

# Information Sheet – TAFE Institute Boards - Directors’ Duties

This information sheet provides a broad overview of the key obligations and duties of a TAFE institute board director.

Such obligations are imposed by the:

- *Public Administration Act 2004*
- *Education and Training Reform Act 2006*
- Constitution of a TAFE Institute
- Directors’ Code of Conduct.

Some duties are imposed on the TAFE institute board, rather than on each individual board director, but there is little practical difference as it is the board directors who carry out such duties. Note also that some of the duties and obligations imposed overlap, but are nonetheless included for completeness.

In addition, TAFE boards are also required to comply with the:

- Premier’s Circular on good governance
- Appointment and Remuneration Guidelines.

## *Public Administration Act 2004*

TAFE institute boards are considered to be public entities under Divisions 2 and 3 of Part 5 of the *Public Administration Act 2004* (‘PAA’).

In general terms, Division 2 of Part 5 of the PAA sets out the governance principles which apply to public entities which includes a TAFE institute board, with separate provisions relating to duties of directors, duties of the chairperson and duties of the public entity.

Under Division 2, a director of a public entity must at all times:

- act honestly and with integrity
- act in a financially responsible manner and with a reasonable degree of care, diligence and skill

- not improperly use his or her position, or information acquired by reason of his or her position, to gain a personal advantage or cause detriment to the public.

The Chairperson must ensure that all policies adopted by, or relevant to, the public entity are provided to, or made accessible to, all directors of the public entity.

Furthermore, the board of a public entity must:

- act consistently with the functions and objectives of the entity
- inform the Minister and Department of major risks to the effective operation of the entity (and of risk management systems that it has in place to address those risks)
- ensure adequate procedures are in place for assessing the performance of individual directors
- ensure a code of conduct applicable to directors is in place
- ensure processes are in place to deal with conflict of interest of directors
- ensure an adequate gifts policy is in place for directors.

## **Education and Training Reform Act 2006**

Sections 3.1.13 and 3.1.15 of *Education and Training Reform Act 2006* (ETRA) set out the functions and accountability of a TAFE institute board, which can be interpreted as duties imposed on board directors. Duties include -

- to ensure the efficient and effective operation of the institute, and to be accountable to the Minister for the discharge of the institute's statutory functions and financial performance
- to prepare and submit to the Minister for acceptance, a strategic plan for the operation of the institute and to advise the Minister if the board wishes to exercise its functions in a manner inconsistent with the strategic plan
- to ensure that the institute operates in accordance with its strategic plan and statement of corporate intent
- to ensure that the institute operates subject to any economic and social objectives established by the Victorian State Government
- to keep full and complete books and accounts of all money received and paid by the board and maintain a continuous audit of the income and expenditure of the institute.

## **The Directors' Code of Conduct**

In 2006, the Public Sector Standards Commissioner issued a binding code of conduct for Victorian public entity Board members. As a TAFE institute board is a public entity, this document is also relevant to TAFE institute board directors. In summary, directors are required to:

- Act with honesty and integrity: be open and transparent in your dealings; use power responsibly; do not place yourself in a position of conflict of interest.

- Act in good faith in the best interests of the public entity: demonstrate accountability for your actions; accept responsibility for your decisions; do not engage in activities that may bring you or the public entity into disrepute.
- Act fairly and impartially: avoid bias, discrimination or self-interest; do not use your position as a director to seek an undue advantage for yourself, family members or associates, or to cause detriment to the public entity.
- Act in a financially responsible manner: understand financial reports, audit reports and other financial material that comes before the Board; actively inquire into this material.
- Exercise due care, diligence and skill: make reasonable enquiries; understand the financial, strategic and other implications of decisions.
- Use information appropriately: ensure information gained as a director is only applied to proper purposes and is kept confidential.
- Comply with the establishing legislation, or its equivalent, for your public entity: act within the powers and for the functions set out in your public entity's establishing legislation and/or ministerial charter.

The complete Directors' Code of Conduct and guidance notes are available on the Victorian Public Service Commission's website:  
<http://vpssc.vic.gov.au>

## **The Constitution of a TAFE institute**

Each TAFE institute is also governed by a constitution. All TAFE institute constitutions were re-made in April 2016. TAFE constitutions impose additional obligations to those imposed on the board by ETRA. Some of those include that the TAFE institute board must:

- Elect one of its members as Chair of the Board.

- Provide all assistance and information that the Minister, the Secretary or Deputy Secretary may reasonably require.
- Notify the Minister of vacancies on the board and where a director or chairperson is absent or unable to perform his other duties for 10 consecutive meetings.
- Meet at intervals prescribed in the Constitution of the respective TAFE institute and keep minutes of meetings and records of decisions.
- Appoint a board secretary who is an executive member (other than the Chief Executive Officer) of the institute or who is qualified to be a company secretary under the *Corporations Act 2001* (Cth).

### Premier's Circular on good board governance

In 2015, the Premier released a Circular on good board governance. The Circular outlines the minimum standards of good governance that all Victorian Government boards are expected to meet in relation to the:

- recruitment and selection of board members;
- appointment and remuneration of board members; and
- the induction of members.

[http://www.dpc.vic.gov.au/images/documents/Premiers\\_Circular\\_201502\\_Good\\_Board\\_Governance.PDF](http://www.dpc.vic.gov.au/images/documents/Premiers_Circular_201502_Good_Board_Governance.PDF)

### Appointment and remuneration guidelines

These Guidelines outline the standard processes and principles for appointment and remunerating board members of TAFE institutes. TAFE boards are required to comply with these Guidelines when co-opting members to the board, and determining whether board members are eligible for remuneration.

<http://www.dpc.vic.gov.au/index.php/policies/governance/appointment-and-remuneration-guidelines>

### Additional information for board directors

*Please note that this information sheet does not constitute legal advice and is by no means a complete account of all the legal obligations that may apply to TAFE institute boards and directors. It is advisable that TAFE institute board directors take the time to understand their obligations, and seek legal advice where necessary, to obtain a full and proper understanding of their obligations at law.*

Some additional resources which new board directors may find helpful are:

‘Welcome to the Board’

<http://vpsc.vic.gov.au/resources/welcome-to-the-board/>

‘Conflicts of Interest and Duty – a practical guide for directors of public entities’

<http://vpsc.vic.gov.au/governance/board-directors/conflicts-of-interest-and-duty/>

‘Directors’ Code of Conduct and Guidance Notes’

<http://vpsc.vic.gov.au/governance/board-directors/directors-code-of-conduct/>

**For further information, please contact:**

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Governance  
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