

# The Constitution of the Chisholm Institute

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## Division 1—Preliminary

### 1. Title of Order

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

### 2. Purposes

The purposes of this Constitution are—

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

### 3. Authorising powers

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

### 4. Commencement

This Constitution comes into operation on 1 July 2016.

### 5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter—

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

**board** means the board of the Chisholm Institute established under clause 10;

**board secretary** means the person appointed by the board under clause 28;

**chairperson** means the chairperson of the board appointed under clause 13;

**commercial activity** means—

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

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

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

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

**this Constitution** means this Order in Council;

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

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

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

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

**elected director** means a director elected under clause 16;

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

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

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

- (a) the supply of vocational training or higher education in accordance with the

Institute's strategic plan; or

- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

**Ministerial appointed director** means a director appointed under clause 14;

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

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

## **Division 2—Establishment, objectives, functions, powers and duties of the Institute**

### **6. Establishment of the Institute**

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

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

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

- (a) to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to facilitate increasing opportunities for Apprenticeships and Traineeships across the relevant Australian industry sectors.

### **8. Functions of the Institute**

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

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

### **9. Powers of the Institute**

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

- (a) the Act and other laws; and
- (b) this Constitution; and
- (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and

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

### **Division 3—Establishment, powers and duties of the board**

#### **10. Establishment of the board**

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

#### **11. General duties of the board**

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

### **Division 4—Composition of the board**

#### **12. Board composition**

The board consists of 10 directors, of whom—

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section

3.1.16(1)(c) of the Act; and

- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

### **13. Chairperson of Board and other Office Bearers**

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

### **14. Appointment of Ministerial appointed directors**

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

### **15. Appointment of co-opted directors**

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

### **16. Election of elected directors**

- (1) The board must decide the process for election to the elected director positions.
- (2) The process determined by the board under subclause (1) must—
  - (a) provide for the direct election of a staff member of the Institute to the elected director position;
  - (b) permit all on-going and fixed-term TAFE teaching staff and non-teaching staff employed

by the Institute for a time fraction of equal than or greater than 0.6 FTE to stand for election as the elected member;

- (c) address the matters referred to in Schedule 1 to this Constitution.

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

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

### **17. Notification of appointment or election**

The board must notify the Minister in writing of the—

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

within one calendar month of the respective appointment or election.

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

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

### **19. Terms and conditions of office of directors**

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

### **20. Indemnity of directors and committee members**

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

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

## **Division 5—Meetings**

### **21. Procedure for board meetings**

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

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#### **Note**

Clause 22 was removed from this Constitution by an Order of the Governor in Council made on 18 June 2019 under sections 3.1.11 and 3.3.28 of the Act. The removal of Clause 22 reflects the repeal of section 3.1.18D of the Act by section 50 of the **Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018**, which commenced on 8 August 2018. Former section 3.1.18D of the Act required TAFE institutes to hold a public annual meeting in the manner specified in that section and mirrored in Clause 22.

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

- (1) The board must—
  - (a) keep a record of its decisions, including decisions of its committees; and
  - (b) keep full and accurate minutes of its meetings 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 6—Board Committees**

### **24. Establishment of Committees**

- (1) The board may, to facilitate its functioning, establish and dissolve committees.
- (2) The board may, at any time—
  - (a) appoint to office a director, or any other person, as a member of a committee; and
  - (b) remove from office a member of a committee and must provide in writing to the

- member the reasons for the removal; and
- (c) by resolution, make rules and give directions, with which committees must comply, about—
    - (i) their quorums; and
    - (ii) voting powers of their members; and
    - (iii) their proceedings; and
    - (iv) any other matter; and
  - (d) confer any functions on a committee to advise or assist the board in relation to the performance or exercise of any of the board's powers, duties, objectives or functions as are delegated by the board from time to time.
- (3) A committee may meet and act despite vacancies in its membership so long as a quorum is present.
- (4) The position of a committee member becomes vacant if—
- (a) the member becomes bankrupt; or
  - (b) the member is found guilty of an offence which is, or which would if committed in Victoria be, an indictable offence; or
  - (c) the member is absent from 3 consecutive meetings of the committee without the leave of the chairperson of the committee, or in the case of the chairperson without the leave of the chairperson of the board; or
  - (d) becomes a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
  - (e) ceases to hold a qualification necessary for his or her appointment.

## **Division 7—Financial and Asset Management**

### **25. General powers and duties**

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



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

## **26. Audits**

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

## **Division 8—Management and Governance**

### **27. Chief executive officer**

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

### **28. Board Secretary**

- (1) The board must appoint a board secretary.

- (2) The board secretary must be—
- (a) an executive member of the staff of the Institute; or
  - (b) if not an executive member of the staff of the Institute, must be qualified to be a company secretary under the *Corporations Act 2001* of the Commonwealth—
- but must not be a director.
- (3) It is the duty of the board secretary to keep full and accurate minutes of meetings and records of decisions of the board and of its committees.
- (4) Where a duty is imposed on the board—
- (a) to give notice or information to the Minister, the Secretary or the Deputy Secretary; or
  - (b) to publish or provide information to any person—
- that duty is also the personal duty of the board secretary.
- (5) Non-compliance by the board secretary with the duties imposed by this clause is capable of being misconduct.

## **29. Delegations**

- (1) The board's power of delegation under clause 11(4) of Schedule 2 to the Act may be exercised subject to subclauses (2) to (4).
- (2) The board must not, and does not have power to, delegate—
- (a) the making, amending or revoking of Institute rules, the standing orders, nor any regulation made by it;
  - (b) the approval of, or a decision to undertake or participate in, any major commercial activity;
  - (c) the submission of the strategic plan to the Minister;
  - (d) the submission of the annual statement of corporate intent to the Minister;
  - (e) the approval of the audited financial annual reports; or
  - (f) the formation of a partnership, trust or joint venture.
- (3) A delegation by the board may limit the delegated authority by reference to the type of commercial activity, financial limits or any other criteria determined by the board.
- (4) In delegating a power or function, the board must take into account the need for the delegate to have appropriate commercial or other experience relevant to the power or function or to have access to the advice of an appropriately qualified person.
- (5) A delegation must be recorded in the board's minutes and given in writing and must specify—

- (a) the period for which it is valid; and
  - (b) any limitations or conditions on the delegation.
- (6) The board may revoke a delegation at any time.
- (7) The board may continue to exercise or perform a power, duty or function which it has delegated.
- (8) Anything done under a delegation—
- (a) has the same effect as if it had been done by the board; and
  - (b) will not be invalidated by the later lapse, revocation or variation of the delegation.
- (9) If the power, duty or function depends on the board's opinion or belief, a delegate will exercise or perform it in accordance with his or her or its own opinion or belief.
- (10) The board remains responsible for actions taken under delegation.
- (11) The board must ensure a copy of every delegation is retained as part of the records of the board and available to the Deputy Secretary on request.
- (12) A delegation of the board is revoked by operation of this subclause three years after its making.
- (13) For the avoidance of doubt—
- (a) the purpose of the sunseting of delegations under subclause (12) is to require the board to review the appropriateness of delegations periodically; and
  - (b) the revocation of a delegation by subclause (12) does not prevent the making of a new delegation in the same or a similar form by the board following that review.

### **30. Institute rules**

- (1) The board may make Institute rules for the good order and management of the Institute on matters within its power and may amend or revoke those Institute rules.
- (2) The board may amend or revoke any rule or regulation made by its predecessors.
- (3) An Institute rule is revoked by operation of this subclause five years after its making.
- (4) For the avoidance of doubt—

  - (a) the purpose of the sunseting of Institute rules under subclause (3) is to require the board to review the appropriateness of Institute rules periodically; and
  - (b) the revocation of an Institute rule by subclause (3) does not prevent the making of a new Institute rule in the same or a similar form by the board following that review.

### **31. Common seal**

- (1) The common seal of the Institute must—

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

## **Division 9—Conduct and accountability of directors, committee members and Institute staff**

### **32. Interpretation**

In this Division—

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

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

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

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

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

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

***relevant person*** means—

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

### **33. Primary principle of director and committee member conduct**

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

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

### **34. General conduct principles**

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

### **35. Misuse of position**

- (1) A relevant person must not misuse his or her position—
- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
  - (b) to cause, or attempt to cause, detriment to the board or another person.
- (2) For the purposes of this clause, circumstances involving the misuse of a position by a director or a committee member include—
- (a) making improper use of information acquired as a result of the position he or she held or holds; or

- (b) disclosing information that is confidential information within the meaning of clause 37;  
or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Institute staff in contravention of clause 36; or
  - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
  - (e) using Institute funds or resources in a manner that is improper or unauthorised; or
  - (f) failing to disclose a conflict of interest as required under the Act or this Constitution.
- (3) This clause has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of directors or members of committees.

### **36. Improper direction and improper influence**

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

### **37. Confidential information**

- (1) A relevant person must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this clause, information is *confidential information* if—
  - (a) the information has been designated as confidential information by a resolution of the board or a committee and the board or committee has not passed a resolution that the information is not confidential; or
  - (b) subject to subclause (3), the information has been designated in writing as confidential

information by the board secretary and the board has not passed a resolution that the information is not confidential.

- (3) Confidential information referred to in subclause (2)(b) ceases to be confidential at the expiry of the period of 65 days after the designation is made unless subclause (2)(a) applies to the information.
- (4) For the avoidance of doubt, this clause does not prevent the disclosure of information as required by law, including this Constitution.

### **38. Disclosure of interest of committee members**

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

### **39. Disclosure of interest of staff members**

A member of the Institute's staff who—

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

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

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

(1) For the purposes of—

- (a) in relation to directors — clause 6 of Schedule 2 to the Act and this Division; and
- (b) in relation to committee members and Institute staff — this Division—

a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.

(2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.

(3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds—

- (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
- (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.

(4) A relevant person does not have an interest in a matter if the relevant person—

- (a) does not know the circumstances that give rise to the interest; and
- (b) would not reasonably be expected to know the circumstances that give rise to the interest.

(5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

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

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

(2) Without limiting subclause (1), a person has a direct interest in a matter if—

- (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way; or
- (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.



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

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

total value of \$10,000 or more in the preceding five years, directly or indirectly from—

- (a) a person who has a direct interest in the matter; or
- (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
- (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

#### **43. Additional duties**

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

#### **44. Breach of this Division may be misconduct**

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

### **Division 10—Repeal, savings and transitional provisions**

#### **45. Repeal of former Order**

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

#### **46. Abolition of former boards and transitional arrangements**

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

#### **47. First appointments to the incoming board**

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

#### **48. Election to incoming board**

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

#### **49. Savings of acts under former Order**

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

#### **50. Matters relating to the establishment of the incoming board**

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

revoked by operation of this subclause on the day that is six months after the handover date.

(6) For the avoidance of doubt—

- (a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and
- (b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

## **Schedule 1—Matters that must be addressed in election processes**

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

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



# The Constitution of the Chisholm Institute

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## Division 1—Preliminary

### 1. Title of Order

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

### 2. Purposes

The purposes of this Constitution are—

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

### 3. Authorising powers

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

### 4. Commencement

This Constitution comes into operation on 1 July 2016.

### 5. Interpretation

- (1) In this Constitution, unless inconsistent with the context or subject-matter—

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

**board** means the board of the Chisholm Institute established under clause 10;

**board secretary** means the person appointed by the board under clause 28;

**chairperson** means the chairperson of the board appointed under clause 13;

**commercial activity** means—

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

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

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

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

**this Constitution** means this Order in Council;

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

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

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

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

**elected director** means a director elected under clause 16;

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

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

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

- (a) the supply of vocational training or higher education in accordance with the



Institute's strategic plan; or

- (b) the supply of vocational training or higher education that is supplied pursuant to a competitive tender process;

**Ministerial appointed director** means a director appointed under clause 14;

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

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

## **Division 2—Establishment, objectives, functions, powers and duties of the Institute**

### **6. Establishment of the Institute**

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

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

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

- (a) to facilitate higher education through excellent teaching, innovation and educational leadership that delivers quality outcomes; and
- (b) to facilitate increasing opportunities for Apprenticeships and Traineeships across the relevant Australian industry sectors.

### **8. Functions of the Institute**

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

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

### **9. Powers of the Institute**

- (1) The powers of the Institute are subject to, and must be exercised in accordance with, the functions, duties and obligations conferred or imposed on the Institute by—
  - (a) the Act and other laws; and
  - (b) this Constitution; and
  - (c) Ministerial and Government directions and guidelines under the Act and other legislation, laws and conventions; and
  - (d) the general administrative, social and economic directives and policies established by

the Government of Victoria from time to time.

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

### **Division 3—Establishment, powers and duties of the board**

#### **10. Establishment of the board**

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

#### **11. General duties of the board**

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

### **Division 4—Composition of the board**

#### **12. Board composition**

The board consists of 10 directors, of whom—

- (a) five are Ministerial appointed directors appointed by the Minister under clause 14 for the purposes of section 3.1.16(1)(a) of the Act;
- (b) one is an elected staff member of the Institute elected by staff of the Institute under clause 16 for the purpose of section 3.1.16(1)(b) of the Act;
- (c) one is the chief executive officer of the Institute for the purposes of section 3.1.16(1)(c) of the Act; and

- (d) three are co-opted directors appointed by the board under clause 15 in accordance with section 3.1.16(1)(d) of the Act.

### **13. Chairperson of Board and other Office Bearers**

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

### **14. Appointment of Ministerial appointed directors**

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

### **15. Appointment of co-opted directors**

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

### **16. Election of elected directors**

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

- (c) address the matters referred to in Schedule 1 to this Constitution.

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

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

### **17. Notification of appointment or election**

The board must notify the Minister in writing of the—

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

within one calendar month of the respective appointment or election.

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

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

### **19. Terms and conditions of office of directors**

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

### **20. Indemnity of directors and committee members**

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

- (a) in the exercise of a power or the performance of a function or duty of a director or committee member; or

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

## Division 5—Meetings

### 21. Procedure for board meetings

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

### 22. Procedure for Institute annual meetings

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

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#### **Note**

Clause 22 was removed from this Constitution by an Order of the Governor in Council made on 18 June 2019 under section 3.1.11 of the Act. The removal of Clause 22 reflects the repeal of section 3.1.18D of the Act by section 50 of the **Education Legislation Amendment (Victorian Institute of Teaching, TAFE and Other Matters) Act 2018**, which commenced on 8 August 2018. Former section 3.1.18D of the Act required TAFE institutes to hold a public annual meeting in the manner specified in that section and mirrored in Clause 22.

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

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

- (b) minutes of the board, ~~and its committees of annual meetings conducted for the purposes of section 3.1.18D of the Act—~~

available to the Deputy Secretary on request.

## Division 6—Board Committees

### 24. Establishment of Committees

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

## **Division 7—Financial and Asset Management**

### **25. General powers and duties**

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

### **26. Audits**

The board may, in its discretion, appoint an internal auditor to advise and assist the board

in the management of the Institute and its other functions, subject to and in accordance with any requirements under the **Financial Management Act 1994**.

## **Division 8—Management and Governance**

### **27. Chief executive officer**

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

### **28. Board Secretary**

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

### **29. Delegations**

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



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

### 30. Institute rules

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

### 31. Common seal

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

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

### 32. Interpretation

In this Division—

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

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

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

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

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

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

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

*relevant person* means—

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

### **33. Primary principle of director and committee member conduct**

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

### **34. General conduct principles**

- (1) In addition to acting in accordance with the primary principle of conduct specified in clause 33, in performing the role of a director or committee member, a relevant person must—
  - (a) take all reasonable steps to avoid conflicts between his or her duties as a director or committee member and his or her personal interests and obligations;
  - (b) disclose any conflict of interest in accordance with the Act and this Constitution;
  - (c) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
  - (d) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other directors, committee members, Institute staff and other persons;
  - (e) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
  - (f) endeavour to ensure that Institute resources are used prudently and solely in the Institute's and the public interest;
  - (g) act lawfully and in accordance with the trust placed in him or her as director of a major State public sector body or as a member of one of that body's committees;
  - (h) support and promote these principles by leadership and example and act in a way that

secures and preserves confidence in the office of director or committee member; and

- (i) not make improper use of any information acquired as a member of the committee.
- (2) For the avoidance of doubt, a committee member is subject to any code of conduct applicable to a director under section 63 of the **Public Administration Act 2004**.

### **35. Misuse of position**

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

### **36. Improper direction and improper influence**

- (1) A director or a committee member must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Institute staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A director or committee member must not direct, or seek to direct, a member of Institute staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the board; or
  - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the director or committee member under the Act or this Constitution; or

- (c) In the exercise of a power or the performance of a duty or function the director or committee member exercises or performs in an office or position the director or committee member holds under another Act; or
  - (d) in relation to advice provided to the board or a committee, including advice in a report to the board or committee.
- (3) This clause does not apply to a decision of the board or a committee that is made within the powers, duties or functions conferred under this or any other Act.

### **37. Confidential information**

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

### **38. Disclosure of interest of committee members**

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

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

### **39. Disclosure of interest of staff members**

A member of the Institute's staff who—

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

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

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

(1) For the purposes of—

- (a) in relation to directors — clause 6 of Schedule 2 to the Act and this Division; and
- (b) in relation to committee members and Institute staff — this Division—

a relevant person will be taken to have an interest in any matter in which the board or committee (as the case may be) is concerned if the relevant person has a direct interest or indirect interest in the matter.

- (2) A relevant person does not have an interest in a matter under this Division if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (3) A relevant person does not have an interest in a matter if the direct interest or indirect interest the relevant person holds—
  - (a) is held as a resident of the area served by the Institute and does not exceed the interests generally held by other residents of the areas served by the Institute; or
  - (b) is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (4) A relevant person does not have an interest in a matter if the relevant person—

- (a) does not know the circumstances that give rise to the interest; and
  - (b) would not reasonably be expected to know the circumstances that give rise to the interest.
- (5) For the avoidance of doubt, this provision operates in addition to and is not intended to take away from the operation of clause 6 of Schedule 2 to the Act.

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

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

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

- (1) For the purposes of this Division, a person has an indirect interest in a matter in the circumstances set out in this clause.
- (2) A person has an indirect interest in a matter if—
  - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
  - (b) a relative of the person has a direct interest in a matter; or
  - (c) a member of the person's household has a direct interest in a matter.
- (3) A person has an indirect interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in financial terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (4) A person has an indirect interest in a matter if the person—
  - (a) has a beneficial interest in shares of a company or other body that has a direct interest in the matter, unless the combined total value of all the shares owned by the person and their family members is less than \$10,000 and the total value of issued shares of the company or body exceeds \$10 million; or
  - (b) is owed money from another person and that other person has a direct interest in the matter, unless the money is owed by an approved deposit taking institution.
- (5) A person has an indirect interest in a matter because of conflicting duties if the person—



- (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter; or
  - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter; or
  - (c) is a trustee for a person who has a direct interest in a matter—  
but does not have an indirect interest in a matter under this subclause only because the person—
  - (d) is a member of the Victorian Public Service or a member of staff of a Victorian public sector body and the person has no expected duties in that capacity in relation to the matter; or
  - (e) holds a position, with the board's approval as a representative of the board, in an organisation for which the person receives no remuneration; or
  - (f) is a director who holds a position in the Victorian TAFE Association Inc. (registration no. A37584B, ABN 43 308 387 581) or in another body that has the purpose of representing the interests of TAFE institutions.
- (6) A person has an indirect interest in a matter if the person has received a gift or gifts with a total value of \$10,000 or more in the preceding five years, directly or indirectly from—
- (a) a person who has a direct interest in the matter; or
  - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
  - (c) a person who gave the gift or gifts to the person on behalf of a person, company or body that has a direct interest in the matter.

#### **43. Additional duties**

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



#### **44. Breach of this Division may be misconduct**

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

### **Division 10—Repeal, savings and transitional provisions**

#### **45. Repeal of former Order**

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

#### **46. Abolition of former boards and transitional arrangements**

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

#### **47. First appointments to the incoming board**

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

#### **48. Election to incoming board**

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

#### **49. Savings of acts under former Order**

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

#### **50. Matters relating to the establishment of the incoming board**

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

(2) All delegations made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.

(3) For the avoidance of doubt—

(a) the purpose of subclause (2) is to require the incoming board to review all delegations by the former board and its predecessors; and

(b) the revocation by subclause (2) of a delegation by the former board or one of its predecessors does not prevent the making of a new delegation in the same or similar form by the incoming board following that review.

(4) Institute rules and standing orders made by the former board continue in operation, as if they were made as Institute rules by the incoming board under clause 30, until they are revoked—

(a) by resolution of the incoming board; or

(b) until revoked by operation of subclause (5)—

whichever is the earlier.

(5) All Institute rules and standing orders made by the former board or its predecessors are revoked by operation of this subclause on the day that is six months after the handover date.

(6) For the avoidance of doubt—

(a) the purpose of subclause (5) is to require the incoming board to review all Institute rules and standing orders by the former board and its predecessors; and

(b) the revocation by subclause (5) of an Institute rule or a standing order made by the former board or one of its predecessors does not prevent the making of a new Institute rule in the same or a similar form by the incoming board following that review.

## **Schedule 1—Matters that must be addressed in election processes**

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

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

