



# Public Administration Act

## (3) Recent amendments: including section 13A

### Guidance note - for boards of DEPI agencies

This guidance note has been developed to assist all public entities and other statutory boards, committees, councils, panels, etc. in the Department of Environment and Primary Industries (DEPI) portfolio.

### Overview

Almost all DEPI agencies are public entities and are subject to the *Public Administration Act 2004 (PAA)*.<sup>1</sup>

The Victorian Parliament recently passed amendments to the PAA which take effect from 1 April 2014. This guidance note summarises those amendments, in particular, the introduction of section 13A.

### Oversight and support - s 13A

The board of a public entity is accountable to the responsible minister for the exercise of its functions. In turn, the minister is responsible to the Victorian Parliament.<sup>2</sup>

The Secretary of a department **oversees** and **supports** the agencies in its portfolio on behalf of the responsible minister.

Section 13A of the PAA imposes certain legal obligations that relate to the support and oversight of public entities. Under section 13A:

- the **Secretary** of DEPI is responsible for:
  - advising the minister on matters relating to each public entity, including 'the discharge by the public entity of its responsibilities' under its establishing Act, the PAA, and any other relevant Act; and

- 'working with, and providing guidance to' a public entity on matters relating to 'public administration and governance'.<sup>3</sup>
- a **public entity** must (unless prohibited by law) provide the Secretary with *any information* that he or she requires to comply with his/her obligations under section 13A.<sup>4</sup>

(Note that section 13A does not give the Secretary power to direct or control how a public entity performs the functions conferred by its establishing Act, the PAA, or any other Acts.)<sup>5</sup>

### Assessment by board of its own performance - s 81(1)(d)(iv)

Section 81 of the PAA requires that certain board policies be in place. This includes a long-standing requirement for boards to have adequate procedures in place for assessing the performance of **individual** board members, and for dealing with poor performance.<sup>6</sup>

Section 81(1)(d)(iv) now requires that a board also have adequate procedures in place for 'assessing its own performance' – i.e. the board's **collective** performance.

<sup>1</sup> The definition of a public entity is set out in section 5 of the PAA.

<sup>2</sup> For example, see section 85 of the PAA.

<sup>3</sup> Section 13A(2)

<sup>4</sup> Section 13A(3).

<sup>5</sup> Section 13(4).

<sup>6</sup> Section 81(1)(d)(i) & (ii). (However it is not required for 'commissioner' entities – i.e. where the governing body is a single person rather than a board.)

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## Guidance note - for boards of DEPI agencies

### To which boards does section 81 apply?

Section 81 of the PAA applies to public entities that:

- are established after 1 July 2005; OR
- have had their establishing Act amended to deem that the agency is subject to these provisions (e.g. catchment management authorities and water corporations); OR
- are included in an Order made by the Governor in Council under section 75(a) of the PAA, which is published in the Government Gazette.<sup>7</sup>

This means that it is legally binding on most major DEPI agencies and some smaller committees of management.

### Model policy available from DEPI

To assist DEPI agencies to have a suitable *Performance Assessment* policy in place, DEPI has developed a model policy and guidance note. These are available from the DEPI governance website **On Board** ([www.depi.vic.gov.au/onboard](http://www.depi.vic.gov.au/onboard)).

It is recommended that your board:

- (a) adopt the model policy, which can be **adapted** to take into account the **nature and functions** of your agency; or
- (b) have an **equivalent** policy in place that is consistent with the **key principles** in the model policy.

If your agency's establishing Act contains specific requirements in relation to performance assessment, your board will need to adapt the model policy accordingly.<sup>8</sup>

<sup>7</sup> Section 81 is part of Divisions 2 and 3 of Part 5 of the PAA, which apply to public entities that fit one of these criteria. Even if section 81 is not binding on your agency, it is recommended that a suitable *Performance Assessment* policy be in place; this is basic good governance practice.

<sup>8</sup> If the minister or the Secretary of DEPI issues performance assessment guidelines/requirements that apply to your board then its *Performance Assessment* policy will also need to take these into account. Examples of agencies for which guidelines/requirements have been issued are catchment management authorities and water corporations.

### Administrative guidelines issued by Department of Premier & Cabinet – s 36A

Section 36A gives the Secretary of the Department of Premier and Cabinet ('DPC') the power to issue guidelines in relation to the 'administrative operations' of a public entity (or public entities).

If a public entity operates, or intends to operate, inconsistently with a guideline that affects it, written reasons must be provided to the Secretary of DPC.

A key purpose of such guidelines is to promote consistent standards of administration across the public sector.

(Note that administrative guidelines cannot be issued to a public entity in relation to the exercise of 'a discretion in the performance of its functions'.)

### Subsidiaries – s 5(1A)

Under section 5(1A), if a public entity has a subsidiary then, for the purposes of the PAA, the subsidiary is also a public entity.<sup>9</sup>

Most DEPI public entities do not have subsidiaries (or the power to create them) and will not be affected by this provision.

A public entity that has a subsidiary or is intending to create one should contact DEPI for further information.<sup>10</sup>

### Declared authorities – s 25A(b) is repealed

The repeal of section 25A(b) only affects 'declared authorities'. In the DEPI portfolio these are:

- the Director of the Royal Botanic Gardens Board; and
- the CEO of Zoological Parks and Gardens Board.

The requirement for the Premier to approve the remuneration for these positions has been abolished.<sup>11</sup>

<sup>9</sup> This applies regardless of whether the public entity or its subsidiary are bodies corporate.

<sup>10</sup> Note that under section 84 of the PAA if a public entity has the power to form a subsidiary and intends to do so, it must notify both the responsible minister and the Treasurer in writing. The minister may veto the formation of the subsidiary or impose conditions upon it.

<sup>11</sup> As for other executive positions in the public sector, remuneration is now determined in accordance with the agency's establishing Act and any related public sector requirements, without the need for the Premier's consent.

### Victorian Public Sector Commission – Part 4

Under the new Part 4 of the PAA, the State Services Authority (SSA) is abolished and replaced with the Victorian Public Sector Commission.

The Commission will continue to perform the functions of the SSA such as reviews and inquiries and the collection of data in relation to Victoria's public entities. It will also conduct research and disseminate best practice information on public sector administration, governance, service delivery, and workforce management and development.

The Commission will also perform the functions formerly performed by the Public Sector Standards Commissioner (e.g. issuing binding codes of conduct and employment standards). It will have also have additional functions (e.g. maintaining a register of lobbyists).

DEPI's governance website, **On Board** ([www.depi.vic.gov.au/onboard](http://www.depi.vic.gov.au/onboard)), will include direct links to governance topics (e.g. conflict of interest) on the Commission's new website.

### Further information

**On Board** ([www.depi.vic.gov.au/onboard](http://www.depi.vic.gov.au/onboard)), the DEPI governance website, offers information and resources on a range of key governance topics, for example:

- **Support modules** (e.g. **Public Administration Act**) with:
  - guidance notes, model policies, templates and sample documents, case studies, etc.
  - direct links to the topic on other websites (e.g. [Victorian Public Sector Commission](#) and [Victorian Ombudsman](#)).
- **DEPI guide to good governance – board members**, an overview of the role and duties of board members. (A key resource for all board members of DEPI agencies.)
- **E-alerts** from DEPI with governance news and information (e.g. new laws, best practice, new resources and significant updates to On Board). To register for e-alerts please email [governance@depi.vic.gov.au](mailto:governance@depi.vic.gov.au).

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Published by the Victorian Government  
Department of Environment and Primary Industries, Melbourne  
16 May 2014 (**version 3.2**).

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Authorised by the Victorian Government, 8 Nicholson Street, East Melbourne.

ISBN 978-1-74287-744-0 (online - set)

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