

Passed by both Houses



New South Wales

Technical and Further Education Commission Amendment (Staff Employment) Bill 2011

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2011*



New South Wales

Technical and Further Education Commission Amendment (Staff Employment) Bill 2011

Act No , 2011

An Act to amend the *Technical and Further Education Commission Act 1990* with respect to the employment of staff; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

Clause 1 Technical and Further Education Commission Amendment (Staff
Employment) Bill 2011

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Technical and Further Education Commission Amendment (Staff Employment) Act 2011*.

2 Commencement

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

Schedule 1 Amendment of Technical and Further Education Commission Act 1990 No 118

[1] Section 3 Definitions

Omit the definition of *appropriate Division Head* (including the note) from section 3 (1).

[2] Section 3 (1), definition of “member of staff (or staff member)”

Omit the definition. Insert instead:

member of staff or *staff member* means a member of staff of the TAFE Commission employed under section 15.

[3] Section 5 Functions

Omit section 5 (3) and the note to the subsection.

[4] Sections 15–17

Omit section 17. Insert instead:

15 Employment of staff

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

16 Salary, conditions etc of staff

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

17 Regulations relating to staff

- (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 Commission is a party, and
 - (b) have effect despite any determination of the Commission under section 16.

[5] Section 19 Legal proceedings not to be brought

Omit section 19 (1), (2) and (4).

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Schedule 1 Amendment of Technical and Further Education Commission Act 1990
No 118

[6] Section 19 (3)

Omit “in the TAFE Commission Division of the Government Service”.
Insert instead “on the staff of the TAFE Commission”.

[7] Sections 20, 21, 21A (1)–(3), 21B (1) and (2) and 21C

Omit “appropriate Division Head” wherever occurring.
Insert instead “TAFE Commission”.

[8] Section 21 (b)

Omit “the Division Head” wherever occurring.
Insert instead “the TAFE Commission”.

[9] Section 21B Notification of serious offences committed by members of staff

Omit section 21B (3).

[10] Section 22 Extended or long service leave

Omit section 22 (4).

[11] Part 6A Management of conduct and performance

Omit the Part.

[12] Part 6B Termination of employment of prohibited persons

Omit the Part.

[13] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Technical and Further Education Commission Amendment (Staff
Employment) Act 2011*

[14] **Schedule 4, Part 5**

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Technical and Further Education
Commission Amendment (Staff
Employment) Act 2011**

13 Definitions

In this Part:

commencement date means the date on which section 15 was inserted by the *Technical and Further Education Commission Amendment (Staff Employment) Act 2011*.

existing staff member means:

- (a) a person who, immediately before the commencement date, was employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the TAFE Commission Division of the Government Service, or
- (b) a person who:
 - (i) immediately before the commencement date, was employed in the Department of Education and Communities, and
 - (ii) in the opinion of the Director-General of the Department given in writing, was so employed primarily to assist the TAFE Commission in the exercise of its functions, and
 - (iii) was not so employed under Part 3.1 of the *Public Sector Employment and Management Act 2002*.

transferred staff member means an existing staff member who is transferred to the employment of the TAFE Commission by operation of clause 14.

transitional period, in relation to a transferred staff member, means whichever is the shorter of the following periods:

- (a) the period of 12 months beginning on the commencement date,
- (b) the period beginning on the commencement date and ending immediately before the date on which an enterprise agreement (within the meaning of the *Fair Work Act 2009* of the Commonwealth) first takes effect in relation to the staff member.

14 Transfer of existing staff members to employ of TAFE Commission

On the commencement date, each existing staff member is transferred to the employment of the TAFE Commission.

15 Employment arrangements for transferred staff members

- (1) The TAFE Commission is to take such action as is available to it as an employer of a transferred staff member to ensure that the provisions of this clause are implemented.
- (2) During the transitional period, the employment of a transferred staff member with the TAFE Commission is to be on the same terms and conditions relating to the following matters as applied immediately before the commencement date to the person's employment as an existing staff member:
 - (a) hours of work,
 - (b) salary,
 - (c) shift, overtime and penalty rates,
 - (d) allowances,
 - (e) leave (other than extended leave or long service leave).
- (3) A transferred staff member:
 - (a) retains any rights to annual leave, extended or long service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment as an existing staff member, and
 - (b) is not entitled to receive any payment or other benefit merely because the member ceases to be in the employment from which the member was transferred, and
 - (c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.
- (4) Without limiting subclause (3), a transferred staff member is not, despite any other provision of this or any other Act, entitled to elect, because of that transfer, to be paid the money value of any extended or annual leave that the member accrued in the employment from which the member was transferred.

16 Jurisdiction of Industrial Relations Commission

- (1) On and from the commencement date, the Industrial Relations Commission has no jurisdiction to determine an industrial matter (within the meaning of the *Industrial Relations Act 1996*) relating to a member of staff if:

- (a) the *Fair Work Act 2009* of the Commonwealth has excluded the application of State industrial laws (within the meaning of section 26 of that Act) in relation to the matter, or
 - (b) the matter is an appeal to which Part 7 of Chapter 2 of the *Industrial Relations Act 1996* applies.
- (2) This clause does not affect the jurisdiction of the Industrial Relations Commission in relation to a matter that is the subject of an application under section 146B of the *Industrial Relations Act 1996*.

Schedule 2 Amendment of other Acts

2.1 Children and Young Persons (Care and Protection) Act 1998 No 157

Section 27A Alternative reporting arrangements

Omit paragraph (f) of the definition of *relevant agency* in section 27A (1).

Insert instead:

- (f) the TAFE Commission,

2.2 Commission for Children and Young People Act 1998 No 146

Section 33 Definitions

Omit paragraph (c) of the definition of *relevant agency* in section 33 (1).

Insert instead:

- (c) the TAFE Commission,

2.3 Public Sector Employment and Management Act 2002 No 43

Schedule 1 Divisions of the Government Service

Omit the matter relating to the TAFE Commission Division from Columns 1 and 2 of Part 2.

2.4 Teaching Service Act 1980 No 23

Section 8 Delegation of functions

Omit paragraph (c) of the definition of *authorised person* in section 8 (3).

Insert instead:

- (c) a member of staff of the TAFE Commission.