in your Playgroup's constitution regarding the amount of notice required for meetings to be given to all members. This notice period can vary depending on the specific requirements set out in the constitution. Typically, once the date for a meeting is set, the agenda is sent out to all members of the Playgroup. This is done to promote transparency about what topics will be discussed and to encourage all members, not just those on the committee, to attend the meeting.

Check your constitution for information about any requirements about timing. Agenda templates can be found here: Incorporated Playgroup Committee Meeting Agenda Template.

Agendas can include 'standing items' such as:

- » Membership update;
- » Financial update;
- » President update;
- » Maintenance Issues;
- » Health and Safety issues;
- » Fundraising business; and
- » General business arising.

Playgroups can adapt their agenda to meet the needs of their group and to help structure the meeting to ensure all important matters get addressed within the meeting.

Minutes

Minutes must be taken for all meetings, as they serve as record of what happened during a meeting. A meeting template and example of record of minutes can be found here: Incorporated Playgroup
Committee Meeting Minutes Template. Approved minutes provide an official record of:

- » Attendance (including apologies);
- » Business discussed;
- » Correspondence received and sent;
- » Reports tabled;
- » Decisions made; and
- » Resolutions adopted.



The level of detail recorded in the minutes may vary between Playgroups, but any decisions recorded should clearly state:

- » What decision has been made;
- » Who will be responsible for its implementation;
- » When the decision is to be implemented by;
- » If the decision is to be reviewed, and if so, when and by whom; and
- » Who should be notified of the decision and how.

The minutes must also record when a committee member has disclosed a conflict of interest in a matter being considered by the committee.

Annual General Meeting (AGM)

The Annual General Meeting (AGM) holds a Playgroup accountable to its members and is important to maintain good governance. The AGM is held every year within six months of the Playgroup's end of financial year (in accordance with the constitution).

At the AGM it is normal for the President to provide an overview of the year and for the Treasurer to provide a financial statement outlining the income and expenditure for the past year. All positions become vacant at the AGM (after the reports) and voting occurs to elect new committee members. The AGM is open to all members to attend. The constitution will guide you about how much notice you need to give members of the AGM and any other requirements.

Here are some links to documentation that will assist you in the planning and recording of your AGM:

- Nominations for Committee Positions Template
- Proxy Appointment Template
- AGM Notice and Agenda Template
- AGM Minutes Template

What is a financial year?

It is important to determine the financial year, as this date will be used by the Treasurer to report at the AGM.

If your Playgroup used the Playgroup WA associations template or followed the Model Rules, the financial year should be listed in the constitution under Financial Matters. However, if your Playgroup retained its original style of constitution, the financial year may be listed elsewhere.



AGM Financial Auditing & Reporting

For financial reporting and auditing, all Associations are categorised into three tiers based on their revenue:

- » Tier 1: less than \$500,000 in revenue.
- » Tier 2: over \$500,000 but under \$3,000,000 in revenue.
- » Tier 3: \$3,000,000 or above in revenue.

https://www.commerce.wa.gov.au/books/inc-guide-incorporated-associations-western-australia/ tiered-financial-reporting

Most community playgroups will fit into the Tier 1 category.

Auditing

There is no requirement under the new law for Tier 1 Playgroups to undertake a review or audit of their accounts. However, if the Playgroup's constitution states that an audit is to be conducted, then the Playgroup must adhere to their constitution and conduct an audit.

Furthermore, if the majority of members at a general meeting pass a resolution by vote that an audit will be completed, then the Playgroup is required to do so.

AGM Reporting

The Treasurer of a Tier 1 Playgroup needs to:

- Coordinate the preparation of the Playgroup's financial statements before their submission to the Playgroup's Annual General Meeting; and
- Lodge an Annual Information Statement with the Department of Mines, Industry Regulation and Safety within six months of the end of financial year.

The Annual Information Statement confirms:

- The Playgroup's financial year;
- The main object or purpose (we suggest you tick 'other' and type 'Playgroup' in the text field);
- That the Playgroup has at least six voting members;
- The date of the most recent Annual General Meeting;



- The total revenue (all monies received via fees, grants, and fundraising) for the most recent financial year; and
- If the Playgroup is registered with Australian Charities (you can check your charity status by visiting www.acnc.gov.au).

The Annual Information Statement can be submitted using Associations Online. There is also a step-by-step video

Other meetings?

Information about other meetings including Special General Meetings can be found in your constitution or at Types of meetings | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au)

Record keeping

What records do we need to keep?

The Act requires every incorporated Playgroup to keep the following records:

- An up-to-date register of all members (refer to your constitution for details). Link to Register of Members and Office Bearers Template here;
- An up-to-date copy of the constitution. If you can't find your copy of the constitution you can request one from Associations Online AssociationsOnline (commerce.wa.gov.au);
- An up-to-date list of the names and contact of people who are office holders under the constitution of the Playgroup (we have included this as a tab in the register of members template above);
- Accounting records that record and explain the financial transactions and position of the Playgroup;
- Disclosures of conflict of interest made by a committee member need to be recorded in the minutes of the meeting at which the disclosure was made; and
- Meeting agendas and minutes.



Members have the right under the Act to access the register of members, constitution and record of office holders and receive financial statements or reports.

For more information about the types of records that need to be kept visit the website Types of records to be kept | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au)

Playgroup WA requires the following records to be kept:

Attendance register (required to keep for 20 years). To cut back on paper, electronic copies may be kept.

Insurance

For information about Playgroup WA insurance please see following link https://resourcekit.playgroupwa.com.au/managing-a-community-playgroup/insurance/

For Playgroups who hold a lease (which allows them to hire out their building) please note:

- Playgroup WA insurance DOES NOT cover birthday parties. Additional insurance coverage is required; and
- If a service or business wants to hire your building, they will need to hold their own Public Liability Insurance. If you are considering hiring your building to a third party, please obtain a copy of the Certificate of Currency and speak to Finsura to ensure they have the correct level of coverage.

For further information please contact: Finsura on 1800 252 712 or email playgroup@finsura.com.au

What is Associations Online?

Associations Online is a secure online portal provided by Consumer Protection to check the status of incorporated groups, purchase copies of documents, submit a range of applications and update contact information.

It is important to include how to access the Associations Online portal in your committee handover information.

You can find a help guide for using Associations Online and step by step videos on Consumer Protection's website.



Considering changing your Playgroup's Incorporation status?

Do we need to be 'Incorporated'?

There are positives and negatives associated with being incorporated. The table below provides some differences between being incorporated and unincorporated. We also recommend you speak to your Playgroup WA Development Officer at Playgroup WA for advice.

Feature	Incorporated Playgroups	Unincorporated Playgroups
Can own property	Yes	No
Can lease buildings	Yes	No (unincorporated playgroups usually hire facilities instead)
Can enter contracts	Yes	No
Can employ people	Yes	No
Is a separate legal identity to members	Yes, the playgroup can incur debts, sue and be sued but the members are not liable	No
Follows a constitution	Yes, lodged with Department of Mines, Industry Regulation & Safety (DOMIRS)	No but suggested follow some guidelines as best practice
Minimum requirement of members to be incorporated	Yes, 6 financial members	Not applicable
Can apply for certain grants where they want you to be incorporated	Yes	No. However, Playgroup WA (which is incorporated) may be able to auspice the grant on behalf of unincorporated playgroups depending on specific grant eligibility criteria
Is required to have a committee	Yes, as per outlined in their playgroup's constitution. These include office bearers and general committee members	No although may have roles to suit the needs and size of playgroup
Is required to have committee meetings	Yes, with a quorum found in constitution	No. Committee catch-ups to discuss ideas and make decisions can be held during the playgroup session for flexibility and convenience

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Feature	Incorporated Playgroups	Unincorporated Playgroups
Annual General Meeting (AGM) requirement	Yes, with a quorum and within 6 months of the end of the playgroups' financial year	No requirement but it is best practise to end the year with a summary of what was and welcoming new members taking over
Accounts need to be audited	Playgroups are a Tier 1 organisation meaning no audit nor need an accountant to review unless audited accounts are required in the constitution. Have records for incoming and outgoing money and reconcile with bank statement	No, but should have a record of how much money the playgroup has received and how it has been spent
Annual Information Statement requirement	Yes, lodged with DOMIRS within 6 months of end of financial year	No
Formal Register of Members	Yes	No but should have an enrolment list
Policies and procedures	May have some formal policies and procedures giving an official position on what is expected and how the playgroup operates. Guides decision-making	May have some formal policies and procedures. Depending on size, some guidelines or basic rules could be in the welcome email or pack
Inventory list for insurance claims	Yes	Yes
Not for profit	Yes	Yes



Becoming an Incorporated Playgroup

An Incorporated Playgroup is required to comply with specific obligations under the Act including maintaining records, holding Annual General Meetings and preparing financial reports. Before applying for incorporation the members should ensure that they are eligible (see eligibility criteria here Which groups are eligible for incorporation? | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au) and understand the legal responsibilities that will follow.

If your Playgroup is considering becoming incorporated, we recommend you speak with your Playgroup WA Development Officer as they may be able to provide some additional advice and support throughout this process. It would also be helpful to read 'What is an incorporated playgroup' and 'What does being 'incorporated' mean for our Playgroup?' sections on page 3 and 4 of this guide.

The procedure for incorporating an association involves the following steps:

- 1 Members agree to become incorporated;
- 2 Decide on a suitable name:
- Develop a set of rules (referred to in this guide as a 'Constitution') or adopt the model rules (PGWA has developed a playgroup friendly version of the model rules see Playgroup Constitution Template); and
- Submit the application.

More information about these steps can be found here Steps to becoming an incorporated association | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au). We also recommend you read 'What is the Constitution or Rules?' on page 4 of this guide to provide more information about your Playgroup's constitution.

Considering becoming unincorporated?

There are a number of questions to consider before beginning the process of becoming unincorporated.

- Do you have six members (this is the minimum number of members required to stay incorporated)?;
- Is your Playgroup able to meet the other constitutional requirements? For example, committee makeup, quorums, number of meetings?;
- Have you already ceased operating and just need to deregister the now defunct incorporated association?;
- What are the implications for your current and future venue arrangements?; and
- If you lease a building, you should speak with your lessor to gather information prior to making a decision about becoming unincorporated and breaking lease.

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What can we do if we no longer want to be incorporated?

Playgroup committees should always be guided by their constitution. This could include holding a Special General Meeting for a vote to voluntarily wind up. Ensure you check your lease for any fees/ obligations required to be done prior to breaking lease. You may also ask the Commission to cancel the incorporation if your Playgroup is unable to meet the minimum requirements of its constitution.

There are specific processes that need to be followed and these are outlined at Deregistering an incorporated association | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au)

For more information contact your Playgroup WA Development Officer or the Associations Branch at the Department of Mines, Industry Regulation and Safety (link above) or 1300 304 054.

Dispersing assets

- Playgroups need to follow their constitution in relation to the disposal of assets and must be guided by what the Objects outlined in their constitution allows them to do. For example unless the constitution allows them to give assets including toys and money to anyone or any group outside the Playgroup, then they cannot disperse assets prior to dissolving the incorporated group. The Department's website advises "Where an incorporated association has decided to wind up, there may be some members who wish to carry on some or all of the old association's activities. Please note if this course of action is being contemplated, the old association's assets or property cannot be handed on to those running the unincorporated association";
- Under the Act assets have to be distributed to another incorporated body; and
- Assets may be transferred to Playgroup WA (Inc) and if specified Playgroup WA (Inc) can then distribute these assets to another Playgroup which may include any new Playgroup established. Toys and equipment do not have to be physically transferred to Playgroup WA however, monetary assets (funds) would need to be transferred to Playgroup WA for redistribution.



Still want to run a playgroup after closing your Incorporation?

- Email hotline@playgroupwa.com.au and your Playgroup WA Development Officer to close the Incorporated Playgroup on the database;
- Playgroups can use their existing playgroup name minus Inc or Incorporated (if you wish) or come up with a new name;
- Email hotline@playgroupwa.com.au for a new Family Playgroup Membership Application form to be sent to the new Playgroup;
- Inform the hirer of facility of the name change. You may have to fill in a new form or they can adjust; and
- If you had a bank account under the incorporated name, this will need to close and a new one opened under the new name. Playgroup WA will transfer any funds to this new bank account.

For more information contact your Playgroup WA Development Officer or the Associations Branch at the Department of Mines, Industry Regulation and Safety Associations and clubs Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au) or 1300 304 054.

Future Planning

What is handover and why is it important?

Handover is the process of handing over the key documents and records of the Playgroup to the incoming committee. After the AGM if new committee members are voted onto the committee, it is important to handover the various documents and records of the Playgroup to the incoming committee. This should include:

- Financial records:
- Membership register/lists;
- Bank account information:
- Venue lease or hire information;
- Minutes of meetings;
- Constitution;
- Certificate of Incorporation;



- Access to the Associations Online portal (outgoing committee should unlink themselves from the Playgroup; new committee member registers as an individual and receives a link; search for the Playgroup and link as a registered user);
- Playgroup WA Development Officer contact;
- Important contacts;
- Change bank signatories, Playgroup online contact, utility contacts; and
- Any other records that will assist the incoming committee members to do their jobs.

If an office bearer is leaving the Playgroup at the end of their term it is recommended that information and processes are shared leading up to their term ended as part of a 'slow hand over'. Well thought out and early succession planning can result in better outcomes for the Playgroup and a less stressful handover period for the incoming office bearer.

For a comprehensive Incorporated Playgroup Committee Handover Checklist please see here.

Playgroup WA encourages Presidents to contact their Development Officer early if they know they are going to be leaving the Playgroup so we can provide support if required.

Where can you get help?

- Associations Branch at the Department of Mines, Industry Regulation and Safety Associations and clubs | Department of Mines, Industry Regulation and Safety (commerce.wa.gov.au) or 1300 304 054
- Playgroup WA 1800 171 882 https://playgroupwa.com.au/
- Playgroup WA Resource Kit https://resourcekit.playgroupwa.com.au/

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