

## Education and Training Reform Act 2006

### MINISTERIAL DIRECTIONS TO TAFE INSTITUTES ON THE EMPLOYMENT OF STAFF

#### Purposes

1. The purposes of these Directions are -
  - (a) to establish consistent procedures throughout TAFE institutes in the following matters:
    - (i) in selecting and appointing CEOs, executives and other staff;
    - (ii) for determining the remuneration and terms and conditions of employment of CEOs and executives;
    - (iii) for implementing employment arrangements, policies and procedures which as far as possible are consistent with those that apply in the wider public sector; and
  - (b) to repeal earlier Directions dealing with a wide range of matters including those referred to in subclauses (i) and (ii).

#### PART 1 - PRELIMINARY

#### Overall Objectives

2. In the management of employee relations, an institute must have regard to -
  - (a) the objectives and functions<sup>1</sup> of the institute;
  - (b) the institute's objective under section 3.1.12A(a)(i) of the Act, which requires it to perform its functions for the public benefit by operating its businesses, delivering educational services and utilising assets that it manages on behalf of the State's behalf as efficiently as possible;
  - (c) its obligations under:
    - (i) section 3.1.15 of the Act, which include the obligation to perform its functions and powers subject to any economic or social objectives established from time to time by the Government of Victoria; and
    - (ii) clause 11(d)(ii)<sup>2</sup> of this Direction; and
    - (iii) any Order made under section 3.1.11<sup>3</sup> of the Act;
  - (d) its obligations under the *Public Administration Act 2004* to implement the Public Sector Employment Values in section 7 of that Act, and the Public Sector

---

<sup>1</sup> An institute's objectives and functions are set out in sections 3.1.12A and 3.1.12B of the Education and Training Reform Act 2006.

<sup>2</sup> Clause 11(d)(ii) of this direction refers to the institute's obligation to implement the public sector employment policies of the Government of Victoria published under the title '*Public sector workplace relations policies*'. Page 9 of those policies include provisions dealing with managing industrial action and are available at -

<http://www.dtf.vic.gov.au/Publications/About-publications/Public-Sector-Workplace-Relations-policies>

<sup>3</sup> The Order under s3.1.11 establishes a TAFE institute and may contain provisions dealing with the objectives, powers, duties or functions of the institute.

Employment Principles in section 8, and the *Code of Conduct for the Victorian Public Sector Employees*;

- (e) these Directions;
- (f) the health, welfare, and safety of the staff and students of the institute and of any other person whose health, welfare or safety may be affected by the institute's operations; and
- (g) all other requirements imposed on the institute under statute or at common law.

### Meaning of terms

3. In these Directions, unless stated otherwise or indicated otherwise by its context:

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

**CEO** means the person appointed under section 3.1.23 of the Act as the Chief Executive Officer of a TAFE institute.

**CEO position** means a position of Chief Executive Officer at an institute.

**Executive** means a person holding or acting in an executive position at an institute.

**Executive position** means a position at an institute in respect of which the total remuneration package:

- (a) *for a full time position* - is or exceeds \$141, 667 or such higher amount as approved from time to time by GSERP; or
- (b) *for a position which is less than full time* - is or exceeds an amount computed by multiplying the amount referred to in subclause (a) by the normal hours of duty and dividing it by 76.

#### Notes

*A position which is less than full time* means a position for which the normal hours of duty are less than 76 hours per fortnight.

Clause 22 contains further details on the formula to apply in assessing the amount for the purposes of subclause (b) of this definition.

**GSERP** means the Government Sector Executive Remuneration Panel appointed by the Premier of Victoria, and includes any successor to that panel that has the function of supervising the Government's policy on executive remuneration for public entities in the broader public sector.

**Institute** means a TAFE institute created under section 3.1.11 of the Act or continued in operation under section 6.1.32 of the Act, but does not include the TAFE division of a university with a TAFE division<sup>4</sup>.

**Total Remuneration Package (TRP)** means the fixed remuneration as valued by each institute. It includes cash salary, allowances, benefits, superannuation, and Fringe Benefits Tax (FBT). It excludes annual incentives.

**Full-time position** means a position for which the normal hours of duty are not less than 76 hours in each fortnight.

**Member of staff** means a person employed by the institute.

<sup>4</sup> The term *university with a TAFE division* is defined in s1.1.3 of the Act.

**Part-time position** means a position for which the normal hours of duty are less than 76 hours in each fortnight.

**Position** includes any position at an institute in which a member of staff is employed, any position which is vacant and any position in which it is proposed to employ a member of staff.

**Power** includes a function or duty.

4. Words used in these Directions have the same meaning as in the Act.

#### **Authority for, and commencement and application of Directions**

5. These Directions -
  - (a) are issued pursuant to sections 3.1.23 and 5.2.1(2)(b) of the *Education and Training Reform Act 2006*, and section 27 of the *Interpretation of Legislation Act 1984*;
  - (b) commence on the date they are signed; and
  - (c) are issued to all institutes.

#### **Repeal of previous directions**

6. The following Directions are hereby repealed:
  - (a) the Directions in Schedule 1;
  - (b) the Directions dated 15 December 2009 headed "Ministerial Directions to Boards of TAFE Institutes and Universities with TAFE Divisions (Amendment) 2009"; and
  - (c) the Direction dated 21 December 2012 headed "Direction to Boards of TAFE Institutes on Executive Remuneration and classification".

#### **Operation**

7. These Directions do not confer or impose rights, liabilities or obligations between an institute and a person employed by the institute or affect the application of any law, employment agreement, contract of employment or award which applies to a matter dealt with by these Directions.
8. Without limiting clause 7, to the extent that an institute has discretion under such a law, employment agreement, contract of employment or award, the institute must comply with and give effect to these Directions in the exercise of that discretion.
9. An institute must take all practicable steps to ensure that its employees and agents also give effect to these Directions.
10. An institute must ensure a CEO and an executive are liable for any Fringe Benefits Tax arising from the provision of any benefit to that person by the institute.

## PART 2 - MANAGEMENT OF EMPLOYMENT AND EMPLOYEE RELATIONS

### Management Practices

#### 11. Background

- (a) Section 3.1.13(1)(e) of the Act states that a function of the board of the institute is *to determine policies relating to employment of institute staff*.
  - (b) An institute's Constituting Order made under s3.1.11 of the Act requires the institute to exercise its powers subject to the *policies* established by the Government of Victoria from time to time<sup>5</sup>.
  - (c) An institute's Constituting Order requires the board of an institute to operate in accordance with any public sector management *policy* established by the Government of Victoria from time to time<sup>6</sup>.
  - (d) The relevant policies include:
    - (i) the requirement that the remuneration for public sector executives is established by Government and managed by the Government Sector Executive Remuneration Panel (GSERP). Those policies are available at - <http://www.ssa.vic.gov.au/executive-remuneration/public-sector.html>; and
    - (ii) the public sector employment policies of the Government of Victoria published under the title '*Public sector workplace relations policies*'. Those policies are available at - <http://www.dtf.vic.gov.au/Publications/About-publications/Public-Sector-Workplace-Relations-policies>.
12. In implementing the obligations referred to in clause 11, an institute must develop and implement practices on employment and employee relations which are -
- (a) consistent with these Directions and the policies referred to in clause 11; and
  - (b) designed to ensure –
    - (i) compliance with relevant State and Federal laws relating to employee relations and industrial relations; and
    - (ii) that all ongoing financial liabilities incurred by the institute in relation to employment can be satisfied out of the institute's own resources.

### Consistency with Directions

13. An institute must ensure that -
- (a) an employment agreement made with an employee; and
  - (b) any determination made by it under section 3.1.25 of the Act (which empowers institutes, subject to that Act, to determine conditions of employment);
- are consistent with these Directions.

### Reports and other documents to the Minister

14. An institute must provide to the Minister such information and reports on the status and progress of any industrial matter as the Minister may reasonably require.

<sup>5</sup> This obligation is found in clause 8 or 9 of an institute's Constituting Order.

<sup>6</sup> This obligation is found in clause 10, 11 or 16 of an institute's Constituting Order.

15. In addition to the obligations under section 3.1.24 of the Act -
- (a) to notify the Minister in writing before appointing a CEO;
  - (b) to give the Minister notice in writing of any proposal to appoint a CEO; and
  - (c) not to make the appointment if the Minister gives the institute notice in writing of his objection to the proposal;
- an institute must provide the Minister, or the Minister's nominee, with a true copy of the employment agreement between the institute and the institute's CEO, and any variation to the agreement, within 14 days after the agreement or variation is entered into.

### **Executive performance management system**

- 16.1 An institute created after the commencement of these Directions must:
- (a) prior to appointing a CEO or within 3 months of the creation of the institute, (whichever occurs earlier) develop and maintain an appropriate executive performance management system and provide the Minister, or the Minister's nominee with a copy of the executive performance management system; and
  - (b) provide the Minister, or the Minister's nominee with a copy of any variation to the executive performance management system within one month of the institute agreeing to the variation.
- 16.2 An institute created before the commencement of these Directions must have and maintain an appropriate executive performance management system, and provide the Minister, or the Minister's nominee with a copy of any variation to the executive performance management system within one month of the institute agreeing to the variation.
- 16.3 An institute created on or before the commencement of these Directions that has not provided the Minister, or the Minister's nominee with a copy of its executive performance management system, must do so within 1 month of the commencement of these Directions.

## **PART 3 - CHIEF EXECUTIVE OFFICERS AND EXECUTIVES**

17. An institute must assign one of the following classifications to a CEO position or executive position:

Chief Executive Officer Level 1 (CEO 1)  
Chief Executive Officer Level 2 (CEO 2)  
Executive Officer (EO)

18. An institute must determine the classification level of a CEO position in accordance with the following table<sup>7</sup>:

Institute Annual Income (Less Capital) Ranges	Classification Level	Total Remuneration Package Range		
		Minimum	Mid-Point	Higher Point
Greater than \$107.7. Million	CEO 1	\$238,477	\$267,317	\$296,155
Up to \$107.7 Million	CEO 2	\$196,754	\$217,615	\$238,476
	EO	\$141,667		

### CEO remuneration

19. An institute:
- may determine the total remuneration package of the CEO up to the mid point of the relevant remuneration range, but
  - must obtain the written endorsement of the Chair GSERP<sup>8</sup> prior to determining or adjusting the total remuneration package of the CEO beyond the mid point of the relevant remuneration range, except for any adjustment to the annual remuneration package of a CEO under clause 25.

#### Note

This clause applies if appointing a CEO or adjusting the package of the CEO after being appointed.

20. All increases to CEO remuneration must be consistent with clauses 25 to 30.

### Remuneration of Executives

#### 21.1 Background

The policies referred to in clause 11 require an institute to determine the total remuneration package of an executive in accordance with the policies on Executive Remuneration for Public Entities in the Broader Public Sector issued by GSERP.

#### 21.2 Endorsement of GSERP

An institute must obtain the endorsement of GSERP in respect of a total remuneration package of an executive which approaches or exceed the amounts referred to in the policies referred to in clause 11 as requiring the endorsement of GSERP.

<sup>7</sup> This table implements the remuneration package ranges which have applied since 1 July 2012, and were in operation immediately prior to this Direction.

<sup>8</sup> This implements an institute's obligation under its Constituting Order to operate within Government policy.

### Application of table in clause 18 to CEOs and executives

22. References in the table in clause 18 to amounts of remuneration are made on the basis that a position is a full-time position. In relation to a part-time position, a reference in these Directions to an amount of remuneration must be construed as a reference to an amount equal to –

$$\frac{HW}{76} \quad \times \quad \frac{AR}{1}$$

where –

HW represents the normal hours of work in each fortnight of the occupant of the position;

and

AR represents the amount of remuneration for a full-time position.

23. An institute must apply the amounts stated in table in clause 18 each year in accordance with increases computed in accordance with the following:
- (a) the amounts listed under the heading "*Institute Annual Income (Less Capital) Ranges*" are to be increased in accordance with the indexation rate determined by the Department of Treasury and Finance under the Departmental Funding Model; and
  - (b) the amounts for CEOs and executives listed under the heading "*Total Remuneration Package Range*" are to be increased in accordance with the annual executive remuneration review adjustment approved by the Premier of Victoria from time to time.

#### Note

Institutes will be informed of the indexation rate and the review adjustment approved by the Premier by circular from the Department.

### Contracts of Employment for CEO and Executives

24. An institute must enter into a contract of employment with a CEO and an executive that is consistent with these Directions.

#### Notes

GSERP has issued a pro forma contract for executives and institutes will need to use that pro forma in effecting arrangements with CEOs and executives.

The terms and conditions of employment will need to be consistent with –

- (a) the *Victorian Public Service Executive Employment Handbook* as current from time to time, and
- (b) any policies and guidelines issued by the State Services Authority or the GSERP from time to time.

### Annual Remuneration Adjustment of CEO and Executives

- 25.1 An institute may adjust the total remuneration package of a CEO and an executive in accordance with the annual executive remuneration review adjustment approved by the Premier of Victoria from time to time.

#### Note

Institutes will be informed of the review adjustment approved by the Premier by circular from the Department. Details can also be found on GSERP's website.



- 25.2 In making an adjustment under clause 25.1 in respect of a CEO, an institute may adjust a total remuneration package past the mid point of the relevant remuneration range.
26. Subject to clauses 19 and 25, other increases to the remuneration of a CEO must be endorsed by the Chair GSERP.

### **Performance-Related Incentive Payments for CEOs and Executives**

27. An institute must provide details to the Minister in writing within 14 days of making a performance-related incentive payment to an executive exceeding 12% in respect of a performance review period.
28. The details under clause 27 must include the executive's name, position held, the percentage payment, and reasons for the assessment of the percentage payment.

#### **Notes**

This clause is consistent with Government policy in respect of the Victorian public service that details of payments of 13% and above are to be forwarded to the Secretary of the Department of Premier and Cabinet for the Premier's noting, and will facilitate implementing that policy in respect of executives.

This clause is in addition to any requirement under GSERP's policies in relation to performance related incentive payments.

29. An institute must not make a performance-related incentive payment to an executive if:
- (a) any circumstance listed in clause 30 applied at the date of assessing whether the executive's performance for the previous year or relevant period satisfied the eligibility criteria for such a payment, and
  - (b) the relevant circumstance was disclosed or recorded in any financial statement or report prepared or issued by the institute, including in any financial statement issued in confidence to the Deputy Secretary to the Department.
30. The circumstances for the purposes of clause 29 are:
- (a) there is or is forecast to be an operating deficit for the institute;
  - (b) the operating result for the institute is or is forecast to be less than the institute's operating budget;
  - (c) the return on the institute's investment is or is forecast to be less than the institute's operating budget; or
  - (d) the working capital ratio for the institute is or is forecast to be less than 1.0.
31. In managing the total costs of performance-related incentive payments an institute must not, without the written prior approval of the Secretary, DEECD, exceed 6% of the aggregate of the total remuneration packages of those executives who are assessed for a performance-related incentive payment.

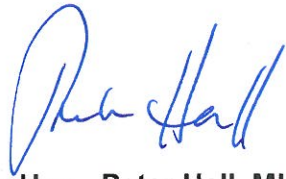
#### **Note**

This clause is in addition to any requirement under GSERP's policies in relation to performance related incentive payments.



### **Selection Panels for CEOs**

32. An institute must ensure that a selection panel for the CEO position includes a nominee of the Minister.



**The Hon. Peter Hall, MLC  
Minister for Higher Education and Skills**

**Dated:** 29 August.....2013

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

**THE DIRECTIONS IN THIS SCHEDULE ARE REPEALED.**

### ***Vocational Education and Training Act 1990***

#### **Ministerial directions**

**to**

#### **Councils of TAFE Institutes**

**and**

#### **Universities with TAFE Divisions**

#### **APPLICATION OF DIRECTIONS**

- 1.1 These Ministerial Directions are given to Councils of TAFE Institutes and Universities with TAFE Divisions.
- 1.2 In accordance with section 6(2) of the *Vocational Education and Training Act 1990*, these Directions are given to the Councils of Universities with TAFE Divisions only in respect of their TAFE Divisions.

#### **SCOPE OF DIRECTIONS**

2. The purpose of these Directions is to clarify management, reporting and other responsibilities of Councils of TAFE Institutes and Universities with TAFE Divisions and to give directions about the employment of staff of those institutions.

#### **AUTHORITY FOR DIRECTIONS**

3. These Directions are given pursuant to sections 6 and 6A of the Act, section 51 of the *Financial Management Act 1994* and after consultation with the Victorian Learning and Employment Skills Commission (the Commission).

#### **Performance agreements**

##### **Purpose**

- 4.1 The purpose of the following Directions about performance agreements is to document the relationship between the Commission and Councils concerning, but not restricted to, vocational education and training and adult, community and further education services purchased by the Commission from Councils.

##### **Application**

- 4.2 A performance agreement between the Commission and a Council must include -
  - (a) key service responsibilities of the Commission; and
  - (b) a requirement to produce Management Plans in accordance with clauses 5.1 to 5.4 (inclusive) of these Directions; and
  - (c) funding to be provided by the Commission for the Council's program profile; and
  - (d) reporting requirements consistent with clauses 11.1 and 11.2 of these Directions; and
  - (e) a statement that intellectual property in materials produced with funds advanced pursuant to the agreement is owned by the State of Victoria; and

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

- (f) a requirement for the Council to not have an operating deficit at the end of any year; and
- (g) the expectations, outcomes, outputs and performance measures for the Council, including specific performance targets (both quantitative and qualitative) for -
  - (i) program profile;
  - (ii) capital works;
  - (iii) other Government-funded activities;
  - (iv) fee-for-service programs and activities; and
- (h) service standards developed from time to time by the OTTE and the Council;
- (i) a provision relating to the maintenance of records that demonstrate the delivery of purchased services; and
- (j) other service delivery items as agreed between the Council and the Commission; and
- (k) a provision which requires the consent of the Commission and the Council to any variation of the agreement.

### **Management plans**

#### **Purpose**

- 5.1 Under section 25(1)(a) of the Act, it is the responsibility of Councils of Institutes to prepare Management Plans for their Institutes. Councils of Universities with TAFE Divisions are also required to prepare Management Plans under the terms of their performance agreements with the Commission. The following Directions specify requirements for Management Plans.

#### **Application**

- 5.2 Each Council must prepare Management Plans comprising a three to five year Strategic Plan and an annual Operational Plan. Management Plans must complement the requirements of the Council's performance agreement with the Commission.
- 5.3 The Strategic Plan component of Management Plans should include the following:
- (a) Mission and Vision for the Institution;
  - (b) Industry trends as they relate to the Institution;
  - (c) Significant external environmental change drivers;
  - (d) Future directions for the next three to five years, including areas of excellence to be pursued;
  - (e) Broad goals and strategies especially in relation to -
    - . vocational education and training programs offered; and
    - . training delivery; and
    - . capital facilities; and
    - . human resource management; and
    - . quality assurance; and
    - . information technologies; and
    - . revenue projections; and
    - . performance monitoring and reporting.
- 5.4 The Operational Plan component of Management Plans should link to the Strategic Plan and include the following:
- (a) Key goals and objectives to achieve priority outcomes and outputs;
  - (b) Defined strategies and tasks;
  - (c) Performance measures and targets;
  - (d) Performance monitoring processes.

### **Fees and charges**

#### **Purpose**

- 6.1 The purposes of the Directions about fees and charges referred to in clause 6.2 are –

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

- (a) to establish a framework for the collection of fees and charges for centrally-funded vocational education and training courses. This framework is based on the principles of equity and consistency across the State Training System; and
- (b) to establish a financial management and accountability framework for fees and charges collected by Institutes and Universities with TAFE Divisions.

### **Application**

- 6.2 The Directions about fees and charges are contained in Schedule 1.

## **Compliance with Commonwealth/State agreements**

### **Purpose**

- 7.1 In June 2006, the Heads of Government of the Commonwealth, States and Territories entered a new agreement to support a National System of Vocational Education and Training. The 2005-08 Commonwealth-State Agreement for Skilling Australia's Workforce (the Agreement) is aligned with the requirements of the *Skilling Australia's Workforce Act 2005*. It requires States to provide information about training activity, to measure performance and to monitor maintenance of effort.
- 7.2. The Ministerial Council for Vocational and Technical Education (the Ministerial Council), established under the Agreement, approves from time to time reporting requirements for States and Territories, determines standards and defines performance targets.
- 7.3. For maintenance of effort purposes, prescribed expenditure measures will be verified through normal audit provisions while non-financial measures will be subject to external audit by a body appointed by the Department of Education, Science and Training.

### **Application**

- 7.4. A Council must comply with the decisions of the Ministerial Council and co-operate with audits and reviews that may be determined by the Ministerial Council, in accordance with protocols established between the Department of Education, Science and Training and the Victorian Learning and Employment Skills Commission.

## **Standard and general form of accounts**

### **Purpose**

- 8.1 The purpose of the following Directions about the standard and general form of accounts is to ensure that accounts are kept so as to enable Councils to report in accordance with reporting requirements applicable to them.

### **Application**

- 8.2 A Council must maintain accurate accounts so as to enable it to report in accordance with the requirements of the *Financial Management Act 1994*, the Financial Reporting Framework and clauses 11.1, 11.2 and 11.3 of these Directions.

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Inspection of Facilities, Accounts and Records**

#### **Purpose**

- 9.1 The purpose of the following Directions about inspection of facilities, accounts and records is to facilitate the inspection of Councils' facilities, accounts and records by persons authorised by the Minister.

#### **Application**

- 9.2 Councils must give persons authorised by the Minister access at reasonable times and on reasonable notice, to inspect facilities, accounts and records of the Council including those relating to non centrally-funded activities. A person conducting an inspection pursuant to these Directions will be required to treat all information, records and materials relating to non centrally-funded activities as "commercial-in-confidence".

### **Formation of companies**

#### **Purpose**

- 10.1 Section 26(2) of the Act confirms the power of TAFE Institute Councils to form companies. The purpose of the following Directions is to require Councils to demonstrate a need to form companies, given that Councils are themselves bodies corporate.

#### **Application**

- 10.2 A Council must not form or participate in the formation of a company unless the written approval of the Minister has been first obtained.
- 10.3. The determination of the Minister must be consistent with Victorian Government policies. In addition to meeting any guidelines set down by the Comptroller-General of the Department of Treasury and Finance, the Council must demonstrate why it is necessary to establish a company to undertake Institute business. The Minister will consider all relevant issues including, but not only -
- (a) who will hold the shares or other interests in the proposed company; and
  - (b) the legal relationship between the holders of the shares and the Council; and
  - (c) the financial relationship between the proposed company and the Council; and
  - (d) the extent of liability, or potential liability, of the Council.
- 10.4. Approval will be granted only if the Council clearly demonstrates that -
- (a) the proposed company will meet a clear need; and
  - (b) the proposed company is the most appropriate structure to meet that need; and
  - (c) the proposal conforms to current Government policy; and
  - (d) the need cannot be met using the legal structure of the Council.
- 10.5. The Directions in clauses 10.1 to 10.4 do not apply to Universities with TAFE Divisions.

### **Reporting Requirements**

#### **Purpose**

- 11.1 The purpose of the following Directions about reporting requirements is to require Councils to report on their activities under specified headings. The Directions reflect the responsibilities of the Minister for oversight of the State Training System.

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Application**

- 11.2 A Council must provide reports to the Minister as follows:
- (a) Annual Financial Statements (as approved by the Auditor-General) in accordance with the Financial Reporting Framework. The Statements must be provided on or before 31 March in each year. If audited Statements are not available by this date, unaudited Statements must be provided; and
  - (b) Quarterly Financial Returns; and
  - (c) Reports on fee for service and other non centrally-funded activities in accordance with Schedule 2; and
  - (d) Student Statistical Collection; and
  - (e) Staffing Data Collection; and
  - (f) Overseas Student Data Collection; and
  - (g) Credit Transfer Arrangements; and
  - (h) Capital Works; and
  - (i) Equipment Expenditure; and
  - (j) Any financial dealings or arrangements with associated companies or companies a director or officer of which is a member of the Council or a member of staff of the institution; and
  - (k) Overseas travel; and
  - (l) Unmet student demand.
- 11.3 Reports must be provided in accordance with guidelines issued from time to time by the Minister.

### **Employment of staff**

#### **Purpose**

- 12.1 The purpose of the following Directions about the employment of staff is to ensure, as far as possible, consistency between the employment arrangements for employees of Councils and those of employees in the wider public sector.
- 12.2 In the management of employee relations, a Council must have regard to -
- (a) the objectives and functions of the Council or institution; and
  - (b) the efficient operation of the institution; and
  - (c) the public sector industrial relations and economic policies of the Government of Victoria; and
  - (d) the Public Sector Employment Principles in section 7, and the Public Sector Conduct Principles in section 8, of Part 2 of the *Public Sector Management and Employment Act 1998*, and the *Code of Conduct for the Victorian Public Sector* as in force from time to time; and
  - (e) these Directions and any other guidelines or directions under the Act; and
  - (f) the health, welfare, and safety of the staff and students of the institution and of any other person whose health, welfare or safety may be affected by the institution's operations; and
  - (g) all other requirements imposed on the Council under statute or at common law.

#### **Application**

- 12.3 The Directions about the employment of staff by Councils are contained in Schedule 3.

### **Meaning of Terms**

- 13.1 In these Directions, unless another meaning is apparent from the context or subject matter -
- “*aborigine*” has the same meaning as “aboriginal” within the meaning of the *Racial Discrimination Act 1975* of the Commonwealth; and
- “*accredited*” in relation to a course, means registered as accredited on the State Register of Accredited Courses maintained under section 78A of the Act; and

## SCHEDULE 1 – REPEAL OF DIRECTIONS

“Act” means the *Vocational Education and Training Act 1990*; and

“Commission” means the Victorian Learning and Employment Skills Commission established by the *Victorian Qualifications Act 2000*; and

“compulsory non-academic fee, subscription or charge” has the same meaning as in Division 3 of the *Tertiary Education Act 1993*; and

“contract of employment” means a contract of employment, between an executive officer and his or her employer, of the kind referred to in clause 4 of Schedule 2 to the Act; and

“Council” means the governing body of an Institute or a University with a TAFE Division; and

“dependent” means wholly or substantially dependent; and

“dependent child” has the same meaning as in the *Social Security Act 1991* of the Commonwealth; and

“Department of Education, Science and Training” means the Australian Government Department of Education, Science and Training; and

“Deputy Secretary, OTTE” means the person for the time being holding, acting in or performing the duties of the position of Deputy Secretary of the Office of Training and Tertiary Education of the Victorian Department of Education and Training; and

“employment benefit” means -

- (a) contributions payable to a superannuation scheme by an executive officer's employer in respect of the officer, including any liability of that employer to make any such contribution or to pay costs associated with that scheme; or
- (b) the provision by an executive officer's employer of a motor vehicle for private use by the officer; or
- (c) any other approved benefit of a private nature provided to an executive officer at the cost of an executive officer's employer.

But does not include -

- (a) performance-related incentive payments; or
- (b) remuneration or benefits to which an executive officer is otherwise entitled by law (such as fees for attendance at meetings); or
- (c) allowances payable under the contract of employment or a determination by the Council; and

“executive officer” has the same meaning as in the Act; and

“fee for service” in relation to a course, program or other service or activity, means a course, program or other service or activity conducted by a Council other than a centrally-funded course; and

“Financial Reporting Framework” means the framework for financial reporting as approved by the Minister from time to time; and

“full-time position” means a position for which the normal hours of duty are not less than 76 hours in each fortnight; and

“government-funded” means the cost of the provision of training or further education is met, in whole or part, out of funds provided to the Council under a performance agreement; and

“Institute” means a TAFE College within the meaning of the Act; and



## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

“*Institute Director*” means a person for the time being holding, acting in or performing the duties of -

- (a) a position of College director referred to in section 34A(1)(a) of the Act;
- (b) the position of director of the Technical and Further Education Division of a University with a TAFE Division; and

“*Institute Director*” means a person for the time being holding, acting in or performing the duties of -

- (a) a position of College director referred to in section 34A(1)(a) of the Act;
- (b) the position of director of the Technical and Further Education Division of a University with a TAFE Division; and

“*institution*” means an Institute or a University TAFE Division; and

“*management staff position*” means a position or a position in a class of positions which has been declared under section 6B of the Act to be part of the management staff of an Institute or a University TAFE Division; and

“*member of staff*” means a person employed by a Council in an Institute or a University TAFE Division; and

“*monetary remuneration*” includes allowances paid in money, but does not include -

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of the duties of a member of staff; and

“*nominal enrolled hours*” means -

- (a) for an accredited course or recognised qualification or part thereof, the nominal subject hours of the course as identified in the submission for accreditation endorsed by the Victorian Qualifications Authority or its delegate; and
- (b) for any other training or further education, the student contact hours scheduled by the institution; and

“*occupational superannuation standards*” means the occupational superannuation standards specified or prescribed by or under the Commonwealth *Occupational Superannuation Standards Act 1987* as amended and in force from time to time; and

“*OTTE*” means the Office of Training and Tertiary Education of the Victorian Department of Education and Training; and

“*part-time position*” means a position for which the normal hours of duty are less than 76 hours in each fortnight; and

“*performance agreement*” means performance agreement entered into between the Victorian Learning and Employment Skills Commission and a Council pursuant to section 10 of the Act; and

“*position*” includes any position at an Institute or a University TAFE Division in which a member of staff is employed, any position which is vacant and any position in which it is proposed to employ a member of staff; and

“*power*” includes a function or duty; and

“*Secretary*” means the Secretary to the Victorian Department of Education and Training; and

“*statutory superannuation scheme*” has the same meaning as in the *Superannuation (Public Sector) Act 1992*; and

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

“*Stream 2000 course*” means a course designed to prepare a student for entry into employment or another educational course or training program and includes a course of basic education or basic employment skills; and

“*Torres Strait Islander*” has the same meaning as in the *Racial Discrimination Act 1975* of the Commonwealth; and

“*tuition contribution*” means a fee to be collected from a person (other than an overseas student) in respect of an enrolment in government-funded training or further education in accordance with Schedule 1; and

“*University TAFE Division*” means the TAFE Division of a university referred to in section 6A(1)(b) of the Act; and

“*University with a TAFE Division*” has the same meaning as in the Act.

- 13.2 A person authorised by the Minister may perform any power, function or duty of the Minister under these Directions.

### **Schedule 1 - Directions about fees and charges**

#### **Calculation of Tuition Contributions**

- 1.1 Subject to clauses 1.2, 1.3, 1.4 and 1.5, Councils must charge each student a tuition contribution on the basis of \$1.31 for each nominal enrolled hour of government-funded training or further education in which the student is enrolled (rounded to the nearest dollar) in any calendar year or continuous 12 month period of enrolment (the ‘enrolment period’).
- 1.2 For students commencing on or after 1 January 2006, Councils must calculate student tuition contributions on the basis of a continuous 12 month period from the date of a student’s enrolment.
- 1.3 Subject to clause 1.9, the minimum tuition contribution that must be charged in respect of the total enrolments by a student in government-funded training or further education in any enrolment period is \$52, based on 40 hours of tuition at the rate of \$1.31 an hour (rounded to the nearest dollar).
- 1.4 The maximum tuition contribution that may be charged in respect of the total enrolments by a student in government-funded training or further education in any enrolment period is \$839, based on 640 hours of tuition at the rate of \$1.31 an hour (rounded to the nearest dollar).

#### **Indexation of fees and charges**

- 1.5 The Minister will each year fix an amount to be known as the indexation rate by which the amount of the fees referred to in clause 1.1, 1.3 and 1.4 will be adjusted for the next calendar year.

#### **Concessions and exemptions**

- 1.6 Councils must allow concessions and exemptions on tuition contributions in accordance with these Directions.
- 1.7 A Council must not charge a tuition contribution which is more than the minimum charge from a person who holds one of the following concession cards (or an alternative card or concession eligibility criterion approved by the Minister for the purposes of these Directions):
- (a) Commonwealth Health Care Card
  - (b) Pensioner Concession Card, or
  - (c) Veteran’s Gold Card.

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

- 1.8 The concessions provided for in clause 1.7 (a) and (b) also apply to the dependant spouse or dependant child of the card holder.
- 1.9 A Council may grant a concession on a tuition contribution where the Council considers that its collection in full would impose extreme hardship. This may include a concession on, or exemption from, the minimum charge.
- 1.10 A Council must not charge -
- (a) a tuition contribution in relation to a student enrolled in government-funded training or further education at another education institution who is undertaking part of that government-funded training or further education at the Council's institution under an arrangement between the Council and the other education institution which provides for payment to the Council for tuition and materials; or
  - (b) a tuition contribution or any other fee or charge for training or further education for which funding has been provided directly or indirectly by the Commonwealth or ANTA, and where a condition of that funding prohibits the imposition of that fee or charge.
- 1.11 A Council must not charge a tuition contribution in relation to a student who is -
- (a) a prisoner within the meaning of the *Corrections Act 1986*; or
  - (b) an individual who is -
    - (i) detained (other than in weekend detention) under a sentence of detention in a youth training centre or a remand centre under the *Children and Young Persons Act 1989* or the *Sentencing Act 1991*; or
    - (ii) detained (other than in weekend detention) in a youth residential centre established under the *Children and Young Persons Act 1989*; or
    - (iii) held on remand in a youth training centre established under the *Children and Young Persons Act 1989*; or
    - (iv) required to undertake the government-funded training or further education pursuant to a non-custodial order made under the *Children and Young Persons Act 1989*.
- 1.12 Where a student, who was previously eligible for an exemption under clause 1.10 or 1.11 or a concession under clause 1.7, 1.8 or 1.9, becomes ineligible for the exemption or concession and then enrolls in further government-funded training or further education during the enrolment period, the total tuition contribution payable by the student in respect of all government-funded training or further education in that enrolment period must not exceed the maximum charge.
- 1.13 Where a student, who was previously not eligible for a concession under clause 1.7, 1.8 or 1.9, becomes eligible for a concession and then enrolls in further government-funded training or further education within an enrolment period, the student, having paid or exceeded the minimum tuition contribution in that enrolment period, will not be liable for additional fees.
- 1.14 The concessions provided for in clauses 1.7, 1.8 and 1.9 do not apply if the student's tuition contribution is being met by a Commonwealth Government Agency or as part of a Commonwealth program or initiative.

### **Student Services and Amenities Fees**

- 1.15 A Council may impose a compulsory non-academic fee, subscription or charge for the purposes of providing student services and amenities.
- 1.16 If a Council decides to impose a compulsory non-academic fee, subscription or charge, the Council must -
- (a) determine a scale of fees, subscriptions or charges to be applied; and
  - (b) provide appropriate concessions or exemptions in cases of hardship; and
  - (c) provide itemised details of the fee or charge to students prior to enrolment.
- 1.17 If a Council decides to impose a compulsory non-academic fee, subscription or charge, the fee, subscription or charge must be imposed, collected and expended in accordance with Division 3 of the *Tertiary Education Act 1993*.

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Other fees and charges for enrolments in government-funded training or further education**

- 1.18 A Council must not charge fees in relation to an enrolment in government-funded
- (a) a tuition contribution in accordance with these Directions; or
  - (b) a compulsory non-academic fee, subscription or charge of the kind referred to in clause 1.16; or
  - (c) to recover no more than the actual cost of providing goods or materials to be retained by a student as his or her personal property. However, a student must be permitted to use equivalent goods or materials obtained from sources other than the Council; or
  - (d) to recover the cost of ancillary non-tuition goods and services provided in support of a student's tuition; or
  - (e) to recover no more than the actual cost of assessment of recognition of prior learning for the purposes of the training or further education, but only if the assessment is conducted at the request, or with the consent, of the student.
- 1.19 Councils must provide students with an itemised list of all fees and materials required, as detailed under clause 1.18, before enrolment. Councils must advise students of when materials will be needed, to enable students to stagger purchases throughout the academic year.

### **Refunds**

- 1.20 If a student withdraws, by written notice, from government-funded training or further education at any time up until 4 weeks after the scheduled commencement date of classes, the Council must refund the tuition contribution paid in respect of the government-funded training or further education less the minimum charge and any other fees and charges paid by or on behalf of the student.
- 1.21 If a student withdraws, by written notice, from government-funded training or further education at any time up until 4 weeks after the scheduled commencement date of classes for the purposes of taking up a place at another educational institution, the Council must refund the full tuition contribution and any other fees and charges paid by or on behalf of the student.
- 1.22 If government-funded training or further education is cancelled by the Council at any time during the period of the student's enrolment, then the Council must refund the full tuition contribution, the pro-rata portion of any student services and amenities fees, ancillary fees and any fees for materials which have not been used in the training or further education prior to the date of cancellation.
- 1.23 For the purposes of clauses 1.20, 1.21 and 1.22, if a student withdraws from only part of their enrolment in government-funded training or further education, the Council need only refund the portion of the tuition contribution and materials fee applicable to that part of the training or further education.
- 1.24 If a student does not undertake tuition in part of their enrolment in government-funded training or further education because of recognised prior learning, then the Council must refund an amount equal to the difference between -
- (a) the tuition contribution which has been paid; and
  - (b) the tuition contribution applicable in accordance with these Directions in respect of the aggregate of the enrolled subject hours for that part of the government-funded training or further education in which the student has undertaken or will undertake tuition in that calendar year.
- 1.25 A Council may grant refunds in other circumstances or of greater amounts as it sees fit.

### **Fee-for-service**

- 1.26 Councils must charge fee-for-service students on a full cost recovery basis.

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Accounts and Records of Tuition Fees**

- 1.27 The accounts and records kept by a Council must clearly distinguish income and expenditure for fee-for-service training or further education and from government-funded training or further education.
- 1.28 A Council must establish and maintain a separate general ledger account to record receipt of income from tuition contributions and the payment of refunds of tuition contributions.
- 1.29 A Council shall keep records, including evidence, to support fee waivers and concessions granted.

**LYNNE KOSKY MP**

Minister for Education and Training

Dated: 19 September 2005

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Schedule 2 - Reporting**

Reports for the purposes of clause 11.2(c) of the Ministerial Directions on Reporting Requirements are to be in the following form or another form approved by the Minister:

#### **FEE FOR SERVICE - INCOME & EXPENDITURE**

##### **Income**

Fee for Service - Government

Fee for Service - Other

**Total Income:**

##### **Expenditure**

Salaries, wages, overtime & allowances

Superannuation

Payroll Tax

Other salary related costs

Consumables

Communication expenses

Depreciation

Energy costs

Equipment

Fees and charges

Travel (including motor vehicle expenses)

Rent/ leasing charges

Repairs and maintenance

Interest on loans

Other payments

**Total Expenditure:**

**Note:** Definitions for all of the above income and expenditure classifications are those used in the Financial Reporting Framework piloted in 1995.



## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **Schedule 3 - Directions about the employment of staff**

#### **PART 1 - PRELIMINARY**

##### **Operation**

- 3.1 These Directions are not intended to operate so as to confer or impose rights, liabilities or obligations as between a Council and a person employed by the Council or to affect the application of any law, employment agreement, contract of employment or award which applies to a matter dealt with by these Directions. Nevertheless, to the extent that a Council has discretion under such a law, employment agreement, contract of employment or award, the Council must comply with and give effect to these Directions in the exercise of that discretion.
- 3.2 A Council must take all practicable steps to ensure that its employees and agents also give effect to these Directions.

#### **PART 2 - MANAGEMENT OF EMPLOYEE RELATIONS**

##### **Management Practices**

- 3.3 Councils must develop policies on employment and employee relations which are consistent with these Directions and the public sector industrial relations policies, from time to time, of the Government of Victoria, and which are designed -
- (a) to ensure compliance with relevant State and Federal laws relating to employee relations and industrial relations; and
  - (b) to ensure that all ongoing financial liabilities incurred by the institution in relation to employment can be satisfied out of the institution's own resources.

##### **Consistency with Directions**

- 3.4 A Council must ensure that an employment agreement or contract of employment does not contain a provision that is inconsistent with these Directions or the public sector industrial relations policies, from time to time, of the Government of Victoria. In this clause, 'employment agreement' means a workplace agreement under the Commonwealth *Workplace Relations Act 1996* or a common law employment contract.

##### **Workplace Agreements under the Commonwealth *Workplace Relations Act 1996***

- 3.5 A Council must not, without the written approval of the Minister-
- (a) make a workplace agreement under the Commonwealth *Workplace Relations Act 1996*; or
  - (b) make an application under the Commonwealth *Workplace Relations Act 1996* or any other application or notice under that Act in relation to the making, approval or implementation of a workplace agreement under that Act.
- 3.6 A Council must provide to the Minister such information and reports on the status and progress of any industrial matter as the Minister may reasonably require.

##### **Council Determinations**

- 3.7 A Council must not make a determination under section 34C of the *Vocational Education and Training Act 1990* (which empowers Councils, subject to that Act, to determine conditions of employment) that is inconsistent with these Directions.



## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

### **PART-3-EXECUTIVE OFFICERS**

- 3.8 Council must, in respect of each management staff (executive) position -
- (a) assign a TAFE executive officer (TEO) level to the position; and
  - (b) determine the amount of the remuneration package for the position in accordance with the following table and these Directions.

<b>TEO LEVEL</b>	<b>POINTS FACTOR SCORE</b>	<b>REMUNERATION RANGE</b>
2	700 -1124	\$120,098 - \$166,795
1	1125 - 2199	\$149,532 – \$238,246

- 3.9 Further adjustments to the remuneration ranges in the table in 3.8, as approved by the Government Sector Executive Remuneration Panel, from time to time, will be issued as an addendum to these Directions, by the Minister, or the Minister's nominee.
- 3.10 Before a TEO level is assigned to a management staff position, or the level is varied, the Council must arrange for a work value assessment to be conducted in respect of the position.
- 3.11 The assessment must be conducted in accordance with the process known as the Mercer CED Job Factor Evaluation System.
- 3.12 The Points Factor Score is a guide only and is useful for establishing role relativities. There is no direct relationship between the Points Factor Score and remuneration. However, in establishing the relative worth of roles within the same TEO level, Councils should consider the relationship to benchmark roles.
- 3.13 The assessment of all Institute Director positions must be submitted to the Minister, or the Minister's nominee, for approval of the level.
- 3.14 References, in the table in clause 3.8, to amounts of remuneration are made on the basis that a position is a full-time position. In relation to a part-time position, a reference in these Directions to an amount of remuneration must be construed as a reference to an amount equal to -

$$\frac{\text{HW}}{76} \quad \times \quad \frac{\text{AR}}{1}$$

where -

HW represents the normal hours of work in each fortnight of the occupant of the position;  
and

AR represents the amount of remuneration for a full-time position.

### **Contracts of Employment for Executive Officers**

- 3.15 A Council must not enter into a contract of employment that is inconsistent with-

## **SCHEDULE 1 – REPEAL OF DIRECTIONS**

- (a) the *Victorian Public Service Executive Employment Handbook* as current from time to time, or
  - (b) any policies and guidelines issued by the Government Sector Executive Remuneration Panel from time to time.
- 3.16 A Council must not determine or adjust the total remuneration package of the Institute Director without the prior written approval of the Minister, or the Minister's nominee.
- 3.17 A Council must provide the Minister, or the Minister's nominee, with a true copy of the contract of employment between the Council and the Institute Director, and any variation to the contract, within 14 days after the contract or variation is entered into.

### **Annual Remuneration Adjustment**

- 3.18 Subject to clause 3.16, a Council may adjust the total remuneration package of an executive officer in accordance with the annual executive remuneration review approved by the Government Sector Executive Remuneration Panel from time to time.

### **Performance-Related Incentive Payments**

- 3.19 A Council must not, without the prior written approval of the Minister, or the Minister's nominee, make a performance-related incentive payment exceeding 12% in respect of any review period.
- 3.20 A Council must consult the Deputy Secretary, Office of Training and Tertiary Education, before making a performance-related incentive payment to an Institute Director in respect of any review period, if the Council has failed to comply in that period with any provision of its Performance Agreement relating to –
- (a) training delivery; or
  - (b) maintaining a satisfactory working capital ratio, or
  - (c) operating deficits.
- 3.21 In managing the total costs of performance-related incentive payments a Council must not, without the written prior approval of the Secretary, Department of Education and Training, exceed 6% (guideline rate) of the aggregate of the total remuneration packages of those executives who are assessed for a performance-related incentive payment.
- 3.22 The guideline rate referred to in 3.21 may, from time to time, be adjusted by the Government Sector Executive Remuneration Panel. Councils will be notified of the adjustment via an addendum to these Directions by the Minister, or the Minister's nominee.

### **Selection of Institute Director**

- 3.23 A Council must ensure that a selection panel for an Institute Director position at its institution includes a nominee of the Minister.
-