

# The Constitution of the Box Hill Institute

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## Division 1—Preliminary

### 1. Title of Order

This Order is called the Constitution of the Box Hill Institute Order 2016.

### 2. Purposes

The purposes of this Constitution are—

(a) to continue in existence Box Hill Institute; and

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(c) to make provision or further provision for or with respect to the objectives, functions and powers of the Institute; and

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(e) to establish a board to oversee and govern the Institute; 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, 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

(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 (made when the CAE existed as a separate legal entity, before the merger); and

(j) to make provision for or with respect to matters of a consequential, transitional or savings nature.

#### Note

Schedule 2 to the 2019 Order removed paragraphs (b) and (d) in Clause 2 because those two paragraphs, which described objectives in relation to the continued existence, objectives, functions and powers of the CAE (when the CAE existed as a separate legal entity, before the merger), became redundant upon the merger.

### 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—

**2019 Order** means the **Merger of Box Hill Institute and Centre for Adult Education and Removal of Annual Public Meeting Requirement (TAFE Institutes and AMES) Order** made by the Governor in Council on 18 June 2019 and which commenced on 30 June 2019;

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

**board** means the board of Box Hill Institute established under this Constitution;

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

**CAE** means Centre for Adult Education, which before the merger existed as a separate legal entity;

##### Note

Following the merger, the Institute may continue to use the CAE brand to carry out its objectives and function under Clauses 7 and 8, respectively.

**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, and as merged with the former adult education institution known as 'Centre for Adult Education';

**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;

**merger** means the merger of the Institute and the CAE on and from 30 June 2019, as effected by the 2019 Order;

**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 following the merger.

### **7. Objectives of the Institute**

In addition to the objectives set out in section 3.1.12A and 3.3.29 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 and 3.3.29B 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.

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### **Note**

Schedule 2 to the 2019 Order removed Division 3 because the division, which provided for the the establishment, objectives, functions, powers, and duties of the CAE (when the CAE existed as a separate legal entity, before the merger), became redundant upon the merger.

## **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.

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**Note**

Schedule 2 to the 2019 Order removed Clause 15 because the clause, which provided for the board of the Institute to oversee the CAE (when the CAE existed as a separate legal entity, before the merger), became redundant upon the merger.

**16a<sup>1</sup> 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 5—Composition of the board**

**16. 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

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<sup>1</sup> Note the number “16a” has been inserted to correct a formatting error during the drafting of the 2019 Order. The clause, prior to the commencement of the 2019 Order, was numbered “16”.

- (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.

### **17. 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.

### **18. 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.

### **19. 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).

### **20. 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).

## **21. 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.

## **22. 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.

## **23. 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.

## **24. 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**

### **25. Procedure for board meetings**

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

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#### **Note**

Schedule 2 to the 2019 Order removed Clause 26 to reflect the repeal of sections 3.1.18D and 3.3.34D of the Act by sections 50 and 53 of the *Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018*, which commenced on 8 August 2018. Former sections 3.1.18D and 3.3.34 of the Act required TAFE institutes and adult education institutions (respectively) to hold a public annual meeting. As Clause 26 reflected the annual public meeting requirement for the Institute and the CAE (when the CAE existed as an adult education institution and a separate legal entity before the merger). The clause became redundant upon the repeal of sections 3.1.18D and 3.3.34 of the Act.

### **27. 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 and its committee meetings.
- (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 and its committees—available to the Deputy Secretary on request.

## **Division 7—Board Committees**

### **28. 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**

### **29. 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.

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**Note**

Schedule 2 to the 2019 Order removed sub-clause 3 because this sub-clause, which provided for the separate or joint application of procurement policies to the Institute and the CAE (when the CAE existed as a separate legal entity, before the merger), became redundant upon the merger.

- (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, the Institute must apply its procurement policies and procedures.
- (7) 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.
- (8) The board must ensure that adequate records of the tenders sought and received are retained as part of the records of the Institute, respectively.

### **30. Audits**

- (4) 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**.
- (5) For the avoidance of doubt, the board may appoint under subclause (1)—
- (a) the same internal auditor for both the Institute; or
  - (b) separate internal auditors for each of the Institute.

## Division 9—Management and Governance

### 31. 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.

### 32. 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.
- (6) In this clause, **executive** means 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.

### 33. 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 in relation to the Institute;

- (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.
- (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.

### 34. 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.

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#### **Note**

Schedule 2 to the 2019 Order removed Clause 35 because the clause, which provided for rules of the CAE (when the CAE existed as a separate legal entity, before the merger) became redundant upon the merger.

### 36. 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.
- (3) For the avoidance of doubt, the Institute must each have their own separate common seals.

## **Division 10—Conduct and accountability of directors, committee members and Institute staff**

### 37. 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;

***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.

### **38. 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.

### **39. 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**.

#### **40. 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 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 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.

#### **41. 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.

#### **42. 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.

#### **43. 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.

#### **44. 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.

#### **45. 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.

#### **46. 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.

#### **47. 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.

#### **48. 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.

**49. 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**

**50. Repeal of 2013 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 Act 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 (*2013 Order*), is repealed.

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**Note**

Schedule 2 to the 2019 Order removed Clauses 51, 52 and 53. These clauses made transitional arrangements, in 2016, for the then shared Board of the Institute and CAE (when the CAE existed as a separate legal entity, before the merger) relating to the commencement of this Order on 1 July 2016. These clauses became redundant following that historical transition of the shared board post 1 July 2016. Upon the merger on 30 June 2019, the shared board ceased to exist.

**54. Savings of acts under 2013 Order**

Unless otherwise specified, this Constitution does not affect the validity or continuity of anything validly done in accordance with the 2013 Order before the handover date.

**54A. Transitional provisions for the merger**

- (1) In this clause, a reference to '*CAE*' means the CAE in existence as a separate legal entity, before the merger.
- (2) In accordance with section 3.1.26AB(1) of the Act, the following transitional arrangements apply in relation to the merger:
  - (a) the CAE and the governing board of the CAE are abolished; and
  - (b) all members of the governing board of the CAE who held office immediately before 30 June 2019, as specified in Column 1 of the Table in Schedule 2 to this Constituion (the '*former board*') are taken to be appointed as a member of the board of the Institute

(the *'incoming board'*) and may continue in that office for the remaining period (as specified in Column 3 in Schedule 2), and on the same terms and conditions, of that member's term of appointment to the governing board of the CAE; and

- (c) the person appointed as chief executive officer of the CAE immediately before 30 June 2019 (Vivienne King) ceases to hold that appointment; and
  - (d) any rights, property and assets vested in the CAE immediately before 30 June 2019 are taken to be vested in the Institute; and
  - (e) any fund referred to in clause 13A of Schedule 2 of the Act, which is in the name of the CAE immediately before 30 June 2019, is taken to be any fund referred to in that clause that is in the name of the Institute; and
  - (f) any debts, liabilities and obligations of the adult education institution that were existing immediately before the commencement day are taken to be the debts, liabilities and obligations of the Institute; and
  - (g) the Institute is substituted as a party to any arrangement, agreement or contract entered into by or on behalf of the adult education institution that was in force immediately before 30 June 2019; and
  - (h) the Institute is substituted as a party to any proceedings pending in any court or tribunal to which the adult education institution was a party immediately before the commencement day; and
  - (i) in any Act, subordinate instrument or any other document of any kind, a reference to the CAE is taken to be a reference to the Institute in relation to any period on or after 30 June 2019 unless a contrary intention appears.
- (3) In accordance with section 3.1.26AB(2) of the Act, any Order in Council made under section 3.1.11(2)(c) of the Act relating to the Institute and CAE is taken to be revoked on and from 30 June 2019.

#### **55. 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 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 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

## Schedule 2—Composition of Board of the Institute upon the merger

<b>Column 1 (name)</b>	<b>Column 2 (type of appointment)</b>	<b>Column 3 (current term)</b>
Jack Diamond	Chair Ministerial Appointee	1 July 2016 - 30 June 2019
Helen Buckingham OAM	Ministerial Appointee	1 June 2018 - 31 May 2021
Amanda Brook	Ministerial Appointee	1 July 2016 - 30 June 2019
Jane Foley	Ministerial Appointee	1 June 2018 - 31 May 2021
Claire Filson	Ministerial Appointee	1 July 2016 - 30 June 2019
John Rosenberg	Ministerial Appointee	26 June 2017 - 31 May 2020
Tracey Cooper	Board Appointee	1 July 2016 - 31 May 2022
Julie Eisenbise	Board Appointee	1 June 2018 - 31 May 2021
Phillip Davies	Board Appointee	1 June 2018 - 31 May 2021
Allan Moore	Board Appointee	1 June 2018 - 31 May 2021
Vivienne King	CEO	25 June 2018 - ongoing
Sam McCurdy	Staff Elected	1 July 2018 - 31 May 2021