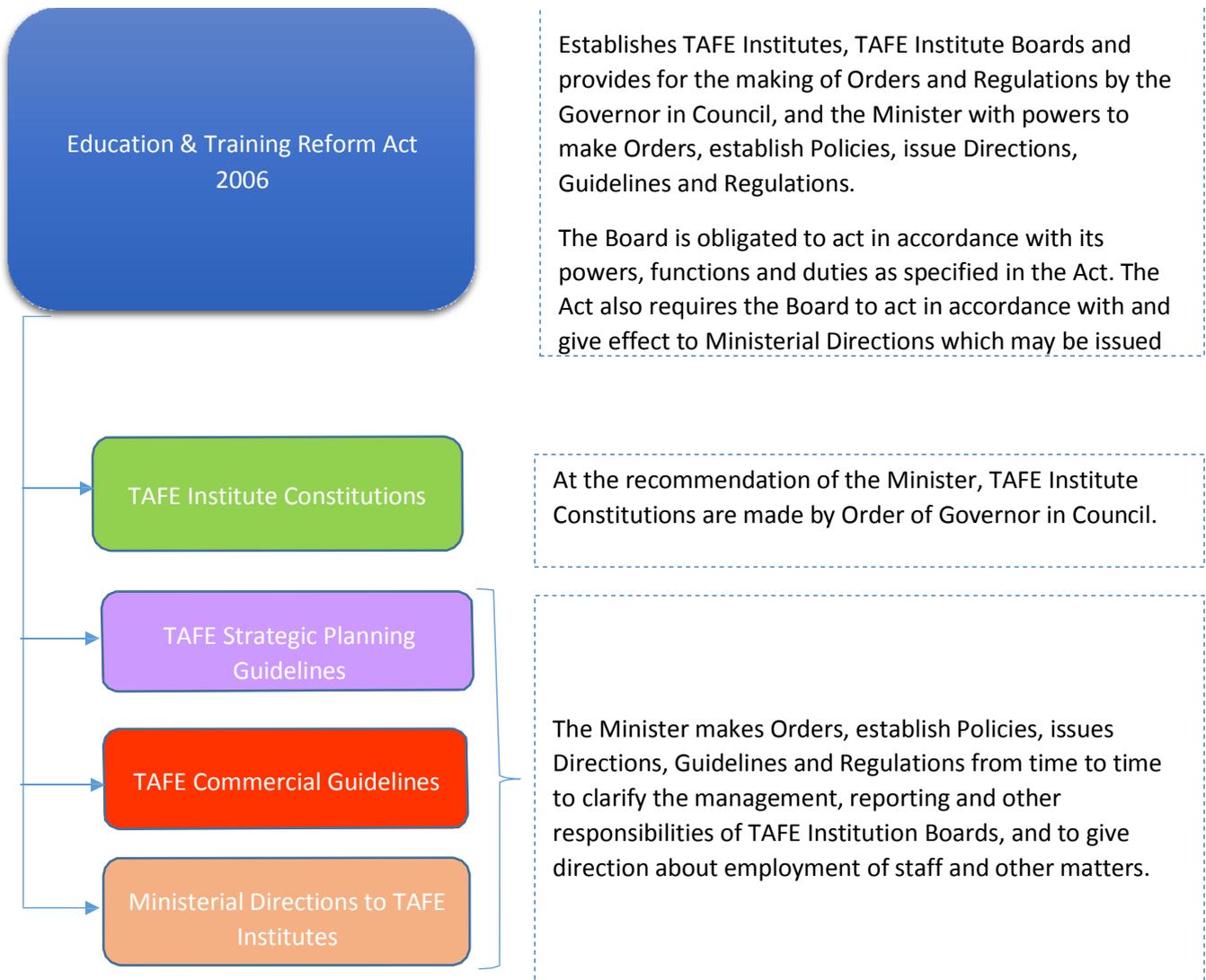


Obligations of TAFE Institute Boards Under the Education and Training Reform Act 2006 (ETRA)

1. Overview of the ETRA and Subsidiary Instruments Imposing Obligations on TAFE Boards.



2. Other Key Legislative Instruments Imposing Obligations on TAFE Boards.

Other key Acts imposing obligations on Directors and Boards of Victorian State Public Entities are the Public Administration Act 2004 and the Financial Management Act 1994 and Minister for Finance Directions pursuant to that Act. These are not expanded on in this paper.

3. Key Contractual Obligations of TAFE Boards.

The ETRA provides for the Secretary of the Department to make payment to RTOs under a VET Funding Contract (A Service/Funding Agreement). The Contract terms and conditions impose obligations on a TAFE Institute. The contract is subject to numerous changes via periodic variations, Service Agreement Notifications (SANs) / Contract Notifications (CNs).

THE EDUCATION & TRAINING REFORM ACT 2006

The ETRA provides the Minister with broad powers to require any TAFE institute or adult education institution to supply any information that he or she may reasonably require in relation to the exercise of any powers and the performance of any functions of that body outside Victoria.

A person or body established by or under this Act or continued in operation under this Act must comply with a policy, guideline or direction issued by the Minister to the extent that the policy, guideline or direction relates to, or is expressed to apply to, the operations of that institution, person, body or TAFE division.

The ETRA also imposes a range of specific obligations on TAFE Institute Boards, TAFE Institutes and TAFE Institute CEOs. The following section focusses only on the requirements as they relate to TAFE Institute Boards (as separate from those relating to the Institutes and CEOs).

ETRA Section 3.1.15 - Accountability of TAFE institute boards	Key Dates	Comment
<p>The board of a TAFE institute is accountable to the Minister for the effective and efficient governance of the institute including the discharge of its statutory functions and for the educational and financial performance of the institute.</p> <p>A board must perform its functions and exercise its powers subject to a VET funding contract, any economic and social objectives established from time to time by the Government of Victoria, its Constitution and any other requirements of the Act.</p> <p>The board of a TAFE institute is accountable to the Minister for the effective and efficient governance of the institute including the discharge of its statutory functions and for the educational and financial performance of the institute.</p>	NA	
ETRA Section 3.1.18A Strategic Plans		
<p>The board of a TAFE institute must at the direction of the Minister and at the time or times determined by the Minister, prepare and submit to the Minister for acceptance a strategic plan for the operation of the institute in accordance with the guidelines established by the Minister from time to time.</p> <p>The Minister may accept, accept it with amendments, or refuse to accept a strategic plan.</p> <p>The board of a TAFE institute must advise the Minister if it wishes to exercise its functions in a manner inconsistent with its accepted strategic plan.</p>	Timelines as per Strategic Planning Guidelines	Further requirements are in the Strategic Planning Guidelines
ETRA Section 3.1.18B Statement of Corporate Intent (SCI)	Key Dates	Comment
<p>For each year, the board must prepare, in consultation with the Secretary, a proposed statement of corporate intent (SCI) in relation to the provision of VET and submit it to the Minister.</p>		Further requirements are in the Strategic Planning Guidelines

ETRA Section 3.1.18B Statement of Corporate Intent (SCI)	Key Dates	Comment
<p>If, prior to 1 October the Minister provides a statement of expectations in relation to the board in relation to operations of the institute in the next year, these must be taken into account in preparing a SCI.</p> <p>If the board and the Minister fail to agree on a SCI before 1 March of the year to which the SCI relates, the Minister may make a SCI in relation to the TAFE institute.</p> <p>A SCI may be varied at any time if the board and the Minister so agree.</p> <p>If the board and the Minister fail to agree to a proposed variation of a SCI within 28 days after the variation is proposed, the Minister may vary the SCI or decline to vary the statement of corporate intent.</p>	<p>1 October</p> <p>1 March</p>	
ETRA Section 3.1.18C Content of Statement of Corporate Intent (SCI)	Key Dates	Comment
<p>A SCI must be consistent with the strategic plan accepted by the Minister for the institute and specify in respect of the year to which it relates:</p> <ul style="list-style-type: none"> • the services to be provided by the institute and the funds to be provided to the institute; and • the objectives, priorities and key performance outcomes to be met by the institute; and • the performance indicators, targets or other measures against which the performance of the institute is to be assessed and monitored; and • how and when the institute must report to the Minister and the Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and • any other matter agreed from time to time between the Minister and the board of the TAFE institute, or determined by the Minister. 	<p>NA</p>	
ETRA Section 3.1.18D Annual meetings	Key Dates	Comment
<p>The board must ensure that the CEO convenes an annual meeting of the institute to be held on or after 1 January and on or before 30 June in each year; or if the Secretary in writing approves a later date, on or before that later date in each year. The CEO must:</p> <ul style="list-style-type: none"> • cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the institute is located giving notice of the date, time and place of the meeting; and that the meeting is open to the public; and give notice of the annual meeting to the Secretary. • at each annual meeting of a TAFE institute the board, submit the financial statements and report of operations prepared in accordance with Part 7 of the Financial Management Act 1994; and 	<p>Between 1 January and 30 June unless otherwise approved by the Secretary.</p>	<p>Further requirements are in the Constitution</p>

ETRA Section 3.1.18D Annual meetings	Key Dates	Comment
<ul style="list-style-type: none"> report on the services provided by the institute in the preceding year and on services proposed to be provided in the following year; and must report on any other matters as prescribed in the regulations. 		
ETRA Section 3.1.23 Employment of staff	Key Dates	Comment
<p>Subject to any direction given by the Minister, a TAFE institute must employ a CEO of the institute and before appointing a person as the CEO of the TAFE institute must notify the Minister in writing of the proposal to make the appointment.</p> <p>The Minister may, within 10 days after receiving that notification and after considering the TAFE institute's proposal, give to the institute notice in writing of his or her objection to the proposed appointment.</p> <p>A TAFE institute must not appoint a person as the chief executive officer of the institute if the Minister has objected to the appointment.</p>	10 days notice period	Expanded further in Ministerial Direction
ETRA Schedule 2	Key Dates	Comment
<p>Contains a range of obligations for Boards and Directors relating to:</p> <ul style="list-style-type: none"> Ethical behaviour Disclosure of Interests Meetings Resolutions Committees Delegations Maintenance of a "Fund" (Bank account) 	NA	Expanded on further in the Institute's Constitutions

TAFE INSTITUTE CONSTITUTION

The Constitution establishes any objectives and functions of the Institute in addition to those set out for all institutes in the ETRA, establishes the TAFE Institute Board, establishes the general and specific duties of the Board, and makes clear that the Board does not have power to act in any way that is inconsistent with its duties and obligations under any applicable law, legislation, guideline directions or policies. The following section focusses only on the things the Board “must” do (as separate from those things it “may” do) and does not include duties imposed on employees of the institute.

Constitutions vary slightly from Institute to institute depending on the nature of amalgamations etc. The list below is based on clauses common to all Institutes.

General Duties of the Board (additional to those imposed by the ETRA and other laws)	Key Dates	Comment
<p>The board must:</p> <ul style="list-style-type: none"> a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution; b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria; c) meet at intervals prescribed in this Constitution; d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and e) ensure the safe custody and proper use of the common seal of the Institute. 	Ongoing	
Composition and Appointments		
<p>The number of directors on TAFE Boards can be between 10 and 15 and is at the discretion of the Board subject to it being described in the Institute’s Constitution.</p> <p>At least half of the directors are appointed by the Minister, one is the CEO and one is a member of staff elected by the staff of the Institute. The remaining directors are appointed by Co-option by the Board based on a merit based process.</p> <p>The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.</p> <p>Terms for all directors including the elected staff director (except the CEO) are for up to 3 years.</p>		Ref ETRA section 3.1.16(1)(a)

Chairperson and Office-bearers	Key Dates	Comment
<p>The board must elect one of its directors as chairperson for term specified by the board, up to a maximum of three years.</p> <p>The board must decide the process for electing a chairperson and this process must identify the skills and capabilities the board requires in a chairperson; and assess potential candidates for chairperson against the identified required skills and capabilities.</p> <p>If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.</p> <p>The board may also have such other office bearers as it determines.</p>	<p>As soon as practicable</p>	<p>Ref ETRA section 3.1.16A</p>
Notification of Vacancies, Appointments, Absences or Inability of Directors to Perform Duties	Key Dates	Comment
<p>Appointments must be notified to the Minister.</p> <p>If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.</p> <p>If, in the opinion of the board, the chairperson or a director unable to perform the duties of the office the board must inform the Minister.</p>	<p>Within one calendar month of the appointment or election.</p> <p>20 business days after a vacancy arises.</p> <p>As soon as practicable</p>	
Indemnity of directors and committee members	Key Dates	Comment
<p>The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done by that director or committee member in good faith in the exercise of a power or the performance of a function or duty of a director or committee member; or in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function or duty of a director or committee member.</p>	<p>Annually</p>	
Board Meetings	Key Dates	Comment
<p>The board must meet at least six times each year and at least once every three months.</p>		

Annual Meetings	Key Dates	Comment
<p>The board must ensure that the chief executive officer convenes an annual meeting of the Institute.</p> <p>A notice must be published at least 15 business days before the date on which the annual meeting is to be held. The notice must include the date, time and location at which the meeting will be held; and a contact person, including telephone number, postal and email address, in relation to arrangements for attendance at the meeting and to obtain a copy of the papers.</p> <p>The board must arrange for copies of the material to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.</p>	<p>Between 1 January and 30 June unless otherwise approved by the Secretary.</p> <p>15 business days before the date of the meeting.</p> <p>10 business days</p>	<p>Ref ETRA 3.1.18D(2)</p>
Minutes of Meetings and Records Of Decisions	Key Dates	Comment
<p>The board must keep a record of its decisions, including decisions of its committees; and keep full and accurate minutes of its meetings, its committee meetings and of annual meetings.</p> <p>The board must make a copy of all records of decisions of the board, its committees and its delegates; and minutes of the board, its committees and of annual meetings available to the Deputy Secretary on request.</p>	<p>Ongoing</p> <p>On request</p>	<p>Ref ETRA 3.1.18D</p>
Establishment of committees	Key Dates	Comment
<p>The board may, to facilitate its functioning, establish and dissolve committees. The board may, at any time appoint or remove from office a member of a committee and must provide in writing to the member the reasons for the removal.</p> <p>The Board must by resolution, make rules and give directions, with which committees must comply, about:</p> <ul style="list-style-type: none"> • their quorums; • voting powers of their members; • their proceedings; and • any other matter; and • confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time. 	<p>NA</p>	

Financial and Asset Management - General Powers and Duties	Key Dates	Comment
<p>The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.</p> <p>The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the institute.</p> <p>The procurement policies and procedures must include:</p> <ul style="list-style-type: none"> • provision in relation to the expenditure levels at which tenders or competitive quotations are required; • the process for calling for tenders and competitive quotations; • the evaluation of tenders and competitive quotations based on objective criteria designed to assess value for money; and that provide tenderers and prospective tenderers a fair opportunity to compete for work; • the level of clearance required for letting contracts of particular kinds or of particular value; • contract management procedures, responsibilities and accountabilities; and • regular review of the procurement policy and its implementation. <p>In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.</p> <p>The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.</p>	NA	

Audits	Key Dates	Comment
<p>The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute in relation to the board's functions, subject to and in accordance with any requirements under the Financial Management Act 1994.</p>	Ongoing	<p>Under the Minister for Finance Directions pursuant to the Financial Management Act 1994 TAFE Institutes as Public sector agencies are required to establish, maintain and resource an independent internal audit function.</p>
Management and Governance	Key Dates	Comment
<p>The board must have a process for recruitment and employment of the Chief Executive Officer of the Institute based on merit and must exercise appropriate oversight over the Chief Executive Officer.</p> <p>The board must decide what powers, duties and responsibilities it will assign to the Chief Executive Officer.</p> <p>The board must appoint a board secretary. The board secretary must be an executive of the Institute (i.e. employed under an executive contract of the kind referred to in Part 2 of Schedule 3 to the Act) or if not an executive of the Institute, must be qualified to be a company secretary under the Corporations Act 2001 of the Commonwealth. The Board Secretary must not be the Institute's Chief Executive Officer.</p>	Ongoing	Ref ETRA Schedule 3

Delegations	Key Dates	Comment
<p>The board must not, and does not have power to, delegate:</p> <ul style="list-style-type: none"> • the making, amending or revoking of institute rules, the standing orders, nor any regulation made by it; • the approval of, or a decision to undertake or participate in, any major commercial activity in relation to the Institute; • the submission of a strategic plan to the Minister; • the submission of an annual statement of corporate intent to the Minister; • the approval of the audited financial annual reports; or • the formation of a partnership, trust or joint venture by the Institute. <p>A delegation must be recorded in the board's minutes and given in writing and must specify the period for which it is valid; and any limitations or conditions on the delegation.</p> <p>In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.</p> <p>A delegation must be recorded in the board's minutes and given in writing and must specify the period for which it is valid; and any limitations or conditions on the delegation.</p> <p>The board may revoke a delegation at any time.</p> <p>The board may continue to exercise or perform a power, duty or function which it has delegated.</p> <p>Anything done under a delegation has the same effect as if it had been done by the board; and will not be invalidated by the later lapse, revocation or variation of the delegation.</p> <p>If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.</p> <p>The board remains responsible for actions taken under delegation.</p> <p>The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.</p> <p>A delegation of the board is revoked by operation of this subclause three years after its making</p>	<p>Ongoing</p>	<p>Ref ETRA clause 11(4) of Schedule 2</p>

Institute rules	Key Dates	Comment
<p>The board may make institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those institute rules.</p> <p>The board may amend or revoke any rule or regulation relating to the Institute made by its predecessors.</p> <p>An institute rule is revoked 5 years after its making.</p>	Ongoing	<p>Rule is undefined in the Act or Constitution or any other guideline.</p> <p>The purpose of the sunseting of Rules is to require the board to review them periodically.</p>
Common seal	Key Dates	Comment
<p>The common seals of the Institute must be kept in the custody of the board secretary or such other custody as the board directs and not be used except as authorised by the board.</p> <p>Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the institute or by the board secretary and at least one director who is not a member of staff of the Institute.</p>	Ongoing	

Conduct & Accountability of Directors	Key Dates	Comment
<p>This section sets out a wide range of principles and behavioral requirements of directors and other relevant persons. It largely reiterates the requirements of directors under the Public Administration Act and VPSC Directors' Code of Conduct and covers the following areas:</p> <ul style="list-style-type: none"> • acting lawfully and act in the best interests of the Chisholm Institute when making board decisions; • exercising reasonable care and diligence; • integrity, honesty, impartiality; • not misusing their position; • not improperly directing staff; • disclosing conflicts of interest; • treating people with respect; • not to improperly seek to confer and advantage or disadvantage on any person; • ensuring prudent use of resources and in the public interest; • not using information improperly and not releasing confidential information or information acquired in the course of his or her duties as a board director except as authorised by the board.; and • providing leadership and supporting and promoting these principles. <p>A breach of these requirements is capable of being misconduct.</p>		<p>Misconduct by directors is dealt with under the relevant provisions of the Public Administration Act.</p>

Guideline 2 - Strategic plan	Key Dates	Comment
<p>Preliminary discussions between the TAFE institute and Department regarding the strategic plan</p> <p>Proposed strategic plan submitted to the Minister, if required</p> <p>Strategic plan submitted to the Minister, if required</p> <p>Where the Minister has refused to accept a strategic plan, revised strategic plan to be submitted.</p>	<p>Due date : April – June</p> <p>Last business day in August</p> <p>Last business day in October</p> <p>Within 30 days of notification that the Minister has refused to accept the strategic plan or other date as directed by the Minister</p>	
Guideline 3 - Annual statement of corporate intent	Key Dates	Comment
<p>Preliminary discussions between the TAFE institute and Department regarding the statement of corporate intent</p> <p>Minister's statement of expectations, if required</p> <p>Statement of corporate intent submitted</p>	<p>September</p> <p>Last business day in September</p> <p>Last business day in October</p>	<p>Ref. ETRA 3.1.18C Statement of Corporate Intent (SCI)</p>
Guideline 4 - Business Plan	Key Dates	Comment
<p>Quarterly phasings (for each quarter and year to date) and annualised Full Time Equivalents from the Business Plan</p>	<p>Last business day in January</p>	
Guideline 5 - Monitoring and reporting by the TAFE Institute and Board	Key Dates	Comment
<p>The Board must regularly monitor its performance against the financial and non-financial performance measures that are included in its strategic plan, statement of corporate intent and the Business Plan.</p> <p><i>(continue next page)</i></p>	<p>Ongoing</p>	

Guideline 5 - Monitoring and reporting by the TAFE Institute and Board	Key Dates	Comment
<p>Continuous disclosure requirements - the Board must advise the Deputy Secretary as soon as it becomes aware of -</p> <ul style="list-style-type: none"> • significant variations to strategies compared to the strategic plan, statement of corporate intent or Business Plan; • significant variations to the timing of capital investments compared to the strategic plan, statement of corporate intent or Business Plan; • a material variation (+/- 10% or more) in forecast full year profit or cash flow from operating activities compared to the Business Plan; • significant variation in financial or non-financial performance measures compared to the Business Plan; and • any financial or non-financial (including reputational) developments which may materially impact the TAFE institute or the Government. 	Ongoing	
Quarterly reporting requirements (March, June, September and December)	<p>15th working day after 31 March</p> <p>15th working day after 30 June</p> <p>15th working day after 30 September</p> <p>20th working day after 31 December (unaudited)</p>	
Guideline 6 - Annual Report	Key Dates	Comment
Draft Annual Report submitted	Last business day in February	
Final Annual Report submitted	Last business day in March	
Guideline 8 - Annual return	Key Dates	Comment
Annual return submitted	Last business day in February	

Guideline 9 - Compliance plan	Key Dates	Comment
<p>The Board must prepare and keep up to date a compliance plan, and set out adequate measures that the Board is to apply to ensure compliance with -</p> <ul style="list-style-type: none"> • the ETRA; and • Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and • any other matters which the Minister directs must be included in the compliance plan. 	Ongoing	
Guideline 10 - Asset management plan	Key Dates	Comment
<p>The Board must prepare and keep up to date an asset management plan, and set out adequate measures that the Board is to apply to ensure compliance with -</p> <ul style="list-style-type: none"> • the Act; and • Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and • any other matters which the Minister directs must be included in the asset management plan. 	Ongoing	
<p>The board secretary must ensure that the original asset management plan is up to date, incorporating any amendments made by the Board; and ensure that the asset management plan, and any amendments to or remaking of the asset management plan, is provided to the Deputy Secretary.</p>	Ongoing	
Guideline 1 - Financial objectives for TAFE institutes	Key Dates	Comment
<p>The Board must ensure that the Institute is able to pay all debts as and when due.</p>	Ongoing	

COMMERCIAL GUIDELINES

The Commercial Guidelines establish additional obligations for institutes in relation to the conduct of commercial operations for the Institute.

Key definitions:

“Commercial Activity” is:

- the provision or sale by the TAFE institute (or the TAFE institute in partnership, in trust, joint venture or association with others) of land, property, goods, services, or other activities on a commercial basis; or
- the acquisition by the TAFE institute of, or capital expenditure on, land, property, goods, services or other things; or
- other activities conducted on a commercial basis or of a commercial nature.

“Major Commercial Activity” is Commercial Activity that involves a transaction or transactions with a total estimated cost greater than 5 per cent of annual revenues, but does not include the supply of vocational training and higher education that is consistent with the TAFE institute’s strategic plan; or the supply of vocational training and higher education that is supplied pursuant to a competitive tender process.

Guideline 1 - Prior to Entering into or Expanding a Commercial Activity	Key Dates	Comment
A full business case must be prepared by the TAFE institute and approved by the Minister before undertaking a Major Commercial Activity.	Event driven	
Guideline 2 - Disposal of Crown land	Key Dates	Comment
<p>The Board must seek the Minister's approval to sell or otherwise dispose of Crown land.</p> <p>In the event that the land is approved for sale by the Minister, following a public land assessment by the Department of Sustainability and Environment, it must be referred to the Department of Treasury and Finance (DTF) for disposal as the Assistant Treasurer is solely responsible for the sale and alienation of Crown land under the Land Act 1958.</p>	Event driven	
Guideline 3 - Disposal of Freehold Land	Key Dates	Comment
<p>The process must also be tailored for each individual project depending on project requirements and must broadly include the following steps -</p> <ul style="list-style-type: none"> • the Board assesses that the land should be disposed; • the Board seeks the Minister's approval to sell and authorise the administration of the sale by the Board if - <ul style="list-style-type: none"> ○ the freehold land is in the name of the Minister; or ○ the freehold land is in the name of the TAFE institute and the value of the land is greater than \$5 million; <p><i>(continue next page)</i></p>	Event driven	Note - in disposing of freehold land, a TAFE institute is bound to comply with the Victorian Government's Policy and Instructions for the purchase, compulsory acquisition and sale of land.

Guideline 3 - Disposal of Freehold Land	Key Dates	Comment
<ul style="list-style-type: none"> property is prepared for sale pursuant to the provisions of the Sale of Land Act 1962; the Board arranges for the land to be valued and sold in accordance with any applicable guidelines or policies; the Board engages legal representatives to act on its behalf in connection with preparation of contract documentation and arrange and bring transaction to settlement; when the sale value exceeds \$100,000 (including GST), ensure that the sale is recorded on the Victorian Government Contracts Publishing System; and arrange for the asset to be removed from the TAFE institute's and Department's Asset Register. 		<p>The requirements are further augmented by the terms and conditions contained in Attachment 2 of the HESG Title Transfer Report specifically Clause 11: Restrictions on Dealings with land.</p>
Guideline 4 - Proceeds from the sale of assets	Key Dates	Comment
<p>Before submitting a proposal for retaining the proceeds, the Board must be satisfied that the following assessments and measures have been undertaken, as appropriate to the nature of the use of the proceeds from the sale of assets -</p> <ul style="list-style-type: none"> that the use of the proceeds from the sale of assets is consistent with the TAFE institute's strategic plan or its objects or functions; a financial analysis that assesses the projected cash flow, the expected rates of return to the TAFE institute, and the level of exposure of the TAFE institute's resources and assets; a cost/benefit analysis including, as appropriate, social costs and benefits; a risk assessment and development of associated risk management measures; a market analysis, that identifies the opportunities, strengths, weaknesses and threats of the TAFE institute to enable the development of adequate business strategies; whether the governance arrangements, legal structures and audit requirements are appropriate for the size, risk and type of use of the proceeds from the sale of assets; and a due diligence assessment in a form appropriate for/commensurate with the use of the proceeds from the sale of assets. <p>A full business case must be prepared by the TAFE institute and approved by the Minister for the use of the proceeds from the sale of assets.</p>	<p>Event driven</p>	<p>The requirements are further augmented by the terms and conditions contained in Attachment 2 of the HESG Title Transfer Report specifically Clause 11: Restrictions on Dealings with land.</p>
Guideline 5 - Acquisition of Freehold Land	Key Dates	Comment
<p>A standard process is followed by the Board for the acquisition of freehold land. The process is tailored for each individual project depending on project requirements, and is broadly covered by the following steps:</p> <p><i>(continue next page)</i></p>	<p>Event driven</p>	<p>Note - In acquiring freehold land, a TAFE institute is bound to comply with the Victorian Government's Policy and instructions for the purchase,</p>

Guideline 5 - Acquisition of Freehold Land	Key Dates	Comment
<ul style="list-style-type: none"> • the Board to undertake due diligence investigations including but not limited to Certificate of Title, environmental issues, town planning, heritage, flora and fauna, check survey; • if the land is contaminated, the nature of the end use will determine whether the acquisition should be abandoned or further legal and appropriate technical advice be obtained to determine the options available to contain or remove the contaminants; • the Board arranges for the land to be valued in accordance with any applicable Victorian Government policies; • the Board engages legal representatives to arrange and bring the transaction to settlement; • when the purchase value exceeds \$100,000 (including GST), ensure that the purchase is recorded on the Victorian Government Contracts Publishing System; and • arrange for the asset to be added to the institute's and Department's Asset Register. 	Event driven	compulsory acquisition and sale of land.
Guideline 6 - Leasing	Key Dates	Comment
<p>The TAFE institute must not enter into an arrangement with a third party to lease out Crown land or buildings on Crown land.</p> <p>The TAFE institute must seek the prior approval of the Minister before entering into an arrangement with a third party to lease out freehold land in the name of the Minister, or buildings on freehold land in the name of the Minister.</p> <p>Any proposal submitted to the Minister seeking approval to lease out land or buildings or part thereof to a third party must include, where applicable -</p> <ul style="list-style-type: none"> • an overview of the proposal; • a detailed plan of the land and the location of the proposed facility; • a risk assessment of the activity and development of associated risk management measures; • funding arrangements; and • the general terms and conditions of the lease. 		
Guideline 7 - Conflict of Interest	Key Dates	Comment
<p>Consultants engaged in connection with any Commercial Activity must be independent and not have any personal or pecuniary interest in the transaction. A written declaration in this regard is essential.</p>	Event driven	

Guideline 8 - Indemnities	Key Dates	Comment
<p>Before providing an indemnity which is considered by the Board to be significant or high risk, having regard to relevant accounting standards, the Board must seek the approval of the Minister and Treasurer; and consider whether the indemnity should be supported by an insurance policy which indemnifies the TAFE institute to the same value, where insurance coverage is available.</p>	Event driven	
Guideline 9 - After Entering or Expanding a Commercial Activity	Key Dates	Comment
<p>After entering a new Commercial Activity or expanding an existing Commercial Activity, the Board must regularly monitor the Commercial Activity as appropriate to the scale and nature of the Commercial Activity.</p>	Ongoing	
Guideline 10 - Register of Major Commercial Activities and Report	Key Dates	Comment
<p>The Board will maintain a register of its current Major Commercial Activities which discloses:</p> <ul style="list-style-type: none"> • all the TAFE institute's Major Commercial Activities, and Major Commercial Activities of the TAFE institute's controlled or related entities; • other Commercial Activities which it considers sufficiently important or of interest to list on the register; • the TAFE institute's involvement in each of those Commercial Activities, and TAFE institute staff or Board directors that occupy a board seat or some other office in connection with the Commercial Activity, and the directors' and officers' liability insurance or other insurance arrangements that apply to the Commercial Activity; • the results of any assessment undertaken (if any) to determine whether the Commercial Activity is meeting its purposes and objectives; and • whether the Commercial Activity is ongoing or its anticipated termination date; and • provide a summary of the above matters in the annual report of its operations under section 45 of the Financial Management Act 1994, together with the matters listed under paragraph 33(c) of Guideline 12 	Ongoing	<p>Note - when maintaining the register of major commercial activities, the Board must be mindful of sensitive commercial information that could be sought through a request for information under the Freedom of Information Act 1982.</p>
Guideline 11 – ETRA Section 3.1.12C of the Act - Powers of TAFE Institutes	Key Dates	Comment
<p>Before exercising any of the powers in section 3.1.12C(2) of the Act to be a member of, form or participate in, a company, association, trust, partnership, or enter into a joint venture (collectively referred to as the undertaking), the Board must assess whether:</p> <ul style="list-style-type: none"> • it will be doing so for a purpose (not necessarily the main purpose) of engaging in a Commercial Activity; and/or <p><i>(continue next page)</i></p>	Event driven	

Guideline 11 – ETRA jSection 3.1.12C of the Act - Powers of TAFE Institutes	Key Dates	Comment
<ul style="list-style-type: none"> • in the case of the TAFE institute being a member of, forming or participating in a company, the main object of the company is to engage in a Commercial Activity, despite whether the Commercial Activity meets the definition of "Commercial Activity"; and • it is the most efficient and effective means of engaging in that Commercial Activity; and • obtain the approval of the Minister if the total investment exceeds \$5,000,000. <p>If the assessment concludes that the TAFE institute will be engaging in a commercial activity, the Board must comply with Guidelines 1 to 9 inclusive; and will be a member of, forming or participating in a company not engaging in a commercial activity, the Board will comply with Guideline 8.</p> <p>If the TAFE institute will be engaging in an undertaking other than through a limited company and will not be engaging in a commercial activity, the Board must make an assessment of the TAFE institute's exposure to liability and, if that assessment is greater than an amount deemed to be material having regard to relevant accounting standards, must consider which, if any, of Guidelines 8 and 9, should apply to the undertaking.</p> <p>Before being a member of, forming or participating in, a company, the Board should have regard to who will hold the shares or other interests in the company; and the legal relationship between the holders of shares and the Board.</p> <p>Where the TAFE institute engages in an undertaking, the undertaking must be a controlled entity of the TAFE institute unless otherwise approved by the Minister.</p> <p>Where a Board has engaged in an undertaking prior to the commencement date of these Guidelines, it may continue to engage in that undertaking until 1 January 2014, but not after that date unless it complies with paragraphs 28 to 31; or any non-compliance has been approved by the Minister.</p>		
Guideline 12 - TAFE Institute Controlled Entities	Key Dates	Comment
<p>Where an entity is a controlled entity of the TAFE institute, the Board will:</p> <ul style="list-style-type: none"> • ensure that the controlled entity is controlled by, and directly accountable to, the Board; <p><i>(continue next page)</i></p>	Ongoing	

Guideline 12 - TAFE Institute Controlled Entities	Key Dates	Comment
<ul style="list-style-type: none"> ensure that any amendment to the entity's constitution has had the prior approval of the Board before the TAFE institute or its representative shareholder or member can vote in favour of that amendment (or where the entity is a trust, partnership, joint venture or other form of entity, similarly ensure that an amendment to the relevant constituent document or agreement governing that entity has the prior approval of the Board); ensure that a report by the Auditor-General or a registered company auditor, on the accounts of the entity is made every twelve months and is submitted to the Board within three months after the end of each twelve month period to which the report relates; state in the report referred to in paragraph 27(b) of Guideline 10, the name of any entity formed or acquired in the year to which that report pertains, and the reasons the Board decided that the acquisition was in the interests of the management or conduct of the affairs or concerns of the TAFE institute; where it is required to comply with section 45 of the Financial Management Act 1994, include in its annual report under that section 45 a copy of the accounts of the entity prepared in accordance with the requirements of the Financial Management Act 1994, as if the entity was a public body within the meaning of that Act in respect of the financial year ending during the period to which the TAFE institute's annual report relates; or if it is not required to comply with that section 45, to forward to the Minister a copy of those accounts within three months of the end of the financial year; and within 14 days of lodging any material report, statement or return in respect of the entity with the Australian Securities and Investments Commission under the Corporations Act 2001 (Cth) or the Australian Taxation Office, other than a routine report of changes in company officers, minor changes in a company's constitution or the like, submit a copy of the report, statement or return to the Minister and Treasurer. 	<p>Every 12 months</p> <p>March 31</p> <p>Within 14 days</p>	
<p>Where the TAFE institute forms, participates in the formation of, or is a member of, an entity to which paragraph 33 applies, the Board will ensure the Auditor-General is appointed as the entity's auditor under the Corporations Act 2001 (Cth) and has right of access at all times to all the books, securities, accounts, vouchers, and electronic records of the entity; and is provided with any information, assistance and explanations necessary for the performance of the duties of the Auditor-General or person in relation to the audit; except where:</p> <ul style="list-style-type: none"> the controlled entity is not located in Australia; and the controlled entity is required to be audited under local laws in accordance with international standards; and the accounts of the controlled entity form part of the consolidated annual accounts of the Institute that are subject to audit by the Auditor-General. 	<p>Event driven</p>	

Guideline 12 - TAFE Institute Controlled Entities	Key Dates	Comment
<p>This paragraph 34 is subject to any contractual obligation which the entity has in relation to any other auditor prior to the entity becoming a controlled entity of the TAFE institute.</p> <p>The Board must regularly monitor the significant activities of controlled entities (being activities which it considers sufficiently important or of sufficient interest to list on the register of Major Commercial Activities, or which it considers sufficiently important or of sufficient interest to monitor), which will include regular reports to the Board. Any such monitoring shall also include any proposals concerning the transfer of ownership of the TAFE institute's controlled entities or investments in controlled entities (whether the transfer is to a third party or pursuant to an internal TAFE institute reorganisation).</p>	Ongoing	
Guideline 13 - Financial Risk	Key Dates	Comment
<p>The Board must establish policies or procedures for protecting itself against financial risks arising from 'financial arrangements' (as defined in the Borrowing and Investment Powers Act 1987), as appropriate to the nature of the TAFE institute's operations and the risk tolerance of the Board. The policies and procedures must comply with the Standing Directions of the Minister for Finance under the Financial Management Act 1994, the Victorian Government Risk Management Framework and any other relevant legislation or subordinate instrument.</p>	Ongoing	<p>S. 3(1) def. of financial arrangement substituted by No. 100/1995 s. 4(3).</p> <p>"financial arrangement" means an arrangement establishing rights and obligations to receive or deliver property the value of which, or to receive or make a payment in an amount which, or the value of which—</p> <p>(a) depends on, or is derived from, the value, or price, at a particular future time or during a particular future period, of particular property, rights or liabilities; or</p> <p>(b) depends on, or is derived by reference to, a particular rate, index or other factor at a particular future time or during a particular future period;</p>

Guideline 14 – Borrowing	Key Dates	Comment
<p>When considering whether to exercise its borrowing powers, the Board must ensure that an assessment is undertaken of the financial and operational impacts of the potential borrowings over the expected term of the loan and the TAFE institute's ability to meet the required loan repayments.</p> <p>When submitting a request for borrowing approval to the Minister and Treasurer, the Board must submit the following matters, subject to any additional matters or changes required by the Minister or Treasurer -</p> <ul style="list-style-type: none"> • projected financial statements (operating statement, cash flow statement and balance sheet) over the life of the loan demonstrating the ability to service and repay the loan without causing undue financial stress on the TAFE institute; • assumptions underpinning the forecasts; • information relating to the purpose of the borrowings (including, but not limited to project details, construction timelines, costs, risk and risk management measures); • details of the proposed financial accommodation being sought (including interest rates, terms and conditions); and • proposed drawdown and repayment schedule. <p>All borrowings must comply with the Standing Directions of the Minister for Finance under the Financial Management Act 1994 and any other relevant legislation or subordinate instrument.</p>	Event driven	
Guideline 15 -Treasury risk management	Key Dates	Comment
<p>When considering whether to exercise its powers to enter into financial arrangements with a commercial institution to invest cash above the limits as set out in the Standing Directions of the Minister for Finance under the Financial Management Act 1994, the Board must ensure that an assessment is undertaken of the risk and return of the potential investment.</p> <p>When submitting a request for approval to the Minister and Treasurer, the Board must submit the following matters, subject to any additional matters or changes required by the Minister or Treasurer projected financial statements (operating statement, cash flow statement and balance sheet) over the life of the investment demonstrating the ability to invest for the term of the investment without causing undue financial stress on the TAFE institute; assumptions underpinning the forecasts; and details of the proposed financial arrangement being sought (including interest rates, terms and conditions).</p> <p>All such financial arrangements must comply with the Standing Directions of the Minister for Finance under the Financial Management Act 1994 and any other relevant legislation or subordinate instrument.</p>	Event driven	

MINISTERIAL DIRECTIONS

Under the ETRA the Minister may issue directions and guidelines. Orders in Council or Ministerial Order may be made concerning an Institute's operations or with respect to the powers, duties or functions of a TAFE Institute. Directions are periodically amended and revoked. The following directions and orders currently apply:

- a) Ministerial Order 231 TAFE Management Staff Positions 23 December 2009 – declares the CEO and other positions for which the remuneration equals or exceeds \$130,914 as management positions within the institute.
- b) Ministerial Directions to TAFE Institutes on the Employment of Staff 29 October 2013 – objectives are to establish consistent procedures throughout TAFE institutes in selecting and appointing CEOs, executives and other staff; determining the remuneration and terms and conditions of employment of CEOs and executives; and implementing employment arrangements, policies and procedures which as far as possible are consistent with those that apply in the wider public sector. The remuneration ranges in this document are updated periodically by the Premier's Circular to TAFE Institutes.

The following also apply but are not expanded on in in this document:

Standing Directions of the Minister for Finance (Updated July 2016). These are designed to supplement the Financial Management Act 1994 by prescribing mandatory procedures that must be complied with by all Victorian departments and public bodies. The main components being: Roles and Responsibilities; Governance; Delivering Services, and Compliance and Reporting.

Directions of the Minister for Finance (Published: July 2016) 4.5.7 Foreign Exchange Risk Management & 4.5.8 Commodity Risk Management) The Minister for Finance has approved these two Ministerial Directions under the authority of the Financial Management Act 1994.

MINISTERIAL DIRECTIONS TO TAFE INSTITUTES ON THE EMPLOYMENT OF STAFF 29 OCTOBER 2013

Consistency with Directions	Key Dates	Comment
An institute must ensure that an employment agreement made with an employee; and any determination made by it under section 3.1.25 of the Act (which empowers institutes, subject to that Act, to determine conditions of employment) are consistent with these Directions.	Ongoing	
Reports and other documents to the Minister	Key Dates	Comment
In addition to the obligations under section 3.1.24 of the Act the Institute is to notify the Minister in writing before appointing a CEO; give the Minister notice in writing of any proposal to appoint a CEO; and not make the appointment if the Minister gives the institute notice in writing of his objection to the proposal. An institute must provide the Minister, or the Minister's nominee, with a true copy of the employment agreement between the institute and the institute's CEO, and any variation to the agreement, within 14 days after the agreement or variation is entered into.	Event driven	

Executive performance management system					Key Dates	Comment																																			
<p>An institute created before the commencement of these Directions must have and maintain an appropriate executive performance management system, and provide the Minister, or the Minister's nominee with a copy of any variation to the executive performance management system within one month of the institute agreeing to the variation.</p> <p>An institute created on or before the commencement of these Directions that has not provided the Minister, or the Minister's nominee with a copy of its executive performance management system, must do so within 1 month of the commencement of these Directions.</p>					28 September 2013																																				
<p>An institute must determine the classification level of a CEO position in accordance with the following table:</p> <table border="1"> <thead> <tr> <th>Annual Income (less capital) range</th> <th>Classification Level</th> <th>Minimum</th> <th>Mid-Point</th> <th>Higher Point</th> </tr> </thead> <tbody> <tr> <td>Greater than \$116.0 million</td> <td>CEO 1</td> <td>\$256,814</td> <td>\$289,192</td> <td>\$320,390</td> </tr> <tr> <td>Up to \$116.0 million</td> <td>CEO 2</td> <td>\$211,883</td> <td>\$235,424</td> <td>\$257,991</td> </tr> <tr> <td></td> <td>EO</td> <td>\$152,560</td> <td>n/a</td> <td>n/a</td> </tr> <tr> <td>Greater than \$116.0 million</td> <td>CEO 1</td> <td>\$263,234</td> <td>\$296,421</td> <td>\$328,399</td> </tr> <tr> <td>Up to \$116.0 million</td> <td>CEO 2</td> <td>\$217,180</td> <td>\$241,309</td> <td>\$264,442</td> </tr> <tr> <td></td> <td>EO</td> <td>\$156,374</td> <td>n/a</td> <td>n/a</td> </tr> </tbody> </table>					Annual Income (less capital) range	Classification Level	Minimum	Mid-Point	Higher Point	Greater than \$116.0 million	CEO 1	\$256,814	\$289,192	\$320,390	Up to \$116.0 million	CEO 2	\$211,883	\$235,424	\$257,991		EO	\$152,560	n/a	n/a	Greater than \$116.0 million	CEO 1	\$263,234	\$296,421	\$328,399	Up to \$116.0 million	CEO 2	\$217,180	\$241,309	\$264,442		EO	\$156,374	n/a	n/a	Ongoing	Note – this table is from the TAFE institutes – 2016/17 Total Remuneration Package Circular which amends the ranges in the Direction issued in 2013.
Annual Income (less capital) range	Classification Level	Minimum	Mid-Point	Higher Point																																					
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CEO remuneration					Key Dates	Comment																																			
<p>An institute may determine the total remuneration package of the CEO up to the mid point of the relevant remuneration range, but must obtain the written endorsement of the Chair GSERP prior to determining or adjusting the total remuneration package of the CEO beyond the mid point of the relevant remuneration range, except for any adjustment to the annual remuneration package of a CEO under clause 25.</p>					Ongoing	Note - This clause applies if appointing a CEO or adjusting the package of the CEO after being appointed.																																			

Remuneration of Executives	Key Dates	Comment
<p>An institute must obtain the endorsement of GSERP in respect of a total remuneration package of an executive which approaches or exceed the amounts referred to in the policies referred to in clause 11 as requiring the endorsement of GSERP.</p> <p>An institute must apply the amounts stated in table (above) each year in accordance with increases computed in accordance with the amounts listed under the heading "Institute Annual Income (Less Capital) Ranges" are to be increased in accordance with the indexation rate determined by the Department of Treasury and Finance under the Departmental Funding Model; and the amounts for CEOs and executives listed under the heading "Total Remuneration Package Range" are to be increased in accordance with the annual executive remuneration review adjustment approved by the Premier of Victoria from time to time.</p>	Event driven	
Contracts of Employment for CEO and Executives	Key Dates	Comment
<p>An institute must enter into a contract of employment with a CEO and an executive that is consistent with these Directions.</p>	Ongoing	
Performance-Related Incentive Payments for CEOs and Executives	Key Dates	Comment
<p>An institute must provide details to the Minister in writing within 14 days of making a performance-related incentive payment to an executive exceeding 12% in respect of a performance review period. The details under clause 27 must include the executive's name, position held, the percentage payment, and reasons for the assessment of the percentage payment.</p> <p>An institute must not make a performance-related incentive payment to an executive if:</p> <ul style="list-style-type: none"> • any circumstance listed in clause 30 applied at the date of assessing whether the executive's performance for the previous year or relevant period satisfied the eligibility criteria for such a payment, and • the relevant circumstance was disclosed or recorded in any financial statement or report prepared or issued by the institute, including in any financial statement issued in confidence to the Deputy Secretary to the Department. <p>The circumstances for the purposes of clause 29 are:</p> <ul style="list-style-type: none"> • there is or is forecast to be an operating deficit for the institute; • the operating result for the institute is or is forecast to be less than the institute's operating budget; • the return on the institute's investment is or is forecast to be less than the institute's operating budget; or • the working capital ratio for the institute is or is forecast to be less than 1.0. 	Within 14 days of making a performance-related incentive payment	

Performance-Related Incentive Payments for CEOs and Executives	Key Dates	Comment
In managing the total costs of performance-related incentive payments an institute must not, without the written prior approval of the Secretary, DEECD, exceed 6% of the aggregate of the total remuneration packages of those executives who are assessed for a performance-related incentive payment.	Event driven	
Selection Panels for CEOs	Key Dates	Comment
An institute must ensure that a selection panel for the CEO position includes a nominee of the Minister.	Event driven	

ANNUAL CALENDAR OF KEY RECURRING DATES (NOT ONE OFF)

Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
January	AM																				QR										QP	
February																											DAR	AR				
March	SCI																														FAR	
April																					QR											
May																																
June																					QR									AM		
July																																
August																																PSP
September																					QR											SOE
October	SOE & FE																														SP	
November																																SCI
December																																

	Period in which the Institute Annual Meeting must be held unless otherwise approved by the Secretary
	Period in which the Board's Annual General Meeting must be held
SOE/ FE	SOE Statement of Expectation By the Minister including Financial Return expected
SCI	Minister may Make SCI for the Institute if no agreement reached between the TAFE and the Minister
	Period of preliminary discussions between the TAFE institute and Department regarding the strategic plan
PSP	Proposed SP submitted to the Minister
SP	Final SP submitted to the Minister
	Preliminary discussions between the TAFE institute and Department regarding the statement of corporate intent
SOE	Minister's statement of expectations
SCI	Statement of corporate intent submitted

QP	Quarterly phasings (for each quarter and year to date) and annualised Full Time Equivalents from the Business Plan
QR	Quarterly reporting requirements (for March, June, September and December) 21 working days after end of month.
DAR	Draft Annual Report submitted
FAR	Final Annual Report submitted
AR	Annual return submitted