



Victoria Government Gazette

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GENERAL

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As from 12 May 2016

The last Special Gazette was No. 143 dated 11 May 2016.

The last Periodical Gazette was No. 1 dated 27 May 2015.

How To Submit Copy

- See our webpage www.gazette.vic.gov.au
 - or contact our office on 8523 4601
between 8.30 am and 5.30 pm Monday to Friday
-

PRIVATE ADVERTISEMENTS

DISSOLUTION OF PARTNERSHIP

Notice is hereby given that the partnership previously subsisting between Kelli Marchewka and Lina Filardo, carrying on business as designers, importers and sellers of children's bibs and accessories under the style of Bibalicious Bibs has been dissolved as from 21 April 2016 so far as concerns the said Kelli Marchewka who retires from the said partnership.

BELBRIDGE HAGUE SOLICITORS,
522 Kiewa Street, Albury,
New South Wales 2640.

DISSOLUTION OF PARTNERSHIP

Notice is hereby given that the partnership between Carla Budds and Leah Rice, which traded under the name of Mr Fox Hair Beauty Retail, has been dissolved with effect from 29 January 2016.

ROBERTS BECKWITH PARTNERS,
16 Blamey Place, Mornington 3931.

DISSOLUTION OF PARTNERSHIP

Notice is hereby given in accordance with the provisions of the **Partnership Act 1958** (section 41) that:

- The partnership existing between DGH Properties Pty Ltd as trustee for the DG Harris Family Trust ('Harris'), MW Corp Pty Ltd as trustee for the Wood Family Trust ('Wood') and Sabata Lalita Nominees Pty Ltd as trustee for the Wilson 2000 Trust ('Wilson'), trading as Wilson Real Estate ('Business') at 104 Liebig Street, Warrnabool, Victoria, is now dissolved by mutual consent with effect from 31 August 2015.
- Harris and Wood are no longer associated in conducting the Business and Wilson will conduct the Business hereafter, has assumed all of the outstanding obligations of the Business incurred before and after dissolution, and is entitled to all of the assets of the Business.

NICHOLAS O'DONOHUE & CO., lawyers,
Level 29, 140 William Street, Melbourne,
Victoria 3000.

Re: MALCOLM JOHN HOCKING, late of Unit 3, 92 New Street, Ringwood, Victoria, taxi driver, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the abovenamed deceased, who died on 28 December 2015, are required by the executrix, Pauline Hocking, to send particulars thereof to her, care of the undermentioned solicitors within two months from the date of publication of this notice, after which date the executrix will distribute the estate, having regard only to the claims of which she has notice.

AUGHTERSONS, solicitors,
267 Maroondah Highway, Ringwood,
Victoria 3134.

Re: Estate MARY MARGARET MANUEL, deceased.

In the estate of MARY MARGARET MANUEL of Northaven Guest Home for the Aged, Shadforth Street, Kerang, Victoria, retired, deceased.

Creditors, next-of-kin and all other persons having claims against the estate of the said deceased are required by Helen Margaret Trezise and Carolyn Ann Dear, the executors of the Will of the said deceased, to send particulars of such claims to them, in care of the undermentioned solicitors, within two months from the date of publication of this notice, after which date they will distribute the assets, having regard only to the claims of which they then have notice.

BASILE & CO. PTY LTD, legal practitioners,
46 Wellington Street, Kerang, Victoria 3579.

Estate LESLIE DONALD SHARP, late of 69 Haldane Street, Beaumaris, Victoria, retired, hosiery operator, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 21 July 2015, are required by the executor, Pamela Agnes Sharp, to send particulars, care of the solicitors below, within two months from the publication hereof, after which date the executor may convey or distribute the assets, having regard only to the claims of which she then has notice.

BEAUMARIS LAW,
25 North Concourse, Beaumaris, Victoria 3193.

Re: ALBERTO MOREIRA DE CARVALHO, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of ALBERTO MOREIRA DE CARVALHO, late of 1 Clayton Road, Balwyn, Victoria, who died on 2 January 2016, are to send particulars of their claims to the personal representative/s, care of the undermentioned solicitors, by 13 July 2016, after which date the personal representative/s may convey or distribute the assets, having regard only to the claims of which they then have notice.

BRUCE M. COOK & ASSOCIATES,
solicitors,
Level 4, 114 William Street, Melbourne 3000.

Re: AILSA JEAN ELBOURNE, late of 5 Pearson Road, Drouin, Victoria, homemaker, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 14 January 2016, are required by the executors, Collin Douglas Elbourne and Bruce William Elbourne, to send particulars of such claims to Collin Douglas Elbourne, PO Box 1474, Warragul, Victoria 3820, by 29 October 2016, after which date the executors will distribute the assets, having regard only to the claims of which they have notice.

Re: MATRONA ANTONOWICZ, late of 30 North Street, Ardeer, Victoria, home duties, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 20 January 2016, are required by the trustee, Joseph De Marco, to send particulars to the trustee, care of the undermentioned solicitors, within 60 days from the publication hereof, after which date the trustee may convey or distribute the assets, having regard only to the claims of which the trustee has notice.

DE MARCO LAWYERS,
of 794A Pascoe Vale Road, Glenroy 3046.

Re: ELIZABETH MARY HIGGS, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of ELIZABETH MARY HIGGS, late of Faversham House, 27 Shierlaw Avenue, Canterbury, Victoria and

formerly of 4 Albany Place, Bulleen, Victoria, home duties, deceased, who died on 17 February 2016, are required by the executor to send particulars of their claim to her, care of the undermentioned solicitors, by 28 October 2016, after which date the said executor will distribute the assets of the deceased, having regard only to the claims of which she then shall have notice.

DONALD & RYAN LAWYERS, solicitors,
304 High Street, Kew 3101.

Re: Estate of THOMAS LESLIE ROBINSON.

Creditors, next-of-kin and others having claims in respect of the estate of THOMAS LESLIE ROBINSON, late of 33 River Street, Nyah, in the state of Victoria, retired postman, deceased, who died on 4 February 2016, are to send particulars of their claim to the executor, care of the undermentioned legal practitioners, by 26 July 2016, after which the executor will distribute the assets, having regard only to the claims of which she then has notice.

DWYER MAHON & ROBERTSON,
legal practitioners, Beveridge Dome,
194–208 Beveridge Street, Swan Hill.

Re: ALMA MARY WILSON, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 14 September 2015, are required by the personal representative, Elizabeth Mary Hutchesson, to send particulars to the personal representative, care of its below lawyers, by 11 July 2016, after which date the personal representative may convey or distribute the assets, having regard only to the claims of which it has notice.

HALL & WILCOX LAWYERS,
Level 11, Rialto South Tower,
525 Collins Street, Melbourne 3000.

Re: Estate of DAPHNE MAY FRASER, late of Blue Cross Gardens, 37 Argyle Avenue, Chelsea, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 10 February 2016, are required by the trustees, to send particulars to the trustees,

care of the undermentioned solicitors, by 12 August 2016, after which date the trustees may convey or distribute the assets, having regard only to the claims of which the trustees then have notice.

MAHONS with Yuncken & Yuncken, solicitors,
177 Surrey Road, Blackburn 3130.
SM:CH2160453

Re: VALERIE MARY CRESSWELL,
deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 7 February 2016, are required by the trustees, Susan Elizabeth Pearce and Jennifer Anne Clark, to send particulars of such claims to them, in care of the below mentioned lawyers, by 13 July 2016, after which date the trustees may convey or distribute the assets, having regard only to the claims of which they then have notice.

ROBERTS BECKWITH PARTNERS,
16 Blamey Place, Mornington, Victoria 3931.

Re: VIVIEN HARRISON, late of Unit 182,
83 Kulin Drive, Tarneit, Victoria 3029, retired,
deceased.

Creditors, next-of-kin, and others having claims in respect of the estate of the deceased, who died on the 8 March 2016, are required by the trustee, Sandhurst Trustees Limited, ACN 004 030 737 of 18 View Street, Bendigo, Victoria, to send particulars to the trustee, by 15 July 2016, after which date the trustee may convey or distribute the assets, having regard only to the claims of which the trustee then has notice.

SANDHURST TRUSTEES LIMITED,
18 View Street, Bendigo 3550.

Re: PETER MAXWELL SUDHOLZ, late
of 'The Homestead', 221 Creek Road, Natimuk,
Victoria, deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the abovenamed deceased, who died on 3 January 2016, are required to send particulars of their claims to the executor, David Martin Sudholz, care of the undermentioned solicitors, within 60 days from

the date of publication of this notice, after which date the said executor will distribute the assets, having regard only to the claims of which he then has notice.

T. J. MULVANY & CO, lawyers,
Suite 5.01, Level 5, 45 William Street,
Melbourne 3000.

RAYMOND CYRIL SCHILD, late of
12 Murra Court, Kiewa, Victoria 3691, retired,
deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the abovenamed deceased, who died on 1 September 2015, are required by the executor, Beverley Anne Wilson, care of PO Box 585, Albury, New South Wales 2640, to send particulars of their claims to her, by 7 June 2016, after which date the executor may convey or distribute the assets and distribute the estate, having regard only to the claims of which she then has notice. Probate was granted in Victoria on 18 April 2016.

TONY BRANDT, lawyer,
566 Kiewa Street, Albury, New South Wales 2640,
PO Box 585, Albury, New South Wales 2640.
Ph: (02) 6023 3133, Fax: (02) 6023 5266.
TB:AB:153473. Contact Anthony Brandt.

Re: KEITH JAMES PALMER, late of
34 Park Avenue, Sandringham, Victoria 3191,
deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 29 March 2016, are required by the executor, Equity Trustees Limited, to send particulars to it, care of the undermentioned solicitors, by 15 July 2016, after which date the executor may convey or distribute the assets, having regard only to the claims of which it then has notice.

TRAGEAR & HARRIS LAWYERS,
1/23 Melrose Street, Sandringham 3191.

Re: JAN LUDZER VAN DER MOLEN, late
of 75 Thames Street, Box Hill, Victoria, retired,
deceased.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 6 November 2015, are required by

the executor, Verna Ann Cook, to send particulars of such claims to her at her below address, by 12 July 2016, after which date the executor may convey or distribute the assets, having regard only to the claims of which she then has notice.

VERNA ANN COOK, solicitor,
30 Sussex Street, Brighton, Victoria 3186.

The estate of BETTY ALLISON JENNINGS, late of 72 Oak Street, Beaumaris, Victoria.

Creditors, next-of-kin and others having claims in respect of the estate of the deceased, who died on 24 October 2015, are required by the executor, Andrew Mark Jennings, to send particulars to him, care of the undersigned solicitors, by a date not later than two months from the date of publication hereof, after which date the trustee may convey or distribute the assets, having regard only to the claims of which the trustee has notice.

WILLIS SIMMONDS LAWYERS,
legal practitioners,
6/1 North Concourse, Beaumaris 3193.

Terms: 10% deposit on the fall of the hammer. Balance within 14 days unless as stated in particulars of sale in contract of sale. Payment is by cheque only.

Please contact Sheriff's Asset Administration Services by email at realestatesection@justice.vic.gov.au for an information sheet on Sheriff's auctions, a contract of sale and any other enquiries.

SHERIFF

ADVERTISEMENT OF AUCTION BY THE SHERIFF

On Thursday 16 June 2016 at 1.30 pm in the afternoon at the Sheriff's Office, 444 Swanston Street, Carlton (unless process be stayed or satisfied).

All the estate and interest (if any) of Colin John Schelfhout of 3 Ocean Park Drive, Marengo, joint proprietor with Dianne Margaret Schelfhout, of an estate in fee simple in the land described on Certificate of Title Volume 10068 Folio 921, upon which is erected a house and known as 3 Ocean Park Drive, Marengo, will be auctioned by the Sheriff.

Registered Mortgage (Dealing No. AK529136R), Registered Caveat (Dealing No. AL309104A), Registered Caveat (Dealing No. AL549026C), Registered Caveat (Dealing No. AL621715B), Registered Caveat (Dealing No. AL820981T), Registered Caveat (Dealing No. AL848322F), Registered Caveat (Dealing No. AL934020T), and Registered Covenant T057526P affect the said estate and interest. The Sheriff is unable to provide access to this property.

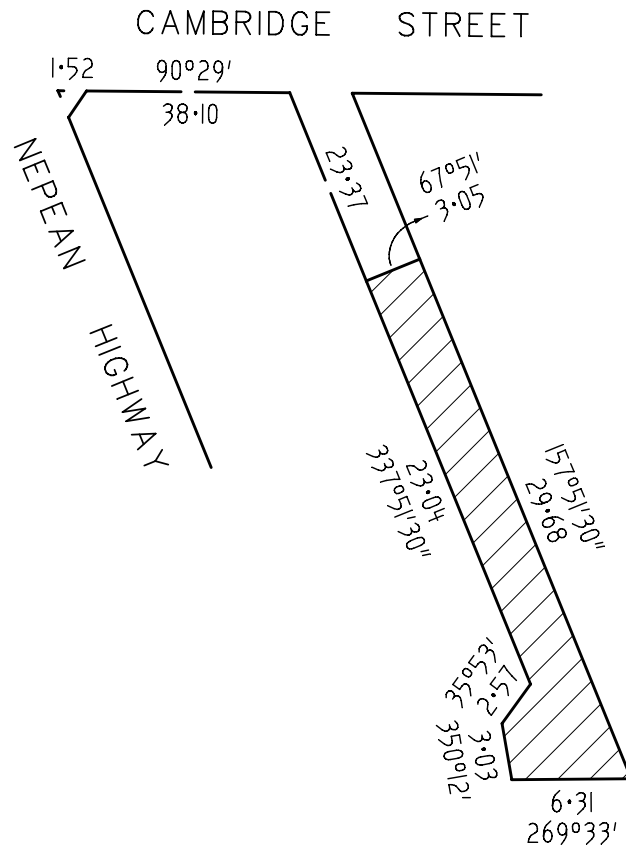
**GOVERNMENT AND OUTER BUDGET
SECTOR AGENCIES NOTICES**

BAYSIDE CITY COUNCIL

Road Discontinuance

Acting under Clause 3 of Schedule 10 to the **Local Government Act 1989**, Bayside City Council resolved to discontinue and sell the road abutting 2 Cambridge Street, Brighton East, being part of the land contained in Certificate of Title Volume 4781 Folio 072 and shown hatched on the plan below (Road).

The Road is to be sold subject to any right, power or interest held by South East Water in connection with any sewers, drains or pipes under the control of that authority in the Road.

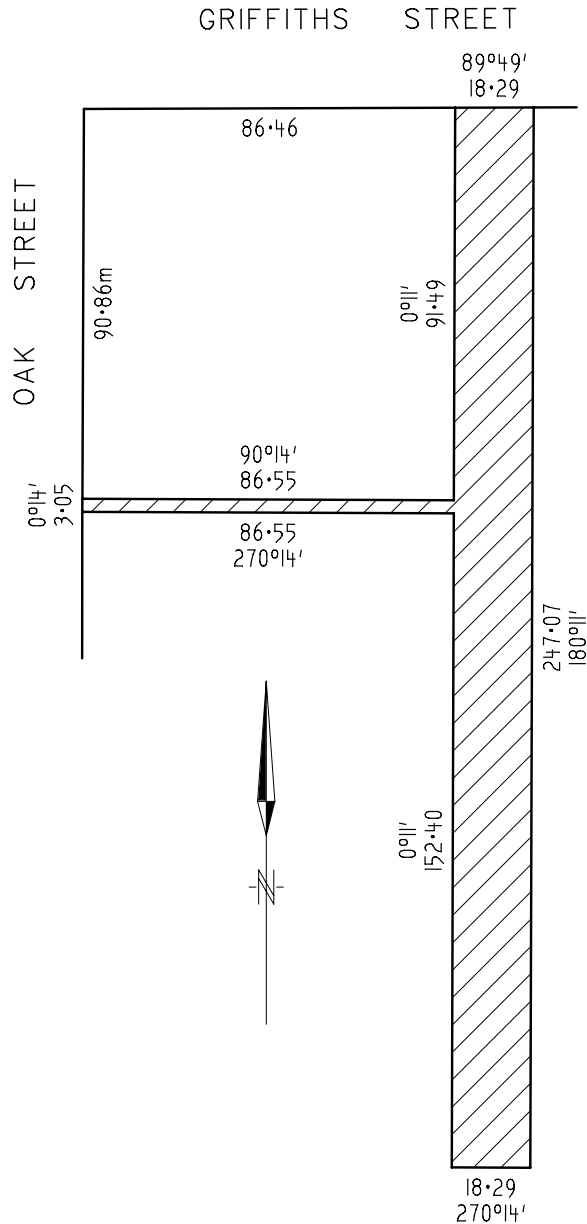


ADRIAN ROBB
Chief Executive Officer
Bayside City Council

BAYSIDE CITY COUNCIL

Road Discontinuance

Acting under Clause 3 of Schedule 10 to the **Local Government Act 1989**, Bayside City Council resolved to discontinue the road forming part of Banksia Reserve, being part of the land contained in Certificate of Title Volume 11176 Folio 338 and shown hatched on the plan below (Road), and to transfer the Road to itself.



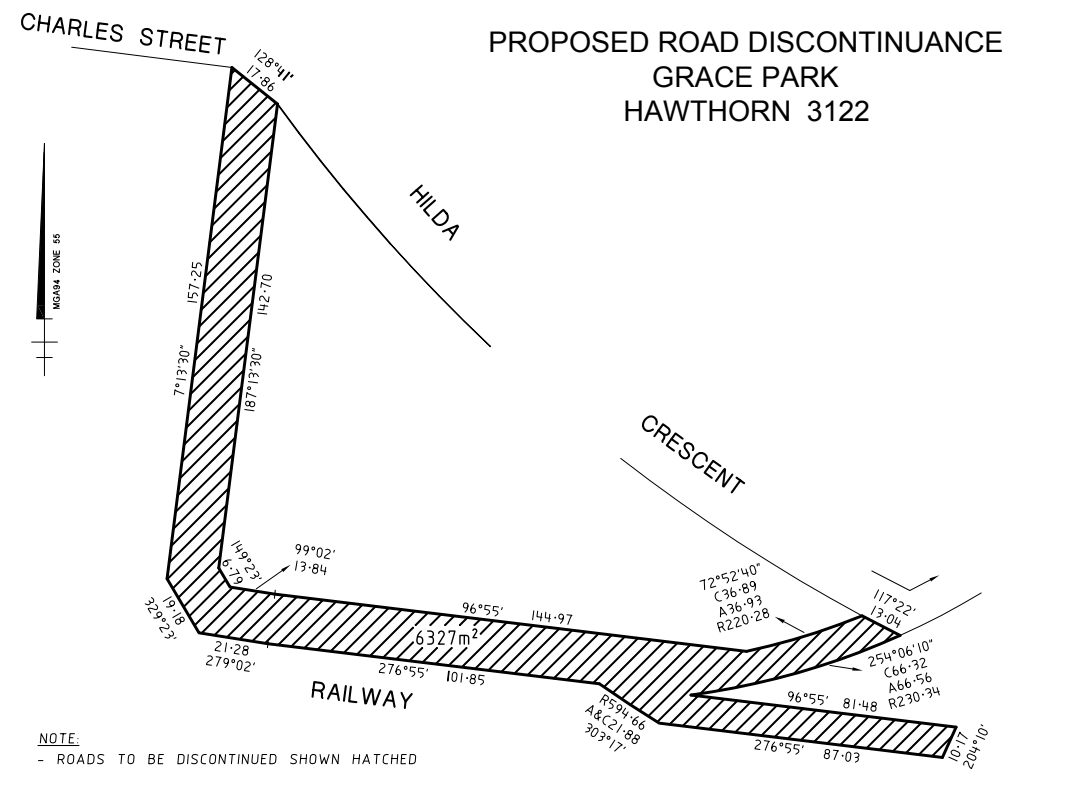
ADRIAN ROBB
 Chief Executive Officer
 Bayside City Council

BOROONDARA CITY COUNCIL

Erratum

On 17 September 2015, Boroondara City Council (Council) gave notice on page 1986 of the Victoria Government Gazette G 37 of its resolution to discontinue the road within Grace Park, Hilda Crescent, Hawthorn, shown hatched on the plan below, and to retain part of the land and transfer part of the land to Grace Park Hawthorn Club Inc. (the Club) pursuant to a land exchange agreement between Council and the Club.

Notice is hereby given that the previous gazettal notice incorrectly stated that the road discontinuance was subject to any right, power or interest held by Yarra Valley Water Corporation Pty Ltd in the road. The second paragraph of the previous gazettal notice is deleted.

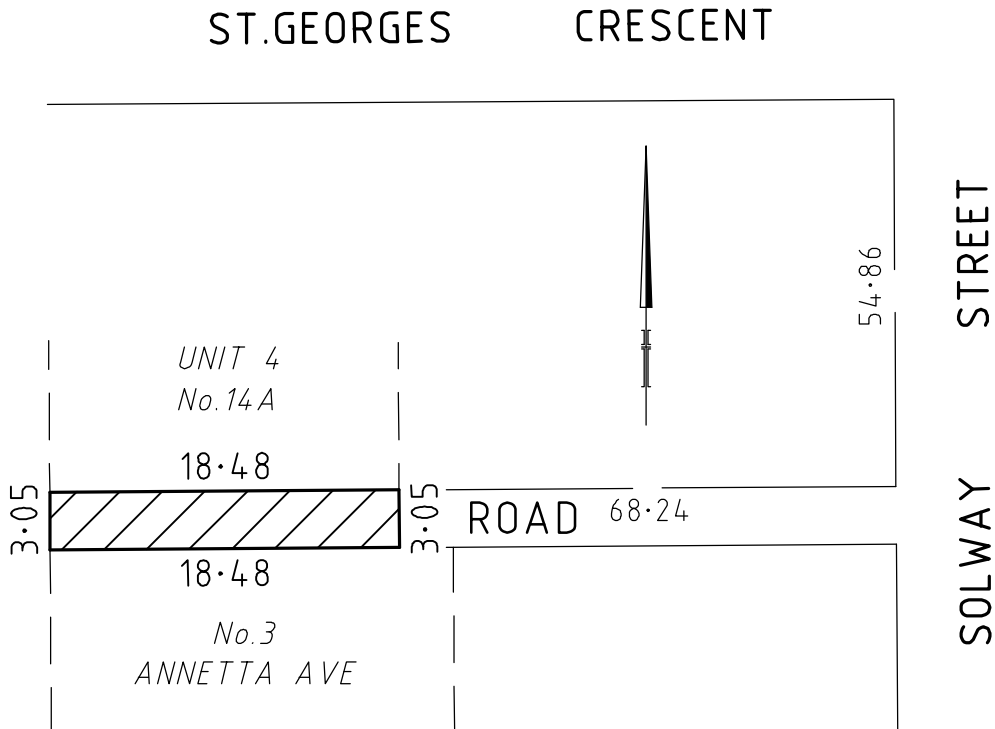


BOROONDARA CITY COUNCIL

Road Discontinuance

Pursuant to section 206 and Schedule 10, Clause 3 of the **Local Government Act 1989**, the Boroondara City Council has resolved to discontinue the road adjoining 4/14A St Georges Crescent and 3 Annetta Avenue, Ashburton, shown by hatching on the plan below, and to sell the land from the road by private treaty to the owner of 4/14A St Georges Crescent, Ashburton.

The road is to be sold subject to the right, power or interest held by Yarra Valley Water in the road in connection with any sewers, drains or pipes under the control of that authority in or near the road.



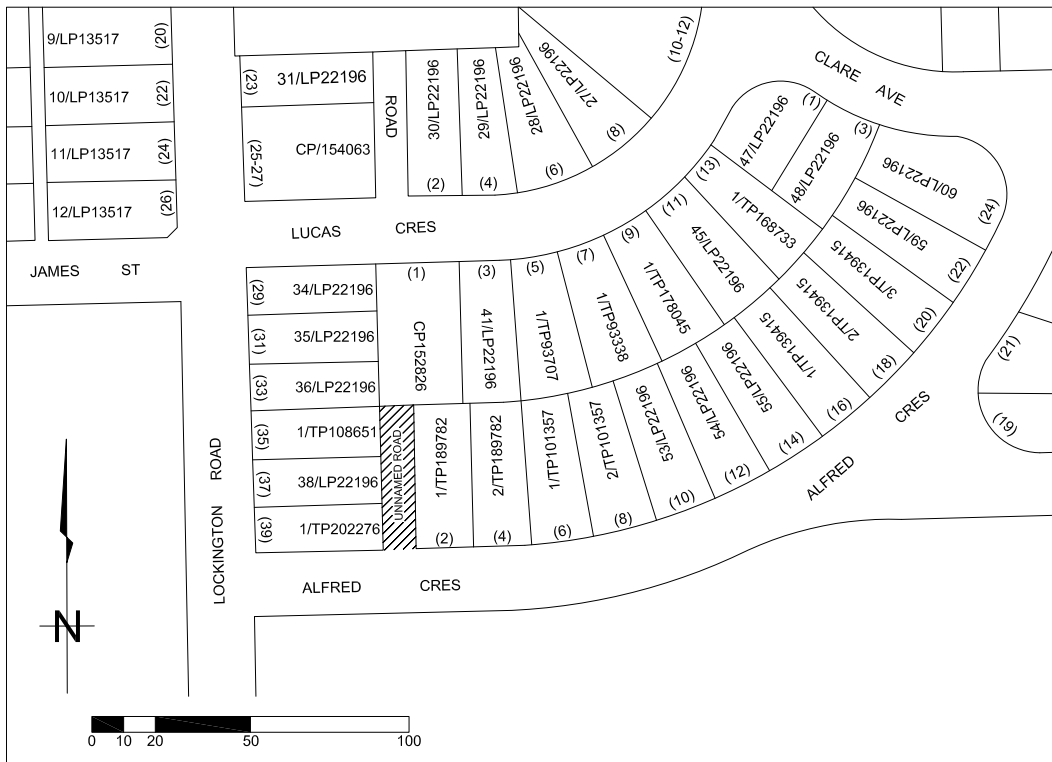
PHILLIP STORER
Chief Executive Officer



ROAD DISCONTINUANCE

Pursuant to section 206(1) and Clause 3(a) of Schedule 10 of the **Local Government Act 1989** ('the Act'), the Campaspe Shire Council at its ordinary meeting held on 15 March 2016 having received no submissions under section 223 of the Act, resolved to discontinue the road in Lockington shown hatched on the plan below, and the subject land will vest in Council and will be sold under the adopted Standard Process for Property Disposal.

**Plan for road closure
County of Bendigo Parish of Bamawm
Township of Lockington**



MOORABOOL SHIRE COUNCIL

Proposed Meeting Procedure Local Law No. 9

Opportunity to Make a Submission

Notice is hereby given that pursuant to section 119(2) of the **Local Government Act 1989**, Moorabool Shire Council, at its ordinary meeting of 4 May 2016, resolved to advertise its intent to make a new Meeting Procedure Local Law (proposed Local Law).

The purpose and general purport of the proposed Local Law is to regulate proceedings and provide for orderly and fair conduct at all Council Meetings, Special Committee Meetings and Advisory Committee Meetings. The proposed Local Law will also regulate the proceedings for the election of the Mayor/Deputy Mayor and Chairperson/Deputy Chairperson of the committees in addition to regulating the use of the common seal or any device resembling the common seal.

A Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council.

The proposed Local Law can be viewed at Council offices located at 15 Stead Street, Ballan; 182 Halletts Way, Darley; Lerderderg Library, 215 Main Street, Bacchus Marsh; and also online at www.moorabool.vic.gov.au

Written submissions on the proposed Local Law No. 9 are welcome until 5.00 pm on Tuesday 7 June 2016.

Written submissions should be addressed to: The Chief Executive Officer, Meeting Procedure Local Law Submission, Moorabool Shire Council, PO Box 18, Ballan, Victoria 3342 or emailed to: info@moorabool.vic.gov.au

Submissions may also be presented to Council via the Moorabool Have Your Say website at haveyoursaymoorabool.com.au

Council will consider submissions on Wednesday 22 June 2016 at a Special Meeting of Council to be held in the James Young Room, Lerderderg Library, 215 Main Street, Bacchus Marsh, at 6 pm.

Any person making a submission is entitled to state in the submission that he or she wishes to appear in person, or to be represented by a person specified in the submission, before

this Special Meeting of the Council. Persons wishing to be heard will be notified of the time and date of the meeting.

Whilst it is appropriate for submitters' names and addresses to be disclosed to enable transparent decision making, if you have concerns about this, Council can provide you with the option of having your submission remain anonymous.

If you choose to provide your name and address it will be included as part of your submission to be considered by Council. You should also be aware that even if you choose to be anonymous, the details contained in some submissions may be sufficient to identify the author of the submission to some readers. Hence, if you wish your submission to remain anonymous you should bear this in mind when drafting it.

Please contact Customer Service on 5366 7100 should you have any queries in relation to the proposed Meeting Procedure Local Law No. 9.



**MORNINGTON
PENINSULA**
Shire

Road Management Act 2004PROPOSED AMENDMENT OF
ROAD MANAGEMENT PLAN

In accordance with section 54(6) of the **Road Management Act 2004**, and regulation 10(1) of the Road Management (General) Regulations 2016, Mornington Peninsula Shire Council gives notice that it proposes to amend its Road Management Plan (RMP).

The purpose of the proposed amendments is to incorporate into the RMP the suggested improvements identified in the Shire's written review report adopted by Council that summarises the findings and conclusions of the review of the Shire's current RMP (2011).

This includes:

- changes to the Pathway and Car Park hierarchies;
- changes to standards for inspection, maintenance and repair, including inspection frequencies, compulsory intervention levels and response times;
- inclusion of type of intervention action to be taken;

- introduction of standards for roadside vegetation and equestrian trails; and
- miscellaneous clarifications, corrections and modifications where required.

The Council also intends to nominate roads to be re-classified in its Register of Public Roads as 'substandard' or 'not maintainable'. The Register is not an incorporated document in the RMP.

The amendments will ensure that the standards and priorities to be given to the construction, inspection, maintenance and repair of the roads to which the Shire's RMP applies are safe and efficient. Account is being taken of the needs, priorities and expectations of the Shire's communities, relevant policies and available funding.

The amendments apply to all of the roads and classes of roads in the Shire for which the Council is the responsible road authority under the Act.

A copy of the proposed amended RMP, the review report and the proposed changes to the Register of Public Roads may be obtained or inspected at the Shire Offices in Rosebud, Mornington and Hastings, or accessed on the Shire's internet site, www.mornpen.vic.gov.au

Any person who is aggrieved by the proposed amendment may make a submission on the proposed amendment to the Shire by close of business on Tuesday 28 June 2016.

Submissions must be in writing, marked as 'Proposed Amendment to Road Management Plan' and be addressed to: Team Leader Asset Management, MPSC, Private Bag 1000, Rosebud 3939; or by email to customerservice@mornpen.vic.gov.au

A person who has made a submission and requested that they be heard in support of their submission is entitled to appear in person, or be represented by a person acting on their behalf, before a meeting of the Council or Committee of Council, in accordance with section 223 of the **Local Government Act 1989**, the day, time and place of which will be advised.

Any enquiries about the proposed amendments can be directed to Colin Myers, Team Leader Asset Management, on (03) 5950 1320.

CARL COWIE
Chief Executive Officer



LOCAL LAW REVIEW AND PROPOSED GENERAL LOCAL LAW

Yarra City Council is reviewing the Roads and Council Land Law No. 2 and Environment Local Law No. 3. These local laws have been merged into a single proposed General Local Law. Council is seeking submissions from the community regarding the proposed changes.

Copies of the proposed General Local Law, explanatory documents and the feedback survey are available at Council's town halls, libraries or mailed on request.

Have your say

Online – View the proposed General Local Law and additional information and provide your feedback online by Friday 10 June at www.yarracity.vic.gov.au/LLR

Post – Hard copy submissions must be received by Olivia Bennett, Yarra City Council, PO Box 168, Richmond, Victoria 3121 by Friday 10 June.

Before the proposed General Local Law is finalised, any person has a right to make a submission on the proposed local law.

Submissions must be received by Council by Friday 10 June 2016 and should be sent to Olivia Bennett.

Any person wishing to be heard in support of a submission should request in their submission to appear in person or be represented by a person specified in the submission.

Submitters requesting to be heard will be advised of the day, time and place of the relevant Council meeting.

For more information on the Local Law Review, contact Olivia Bennett, Senior Prosecution Administrator on 9205 5555 or Olivia.Bennett@yarracity.vic.gov.au

SURF COAST SHIRE COUNCIL

Proposed Local Law No. 2
Council Meeting Procedures
and Common Seal

Notice is hereby given that the Surf Coast Shire Council, at its meeting held on 26 April 2016, resolved to commence the statutory

process in accordance with sections 119 and 223 of the **Local Government Act 1989** (the Act) to make a new Local Law, Local Law No. 2 – Council Meeting Procedures and Common Seal.

The overall purpose and purport of the proposed Local Law as set out in the draft are to:

- facilitate good government and provide a process for good decision-making of Surf Coast Shire Council matters affecting the municipality and community;
- provide for procedures governing the conduct of Council Meetings, Special and Advisory Committee meetings;
- set the rules of behaviour for those participating in or present at Council meetings, Special and Advisory Committee meetings;
- promote and encourage community engagement in local government while at the same time ensuring that Council conducts its business in an effective and efficient manner in line with the Act;
- regulate proceedings for the election of the Mayor and Chair of various committees;
- regulate the use and control of the Common Seal; and
- revoke Local Law No. 2 – Council Meeting Procedures and Common Seal 2011.

Written submissions about the proposed Local Law are invited from any person affected by the proposed Local Law. Written submissions will be considered in accordance with section 223 of the Act and should be addressed to the Chief Executive Officer, Surf Coast Shire Council, PO Box 350, Torquay, Victoria 3228 and received no later than 5 pm Tuesday 28 June 2016. You may also request to be heard in support of your submission.

A Community Impact Statement has been developed to assist the community in understanding the new Local Law and how it complies and aligns with other legislation.

A copy of the proposed Local Law and Community Impact Statement are available from Surf Coast Shire Council Offices, 1 Merrijig Drive, Torquay, or online at www.surfcoast.vic.gov.au

Any person requiring further information should direct their enquiry to Wendy Hope, Manager Governance and Risk on (03) 5261 0600.

KEITH BAILLIE
Chief Executive Officer

Planning and Environment Act 1987

BAYSIDE PLANNING SCHEME

Notice of the Preparation of an Amendment

Amendment C124

Bayside City Council has prepared Amendment C124 to the Bayside Planning Scheme.

The land affected by the Amendment is all land within the Bayside municipality.

The Amendment proposes to amend the Municipal Strategic Statement of the Bayside Planning Scheme to implement the planning elements of the Bayside Integrated Transport Strategy (2013), the Bayside Walking Strategy (2015) and the Bayside Bicycle Strategy (2013).

You may inspect the Amendment, any documents that support the Amendment and the explanatory report about the Amendment, free of charge, at the following locations: during office hours, at the office of the planning authority, Bayside City Council Corporate Centre, 76 Royal Avenue, Sandringham; during opening hours at one of Bayside's libraries (opening hours are available on Council's website) – Brighton Library, 14 Wilson Street, Brighton; Hampton Library, 1D Service Street, Hampton; Sandringham Library, 2–8 Waltham Street, Sandringham; Beaumaris Library, 96 Reserve Road, Beaumaris; and at the Department of Environment, Land, Water and Planning website, www.delwp.vic.gov.au/public-inspection

Any person who may be affected by the Amendment may make a submission to the planning authority about the Amendment. Submissions must be made in writing giving the submitter's name and contact address, clearly stating the grounds on which the Amendment is supported or opposed and indicating what changes (if any) the submitter wishes to make.

Name and contact details of submitters are required for Council to consider submissions and to notify such persons of the opportunity to attend Council meetings and any public hearing held to consider submissions.

The closing date for submissions is 5 pm Friday 10 June 2016. A submission must be sent to one of the following: post to Urban Strategy – Amendment C124, Bayside City Council, PO Box 27, Sandringham, Victoria 3191; email to enquiries@bayside.vic.gov.au

The planning authority must make a copy of every submission available at its office for any person to inspect, free of charge, for two months after the Amendment comes into operation or lapses.

SHIRAN WICKRAMASINGHE
Director City Planning and Amenities

Planning and Environment Act 1987

CAMPASPE PLANNING SCHEME

Notice of Preparation of Amendment

Amendment C105

The Campaspe Shire Council has prepared Amendment C105 to the Campaspe Planning Scheme.

The Amendment applies to all land within the Shire of Campaspe.

The Amendment proposes to implement the 2014 Planning Scheme Review.

In particular, the Amendment proposes to replace part of the existing Local Planning Policy Framework (LPPF) at Clause 21 (Municipal Strategic Statement – MSS) with a new MSS. The Amendment proposes to further modify the LPPF by introducing a new local policy at Clause 22.04 dealing with ‘Non-agricultural uses’ in the Farming Zone.

The Amendment also proposes to introduce minor changes to schedules to Clause 42.01 (Schedule 1), Clause 43.04 (Schedule 9), Clause 45.01 and Clauses 61.03 and 66.06. The Amendment deletes a Public Acquisition Overlay from a site in Echuca.

You may inspect the Amendment, any documents that support the Amendment and the explanatory report about the Amendment, free of charge, during office hours, at the office of the planning authority, Shire of Campaspe offices, corner Heygarth and Hare Streets, Echuca; Shire of Campaspe Service Centres in Rochester, Tongala, Kyabram, Rushworth; Council’s website, www.campaspe.vic.gov.au; and Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions must be made in writing giving the submitter’s name and contact address, clearly stating the grounds on which

the Amendment is supported or opposed and indicating what changes (if any) the submitter wishes to make.

Name and contact details of submitters are required for Council to consider submissions and to notify such persons of the opportunity to attend Council meetings and any public hearing held to consider submissions. In accordance with the **Planning and Environment Act 1987**, Council must make available for inspection a copy of any submissions made.

The closing date for submissions is 30 June 2016. A submission must be sent to Council’s Planning Department, Campaspe Shire Council, PO Box 35, Echuca 3564, or email to strategy@campaspe.vic.gov.au

The following panel hearing dates have been set for this Amendment:

- directions hearing: week of 5 September 2016.
- panel hearing: week of 3 October 2016.

JASON RUSSELL
Chief Executive Officer

Planning and Environment Act 1987

CARDINIA PLANNING SCHEME

Notice of the Preparation of an Amendment

Amendment C211

The Cardinia Shire Council has prepared Amendment C211 to the Cardinia Planning Scheme.

The Amendment applies to land identified as the Pakenham Activity Centre.

The Amendment proposes to revise the Municipal Strategic Statement (MSS) to consider ‘Activity Centre Structure Plans’ (in general) and reference the Pakenham Structure Plan where applicable. The Amendment also proposes to insert the ‘Pakenham Structure Plan (April 2015)’ into the Schedule to Clause 81.01 as an incorporated document.

You may inspect the Amendment, any documents that support the Amendment and the explanatory report about the Amendment, free of charge, at the following locations: during office hours, at the office of the planning authority, Cardinia Shire Council, 20 Siding Avenue, Officer; and, at the Department of Environment, Land, Water and Planning website, www.delwp.vic.gov.au/public-inspection

Any person who may be affected by the amendment may make a submission to the planning authority about the Amendment. Submissions must be made in writing giving the submitter's name and contact address, clearly stating the grounds on which the Amendment is supported or opposed and indicating what changes (if any) the submitter wishes to make.

Name and contact details of submitters are required for Council to consider submissions and to notify such persons of the opportunity to attend Council meetings and any public hearing held to consider submissions. The closing date for submissions is 5 pm Tuesday 14 June 2016. A submission must be sent to the Cardinia Shire Council at mail@cardinia.vic.gov.au or Cardinia Shire Council, Amendment C211, PO Box 7, Pakenham, Victoria 3810.

The planning authority must make a copy of every submission available at its office for any person to inspect, free of charge, for two months after the Amendment comes into operation or lapses.

TRACEY PARKER
Manager Strategic Planning

Planning and Environment Act 1987

CARDINIA PLANNING SCHEME

Notice of the Preparation of an Amendment Amendment C212

The Cardinia Shire Council has prepared Amendment C212 to the Cardinia Planning Scheme.

The Amendment affects a variety of land parcels in Cardinia Shire Council.

The Amendment proposes to correct minor zoning and overlay anomalies and correct errors in the description of heritage places in the Schedule to Clause 43.01 in the Cardinia Planning Scheme.

You may inspect the Amendment, any documents that support the Amendment and the explanatory report about the Amendment, free of charge, at the following locations: during office hours, at the office of the planning authority, Cardinia Shire Council, 20 Siding Avenue, Officer; and at the Department of Environment, Land, Water and Planning website, www.delwp.vic.gov.au/public-inspection

Any person who may be affected by the Amendment may make a submission to the planning authority about the Amendment. Submissions must be made in writing giving the submitter's name and contact address, clearly stating the grounds on which the Amendment is supported or opposed and indicating what changes (if any) the submitter wishes to make.

Name and contact details of submitters are required for Council to consider submissions and to notify such persons of the opportunity to attend Council meetings and any public hearing held to consider submissions. The closing date for submissions is 5 pm Tuesday 14 June 2016. A submission must be sent to the Cardinia Shire Council at mail@cardinia.vic.gov.au or Cardinia Shire Council, Amendment C212, PO Box 7, Pakenham, Victoria 3810.

The planning authority must make a copy of every submission available at its office for any person to inspect, free of charge, for two months after the Amendment comes into operation or lapses.

TRACEY PARKER
Manager Strategic Planning

Planning and Environment Act 1987

STONNINGTON PLANNING SCHEME

Notice of the Preparation of an Amendment Amendment C233

The Stonnington Council has prepared Amendment C233 to the Stonnington Planning Scheme.

The land affected by the Amendment is 878 High Street, Armadale.

The Amendment proposes to apply an individual heritage control to one place of heritage significance not currently in the Heritage Overlay in the City of Stonnington.

You may inspect the Amendment, any documents that support the Amendment and the explanatory report about the Amendment, free of charge, at the following locations: during office hours, at the office of the planning authority, City of Stonnington, Stonnington City Centre, 311 Glenferrie Road, Malvern, Victoria 3144; and at the Department of Environment, Land, Water and Planning website, www.delwp.vic.gov.au/public-inspection

Any person who may be affected by the Amendment may make a submission to the planning authority about the Amendment. Submissions must be made in writing giving the submitter's name and contact address, clearly stating the grounds on which the Amendment is supported or opposed and indicating what changes (if any) the submitter wishes to make.

Name and contact details of submitters are required for Council to consider submissions and to notify such persons of the opportunity to attend Council meetings and any public hearing held to consider submissions. The closing date for submissions is 14 June 2016. A submission must be sent to the City of Stonnington, PO Box 21, Prahran 3181.

The planning authority must make a copy of every submission available at its office for any person to inspect, free of charge, for two months after the Amendment comes into operation or lapses.

RACHEL DUCKER
Manager City Strategy

Creditors, next-of-kin and others having claims against the estate of any of the undermentioned deceased persons are required to send particulars of their claims to State Trustees Limited, ABN 68 064 593 148, of 1 McNab Avenue, Footscray, Victoria 3011, the personal representative, on or before 12 July 2016, after which date State Trustees Limited may convey or distribute the assets, having regard only to the claims of which State Trustees Limited then has notice.

CLARKE, Margaret, late of Casey Aged Care, 300 Golf Links Road, Narre Warren, Victoria 3805, deceased, who died on 23 October 2015.

KERR, Ivy Jean, late of Uniting Agewell, 319 Geelong Road, Kingsville, Victoria 3012, retired, deceased, who died on 7 December 2015, Grant of Probate dated 22 April 2016.

SMITH, Lois Dawn, late of Newmans Manor, 33 Newmans Road, Templestowe, Victoria 3106, deceased, who died on 19 January 2016.

ZUPANEK, Roger Marjan, late of 26 Clearwater View, South Morang, Victoria 3752, engineer, deceased, who died on 22 July 2015.

ZUREK, Helen Luina, late of Bupa Aged Care Clayton, 12 Burton Avenue, Clayton, Victoria 3168, retired, deceased, who died on 31 January 2016.

Dated 3 May 2016

STEWART MacLEOD
Manager

Creditors, next-of-kin and others having claims against the estate of any of the undermentioned deceased persons are required to send particulars of their claims to State Trustees Limited, ABN 68 064 593 148, of 1 McNab Avenue, Footscray, Victoria 3011, the personal representative, on or before 13 July 2016, after which date State Trustees Limited may convey or distribute the assets, having regard only to the claims of which State Trustees Limited then has notice.

JONES, Eunice Joan also known as Eunice June Jones, late of Flat 30, 5 Moore Street, Creswick, Victoria 3363, deceased, who died on 21 August 2015.

QUIGLEY, Garry Anthony, late of 72 Mitchell Street, Bentleigh, Victoria 3204, deceased, who died on 26 February 2016.

TURNER, Noel Francis, late of 17 Dunolly Crescent, Reservoir, Victoria 3073, deceased, who died on 17 January 2016.

ZUCAK, Nikola, late, care of Fermont Lodge, 29/31 Fintonia Road, Noble Park, Victoria 3174, deceased, who died on 11 February 2016.

Dated 4 May 2016

STEWART MacLEOD
Manager

Creditors, next-of-kin and others having claims against the estate of any of the undermentioned deceased persons are required to send particulars of their claims to State Trustees Limited, ABN 68 064 593 148, of 1 McNab Avenue, Footscray, Victoria 3011, the personal representative, on or before 14 July 2016, after which date State Trustees Limited may convey or distribute the assets, having regard only to the claims of which State Trustees Limited then has notice.

CLEMENTS, Pauline Joan, late of 517 Highbury Road, Burwood East, Victoria 3151, deceased, who died on 25 December 2015.

KULDA, Ludmila, late of Central Park Aged Care, 101 Punt Road, Windsor, Victoria 3181, deceased, who died on 15 October 2015.

MITCHELL, Leslie, late of Unit 202, 6 Duke Street, Windsor, Victoria 3181, deceased, who died on 26 December 2015.

NOORDHOFF, Dorothea Johanna, late of Lilydale Nursing Home, 475 Swansea Road, Lilydale, Victoria 3140, deceased, who died on 21 February 2016.

Dated 5 May 2016

STEWART MacLEOD
Manager

Creditors, next-of-kin and others having claims against the estate of any of the undermentioned deceased persons are required to send particulars of their claims to State Trustees Limited, ABN 68 064 593 148, of 1 McNab Avenue, Footscray Victoria 3011, the personal representative, on or before 15 July 2016, after which date State Trustees Limited may convey or distribute the assets, having regard only to the claims of which State Trustees Limited then has notice.

ANDERSON, Philip John, late of Southern Cross Care, 1497 Point Nepean Road, Rosebud, Victoria 3939, deceased, who died on 25 December 2015. Date of Grant, 21 April 2016.

HAMMOUD, Sarah, late of 63 Haldane Road, Niddrie, Victoria 3042, deceased, who died on 21 March 2016.

HUMPHREY, John, late of Room 14, Colton Close Nursing Home, 1-19 York Street, Glenroy, Victoria 3046, deceased, who died on 5 December 2015.

MILLS-FRANKLIN, Abigail Thomson, late of Perraton, 443 Ballarto Road, Skye, Victoria 3977, deceased, who died on 25 November 2015.

Dated 6 May 2016

STEWART MacLEOD
Manager

Creditors, next-of-kin and others having claims against the estate of any of the undermentioned deceased persons are required to send particulars of their claims to State Trustees Limited, ABN 68 064 593 148, of 1 McNab Avenue, Footscray, Victoria 3011, the personal representative, on or before 18 July 2016, after which date State Trustees Limited may convey or distribute the assets, having regard only to the claims of which State Trustees Limited then has notice.

BORIC, Marica, late of 39 Jamieson Street, Daylesford, Victoria 3460, deceased, who died on 7 December 2015. Date of Grant – 29 April 2016.

LAVERTY, John Frederick, late of Room 31A Glenhuntly Terrace, 164 Grange Road, Glen Huntly, Victoria 3163, deceased, who died on 4 February 2016.

NIKSICH, Miroslav, late of 62 Iluka Avenue, Aspendale, Victoria 3195, deceased, who died on 31 August 2015. Date of Grant – 4 May 2016.

Dated 9 May 2016

STEWART MacLEOD
Manager

Adoption Act 1984

Under the functions and powers assigned to me by the Secretary to the Department of Health and Human Services, under section 17(5) of the **Children Youth and Families Act 2005** in relation to section 5 of the **Adoption Act 1984**, I, Paul Smith, approve the following person under section 5(1) and section 5(2)(b) of the **Adoption Act 1984** as approved counsellor for the purposes of section 35 of the **Adoption Act 1984**.

Name of person: Christine Facchini

Name of agency: Child Protection

Dated 5 May 2016

PAUL SMITH
Deputy Secretary
West Division

Adoption Act 1984

Under the functions and powers assigned to me by the Secretary to the Department of Health and Human Services, under section 17(5) of the **Children Youth and Families Act 2005** in relation to section 5 of the **Adoption Act 2005**

Act 1984, I, Paul Smith, approve the following person under section 5(1) and section 5(2)(b) of the **Adoption Act 1984** as approved counsellor for the purposes of section 35 of the **Adoption Act 1984**.

Name of person: Michelle Kirkpatrick

Name of agency: Child Protection

Dated 5 May 2016

PAUL SMITH
Deputy Secretary
West Division

Associations Incorporation Reform Act 2012

SECTION 134

I, David Joyner, under delegation provided by the Registrar, hereby give notice that, pursuant to section 134(1) of the Act, the registration of the incorporated association mentioned below has been cancelled on this day:

Broadmeadows Multi-Cultural Early Learning Centre Inc.

Dated 12 May 2016

David Joyner
Deputy Registrar of Incorporated Associations
PO Box 4567
Melbourne, Victoria 3001

Associations Incorporation Reform Act 2012

SECTION 135

I, David Joyner, Deputy Registrar under the **Associations Incorporation Reform Act 2012** (the Act), under delegation provided by the Registrar, hereby give notice that, pursuant to section 135(3) of the Act, I intend to cancel the incorporation of the incorporated associations mentioned below: Victorian Model Power Boat Racing Club Inc.

Otway T.O.W.N. Club Incorporated

I further advise that unless a person makes a written objection to cancellation to the Registrar within 28 days of the date of this notice, I intend to cancel the incorporation of the incorporated associations mentioned above.

Dated 12 May 2016

David Joyner
Deputy Registrar of Incorporated Associations
PO Box 4567
Melbourne, Victoria 3001

Education and Training Reform Act 2006

NOTIFICATION OF CANCELLATION AND DISQUALIFICATION OF REGISTRATION OF A TEACHER

Pursuant to section 2.6.29 of the **Education and Training Reform Act 2006** (Vic.) ('the Act'), the Victorian Institute of Teaching must disqualify a registered teacher from teaching and cancel his/her registration where that person has been convicted or found guilty at any time, in Victoria or elsewhere, of a sexual offence.

On 13 April 2016, David John Deegan was found guilty of six sexual offences under the Act.

On 13 April 2016, David John Deegan was disqualified from teaching and his registration as a teacher in Victoria was cancelled.

Education and Training Reform Act 2006
MINISTERIAL ORDER NO. 882
DRUMMARTIN PRIMARY SCHOOL COUNCIL
DISSOLUTION

The Minister for Education makes the following Order:

1. Objectives

The objectives of this Order are to change the members of the Council and provide for dissolution of the Council and disposal of its assets.

2. Definitions

In this Order:

‘**Council**’ means Drummartin Primary School Council; and

‘**Constituting Order**’ means the Order in Council constituting the Council dated 3 August 1976 as amended.

3. Authorising provisions

This Order is made under subsections (6) and (7) of section 2.3.2 and all other enabling provisions of the **Education and Training Reform Act 2006**.

4. Commencement

This Order takes effect on the date the Order is signed.

5. Amendments to the Constituting Order

5.1 All members of the Council elected, co-opted or appointed to the Council under the Constituting Order as it was in effect immediately prior to this Order taking effect cease to be members of the Council on the date this Order takes effect.

5.2 Subject to Clause 5.6, Anne Cunniff, Acting Executive Director, and Gerard Harrison, Finance Manager, both of the North-Western Victoria Region Office, Department of Education and Training, are appointed as members of the Council for a period of three months from the date this Order takes effect.

5.3 The Council as constituted in accordance with this Order shall identify all trusts (if any) of which it is trustee and shall provide the following information on each of the trusts to the Regional Director, North-Western Victoria Region, Department of Education and Training, within 28 days from the date this Order takes effect:

- (a) the name of the trust;
- (b) the purpose of the trust;
- (c) the amount of monies held in trust as at the date of this Order;
- (d) the bank account or other investment in which the monies are held in trust; and
- (e) the identity of the person or persons who gave or donated to the trust where possible.

5.4 The Council as constituted in accordance with this Order shall, before the expiry of two months from the date this Order takes effect, prepare a schedule setting out the assets, liabilities and obligations of the Council and the manner in which any assets that will remain after the liabilities and obligations of the Council have been satisfied are to be distributed.

5.5 After payment of the Council’s liabilities and obligations and subject to the approval of the Regional Director, North-Western Victoria Region, all assets of the Council shall be distributed in accordance with the schedule prepared in accordance with Clause 5.4 of this Order.

5.6 The Minister may remove a member of the Council and appoint a person to the Council as constituted in accordance with this Order at any time.

- 5.7 The quorum for a Council meeting held after the date this Order takes effect shall be two.
- 5.8 Except for Regulations 21, 30, 36(1) and (2) and 41, Part 3 of the Education and Training Reform Regulations 2007 shall not apply to the Council.
- 5.9 This Order overrides any provision of the Constituting Order which is inconsistent with this Order.

6. Dissolution of the Council

- 6.1 Clause 6.2 of this Order takes effect upon the expiration of three months from the date this Order takes effect.
- 6.2 On the date this Clause 6.2 takes effect, the Council is dissolved.

This Order is made 19 April 2016.

THE HON. JAMES MERLINO, MP
Deputy Premier
Minister for Education

Education and Training Reform Act 2006

MINISTERIAL ORDER NO. 883

PIANGIL PRIMARY SCHOOL COUNCIL

DISSOLUTION

The Minister for Education makes the following Order:

1. Objectives

The objectives of this Order are to change the members of the Council and provide for dissolution of the Council and disposal of its assets.

2. Definitions

In this Order:

‘**Council**’ means Piangil Primary School Council; and

‘**Constituting Order**’ means the Order in Council constituting the Council dated 3 August 1976 as amended.

3. Authorising provisions

This Order is made under subsections (6) and (7) of section 2.3.2 and all other enabling provisions of the **Education and Training Reform Act 2006**.

4. Commencement

This Order takes effect on the date the Order is signed.

5. Amendments to the Constituting Order

5.1 All members of the Council elected, co-opted or appointed to the Council under the Constituting Order as it was in effect immediately prior to this Order taking effect cease to be members of the Council on the date this Order takes effect.

5.2 Subject to Clause 5.6, Jane Maine, Executive Director, and Gerard Harrison, Finance Manager, both of the North-Western Victoria Region Office, Department of Education and Training, are appointed as members of the Council for a period of three months from the date this Order takes effect.

5.3 The Council as constituted in accordance with this Order shall identify all trusts (if any) of which it is trustee and shall provide the following information on each of the trusts to the Regional Director, North-Western Victoria Region, Department of Education and Training, within 28 days from the date this Order takes effect:

- (a) the name of the trust;
 - (b) the purpose of the trust;
 - (c) the amount of monies held in trust as at the date of this Order;
 - (d) the bank account or other investment in which the monies are held in trust; and
 - (e) the identity of the person or persons who gave or donated to the trust where possible.
- 5.4 The Council as constituted in accordance with this Order shall, before the expiry of two months from the date this Order takes effect, prepare a schedule setting out the assets, liabilities and obligations of the Council and the manner in which any assets that will remain after the liabilities and obligations of the Council have been satisfied are to be distributed.
- 5.5 After payment of the Council's liabilities and obligations and subject to the approval of the Regional Director, North-Western Victoria Region, all assets of the Council shall be distributed in accordance with the schedule prepared in accordance with Clause 5.4 of this Order.
- 5.6 The Minister may remove a member of the Council and appoint a person to the Council as constituted in accordance with this Order at any time.
- 5.7 The quorum for a Council meeting held after the date this Order takes effect shall be two.
- 5.8 Except for Regulations 21, 30, 36(1) and (2) and 41, Part 3 of the Education and Training Reform Regulations 2007 shall not apply to the Council.
- 5.9 This Order overrides any provision of the Constituting Order which is inconsistent with this Order.
- 6. Dissolution of the Council**
- 6.1 Clause 6.2 of this Order takes effect upon the expiration of three months from the date this Order takes effect.
- 6.2 On the date this Clause 6.2 takes effect, the Council is dissolved.

This Order is made 19 April 2016.

THE HON. JAMES MERLINO, MP
Deputy Premier
Minister for Education

Electricity Industry Act 2000

NOTIFICATION OF GRANT OF LICENCE TO TRANSMIT ELECTRICITY

The Essential Services Commission gives notice under section 30 of the Electricity Industry Act 2000 that pursuant to section 19(1) of that Act, the Electricity Transmission Licence applied for by Transmission Operations (Australia) 2 Pty Ltd (ABN 34 605 734 129) has been granted by the Commission. The Licence permits transmission of electricity via the assets connecting the Ararat Wind Farm to the declared transmission system. The licence is granted on an ongoing basis.

A copy of the licence is available on the Commission's website located at www.esc.vic.gov.au or a copy can be obtained by calling the Commission's reception on (03) 9032 1300.

DR RON BEN-DAVID
Chairperson



VICTORIA POLICE

Firearms Act 1996

INSTRUMENT OF DECLARATION

ENABLING POWER: Section 3A(1)(a), **Firearms Act 1996**

SUBJECT: Temporary declaration by the Chief Commissioner of a firearm as a 'category D longarm'.

FILE NUMBER: FF-103174

DECLARATION: I, Graham Ashton, Chief Commissioner of Police for the State of Victoria, pursuant to section 3A(1)(a) of the **Firearms Act 1996** (Act), **HEREBY DECLARE** the below listed firearm to be a 'category D longarm' pursuant to the definition of that term at section 3 of the Act.

FIREARM: Verney-Carron Speedline Rifle

DATE: 9 May 2016

SIGNED: GRAHAM ASHTON AM
Chief Commissioner of Police

Flora and Fauna Guarantee Act 1988

NOTICE OF DECISION UNDER SECTION 16

In accordance with section 16 of the **Flora and Fauna Guarantee Act 1988**, Lisa Neville, Minister for Environment, Climate Change and Water, and Jaala Pulford, Minister for Agriculture have:

- (i) considered the recommendations of the Scientific Advisory Committee as advertised in the 'Herald Sun', 'Weekly Times' and 'Bendigo Advertiser' on 23 March 2016, and Government Gazette on 24 March 2016;
- (ii) considered the comments of the Victorian Catchment Management Council; and
- (iii) decided to recommend to the Governor in Council that the taxon described in the Schedule to this Notice be added to the Threatened List for the reasons shown in the Table contained in this Notice.

Dated 4 April 2016

Dated 22 April 2016

LISA NEVILLE
Minister for Environment, Climate Change and Water

JAALA PULFORD
Minister for Agriculture

Schedule

ITEMS TO BE ADDED TO THE THREATENED LIST

Shiny Daisy-bush (*Olearia passerinoides* subsp. *glutescens*)

Table

REASONS FOR DECISION

Community/Taxon	Criteria/criterion met
Shiny Daisy-bush	<p>Sub-criterion 1.2.1 The taxon is very rare in terms of abundance or distribution.</p> <p>The known geographic distribution of Shiny Daisy-bush in Victoria spans just two linear kilometres and occupies a collective area totalling not more than 280 square metres. The Victoria population is unlikely to exceed 150 plants, and may be as low as five.</p> <p>Sub-criterion 1.2.3 The reproduction or recruitment of the taxon has seriously declined or is not occurring.</p> <p>Field observations indicate that Shiny Daisy-bush produces little or no viable seed, and there is no evidence that recruitment from seed is occurring in the population near Inglewood, Victoria.</p>

Forests Act 1958

REVOCATION OF DETERMINATION OF FIREWOOD COLLECTION AREA

I, Andrew Morrow, Acting Assistant Chief Fire Officer, Barwon South West, Department of Environment, Land, Water and Planning, as delegate of the Secretary to the Department of Environment Land Water and Planning, under section 57U of the **Forests Act 1958**, revoke the determination of the firewood collection areas described in items 15, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31 and 32 of the table in the determination made under section 57U of the **Forests Act 1958** on 04 February 2016 and published in the Government Gazette No. G 6, page 198, 11 February 2016.

This amendment comes into operation on the date on which it is published in the Government Gazette.

Dated 4 May 2016

ANDREW MORROW

Acting Assistant Chief Fire Officer, Barwon South West
Department of Environment, Land, Water and Planning
as delegate of the Secretary to the
Department of Environment, Land, Water and Planning

Forests Act 1958

DETERMINATION OF FIREWOOD COLLECTION AREAS

I, Heather Shaw, Acting Assistant Chief Fire Officer, Loddon Mallee Region, Department of Environment, Land, Water and Planning, make the following determination under section 57U of the **Forests Act 1958**.

Definitions

In this determination and with reference to a numbered item in the table in the determination:

- (a) **closing date**, being the date of revocation of the determination of a firewood collection area, means the date specified in column 6 of the item;
- (b) **opening date**, being the date on which the determination of a firewood collection area comes into operation, means the date specified in column 5 of the item or, if no date is specified, the date on which this determination is published in the Government Gazette.

Determination

Each area of State forest shown hatched on a plan lodged in the Central Plan Office of the Department of Environment, Land, Water and Planning, the number of which is shown in column 1 of an item in the table in this determination, is a firewood collection area for the purposes of section 57U of the **Forests Act 1958**, effective from the opening date for that area until the closing date for that area (inclusive).

Table – Firewood collection areas

Item no.	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
	LEGL no.	DELWP region	DELWP district	Name of firewood collection area	Opening date	Closing date
1	LEGL./15-455	Loddon Mallee	Murray Goldfields	Wellsford Road	14/05/2016	30/06/2016

Notes

1. The information in columns 2, 3 and 4 of the table is for information only.
2. **DELWP** means Department of Environment, Land, Water and Planning.

3. The legal plan of any firewood collection area may be obtained from the Central Plan Office of the Department of Environment, Land, Water and Planning – see <<https://www.landata.vic.gov.au>>, select Central Plan Office, and LEGL Plan. Maps of firewood collection areas that are open from time to time may be obtained from <www.dse.vic.gov.au/firewood>.
4. There are no firewood collection areas open outside the firewood collection seasons as defined in the **Forests Act 1958**.

Dated 5 May 2016

HEATHER SHAW
Acting Assistant Chief Fire Officer, Loddon Mallee
Department of Environment, Land, Water and Planning
as delegate of the Secretary to the
Department of Environment, Land, Water and Planning

Geographic Place Names Act 1998

NOTICE OF REGISTRATION OF GEOGRAPHIC NAMES

The Registrar of Geographic Names hereby gives notice of the registration of the undermentioned place names.

Feature Naming:

Change Request Number	Place Name	Naming Authority and Location
91696	Manna Gum Family and Children's Centre	Macedon Ranges Shire Council Located at 71 Robertson Street, Gisborne. For further details see map at www.delwp.vic.gov.au

Road Naming:

Change Request Number	Road Name	Locality	Naming Authority and Location
87338	Agnes Lane	Anglesea	Surf Coast Shire Council Formerly known as part Wray Street. The road traverses west from Camp Road to Bingley Parade.
92146	Seaberry Close	Dromana	Mornington Peninsula Shire Council Located at the rear of 341–357 Point Nepean Road, Dromana.
92692	Tribute Lane	Bendigo	Greater Bendigo City Council The road traverses south from Niemann Street.
92988	Waldie Lane	Armadale	Stonnington City Council Located at the rear of 706–730 High Street.

Office of Geographic Names

Land Victoria
570 Bourke Street
Melbourne 3000

JOHN E. TULLOCH
Registrar of Geographic Names

Land Acquisition and Compensation Act 1986

FORM 7

S. 21(a)
Reg. 16

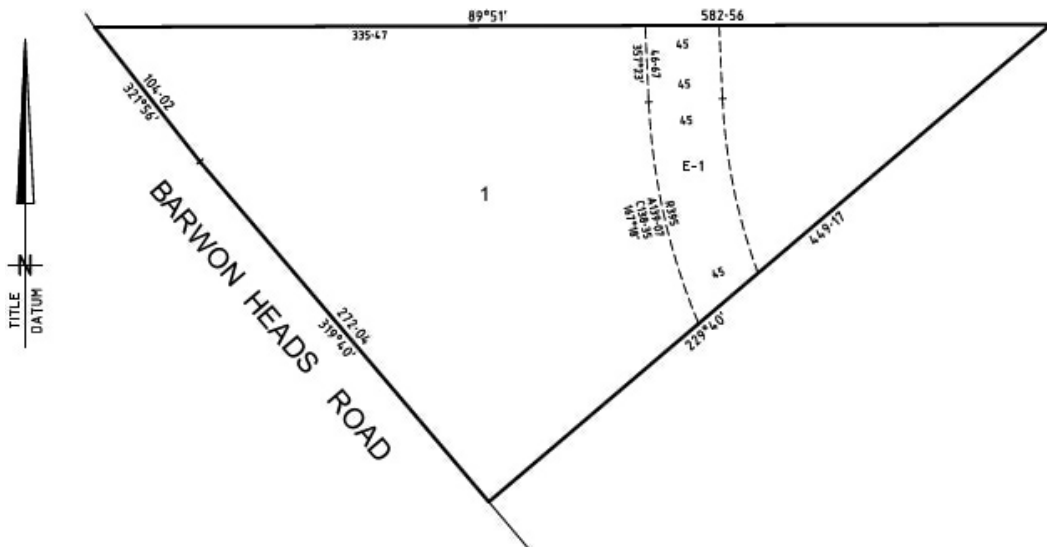
Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Greater Geelong City Council declares that by this notice it acquires the following interest in the land described as Lot 1 on Plan of Subdivision 092692, known as 771–789 Barwon Heads Road, Armstrong Creek, being more particularly described as Certificate of Title Volume 08914 Folio 303:

Interest acquired: An easement for drainage purposes over that part of the land shown as 'E-1' on the plan hereunder comprising an area of 7,637 square metres.

Registered proprietor: Andrew Polyzos and all other interested parties.



Published with the authority of the Greater Geelong City Council.

For and on behalf of the Greater Geelong City Council

Signed LINDSAY ALLAN

Name Lindsay Allan, Manager Property and Procurement

Dated 12 May 2016

Land Acquisition and Compensation Act 1986

FORM 7

S. 21(a)
Reg. 16

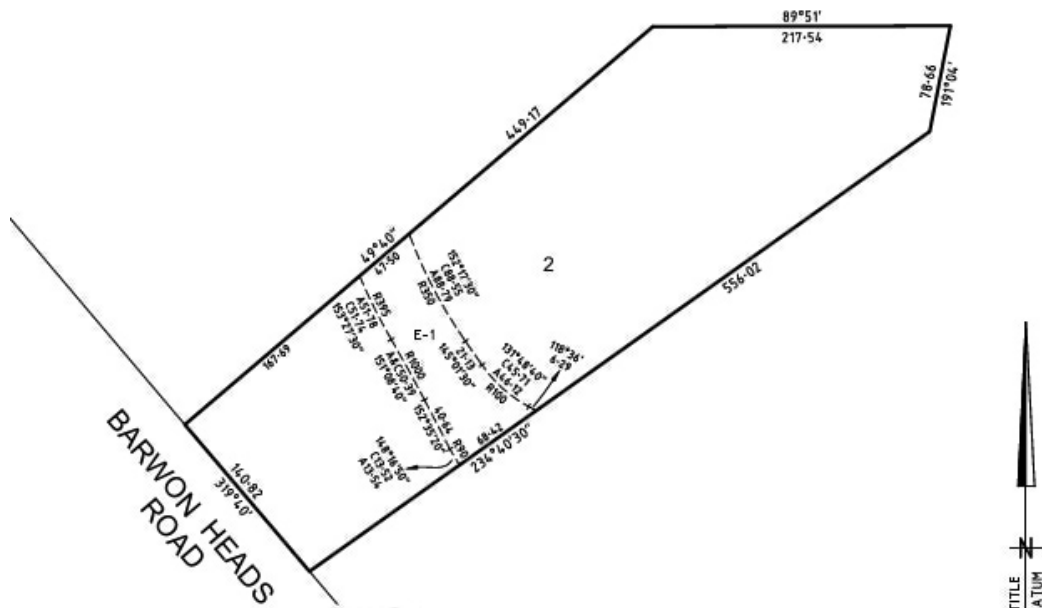
Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Greater Geelong City Council declares that by this notice it acquires the following interest in the land described as Lot 2 on Plan of Subdivision 092692, known as 791–809 Barwon Heads Road, Armstrong Creek, being more particularly described as Certificate of Title Volume 08914 Folio 304:

Interest acquired: An easement for drainage purposes over that part of the land shown as ‘E-1’ on the plan hereunder comprising an area of 7,800 square metres.

Registered proprietor: Ronald Alexander Driscoll and Carole Eileen Driscoll as joint proprietors and all other interested parties.



Published with the authority of the Greater Geelong City Council.

For and on behalf of the Greater Geelong City Council

Signed LINDSAY ALLAN

Name Lindsay Allan, Manager Property and Procurement

Dated 12 May 2016

Land Acquisition and Compensation Act 1986
FORM 7

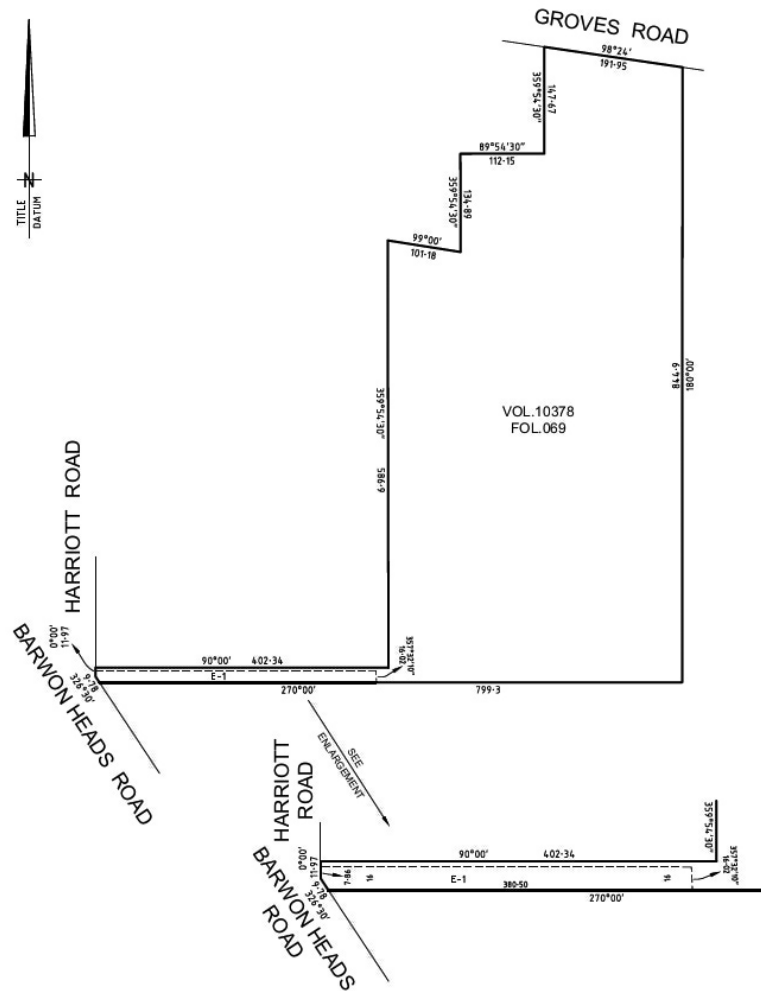
S. 21(a)
 Reg. 16

Notice of Acquisition
 Compulsory Acquisition of Interest in Land

The Greater Geelong City Council declares that by this notice it acquires the following interest in the land described as Land in Plan of Consolidation 361416Q, known as 64-74 Groves Road, Armstrong Creek, being more particularly described as Certificate of Title Volume 10378 Folio 069:

Interest acquired: An easement for drainage purposes over that part of the land shown as 'E-1' on the plan hereunder comprising an area of 6,147 square metres.

Registered proprietor: Mintfield Pty Ltd ACN 169 100 654 and all other interested parties.



Published with the authority of the Greater Geelong City Council.
 For and on behalf of the Greater Geelong City Council
 Signed LINDSAY ALLAN
 Name Lindsay Allan, Manager Property and Procurement
 Dated 12 May 2016

Land Acquisition and Compensation Act 1986

FORM 7

S. 21(a)
Reg. 16

Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Roads Corporation (VicRoads) declares that by this notice it acquires the following interest in the land described as the whole of Crown Allotment 31D on Title Plan 76087U and 31E on Title Plan 68864T, Parish of Scoresby, comprising 1778.0 square metres and being the whole of the land described in Certificate of Title Volume 10183 Folio 632; Certificate of Title Volume 10183 Folio 633, shown as Parcels 16 and 17 on Survey Plan 23089.

Interest Acquired: That of Wheelton Investments Pty Ltd (006 549 177) (leasehold).

Published with the authority of VicRoads.

For and on behalf of VicRoads

Signed TIM PONTEFRACT

Name Tim Pontefract

Dated 12 May 2016

Land Acquisition and Compensation Act 1986

FORM 7

S. 21(a)
Reg. 16

Notice of Acquisition

Compulsory Acquisition of Interest in Land

The Roads Corporation (VicRoads) declares that by this notice it acquires the following interest in the land described as the whole of land in Crown Allotment 31D on Title Plan 76087U and 31E on Title Plan 68864T, Parish of Scoresby, comprising 1778.0 square metres and being the whole of the land described in Certificate of Title Volume 10183 Folio 632; Certificate of Title Volume 10183 Folio 633, shown as Parcels 16 and 17 on Survey Plan 23089.

Interest Acquired: That of Wheelton Properties Pty Ltd (ACN 050 133 723) and all other interests.

Published with the authority of VicRoads.

For and on behalf of VicRoads

Signed TIM PONTEFRACT

Name Tim Pontefract

Dated 12 May 2016

Pipelines Act 2005

SECTION 67

Minor Alteration to Authorised Route

PIPELINE LICENCE NUMBER	PL101
NAME(S) OF LICENSEE(S)	APA VTS Australia (Operations) Pty Limited
ADDRESS(ES) OF LICENSEE(S)	180 Greens Road Dandenong, Victoria 3175
DESCRIPTION OF EXISTING AUTHORISED ROUTE	<ol style="list-style-type: none"> 1. The pipeline commences at the Keon Park offtake with a 600 mm nominal bore and heads north for 14.1 km to the Wollert Compressor Station. It then continues north for 269.4 km with a 300 mm nominal bore terminating at the Wodonga City Gate. The pipeline also includes a 34.5 km lateral with a 200 mm nominal bore from the Euroa City Gate to the Shepparton City Gate and a 258.8 km looping of the 300 mm Wollert to Wodonga pipeline with a 400 mm nominal bore pipeline between Wollert and Barnawartha. 2. The overall length of the pipeline is approximately 576.8 km.
ALTERATION	<p>As from today:</p> <ol style="list-style-type: none"> 1. The authorised route of the pipeline is altered to upgrade pipework within the: <ol style="list-style-type: none"> (a) Wollert Compressor Station being: <ul style="list-style-type: none"> – new pipework within the Pressure Limiter; – new pipework within the Station B Fuel Gas Filter; – new pipework within Compressor A; – new pipework within Compressor B; – decommissioning 6 m of piping to allow for installation of a new pressure reduction spool. (b) Euroa Compressor Station being: <ul style="list-style-type: none"> – new pipework off the Regulator Station. 2. The authorised route of the pipeline is delineated by the red and green lines depicted on Drawing Numbers: A6-101-1 Rev X, A6-101-2 Rev R, A6-101-3 Rev S, A6-101-4 Rev M, A6-101-5 Rev M, A6-101-6 Rev S, A6-101-7 Rev N, A6-101-8 Rev N, A6-101-9 Rev N, A6-101-10 Rev M, A6-101-11 Rev Q, A6-101-12 Rev R, A6-101-13 Rev M, A6-101-14 Rev R, A6-101-15 Rev F and A6-101-16 Rev C and replace all existing drawings.

CONDITIONS:

As from today the conditions of Pipeline Licence 101 are revoked and replaced with the following conditions:

1. The pipeline shall have the following features:
 - a. Maximum Allowable Operating Pressure:
 - Line 1 – 2,760 kPa
 - Line 2 – 8,800 kPa (KP 00 to KP 123.6)
 - Line 3 – 7,400 kPa (KP 123.6 to KP 269.4)
 - Line 4 – 7,400 kPa
 - Line 5 – 15,300 kPa
 - b. Contents: – Gaseous hydrocarbons
 - c. Internal diameter: – 200 mm for a length of 34.5 km
Internal diameter: – 300 mm for a length of 269.4 km
Internal diameter: – 400 mm for a length of 258.8 km
Internal diameter: – 600 mm for a length of 14.1 km
 - d. Overall length – 576.8 km

Dated 3 May 2016

DUNCAN PENDRIGH
Manager Earth Resources Tenements
Delegate of the Minister for Energy and Resources

Plant Biosecurity Act 2010**ORDER PROHIBITING OR RESTRICTING THE ENTRY OR IMPORTATION OF
CITRUS RED MITE HOST MATERIAL INTO VICTORIA**

I, Gabrielle Vivian-Smith, as delegate of the Minister for Agriculture, make the following Order:

1. Objective

The objective of this Order is to prevent the entry or importation of the exotic pest citrus red mite into Victoria.

2. Authorising provision

This Order is made under section 36 of the **Plant Biosecurity Act 2010** (the Act).

3. Revocation

The Order made under section 36 of the **Plant Biosecurity Act 2010** published in the Victoria Government Gazette on 14 May 2015 at page 1057 is revoked.

4. Definitions

In this Order –

‘**citrus red mite**’ means the exotic pest *Panonychus citri* (McGregor);

‘**citrus red mite host material**’ means any plant or plant product, excluding fruit, of *Poncirus trifoliata*, hybrids of *Poncirus* species, or species of *Fortunella* or *Citrus*.

5. Controls applying to citrus red mite host material

(1) The entry or importation into Victoria of any citrus red mite host material is prohibited.

(2) Sub-clause (1) does not apply if the citrus red mite host material –

- (a) was grown on, or sourced from, a property that is located in a State or Territory or part of a State or Territory for which an area freedom certificate, issued by an officer responsible for agriculture in the State or Territory where the citrus red mite host material was grown or sourced, is currently in force certifying that the State or Territory, or part of the State or Territory, is known to be free of citrus red mite; or
- (b) is accompanied by a plant health certificate, assurance certificate or plant health declaration, certifying or declaring that the material has been treated in a manner prescribed in Schedule 1; or
- (c) enters Victoria under and in accordance with a permit issued by an inspector and there is compliance with any conditions or requirements set out in the permit.

6. Verification of Consignments

(a) Where requested by an inspector, citrus red mite host material imported into Victoria which is required by clause 5(2) to be accompanied by a certificate or declaration, must be:

- (b) presented to an inspector for inspection; or
- (c) verified by a person accredited to do so by the Department of Economic Development, Jobs, Transport and Resources.

Schedule 1

Hosts of citrus red mite must be grown on a property inspected by an officer of the department responsible for agriculture in the State of Territory where the host material is grown, and found free from citrus red mite.

Notes:

- (1) Section 38(1) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate for knowingly causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

- (2) Section 38(2) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 10 penalty units in the case of a natural person and 60 penalty units in the case of a body corporate for causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.
- (3) Terms used in this Order that are defined in the Act have that meaning.

Dated 6 May 2016

GABRIELLE VIVIAN-SMITH
Chief Plant Health Officer

Plant Biosecurity Act 2010

ORDER PROHIBITING OR RESTRICTING THE ENTRY OR IMPORTATION OF BLUEBERRY RUST HOST MATERIAL INTO VICTORIA

I, Gabrielle Vivian-Smith, as delegate of the Minister for Agriculture, make the following Order:

1. Objective

The objective of this Order is to prevent the entry or importation of the exotic disease blueberry rust into Victoria.

2. Authorising provision

This Order is made under section 36 of the **Plant Biosecurity Act 2010** (the Act).

3. Revocation

The Order made under section 36 of the **Plant Biosecurity Act 2010** and published in the Victoria Government Gazette on 14 May 2015 at page 1055 is revoked.

4. Definitions

In this Order –

‘**blueberry rust**’ means the exotic disease caused by the fungus *Thekopsora minima*;

‘**blueberry rust host plant**’ means any plant or plant product of *Vaccinium* spp. (including blueberry, cranberry and huckleberry), *Gaylussacia* (black huckleberry), *Tsuga* (hemlock), *Rhododendron* spp. (including azalea), *Lyonia*, *Menziesia*, *Pernettya*, *Hugeria*, *Pieris*, *Leucothoe*, *Oxycoccus*;

‘**blueberry rust host material**’ means any blueberry rust host plant, agricultural equipment or used package.

5. Controls applying to blueberry rust host material

- (1) The entry or importation into Victoria of any blueberry rust host material is prohibited.
- (2) Sub-clause (1) does not apply if the blueberry rust host material –
- (a) was grown, sourced or last used on a property that is located in a State or Territory or part of a State or Territory for which an area freedom certificate, issued by an officer responsible for agriculture in the State or Territory where the blueberry rust host material was grown, sourced or last used, is currently in force certifying that the State or Territory or part of the State or Territory is known to be free of blueberry rust; or
 - (b) is accompanied by a plant health certificate, assurance certificate or plant health declaration, certifying or declaring that the material has been treated in a manner prescribed in Schedule 1; or
 - (c) in the case of plants, or plant products, enters Victoria under and in accordance with a permit issued by an inspector and there is compliance with any conditions or requirements set out in the permit; or
 - (d) in the case of fruit grown in New Zealand, is accompanied by an original phytosanitary certificate certifying compliance with requirements prescribed in clause (1)(a) of Schedule 1.

6. Verification of Consignments

- (1) Where requested by an inspector, blueberry rust host material imported into Victoria which is required by clause 5(2) to be accompanied by a certificate or declaration, must be:
 - (a) presented to an inspector for inspection; or
 - (b) verified by a person accredited to do so by the Department of Economic Development, Jobs, Transport and Resources.

7. Expiry

This Order remains in force for a period of 12 months after the date of making.

Schedule 1

- (1) Fruit of *Vaccinium* spp must be –
 - (a) sourced from a crop which has been:
 - (i) inspected within 14 days prior to harvest and no blueberry rust detected; or
 - (ii) sprayed within 14 days prior to harvest with a pre-harvest application of a fungicide registered for the treatment of blueberry rust as per label recommendations; and
 - (b) inspected at despatch at the rate of 600 berries per consignment and found free of the symptoms of blueberry rust.
- (2) Blueberry rust host plants (other than plants of *Vaccinium* spp.), must be inspected within 14 days prior to dispatch to Victoria, and no blueberry rust detected.
- (3) Blueberry fruit grown and packed in New Zealand must be accompanied by a copy of the original phytosanitary certificate certifying compliance with requirements prescribed in clause (1)(a).
- (4) Agricultural equipment and packages must be cleaned free of soil and organic matter; and
 - (a) steam cleaned; or
 - (b) disinfected with a solution containing not less than 100 ppm available chlorine used as a spray rinse or dump treatment.

Notes:

Section 38(1) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate for knowingly causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

Section 38(2) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 10 penalty units in the case of a natural person and 60 penalty units in the case of a body corporate for causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

Terms used in this Order that are defined in the Act have that meaning.

Dated 6 May 2016

GABRIELLE VIVIAN-SMITH
Chief Plant Health Officer

Plant Biosecurity Act 2010**ORDER PROHIBITING OR RESTRICTING THE ENTRY OR IMPORTATION OF
MEDITERRANEAN FRUIT FLY HOST MATERIAL INTO VICTORIA**

I, Gabrielle Vivian-Smith, delegate of the Minister for Agriculture, make the following Order:

1 Objective

The objective of this Order is to prevent the entry or importation of the exotic pest Mediterranean fruit fly into Victoria.

2 Authorising Provision

This Order is made under section 36 of the **Plant Biosecurity Act 2010** (the Act).

3 Revocation

The Order made under section 36 of the **Plant Biosecurity Act 2010** and published in the Victoria Government Gazette on 14 May 2015 at page 1058 is revoked.

4 Definitions

In this Order –

‘**Mediterranean fruit fly**’ means the exotic pest, *Ceratitidis capitata* (Wiedemann);

‘**Mediterranean fruit fly host material**’ means any fruit or vegetable as listed in Schedule 1;

‘**used package**’ means any packaging that has contained Mediterranean fruit fly host material.

5 Controls applying to Mediterranean fruit fly host material

(1) The entry or importation into Victoria of any Mediterranean fruit fly host material and used package is prohibited.

(2) Sub-clause (1) does not apply if the Mediterranean fruit fly host material and used package –

(a) was grown and packed on, or last used on a property located in a State or Territory, or part of a State or Territory, for which an area freedom certificate, issued by an officer responsible for agriculture in the State or Territory where the Mediterranean fruit fly host material was grown, is currently in force certifying that the State or Territory, or part of the State or Territory, is known to be free from Mediterranean fruit fly; or

(b) is accompanied by a plant health certificate, assurance certificate or plant health declaration, certifying or declaring that the material has been treated in a manner prescribed in Schedule 2; or

(c) enters Victoria under and in accordance with a permit issued by an inspector and there is compliance with any conditions or requirements set out in the permit.

6 Verification

Mediterranean fruit fly host material or used package imported into Victoria which is required by clause 5(2) to be accompanied by a certificate or declaration, must be:

(a) presented to an inspector for inspection; or

(b) verified by a person accredited to do so by the Department of Economic Development, Jobs, Transport and Resources.

7 Expiry

This Order remains in force for a period of 12 months after the date of making.

Schedule 1

Abiu	Dragon Fruit (Than Lung)	Nectarine
Acerola	Durian	Olive
Apple	Eggplant	Orange
Apricot	Feijoa	Passionfruit
Avocado	Fig	Pawpaw
Babaco	Goji Berry	Peach
Banana	Granadilla	Peacharine
Black Sapote	Grape	Pear
Blackberry	Grapefruit	Pepino
Blueberry	Grumichama	Persimmon
Boysenberry	Guava	Plum
Brazil Cherry	Hog Plum	Plumcot
Breadfruit	Jaboticaba	Pomegranate
Caimito (Star Apple)	Jackfruit	Prickly Pear
Cape Gooseberry	Kiwifruit	Pummelo
Capsicum	Lemon	Quince
Carambola (Starfruit)	Lime	Rambutan
Cashew Apple	Loganberry	Raspberry
Casimiroa (White Sapote)	Longan	Rollinia
Cherimoya	Loquat	Santol
Cherry	Lychee	Sapodilla
Chilli	Mandarin	Shaddock
Choko	Mango	Soursop
Citron	Mangosteen	Sweetsop (Sugar Apple)
Cocoa berry	Medlar	Tahitian Lime
Coffee Berry	Miracle Fruit	Tamarillo
Cumquat	Monstera	Tangelo
Custard Apple	Mulberry	Tomato
Date	Nashi	Wax jambu (Rose Apple)

Schedule 2

Hosts of Mediterranean fruit fly must be:

- (1) in the case of field grown tomatoes, treated as a program of cover sprays, with a trichlorfon mixture:
 - (a) in a high volume application containing 250 ml of a 500 g/L product per 100 L of spray mixture in the first application to a block; and
 - (b) in a high volume application containing 125 ml of a 500 g/L product per 100 L of spray mixture in all subsequent spray applications; and
 - (c) inspected post harvest, where a sample of the lot is inspected and found free of fruit fly larvae; or

- (2) excepting for coffee berries and goji berries, cold treated, at a temperature of:
- $0^{\circ}\text{C} \pm 0.5^{\circ}$ for at least 14 days; or
 - $1^{\circ}\text{C} \pm 0.5^{\circ}\text{C}$ for at least 16 days, or in the case lemons, 14 days; or
 - $2^{\circ}\text{C} \pm 0.5^{\circ}\text{C}$ for at least 18 days, or in the case of lemons, 16 days; or
 - $3^{\circ}\text{C} \pm 0.5^{\circ}\text{C}$ for at least 20 days, or in the case of lemons, 18 days; or
- (3) excepting for coffee berries and goji berries, fumigated with methyl bromide at:
- $10^{\circ}\text{C} - 10.9^{\circ}\text{C}$ @ 56 g/m^3 for 2 hours; or
 - $11^{\circ}\text{C} - 15.9^{\circ}\text{C}$ @ 48 g/m^3 for 2 hours; or
 - $16^{\circ}\text{C} - 20.9^{\circ}\text{C}$ @ 40 g/m^3 for 2 hours; or
 - $>21^{\circ}\text{C}$ @ 32 g/m^3 for 2 hours; or
- (4) in the case of bananas, harvested and packed in a mature green condition, where mature green means;
- the flesh is hard and not flexible; and
 - the skin is green and shows no yellow colouration except for areas towards the flower end of a fruit where the sun has bleached the skin but the flesh beneath is still hard; and
 - the skin has no pre-harvest cracks, splits, punctures or other breaks that penetrate through to the flesh; or
- (5) in the case of tomatoes, harvested and packed in a mature green condition, where mature green means the fruit has no more than a two centimetre diameter area of pink to red colour at the styler end at the time of colour sorting after harvest; or
- (6) in the case of avocados (Fuerte, Hass, Lamb Hass, Reed and Sharwil varieties only), harvested in hard condition, and stored in secure conditions, within 48 hours of harvest, where hard condition means the flesh is not soft, or softening, and the skin is not cracked or broken; or
- (7) in the case of diagnostic samples, disinfested by:
- autoclaving at
 - 121°C and 103 kPa for 15 minutes; or
 - 134°C and 103 kPa for 4 minutes; or
 - freezing at -18°C for 24 hours; or
 - freezing and transfer under liquid nitrogen at -196°C ; or
 - freeze drying; or
 - oven drying at 45°C for 2 hours; or
- (8) in the case of apple, apricot, breadfruit, capsicum, carambolas, cherry, custard apple, lychee, longan, mango, nectarine, paw paw, peach, persimmon, plum, rambutan, strawberry, tomato and table grape, the fruit have undergone post-harvest irradiation, with a minimum dose of 150 Gy; or
- (9) in the case of used packages, be brushed or washed so as to remove all visible organic matter.

Notes:

- Section 38(1) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate for knowingly causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.
- Section 38(2) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 10 penalty units in the case of a natural person and 60 penalty units in the case of a body corporate for causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

3. Terms used in this Order that are defined in the Act have that meaning.

Dated 3 May 2016

GABRIELLE VIVIAN-SMITH
Chief Plant Health Officer

Plant Biosecurity Act 2010

**ORDER PROHIBITING OR RESTRICTING THE ENTRY OR IMPORTATION OF
ONION SMUT HOST MATERIAL INTO VICTORIA**

I, Gabrielle Vivian-Smith, as delegate of the Minister for Agriculture, make the following Order:

1. Objective

The objective of this Order is to prevent the entry or importation of the exotic disease onion smut into Victoria.

2. Authorising provision

This Order is made under section 36 of the **Plant Biosecurity Act 2010** (the Act).

3. Revocation

The Order made under section 36 of the **Plant Biosecurity Act 2010** and published in the Victoria Government Gazette on 14 May 2015 at page 1052 is revoked.

4. Definitions

In this Order –

‘**onion smut**’ means the exotic disease caused by the fungus *Urocystis cepulae* (Frost);

‘**onion smut host material**’ means any plant of the genus *Allium*, excluding plants in tissue culture, and plant products of the genus *Allium*, including bulbs and seeds.

5. Controls applying to onion smut host material

(1) The entry or importation into Victoria of any onion smut host material is prohibited.

(2) Sub-clause (1) does not apply if the onion smut host material was grown on, or sourced from, a property that is located in a State or Territory or part of a State or Territory for which an area freedom certificate, issued by an officer responsible for agriculture in the State or Territory where the onion smut host material was grown or sourced, is currently in force certifying that the State or Territory, or part of the State or Territory, is known to be free of onion smut.

Notes:

1. Section 38(1) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate for knowingly causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

2. Section 38(2) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 10 penalty units in the case of a natural person and 60 penalty units in the case of a body corporate for causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.

3. Terms used in this Order that are defined in the Act have that meaning.

Dated 3 May 2016

GABRIELLE VIVIAN-SMITH
Chief Plant Health Officer

Plant Biosecurity Act 2010**ORDER PROHIBITING OR RESTRICTING THE ENTRY OR IMPORTATION OF
CITRUS TRISTEZA VIRUS HOST MATERIAL INTO VICTORIA**

I, Gabrielle Vivian-Smith, as delegate of the Minister for Agriculture, make the following Order:

1. Objective

The objective of this Order is to prevent the entry or importation of the exotic disease citrus tristeza virus into Victoria.

2. Authorising provision

This Order is made under section 36 of the **Plant Biosecurity Act 2010** (the Act).

3. Revocation

The Order made under section 36 of the **Plant Biosecurity Act 2010** and published in the Victoria Government Gazette on 14 May 2015 at page 1054 is revoked.

4. Definitions

In this Order –

‘**citrus tristeza virus**’ means the stem pitting strain of the exotic disease citrus tristeza virus;

‘**citrus tristeza virus host material**’ means any plant or plant product of the genus *Citrus* and the genus *Fortunella*, excluding fruit and kaffir lime leaves for human consumption.

5. Controls applying to citrus tristeza virus host material

(1) The entry or importation into Victoria of any citrus tristeza virus host material is prohibited.

(2) Sub-clause (1) does not apply if the citrus tristeza virus host material was grown on, or sourced from, a property that is located in a State or Territory or part of a State or Territory for which an area freedom certificate, issued by an officer responsible for agriculture in the State or Territory where the citrus tristeza virus host material was grown or sourced, is currently in force certifying that the State or Territory, or part of the State or Territory, is known to be free of citrus tristeza virus.

Notes:

1. Section 38(1) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 60 penalty units in the case of a natural person and 300 penalty units in the case of a body corporate for knowingly causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.
2. Section 38(2) of the Act provides that a person is guilty of an offence and liable for a penalty not exceeding 10 penalty units in the case of a natural person and 60 penalty units in the case of a body corporate for causing, permitting or assisting any host material to enter or be imported into Victoria in contravention of an importation order.
3. Terms used in this Order that are defined in the Act have that meaning.

Dated 3 May 2016

GABRIELLE VIVIAN-SMITH
Chief Plant Health Officer

**Water Act 1989****SALE OF SURFACEWATER WINTERFILL LICENCES IN THE CURDIES RIVER CATCHMENT**

In accordance with section 57 of the **Water Act 1989**, Gippsland and Southern Rural Water Corporation (trading as Southern Rural Water), as the delegate for the Minister for Environment, Climate Change and Water, offers for sale via an auction process, Section 51 Take and Use Surfacewater Licences within the Curdies River Catchment.

The sale is only open to persons who meet SRW's eligibility requirements and will be made available as follows:

- Curdies River Catchment: 1,500 ML (parcels from 10 ML up to 200 ML)

Expressions of interest are invited from those people that are interested in securing a licence and meet SRW's eligibility requirements.

Expressions of interest must be received by SRW by 4 pm Wednesday 25 May 2016.

To meet eligibility requirements persons interested in purchasing a licence must:

- own or occupy land within the Curdies River Catchment; and
- utilise or plan to utilise surfacewater for irrigation or commercial purposes within the Curdies River Catchment; and
- have been notified prior that they were eligible to participate in the auction.

Those people that apply will be advised of their eligibility and of the auction date and details prior to the auction.

The licences will be issued with conditions which include:

- restriction to only pump or harvest water from 1 July to 31 October in any year; and
- requirement to take the water from licensed works; and
- requirement to comply with the Irrigation Development Guidelines where relevant; and
- standard surfacewater licence conditions as set out in the Ministerial Policies for Managing Take and Use Licences available from the Victorian Water Register.

Licences may be issued for an initial period of up to 5 years, after which time they may be renewed in accordance with Section 58 of the **Water Act 1989**.

For an expression of interest form or for further information contact Southern Rural Water on 1300 139 510.

Planning and Environment Act 1987
BOROONDARA PLANNING SCHEME
Notice of Approval of Amendment
Amendment C208

The Minister for Planning has approved Amendment C208 to the Boroondara Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment amends the Schedule to the Heritage Overlay at Clause 43.01 and the Heritage Overlay maps to introduce permanent controls to six individual places and to delete the interim Heritage Overlay from 46 Rowland Street, Kew.

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Boroondara City Council, 8 Inglesby Road, Camberwell.

RACHAEL JOINER
Director
Planning Services and Impact Assessment
Department of Environment, Land, Water and Planning

Planning and Environment Act 1987
CARDINIA PLANNING SCHEME
Notice of Approval of Amendment
Amendment C198

The Minister for Planning has approved Amendment C198 to the Cardinia Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment implements the Beaconsfield Structure Plan – December 2013 (expires 31 March 2019) by incorporating the structure plan into the Schedule to Clause 81.01 by amending Local Planning Policy Framework at Clause 21.03 and 21.04 to make reference to the Beaconsfield Structure Plan – December 2013 (expires 31 March 2019) and by amending Clause 21.06 to make reference to the Woods Street (North) Urban Design Guidelines (May 2013).

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Cardinia Shire Council, 20 Siding Avenue, Officer.

RACHAEL JOINER
Director
Planning Services and Impact Assessment
Department of Environment, Land, Water and Planning

Planning and Environment Act 1987
GREATER BENDIGO PLANNING SCHEME
Notice of Approval of Amendment
Amendment C201

The Minister for Planning has approved Amendment C201 to the Greater Bendigo Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment:

- applies the Heritage Overlay to 23 new heritage places in Ascot, Bendigo, East Bendigo and North Bendigo identified in the White Hills and East Bendigo Heritage Study, revised November 2015 as shown on Map Nos. 16HO, 19HO and 20HO;
- amends Clauses 21.01, 21.02, 21.08 and 21.10 of the Municipal Strategic Statement to update the local policy content relating to heritage and include two new reference documents;
- amends Clause 22.06 of the Local Planning Policies to update the Heritage Policy, which guides decision-making when permit applications are triggered under Clause 43.01 (Heritage Overlay);
- amends the Schedule to Clause 43.01 to include the 23 new heritage places and introduces the Greater Bendigo Heritage Incorporated Plan – Permit Exemptions, August 2015 to all places in the Schedule except those listed on the Victorian Heritage Register; and
- amends the Schedule to Clause 81.01 to include two new incorporated documents titled the Greater Bendigo Heritage Incorporated Plan – Permit Exemptions, August 2015 and Greater Bendigo Heritage Design Guidelines, August 2015 and delete three existing incorporated documents now obsolete.

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Greater Bendigo City Council, Hopetoun Mill, 15 Hopetoun Street, Bendigo.

RACHAEL JOINER
Director
Planning Services and Impact Assessment
Department of Environment, Land, Water and Planning

Planning and Environment Act 1987
MELTON PLANNING SCHEME
Notice of Approval of Amendment
Amendment C100

The Minister for Planning has approved Amendment C100 to the Melton Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment includes 125 dry stone walls in the Heritage Overlay by listing 5 dry stone wall precincts and two individual walls in the Schedule to the Heritage Overlay. It includes Dry Stone Walls local planning policy at Clause 22.14 and incorporates the City of Melton Dry Stone Wall Study Volume 3 Statement of Significance (February 2016) at Clause 81.01. It also removes the schedule to Clause 52.37.

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Melton City Council, 232 High Street, Melton.

RACHAEL JOINER
Director
Planning Services and Impact Assessment
Department of Environment, Land, Water and Planning

Planning and Environment Act 1987

NILLUMBIK PLANNING SCHEME

Notice of Approval of Amendment

Amendment C103

The Minister for Planning has approved Amendment C103 to the Nillumbik Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment rezones the land at 15 Lotus Court, Diamond Creek, from Public Use Zone 1 to the General Residential Zone.

The Minister has granted the following permit under Division 5 of Part 4 of the Act:

Permit No.	Description of land
No. P1/2015/16P	15 Lotus Court, Diamond Creek

A copy of the Amendment and the permit can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Nillumbik Shire Council, Civic Drive, Greensborough.

RACHAEL JOINER

Director

Planning Services and Impact Assessment

Department of Environment, Land, Water and Planning

Planning and Environment Act 1987

NORTHERN GRAMPPIANS PLANNING SCHEME

Notice of Approval of Amendment

Amendment C47

The Minister for Planning has approved Amendment C47 to the Northern Grampians Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment inserts Design and Development Overlay Schedule 4 to protect the Stawell Aerodrome Obstacle Limitation Surface area, amends the Schedule to Clause 61.03 to update the list of maps and amends the Schedule to Clause 66.04 to specify the Stawell Airport Manager as a determining referral authority for all applications.

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Northern Grampians Shire Council, Town Hall, 63–65 Main Street, Stawell.

RACHAEL JOINER

Director

Planning Services and Impact Assessment

Department of Environment, Land, Water and Planning

Planning and Environment Act 1987
WELLINGTON PLANNING SCHEME
Notice of Approval of Amendment
Amendment C87

The Minister for Planning has approved Amendment C87 to the Wellington Planning Scheme.

The Amendment comes into operation on the date this notice is published in the Government Gazette.

The Amendment implements the vision for Longford as set out in the Longford Development Plan, November 2015 by amending Clause 21.05 (Sale, Wurruk and Longford Strategic Framework) and Clause 21.20 (Reference Documents).

A copy of the Amendment can be inspected, free of charge, at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection and free of charge, during office hours, at the offices of the Wellington Shire Council, 18 Desailly Street, Sale, Victoria 3850.

RACHAEL JOINER
Director
Planning Services and Impact Assessment
Department of Environment, Land, Water and Planning

ORDERS IN COUNCIL

Education and Training Reform Act 2006

THE CONSTITUTION OF THE BENDIGO KANGAN INSTITUTE ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Bendigo Kangan Institute Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

THE CONSTITUTION OF THE BENDIGO KANGAN INSTITUTE

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Bendigo Kangan Institute Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Bendigo Kangan Institute; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Bendigo Kangan Institute; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

In this Constitution, unless inconsistent with the context or subject-matter –

Act means the **Education and Training Reform Act 2006**;

board means the board of the Bendigo Kangan Institute established under clause 9;

board secretary means the person appointed by the board under clause 27;

chairperson means the chairperson of the board appointed under clause 12;

commercial activity means –

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

committee means a committee established by the board under clause 23;

committee member means a member of a committee appointed under clause 23 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 14;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

elected director means a director elected under clause 15;

Institute means the Bendigo Kangan Institute continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 25;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 13;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute

6. Establishment of the Institute

There continues to be established a TAFE Institute called the Bendigo Kangan Institute.

7. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

8. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**9. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Bendigo Kangan Institute.

10. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**11. Board composition**

The board consists of between 10 and 15 directors, of whom –

- (a) at least half are Ministerial appointed directors appointed by the Minister under clause 13 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 15 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) the remaining directors are co-opted directors appointed by the board under clause 14 in accordance with section 3.1.16(1)(d) of the Act.

12. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the Board Secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

13. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 11(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

14. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 11(d).

15. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.
Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).
- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

16. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

17. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

18. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

19. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings**20. Procedure for board meetings**

The board must meet at least six times each year, and at least once every three months.

21. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

22. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.

- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –
available to the Deputy Secretary on request.

Division 6 – Board Committees

23. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

24. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;

- (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

25. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

26. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.
- (3) The board must ensure that the chief executive officer's responsibilities include engagement with industry and the development of opportunities in and engagement with the regional and metropolitan areas and communities the Institute is located in.

27. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or

- (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

28. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

29. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

30. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff**31. Interpretation**

In this Division –

direct interest means an interest in a matter of a kind described in clause 40;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 41;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

32. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Bendigo Kangan Institute when making board decisions.

33. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 32, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

34. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 36; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 35; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

35. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

36. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

37. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
 - (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.

- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

38. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

39. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

40. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

41. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter – but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or

- (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

42. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

43. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

44. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 27 May 2014, made under section 3.1.11 of the **Education and Training Reform Act 2006** that changed the name of Bendigo TAFE to Bendigo Kangan Institute and amalgamated the Kangan Institute with the Bendigo Kangan Institute (*the former Order*), is repealed.

45. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

46. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

47. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 15 of this Constitution.

48. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

49. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.

-
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
 - (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
 - (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 29, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
 - (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
 - (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 15(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006THE CONSTITUTION OF THE BOX HILL INSTITUTE AND THE
CENTRE FOR ADULT EDUCATION ORDER 2016

Order in Council

The Governor in Council under sections 3.1.11 and 3.1.26AA of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with those sections, makes the **attached** Constitution of the Box Hill Institute and the Centre for Adult Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

**THE CONSTITUTION OF THE BOX HILL INSTITUTE AND THE
CENTRE FOR ADULT EDUCATION**
Division 1 – Preliminary**1. Title of Order**

This Order is called the Constitution of the Box Hill Institute and the Centre for Adult Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence Box Hill Institute; and
- (b) to continue in existence the Centre for Adult Education; and
- (c) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (d) to make provision or further provision for or with respect to the objectives, functions and powers of the CAE; and
- (e) to establish a board to oversee and govern the Institute and the CAE; and
- (f) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute and the CAE, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (g) to make provision for the board to make rules for the governance of the Institute and the CAE; and
- (h) to make provision for the board to delegate its powers and functions; and
- (i) to repeal previous Orders relating to the board of the Institute and the CAE; and
- (j) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by sections 3.1.11 and 3.1.26AA of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

In this Constitution, unless inconsistent with the context or subject-matter –

Act means the **Education and Training Reform Act 2006**;

board means the board of Box Hill Institute and the Centre for Adult Education established under this Constitution;

board secretary means the person appointed by the board under clause 33;

CAE means the Centre for Adult Education continued in existence by clause 10 of this Constitution;

chairperson means the chairperson of the board appointed under clause 18;

commercial activity means –

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

committee means a committee established by the board under clause 29;

committee member means a member of a committee appointed under clause 29 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 20;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

elected director means a director elected under clause 21;

Institute means the Box Hill Institute continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 31;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 19;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called Box Hill Institute.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to facilitate VCAL, VETis and higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to provide global education including tertiary education and consultancy services for employment, workforce development and industry productivity delivering employment outcomes, improved productivity, and enterprise business success; and
- (c) to build community capacity and enrich the lives of young people and adults through lifelong learning and personal development delivering economic development within communities, social inclusion, and adult personal learning and development.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards and higher education awards ; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

(1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –

- (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, objectives, functions, powers, and duties of the CAE**10. Establishment of the CAE**

There continues to be established an adult education institution called the Centre for Adult Education.

11. Objectives of the CAE

(1) In addition to the objectives set out in section 3.3.29A of the Act, the objectives of the CAE include –

- (a) to facilitate VCAL and VETis education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to provide global education and consultancy services for employment, workforce development and industry productivity delivering employment outcomes, improved productivity, and enterprise business success; and

- (c) to build community capacity and enrich the lives of young people and adults through lifelong learning and personal development delivering economic development within communities, social inclusion, and adult personal learning and development.

12. Functions of the CAE

- (1) In addition to the functions set out in section 3.3.29B of the Act, the functions of the CAE include –
 - (a) to confer vocational training awards; and
 - (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

13. Powers of the CAE

- (1) The powers of the CAE are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the CAE by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the CAE so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, guidelines, directions and policies that apply to the CAE.

Division 4 – Establishment, powers and duties of the board

14. Establishment of the board of the Institute

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Box Hill Institute.
- (2) The board established under subclause (1) is named the Board of the Box Hill Institute.

15. The board is to oversee and govern the CAE

In accordance with section 3.1.11(2)(c) of the Act, the board established under clause 14 is to oversee and govern both the Box Hill Institute and the Centre for Adult Education, an adult education institution established under section 3.3.27 of the Act.

16. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute, the CAE and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute and the CAE.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 5 – Composition of the board

17. Board composition

The board consists of 12 directors, of whom –

- (a) Six are Ministerial appointed directors appointed by the Minister under clause 19 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 21 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) four are co-opted directors appointed by the board under clause 20 in accordance with section 3.1.16(1)(d) of the Act.

18. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the staff director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the Board Secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

19. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 17(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

20. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 17(d).

21. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

22. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

23. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

24. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

25. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 6 – Meetings

26. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

27. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting –
 - (a) of the Institute, for the purposes of section 3.1.18D of the Act; and
 - (b) of the CAE, for the purposes of section 3.3.34D of the Act;in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) or 3.3.34D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.

- (3) A notice for the purposes of section 3.1.18D(2) or 3.3.34D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the relevant material referred to in section 3.1.18D(4) or 3.3.34D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.
- (5) For the avoidance of doubt, the board may conduct the annual meeting –
 - (a) for the purposes of section 3.1.18D of the Act in relation to the Institute; and
 - (b) for the purposes of section 3.3.34D of the Act in relation to the CAE – either together or separately, as the board determines.

28. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D or 3.3.34D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D or 3.3.34D of the Act – available to the Deputy Secretary on request.

Division 7 – Board Committees

29. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.

- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 8 – Financial and Asset Management

30. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute or the CAE.
- (3) The procurement policies and procedures developed and implemented by the board may –
 - (a) be separate policies and procedures that apply in relation to –
 - (i) the Institute only; or
 - (ii) the CAE only; or
 - (b) be joint policies and procedures that apply both to the Institute or the CAE.
- (4) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (5) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (6) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute or the CAE, the Institute or the CAE must apply its procurement policies and procedures.
- (7) The Institute or the CAE need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (8) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute and the CAE, respectively.

31. Audits

- (1) The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute or the CAE and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.
- (2) For the avoidance of doubt, the board may appoint under subclause (1) –
 - (a) the same internal auditor for both the Institute and the CAE; or
 - (b) separate internal auditors for each of the Institute and the CAE.

Division 9 – Management and Governance**32. Chief executive officer**

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

33. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute or the CAE; or
 - (b) if not an executive member of the staff of the Institute or the CAE, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth –
but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person –
that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.
- (6) In this clause, *executive* means –
 - (a) In the case of the Institute, a member of the staff of the Institute who is employed under an executive level contract of the kind referred to in Part 2 of Schedule 3 to the Act; and
 - (b) In the case of the CAE, a member of the staff of the CAE with a salary not less than the salary of any executive member of the Institute.

34. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, CAE rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity in relation to the Institute or the CAE;

- (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture by the Institute or the CAE.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
 - (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
 - (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
 - (6) The board may revoke a delegation at any time.
 - (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
 - (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
 - (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
 - (10) The board remains responsible for actions taken under delegation.
 - (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
 - (12) A delegation of the board is revoked by operation of this subclause three years after its making.
 - (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

35. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

36. CAE Rules

- (1) The board may make CAE rules for the good order and management of the CAE on matters within its power and may amend or revoke those CAE rules.
- (2) The board may amend or revoke any rule or regulation relating to the CAE made by its predecessors.
- (3) A CAE rule is revoked by operation of this subclause 5 years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunsetting CAE rules under subclause (3) is to require the board to review the appropriateness of CAE rules periodically; and
 - (b) the revocation of a CAE rule by subclause (3) does not prevent the making of a new CAE rule in the same manner or form by the board following the review.

37. Common seal

- (1) The common seal of the Institute and the CAE must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute or the CAE, or by the board secretary and at least one director who is not a member of staff of the Institute or the CAE.
- (3) For the avoidance of doubt, the Institute and the CAE must each have their own separate common seals.

Division 10 – Conduct and accountability of directors, committee members and Institute staff**38. Interpretation**

In this Division –

direct interest means an interest in a matter of a kind described in clause 47;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 48;

institute in relation to a relevant person –

- (a) who is a director, committee member or the Chief Executive Officer, means both the Institute and the CAE;
- (b) who is a member of staff of the Institute whose duties relate only to the Institute, means the Institute only;
- (c) who is a member of staff of the CAE whose duties relate only to the CAE, means the CAE only –

and in any other case, means both the Institute and the CAE.

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute's chief executive officer; and
- (d) A member of the staff of the CAE.

39. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of Box Hill Institute when making board decisions.

40. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 39, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff, CAE staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

41. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 43; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff or CAE staff in contravention of clause 42; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute or CAE funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

42. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff or CAE staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff or CAE staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) in the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

43. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

44. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
 - (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

45. Disclosure of interest of staff members

A member of the Institute's staff or the CAE's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

46. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –

- (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
- (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.
- 47. Assessing whether a person has a direct interest in a matter**
- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
- (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- 48. Assessing whether a person has an indirect interest in a matter**
- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
- (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
- (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
- (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –

but does not have an indirect interest in a matter under this subclause only because the person –

- (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding 5 years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

49. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute, the CAE and the board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

50. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 11 – Repeal, savings and transitional provisions

51. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under sections 3.1.11, 3.1.26AA and 3.3.28 of the **Education and Training Reform Act 2006** that continued the existence of the Box Hill Institute of Technical and Further Education, changed its name to Box Hill Institute and continued in existence the Centre for Adult Education (*the former Order*), is repealed.

52. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

53. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to

section 26 of the **Interpretation of Legislation Act 1984**.

54. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 21 of this Constitution.

55. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

56. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board or any of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules, CAE rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 35, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules, CAE rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 21(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE CHISHOLM INSTITUTE ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Chisholm Institute Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

THE CONSTITUTION OF THE CHISHOLM INSTITUTE

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Chisholm Institute Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Chisholm Institute; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Chisholm Institute; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
Act means the **Education and Training Reform Act 2006**;
board means the board of the Chisholm Institute established under clause 10;
board secretary means the person appointed by the board under clause 28;
chairperson means the chairperson of the board appointed under clause 13;

commercial activity means –

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

committee means a committee established by the board under clause 24;

committee member means a member of a committee appointed under clause 24 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 15;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

elected director means a director elected under clause 16;

Institute means the Chisholm Institute continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 26;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 14;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute

6. Establishment of the Institute

There continues to be established a TAFE Institute called the Chisholm Institute.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and

- (b) to facilitate increasing opportunities for Apprenticeships and Traineeships across the relevant Australian industry sectors.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board

10. Establishment of the board

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Chisholm Institute.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board

12. Board composition

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;

- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal than or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.
Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).
- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings**21. Procedure for board meetings**

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –
available to the Deputy Secretary on request.

Division 6 – Board Committees**24. Establishment of Committees**

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 3 consecutive meetings of the committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management**25. General powers and duties**

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.

- (2) The board must develop and implement procurement policies and procedures for entering into contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.

- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person –
that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and

- (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.

- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Chisholm Institute when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
- (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
 - (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.

- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or

- (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006** that continued the existence of the Chisholm Institute of Technical and Further Education and changed its name to Chisholm Institute (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.

- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF FEDERATION TRAINING ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of Federation Training Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON
Clerk of the Executive Council

THE CONSTITUTION OF FEDERATION TRAINING**Division 1 – Preliminary****1. Title of Order**

This Order is called the Constitution of Federation Training Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence Federation Training; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern Federation Training; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
Act means the **Education and Training Reform Act 2006**;
board means the board of Federation Training established under clause 10;
board secretary means the person appointed by the board under clause 28;
chairperson means the chairperson of the board appointed under clause 13;

commercial activity means –

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

committee means a committee established by the board under clause 24;

committee member means a member of a committee appointed under clause 24 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 15;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

elected director means a director elected under clause 16;

Institute means Federation Training continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 26;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 14;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute

6. Establishment of the Institute

There continues to be established a TAFE Institute called Federation Training.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to facilitate higher education through excellent training, innovation and educational leadership that delivers quality outcomes; and

- (b) to build community capacity and enrich the lives of young people and adults through lifelong learning and personal development delivering economic development within communities, social inclusion, and adult personal learning and development.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards and higher education awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board

10. Establishment of the board

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of Federation Training.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board

12. Board composition

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;

- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.
Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).
- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings**21. Procedure for board meetings**

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making to arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –
available to the Deputy Secretary on request.

Division 6 – Board Committees**24. Establishment of Committees**

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management**25. General powers and duties**

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.

- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.

- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person –
that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and

- (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.

- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of Federation Training when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
- (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
- (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.

- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
- (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
- (a) may, at the discretion of the board, take part in the discussion in the meeting; and

- (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.

- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
- (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 15 April 2014, made under section 3.1.11 of the **Education and Training Reform Act 2006** that amalgamated the Central Gippsland Institute of Technical and Further Education and Advance TAFE and changed the name to Federation Training (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE GORDON INSTITUTE OF TECHNICAL AND FURTHER
EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Gordon Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

**THE CONSTITUTION OF THE GORDON INSTITUTE OF TECHNICAL
AND FURTHER EDUCATION**

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Gordon Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Gordon Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Gordon Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
- board** means the board of the Gordon Institute of Technical and Further Education established under clause 9;
- board secretary** means the person appointed by the board under clause 27;
- chairperson** means the chairperson of the board appointed under clause 12;
- commercial activity** means –
- (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
- committee** means a committee established by the board under clause 23;
- committee member** means a member of a committee appointed under clause 23 and includes an acting member of a committee;
- controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
- this Constitution** means this Order in Council;
- co-opted director** means a director appointed under clause 14;
- Department** has the same meaning as it has in section 1.1.3(1) of the Act;
- Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
- director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
- elected director** means a director elected under clause 15;
- Institute** means the Gordon Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
- internal auditor** means an auditor appointed by the board under clause 25;
- major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
- Ministerial appointed director** means a director appointed under clause 13;
- Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the Gordon Institute of Technical and Further Education.

7. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (d) to confer vocational training awards; and
- (e) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

8. Powers of the Institute

(1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –

- (a) the Act and other laws; and
- (b) this Constitution; and
- (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
- (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.

(2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**9. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Gordon Institute of Technical and Further Education.

10. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**11. Board composition**

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 13 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 15 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 14 in accordance with section 3.1.16(1)(d) of the Act.

12. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

13. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 11(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

14. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 11(d).

15. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

16. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

17. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

18. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

19. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

20. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

21. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and

- (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
 - (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.
- 22. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary**
- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
 - (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees

23. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management**24. General powers and duties**

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

25. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance**26. Chief executive officer**

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

27. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or

- (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

28. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.

- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

29. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

30. Common seal

- (1) The common seal of the Institute must–
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

31. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 40;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 41;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require–

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

32. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Gordon Institute of Technical and Further Education when making board decisions.

33. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 32, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

34. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 36; or

- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 35; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

35. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

36. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
- (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

37. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or

- (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

38. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

39. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

40. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

41. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in

- an organisation for which the person receives no remuneration; or
- (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

42. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

43. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

44. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the Gordon Institute of Technical and Further Education (*the former Order*), is repealed.

45. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

46. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

47. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 15 of this Constitution.

48. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

49. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board or one of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 29, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 15(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE GOULBURN OVENS INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Goulburn Ovens Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

THE CONSTITUTION OF THE GOULBURN OVENS INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Goulburn Ovens Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Goulburn Ovens Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Goulburn Ovens Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
- board** means the board of the Goulburn Ovens Institute of Technical and Further Education established under clause 10;
- board secretary** means the person appointed by the board under clause 28;
- chairperson** means the chairperson of the board appointed under clause 13;
- commercial activity** means –
- (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
- committee** means a committee established by the board under clause 24;
- committee member** means a member of a committee appointed under clause 24 and includes an acting member of a committee;
- controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
- this Constitution** means this Order in Council;
- co-opted director** means a director appointed under clause 15;
- Department** has the same meaning as it has in section 1.1.3(1) of the Act;
- Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
- director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
- elected director** means a director elected under clause 16;
- Institute** means the Goulburn Ovens Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
- internal auditor** means an auditor appointed by the board under clause 26;
- major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
- Ministerial appointed director** means a director appointed under clause 14;
- Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the Goulburn Ovens Institute of Technical and Further Education.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) To develop, provide and facilitate vocational education and training and higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to provide global education including tertiary education and consultancy services for employment, workforce development and industry productivity delivering employment outcomes, improved productivity, and enterprise business success; and
- (c) to build community capacity and enrich the lives of young people and adults through lifelong learning and personal development delivering economic development within communities, social inclusion, and adult personal learning and development.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**10. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Goulburn Ovens Institute of Technical and Further Education.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;

- (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board

12. Board composition

The board consists of 11 directors, of whom –

- (a) six are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings**21. Procedure for board meetings**

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees**24. Establishment of Committees**

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.

- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

25. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance**27. Chief executive officer**

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.

- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. **Primary principle of director and committee member conduct**

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Goulburn Ovens Institute of Technical and Further Education when making board decisions.

34. **General conduct principles**

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute’s and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body’s committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is **confidential information** if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.

- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
 - (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.

- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.

- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
- (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board’s approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
- (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006** that continued the existence of the Goulburn Ovens Institute of Technical and Further Education (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.

- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
- (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –
- whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
- (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board or one of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
- (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –
- whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
- (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE HOLMESGLEN INSTITUTE ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Holmesglen Institute Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON
Clerk of the Executive Council

THE CONSTITUTION OF THE HOLMESGLEN INSTITUTE**Division 1 – Preliminary****1. Title of Order**

This Order is called the Constitution of the Holmesglen Institute Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Holmesglen Institute; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Holmesglen Institute; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
Act means the **Education and Training Reform Act 2006**;
board means the board of the Holmesglen Institute established under clause 10;
board secretary means the person appointed by the board under clause 28;
chairperson means the chairperson of the board appointed under clause 13;

commercial activity means –

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

committee means a committee established by the board under clause 24;

committee member means a member of a committee appointed under clause 24 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 15;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

elected director means a director elected under clause 16;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

Institute means the Holmesglen Institute continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 26;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 14;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute

6. Establishment of the Institute

There continues to be established a TAFE Institute called the Holmesglen Institute.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include to confer vocational training awards.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**10. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Holmesglen Institute.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**12. Board composition**

The board consists of 12 directors, of whom –

- (a) six are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) four are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing address to the Board Secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.
Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).
- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings**21. Procedure for board meetings**

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.

- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –
available to the Deputy Secretary on request.

Division 6 – Board Committees

24. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules, give directions and approve charters and terms of reference, with which committees must comply, about –
 - (i) the powers of the committee; and
 - (ii) their quorums; and
 - (iii) voting powers of their members; and
 - (iv) their proceedings; and
 - (v) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

25. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;

- (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.

- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
- (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
- (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
- (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
- (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.

- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunsetting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Holmesglen Institute when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
 - (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.

- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.

- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter – but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or

- (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the Holmesglen Institute of Technical and Further Education and changed its name to Holmesglen Institute (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or

- (b) by operation of subclause (2) –
whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –
whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF MELBOURNE POLYTECHNIC ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of Melbourne Polytechnic Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON
Clerk of the Executive Council

THE CONSTITUTION OF MELBOURNE POLYTECHNIC**Division 1 – Preliminary****1. Title of Order**

This Order is called the Constitution of Melbourne Polytechnic Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence Melbourne Polytechnic; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern Melbourne Polytechnic; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
Act means the **Education and Training Reform Act 2006**;
board means the board of Melbourne Polytechnic established under clause 10;
board secretary means the person appointed by the board under clause 28;
chairperson means the chairperson of the board appointed under clause 13;

commercial activity means –

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

committee means a committee established by the board under clause 24;

committee member means a member of a committee appointed under clause 24 and includes an acting member of a committee;

controlling interest has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;

this Constitution means this Order in Council;

co-opted director means a director appointed under clause 15;

Department has the same meaning as it has in section 1.1.3(1) of the Act;

Deputy Secretary means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;

elected director means a director elected under clause 16;

director includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;

Institute means Melbourne Polytechnic continued in existence by clause 6 of this Constitution;

internal auditor means an auditor appointed by the board under clause 26;

major commercial activity means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –

- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

Ministerial appointed director means a director appointed under clause 14;

Secretary has the same meaning as it has in section 1.1.3(1) of the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute

6. Establishment of the Institute

There continues to be established a TAFE Institute called Melbourne Polytechnic.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes;

- (b) to provide global education including tertiary education and consultancy services for employment, workforce development and industry productivity delivering employment outcomes, improved productivity, and enterprise business success; and
- (c) to build community capacity and enrich the lives of young people and adults through lifelong learning and personal development delivering economic development within communities, social inclusion, and adult personal learning and development.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards and higher education awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board

10. Establishment of the board

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of Melbourne Polytechnic.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**12. Board composition**

The board consists of between 10 and 15 directors, of whom –

- (a) at least half are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) the remaining directors are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

21. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and

- (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
 - (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.
- 23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary**
- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
 - (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees

- 24. Establishment of Committees**
- (1) The board may, to facilitate its functioning, establish and dissolve committees.
 - (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
 - (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
 - (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management**25. General powers and duties**

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance**27. Chief executive officer**

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or

- (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.

- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of Melbourne Polytechnic when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or

- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
- (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or

- (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or

- (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
- (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Orders

On the date this Constitution comes into operation (*the handover date*), the following Orders (*the former Orders*) are repealed –

- (a) the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the Northern Melbourne Institute of Technical and Further Education; and
- (b) the Order in Council dated 30 September 2014, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that amended the Order referred to in paragraph (a) by changing the name of the Northern Melbourne Institute of Technical and Further Education to Melbourne Polytechnic.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Orders (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Orders

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Orders before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE SOUTH WEST INSTITUTE OF TECHNICAL
AND FURTHER EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the South West Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

THE CONSTITUTION OF THE SOUTH WEST INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the South West Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the South West Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the South West Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
- board** means the board of the South West Institute of Technical and Further Education established under clause 10;
- board secretary** means the person appointed by the board under clause 28;
- chairperson** means the chairperson of the board appointed under clause 13;
- commercial activity** means –
- (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
- committee** means a committee established by the board under clause 24;
- committee member** means a member of a committee appointed under clause 24 and includes an acting member of a committee;
- this Constitution** means this Order in Council;
- controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
- co-opted director** means a director appointed under clause 15;
- Department** has the same meaning as it has in section 1.1.3(1) of the Act;
- Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
- director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
- elected director** means a director elected under clause 16;
- Institute** means the South West Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
- internal auditor** means an auditor appointed by the board under clause 26;
- major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
- Ministerial appointed director** means a director appointed under clause 14;
- Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the South West Institute of Technical and Further Education.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to serve the vocational education and training needs of the communities of South West Victoria, which include the Shires of Glenelg, Corangamite, Moyne, Warrnambool, and the Southern Grampians; and
- (b) to expand its delivery and reputation beyond the South West Victorian region in the areas of its educational expertise.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**10. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the South West Institute of Technical and Further Education.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;

- (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board

12. Board composition

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;

- (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal than or greater than 0.6 FTE to stand for election as the elected member;
- (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

21. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.

- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees

24. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
- (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

25. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.

- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth –
but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person –
that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and

- (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;

- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the South West Institute of Technical and Further Education when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute’s and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body’s committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.

- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.

- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
- (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
- (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –
- a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
 - (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
 - (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.
- 41. Assessing whether a person has a direct interest in a matter**
- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
 - (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- 42. Assessing whether a person has an indirect interest in a matter**
- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
 - (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
 - (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
 - (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
 - (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or

- (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the South West Institute of Technical and Further Education (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE SUNRAYSLIA INSTITUTE OF TECHNICAL
AND FURTHER EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Sunraysia Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

**THE CONSTITUTION OF THE SUNRAYSLIA INSTITUTE OF TECHNICAL AND
FURTHER EDUCATION**

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Sunraysia Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Sunraysia Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Sunraysia Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
 - board** means the board of the Sunraysia Institute of Technical and Further Education established under clause 10;
 - board secretary** means the person appointed by the board under clause 28;
 - chairperson** means the chairperson of the board appointed under clause 13;
 - commercial activity** means –
 - (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
 - committee** means a committee established by the board under clause 24;
 - committee member** means a member of a committee appointed under clause 24 and includes an acting member of a committee;
 - controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
 - co-opted director** means a director appointed under clause 15;
 - this Constitution** means this Order in Council;
 - Department** has the same meaning as it has in section 1.1.3(1) of the Act;
 - Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
 - director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
 - elected director** means a director elected under clause 16;
 - Institute** means the Sunraysia Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
 - internal auditor** means an auditor appointed by the board under clause 26;
 - major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
 - (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
 - Ministerial appointed director** means a director appointed under clause 14;
 - Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the Sunraysia Institute of Technical and Further Education.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include to perform its functions with a particular focus on the North West region of Victoria.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

(1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –

- (a) the Act and other laws; and
- (b) this Constitution; and
- (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
- (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.

(2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**10. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the Sunraysia Institute of Technical and Further Education.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
 - (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**12. Board composition**

The board consists of 11 directors, of whom –

- (a) six are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

21. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and

- (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
 - (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.
- 23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary**
- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
 - (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees

24. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (v) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or

- (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

25. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.

- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Sunraysia Institute of Technical and Further Education when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute’s and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body’s committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.

- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.

- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
- (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
- (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –
- a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or

- (c) is a trustee for a person who has a direct interest in a matter – but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the Sunraysia Institute of Technical and Further Education (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board of one or of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006THE CONSTITUTION OF THE WILLIAM ANGLISS INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the William Angliss Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

**THE CONSTITUTION OF THE WILLIAM ANGLISS INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION**
Division 1 – Preliminary**1. Title of Order**

This Order is called the Constitution of the William Angliss Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the William Angliss Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the William Angliss Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
- board** means the board of the William Angliss Institute of Technical and Further Education established under clause 10;
- board secretary** means the person appointed by the board under clause 28;
- chairperson** means the chairperson of the board appointed under clause 13;
- commercial activity** means –
- (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
- committee** means a committee established by the board under clause 24;
- committee member** means a member of a committee appointed under clause 24 and includes an acting member of a committee;
- controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
- this Constitution** means this Order in Council;
- co-opted director** means a director appointed under clause 15;
- Department** has the same meaning as it has in section 1.1.3(1) of the Act;
- Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
- director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
- elected director** means a director elected under clause 16;
- Institute** means the William Angliss Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
- internal auditor** means an auditor appointed by the board under clause 26;
- major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
- Ministerial appointed director** means a director appointed under clause 14;
- Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the William Angliss Institute of Technical and Further Education.

7. Objectives of the Institute

In addition to the objectives set out in section 3.1.12A of the Act, the objectives of the Institute include –

- (a) to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to perform its functions with a particular focus on the foods, tourism, hospitality and events industries in Victoria, Australia and internationally.

8. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards and higher education awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

9. Powers of the Institute

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –
 - (a) the Act and other laws; and
 - (b) this Constitution; and
 - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
 - (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.
- (2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**10. Establishment of the board**

- (1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.
- (2) The board established under subclause (1) is named the Board of the William Angliss Institute of Technical and Further Education.

11. General duties of the board

- (1) The board must –
 - (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
 - (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
 - (c) meet at intervals prescribed in this Constitution;
 - (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and

- (e) ensure the safe custody and proper use of the common seal of the Institute.
- (2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board

12. Board composition

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

13. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

14. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 12(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

15. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 12(d).

16. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;

- (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

17. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
(b) election of an elected director –

within one calendar month of the respective appointment or election.

18. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

19. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

20. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
(b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

21. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

22. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.

- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and
 - (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
- (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.

23. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary

- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
- (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –
available to the Deputy Secretary on request.

Division 6 – Board Committees

24. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
- (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management

25. General powers and duties

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

26. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance

27. Chief executive officer

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.

- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

28. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or
 - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth – but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person – that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

29. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.

- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

30. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

31. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

32. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 41;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 42;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute's chief executive officer.

33. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the William Angliss Institute of Technical and Further Education when making board decisions.

34. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

35. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.

- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 37; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

36. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
 - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

37. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
 - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.

- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

38. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or
 - (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
- (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

39. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

40. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
- (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –
- a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

41. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

42. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or

- (c) is a trustee for a person who has a direct interest in a matter – but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
 - (e) holds a position, with the board’s approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in a body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

43. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

44. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

45. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the William Angliss Institute of Technical and Further Education (*the former Order*), is repealed.

46. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

47. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

48. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.
- (2) The election must be conducted in a manner consistent with the process set out in clause 16 of this Constitution.

49. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

50. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
 - (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board or its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked –
 - (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
 - (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 16(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Education and Training Reform Act 2006

THE CONSTITUTION OF THE WODONGA INSTITUTE OF TECHNICAL
AND FURTHER EDUCATION ORDER 2016

Order in Council

The Governor in Council under section 3.1.11 of the **Education and Training Reform Act 2006**, on the recommendation of the Minister for Training and Skills made in accordance with that section, makes the **attached** Constitution of the Wodonga Institute of Technical and Further Education Order 2016.

Dated 3 May 2016

Responsible Minister:

THE HON. STEVE HERBERT MP

Minister for Training and Skills

ANDREW ROBINSON

Clerk of the Executive Council

**THE CONSTITUTION OF THE WODONGA INSTITUTE OF
TECHNICAL AND FURTHER EDUCATION**

Division 1 – Preliminary

1. Title of Order

This Order is called the Constitution of the Wodonga Institute of Technical and Further Education Order 2016.

2. Purposes

The purposes of this Constitution are –

- (a) to continue in existence the Wodonga Institute of Technical and Further Education; and
- (b) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and
- (c) to establish a board to oversee and govern the Wodonga Institute of Technical and Further Education; and
- (d) to make provision or further provision for or with respect to the constitution, management structure, membership, objectives, powers, duties or functions of the board of the Institute, the manner of appointment and the terms and conditions of appointment of directors of the board; and
- (e) to make provision for the board to make rules for the governance of the Institute; and
- (f) to make provision for the board to delegate its powers and functions; and
- (g) to repeal previous Orders relating to the board of the Institute; and
- (h) to make provision for or with respect to matters of a consequential, transitional or savings nature.

3. Authorising powers

- (1) This Constitution is made under the powers conferred by section 3.1.11 of the **Education and Training Reform Act 2006** and all other enabling powers.
- (2) This Constitution is to be read and construed subject to the Act. If there is any inconsistency between the Act and this Constitution, the Act will prevail to the extent of any inconsistency.

4. Commencement

This Constitution comes into operation on 1 July 2016.

5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter –
- Act** means the **Education and Training Reform Act 2006**;
- board** means the board of the Wodonga Institute of Technical and Further Education established under clause 9;
- board secretary** means the person appointed by the board under clause 27;
- chairperson** means the chairperson of the board appointed under clause 12;
- commercial activity** means –
- (a) the provision or sale by the Institute (or the Institute in partnership, trust, joint venture or association with others) of land, property, goods, services or other activities on a commercial basis; or
 - (b) the acquisition by the Institute of, or capital expenditure on, land, property, goods, services or other things; or
 - (c) other activities conducted on a commercial basis or of a commercial nature;
- committee** means a committee established by the board under clause 23;
- committee member** means a member of a committee appointed under clause 23 and includes an acting member of a committee;
- controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**;
- this Constitution** means this Order in Council;
- co-opted director** means a director appointed under clause 14;
- Department** has the same meaning as it has in section 1.1.3(1) of the Act;
- Deputy Secretary** means the person for the time being holding, acting in or performing the duties of the Deputy Secretary, Higher Education and Skills Group within the Department, and if its name is changed, means the person for the time being holding, acting in or performing the duties of the Deputy Secretary of that part of the Department with responsibility for vocational education and training;
- director** includes a Ministerial appointed director, a co-opted director, an elected director and the chief executive officer of the Institute, and includes any person acting as a director;
- elected director** means a director elected under clause 15;
- Institute** means the Wodonga Institute of Technical and Further Education continued in existence by clause 6 of this Constitution;
- internal auditor** means an auditor appointed by the board under clause 25;
- major commercial activity** means commercial activity that involves a transaction or transactions with a total estimated cost greater than five per cent of annual revenues of the Institute, but does not include –
- (a) the supply of vocational training or higher education in accordance with the Institute's strategic plan; or
 - (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;
- Ministerial appointed director** means a director appointed under clause 13;
- Secretary** has the same meaning as it has in section 1.1.3(1) of the Act.
- (2) Unless otherwise defined, words and expressions in this Order have the same meaning as in the Act.

Division 2 – Establishment, objectives, functions, powers and duties of the Institute**6. Establishment of the Institute**

There continues to be established a TAFE Institute called the Wodonga Institute of Technical and Further Education.

7. Functions of the Institute

In addition to the functions set out in section 3.1.12B of the Act, the functions of the Institute include –

- (a) to confer vocational training awards; and
- (b) subject to Part 5.5 of the Act, to operate as a group training organisation that employs apprentices and other trainees and places them with host employers.

8. Powers of the Institute

(1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by –

- (a) the Act and other laws; and
- (b) this Constitution; and
- (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
- (d) the general administrative, social and economic directives and policies established by the Government of Victoria from time to time.

(2) For the avoidance of doubt, it is the intention of subclause (1) to limit the power of the Institute so that it does not have power to act in a manner that is contrary to, or inconsistent with, its duties and obligations under laws, legislation, Ministerial Orders, Orders in Council, guidelines, directions and policies that apply to the Institute.

Division 3 – Establishment, powers and duties of the board**9. Establishment of the board**

(1) In accordance with section 3.1.11(2) of the Act, there is established a board to oversee and govern the Institute.

(2) The board established under subclause (1) is named the Board of the Wodonga Institute of Technical and Further Education.

10. General duties of the board

(1) The board must –

- (a) take all reasonable steps for the advancement of the objectives of the Institute and the board under the Act and this Constitution;
- (b) operate in accordance with the economic and social objectives and public sector management policy established from time to time by the Government of Victoria;
- (c) meet at intervals prescribed in this Constitution;
- (d) provide all assistance and information as the Minister, the Secretary or the Deputy Secretary may reasonably require from the board; and
- (e) ensure the safe custody and proper use of the common seal of the Institute.

(2) These duties are in addition to, and do not take away from, the duties imposed on the board by the Act, other provisions of this Constitution, and any other duties imposed by any other Act or law.

Division 4 – Composition of the board**11. Board composition**

The board consists of 10 directors, of whom –

- (a) five are Ministerial appointed directors appointed by the Minister under clause 13 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 15 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and
- (d) three co-opted directors appointed by the board under clause 14 in accordance with section 3.1.16(1)(d) of the Act.

12. Chairperson of Board and other Office Bearers

- (1) The board must elect one of its directors as chairperson for the purposes of, and in accordance with, section 3.1.16A of the Act for term specified by the board, up to a maximum of three years.
- (2) The chief executive officer and the elected director must not be chairperson.
- (3) The board must decide the process for electing a chairperson under subclause (1).
- (4) The process determined by the board under subclause (3) must –
 - (a) identify the skills and capabilities the board requires in a chairperson; and
 - (b) assess potential candidates for chairperson against the identified required skills and capabilities.
- (5) The chairperson may resign that office by notice in writing addressed to the board secretary.
- (6) If there is a casual vacancy in the office of chairperson, the board must, as soon as practicable, elect another chairperson.
- (7) The board may also have such other office bearers as it determines.

13. Appointment of Ministerial appointed directors

- (1) The Minister may, by instrument in writing, appoint a person to a Ministerial appointed director position referred to in clause 11(a).
- (2) The Minister shall seek input from the chairperson before appointing a person to a Ministerial appointed director position.

14. Appointment of co-opted directors

The board may, by instrument in writing, appoint a person by co-option to a co-opted director position referred to in clause 11(d).

15. Election of elected directors

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must –
 - (a) provide for the direct election of a staff member of the Institute to the elected director position;
 - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed by the Institute for a time fraction of equal to or greater than 0.6 FTE to stand for election as the elected member;
 - (c) address the matters referred to in Schedule 1 to this Constitution.

Note: the eligibility requirements to stand in elections that are provided for in subclause (2) are minimum requirements. The election process determined by the board under this provision may provide for broader eligibility to stand for election than what is provided for in subclause (2).

- (3) The board must ensure that appropriate training and resources are provided to an elected director, so as to enable that elected director to comply with the duties and obligations imposed by this Constitution, the Act and any other relevant duty or obligation.
- (4) An elected director ceases to hold office if they cease to meet the criteria to stand for election set out in subclause (2)(b).

16. Notification of appointment or election

The board must notify the Minister in writing of the –

- (a) appointment of a co-opted director; or
- (b) election of an elected director –

within one calendar month of the respective appointment or election.

17. Notification of vacancies, absences or inability of directors to perform their duties

- (1) If a vacancy occurs in an office of the chairperson or a director, the board must inform the Minister of the vacancy in writing as soon as practicable, and in any event no later than 20 business days after a vacancy arises.
- (2) If, in the opinion of the board, the chairperson or a director is unable to perform the duties of the office, the board must inform the Minister in writing as soon as practicable.

18. Terms and conditions of office of directors

- (1) Directors (other than the chief executive officer) hold office for the term, not exceeding three years, that is specified in the instrument of appointment.
- (2) A Ministerial appointed director may resign by notice in writing delivered to the Minister.
- (3) A co-opted director or elected director may resign by notice in writing delivered to the board secretary.

19. Indemnity of directors and committee members

The board must arrange insurance or an indemnity for each director and committee member for an amount of not less than \$10 million per event to indemnify that director or committee member against liability in respect of any injury, damage or loss suffered by the board or any person caused or arising out of anything necessarily or reasonably done, or omitted to be done, by that director or committee member in good faith –

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or
- (b) in the reasonable belief that the act or omission was done in the exercise of a power or the performance of a function or duty of a director or committee member.

Division 5 – Meetings

20. Procedure for board meetings

The board must meet at least six times each year, and at least once every three months.

21. Procedure for Institute annual meetings

- (1) The board must ensure that the chief executive officer convenes an annual meeting of the Institute, for the purposes of section 3.1.18D of the Act, in accordance with this clause.
- (2) The notice required under section 3.1.18D(2) of the Act must be published at least 15 business days before the date on which the annual meeting is to be held.
- (3) A notice for the purposes of section 3.1.18D(2) of the Act must also include –
 - (a) the date, time and location at which the meeting will be held; and

- (b) a contact person, including telephone number, postal address and email address, for making arrangements for attendance at the meeting and to obtain a copy of the papers referred to in subclause (4).
 - (4) The board must arrange for copies of the material referred to in section 3.1.18D(4) of the Act to be available on request to members of the public at least 10 business days before the date on which the annual meeting is to be held.
- 22. Minutes of meetings and records of decisions to be kept and made available to the Deputy Secretary**
- (1) The board must –
 - (a) keep a record of its decisions, including decisions of its committees; and
 - (b) keep full and accurate minutes of its meetings, its committee meetings and of annual meetings conducted for the purposes of section 3.1.18D of the Act.
 - (2) The board must make a copy of all –
 - (a) records of decisions of the board, its committees and its delegates; and
 - (b) minutes of the board, its committees and of annual meetings conducted for the purposes of section 3.1.18D of the Act –available to the Deputy Secretary on request.

Division 6 – Board Committees

23. Establishment of Committees

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time –
 - (a) appoint to office a director, or any other person, as a member of a committee; and
 - (b) remove from office a member of a committee and must provide in writing to the member the reasons for the removal; and
 - (c) by resolution, make rules and give directions, with which committees must comply, about –
 - (i) their quorums; and
 - (ii) voting powers of their members; and
 - (iii) their proceedings; and
 - (iv) any other matter; and
 - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee 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 committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
 - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (e) ceases to hold a qualification necessary for his or her appointment.

Division 7 – Financial and Asset Management**24. General powers and duties**

- (1) The board and each of its directors are subject to the same duties that apply to investments by trustees under the law relating to trustees.
- (2) The board must develop and implement procurement policies and procedures for letting contracts or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute.
- (3) The procurement policies and procedures must include –
 - (a) provision in relation to the expenditure levels at which tenders or competitive quotations are required;
 - (b) the process for calling for tenders and competitive quotations;
 - (c) the evaluation of tenders and competitive quotations –
 - (i) based on objective criteria designed to assess value for money; and
 - (ii) that provide tenderers and prospective tenderers a fair opportunity to compete for work;
 - (d) the level of clearance required for letting contracts of particular kinds or of particular value;
 - (e) contract management procedures, responsibilities and accountabilities; and
 - (f) regular review of the procurement policy and its implementation.
- (4) In developing and reviewing its procurement policy and procedures, the board must have regard to the procurement policies adhered to by departments of the Victorian Government from time to time.
- (5) When entering any contract for or authorising expenditure on the supply of goods or services or the carrying out of works for the Institute, the Institute must apply its procurement policies and procedures.
- (6) The Institute need not comply with subclause (5) for the engagement of professional advisors whose charges are normally made at rates fixed and published by statutory bodies or professional associations.
- (7) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute.

25. Audits

The board may, in its discretion, appoint an internal auditor to advise and assist the board in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

Division 8 – Management and Governance**26. Chief executive officer**

- (1) The board must have a process for recruitment and employment of the chief executive officer of the Institute based on merit and must exercise appropriate oversight over the chief executive officer.
- (2) The board must decide what powers, duties and responsibilities it will assign to the chief executive officer.

27. Board Secretary

- (1) The board must appoint a board secretary.
- (2) The board secretary must be –
 - (a) an executive member of the staff of the Institute; or

- (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the **Corporations Act 2001** of the Commonwealth –
but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board –
 - (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
 - (b) to publish or provide information to any person –
that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

28. Delegations

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate –
 - (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
 - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
 - (c) the submission of the strategic plan to the Minister;
 - (d) the submission of the annual statement of corporate intent to the Minister;
 - (e) the approval of the audited financial annual reports; or
 - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify –
 - (a) the period for which it is valid; and
 - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation –
 - (a) has the same effect as if it had been done by the board; and
 - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.

- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt –
 - (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
 - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

29. Institute rules

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt –
 - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
 - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

30. Common seal

- (1) The common seal of the Institute must –
 - (a) be kept in the custody of the board secretary or such other custody as the board directs;
 - (b) not be used except as authorised by the board.
- (2) Every document on which the common seal is affixed must be signed by at least two directors who are not members of staff of the Institute, or by the board secretary and at least one director who is not a member of staff of the Institute.

Division 9 – Conduct and accountability of directors, committee members and Institute staff

31. Interpretation

In this Division –

direct interest means an interest in a matter of a kind described in clause 40;

family member has the same meaning as in section 78(1) of the **Local Government Act 1989**;

indirect interest means an interest in a matter of a kind described in clause 41;

matter means a matter with which the board, committee or a member of Institute staff is concerned and that will require –

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the board or a committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Institute staff in respect of the matter;

relative has the same meaning as in section 78(1) of the **Local Government Act 1989**;

relevant person means –

- (a) a director; and
- (b) a committee member; and
- (c) a member of the Institute staff, including the Institute’s chief executive officer.

32. Primary principle of director and committee member conduct

- (1) A director or a committee member must, in performing their duties –
 - (a) act with integrity; and
 - (b) impartially exercise his or her responsibilities in the interests of the Institute; and
 - (c) not improperly seek to confer an advantage or disadvantage on any person.
- (2) For the avoidance of doubt, it is the responsibility of any elected director to act in the best interests of the Wodonga Institute of Technical and Further Education when making board decisions.

33. General conduct principles

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 32, in performing the role of a director or committee member, a relevant person must –
 - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
 - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
 - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
 - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
 - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
 - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
 - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
 - (h) support and promote these principles by leadership and example and act in a way that secures and preserves confidence in the office of director or committee member; and
 - (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

34. Misuse of position

- (1) A relevant person must not misuse his or her position –
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include –
 - (a) making improper use of information acquired as a result of the position he or she held or holds; or
 - (b) disclosing information that is confidential information within the meaning of clause 36; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 35; or

- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
 - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

35. Improper direction and improper influence

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff –
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or
 - (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
 - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

36. Confidential information

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if –
- (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
 - (b) subject to subclause (3), the information has been designated in writing as confidential information by the board secretary and the board has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

37. Disclosure of interest of committee members

- (1) A committee member who has a pecuniary or other interest in any matter in which the committee is concerned must –
- (a) if the committee member is present at a meeting of the committee at which the matter is to be considered, disclose the nature of the interest immediately before the consideration of that matter; or

- (b) if the committee member is aware that the matter is to be considered at a meeting of the committee at which the committee member does not intend to be present, disclose the nature of the interest to the committee chairperson before the meeting is held.
- (2) A committee member who has made a disclosure in accordance with subclause (1) –
 - (a) may, at the discretion of the board, take part in the discussion in the meeting; and
 - (b) must leave the meeting while any vote is taken on a question relating to the matter.
- (3) The chairperson of the committee must ensure that a disclosure made to a committee is reported to the next meeting of the board.
- (4) All disclosures must be recorded in the minutes of the committee and the board.
- (5) A disclosure can be in the form of a general notice read at a board meeting and entered in its minutes that the committee member holds an office or possesses certain property or has other relevant interests.
- (6) The requirements of this clause in relation to committee members do not apply to conflicts in respect of positions, offices or employment held which are a necessary qualification for the appointment of a person to the committee.
- (7) For the avoidance of doubt, this clause applies to a director who is a member of a committee when acting in that capacity.

38. Disclosure of interest of staff members

A member of the Institute's staff who –

- (a) prepares material for the board or a committee in relation to a matter; or
- (b) is present at a meeting of the board or a committee to provide assistance or advice in relation to a matter –

must disclose to the board or committee (as the case may be) if he or she has an interest in relation to that matter.

39. Assessing whether a person has an interest in a matter

- (1) For the purposes of –
 - (a) in relation to directors – clause 6 of Schedule 2 to the Act and this Division; and
 - (b) in relation to committee members and Institute staff – this Division –a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds –
 - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
 - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

- (4) A relevant person does not have an interest in a matter if the relevant person –
 - (a) does not know the circumstances that give rise to the interest; and
 - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

40. Assessing whether a person has a direct interest in a matter

- (1) For the purposes of this Division, a person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subclause (1), a person has a direct interest in a matter if –
 - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

41. Assessing whether a person has an indirect interest in a matter

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if –
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person –
 - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
 - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person –
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
 - (c) is a trustee for a person who has a direct interest in a matter –
but does not have an indirect interest in a matter under this subclause only because the person –
 - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or

- (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
 - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from –
- (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

42. Additional duties

- (1) The duties imposed by this clause are in addition to, and do not take away from, those imposed by the Act or other laws.
- (2) Before being eligible to take up the position of director, a person must sign an instrument agreeing to be bound by and to comply with –
 - (a) the Act and other laws applying to the Institute and board;
 - (b) this Constitution; and
 - (c) subject to the above, any governance protocols adopted by the board from time to time.
- (3) A person who is, or has been a director of the board must not disclose confidential information acquired in the course of his or her duties as a board director except as authorised by the board.

43. Breach of this Division may be misconduct

A breach of this Division by a relevant person is capable of being misconduct.

Division 10 – Repeal, savings and transitional provisions

44. Repeal of former Order

On the date this Constitution comes into operation (*the handover date*), the Order in Council dated 9 April 2013, made under section 3.1.11 of the **Education and Training Reform Act 2006**, that continued the existence of the Wodonga Institute of Technical and Further Education (*the former Order*), is repealed.

45. Abolition of former boards and transitional arrangements

- (1) On the handover date, the board established under the former Order (*the former board*) is abolished, and the directors of the former board go out of office.
- (2) Subclause (1) does not affect the eligibility of any person for appointment to the board established by this Constitution (*the incoming board*).

46. First appointments to the incoming board

For the avoidance of doubt, directors may be appointed to the incoming board after this Constitution is made but before the commencement date in accordance with and subject to section 26 of the **Interpretation of Legislation Act 1984**.

47. Election to incoming board

- (1) Prior to the handover date, the former board must arrange for, and conduct, an election for an elected director to be elected to the incoming board.

- (2) The election must be conducted in a manner consistent with the process set out in clause 15 of this Constitution.

48. Savings of acts under former Order

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the former Order before the handover date.

49. Matters relating to the establishment of the incoming board

- (1) Delegations made by the former board continue in operation as if they were made by the incoming board until they are revoked –
- (a) by resolution of the incoming board; or
 - (b) by operation of subclause (2) –
- whichever is the earlier.
- (2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (3) For the avoidance of doubt –
- (a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and
 - (b) the revocation by subclause (2) of a delegation by the former board or one of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.
- (4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 29, until they are revoked –
- (a) by resolution of the incoming board; or
 - (b) until revoked by operation of subclause (5) –
- whichever is the earlier.
- (5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.
- (6) For the avoidance of doubt –
- (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
 - (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

Schedule 1 – Matters that must be addressed in election processes

For the purposes of clause 15(2), the election processes established by the board must make provision for the following –

- A. Who is eligible to stand for election
 - B. Who is eligible to vote in an election
 - C. The process for appointing a returning officer
 - D. The election timetable
 - E. Procedures for establishing and maintaining the electoral roll
 - F. The process for nominating for election
 - G. The processes for
 - a. uncontested elections
 - b. contested elections
 - H. Method(s) of voting
 - I. Security of ballot-papers / scrutineers
 - J. The process for counting of votes
 - K. The process for declaring results of the election
 - L. Dispute procedures
-

Health Services Act 1988

EXEMPTION FROM THE OPERATION OF A PROVISION IN PART 3

Order in Council

The Governor in Council under section 11(1) of the **Health Services Act 1988** (the Act) declares that section 65U(2) of Part 3 of the Act, that requires a person to not serve more than nine consecutive years as a director of a board of a public health service, does not have effect in relation to Robert Keith Bennett Doyle as a director and chairperson of the board of directors of Melbourne Health, for the period 1 July 2016 to 30 June 2019 (both dates inclusive).

This Order comes into effect from the date it is published in the Government Gazette.

Dated 10 May 2016

Responsible Minister:

HON JILL HENNESSY MP

Minister for Health

ANDREW ROBINSON
Clerk of the Executive Council

Honorary Justices Act 2014

REMOVAL OF A JUSTICE OF THE PEACE

Order in Council

The Governor in Council under Section 37 of the **Honorary Justices Act 2014**, removes Mr Gavan Holt from the office of Justice of the Peace.

This Order comes into effect from the date it is published in the Government Gazette.

Dated 10 May 2016

Responsible Minister:

THE HON MARTIN PAKULA MP

Attorney-General

ANDREW ROBINSON
Clerk of the Executive Council

Land Act 1958

APPROVAL BY THE GOVERNOR IN COUNCIL TO THE
SALE OF CROWN LAND BY PRIVATE TREATY

Order in Council

The Governor in Council under section 99A (1) and section 99A (2) of the **Land Act 1958** approves the sale by the Minister for Finance of Crown Allotments 2023 and 2024, Parish of Prahran at Gardiner located at 321 Glenferrie Road, Malvern.

Dated 10 May 2016

Responsible Minister

ROBIN SCOTT MP

Minister for Finance

ANDREW ROBINSON
Clerk of the Executive Council

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**SUBORDINATE LEGISLATION ACT 1994
NOTICE THAT STATUTORY RULES ARE
OBTAINABLE**

Notice is hereby given under section 17(3) of the **Subordinate Legislation Act 1994** that the following Statutory Rules were first obtainable from SAI Global Bookshop, 85 Buckhurst Street, South Melbourne, on the date specified:

37. *Statutory Rule:* Wrongs (Part VB)
(Dust and Tobacco-
Related Claims)
Regulations 2016

Authorising Act: Wrongs Act 1958

Date first obtainable: 10 May 2016

Code A

38. *Statutory Rule:* Sentencing
Amendment
Regulations 2016

Authorising Act: Sentencing Act
1991

Date first obtainable: 10 May 2016

Code A

39. *Statutory Rule:* Subordinate
Legislation
(Environment
Protection (Ships'
Ballast Water)
Regulations
2006) Extension
Regulations 2016

Authorising Act: Subordinate
Legislation Act
1994

Date first obtainable: 10 May 2016

Code A

40. *Statutory Rule:* Tobacco (Victorian
Health Promotion
Foundation)
Amendment
Regulations 2016

Authorising Act: Tobacco Act 1987

Date first obtainable: 10 May 2016

Code A

41. *Statutory Rule:* Magistrates' Court
(Outworkers) Rules
2016

Authorising Act: Magistrates' Court
Act 1989

Date first obtainable: 10 May 2016

Code A

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