



VTA Response to the Review of Education and Training Legislation Discussion Paper 12th May 2005

Preamble

1. This submission is made by the Victorian TAFE Association (VTA) to the Strategic Initiatives Division, Department of Education and Training in response to the Review of Education and Training Legislation Discussion Paper (February 2005).
2. As the peak employer body for the TAFE sector in Victoria, with membership including all of Victoria's TAFE Institutes and four multi-sector universities, the VTA is well placed to comment on the Review of Education and Training Legislation Discussion Paper (The Discussion Paper) from the TAFE perspective.
3. In preparing this response the VTA distributed a questionnaire to all TAFE Institute Councils and to Universities with a TAFE Division which sought responses to the key questions asked in The Discussion Paper but, in particular, sought responses to questions relating to the Victorian Vocational Education and Training Act 1990.
4. The VTA also met with representatives of the Office of Training and Tertiary Education (OTTE) on April 26, 2005 who provided the VTA with a discussion paper titled 'VLESC Legislation Discussion Paper' (VLESC Discussion Paper) which sought responses from the VTA on a number of possible legislative changes relating more directly to the vocational education and training sector (VET) and its enabling legislation.
5. The responses to the questionnaire and the legislative issues raised in the VLESC Discussion Paper were further discussed at the April 21 VTA Association Council meeting and a draft VTA response paper was then prepared and circulated to VTA members for their comment and final endorsement.
6. The VTA welcomes the initiative of the Minister for Education and Training in releasing the Discussion Paper and is very supportive of the Victorian Government's objectives for the review. We also acknowledge that this review is part of a range of initiatives by the Government to ensure a modern and innovative education and VET system in Victoria, and, as such, any legislative change stemming from the review should be complementary to and support the expectations for the VET sector and the broader role of TAFE Institutions outlined in Minister Kosky's 2002 Ministerial Statement *'Knowledge & Skills for the Innovation Economy; on the Future Directions for the Victorian Vocational Education and Training System'*. The VTA also notes that there has recently been concluded a TAFE Governance Review which highlighted a number of developments pertinent to this review.
7. This response has been structured into a number of sections:
 - General comments on The Discussion Paper (paras 9 to 15)
 - VTA response to the current VET Act 1990 (paras 16 to 55)
 - VTA response to possible changes to other Statutory Authorities (paras 56 & 57)
 - VTA response to the key questions asked in The Discussion Paper (paras 58 to 71)

8. Where appropriate the VTA's views on the issues raised in the VLESC Discussion Paper have been incorporated into the response.

General comments on the Discussion Paper

9. The Discussion Paper rightfully focuses on the schools sector and the Education Act 1958 which regulates this sector. The VTA agrees that many parts of this act require review to bring them into line with the present and future needs, expectations and aspirations of parents, students and the community. In doing so, the VTA recognizes the importance of a complementary world class VET sector in Victoria to maximize the flexibility and choice for school students when determining their post compulsory pathways to further education and relevant vocational education and training. As such the VTA is pleased that the underpinning legislation for the VET sector in Victoria will also be considered in the review process.
10. The review provides the opportunity to further strengthen the legislative base for VET and, in particular, the governance and operational arrangements for TAFE Institutes in Victoria. This can be achieved by fine-tuning, the comparatively recent VET Act 1990, amended in 2000 to reconstitute the State Training Board as the Victorian Learning and Employment Skills Commission (VLESC) and the Victorian Qualifications Act 2000 which established the Victorian Qualifications Authority (VQA) as a statutory authority.
11. In welcoming the review, the VTA is concerned that the Discussion Paper referred consistently to the "education and training system" and, as such, does not give adequate recognition to the broad education and training role provided by TAFE Institutes, nor does the Discussion Paper acknowledge the significance of the publicly funded TAFE Institutes as part of the overall VET sector. This appears to be inconsistent with the broader role for TAFE Institutes as set out in the 2002 Ministerial Statement (*op. cit p4*).
12. The VTA notes that an initial technical analysis of existing education and training legislation undertaken by the Department of Education & Training (DET) identified the need for further clarification relating to the powers of school councils and that a concurrent review of school governance will be undertaken to inform the overall review. While the VTA supports this concurrent review, it will be important that the recently completed TAFE Governance Review is also used to inform the review outcomes. In fact many of the issues raised in the VLESC Discussion Paper and discussed later in this response, stem from the TAFE Governance Review.
13. The Discussion Paper in *Section 1 Community Needs and Expectations* makes comment regarding the contemporary education and training environment and, while the VTA would endorse the general characteristics noted in the Discussion Paper, the VTA is concerned that the Discussion Paper does not give adequate attention to the numbers of providers now involved in the *increased range of pathways to Year 12 and post-school education*. Increasingly, TAFE Institutes, ACE providers and private RTOs are providing education and training to 15 to 19 year olds that were once the domain of the schools sector. This development is exposing a number of policy and legislative gaps which transgress the education and training sectors especially around duty of care and students at risk. It will be important that the review addresses these issues in order to overcome the rather piecemeal approach currently in place.

14. Section 1 of the Discussion Paper also refers to community expectations for the education and training system and notes that the system should provide: *The right curriculum, the right skills and the right values*. The Discussion Paper then reflects on the way education and training should be provided so that the system will be *effective, efficient, flexible and transparent*. The VTA agrees with the general propositions put forward in the Discussion Paper but is very concerned that the role and importance of applied learning is not recognized in ensuring the right skills are provided in the education and training system. This is especially important given the increasing provision of vocational education and training in school settings and the expectations set out for VET in the 2002 Ministerial Statement (*op. cit p5-6*). The Discussion Paper is also silent on the important role that industry should play in influencing educational outcomes. It will be very important to ensure that any new legislative framework for VET retains the very strong relationship that the VET sector now has with industry, both through membership of Statutory Authorities, membership of Institute Councils, advisory mechanisms to government and in new structures being created at the national level with the previous functions of ANTA being absorbed into the Department of Science Education and Training (DEST).
15. The VTA believes that the three broad policy principles of *Equality, Reciprocity and Subsidiarity* are appropriate to inform the development of new education and training legislation but is concerned that there is an inherent tension between the principle of subsidiarity and the dual role that government has in Victoria as the owner of the publicly funded TAFE Institutes and as a purchaser of training services from the same Institutes. It is unclear from the Discussion Paper how the review will address this dichotomy and the implications for user choice when purchasing decisions are made by governments which may restrict the availability of certain types of VET programs for students and parents in the interest of government priorities for the VET sector. This is clearly a difficult issue and highlights some differences in application of the broad principles outlined in the Discussion Paper between the schools sector and the VET sector. In the same vein there are tensions between the *Free, Compulsory and Secular* principle outlined in the Discussion Paper for the schools sector and the growing importance of user pays approaches and growth in fee for service expectations in the VET sector. This can be further exacerbated by Federal and State arrangements for the funding of VET.

VTA Response to the Current VET Act 1990

Section 6 Ministerial Directions

16. The VTA believes that the current articulated powers of direction of the Minister under S6(1) (a) to (h), with the exception of S6(1)(g) of the Act are appropriate as they reflect the diversity of operations and accountabilities of a TAFE Institute. Given this diversity, which to a large extent differentiates TAFE Institutes from other service agencies of government, the VTA believes it is better to spell out those areas where Ministerial direction is appropriate rather than have these articulated powers of direction replaced by a more general power of Ministerial direction.
17. Section 6(1)(g) which enables the Minister to determine what approvals must be obtained by TAFE Institute Councils before they invoke S26(2) of their powers to enter into certain types of business structures appears to be in contradiction to the current expectation that TAFE Institutes are to engage widely in commercial business activity and are to achieve certain commercial revenue targets annually. At a minimum S6(1)(g) needs to be clarified in relation to S26(2) so that it is quite clear what TAFE Institute Councils are permitted to do in pursuit of commercial business objectives for their Institutes.

18. Section 6A Ministerial directions on employment matters especially S6A(2)(a) and S6A(2)(b) appear to be out of touch with contemporary practice in TAFE Institutes and need revision in light of current clauses in awards and enterprise agreements regarding redundancies, EO and recognition of prior service.
19. Concern was also expressed by VTA members that there seems to be no quality, version controlled process in place regarding Ministerial directions to ensure that a complete set of current directions is sent to TAFE Institutes by an annually prescribed date.
20. There was also a strong concern expressed that Ministerial Directions are being overused and interpreted by OTTE to reduce the autonomy of TAFE Institute Councils. This is clearly evident in relation to Executive employment and is inconsistent with the way this is treated in other government agencies where executive employment is handled under a whole-of-government approach through GSERP. In a similar way it will be important to clarify the relationship between whole-of-government directions through the new State Service Authority and Ministerial Directions to TAFE Institute Councils.
21. The VTA suggests that there be wider consultation with TAFE Institutes in the formation stage of any Ministerial Direction to ensure there were no anomalies in its implementation.

Orders of the Governor in Council

22. The VTA acknowledges that many procedures and processes are quite formalized under the VET Act 1990 especially in relation to establishing a TAFE College (S23), incorporation of TAFE college councils (S24), Council membership (S28), terms and conditions of office of members (S29), reserve powers of Minister (S31), and require orders of the Governor in Council to come into effect or be changed. This can inhibit the flexibility and responsiveness of the Act and there may be some instances where it would be more appropriate for the Minister to have the authority to act rather than having to go through the Governor in Council process. The VTA is willing to consider which, if any, of the current procedures and processes could be amended this way but in general believes the current legislation works in the best interest of the government and the TAFE Institutes established under the Act. For instance it may be appropriate for the Minister to directly approve a change to the constitution of a TAFE Institute or a name change for an Institute provided the Council of the Institute has agreed to the change.

The VLESC

23. In general the VTA is in favour of retaining the VLESC with most of its current functions, powers and accountabilities. The VTA believes it is important to have an independent statutory body charged with the promotion, planning, co-ordination and administration of VET in Victoria.
24. VTA members support retaining an independent Board of the VLESC with strong industry representation for provision of advice to the Minister on VET priorities and issues. The VTA believes that this advisory capacity would be strengthened by amending Section 13(1B) of the Act to include an additional member of the VLESC Board drawn from the TAFE sector in recognition of the importance of the public TAFE Institutes as providers in delivering VET in Victoria.

25. In supporting the retention of the VLESC, VTA members are concerned that the independence of the VLESC is currently being compromised by the lack of transparency and documentation of VLESC delegations to OTTE. Many VTA members believed the relationship between the VLESC, OTTE and TAFE Institutes had become quite confusing with a strong perception emerging that OTTE has become the driver of VET provision in Victoria rather than a source of credible, relevant, reliable and strategic advice to the VLESC about VET provision.
26. Some of this confusion appears to be created by the lack of an independent secretariat within the VLESC and with this service being provided through DET. TAFE Institutes have had very little direct relationship with the VLESC and as such there is a lack of understanding about its role with most day to day relationships being not with the VLESC but with OTTE. However, VTA members see no need to change the current delegations of the VLESC within the VET Act 1990 and are on the whole supportive of retaining the current secretariat arrangements rather than establishing another secretariat within the VLESC. The key was not so much legislative change but the need to create a more open and transparent relationship between the TAFE Institutes, the VLESC, DET in its secretariat role for the VLESC and OTTE in its planning, regulation and delivery role for VET in Victoria.
27. A number of the current functions of the VLESC relating to its role as the State Training Agency S9(2) will need amendment once new national arrangements for the absorption of ANTA into DEST is finalised later in 2005. The VTA would welcome the opportunity for further consultation on the changes to S9(2) once arrangements are finalised.
28. In a similar vein, S22(A) conferral of functions on ANTA in relation to Victoria will require amendment as will S22(B) Powers of ANTA in Victoria and S22(C) Representations to funding bodies. In relation to S22(C) the VTA believes this clause is redundant and inconsistent with self governance arrangements relating to TAFE Institutes.
29. A number of responses to the VTA Questionnaire suggested that S9(1)(a) and S9(1)(ab) Functions of the Commission, should be amended to remove the reference to employment to enable the Commission to focus its activities on vocational learning and skills formation in Victoria. However, there was not a unanimous view on this within the VTA membership.

Part 3 TAFE Colleges

Changes in Terminology

30. Currently the VET Act 1990 Part 3 refers to TAFE Colleges. The VTA would like to see 'TAFE Colleges' changed to 'TAFE Institutes' to reflect the current terminology used by the public providers of VET in Victoria.
31. Section 24(1)(a) refers to establishing a Council to oversee and manage a TAFE college. To bring this into line with the recently proclaimed Public Administration Act 2004 and the general terminology used for similar bodies, the VTA supports the name 'Council' being changed to 'Board'.
32. Similarly, members of an Institute Board should be called 'Directors' rather than Councilors. This will require S34A(1)(a) Employment of Staff to be changed so that there is no confusion with the role of Director on the Board of the TAFE Institute. The VTA would recommend that S34A(1)(a) be changed to refer to 'must employ an Institute Chief Executive Officer' (CEO). This change would also require change to Institute constitutions being processed through the Governor in Council.

Section 25 Functions of TAFE College Councils

33. The VTA believes that the Functions of TAFE Institute Councils do not now reflect the realities of the operations of a TAFE Institute 15 years after the inception of the VET Act 1990. The current environment is far more competitive with many more stakeholders now involved in the VET sector. TAFE Institutes now work in the context of a more ambiguous relationship with government who are at the same time owners of the Institutes yet see themselves as purchasers of Institute services in the same way as they do for other non-government providers in the sector. TAFE Institutes are now engaged in significant commercial operations both on and off shore and many TAFE Institutes are earning in excess of 30% of their revenue from non-government sources. This is also a growing expectation of government as is evident in the Performance and Funding Agreements of TAFE Institutes. A number of mergers have also occurred since the inception of the Act and the general size of Institutes and their geographic coverage through campus structures has grown significantly. TAFE Institutes today are complex business organisations delivering a diverse array of education and training services to their client base.
34. In this sense there is a need to get a correct balance between the strategic governance role of Councils of the Institutes and the day to day management of business activity through delegations to the CEO. Section 25(1)(a) would better reflect this relationship if the words 'to oversee and manage' were replaced with 'to provide effective and efficient governance of the Institute'.
35. Section 25(1)(a) also refers to preparing periodic management plans for the college. Again this is inconsistent with current best practice in governance which requires a more strategic business approach to be taken by the Council. TAFE Institutes Councils now prepare very sophisticated strategic plans and underpin these with a range of operational business plans for both government and commercial operations. It is suggested that this clause be amended to reflect this reality.
36. Section 25(2)(b) underplays the significance of commercial activity by TAFE Institutes. It is suggested that this clause be amended to reflect the commercial activity of TAFE Institutes.
37. Section 26(2) Powers of TAFE College Councils provides for Councils to enter into a range of business structures and relationships in order to carry out its functions as outlined in S25(2). The intention of S26(2) requires clarification in any new Act in terms of using these powers to pursue commercial objectives. In the same way, the application of S6(1)(g) Ministerial Directions which requires Institute Councils to seek approval to use their powers under S26(2), could be considered inappropriate in the contemporary TAFE Institute environment.
38. TAFE Institutes are currently not allowed to establish or operate Group Training Companies (GTC) and can find themselves disadvantaged in the market place by this restriction on their entry. S25(1) should be amended to allow TAFE Institutes to establish and operate GTCs or use their powers under S26(2) to engage in joint ventures or other arrangements with existing or new GTC entrants.
39. The VTA recognises that under the current VET Act that there is some ambiguity regarding borrowing powers of TAFE Institute Councils. This clearly requires clarification and it will be important to ensure that when a TAFE Institute Council seeks to borrow funds that there is a consistent and transparent process established to obtain approval to do so.

40. The current VET Act stipulates the functions and powers of a TAFE Institute Council and establishes the Council as a body corporate who can exercise its powers in terms of these functions. The review may wish to consider in which cases an Institute Council may undertake activities that are not part of its stipulated functions and on what basis they can do this.
41. The VTA would welcome, in the context of the review, the opportunity for further consultation on a general overhaul of the current clauses in the VET Act 1990 which relate to the Functions, Powers and Accountabilities of Institute Councils. In our view it is important that these reflect the current expectations of government and the contemporary operating environment of TAFE Institutes whilst recognising consistency with the Public Administration Act 2004. This would assist greatly in establishing a clear statement of the key accountabilities of TAFE Institute Councilors, as members of the Council of a public entity, to the Minister in terms of their governance role, the discharge of their statutory obligations and for the educational and financial performance of the TAFE Institute.
42. *To move forward and respond to the challenge of the innovation economy, TAFE needs new freedoms to innovate, to be flexible enough to move with the rapid changes in industry, to build new alliances with other educational institutions and to embed training activity in the community and industry in new ways(op. cit p6).*
43. This stated intent needs to be measured against the current legislation, Institute constitutions and Ministerial orders and where necessary amendments be made to achieve stated objectives.

Section 28 Council Membership

44. In general the VTA believes that the current sections of the Act are appropriate with notable exceptions being the elected positions of staff and student members. The VTA members thought it was important that Ministerial appointments were kept at one half of the total Council membership. A clear reason for this was the possible conflict of interest which may arise for the Minister who is also a purchaser of training services from the Institute. It was also pointed out that TAFE Institutes provide many services other than just government education and training provision and, as such, need a different Council membership from other service agencies of government which were generally more singular in their focus. Regional TAFE Institute Councils expressed concern that any move to make Ministerial appointments a majority of Council membership could also lead to centralisation of decision making at the expense of their regional responsibilities.
45. The major issue facing TAFE Institute Councils was finding appropriate candidates who had the right skill sets for their role and who were willing to give up a considerable amount of their time to discharge their responsibilities under the VET Act 1990. This was a significant issue for regional Institutes who were drawing from a smaller population base. VTA members reflected on the growing accountability requirements of Councils and the increased need for professionalism and business skills amongst Council members.
46. The VET Act S28(1)(e) and S28(2) stipulate the required skill sets of non-elected Council members. It would be better if S28(1)(e) became an overarching statement relating to the skills and experience of non-elected Council members and that S28(2) was deleted. This would provide greater flexibility for TAFE Institutes in identifying and approaching potential Council members.

47. Concern was expressed regarding the increasing expectation by government that TAFE Institute Councils have a balanced membership which reflect the diversity of the community. At present the Act is not prescriptive regarding this and change is being affected through the Ministerial approval process for membership. The VTA believes it would be better if the Act was amended to include a clause something like "must have regard to ensuring membership of Council reflects the diversity of the community". This would improve decision making processes at a Council level without the perceived prescription now taking place and may expedite ministerial approval of appointments.
48. The time it is taking for Ministerial approval of TAFE Institute Council membership is clearly a major problem. The VTA agrees that it would be sensible to fix a date each year for Ministerial appointments to TAFE Institute Councils and for a process to be established whereby terms of Councilors are staggered so that one third of Councilors retire or become eligible for re-election each year. This process would mirror the approach now in place in the Health sector where an annual four month cycle is in place to identify, select and appoint members of Hospital Boards. VTA members also suggested that it would be sensible for the concept of reserve members to be introduced, with reserve members likewise to be approved by the Minister through this process so that if any vacancy occurred through the year the reserve member could immediately take up their membership. The VTA suggests that February is an appropriate time for this process to occur and that these timelines should be adhered to in selecting co-opted members to Council.
49. In relation to this, it is also suggested that any review of the legislation not limit unduly, the number of consecutive terms that a Councilor could serve given the difficulty of recruiting good Councilors and the valuable expertise brought to the Council by experienced members who have a sound understanding of the complex governance issues in the sector.
50. VTA members are concerned about the efficacy of student membership on their TAFE Institute Council. Due to the differences in age groups, ratios between part and full time students, campus and workplace delivery, and the socio-economic background of TAFE students, a significant number of Institutes have found it difficult obtaining nominations for the student member. A number of VTA members were also concerned about the expectations which were being placed on student members who were seen by the student body as their representative. This expectation is not always consistent with the governance requirements and accountabilities of Councilors under the Act. The VTA would prefer that student input be obtained through appropriately structured student forums and other processes designed to involve students in the broader affairs of the Institute.
51. Representation verses a broader governance role is also an issue with the elected staff member on Council. Because they are elected by staff, a climate is created whereby Institute staff expects the elected member to be their advocate, often at the expense of their broader governance role. This is particularly evident in the area of terms and conditions of employment which often puts the staff member in an invidious position especially around enterprise bargaining time. Again there are other ways of involving staff through forums, structured communication, involvement in working groups and improved devolution of responsibilities through the organisation.

52. In the event that student and staff representatives remain as members of Council the VTA suggests a clear statement of their role is outlined in the VET Act and in Institute constitutions. This is normally done now through a Code of Conduct developed by Institute Councils. It would be sensible if the revised VET Act provided enabling clauses to take appropriate measures or sanctions against Council Members, including elected members, who act or are acting contrary to the Council's Code of Conduct or the best interests of the Institute.
53. These issues reflect the growing expectations of government and the community for improved governance and accountability by TAFE Institute Councils, whose operating context is now extremely complex in meeting dual social and commercial objectives. Given this, the elected membership categories of Institute Councils may need to be rethought so the Councilors' focus is squarely on governance rather than representation.

Other sections of the VET Act 1990

54. Section 34A(3) which relates to employment of staff states *'the college Director must be taken to be the employer, for the purpose of the provisions of Schedule 2 relating to contracts of employment and for no other purpose, of any person employed under subsection (1)(b)'*. The VTA requires clarification as to why the Director/CEO would not be the employer for all purposes.
55. Section 36 'Immunity' does not adequately explain the extent of immunity particularly in the light of increased compliance and reporting requirements and the massive increase in commercial activity and growing international operations of TAFE Institutes. S36(1) requires clarification as to the implications for immunity for Institute Councilors of any action/activity which the Institute Council is involved in under S26(2) of its powers.

VTA response to possible changes to other Statutory Authorities

56. There were no major concerns about the legislative framework for the other Statutory Authorities under review. As with the VLESC the issue is more about building appropriate relationships with these authorities so that their functions, powers and accountabilities were well understood. The VQA was cited as one of the Statutory Authorities which was working well with TAFE Institutes, especially in supporting the delegation of powers for self accreditation and self management of scope to TAFE Institutes. The regulatory role of the VQA in registering RTOs in the VET sector in Victoria is acknowledged and with the right level of resources the VQA could play such a role across the schools sector as well. Any changes to the VQA or Board membership would need to maintain the level of TAFE Provider consultation and include in its composition TAFE Provider representation.
57. The outcomes of consultations for establishing new National VET arrangements suggest that States and Territories establish a national Registration and Audit body rather than continue to have a range of separate State and Territory bodies. These developments will need to be factored in when considering the VQA's future role.

VTA response to the key questions asked in The Discussion Paper

1. ***Should the principle of a free instruction to a certain age or attainment level be affirmed as a guiding principle in new legislation? (For example, there may be a better case for enshrining access to Education and Training to a certain level of attainment such as Year 12 or its equivalent.***
 58. The VTA members believe this is a long standing principle which serves Victoria well. There is no conclusive position arrived at in relation to whether free instruction should be to a certain age or attainment level. The VTA can see some advantages for students in having an attainment level underpinning the new legislation in that it would encourage improved pathways and user choice for students who would be supported in either the schools or VET sector while they completed their studies. If free instruction is available to a certain attainment level, then it does raise a number of significant questions that require clarification in relation to the funding arrangements where a student may complete their education in another sector other than the schools sector.

2. ***Should the secular nature of government school provision be affirmed as a guiding principle in new legislation?***
 59. The VTA supports this proposition.

3. ***Should people's right to choose between school education providers, registered or recognised by the Government, be established as a guiding principle in new legislation?***
 60. The VTA supports this proposition.

4. ***Should education and training providers be required through legislation to operate and deliver a curriculum consistent with Australian democratic principles (including those of tolerance, respect for the individual, freedom of speech and freedom of religious affiliation)?***
 61. VTA members have a range of views on this question and are concerned about enshrining this requirement through legislation. School curriculum should cover the exploration of various value systems including the principles of democracy but it should also be open, in today's global world, to the values and systems that are used in other societies. The aim should be to ensure that a school leaver has been exposed to a wide range of values held in the community and industry, to assist them in forming their own understanding of the world and to make educated life decisions.

 62. From the perspective of TAFE Institutes, the key driver of curriculum is industry relevance, with much TAFE curriculum being developed to support nationally developed Training Packages. In terms of delivering the curriculum, TAFE Institute Councils develop a set of values and ethical principles that underpin the operation of their Institute. There is, however, likely to be a strong correlation between these values and ethical principles and tolerance, respect for the individual, freedom of speech and freedom of religious affiliation. The VTA would prefer that curriculum be delivered in TAFE Institutes in a manner consistent with the Institute's values and ethical principles within the general parameters applying to public entities.

5. *Should the right of public access to information about provider performance be established as a guiding principle in new legislation?*

63. VTA members are generally comfortable with this proposition but are strong in their belief that there is adequate disclosure already through annual reports and the 'Selected TAFE Institute Performance Measures for the Victorian State Training Network' regarding their Institute's performance and, as such, are concerned that any enshrining of this principle in the new legislation should only be on the basis that base line data, data collection methodology and KPI's are robust with statistical integrity and have been negotiated with the Institutes. VTA members were also concerned that disclosure did not lead to undesirable 'League Tables' or 'Ranking' of Institutes.
64. It will be important to distinguish between public access to provider performance in relation to government profile delivery and other KPI's negotiated in the Performance and Funding agreement between a TAFE Institute and the VLESC and access by third parties to commercial in confidence data which could provide competitors with an unfair advantage, or interfere with privacy rights.
65. Provider performance parameters should be consistent between TAFE Institutes and Private RTOs

6. *Should the right of parent and student access to information about individual student achievement be established as a guiding principle in new legislation?*

66. VTA members were generally comfortable with this principle but are concerned that the legislation will need to take into account the differences between compulsory and post-compulsory education as well as an appropriate framework for the adult learning environment of TAFE Institutes. Many TAFE students are adults in their own right and parents would not have access to information about their achievement. The current privacy legislation appears to provide an appropriate level of access for students.

7. *Should a common and flexible regulation and quality assurance regime be established for all schools?*

67. VTA members support this proposition.

Conclusion

68. VTA supports the continuation of separate legislation for the schools sector and the VET sector to reflect the different nature and expectations of each sector. The VET Act 1990 is a relatively recent Act and in general is working well in terms of the planning, regulation, governance and delivery of VET through TAFE Institutes in Victoria.
69. This response to the Discussion Paper has highlighted a number of areas which require refinement within the VET Act 1990 to ensure that TAFE Institutes can realize the expectations of government as set out in the 2002 Ministerial Statement, and to bring the VET Act 1990 into line with the new Public Administration Act 2004 and forthcoming changes at the national level.

70. The response has also identified some non legislatively based changes which will make the VET Act 1990 more workable, such as improved relationships and a better understanding of the functions, powers and accountabilities between TAFE Institute Councils, Statutory Bodies such as the VLESC and OTTE.
71. The VTA welcomes the opportunity to comment further on the outcomes from the general response to the Discussion Paper and will be pleased to participate further in reviewing the draft legislative changes, as has been formally offered by the Deputy Secretary VET to the VTA Governance Standing Committee.

VTA Response to the Review of Education and Training Legislation Discussion Paper

Summary Schedule

This Schedule outlines key points only as an assistance to the reader. The entire VTA submission needs to be perused to determine the complete VTA response.

Key Points	Paragraph Reference	Summary of Commentary: VTA Position	VET Act 1990 Reference
1	10	Maintain a separate VET Act and fine tune VET Act 1990 to ensure the Act meets contemporary and future expectations.	
2.	12	That the Review be informed by the recent TAFE Governance Review.	
3.	13	An urgent need exists to address how the education and training sectors are delivering to 15 to 19 year old early school leavers and whether legislative change can ensure consistency of approach across the sectors.	
4.	14	Any change to the legislation should acknowledge the importance of applied learning and the role of industry.	
5.	15	There are still unresolved tensions created by the dual role of government as the owner of the public TAFE sector and as a purchaser of services from the sector. This priorities set through this relationship can impact on student choice.	
6.	16	The current articulated powers of direction of the Minister, with the exception of S6(1)(g) are appropriate and given the diverse roles of TAFE Institutes it is better to retain these articulated powers of direction rather than replace them with a more general power of Ministerial direction.	S6(1)(a-h)
7.	17	Given the growth in commercial activities of TAFE Institutes there is a need to clarify the relationship between S6(1)(g) and S26(2).	S6(1)(g) S26(2)
8.	20	There is a need to clarify when Ministerial directions should be used and their relationship to whole-of - government directions through GSERP and the State Services Authority.	
9.	22	VTA would prefer to maintain the requirements of Governor in Council orders in relation to TAFE Institutes as specified in the current VET Act 1990. However, the VTA is willing to consider if there are any current procedures and process that could be handled on reference from an Institute Council, by direct Ministerial decision.	S(23) S(24) S(28) S(29) S(31)
10.	23	The VTA supports the retention of the VLESC in any new legislation.	
11.	24	The advisory capacity of the VLESC would be strengthened by amending S13(1B) of the VET Act 1990 to include an additional member from the public TAFE Institutes.	S13(1B)
12.	26	The VLESC secretariat should remain within DE&T but work should be done on improving the understanding of the roles and responsibilities and delegations of the VLESC to DE&T.	

Key Points	Paragraph Reference	Summary of Commentary: VTA Position	VET Act 1990 Reference
13.	27 28	The VLESC functions will need to be amended to take account of new national arrangements for VET. S22(C) should be deleted as it is inconsistent with self governance arrangements for TAFE Institutes.	S9(2) S22(A) S22(B) S22(C)
14.	30	'TAFE Colleges' should be renamed 'TAFE Institutes'.	VET Act 1990 Part 3
15.	31	'TAFE Council' should be renamed 'TAFE Board'.	S24(1)(a)
16.	32	Members of Institute Boards should be called 'Directors' rather than Councilors.	
17.	32	Change S34(1)(a) to refer to employing a 'Chief Executive Officer' (CEO) rather than a Director.	S34A(1)(a)
18.	34	Amend S25(1)a) to refer to "to provide effective and efficient governance of the Institute".	S25(1)(a)
19.	35	S25(1)(a) to be amended to reflect the current and future business responsibilities of Institute Councils.	S25(1)(a)
20.	36	Amend S25(2)(b) to reflect the commercial expectations of government for TAFE Institutes.	S25(2)(b)
21.	38	Amend S25(1) to allow TAFE Institutes to operate Group Training Companies.	S25(1) S26(2)
22.	39	The VET Act 1990 needs to clarify the borrowing powers of Councils.	
23.	40	The VET Act 1990 needs to clarify when an Institute Council can undertake activities that are not part of its stipulated functions.	
24.	44	Ministerial appointments to Institute Councils should remain at one half of the membership.	S28
25.	45	All Institutes found it difficult to attract Council members with the right skill sets.	
26.	46	S28(1)(e) should become an overarching clause relating to the skill requirements of Institute Councilors and S28(2) could be deleted.	S28(1)(e) S28(2)
27.	47	The VET Act should be amended to include a general clause such as 'must have regard to' in terms of Council membership reflecting community diversity.	
28.	48	Council Appointments, including Ministerial appointments take place in February each year with Council membership terms being staggered so that one third of members retire or are eligible for re-election each year.	
29.	48	That the Minister appoint 'reserve councilors' to speed up appointment to vacancies that occur through the year.	
30.	49	That new legislation not restrict the number of consecutive terms that a Councilor can serve.	
31.	50	That the position of elected student member on Council is not consistent with best practice in governance.	
32.	51	That the position of elected staff member on Council is not consistent with best practice in governance.	
33.	52	That the VET Act should spell out the role of student and staff members of Council and the Act should enable action to be taken against a Councilor who is not acting consistently with the Council's Code of Conduct.	
34.	54	S34A(3) - need to clarify to VTA why the Director would not be the employer for all purposes.	S34A(3)

Key Points	Paragraph Reference	Summary of Commentary: VTA Position	VET Act 1990 Reference
35.	55	The current Clauses relating to 'Immunity' need revision to clarify their meaning in light of the growing commercial operations of TAFE Institutes especially S36(1) in relation to S26(2).	S36
36.	56	The VTA supports the continuation of the VQA as a Statutory Body and would support the VQA taking on a regulatory role across the education and training sectors provided TAFE provider consultation levels and TAFE provider representation is maintained.	
37.	58	VTA supports in general the principle of free instruction to a certain age or attainment level.	
39.	59	VTA supports government schools being secular as a guiding principle in new legislation.	
40.	60	VTA supports the proposition of people's right to chose between school education providers.	
41.	62	VTA believes there will be a strong correlation between TAFE Institute Values and Ethics and the principles of tolerance, respect for the Individual, freedom of speech, and freedom of religious affiliation, underpinning the operation of a TAFE Institute.	
42.	63 64 65	VTA is comfortable with the right of public access to information about providers, providing there is integrity in the way data is collected and analysed and that commercial operations are excluded. Private and Public RTOs should have the same performance parameters. VTA does not support potential extension to 'Ranking' or 'League Table' of providers.	
43.	66	VTA agrees in general with parent and student access to information about individual student achievement but notes that in a TAFE Institute many students are adults in their own right and are learning in an adult learning environment.	
44.	67	VTA supports a common and flexible regulation and quality assurance regime being established for all schools.	
45.	68	The VTA concludes that it supports the continuation of a separate VET Act and notes that the relatively recent VET Act 1990 has served the sector well.	
46.	69	The VTA believes the current VET Act needs revision to reflect the expectations of the public TAFE sector set out in the Ministerial Statement (2002) and the current operating environment of TAFE Institutes.	
47.	70	The VTA notes the need for some non-legislatively based change to improve the relationships and understanding of respective roles and functions between TAFE Institute Councils, VLESC and OTTE.	
48.	71	The VTA seeks further consultation on the progress of the review.	