

The Public Administration Act 2004

Obligations of TAFE Institute Boards and Directors

Background

The *Public Administration Act 2004* (PAA) was introduced in 2004 and was amended in 2014. It provides a framework for good governance in the Victorian public sector, establishes the Victorian Public Sector Commission (VPSC) and creates the role of the Victorian Public Sector Commissioner.

The *public sector* includes the public service, public entities and special bodies.

In Victoria, “public entities” are bodies, whether corporate or unincorporated, that:

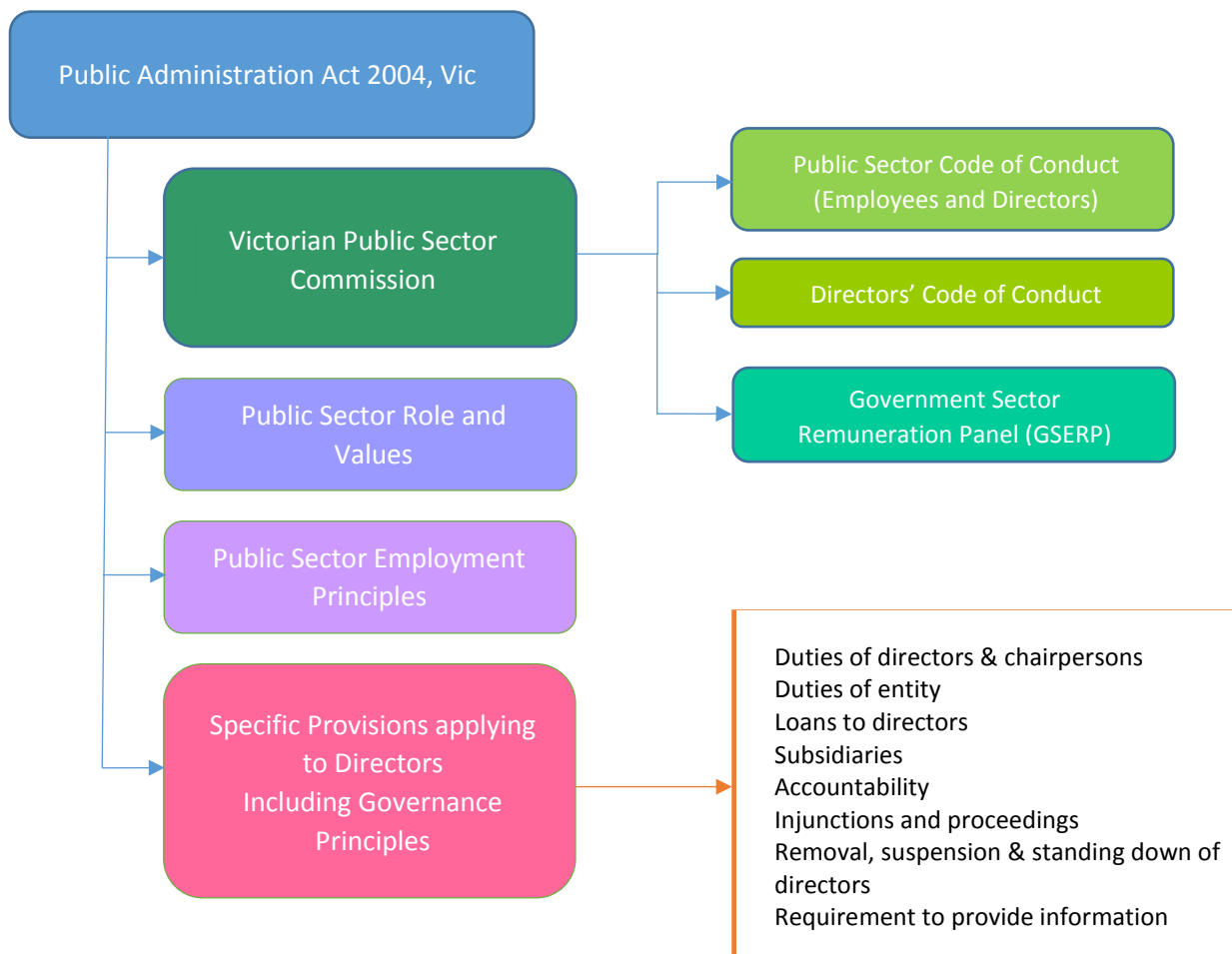
- are established by an Act, the Governor-in-Council, or a minister
- perform a public function on behalf of the State or are wholly owned by the State, and the Governor-in-Council or a minister has the right
- to appoint at least half of the directors (in the case of a body corporate).

TAFE Institutes and their Boards are “public entities” and are subject to Part 5 of the PAA. This means that any director of a TAFE Institute Board should be aware of and comply with the requirements of Part 5 of the PAA in undertaking his or her duties as a director.

A subsidiary of a public entity is also a public entity.

[Key definitions](#) from the PAA to are provided on the last page of this document.

Overview



The PAA covers 4 key areas relating to public sector governance

THE VICTORIAN PUBLIC SECTOR COMMISSION (VPSC)

The Victorian Public Sector Commission (the VPSC) was established on 1 April 2014 through an amendment to the Public Administration Act 2004. The VPSC is headed by a single Commissioner and has a range of legislated functions to achieve its objectives. These are to:

- Strengthen the efficiency, effectiveness and capability of the public sector in order to meet existing and emerging needs and deliver high quality services
- Maintain, and advocate for, public sector professionalism and integrity.

The VPSC helps strengthen public sector efficiency, effectiveness and capability by:

- assessing, researching and providing advice and support on issues relevant to public sector administration, governance, service delivery and workforce management and development
- collecting and reporting on whole of government data
- conducting enquiries as directed under the Act by the Premier

It helps maintain public sector integrity by:

- advocating for an apolitical and professional public sector
- issuing and applying codes of conduct and standards
- monitoring and reporting to public sector body Heads on compliance with the public sector values, codes of conduct and public sector employment principles and standards
- reviewing employment related actions and making relevant recommendations
- maintaining a register of lobbyists.

PUBLIC SECTOR ROLE AND VALUES

The PAA defines the role of the public sector and its role in serving the public interest by:

- providing a broad definition of the public sector that includes 'public service bodies' (departments and administrative offices), 'special bodies' that have a special relationship with Government (e.g. Victoria Police, the Auditor-General, Ombudsman) and 'public entities' (e.g. public hospitals, TAFE institutes and catchment management authorities);
- establishing a framework to ensure the effective governance of the whole of the Victorian public sector, to help government manage both the financial and non-financial risks associated with public entities carrying out functions on its behalf;
- enshrining the core and enduring public sector values of responsiveness, integrity, impartiality, accountability, respect, support for human rights, and leadership, which represent the defining characteristics of the behaviour required of all public sector employees.

Part 2 – Public sector values and employment principles

A public entity Head (CEO) must promote the public sector values to public officials (Employees and Directors) employed in the body and ensure that any statement of values adopted or applied by the body is consistent with the public sector values.

- Responsiveness
- Integrity
- Impartiality
- Accountability
- Respect
- Leadership
- Human Rights

Public entity Heads (CEOs) must establish employment processes that will ensure that

- Employment decisions are based on merit
- Public sector employees are treated fairly and reasonably; and
- equal employment opportunity is provided; and
- Human rights as set out in the Charter of Human Rights and Responsibilities are upheld; and
- Public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment

Part 3 Section 20 – Employees

The public entity Head (CEO) has all the rights, powers, authorities and duties of an employer in respect of the public entity and employees in it and must exercise these rights and powers in accordance with the public sector values, and the public sector employment principles. This section provides that employees may retire at 55 and refers to regulations which may be established to deal with unsatisfactory performance and misconduct of employees.

Part 3 Sections 23 and 25 – Executives

Requires Executives to be employed under a contract of employment and a range of employment and remuneration matters relating to Executives.

Note: The Government Sector Remuneration Panel (GSERP) policy makes specific requirements relevant to FAFE Institute Boards. See [GSERP Policy on Executive Remuneration in the Broader Public Sector](#).

SPECIFIC PROVISIONS APPLYING TO DIRECTORS INCLUDING GOVERNANCE PRINCIPLES

Governance principles are set out in Part 5 of the PAA and align with the minimum governance standards in the Corporations Act 2001 (Commonwealth), Australian Standards and common law. While similar governance standards apply to public, not-for-profit and private entities, public entities are arguably held to higher standards of accountability and transparency because of their relationship with Government and the expectations of the community about the proper use of public resources and standards of behavior. The relevant matters covered in Part 5 are outlined in further detail below.

Part 5 Division 2 - Governance Principles

Section 79 – Duties of a director

A director must act in the best interests of the organisation and with a reasonable degree of care and skill. Directors of a public entity must all times in the exercise of the functions of his or her office act:

- honestly; and
- in good faith in the best interests of the public entity; and
- with integrity; and
- in a financially responsible manner; and
- with a reasonable degree of care, diligence and skill; and
- in compliance with the Act or subordinate instrument or other document under which the public entity is established.

A director must also not improperly use his or her position or disclose information acquired while being in that position. A director of a public entity who becomes a candidate for an election to the Parliament of Victoria or of the Commonwealth or of any other State or a Territory or to a Council within the meaning of the Local Government Act 1989 or a corresponding body in another jurisdiction must notify the board of the public entity of that fact; and must not use any resources of the public entity in connection with his or her candidature.

Section 80 – Duties of chairperson

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

Section 81 – Duties of entity

This section contains an extensive list of obligations imposed on the board in relation to board governance. These include:

1. Acting consistently with the functions and objectives of the Institute (as established by the ETRA 2006)
2. Informing the responsible Minister and the relevant Department Head of known major risks to the effective operation of the entity and of the risk management systems that it has in place to address those risks;
3. Providing the Minister responsible for the public entity with any information relating to the entity or its operations that he or she requests unless prohibited from doing so by or under any law.

4. Ensuring that adequate procedures are in place for:
 - assessing the performance of individual directors;
 - dealing with poor performance by directors;
 - resolving disputes between directors; and
 - assessing the Board's own performance.
5. Ensuring that:
 - a code of conduct applicable to directors is in place (this can be satisfied by the adoption of the Public Sector Code of Conduct for Directors);
 - processes are in place to deal with conflicts of interests in directors;
 - an adequate gifts policy for directors is in place;
 - adequate controls are in place to prevent fraudulent behaviour; and
 - its financial statements or accounts are audited by the Auditor-General at intervals of no greater than 3 years.

Section 82 – Loans to directors

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

Section 83 – Sub-committees

A public entity can form or dissolve subcommittees, define their functions and membership and make delegations to Directors who are members of sub-committees. Sub-committee membership is not restricted to directors of the board.

Section 84 – Subsidiaries

A public entity that has the power to form, or participate in the formation of, a body corporate and that intends to do so must, within a reasonable time before doing so, notify in writing the Minister responsible for the public entity and the Treasurer of that intention.

The Minister may direct the entity not to form or participate in the formation of a body corporate or impose restrictions which the public entity must comply with.

Section 85 – Accountability

This section stipulates that the board of a public entity is accountable to the Minister and also sets out the Minister's powers in relation the board, such as the appointment and removal of directors, the power to give directions or request information, the power to control or affect its operations and to initiate a review of the entity's management systems, structures or processes.

Section 86 – Injunctions

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

Section 87 – Bringing of proceedings

The responsible Minister has the power to bring proceedings or do so in the name of the public entity and to recover from the director as a debt due to the public entity,

where a director has made a profit, or where the entity has suffered a loss or damage as a result of the contravention mentioned in section 86.

Part 5 Division 3 - Removal, Suspension or Standing Down of Directors

Section 89 – Power to remove or suspend a director

If a director is believed to have contravened a code of conduct or any duty or obligation under the PAA, the director may be removed from office or suspended for up to a month. The section also details the resignation process for a director. The office of a director becomes vacant if said director becomes insolvent under administration or is convicted of an indictable offence.

Section 90 – Standing down of a director

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

Part 5 Division 4 – General

Section 92 - Power to make public entities subject to specified whole of government policies

On the recommendation of the Premier public entities, or a specified public entity or class of public entity, may be required to comply with a specified whole of government policy.

Section 93 - Requirement to provide financial information

The board of a public entity must provide to the Treasurer or the Minister administering section 44A of the **Financial Management Act 1994**, at a time and in a manner specified by that Minister, any financial information requested by that Minister. The request must be provided in writing.

Section 94 - Requirement to provide non-financial information

The board of a public entity must provide to the Premier at a time and in a manner specified by that Premier, any non-financial information requested. The request must be provided in writing.

DIRECTORS' CODE OF CONDUCT

The Directors' Code of Conduct applies to all directors and a similar code applies to public sector employees. These codes are based on public sector values which are contained in the Public Administration Act 2004 (PAA).

As a director of a Victorian public entity you must comply with the Directors' Code of Conduct issued under the PAA. You must:

- act with honesty and integrity. Be open and transparent in your dealings; use power responsibly; do not place yourself in a position of perceived, potential or actual conflict of interest; strive to earn and sustain public trust of a high level.
- act in good faith in the best interests of the public entity. Demonstrate accountability for your actions; accept responsibility for your decisions; do not engage in activities that may bring you or the public entity into disrepute.
- act fairly and impartially. Avoid bias, discrimination, caprice or self-interest; demonstrate respect for others by acting in a professional and courteous manner.
- use information appropriately. Ensure information gained as a director is only applied to proper purposes and is kept confidential.
- use your position appropriately. Do not use your position as a director to seek an undue advantage for yourself, family members or associates, or to cause detriment to the public entity; ensure that you decline gifts or favours that may cast doubt on your ability to apply independent judgement as a Board member of the public entity.
- act in a financially responsible manner. Understand financial reports, audit reports and other financial material that comes before the Board; actively inquire into this material.
- exercise due care, diligence and skill. Ascertain all relevant information; make reasonable enquiries; understand the financial, strategic and other implications of decisions.
- comply with the establishing legislation, or its equivalent, for your public entity. Act within the powers and for the functions set out in your public entity's establishing legislation and/or ministerial charter.
- demonstrate leadership and stewardship. Promote and support the application of the Victorian public sector values; act in accordance with the directors' code.

The public sector values, set out in the PAA (s7) apply to everyone in the public entity including its directors and CEO. They must be responsive, impartial and accountable, demonstrate integrity, respect and leadership and uphold human rights. These values are integral to the Directors' Code of Conduct.

GOVERNMENT SECTOR REMUNERATION PANEL (GSERP)

The Government Sector Executive Remuneration Panel (GSERP) is established to administer the Government's policy for executive remuneration in public entities defined under the Public Administration Act 2004. GSERP comprises the Victorian Public Sector Commissioner as Chair and the Secretary of the relevant portfolio Department.

The Government's GSERP Policy seeks to ensure a rigorous approach to monitoring and reporting on executive remuneration; and determining remuneration outcomes.

Boards are responsible for ensuring that their organisations adhere to the policy and the approval and reporting requirements.

Under the Policy, the Board is required to establish a remuneration sub-committee of at least three non-executive Directors with specific responsibility for determining the organisation's policy and practice for executive remuneration and the individual remuneration packages for its executives (that is, employees not covered by awards and collective agreements).

The members of the remuneration sub-committee should have no personal financial interest in the committee's decisions, have a good knowledge of the organisation and its senior executives, a keen interest in its progress and a full understanding of the governments' interests and directions for the organisation □ have a good understanding, enhanced as necessary by appropriate training or access to expert advice, of the areas of remuneration sub-committee business. Members should preferably serve for a period of 3 years as knowledge and experience are important to ensure consistency and awareness of history and context.

GSERP Policy applies to Chief Executive Officers or equivalent role and any person who has significant management responsibility and who is remunerated at or above \$156,374 as at 1 July 2016.

The policy does not apply to:

- technical specialists who do not have a management function;
- people whose employment is regulated by an award or enterprise agreement; and
- people who do not have significant management responsibility as determined by the CEO or equivalent role.

GSERP must approve all CEO remuneration (on appointment and any subsequent adjustments), other than:

- decisions about application of annual adjustments up to the guideline rate.
- where GSERP has previously approved a TRP range and the midpoint of that range or other amount as previously advised by GSERP is not exceeded.

GSERP approval must also be sought for remuneration of other executives in the entity where:

- the proposed TRP of an individual executive would be greater than 80% of the TRP for the CEO

- the average TRP of all executives reporting directly to the CEO would exceed 70% of the CEO's TRP.

A standard executive contract is provided to ensure consistency with government policy.

Public sector entities are required to participate regularly in the GSERP survey, reporting on the total remuneration packages and other key information on individuals covered by GSERP Policy.

Key Definitions

Director - in relation to a public entity, means a member of the Board of the public entity.(s. 4(1), Public Administration Act)

Non-executive Director – means a Director who is not an employee of the entity.

Public entity – A TAFE Institute is a public entity in that it is established under an Act (the ETRA) and has a public function to exercise on behalf of the State or is wholly owned by the State. (s. 5, Public Administration Act)

Public Sector Body Head – is the Chief Executive Officer (called by whatever name) of a public entity.(s. 4(1), Public Administration Act)

Public Sector - is the sector that comprises the public service, public entities, and special bodies (s. 4(1), Public Administration Act)

Public Sector Employee - is a person employed under Part 3 in any capacity and includes a public service body Head, an employee; or a person employed by a public entity or special body. (s. 4(1), Public Administration Act)

Public Sector Employment Principles – are the principles set out in s. 8 of the Public Administration Act and are: employment decisions are based on merit; public sector employees are treated fairly and reasonably; equal employment opportunity is provided; human rights as set out in the Charter of Human Rights and Responsibilities are upheld; public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment; in the case of public service bodies, the development of a career public service is fostered.

Standards - are issued by the Victorian Public Sector Commission concerning the application of the public sector employment principles. The Standards define what is essential for applying the employment principles and are supplemented by discretionary guidelines.

LINKED DOCUMENTS:

[Public Administration Act 2004 \(Vic\)](#)

[GSERP Policy on Executive Remuneration for Public Entities in the Broader Public Sector](#)

[Directors Code of Conduct and Guidance Notes \(VPSC\)](#)

[Gifts, Benefits and Hospitality Framework](#)