

**TECHNICAL AND FURTHER EDUCATION COMMISSION  
ACT 1990 No. 118**

NEW SOUTH WALES



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**TECHNICAL AND FURTHER EDUCATION COMMISSION  
ACT 1990 No. 118**

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**Act No. 118, 1990**

An Act relating to the constitution, functions and management of the Technical and Further Education Commission; to repeal the Technical and Further Education Act 1974; and to amend certain other Acts. [Assented to 18 December 1990]

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See also Board of Adult and Community Education Act 1990.

**The Legislature of New South Wales enacts:**

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the Technical and Further Education Commission Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act:

"**Managing Director**" means the Managing Director of the TAFE Commission;

"**TAFE college**" means an institution providing technical and further education, being an institution established and maintained by the TAFE Commission;

"**TAFE Commission**" means the Technical and Further Education Commission constituted by this Act;

"**TAFE Commission Board**" means the TAFE Commission Board established under this Act;

"**technical and further education**" includes:

- (a) basic and pre-vocational education; and
- (b) vocational education and training.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

**PART 2—CONSTITUTION OF THE TECHNICAL AND FURTHER EDUCATION COMMISSION**

**Constitution of the TAFE Commission**

4. (1) There is constituted by this Act a body corporate with the corporate name of the Technical and Further Education Commission.

(2) The Technical and Further Education Commission may use, and act under, the name TAFE Commission.

(3) A reference to the TAFE Commission in any Act, in any instrument made under any Act or in any document of any kind is a reference to the Technical and Further Education Commission constituted by this Act.

(4) The TAFE Commission is, for the purposes of any Act, a statutory body representing the Crown.

**PART 3—FUNCTIONS AND OBJECTIVES OF THE TAFE COMMISSION**

**Functions**

5. (1) The principal function of the TAFE Commission is to provide technical and further education services.

(2) The TAFE Commission has such other functions as are conferred or imposed on it by or under this or any other Act.

**Objectives**

6. (1) In exercising its functions, the TAFE Commission must:

- (a) ensure that it provides technical and further education services to meet the needs of individuals and the skill needs of the workforce and, in particular, ensure that it provides basic and pre-vocational education as well as vocational education and training; and
- (b) provide adults and young persons with a range of technical and further education services that recognise the changing nature of the working environment and the need for new skills and re-training; and

- (c) provide, through formal arrangements and after consultation, technical and further education services that are relevant to the needs of industry, business, students and other client groups; and
- (d) provide students with the maximum opportunity for progression by the linking or other articulation of courses and programs provided by the TAFE Commission and between those courses and programs and those provided by other education and training providers; and
- (e) provide educationally or vocationally disadvantaged groups (such as women, Aborigines, persons of non-English speaking background, persons with disabilities and persons in rural areas) with access to technical and further education services, including a range of appropriate specialised services; and
- (f) consult with relevant agencies to promote the effective and efficient use of resources and co-operation between TAFE, colleges and other educational institutions.

(2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

### **Miscellaneous functions**

7. (1) Without limiting any other functions conferred or imposed on it, the TAFE Commission may

- (a) establish and maintain TAFE colleges; and
- (b) provide courses of study at TAFE colleges and at other places; and
- (c) confer educational awards on students who have completed technical or further education courses (and determine the eligibility of students to receive those awards); and
- (d) provide student support services, including library, counselling, course information, student activities and child care services; and
- (e) make loans and grants to students of TAFE colleges; and
- (f) impose penalties (including pecuniary penalties) for breaches of discipline by students of TAFE colleges; and

- (g) enter into credit transfer arrangements with other education and training providers (including government agencies, higher education institutions and private agencies); and
  - (h) impose fees and charges (and grant exemptions from payment of fees and charges), including fees and charges to be paid in respect of the following.
    - \* entrance to a TAFE college;
    - \* tuition;
    - \* examinations;
    - \* the conferring of educational awards;
    - \* residence;
    - \* the provision of amenities and services, whether or not of an educational nature; and
  - (i) enter into commercial arrangements for the provision of technical and further education services and for the payment of appropriate fees and charges for those services (including arrangements with employers for the provision of services to their employees); and
  - (j) with the approval of the Minister, conduct any business which is related to technical and further education or which makes use of the facilities, staff or services of the TAFE Commission.
- (2) The exercise of the functions of the TAFE Commission under this section is subject to:
- (a) in the case of the provision of accredited vocational courses of study and the conferring of educational awards in connection with those courses—the accreditation requirements of the Vocational Education and Training Accreditation Board; and
  - (b) in any case—any requirements of the regulations.
- (3) The TAFE Commission may, with the approval of the Minister:
- (a) form, or participate in the formation of, private corporations; and
  - (b) acquire, sell or otherwise dispose of interests in private corporations; and
  - (c) enter into partnerships, joint ventures or other profit-making arrangements,

for the purpose of the exercise of the functions of the TAFE Commission referred to in subsection (1) (j) or such other of its functions of a commercial nature as the Minister may approve.

(4) A private corporation in which the TAFE Commission has a controlling or other interest is not, and does not represent, the Crown.

(5) The Minister may give an approval under this section that is limited to a particular case or that applies generally.

### **Delegation of functions**

8. (1) The TAFE Commission may delegate to an authorised person any of the functions of the TAFE Commission, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the TAFE Commission if the delegate is authorised in writing to do so by the TAFE Commission.

(3) Any of the following functions may not be delegated or sub-delegated to an authorised person unless that person is a member of the staff of the TAFE Commission:

- (a) a function under this Act, or any other law, of entering into agreements relating to an industrial matter;
  - (b) a function under section 15 or 16;
  - (c) a function in proceedings concerning industrial awards.
- (4) In this section, "authorised person" means:
- (a) a member of the staff of the TAFE Commission; or
  - (b) a person of a class prescribed by the regulations or approved by the Minister.

## **PART 4—THE MINISTER AND TAFE COMMISSION BOARD**

### **Ministerial control**

9. The TAFE Commission is, in the exercise of its functions, subject to the control and direction of the Minister.



### **Corporate plans**

**10. (1)** The TAFE Commission is required to prepare and deliver to the Minister, at least 3 months before the beginning of each financial year of the TAFE Commission, a draft corporate plan for the financial year.

**(2)** The TAFE Commission must:

- (a)** consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister; and
- (b)** deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

**(3)** The TAFE Commission is, as far as practicable, to exercise its functions in accordance with the relevant corporate plan.

**(4)** A corporate plan must specify

- (a)** the separate activities of the TAFE Commission and, in particular, the separate commercial and non-commercial activities; and
- (b)** the objectives of each such separate activity for the financial year concerned and for future financial years; and
- (c)** the strategies, policies and budgets for achieving those objectives; and
- (d)** targets and criteria for assessing the TAFE Commission's performance.

**(5)** This section is subject to the requirements of any direction of the Minister under section 9.

### **TAFE Commission Board**

**11. (1)** There shall be a TAFE Commission Board.

**(2)** The TAFE Commission Board is to consist of the following 13 members:

- (a)** the Managing Director of the TAFE Commission;
- (b)** a senior member of the staff of the TAFE Commission for the time being nominated by the Minister;

- (c) the Director-General of the Department of Further Education, Training and Employment;
- (d) the Chairperson of the Board of Adult and Community Education;
- (e) a person for the time being nominated by the Minister for School Education and Youth Affairs;
- (f) 8 members appointed by the Minister.

(3) The senior member of the staff of the TAFE Commission nominated by the Minister must have a background in education if the Managing Director does not have such a background.

(4) The members appointed by the Minister must have such qualifications and experience in the areas of management, industry, commerce, industrial relations, higher education, vocational education and training or community service as the Minister considers necessary to enable them to make a valuable contribution to technical and further education in the State.

(5) In making appointments of members, the Minister is to have regard to the need to appoint:

- (a) both men and women; and
- (b) persons who have knowledge or expertise in the education and training of women, Aborigines, persons from non-English speaking backgrounds, persons with disabilities and persons from rural areas; and
- (c) persons with knowledge or expertise in basic or pre-vocational education as well as vocational education and training.

(6) Schedule 1 has effect with respect to the members and procedure of the TAFE Commission Board.

### **Functions of the TAFE Commission Board**

12. (1) The functions of the TAFE Commission Board are to review and make recommendations to the Minister on the following:

- (a) policies related to the technical and further education services provided by the TAFE Commission;
- (b) efficiency and effectiveness in relation to the operation and management of the technical and further education services provided by the TAFE Commission;

- (c) the Commission's commercial activities, the setting of priorities for its commercial operations and the utilisation of funds generated from commercial activities, consistent with the Government's overall policies and objectives in the education and training area;
- (d) the corporate plans prepared by the TAFE Commission under this Part;
- (e) the relationship between the TAFE Commission and other education sectors, including schools, higher education and adult and community education;
- (f) any matter referred to the Board by the Minister.

(2) The Minister is to have regard to the recommendations of the TAFE Commission Board when giving directions to the Managing Director under this Act with respect to the exercise of the functions of the TAFE Commission.

(3) The TAFE Commission Board also has the function conferred under the Board of Adult and Community Education Act 1990 of preparing jointly with the Board of Adult and Community Education strategic plans for the co-ordination and development of adult and community education generally in the State.

## **PART 5—THE MANAGING DIRECTOR OF THE TAFE COMMISSION**

### **Managing Director**

**13. (1)** The Governor may appoint a Managing Director of the TAFE Commission.

(2) The employment of the Managing Director is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act.

(3) The Minister may, from time to time, appoint a person to act in the office of the Managing Director during the illness or absence of the Managing Director (or during a vacancy in the office of Managing Director) and the person, while so acting, has all the functions of the Managing Director and is taken to be the Managing Director.

(4) The Minister may, at any time, remove a person from office as acting Managing Director.

(5) An acting Managing Director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

### **Managing Director to manage and control affairs of the TAFE Commission**

14. (1) The affairs of the TAFE Commission are to be managed and controlled by the Managing Director, subject to any direction of the Minister under this Act.

(2) Any act, matter or thing done in the name of, or on behalf of, the TAFE Commission by the Managing Director is taken to have been done by the TAFE Commission.

## **PART 6—STAFF**

### **Employment of staff**

15. The TAFE Commission may employ such staff as it requires to exercise its functions.

### **Salary, conditions etc. of staff**

16. (1) The TAFE Commission may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

(2) Members of the staff of the TAFE Commission are employees of the Crown for the purposes of the Industrial Arbitration Act 1940 or any other Act.

### **Regulations relating to staff**

17. (1) The regulations may make provision for or with respect to the employment of the staff of the TAFE Commission, including the conditions of employment and the discipline of any such staff.

(2) Any such regulations relating to the conditions of employment or the discipline of staff:

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the TAFE Commission is a party; and
- (b) have effect despite any determination of the TAFE Commission under section 16; and

(c) are subject to Part 2A of the Public Sector Management Act 1988.

### **Appointments and promotion on merit**

**18. (1)** Appointments to the staff of the TAFE Commission and promotions for members of that staff are to be made on the basis of the merit of the applicants for appointment or promotion.

(2) The merit of persons eligible for appointment or promotion to a vacant position are to be determined having regard to:

- (a) the nature of the duties of the position; and
- (b) abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.

### **Legal proceedings not to be brought in respect of appointments etc.**

**19. (1)** The appointment or failure to appoint a person to a vacant position on the staff of the TAFE Commission, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the Industrial Arbitration Act 1940.

(2) Subsection (1) applies whether or not any person has been appointed to the vacant position.

(3) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, lie in respect of the appointment or failure to appoint a person to a position on the staff of the TAFE Commission, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.

(4) Subsection (3) does not affect the operation of the Government and Related Employees Appeal Tribunal Act 1980.

### **Incapable officer may be retired**

**20. If:**

- (a) a member of the staff of the TAFE Commission is found to be unfit to discharge or incapable of discharging the member's duties; and
- (b) the member's unfitness or incapacity appears to be of a permanent nature and has not arisen from actual misconduct

on the part of the member (or from causes within the member's control),  
the TAFE Commission may cause the member to be retired.

**Use of staff or facilities of Departments etc.**

21. The TAFE Commission may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, the Education Teaching Service, a public or local authority or any other education or training provider.

**Extended or long service leave**

22. (1) This section applies to all members of the staff of the TAFE Commission who are employed on a full-time basis.

(2) Members of staff of the TAFE Commission to whom this section applies are entitled to extended leave at the same rate and under the same conditions as officers of the Public Service.

(3) For that purpose, Schedule 5 to the Public Sector Management Act 1988 applies with any necessary modifications) to those members of staff.

**PART 7—PROVISIONS RELATING TO PROPERTY**

**Powers of the TAFE Commission relating to property**

23. (1) The TAFE Commission may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The TAFE Commission must not, except with the approval of the Minister, alienate, mortgage, charge or demise any of its land.

(3) Despite subsection (2), the TAFE Commission may, without the approval of the Minister, lease any of its land if:

- (a) the term of the lease does not exceed 21 years; and
- (b) there is reserved for the whole of the term the highest rent that can reasonably be obtained.

(4) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the TAFE Commission has agreed.

**Powers of the TAFE Commission over certain property vested in Crown**

**24. (1)** If any property used wholly or mainly for the conduct of a TAFE college or other TAFE Commission facility is not vested in the TAFE Commission but is vested in the Crown or a Minister of, the Crown (whether as Constructing Authority or otherwise), the TAFE Commission has the control and management of that property and is responsible for its maintenance.

**(2)** Nothing in subsection (1) enables the TAFE Commission to alienate, mortgage, charge or demise any land vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise).

**(3)** Despite subsection (2), the TAFE Commission may (on behalf of the Crown or a Minister of the Crown) lease land of which it has, pursuant to this section, the control and management.

**(4)** Such a lease:

- (a) is to be for a purpose approved by the Minister; and
- (b) is to be for a term not exceeding 10 years; and
- (c) is to contain a condition that the lease is not to be assigned and such other conditions as the TAFE Commission thinks fit.

**Resumption etc. of land**

**25. (1)** For the purposes of this Act, the Governor may, on the recommendation of the Minister, resume or appropriate any land under Division 1 of Part 5 of the Public Works Act 1912.

**(2)** A resumption or appropriation effected pursuant to this section is to be taken to be for an authorised work within the meaning of the Public Works Act 1912 and the Minister is, in relation to that authorised work, to be taken to be the Constructing Authority within the meaning of that Act.

**(3)** Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not, but section 38 of that Act does, apply in relation to a resumption or appropriation under this section.

**Grant or transfer of certain land to the TAFE Commission**

**26. (1)** If land on which a TAFE college or other TAFE Commission facility is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may:

- (a) if it is vested in the Crown—be transferred to the TAFE Commission subject to such trusts, conditions, covenants, provisions, exceptions and reservations as the Minister administering the Crown Lands Act 1989 thinks fit; or
- (b) if it is vested in a Minister of the Crown—be conveyed or transferred to the TAFE Commission for such estate, and subject to such trusts and rights of way or other easements, as the Minister in whom the land is vested thinks fit,

**(2)** A conveyance, transfer or other instrument executed for the purposes of this section:

- (a) is not liable to stamp duty under the Stamp Duties Act 1920; and
- (b) may be registered under any Act without fee.

**Acquisition and disposal of land by Minister**

**27. (1)** The Minister may, for the purposes of this Act or jointly for those purposes and purposes of or associated with technical and further education or recreation, acquire land:

- (a) by purchase, lease or exchange; or
- (b) by resumption or appropriation under and subject to the Public Works Act 1912.

**(2)** The Minister may acquire, by gift made during a person's lifetime or by devise or bequest in the will or other testamentary disposition of any person, any property for use for purposes for which land may be acquired under subsection (1).

**(3)** The Minister may agree to a condition of any such gift, devise or bequest, and the rule of law against remoteness of vesting does not apply to any such condition.

**(4)** The Minister may expend money on the improvement of any land acquired under this Act, or, for the purposes of this Act, on any other land, even though the improvement or the land may not be used solely for technical and further education.



(5) The Minister may:

- (a) for any of the purposes for which land may be acquired under this section, grant a lease or licence of any land so acquired; and
- (b) in the case of land that is no longer required for the purpose for which it was acquired, grant a lease or licence of the land or sell or exchange the land; and
- (c) grant easements and rights of way in respect of land acquired under this section.

(6) The Minister may make commercial use of land acquired under this section if that use is associated with a purpose for which land may be so acquired.

(7) Land:

- (a) acquired under or for the purposes of the Technical and Further Education Act 1974; or
  - (b) acquired under any other Act for those purposes,
- is to be taken to have been acquired under this section.

#### **Power to rescind resumptions**

**28. (1)** The Governor may, by notification published in the Gazette, rescind in whole or in part any notification of resumption made:

- (a) in accordance with this Act; or
- (b) for the purposes of colleges for technical and further education.

**(2)** On the publication of any notification of rescission, the land described in the notification:

- (a) reverts in the person who was entitled to it immediately before the resumption for the estate, interest or right which the person had immediately before the resumption, but subject to any interest in or equity binding on the land created by the Constructing Authority since the resumption; and
- (b) is subject to all trusts, obligations, estates, interests, contracts, charges, rates and rights-of-way or other easements from which it was freed and discharged by the resumption; and
- (c) is subject to any interests in or equities binding upon the compensation money that were created since the resumption.

**(3)** If a resumption application relating to land described or referred to in a notification of resumption made in pursuance of the Public

Works Act 1912 has been lodged under section 31A (2) of the Real Property Act 1900 with the Registrar-General:

- (a) a notification under subsection (1) published in the Gazette may not rescind so much of the notification of resumption as relates to that land; and
- (b) any transfer of that land, after it has been brought under the provisions of the Real Property Act 1900, to the person who was entitled to it immediately before the resumption. is, for the purposes of subsection (5), taken, on its registration under that Act:
  - (i) to revest that land under this section in the transferee; and
  - (ii) to rescind the resumption in so far as it relates to that land.

(4) On the lodgment with the Registrar-General of a copy of a notification published in the Gazette under this section that rescinds a notification of resumption of land under the provisions of the Real Property Act 1900, the Registrar-General is to:

- (a) make, in the Register kept under that Act, such recordings with respect to the rescission; and
- (b) create or cancel such folios of that Register, as the Registrar-General considers appropriate.

(5) The person in whom any land is revested under this section is to be entitled to be compensated by the Constructing Authority for any loss or damage actually suffered by the person as a direct consequence of the resumption and its rescission, other than compensation in respect of the value of the land.

(6) Any claim for compensation arising under this section is to be heard and determined in the same way and subject to the same conditions as a claim for compensation by reason of the acquisition of land under the Public Works Act 1912 by notification published in the Gazette, and the Land and Environment Court has jurisdiction accordingly.

### **Delegation**

29. The Minister may delegate to any person any of the Minister's functions under this Part, other than the power to give an approval under section 23 (2) or this power of delegation.

**PART 8—MISCELLANEOUS**

- 30.** The TAFE Commission may invest money held by it:
- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
  - (b) if that Act does not confer power to invest money held by the TAFE Commission:
    - (i) in any manner authorised for the time being for the investment of trust funds; and
    - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**Financial year**

**31. (1)** The financial year of the TAFE Commission is the year commencing on 1 July.

**(2)** A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

**Personal liability of members etc.**

**32.** A matter or thing done or omitted to be done by the TAFE Commission, the TAFE Commission Board, a member of the TAFE Commission Board, the Managing Director or any person acting under the direction of the TAFE Commission, that Board or the Managing Director does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the Managing Director, member or a person so acting personally to any action, liability, claim or demand.

**Seal of the TAFE Commission**

**33.** The seal of the TAFE Commission is to be kept by the Managing Director and may be affixed to a document only

- (a) in the presence of the Managing Director or a member of the staff of the TAFE Commission authorised in that behalf by the Managing Director; and
- (b) with an attestation by the signature of the Managing Director or that member of the fact of the affixing of the seal.

**Service of documents on the TAFE Commission**

**34. (1)** A document may be served on the TAFE Commission by leaving it at, or by sending it by post to:

- (a) the office of the TAFE Commission; or
- (b) if it has more than one office—any one of its offices.

**(2)** Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the TAFE Commission in any other manner.

**Recovery of charges etc. by the TAFE Commission**

**35.** Any charge, fee or money due to the TAFE Commission may be recovered by the TAFE Commission as a debt in a court of competent jurisdiction.

**Regulations**

**36.** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Repeals**

**37.** The Acts and statutory instruments specified in Schedule 2 are repealed.

**Amendment of Acts**

**38.** The Acts specified in Schedule 3 are amended in the manner set out in that Schedule.

**Savings, transitional and other provisions**

**39.** Schedule 4 has effect.

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**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS  
AND PROCEDURE OF THE TAFE COMMISSION BOARD**

(Sec. 11)

**Definitions**

1. In this Schedule:

"**appointed member**" means a member of the the TAFE Commission Board other than an ex-officio member;

"**ex-officio member**" means a member of the the TAFE Commission Board referred to in section 11 (2) (a)–(e);

"**member**" means any member of the TAFE Commission Board.

**Chairperson and Deputy Chairperson of the TAFE Commission Board**

2. (1) Of the appointed members, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as Chairperson and Deputy Chairperson of the TAFE Commission Board respectively.

(2) The Minister may at any time remove an appointed member from the office of Chairperson or Deputy Chairperson.

(3) A person who is a member and Chairperson or Deputy Chairperson of the TAFE Commission Board vacates that office if the person:

- (a) is removed from that office by the Minister, or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a member.

**Deputies**

3. (1) The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.

(2) An ex-officio member may, from time to time, appoint a person to be the deputy of the member, and the ex-officio member or the Minister may revoke any such appointment.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF THE TAFE COMMISSION BOARD—*continued*

- (3) In the absence of a member, the member's deputy
- (a) may, if available, act in the place of the member; and
  - (b) while so acting, has all the functions of the member and is to be taken to be a member.

(4) The deputy of a member who is Chairperson or Deputy Chairperson of the TAFE Commission Board does not (because of this clause) have the member's functions as Chairperson or Deputy Chairperson.

(5) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

**Terms of office of appointed members**

4. (1) Subject to this Schedule, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) The nomination of a senior member of the staff of the TAFE Commission as a member under section 11 (2) (b) has effect for a period of 2 years, unless the Minister nominates a different member before the expiration of that period.

**Remuneration**

5. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

**Vacancy in office of appointed member**

6. (1) The office of an appointed member becomes vacant if the member:

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF THE TAFE COMMISSION BOARD—*continued*

- (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns the office by instrument in writing addressed to the Minister; or
  - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
  - (e) is absent from 4 consecutive meetings of the TAFE Commission Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the TAFE Commission Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the TAFE Commission Board for having been absent from those meetings; or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (g) becomes a mentally incapacitated person; or
  - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member from office at any time.

**Disclosure of pecuniary interests**

7. (1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the TAFE Commission Board; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF THE TAFE COMMISSION BOARD—*continued*

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the TAFE Commission Board.

(2) A disclosure by a member at a meeting of the TAFE Commission Board that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by the TAFE Commission Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the TAFE Commission Board.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the TAFE Commission Board otherwise determines:

- (a) be present during any deliberation of the TAFE Commission Board with respect to the matter; or
- (b) take part in any decision of the TAFE Commission Board with respect to the matter.

(5) For the purpose of the making of a determination by the TAFE Commission Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the TAFE Commission Board for the purpose of making the determination; or
- (b) take part in the making by the TAFE Commission Board of the determination.



SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF THE TAFE COMMISSION BOARD—*continued*

(6) A contravention of this clause does not invalidate any decision of the TAFE Commission Board.

**Filling of vacancy in office of appointed member**

8. If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

**Effect of certain other Acts**

9. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

**General procedure**

10. The procedure for the calling of meetings of the TAFE Commission Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the TAFE Commission Board.

**Quorum**

11. The quorum for a meeting of the TAFE Commission Board is 7 members.

SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE TAFE COMMISSION BOARD—*continued*

**Presiding member**

12. (1) The Chairperson of the TAFE Commission Board or, in the absence of the Chairperson, the Deputy Chairperson (or, in the absence of both, another member elected to chair the meeting by the members present) is to preside at a meeting of the TAFE Commission Board.

(2) The person presiding at any meeting of the TAFE Commission Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

13. A decision supported by a majority of the votes cast at a meeting of the TAFE Commission Board at which a quorum is present is the decision of the TAFE Commission Board.

**Transaction of business outside meetings or by telephone etc.**

14. (1) The TAFE Commission Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the TAFE Commission Board for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the TAFE Commission Board.

(2) The TAFE Commission Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

(a) the approval of a resolution under subclause (1); or

(b) a meeting held in accordance with subclause (2),

the Chairperson and each member have the same voting rights they have at an ordinary meeting of the TAFE Commission Board.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the TAFE Commission Board.

**SCHEDULE 1—PROVISIONS RELATING TO MEMBERS AND  
PROCEDURE OF THE TAFE COMMISSION BOARD—*continued***

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**Committees of the TAFE Commission Board**

15. (1) The TAFE Commission Board may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the TAFE Commission Board.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the TAFE Commission Board or (subject to any determination of the TAFE Commission Board) by the committee.

**First meeting**

16. The Minister may call the first meeting of the TAFE Commission Board in such manner as the Minister thinks fit.

**SCHEDULE 2—REPEALS**

(Sec. 37)

**PART 1—ACTS**

Technical and Further Education Act 1974 No. 72

Technical and Further Education (Amendment) Act 1976 No. 57

**PART 2—STATUTORY INSTRUMENTS**

Technical and Further Education Regulation 1975

Technical and Further Education Teaching Service Regulation 1981

**SCHEDULE 3—AMENDMENT OF ACTS**

(Sec. 38)

**Annual Reports (Departments) Act 1985 No. 156:**

**Section 3 (Definitions):**

From the definition of "financial year":

- (a) Omit "or the Department of Technical and Further Education".
- (b) Omit "and the Department of Technical and Further Education".
- (c) Omit "each Department" wherever occurring, insert instead "the Department".

**Anti-Discrimination Act 1977 No. 48:**

(1) **Section 4 (Definitions):**

From paragraph (a) of the definition of "private educational authority" in section 4 (1), omit "Technical and Further Education Act 1974", insert instead "Technical and Further Education Commission Act 1990".

(2) **Section 122B (Application of Pt. 9A—authorities):**

From section 122B (1) (a), omit "and, in relation to the Department of Technical and Further Education, the Technical and Further Education Teaching Service within the meaning of the Education Commission Act 1980".

(3) **Section 122D (Exercise of functions of authorities under Part 9A):**

From section 122D (a), omit "and, in relation to the Technical and Further Education Teaching Service within the meaning of the Education Commission Act 1980, the Director-General of Technical and Further Education".

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

**Community Justice Centres Act 1983 No. 127:**

**Schedule 1 (Constitution and procedure of Community Justice Centres Council):**

Omit clause 1 (2) (c), insert instead:

- (c) one shall be a member of the staff of the TAFE Commission nominated by the Minister for Further Education, Training and Employment;

**Education Reform Act 1990 No. 8:**

(1) **Section 95 (Higher School Certificate):**

From section 95 (1) (b) (iii), omit "a college within the meaning of the Technical and Further Education Act 1974", insert instead "a TAFE college within the meaning of the Technical and Further Education Commission Act 1990".

(2) **Section 100 (Constitution of the Board):**

Omit section 100 (2) (b), insert instead:

- (b) the Managing Director of the TAFE Commission or a nominee of that Managing Director; and

(3) **Section 102 (Functions of the Board):**

Omit section 102 (2) (h), insert instead:

- (h) to develop or endorse, in consultation with the TAFE Commission, syllabuses for courses of study that will enable school students to be granted credits by TAFE colleges within the meaning of the Technical and Further Education Commission Act 1990;

**Environmental Planning and Assessment Act 1979 No. 203:**

**Schedule 2 (Advisory Co-ordinating Committee):**

From paragraph (b) of clause 1, omit "The Department of Technical and Further Education", insert instead "The TAFE Commission".

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

**Factories, Shops and Industries Act 1962 No. 43:**

Section 111 (**Teachers of trade of hairdressing**):

From section 111 (b), omit "the Department of Technical and Further Education", insert instead "the TAFE Commission".

**Government and Related Employees Appeal Tribunal Act 1980 No. 39:**

Schedule 4 (**Employing Authorities**):

Insert, in alphabetical order:  
TAFE Commission.

**Industrial and Commercial Training Act 1989 No. 77:**

(1) Section 7 (**Constitution of the Council**):

From section 7 (2) (d), omit "the Department of Technical and Further Education", insert instead "the TAFE Commission".

(2) Section 16 (**Establishment of the Board**):

From section 16 (2) (b), omit "Director-General of Technical and Further Education", insert instead "Managing Director of the TAFE Commission".

**Motor Vehicle Repairs Act 1980 No. 71:**

Section 11 (**Council to promote standards and education**):

From section 11 (2) (d), omit "Technical and Further Education Act 1974.", insert instead "Technical and Further Education Commission Act 1990".

**Public Authorities (Financial Arrangements) Act 1987 No. 33:**

Schedule 1 (**Authorities**):

Insert, in alphabetical order:  
TAFE Commission

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

**Public Finance and Audit Act 1983 No. 152:**

(1) Section 4 (**Definitions**):

(a) From the definition of "authority" in section 4 (1), omit paragraph (b), insert instead:

(b) the School Education Teaching Service;

(b) From the definition of "Head of an authority" in section 4 (1), omit paragraph (b), insert instead:

(b) in relation to the School Education Teaching Service—the Director-General of School Education;

(c) From the definition of "officer of an authority" in section 4 (1), omit paragraph (b), insert instead:

(b) in relation to the School Education Teaching Service—an officer or temporary employee of that Service;

(2) Section 45E (**Nature of financial statements**):

From section 45E (5), omit "or the Department of Technical and Further Education".

(3) Schedule 3 (**Departments**):

Omit the matter relating to the Department of Technical and Further Education, insert instead:

TAFE Commission Managing Director  
of the Commission

**Public Sector Management Act 1988 No. 33:**

(1) Schedule 3 (**Declared Authorities**):

Insert, in alphabetical order:

TAFE Commission

SCHEDULE 3—AMENDMENT OF ACTS—*continued*

(2) Schedule 3A (**Chief Executive Positions**):

Insert in Part 3, in alphabetical order of public authorities:  
Managing Director of the TAFE Commission

**State Authorities Non-contributory Superannuation Act 1987 No. 212:**

Schedule 1 (**Employers**):

At the end of Part 1, insert:  
TAFE Commission

**State Authorities Superannuation Act 1987 No. 211:**

Schedule 1 (**Employers**):

At the end of Part 1, insert:  
TAFE Commission.

**Superannuation Act 1916 No. 28:**

Schedule 3 (**List of Employers**):

At the end of Part 1, insert:  
TAFE Commission

**Teacher Housing Authority Act 1975 No. 27:**

Section 4 (**Definitions**):

From the definition of "school", omit "college within the meaning of the Technical and Further Education Act 1974", insert instead "a TAFE college within the meaning of the Technical and Further Education Commission Act 1990".



SCHEDULE 3—AMENDMENT OF ACTS—*continued*

**Teaching Services Act 1980 No. 23:**

After section 2, insert:

**Act ceases to apply to TAFE**

2A The provisions of this Act relating to the Technical and Further Education Teaching Service and the Director-General of Technical and Further Education cease to have effect on the commencement of section 4 of the Technical and Further Education Commission Act 1990.

**Technical Education Trust Funds Act 1967 No. 95:**

Section 2 **(Definitions):**

- (a) From the definition of "educational establishment" in section 2, omit paragraph (a), insert instead:

(a) a college conducted by the TAFE Commission;

- (b) Section 3 **(Statutory trustees):**

From section 3 (2), omit "Director-General of the Department of Technical and Further Education", insert instead "Managing Director of the TAFE Commission".

**Transferred Officers Extended Leave Act 1961 No. 13**

Section 2 **(Definitions):**

From the definition of "State employer", omit paragraph (d) and "or" in paragraph (c).

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 39)

**PART 1—SAVINGS AND TRANSITIONAL REGULATIONS**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

**PART 2—GENERAL PROVISIONS CONSEQUENTIAL ON ENACTMENT OF THIS ACT**

**Abolition of the TAFE Authority and TAFE Teaching Service**

2. The Technical and Further Education Authority (within the Department of Further Education, Training and Employment) and the Technical and Further Education Teaching Service are abolished.

**Dissolution of Council of Technical and Further Education**

3. (1) The Council of Technical and Further Education is dissolved.

(2) A person who, immediately before the repeal of the Technical and Further Education Act 1974, held office as a member of that Council:

- (a) ceases to hold that office; and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

(3) On the dissolution of that Council, the assets, rights, liabilities and obligations of that Council become the assets, rights, liabilities and obligations of the TAFE Commission.

**Construction of certain references**

4. In any other Act, in any instrument made under any Act or in any document of any kind:

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

- (a) a reference to the Department of Technical and Further Education or the Department of Technical Education is to be read as a reference to the TAFE Commission; and
- (b) a reference to the Director-General of the Technical and Further Education Authority, Director-General of the Department of Technical and Further Education, the Director of Technical and Further Education or the Director of Technical Education is to be read as a reference to the Managing Director of the TAFE Commission; and
- (c) a reference to an officer or employee of the Technical and Further Education Teaching Service, the Technical and Further Education Authority, the Department of Technical and Further Education or the Department of Technical Education is to be read as a reference to a member of the staff of the TAFE Commission; and
- (d) a reference to the Council of Technical and Further Education is to be read as a reference to the TAFE Commission Board.

**Transfer of assets etc. to the TAFE Commission**

5. (1) The Minister may, by order in writing, direct that specified assets, rights and liabilities of the Crown that relate to the Technical and Further Education Authority be transferred to the TAFE Commission.

(2) On the commencement of the order, the following provisions have effect (subject to the order):

- (a) the assets so transferred vest in the TAFE Commission by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance;
- (b) the rights and liabilities so transferred become by virtue of this clause the rights and liabilities of the TAFE Commission;
- (c) all proceedings relating to those assets, rights and liabilities commenced before the transfer by or against the Crown and pending immediately before the transfer are to be taken to be proceedings pending by or against the TAFE Commission;
- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights and liabilities before the transfer by, to or

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

in respect of the Crown is (to the extent that that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the TAFE Commission.

- (3) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) No attornment to the TAFE Commission by a lessee from the Crown is required.

**Board of studies or advisory committees**

6. (1) A board of studies or advisory committee established under the Technical and Further Education Regulation 1975 is not abolished because of the repeal of that Regulation.

(2) Any such board or committee may (subject to any regulation under this Act or determination of the TAFE Commission) continue to operate in accordance with the relevant provisions of the Technical and Further Education Regulation 1975 in force immediately before the repeal of that Regulation.

**Saving of regulations relating to student discipline and appeals**

7. The provisions of Part 8 of the Technical and Further Education Regulation 1975, as in force immediately before the repeal of that Regulation, continue to have effect with respect to students of a TAFE college until the regulations under this Act otherwise provide.

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

**PART 3—PROVISIONS RELATING TO TRANSFER  
OF EXISTING STAFF**

**Existing staff of Department**

8. A person who, immediately before the repeal of the Technical and Further Education Act 1974, was employed in the Technical and Further Education Authority as a member of the Technical and Further Education Teaching Service or as a public servant is taken to be a member of the staff of the TAFE Commission employed under this Act.

**Continuation of existing conditions of employment**

9. (1) A person who becomes a member of the staff of the TAFE Commission under clause 8 is (until other provision is duly made under this or any other Act) to be employed in accordance with the relevant statutory provisions, awards, agreements and determinations that would have applied to the person if the person had not become a member of that staff and the Technical and Further Education Authority and the Technical and Further Education Teaching Service had not been abolished.

(2) The relevant statutory provisions are the provisions of the Teaching Service Act 1980, the Public Sector Management Act 1988 and the regulations under those Acts which relate to the employment of the persons concerned.

(3) Subclause (1) also applies to persons who become members of staff of the TAFE Commission within such period after the constitution of the TAFE Commission as the Minister determines. For the purposes of subclause (1), those persons are to be regarded as either former members of the Technical and Further Education Teaching Service or former public servants, as determined by the TAFE Commission.

(4) This clause is subject to the provisions of this Act and the regulations.

SCHEDULE 4—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*

**Eligibility of former public servants for appointment to Public Service**

10. (1) A member of the staff of the TAFE Commission who was a public servant employed in the Technical and Further Education Authority immediately before its abolition may apply for a position in the Public Service as if the member were an officer of the Public Service.

(2) Any such member who applies for such a position, or is appointed as an officer of the Public Service, is taken (for the purposes of the Public Sector Management Act 1988, the Government and Related Employees Appeal Tribunal Act 1980 and the Industrial Arbitration Act 1940 and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.

(3) This clause applies only to applications for positions in the Public Service made within 3 years after the abolition of the Technical and Further Education Authority.

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*[Minister's second reading speech made in—  
Legislative Assembly on 21 November 1990  
Legislative Council on 29 November 1990]*