

## **CHAPTER 3—POST SCHOOL EDUCATION AND TRAINING**

### **PART 3.1—VOCATIONAL EDUCATION AND TRAINING**

#### **Division 1—Co-ordination of State Training System**

##### **3.1.1 Victorian Skills Commission**

- (1) The Victorian Learning and Employment Skills Commission established under the **Vocational Education and Training Act 1990** continues in operation under and subject to this Act.
  - (2) On the commencement of this section, the Victorian Learning and Employment Skills Commission is to be called the Victorian Skills Commission.
  - (3) The Commission—
    - (a) is a body corporate with perpetual succession; and
    - (b) has a common seal; and
    - (c) may sue and be sued in its corporate name; and
    - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
    - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer, and that is necessary or expedient for performing its functions and exercising its powers.
  - (4) The common seal must be kept as directed by the Commission and must only be used as authorised by the Commission.
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- (5) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

**3.1.2 Functions of the Commission**

- (1) The functions of the Commission are—
- (a) to advise the Minister about—
    - (i) the development and implementation of policy for post-compulsory education and training;
    - (ii) state wide planning for post-compulsory education and training including emerging requirements of Government, industry, the community and individuals;
    - (iii) vocational education and training strategies to complement State and national economic and social development;
    - (iv) the effective spending of money made available for vocational education and training;
    - (v) the provision of adult, community and further education in TAFE institutes;
    - (vi) any other matter that the Minister refers to the Commission;
  - (b) to provide for the delivery of vocational education and training in Victoria by registered education and training organisations;
  - (c) to support local learning and employment networks of providers and stakeholders in post-compulsory education and training;
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- (d) to promote research in relation to post-compulsory education and training;
  - (e) to monitor the outcomes of post-compulsory education and training;
  - (f) to act as the State Training Authority under the Skilling Australia's Workforce Act 2005 of the Commonwealth;
  - (g) to carry out any other function that is conferred on the Commission by this or any other Act.
- (2) The Commission, in carrying out its functions must—
- (a) establish systems to achieve co-operation between the Commission and the Adult, Community and Further Education Board and to ensure that the Commission's actions are consistent with arrangements for the provision of adult, community and further education in Victoria; and
  - (b) liaise, as it considers appropriate, with the Authority and the Victorian Curriculum and Assessment Authority; and
  - (c) consult, as it considers appropriate, with Government, industry and the community.

**3.1.3 Functions of the Commission as State Training Authority**

- (1) The Minister may, by notice published in the Government Gazette, nominate the Commission as the State Training Authority for Victoria under the Skilling Australia's Workforce Act 2005 of the Commonwealth.

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- (2) The Commission as the State Training Authority has the functions for the purposes of the Skilling Australia's Workforce Act 2005 of the Commonwealth that the Minister specifies by notice published in the Government Gazette.

**3.1.4 Performance agreements and financial powers**

- (1) The Commission may enter into a performance agreement with the council of a TAFE institute with respect to the provision by the institute of vocational education and training or adult, community and further education.
- (2) A performance agreement under sub-section (1) may contain, with the consent of the Minister and subject to any conditions imposed by the Minister, additional provisions with respect to the provision by the TAFE institute of education other than vocational education and training or adult, community and further education.
- (3) The Commission may enter into a performance agreement with an industry training board with respect to the board's functions under this Act.
- (4) The Commission may—
- (a) apply money for or towards the costs of or incidental to the performance of its functions and exercise of its powers under this Act; and
  - (b) make payments to the council of a TAFE institute in accordance with a performance agreement with the council; and
  - (c) make payments to an industry training board in accordance with a performance agreement with the board; and
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- (d) make payments to local learning and employment networks in accordance with a performance agreement with the committee of management of that network; and
  - (e) make payments by way of grants, subsidies or loans in relation to vocational education and training to any person, organisation or institution, whether public or private, on any terms or conditions that the Commission thinks fit.
- (5) The Commission must cause to be kept proper accounts and records of all money applied or paid under sub-section (4).
  - (6) The accounts and records are to be kept in the form required by the Auditor-General.
  - (7) The accounts of the Commission kept under this section must be audited at least once a year by the Auditor-General, who has in respect of the accounts all the powers conferred on the Auditor-General by any law relating to the audit of public accounts.

**3.1.5 Powers of the Commission**

The Commission has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function specified by the Minister or delegated to it.

**3.1.6 Accountability**

- (1) The Commission must perform its functions and exercise its powers subject to—
  - (a) any economic and social objectives and public sector management policy established from time to time by the Government of Victoria; and

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- (b) the general control of the Minister and any other requirements of this Act.
- (2) The Commission must publish any written direction given to it during a financial year in its annual report for that year.

**3.1.7 Members**

- (1) The Commission consists of—
    - (a) a person appointed by the Governor in Council on the nomination of the Minister as Chairperson;
    - (b) the Chairperson of the Victorian Registration and Qualifications Authority or his or her nominee;
    - (c) the Chairperson of the Adult, Community and Further Education Board or his or her nominee;
    - (d) the Secretary or his or her nominee;
    - (e) not more than 7 other members appointed by the Governor in Council on the nomination of the Minister.
  - (2) The Minister must nominate a person to be Chairperson who, in the Minister's opinion, is experienced in industry or government.
  - (3) In nominating other members, the Minister must have regard to ensuring that—
    - (a) the membership of the Commission includes at least 5 persons with knowledge of or experience in industry;
    - (b) if the number of members appointed under sub-section (1)(e) exceeds 5, at least 2 of those members have direct industry experience or experience in the training system.
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- (c) the membership of the Commission includes persons who have backgrounds in vocational education and training and community development;
  - (d) the composition of the Commission is a fair and balanced reflection of the diversity of the community;
  - (e) the composition of the Commission reflects both metropolitan and rural and regional interests;
  - (f) there is sufficient financial and management expertise on the Commission.
- (4) The **Public Administration Act 2004** (other than Part 5 of that Act) does not apply to a member in respect of the office of member.

**3.1.8 Schedule 10**

Schedule 10 has effect subject to any contrary intention in this Part.

**3.1.9 Delegations**

- (1) The Commission may, by instrument under its common seal, delegate to—
- (a) a member of the Commission; or
  - (b) the board of a TAFE institute or the council of a university with a TAFE division; or
  - (c) an industry training board; or
  - (d) the Secretary or an employee employed for the purposes of this Act; or
  - (e) the Adult, Community and Further Education Board or the General Manager of that Board—
- any power or function of the Commission.

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- (2) A delegation to an industry training board must not be made without the Minister's consent and must be published in the Government Gazette.

**3.1.10 Power of further delegation**

- (1) If a power or function has been delegated to the board of a TAFE institute or a university with a TAFE division under section 3.1.9, that board or council may delegate the power or function to—
- (a) any other person or body to whom that power or function may be delegated directly; and
  - (b) in the case of the board of a TAFE institute, any person employed by the board under this Part; and
  - (c) in the case of a university with a TAFE division, any person employed on the staff of the university—
- if the original instrument of delegation of that power or function authorised the making of a further delegation.
- (2) An original instrument of delegation may specify any terms, conditions, limitations or restrictions on the making of a further delegation.
- (3) Sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.

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**Division 2—TAFE Institutes**

**3.1.11 TAFE institutes**

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
    - (a) create a TAFE institute; or
    - (b) abolish a TAFE institute; or
    - (c) amalgamate one or more TAFE institutes; or
    - (d) if the council of a university with a TAFE division approves, merge a TAFE institute with the university; or
    - (e) change the name of a TAFE institute—and amend Schedule 2 by—
    - (f) inserting the name of a new or amalgamated TAFE institute; or
    - (g) removing the name of a TAFE institute; or
    - (h) changing the name of a TAFE institute.
  - (2) The Minister must not make a recommendation under sub-section (1) unless—
    - (a) the board or the governing body (if any) of any institute or proposed institute concerned has made a request for the proposed order or has been consulted about the proposed order; and
    - (b) the Minister has consulted the Commission about the proposed order.
  - (3) If an Order in Council changes the name of an institute pursuant to sub-section (1)—
    - (a) the institute continues in existence under the new name so that its identity is not affected; and
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- (b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to an institute under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the institute under the new name.

**3.1.12 Incorporation of TAFE institute boards**

- (1) The Governor in Council may, on the recommendation of the Minister by Order—
    - (a) establish a board to oversee and govern a TAFE institute; or
    - (b) amalgamate a board with another board; or
    - (c) abolish a board; or
    - (d) change the name of a board; or
    - (e) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a board, the manner of appointment or the terms and conditions of appointment of directors of a board; or
    - (f) make provision for the board to make rules for the government of the institute; or
    - (g) make provision for the board to delegate any of its powers and functions under this Act (except any powers delegated to it under this Act) to a person employed at the institute or to a committee established by or under an Order in Council relating to the board; or
    - (h) amend any provision of a previous order relating to a board; or
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- (i) make provision for or with respect to anything that is consequential upon the making of an order including the rights and obligations or the assignment of any property (subject to any trusts) of any board referred to in the Order.
  - (2) Without limiting the powers of the Governor in Council under sub-section (1), the Minister may also make Orders for the purposes of sub-section (1)(e), (f), (g), (h) or (i).
  - (3) The Minister must not make a recommendation under sub-section (1) or an Order under sub-section (2) unless—
    - (a) the board of any institute concerned has made a request for the proposed Order or has been consulted about the proposed Order; and
    - (b) the Minister has consulted the Commission about the proposed order.
  - (4) A board established under sub-section (1)—
    - (a) is a body corporate with perpetual succession; and
    - (b) has a common seal; and
    - (c) may sue and be sued in its corporate name; and
    - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
    - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
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- (5) If two or more boards are amalgamated under an Order under sub-section (1), any legal proceedings that might have been commenced or continued by or against any of the boards may be commenced or continued by or against the single board formed by the amalgamation.
- (6) A change of name under an Order under sub-section (1) does not affect the identity of the board or any rights or obligations of the board or render defective any legal proceedings by or against the board, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name.

**3.1.13 Functions of TAFE institute boards**

- (1) The functions of the board of an institute are—
    - (a) to oversee and govern the institute efficiently and effectively and to prepare periodic management plans for the institute; and
    - (b) to provide the population of the area served by the institute with efficient and effective technical and further education programs and services responsive to the needs of industry, students and the general community; and
    - (c) to provide the population of the area served by the institute with efficient and effective adult, community and further education programs and services which are responsive to the needs of the community and to consult with the relevant Regional Councils about the provision of these programs and services; and
    - (d) to offer and conduct a course of study leading to the conferral of a higher education award in accordance with this Act; and
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- (e) to confer a higher education award in accordance with this Act; and
  - (f) to make adequate arrangements for persons and groups which have not had or do not have adequate access to technical and further education programs and services; and
  - (g) to carry out any other function conferred on the board by or under this Act or any Order made under section 3.1.12.
- (2) Without limiting the generality of sub-section (1) the board may carry out all or any of the following functions—
- (a) provide facilities or services for study, research or education;
  - (b) undertake research, development, counselling or other services for commercial organisations;
  - (c) aid or engage in the development or promotion of institute research or the application or use of the results of that research;
  - (d) prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;
  - (e) seek or encourage gifts to the institute or for institute purposes;
  - (f) promote or assist drama, music or the visual arts.

**3.1.14 Powers of TAFE institute boards**

- (1) A board has power to do all things that are necessary or convenient to be done for or in connection with or, as incidental to, the performance of its functions including any function delegated to it.
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- (2) Without limiting the generality of sub-section (1) a board, for the purpose of carrying out its functions under section 3.1.13(2), may—
  - (a) be a member of a company, association trust or partnership;
  - (b) form or participate in the formation of a company, association, trust or partnership;
  - (c) enter into a joint venture with another person or persons.
- (3) A board, in the performance of its functions, may exercise its powers in Victoria and elsewhere.

**3.1.15 Accountability of TAFE institute boards**

- (1) A board must perform its functions and exercise its powers subject to—
    - (a) a performance agreement; and
    - (b) any economic and social objectives established from time to time by the Government of Victoria; and
    - (c) an Order made under section 3.1.12; and
    - (d) any other requirements of this Act.
  - (2) 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.
  - (3) A board must establish and keep full and complete books and accounts of all money received and paid by the board and must arrange for a continuous audit of the income and expenditure to be made at any intervals not exceeding one month that the Minister directs.
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- (4) The books and accounts referred to in subsection (3) must be kept in the form and manner approved by the Auditor-General.

**3.1.16 Board directorship**

- (1) An Order under section 3.1.12 must provide for a board consisting of not less than 9 and not more than 15 persons of whom—
- (a) more than one half must be appointed by the Minister;
  - (b) one must be a staff member of the institute elected by staff of the institute;
  - (c) one must be a student of the institute elected by students of the institute;
  - (d) one must be the chief executive officer of the institute;
  - (e) the remaining directors must be persons with knowledge of or experience in the community or any industry served by the institute or in adult, community and further education or with special skills or knowledge relevant to the board appointed by the board by co-option.
- (2) In appointing directors to a board, the Minister must have regard to the total membership reflecting the diversity of the community and to having equal numbers of men and women as directors of the board and the criteria in subsection (1)(e).
- (3) At least half the directors referred to in subsection (1)(a) must be persons appointed by the Minister after considering the advice of the directors of the board who have been appointed.
- (4) A person who is a member of Parliament must not be appointed or elected to be a director of a board.
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**3.1.17 Schedule 10**

Schedule 10 has effect subject to any contrary intention in this Part.

**3.1.18 Removal of directors**

- (1) The Governor in Council may remove a director appointed by the Minister under section 3.1.16(1)(a) from office at any time.
- (2) The Governor in Council may remove a director elected or appointed to the board under section 3.1.16(1)(b), (c) or (e)—
  - (a) on the recommendation of two thirds of the directors for the time being of the board; or
  - (b) on the recommendation of the Commission.
- (3) The Commission must not make a recommendation under sub-section (2)(b) unless—
  - (a) the Commission has requested the board to recommend the removal of a director and the board has not made a recommendation within 30 days of the request; and
  - (b) the Commission is satisfied that the director failed to comply with any requirement of clause 2(4) of Schedule 10; and
  - (c) the Commission has given the director an opportunity to submit an explanation in relation to the alleged failure.

**3.1.19 Reserve powers of Minister**

- (1) If the Minister is satisfied that the board of an institute—
    - (a) is inefficiently or incompetently managing the institute; or
    - (b) is failing to comply with its performance agreement; or
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- (c) has failed to comply with any provision of this Act, a guideline issued by the Minister or any directions given to the board by the Minister under this Act or an Order establishing the board—

the Minister may do any one or more of the following—

- (d) issue written directions to the board about—
    - (i) action to be taken to remedy inefficient or incompetent management, which may include the dismissal of the chief executive officer of the institute; or
    - (ii) compliance with a performance agreement; or
    - (iii) compliance with the Act, guidelines, directions or an Order; or
  - (e) censure the board; or
  - (f) recommend that the Governor in Council dismiss the directors of the board and appoint new directors of the board and make arrangements for the elections for elected directors of the board; or
  - (g) recommend to the Governor in Council that an administrator of the institute be appointed in accordance with this Division.
- (2) If the Minister is satisfied that a board has failed to comply with a direction given under sub-section (1)(d) the Minister may do any one or more of the things specified in sub-section (1)(e), (f) and (g).

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**3.1.20 Notice of proposal**

- (1) If the Minister proposes to exercise his or her powers under section 3.1.19, the Minister—
  - (a) must give the board notice in writing of the proposal and the reasons for the proposal; and
  - (b) must consider any submissions whether oral or in writing made to the Minister by the board within 7 days after the giving of the notice or any further time specified in the notice; and
  - (c) may consider any other submissions and any matters the Minister considers appropriate—  
before deciding whether or not to exercise the power.
- (2) If the Minister decides to censure or dismiss a board or recommend the appointment of an administrator to the board, the Minister must—
  - (a) give notice in writing of the censure, dismissal or appointment to the board; and
  - (b) cause to be tabled in each House of Parliament within 7 sitting days of the House after the notice is given to the board—
    - (i) a copy of the notice; and
    - (ii) a report of the circumstances leading to the action; and
    - (iii) a copy of any written submission made by the board.

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**3.1.21 Appointment of administrator**

- (1) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the institute for the period and subject to the terms and conditions that are specified in the appointment.
  - (2) An administrator of an institute appointed under this section has and may exercise all the powers and is subject to all the duties of the board of the institute and the chief executive officer of the institute.
  - (3) On the appointment of an administrator, the directors of the board of the institute cease to hold office.
  - (4) The Minister must review the appointment of an administrator within 12 months after the appointment.
  - (5) If the Minister recommends to the Governor in Council that the appointment of the administrator should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment is revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
  - (6) If a notice is published under sub-section (5) in relation to an institute—
    - (a) directors of the board of the institute shall be elected or appointed in accordance with this Part; and
    - (b) on the date specified in the notice—
      - (i) the appointment of the administrator is revoked; and
      - (ii) the board of the institute is re-established.
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**3.1.22 Saving of acts of board**

Nothing done by a board is in any way abated or affected by the dismissal of the board or the appointment of an administrator.

**3.1.23 Employment of staff**

- (1) Subject to any direction given by the Minister, a board—
  - (a) must employ a chief executive officer of the institute; and
  - (b) may employ such other staff as is necessary to enable the board to perform its functions and exercise its powers.
- (2) A board, in employing persons under this section, does not represent the Crown.
- (3) A board may, by instrument under its common seal, delegate to the chief executive officer of the institute any power of the board under this section, other than this power of delegation.

**3.1.24 Minister may object to appointment of chief executive officer**

- (1) Before appointing a person as the chief executive officer of the institute a board must notify the Minister in writing of the proposal to make the appointment.
- (2) The Minister may, within 10 days after receiving that notification and after considering the board's proposal, give to the board notice in writing of his or her objection to the proposed appointment.
- (3) A board must not appoint a person as the chief executive officer of the institute if the Minister has objected to the appointment in accordance with sub-section (2).

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**3.1.25 Schedule 6**

- (1) Schedule 6 applies to the employment of staff at a TAFE institute or in the TAFE division of a university with a TAFE division.
- (2) A board may determine terms and conditions of employment of persons employed under section 3.1.23 to the extent that those terms and conditions are not determined or agreed in accordance with Schedule 6.
- (3) A provision determined under sub-section (2) is of no effect to the extent that it provides a term and condition of employment that is less favourable to an employee than a term or condition to which he or she was entitled under section 19, 20 or 21 of the **Vocational Education and Training (College Employment) Act 1993**.

**3.1.26 Chief executive officer**

The chief executive officer of the institute—

- (a) is the chief executive officer of the board;  
and
- (b) is responsible for the day to day administration and management of the institute in accordance with any policies or directions of the board of the institute and with the requirements of this Act; and
- (c) must satisfy the board that—
  - (i) funds are spent; and
  - (ii) staff are carrying out functions; and
  - (iii) the institute is generally managed and administered—

in accordance with the requirements of this Act.

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**Division 3—Industry Training Boards**

**3.1.27 Establishment or declaration of industry training boards**

- (1) The Minister may by Order published in the Government Gazette—
  - (a) establish an industry training board; or
  - (b) declare any association incorporated under the **Associations Incorporation Act 1981** or any company within the meaning of the Corporations Act that is taken to be registered in Victoria to be an industry training board—

in respect of the industry specified in the Order.

- (2) In determining whether to make a declaration of an association or a company the Minister must consult with the Commission and consider—
  - (a) whether the functions, objects, purposes or powers of the association or company are similar to the functions set out in section 3.1.30 and the powers set out in section 3.1.31; and
  - (b) whether the membership of the governing body of the association or company includes persons with experience in the various aspects of the industry specified in the order including backgrounds as employers and as employees.

**3.1.28 Orders establishing industry training boards**

- (1) An Order under section 3.1.27(1)(a) may make provision for or with respect to the constitution, management structure, membership or objectives of a board or the manner of appointment or the terms and conditions of appointment of members of a board.

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- (2) An industry training board established under section 3.1.27(1)(a)—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions or exercising its powers; and
  - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
- (3) The common seal of an industry training board established under section 3.1.27(1)(a) must be kept as directed by that board and must only be used as authorised by that board.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

**3.1.29 Revocation of orders**

- (1) The Minister may by Order published in the Government Gazette—
    - (a) abolish an industry training board established under section 3.1.27(1)(a); or
    - (b) revoke any declaration under section 3.1.27(1)(b) in respect of an industry training board; or
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- (c) make any provision for any matter consequential upon the making of an order under paragraph (a) or (b).
- (2) Without limiting the generality of sub-section (1)(c) an Order abolishing a board may provide for the distribution of the assets of the abolished board to another board established under section 3.1.27(1)(a).

**3.1.30 Functions of industry training boards**

- (1) The functions of an industry training board established under section 3.1.27(1)(a) are—
    - (a) within the national and State strategic framework, to prepare quality training plans detailing industry skill requirements, the quantity and types of training needed by industry and training arrangements;
    - (b) to promote training within the industry;
    - (c) to liaise with or participate on national industry training advisory bodies;
    - (d) to participate in accreditation and recognition processes.
  - (2) An Order under section 3.1.27(1)(a) may confer any additional functions on the industry training board established by the Order.
  - (3) The Minister may at any time by Order published in the Government Gazette confer any additional functions on an industry training board or amend any of the functions conferred on the board by Order.
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**3.1.31 Powers of industry training boards**

An industry training board established under section 3.1.27(1)(a) has power to do everything that is necessary or convenient for it to do for or in connection with the performance of the functions of the board including any function delegated to it.

**3.1.32 Members**

- (1) An industry training board established under section 3.1.27(1)(a) consists of the number of members that is fixed by the Order establishing the board.
- (2) Members of a board established under section 3.1.27(1)(a) are to be appointed by the Minister.
- (3) The Minister must, in appointing members to a board established under section 3.1.27(1)(a), endeavour to ensure that the board has a membership of persons with experience in the various aspects of the industry specified in the order including backgrounds as employers and employees.

**3.1.33 Terms and conditions of office of directors**

- (1) A member of a board established under section 3.1.27(1)(a) holds office for a term not exceeding 3 years and is eligible for re-appointment.
  - (2) The office of a member of a board established under section 3.1.27(1)(a) becomes vacant if—
    - (a) the member becomes bankrupt; or
    - (b) the member is found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence; or
    - (c) the member is absent from 3 consecutive meetings of the Board without the Chairperson's leave; or
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- (d) the member becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**.
- (3) A member of a board established under section 3.1.27(1)(a) must in the exercise of his or her functions—
  - (a) act honestly; and
  - (b) exercise reasonable care and diligence; and
  - (c) not make improper use of any information acquired as a member of an industry training board; and
  - (d) disclose any conflict of interest or duties to the industry training board.
- (4) The Minister may at any time remove a member of an industry training board established under section 3.1.27(1)(a) from office.

**3.1.34 Proceedings of boards**

- (1) Subject to this Act and any Order made under section 3.1.27(1)(a), a board established under section 3.1.27(1)(a) may regulate its own proceedings.
  - (2) A board may permit members to participate in a particular meeting or all meetings, by telephone, closed circuit television or other means of communication.
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**PART 3.2—HIGHER EDUCATION**

**Division 1—Student fees, subscriptions and charges**

**3.2.1 Definition**

In this Division—

**"organisation of students"** means any person or body the object of which or one of the objects of which is to represent or serve the needs of students and—

- (a) the constituting documents of which require that its membership is to be constituted by a majority of students; or
- (b) the constituting documents of which provide for any student to be a member of the organisation without the requirement for the student to apply for and be accepted as a member of that organisation; or
- (c) the majority of the members of which are students; or
- (d) in the case of an organisation with an elected governing body, at the last general election for membership of that governing body the majority of members were elected at elections where the majority of voters were students.

**3.2.2 Application of Division**

The provisions of this Division apply to the governing body of a post-secondary education institution despite anything to the contrary in—

- (a) any Act; or

(b) a subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984**; or

(c) any document whatever—  
relating to the post-secondary education institution.

### **3.2.3 Provision for declining automatic membership of a student organisation**

- (1) The governing body of a post-secondary education institution that has procedures to provide for students to become members of an organisation of students as a consequence of, or at the same time as, enrolling in a course of study at the institution must ensure that those procedures provide for a student to indicate at the time of enrolment that he or she does not wish to become a member of the organisation of students.
- (2) The governing body of a post-secondary education institution must ensure that a student who has indicated, in accordance with procedures referred to in sub-section (1), that he or she does not wish to become a member of an organisation of students is not made a member of an organisation of students as a consequence of, or by enrolling in a course of study at that institution.

### **3.2.4 Students who do not join student organisation**

The governing body of a post-secondary education institution must ensure that any student or prospective student of the institution who has paid the compulsory fees, subscriptions or charges of the institution but who is not or does not become a member of any organisation of students is not liable to—

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- (a) exclusion from the institution; or
- (b) exclusion from or discrimination against in respect of examinations or any other academic activities of the institution; or
- (c) exclusion from facilities, services or activities for students which are wholly or partially funded by the compulsory fees, subscriptions or charges; or
- (d) pay a fine to the institution; or
- (e) any other punishment imposed by or on behalf of the institution—

because the student is not or does not become a member of an organisation of students.

**3.2.5 Limitation on powers to spend funds from compulsory non-academic fees etc.**

- (1) The governing body of a post-secondary education institution must not spend or allow to be spent—
  - (a) any money paid to the institution by a student or a prospective student of the institution by way of a compulsory non-academic fee, subscription or charge; or
  - (b) any money which is profit made by the institution or an organisation of students in the course of providing facilities, services or activities funded wholly or partly by the money referred to in paragraph (a)—

except for providing facilities, services or activities of direct benefit to students at the institution.

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- (2) The governing body of a post-secondary education institution must establish procedures and sanctions to ensure that any money referred to in sub-section (1) is spent or allowed to be spent in accordance with that sub-section and, if spent or allowed to be spent in contravention of that sub-section, is repaid to the governing body.

**3.2.6 Voluntary fees held on trust**

- (1) If the governing body of a post-secondary education institution collects money for voluntary fees, subscriptions or charges to be paid to an organisation of students—

- (a) for voluntary membership of an organisation of students; or
- (b) for the voluntary use of a facility, service or activity; or
- (c) for voluntary participation in an activity—

the governing body holds the money for the beneficial use of the organisation of students and is not entitled to retain any of the money except to defray the costs of administration of collecting, holding or transfer of the money and to pay authorised deposit-taking institution and Government fees and charges relating to collecting, holding or transfer of the money.

- (2) In this section—

**"authorised deposit-taking institution"** has the same meaning as in the Banking Act 1959 of the Commonwealth.

### **3.2.7 Offence**

A person must not persuade another person to become a member of an organisation of students of a post-secondary education institution by threats, intimidation or deception or attempt to persuade a person to become a member by any of those means.

Penalty: 10 penalty units.

### **3.2.8 Statement about compulsory fees etc.**

- (1) The governing body of a post-secondary education institution must ensure that the institution's annual report under the **Financial Management Act 1994** that is submitted to the Minister includes a statement about compulsory non-academic fees, subscriptions and charges payable in the preceding financial year.
  - (2) The statement must specify—
    - (a) the amount of compulsory non-academic fees, subscriptions and charges collected by the institution from students and prospective students in the preceding financial year; and
    - (b) the purposes for which the institution spent those fees, subscriptions and charges or made them available and the amounts spent or made available; and
    - (c) the names of organisations of students to which the institution made the fees, subscriptions and charges or part of the fees, subscriptions and charges available and the amounts of money which were made available to each organisation; and
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- (d) the purposes for which the organisations referred to in paragraph (c) spent the money made available to them including names of other bodies to which they made the money available and the amounts of money they made available.

**Division 2—Incorporation of Councils**

**3.2.9 Application**

Nothing in this Division applies to a university, a TAFE institute or a provider of further education.

**3.2.10 Post-secondary education institutions**

- (1) The Governor in Council may, on the recommendation of the Minister, by order published in the Government Gazette—
- (a) create a post-secondary education institution; or
  - (b) abolish a post-secondary education institution; or
  - (c) amalgamate one or more post-secondary education institutions; or
  - (d) change the name of a post-secondary education institution—

and amend Schedule 1 by—

- (e) inserting the name of a new or amalgamated post-secondary education institution; or
- (f) removing the name of a post-secondary education institution; or
- (g) changing the name of a post-secondary education institution.

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- (2) The Minister must not make a recommendation under sub-section (1) unless the council or governing body (if any) of any institution or proposed institution concerned has made a request for the proposed order or has consented to the proposed order.
- (3) If an Order in Council under sub-section (1) changes the name of an institution—
  - (a) the institution continues in existence under the new name so that its identity is not affected; and
  - (b) any reference to an institution under the former name shall, except in relation to matters that occurred before the change of name, be construed as a reference to the institution under the new name.

**3.2.11 Incorporation of Councils**

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
    - (a) establish a council to be the governing body of an institution; or
    - (b) amalgamate a council with another council; or
    - (c) abolish a council; or
    - (d) change the name of a council; or
    - (e) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a council, the manner of appointment or the terms and conditions of appointment of members of a council; or
    - (f) make provision for a council to make rules for the government of the institution; or
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- (g) make provision for a council to delegate any of its powers and functions under this Act to a person employed at the institution or to a committee established by or under an Order in Council relating to the council; or
  - (h) amend any provision of a previous order relating to a council; or
  - (i) make provision for or with respect to anything that is consequential on the making of an order involving the rights and obligations or the assignment of any property (subject to any trusts) of any council referred to in the Order.
- (2) The Minister must not make a recommendation under sub-section (1) unless the council of the institution concerned has made a request for the proposed Order or has consented to the proposed Order.
- (3) A council established under sub-section (1)—
- (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) is capable in law of suing and being sued in its corporate name; and
  - (d) may acquire, hold and dispose of real and personal property for the purpose of performing its functions and exercising its powers under this Act; and
  - (e) may do and suffer all acts matters and things that a body corporate may by law do or suffer and are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act.
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- (4) If two or more councils previously incorporated under this Act are amalgamated under an Order made under sub-section (1), any legal proceedings that might have been commenced or continued by or against any of the councils may be commenced or continued by or against the single council formed by the amalgamation.
- (5) A change of name of a council under an order under sub-section (1) does not affect the identity of the council or any rights or obligations of the council, and any legal proceedings that might have commenced or continued by or against it by its former name may be commenced or continued by or against it by its new name.

**3.2.12 Award of degrees or diplomas**

- (1) The Governor in Council may by Order published in the Government Gazette confer on the council of a post-secondary education institution incorporated under section 3.2.11 the power to award a degree or diploma specified in the Order.
  - (2) The Governor in Council may in an Order or further Order make the power to award a specified degree or diploma subject to any terms and conditions that the Governor in Council thinks fit or remove or vary any term or condition to which the power is subject or impose additional terms and conditions on the exercise of the power.
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Part 3.3—Adult, Community and Further Education

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**PART 3.3—ADULT, COMMUNITY AND FURTHER  
EDUCATION**

**Division 1—Preliminary**

**3.3.1 Definitions**

In this Part—

**"Board"** means the Adult, Community and Further Education Board;

**"Board of AMES"** means the governing board of Adult Multicultural Education Services established by Order in Council under Division 4;

**"Board of the Centre for Adult Education"** means the Board of the Centre for Adult Education established by Order in Council under Division 4;

**"governing board"** means the governing board of an adult education institution established by Order in Council under Division 4;

**"Regional Council"** means a Regional Council of Adult, Community and Further Education established under Division 3.

**Division 2—Adult, Community and Further Education  
Board**

**3.3.2 The Adult, Community and Further Education  
Board**

- (1) The Adult, Community and Further Education Board established under the **Adult, Community and Further Education Act 1991** continues in operation under and subject to this Act.

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- (2) The Board—
- (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
  - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer, and that is necessary or expedient for performing its functions and exercising its powers.
- (3) The common seal must be kept as directed by the Board and must only be used as authorised by the Board.
- (4) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document was properly sealed.

**3.3.3 Functions of the Board**

- (1) The functions of the Board with respect to adult, community and further education that is not provided by TAFE institutes, are—
- (a) to inquire into and make reports on the general development of policies, programs and services, having regard to, amongst other things—
    - (i) the needs of the community; and
    - (ii) the establishment of objectives and priorities; and
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- (iii) the promotion of an awareness of the importance of adult, community and further education; and
  - (iv) the adequacy of arrangements for persons who have not had or do not have access to education programs and who wish to participate in adult, community and further education programs; and
  - (v) the role of Government in supporting community initiative in planning, developing and providing adult, community and further education; and
- (b) to plan, develop, evaluate and fund, policies, programs and services for the co-ordination, provision and support of adult, community and further education having regard to—
- (i) the promotion of individual and community development through learning as reflected in those policies, programs and services; and
  - (ii) the development and maintenance of the quality of and equitable access to those programs and services; and
- (c) to provide for the delivery of adult, community and further education; and
- (d) to advise the Minister on any matter relating to adult, community and further education; and
- (e) to provide educational programs where directed by the Minister or so as to comply with any agreement or arrangement between the State and the Commonwealth or any other State or Territory of the Commonwealth; and
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- (f) to promote research and development into matters relating to adult, community and further education; and
  - (g) to promote public awareness of adult, community and further education; and
  - (h) to carry out any other function that is conferred on the Board by this or any other Act.
- (2) The functions of the Board with respect to all adult, community and further education are to act jointly with the Commission—
- (a) to plan for all adult, community and further education in the State including—
    - (i) analysing the needs of the community for adult, community and further education; and
    - (ii) deciding what priority is to be given to these needs; and
    - (iii) establishing objectives and targets in order to meet these needs; and
  - (b) establish systems to achieve co-operation between the Board and the Commission to ensure that the Board's actions are consistent with arrangements for the provision of vocational education and training in Victoria.

**3.3.4 Powers of the Board**

- (1) The Board has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function delegated to it.
  - (2) In addition to the powers set out in sub-section (1) the Board may—
    - (a) be a member of a company, association, trust or partnership; and
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- (b) form or participate in the formation of a company, association, trust or partnership; and
- (c) enter into a joint venture with any other person or persons; and
- (d) apply for, obtain and hold, whether on its own behalf or jointly with any other person, any intellectual property rights; and
- (e) assign or grant licences in respect of those intellectual property rights, with or without charge; and
- (f) enter into agreements and arrangements for the commercial exploitation of intellectual property rights; and
- (g) charge fees for adult, community and further education services provided by the Board.

**3.3.5 Board to consult**

In carrying out its functions and exercising its powers, the Board must—

- (a) give effect to the adult, community and further education plan; and
- (b) have regard to the advice of a Regional Council of Adult, Community and Further Education on any matter relating to adult, community and further education in that Region; and
- (c) consult, as a matter of general practice, with—
  - (i) the Regional Councils; and
  - (ii) the governing boards of adult education institutions; and
  - (iii) the Councils of TAFE institutes; and

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(iv) any person or organisation providing or using adult, community and further education—

on any matter of general concern about adult, community and further education; and

(d) ensure that its actions are consistent with the arrangements for the provision of vocational education and training.

**3.3.6 Financial powers**

The Board—

(a) may apply money for or towards the costs of or incidental to the performance of its functions and the exercise of its powers under this Act; and

(b) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to any person, organisation or institution, whether public or private, on any terms or conditions that the Board thinks fit; and

(c) may make payments by way of grants, subsidies or loans in relation to adult, community and further education to a Council of a TAFE institute and any such payment—

(i) must be consistent with the adult, community and further education plan; and

(ii) must be made on any terms and conditions that the Board thinks fit; and

(d) may make payments to a Regional Council or the governing board of an adult education institution with respect to their functions in accordance with a performance agreement entered into under section 3.3.7;

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- (e) may make payments by way of grants, subsidies or loans in relation to education other than adult, community and further education and any such payment—
  - (i) must not be made unless the Minister has first given his consent to it; and
  - (ii) is subject to any terms and conditions imposed by the Minister.

**3.3.7 Performance agreements**

- (1) The Board may enter into a performance agreement with a Regional Council with respect to that Council's functions under this Act.
- (2) The Board may enter into a performance agreement with the governing board of an adult education institution with respect to the functions of the governing board under this Act.

**3.3.8 Adult, community and further education plan**

- (1) The Board and the Commission must jointly prepare an adult, community and further education plan.
  - (2) In developing the plan the Board must have regard to the integration of regional information including information provided by a Regional Council.
  - (3) A new plan must be made at the end of every 3 years after the last plan was made.
  - (4) Nothing in sub-section (3) prevents a new plan from being made before the end of 3 years.
  - (5) Before making a new plan, the Board and the Commission must jointly evaluate the previous plan.
  - (6) Each plan must be reviewed at regular intervals not exceeding 3 years after the making of the last plan.
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- (7) A plan may be amended at any time.
- (8) If the Board and Commission are unable to agree upon the making or amendment of a plan it must be determined by the Minister for the time being responsible for the administration of this Act.

**3.3.9 Implementation of the plan**

The Board and the Commission must give effect to the plan.

**3.3.10 Membership of the Board**

- (1) There are to be 12 members of the Board to be appointed by the Governor in Council on the recommendation of the Minister of whom—
  - (a) one member is to be appointed as Chairperson; and
  - (b) one member is to be appointed as Deputy Chairperson.
- (2) In making a recommendation under subsection (1) the Minister must have regard to—
  - (a) maintaining a balance between the number of men and women on the Board; and
  - (b) ensuring that the composition of the Board reflects both metropolitan and country interests; and
  - (c) ensuring that the composition of the Board is a fair and balanced reflection of the diversity of the community; and
  - (d) ensuring that there is sufficient financial and management expertise on the Board; and
  - (e) ensuring that the composition of the Board reflects the interests of users of adult, community and further education; and

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- (f) ensuring that the composition of the Board reflects the importance of the community based provision of adult, community and further education.

**3.3.11 Schedule 10**

Schedule 10 has effect subject to any contrary intention in this Part.

**3.3.12 Committees of the Board**

- (1) The Board must establish an audit committee to audit the financial and other affairs of the Board.
- (2) The Board may establish one or more other committees and may refer matters to a committee for examination.
- (3) The Board must determine the membership, the terms and conditions of membership and procedures of a committee established under this section.

**3.3.13 Staff**

A General Manager of the Board employed under this Act is responsible for implementing any policy or decision of the Board made in accordance with this Part or any other Act.

**Division 3—Delegations**

**3.3.14 Delegations by the Board**

The Board may, by instrument under its common seal, delegate any power or function, other than a function specified in section 3.3.3(2), its duty to make the adult, community and further education plan under section 3.3.8 or this power of delegation to—

- (a) a member of the Board; or
- (b) the General Manager; or

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- (c) any employee in the public service employed for the purposes of this Part or Part 3.1; or
- (d) a Regional Council of Adult, Community and Further Education; or
- (e) a provider of adult, community and further education including the governing board of an adult education institution; or
- (f) the Commission or the Director of the Commission; or
- (g) a person appointed or body established by the Minister under this Act.

**3.3.15 Delegations by the General Manager**

The General Manager may, by instrument in writing, delegate any of his or her powers or functions under this Act, other than this power of delegation, to—

- (a) any employee in the public service employed for the purposes of this Part or Part 3.1; or
- (b) any Regional Council; or
- (c) a person employed under Division 3; or
- (d) a provider of adult, community and further education including the governing board of an adult education institution; or
- (e) the Commission or the Director of that Commission; or
- (f) a person appointed or body established by the Minister under this Act.

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**Division 4—Regions of Adult, Community and Further Education**

**3.3.16 Regions**

The Minister, after consulting with and considering the advice of the Board, is to establish regions for the administration of adult, community and further education in Victoria.

**3.3.17 Regional Councils**

The Minister must appoint a Regional Council of Adult, Community and Further Education for each region established under section 3.3.16.

**3.3.18 Functions of Regional Councils**

- (1) The functions of a Regional Council are—
- (a) to develop a process which will enable users and providers of adult, community and further education to advise the Council and the Board on the needs of adult, community and further education in the region; and
  - (b) to provide advice and prepare reports for the Board; and
  - (c) advise on and implement policies for adult, community and further education which are consistent with the functions and policies of the Board; and
  - (d) to provide information, and contribute to planning, for adult, community and further education in the region; and
  - (e) to make recommendations to the Board about the allocation of funds provided by the Board under Division 2 and about the allocation of resources for providing adult, community and further education in the region when it is not provided by TAFE

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- institutes or an adult education institution;  
and
- (f) to advise the Board about the effectiveness of activities funded by the Board under Division 2 and about the effectiveness of adult, community and further education activities within the region that are not provided by TAFE institutes or an adult education institution; and
  - (g) to support and promote the provision of adult, community and further education in the region; and
  - (h) to support and promote networks between community based providers of adult, community and further education; and
  - (i) to support and promote the diversity and flexibility of the community based provision of adult, community and further education; and
  - (j) to advise the Board on strategies and systems which will support and enhance the communication between the Government and the community about the provision and development of adult, community and further education in the region; and
  - (k) to participate in recommending to the Board priorities and policies to apply throughout the State; and
  - (l) to carry out any other function that is conferred on it by this or any other Act.
- (2) The Minister may from time to time, by notice published in the Government Gazette, confer additional functions relating to adult, community and further education on a Regional Council.
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- (3) In carrying out its functions a Regional Council must—
- (a) consult as a matter of general practice with any person or organisation who uses or provides adult, community and further education and any other education and training organisation in its region including the Council of any TAFE institute which provides or offers adult, community and further education in the region and the governing board of an adult education institution if it provides or offers adult, community and further education in the region; and
  - (b) ensure that its actions are consistent with the arrangements for the provision of vocational education and training.

**3.3.19 Powers of Regional Councils**

A Regional Council has power to do everything that is necessary or convenient for it to do for or in connection with the performance of its functions including any function delegated to it.

**3.3.20 Accountability**

A Regional Council must carry out its functions subject to—

- (a) any performance agreement it has entered into with the Board; and
- (b) the policies of the Board and the adult, community and further education plan; and
- (c) the general control of the Minister and any other requirement of this Act.

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**3.3.21 Membership of Regional Councils**

- (1) A Regional Council consists of 9 members appointed by the Minister of whom one shall be elected as Chairperson and one shall be elected as Deputy Chairperson by the members of the Council.
  - (2) The Minister must consult with any community, or other group or organisation in the region which is, in the Minister's opinion, appropriate concerning the membership of a Regional Council for that region.
  - (3) In appointing members of a Regional Council, the Minister—
    - (a) must consider any advice given in a consultation under sub-section (2) and ensure that the members of the Council—
      - (i) reflect the knowledge, skills and experience of the adult, community education sector; and
      - (ii) reflect in a fair and balanced way the diversity of the community in that region; and
      - (iii) have knowledge and experience of governance responsibilities; and
      - (iv) have knowledge and experience of fiduciary requirements and the employment of staff; and
    - (b) must ensure that at least one half of the members are people with substantial knowledge of or experience in the provision of adult, community and further education.
  - (4) The members of a Council may co-opt, for one term of office and for a period not exceeding one year, not more than 2 members.
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- (5) A co-opted member of the Council has the same rights, powers, duties and entitlements as any other member of the Council for the period during which he or she is co-opted.

**3.3.22 Terms and conditions of office of members**

- (1) A member holds office for the term, not exceeding 3 years, that is specified in the instrument of appointment and is eligible for re-appointment.
- (2) The office of a member becomes vacant if—
- (a) the member becomes bankrupt; or
  - (b) the member is found guilty of an offence which is or which would, if committed in Victoria, be an indictable offence; or
  - (c) the member is absent from three consecutive meetings of the Council without the Chairperson's leave or in the case of the Chairperson, without the Minister's leave.
- (3) A member must, in the exercise of his or her functions—
- (a) act honestly; and
  - (b) exercise reasonable care and diligence; and
  - (c) not make improper use of any information acquired as a member of a Council; and
  - (d) disclose to the Council any conflict of interest or duties.
- (4) A member may resign his or her office in writing delivered to the Minister.
- (5) The Minister may remove or suspend a member from office.

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- (6) A member, other than a person who holds a statutory office within the meaning of the **Public Administration Act 2004**, is employed in the public service or the teaching service or with a statutory authority, and whose travelling and personal expenses are met through that position, is entitled to be paid allowances for travelling and personal expenses at the rates and on the conditions applicable to employees of the public service.
- (7) A member is appointed subject to any other terms and conditions that are specified in the instrument of appointment and that are not inconsistent with this Act.

**3.3.23 Meetings of Councils**

- (1) A Regional Council must have at least 6 meetings in any year.
- (2) The Chairperson must preside at any meeting at which he or she is present.
- (3) If the Chairperson is absent the Deputy Chairperson must preside.
- (4) Subject to this Act and to any guidelines issued by the Minister, the Council may regulate its own proceedings.

**3.3.24 Incorporation of Regional Councils**

- (1) A Regional Council—
  - (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and

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- (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions or exercising its powers; and
  - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
- (2) The common seal of a Regional Council must be kept as directed by the Council and must only be used as authorised by the Council.
  - (3) All courts must take judicial notice of the imprint of the common seal on a document and, until the contrary is proved, must presume that the document is properly sealed.

**3.3.25 Employment of staff**

- (1) A Regional Council may employ a Director of the Regional Council (however described) and any other staff that are necessary to enable the Regional Council to perform its functions and exercise its powers.
- (2) Persons employed under this section shall be employed on terms and conditions determined by the Regional Council.
- (3) A Regional Council, in employing persons under this section, does not represent the Crown.

**Division 5—Adult Education Institutions**

**3.3.26 Adult Multicultural Education Services**

- (1) There continues to be established an adult education institution called Adult Multicultural Education Services.
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- (2) The Board of AMES is the governing body of AMES and is constituted as a body corporate by Order in Council as provided for in this Division.
- (3) The Board of AMES has the functions and powers conferred on it by this Division and by Order in Council made under this Division.

**3.3.27 Centre for Adult Education**

- (1) There continues to be established an adult education institution called the Centre for Adult Education.
- (2) The Board of the Centre for Adult Education is the governing body of the Centre for Adult Education and is constituted as a body corporate by Order in Council as provided for in this Division.
- (3) The Board of the Centre for Adult Education has the functions and powers conferred on it by this Division or an Order in Council under this Division.

**3.3.28 Adult education institutions**

- (1) The Governor in Council may, on the recommendation of the Minister, by Order published in the Government Gazette—
  - (a) create an adult education institution; or
  - (b) abolish an adult education institution; or
  - (c) amalgamate one or more adult education institutions; or
  - (d) change the name of an adult education institution—

and amend Schedule 5 by—

- (e) inserting the name of a new or amalgamated adult education institution; or

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- (f) removing the name of an adult education institution; or
  - (g) changing the name of an adult education institution.
- (2) The Minister must not make a recommendation under sub-section (1) unless—
- (a) the governing board or the governing body (if any) of any institution or proposed institution concerned has made a request for the proposed order or has been consulted about the proposed order; and
  - (b) the Minister has consulted the Adult, Community and Further Education Board about the proposed order.
- (3) If an Order in Council changes the name of an institution under sub-section (1)—
- (a) the institution continues in existence under the new name so that its identity is not affected; and
  - (b) in an Act, in a subordinate instrument made under an Act or in any other document a reference to an institution under the former name must, except in relation to matters that occurred before the change of name, be construed as a reference to the institution under the new name.

**3.3.29 Incorporation of governing boards**

- (1) The Governor in Council may, on the recommendation of the Minister by Order—
- (a) establish a governing board to oversee and manage an adult education institution; or
  - (b) amalgamate a governing board with another governing board; or
  - (c) abolish a governing board; or
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- (d) change the name of a governing board; or
  - (e) make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of a governing board, the manner of appointment or the remuneration or other terms and conditions of appointment of members of a governing board; or
  - (f) make provision for the governing board to make rules for the government of the institution; or
  - (g) make provision for the governing board to delegate any of its powers and functions under this Act (except any powers or functions delegated to it under this Act) to a person employed at the institution or to a committee established by or under an Order in Council relating to the board; or
  - (h) amend any provision of a previous order relating to a governing board; or
  - (i) make provision for or with respect to anything that is consequential upon the making of an order including the rights and obligations or the assignment of any property (subject to any trusts) of any governing board referred to in the Order.
- (2) The Minister must not make a recommendation under sub-section (1) unless—
- (a) the governing board of the institution concerned has made a request for the proposed Order or has been consulted about the proposed Order; and
  - (b) the Minister has consulted the Board about the proposed Order.
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- (3) A governing board established under sub-section (1)—
- (a) is a body corporate with perpetual succession; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) is capable of acquiring, holding, dealing with or disposing of property for the purpose of performing its functions and exercising its powers; and
  - (e) is capable of doing and suffering anything that a body corporate may by law do and suffer and that is necessary or expedient for performing its functions and exercising its powers.
- (4) If two or more governing boards previously incorporated under this Act are amalgamated under an Order under sub-section (1), any legal proceedings that might have been commenced or continued by or against any of the boards may be commenced or continued by or against the single governing board formed by the amalgamation.
- (5) A change of name under an Order under sub-section (1) does not affect the identity of the governing board or any rights or obligations of the governing board or render defective any legal proceedings by or against the board, and any legal proceedings that might have been continued or commenced by or against it by its former name may be continued by or against it by its new name.
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**3.3.30 Functions of governing boards**

- (1) The functions of the governing board of an adult education institution are to—
  - (a) oversee the institution and ensure that the institution is managed efficiently and effectively; and
  - (b) approve periodic management plans for the institution consistent with the plans and policies of the Adult, Community and Further Education Board; and
  - (c) provide the community served by the institution with efficient and effective adult, community, further education, vocational education and training, employment and other associated programs and services responsive to the needs of that community;
  - (d) consult with the relevant Regional Councils about the provision of these programs and services;
  - (e) in the case of the governing board of AMES, monitor the structure, reach and accessibility of AMES services to maximise their availability to new and emerging communities and client groups;
  - (f) in the case of governing boards except the governing board of AMES, make adequate arrangements for persons and groups which have not had or do not have adequate access to programs or services provided by the institution;

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- (g) undertake generally the development and provision of adult, community, further education, vocational education and training, employment and other associated programs and services considered necessary for the objects of the adult education institution within Victoria and outside Victoria, whether in or outside Australia;
  - (h) carry out any other function conferred on the governing board by or under this Act.
- (2) Without limiting the generality of sub-section (1) a governing board may carry out all or any of the following functions—
- (a) provide facilities or services for study, research or education;
  - (b) undertake research, development, counselling or other services for commercial organisations;
  - (c) aid or engage in the development or promotion of research by the institution or the application or use of the results of that research;
  - (d) prepare, publish or distribute or license the use of literary or artistic work, audio or audio-visual material or computer software;
  - (e) seek or encourage gifts to the institution or for institution purposes;
  - (f) promote or assist drama, music or the visual arts.

**3.3.31 Powers of governing boards**

- (1) A governing board has power to do all things that are necessary or convenient to be done for or in connection with or, as incidental to, the performance of its functions including any function delegated to it.
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- (2) Without limiting the generality of sub-section (1) a governing board, for the purpose of carrying out its functions, may—
  - (a) with the prior written approval of the Minister, be a member of a company, association, trust or partnership;
  - (b) with the prior written approval of the Minister, form or participate in the formation of a company, association, trust or partnership;
  - (c) enter into a joint venture with another person or persons.

**3.3.32 Accountability of governing boards**

- (1) A governing board must perform its functions and exercise its powers subject to—
    - (a) a performance agreement; and
    - (b) any economic or social objectives or industrial relations policies established from time to time by the Government of Victoria; and
    - (c) any Order in Council made under section 3.3.29; and
    - (d) any other requirements of this Act.
  - (2) A governing board must establish and keep full and complete books and accounts of all money received and paid by the board and must arrange for a continuous audit of the income and expenditure to be made at any intervals not exceeding one month that the Minister directs.
  - (3) The books and accounts referred to in sub-section (2) must be kept in the form and manner approved by the Auditor-General.
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**3.3.33 Board membership**

- (1) An Order in Council under section 3.3.29 must provide for a governing board consisting of not less than 9 and not more than 15 persons of whom—
  - (a) not less than one half must be appointed by the Minister;
  - (b) one must be a staff member of the institution elected by staff of the institution;
  - (c) one must be a student of the institution elected by students of the institution;
  - (d) one must be the director of the institution;
  - (e) in the case of the governing board of AMES, the remaining members must be persons with knowledge of or experience in the community, business, education, finance or the public sector or with special skills or knowledge relevant to AMES appointed by the governing board by co-option;
  - (f) in the case of other governing boards, the remaining members must be persons with knowledge of or experience in the community or any industry served by the institution or in adult, community and further education or with special skills or knowledge relevant to the governing board appointed by the governing board by co-option.
- (2) A person who is a member of Parliament must not be appointed or elected to be a member of a governing board.

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**3.3.34 Removal from office of members**

- (1) The Minister may remove a member appointed by the Minister under section 3.3.33(1)(a) from office at any time.
- (2) The Minister may remove a member elected or appointed to a governing board under section 3.3.33(1)(b), (c), (e) or (f)—
  - (a) on the recommendation of two thirds of the members for the time being of the governing board; or
  - (b) on the recommendation of the Adult, Community and Further Education Board.
- (3) The Adult, Community and Further Education Board must not make a recommendation under sub-section (2)(b) unless—
  - (a) the Adult, Community and Further Education Board has requested the governing board to recommend the removal of a member and the governing board has not made a recommendation within 30 days of the request; and
  - (b) the Adult, Community and Further Education Board is satisfied that the member failed to comply with any requirement of a member under this Act; and
  - (c) the Adult, Community and Further Education Board has given the member an opportunity to submit an explanation in relation to the alleged failure.

**3.3.35 Reserve powers of Minister**

- (1) If the Minister is satisfied that the governing board of an institution—
    - (a) is inefficiently or incompetently managing the institution; or
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- (b) is failing to comply with its performance agreement; or
- (c) has failed to comply with any provision of this Act, a guideline issued by the Minister or any directions given to the governing board by the Minister or an Order in Council establishing the governing board—

the Minister may do any one or more of the following—

- (d) issue written directions to the governing board about—
    - (i) action to be taken to remedy inefficient or incompetent management, which may include the dismissal of the institution's director; or
    - (ii) compliance with a performance agreement; or
    - (iii) compliance with the Act, guidelines, directions or an Order in Council;
  - (e) censure the governing board;
  - (f) recommend that the Governor in Council dismiss the members of the governing board and appoint new members of the governing board and make arrangements for the elections for elected members of the governing board;
  - (g) recommend to the Governor in Council that an administrator of the institution be appointed.
- (2) If the Minister is satisfied that a governing board has failed to comply with a direction given under sub-section (1)(d) the Minister may do any one or more of the things specified in sub-section (1)(e), (f) and (g).

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**3.3.36 Notice of proposal**

- (1) If the Minister proposes to exercise his or her powers under section 3.3.35, the Minister—
  - (a) must give the governing board notice in writing of the proposal and the reasons for the proposal; and
  - (b) must consider any submissions whether oral or in writing made to the Minister by the governing board within 7 days after the giving of the notice or any further time specified in the notice; and
  - (c) may consider any other submissions and any matters the Minister considers appropriate—  
before deciding whether or not to exercise the power.
- (2) If the Minister decides to censure or dismiss a governing board or appoint an administrator to the governing board, the Minister must—
  - (a) give notice in writing of the censure, dismissal or appointment to the governing board; and
  - (b) cause to be tabled in each House of Parliament within 7 sitting days of the House after the notice is given to the governing board—
    - (i) a copy of the notice; and
    - (ii) a report of the circumstances leading to the action; and
    - (iii) a copy of any written submission made by the governing board.

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**3.3.37 Appointment of administrator**

- (1) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the institution for the period and subject to the terms and conditions that are specified in the appointment.
- (2) An administrator of an institution appointed under this section has and may exercise all the powers and is subject to all the duties of the governing board of the institution and the director of the institution.
- (3) On the appointment of an administrator, the members of the governing board cease to hold office.
- (4) The Minister must review the appointment of an administrator within 12 months after the appointment.
- (5) If the Minister recommends to the Governor in Council that the appointment of the administrator should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
- (6) If a notice is published under sub-section (5) in relation to an institution—
  - (a) members of the governing board of the institution shall be elected or appointed in accordance with this Part; and

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- (b) on the date specified in the notice—
  - (i) the appointment of the administrator is revoked; and
  - (ii) the governing board of the institution is re-established.

**3.3.38 Saving of acts of board**

Nothing done by a governing board is in any way abated or affected by the dismissal of the governing board or the appointment of an administrator under this Division.

**3.3.39 Schedule 10**

Schedule 10 has effect subject to any contrary intention in this Part.

**3.3.40 Employment of staff**

- (1) Subject to any direction given by the Minister, a governing board—
  - (a) must employ an institution director; and
  - (b) may employ such other staff as is necessary to enable the governing board to perform its functions and exercise its powers.
- (2) A governing board, in employing persons under this section, does not represent the Crown.
- (3) A governing board may, by instrument under its common seal, delegate to the institution director any power of the board under this section, other than this power of delegation.

**3.3.41 Minister may object to director appointment**

- (1) Before appointing a person as institution director a governing board must notify the Minister in writing of the proposal to make the appointment.

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- (2) The Minister may, within 10 days after receiving that notification and after considering the governing board's proposal, give to the governing board notice in writing of his or her objection to the proposed appointment.
- (3) A governing board must not appoint a person as an institution director if the Minister has objected to the appointment in accordance with subsection (2).

**3.3.42 Staff conditions**

A governing board may determine terms and conditions of employment of persons employed under section 3.3.39 in addition to any terms or conditions that were determined or agreed in accordance with Part 6 of the **Adult, Community and Further Education Act 1991**.

**3.3.43 Institution directors**

An institution director—

- (a) is the chief executive officer of the governing board; and
- (b) is responsible for the day to day administration and management of the institution in accordance with any policies or directions of the governing board of the institution and with the requirements of this Act; and
- (c) must satisfy the governing board that—
  - (i) funds are spent; and
  - (ii) staff are carrying out functions; and
  - (iii) the institution is generally managed and administered—

in accordance with the requirements of this Act.

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