

Information Sheet: Application of the Public Administration Act 2004 to TAFE Institute Boards

Overview

TAFE institute boards are considered to be public entities under Part 5 of the *Public Administration Act 2004* (PAA), and are subject to the requirements of a public entity set out in Part 5 of the PAA.

This means that any director of a TAFE board should be aware of and comply with the requirements of Part 5 of the PAA in undertaking his or her duties as a director. The provisions are summarised below.

Division 2

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

Section 77 – Application of Division

As the new TAFE institute boards were reconstituted in 2013, they are public entities established after the commencement of Part 5 of the PAA and therefore subject to the provisions in Division 2.

Section 78 – Other duties not affected

This section does not affect other duties imposed on a public entity by any provision of the Act and it has effect in addition to other laws relating to the criminal or civil liability of directors.

Section 79 – Duties of a director

A director must act in the best interests of the organisation and with a reasonable degree of care and skill. A director must also not improperly use his or her position or disclose information acquired while being in that position.

Section 80 – Duties of chairperson

The chairperson must ensure that all policies adopted by or relevant to the public entity are made available to all directors.

Section 81 – Duties of entity

This section contains an extensive list of obligations imposed on the board in relation to board governance, ranging from reporting to the responsible Minister to ensuring there is an adequate gifts policy for directors.

Section 82 – Loans to directors

A public entity cannot make a loan or provide a loan guarantee or security to a board director or their spouse or relative.

Section 83 – Sub-committees

A public entity can form or dissolve sub-committees and its membership is not restricted the board of directors.

Section 84 – Subsidiaries

The public entity must obtain the responsible Minister's approval before forming a subsidiary. Full approval or conditional approval may be granted, the latter of which could impose restrictions with which the public entity must comply.

Section 85 – Accountability

This section stipulates that the board of a public entity is accountable to the Minister and also sets out the Minister's powers in relation to the board, such as the appointment and removal of directors.

Section 86 – Injunctions

The Minister has the power to obtain an injunction, including an interim injunction, restraining a director from engaging in conduct that contravenes the PAA or any other law.

Section 87 – Bringing of proceedings

The responsible Minister has the power to bring proceedings or do so in the name of the public entity where a director has made a profit as a result of the contravention mentioned in section 86.

Division 3

Division 3 of Part 5 of the PAA sets out powers relating to the removal, suspension or standing down of directors of public entities.

Section 88 – Application of Division

As the new TAFE institute boards were reconstituted in 2013, they are public entities established after the commencement of Part 5 of the PAA and therefore subject to the provisions in Division 3.

Section 89 – Power to remove or suspend a director

If a director is believed to have contravened a code of conduct or any duty or obligation under the PAA, the director may be removed from office or suspended for up to a month. The section also details the resignation process for a director.

Section 90 – Standing down of a director

A public entity director who exercises quasi-judicial functions must stand down if they are charged with an indictable offence until the charge is finally determined.

Please note that this information sheet does not constitute legal advice and is not a complete account of the obligations set out in the PAA, or other laws and policies that apply to TAFE institute boards and directors.

For further information:

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The *Public Administration Act 2004* can be found at www.legislation.vic.gov.au.