

# Technical and Further Education Commission Act 1990 No 118

[1990-118]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Technical and Further Education Commission Amendment \(Staff Employment\) Act 2011 No 53](#) (not commenced)

### Authorisation

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# Technical and Further Education Commission Act 1990 No 118



New South Wales

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.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**appropriate Division Head**, in relation to a member of staff, has the same meaning as in the *Public Sector Employment and Management Act 2002*.

**Note—**

At the time this definition was inserted by the *Education Legislation Amendment (Staff) Act 2006*, the appropriate Division Head for staff employed in the TAFE Commission Division of the Government Service was the Managing Director of the TAFE Commission. The functions of an appropriate Division Head under this Act may be delegated under section 4F of the *Public Sector Employment and Management Act 2002*.

**Managing Director** means the Managing Director of the TAFE Commission.

**member of staff** (or **staff member**) means a person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the TAFE Commission Division of the Government Service.

**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.

**TAFE establishment** means an institution providing technical and further education, being an institution established and maintained by the TAFE Commission.

**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.

(3) Notes included in this Act do not form part of this Act.

## **Part 2 Constitution of the Technical and Further Education Commission**

### **4 Constitution of the TAFE Commission**

- (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**

### **5 Functions**

- (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.
- (3) However, the TAFE Commission cannot employ any staff.

**Note—**

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the TAFE Commission to exercise its functions.

**6 Objectives**

- (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 establishments and other educational institutions.
- (2) Nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

**7 Miscellaneous functions**

- (1) Without limiting any other functions conferred or imposed on it, the TAFE Commission may:
  - (a) establish and maintain TAFE establishments, and
  - (b) provide courses of study at TAFE establishments 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 establishments, and
  - (f) impose penalties (including pecuniary penalties) for breaches of discipline by students of TAFE establishments, 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 establishment,
    - 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 courses of study and the conferring of educational awards or statements of attainment in connection with those courses—the provisions of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth, 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.
- (6) The TAFE Commission may exercise its functions under this Act within or outside the State, including outside Australia. The TAFE Commission is taken always to have had the powers conferred by this subsection.

## 8 Delegation of functions

- (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 staff or a public servant employed in the Department of Education and Training:
  - (a) a function under this Act, or any other law, of entering into agreements relating to an industrial matter,
  - (b) (Repealed)
  - (c) a function in proceedings concerning industrial awards.
- (4) In this section, **authorised person** means:
  - (a) a member of staff, or
    - (a1) a public servant employed in the Department of Education and Training, or
    - (b) a person of a class prescribed by the regulations or approved by the Minister.

## **Part 4 The Minister and TAFE Commission Board**

### **9 Ministerial control**

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

### **10 Corporate plans**

- (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.

### **11 TAFE Commission Board**

- (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 staff, or a senior public servant employed in the Department of Education and Training, for the time being nominated by the Minister,

- (c), (d) (Repealed)
  - (e) a person for the time being nominated by the Minister for School Education and Youth Affairs,
  - (f) 10 members appointed by the Minister.
- (3) The senior member of staff, or the senior public servant employed in the Department of Education and Training, 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.

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

- (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) (Repealed)

## **Part 5 The Managing Director of the TAFE Commission**

### **13 Managing Director**

- (1) The Governor may appoint a Managing Director of the TAFE Commission.
- (2) The employment of the Managing Director is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 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.

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

- (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 Provisions relating to members of staff**

### **15, 16 (Repealed)**

### **17 Regulations relating to members of staff**

- (1) The regulations may make provision for or with respect to members of staff, including the conditions of employment of any such staff.

- (2) Any such regulations relating to the conditions of employment of members of staff:
  - (a) have effect subject to any State industrial instrument relating to that staff, and
  - (b) have effect despite any determination under section 4E (1) of the *Public Sector Employment and Management Act 2002*, and
  - (c) are subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

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

- (1) The appointment of members of staff and any promotions for such 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.

### **18A (Repealed)**

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

- (1) The appointment or failure to appoint a person to a vacant position in the TAFE Commission Division of the Government Service, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the *Industrial Relations Act 1996* (except Part 7 of Chapter 2 of that Act).
- (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 in the TAFE Commission Division of the Government Service, 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 Part 7 of Chapter 2 of the *Industrial Relations Act 1996*.

### **20 Incapable member of staff may be retired**

If:

- (a) a member of staff 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 appropriate Division Head may cause the member to be retired.

## **21 Members of staff to report bankruptcy etc**

If a member of staff becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the member's creditors, the member must:

- (a) immediately give to the appropriate Division Head notice of the bankruptcy, composition, arrangement or assignment, and
- (b) within such period as the appropriate Division Head specifies, provide the Division Head with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the Division Head requires.

### **21A Members of staff not to undertake other paid work without permission**

- (1) A member of staff is not to undertake any other paid work without the permission of the appropriate Division Head.
- (2) The appropriate Division Head may prepare guidelines with respect to the type of work that constitutes paid work for the purposes of this section.
- (3) Any such guidelines must be made available to members of staff in such manner as the appropriate Division Head thinks appropriate.
- (4) This section does not apply to a member of staff employed on a casual basis.

### **21B Notification of serious offences committed by members of staff**

- (1) A member of staff who:
  - (a) is charged with, or who is found guilty of, an offence that is punishable by imprisonment for 12 months or more, or
  - (b) is charged with, or who is found guilty elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable,

must immediately report that fact to the appropriate Division Head.

- (2) On becoming aware of the fact that a member of staff has been charged with, or has been found guilty of, an offence referred to in subsection (1), the person in charge of the TAFE establishment at which the member is employed must also immediately report that fact to the appropriate Division Head.

- (3) The requirement to report to the appropriate Division Head under this section does not apply if the matter has already been reported under section 22U.

### **21C List of persons not to be employed as a member of staff**

The appropriate Division Head may prepare and maintain a list of persons who the appropriate Division Head determines are not to be employed as members of staff.

### **22 Extended or long service leave**

- (1) This section applies to members of staff who are employed on a full-time basis.
- (2) The staff 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 3 to the *Public Sector Employment and Management Act 2002* applies (with any necessary modifications) to those members of staff.
- (4) However, a member of staff is not entitled to any leave under clause 3 of that Schedule if the member's employment is terminated by operation of Part 6B.

## **Part 6A Management of conduct and performance**

### **Division 1 Preliminary**

#### **22A Application of Part**

This Part does not apply to those members of staff who are employed on a temporary or casual basis.

#### **22B Objects of Part**

The objects of this Part are as follows:

- (a) to maintain appropriate standards of conduct and work-related performance for members of staff,
- (b) to protect and enhance the integrity and reputation of the TAFE Commission and staff members,
- (c) to ensure that the public interest is protected.

#### **22C Protection of children to be paramount consideration**

- (1) In such cases where the conduct of a member of staff relates to or involves children, the protection of children is to be the paramount consideration:
  - (a) in taking any action with respect to a member of staff under this Part, and
  - (b) in dealing with any appeal against, or determining any claim arising from or in



relation to, that action.

- (2) This section has effect despite anything in the *Industrial Relations Act 1996* or any other Act or law.

## 22D Definitions

- (1) In this Part:

**disciplinary action**, in relation to a member of staff, means any one or more of the following:

- (a) dismissal from the Government Service,
- (b) directing the member of staff to resign, or to be allowed to resign, from the Government Service within a specified time,
- (c) except in the case of a senior executive officer—reduction of the member of staff's salary or demotion to a lower position in the Government Service,
- (d) the imposition of a fine,
- (e) a caution or reprimand.

**misconduct**—see section 22E.

**procedural guidelines** means the guidelines in force from time to time under section 22F.

**remedial action**, in relation to a member of staff, means any one or more of the following:

- (a) counselling,
- (b) training and development,
- (c) monitoring the staff member's conduct or performance,
- (d) implementing a plan addressing unsatisfactory performance,
- (e) the issuing of a warning to the staff member that certain conduct is unacceptable or that the staff member's performance is not satisfactory,
- (f) transferring the staff member to another position in the Government Service that does not involve a reduction of salary or demotion to a lower position,
- (g) any other action of a similar nature.

**senior executive officer** has the same meaning as in the *Public Sector Employment and Management Act 2002*.

- (2) In this Part, a reference to an allegation that a member of staff may have engaged in misconduct includes a reference to the appropriate Division Head being made aware, or becoming aware, by any means that the staff member may have engaged in misconduct.

### **22E Meaning of “misconduct”**

- (1) For the purposes of this Part, **misconduct** includes, but is not limited to, any of the following:
- (a) a contravention of any provision of this Act or the regulations,
  - (b) engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action,
  - (c) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act,
  - (d) taking any action against a person that is substantially in reprisal for an internal disclosure made by that person.
- (2) For the purposes of this Part, the subject-matter of an allegation of misconduct may relate to an incident or conduct that happened:
- (a) while the member of staff concerned was not on duty, or
  - (b) before the staff member was appointed to his or her position.
- (3) In this section, **internal disclosure** means a disclosure made in good faith by a person regarding the alleged misconduct of another person.

### **22F Issuing of procedural guidelines**

- (1) The appropriate Division Head may, from time to time, issue guidelines for the purposes of:
- (a) dealing with allegations of misconduct against members of staff as a disciplinary matter, and
  - (b) the taking of disciplinary action with respect to members of staff under this Part, including disciplinary action in relation to unsatisfactory performance, and
  - (c) any other matter referred to in this Part.
- (2) The procedural guidelines must be consistent with the rules of procedural fairness.
- (3) Without limiting subsection (2), the procedural guidelines are to ensure that:
- (a) a member of staff to whom an allegation of misconduct relates:

- (i) is advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken with respect to the staff member, and
    - (ii) is given an opportunity to respond to the allegation, and
  - (b) a member of staff against whom the appropriate Division Head is proposing to take disciplinary action under Division 3 is given a reasonable opportunity to make a submission in relation to that proposed action.
- (4) The appropriate Division Head may from time to time amend, revoke or replace the procedural guidelines.
  - (5) The procedural guidelines as in force from time to time must be made publicly available in such manner as the appropriate Division Head thinks appropriate.
  - (6) The regulations may make provision for or with respect to any matter for which the procedural guidelines can provide. In the event of any inconsistency between a provision contained in the procedural guidelines and a provision in the regulations, the regulations prevail.
  - (7) The procedural guidelines may apply, adopt or incorporate the procedural guidelines issued under Part 4A of the *Teaching Service Act 1980* with such modifications as are necessary.

## **22G Requirements relating to disciplinary matters**

- (1) A member of staff is not entitled to cross-examine any person in relation to an allegation of misconduct or the taking of disciplinary action against the staff member.
- (2) A hearing involving the legal representation of parties and the calling of witnesses is not to be held in relation to an allegation of misconduct or the taking of disciplinary action against the member of staff.
- (3) Nothing in subsection (1) or (2) prevents the appropriate Division Head from:
  - (a) conducting investigations into an allegation of misconduct, or
  - (b) asking a member of staff a question in relation to an allegation of misconduct, or
  - (c) conducting interviews with the member of staff to whom the allegation relates or with any other person in connection with the matter concerned, or
  - (d) taking signed statements from the member of staff or any such person.

## **Division 2 Dealing with misconduct**

### **22H Dealing with an allegation of misconduct**

- (1) If an allegation is made to the appropriate Division Head that a member of staff may

have engaged in any misconduct, the appropriate Division Head may do either or both of the following:

- (a) deal with the allegation as a disciplinary matter in accordance with the procedural guidelines,
  - (b) take remedial action with respect to the staff member.
- (2) After dealing with an allegation of misconduct as a disciplinary matter in accordance with this Part and the procedural guidelines, the appropriate Division Head may, if the Division Head is of the opinion that the member of staff has engaged in any misconduct, decide to take disciplinary action with respect to the staff member.
- (3) Before any disciplinary action is taken with respect to a member of staff under this section, the staff member must be given an opportunity to make a submission in relation to the disciplinary action that the appropriate Division Head is considering taking.
- (4) Even though the appropriate Division Head decides to deal with an allegation of misconduct as a disciplinary matter in accordance with the procedural guidelines, the Division Head may, at any stage of the process:
- (a) decide to take remedial action with respect to the member of staff concerned as well as dealing with the allegation as a disciplinary matter, or
  - (b) decide to take remedial action with respect to the staff member instead of dealing with the allegation as a disciplinary matter, or
  - (c) decide to dismiss the allegation, or decide that no further action is to be taken in relation to the matter.
- (5) A decision under this section by the appropriate Division Head to take remedial action with respect to a member of staff does not, if it appears to the Division Head that the member of staff may have engaged in any misconduct while the remedial action is being taken, prevent the Division Head from dealing with the alleged misconduct as a disciplinary matter under this section.

### **Division 3 Performance management for members of staff**

#### **22I Performance reviews for members of staff**

- (1) A staff member's performance must be reviewed periodically by the appropriate Division Head.
- (2) The review of a staff member's performance is to have regard to any performance criteria determined by the appropriate Division Head and such other matters as the Division Head considers relevant.

## **22J Dealing with unsatisfactory performance**

- (1) If the appropriate Division Head is of the opinion that a member of staff is not performing the staff member's duties in a satisfactory manner, the Division Head may decide to do either or both of the following:
  - (a) take remedial action with respect to the staff member,
  - (b) take disciplinary action with respect to the staff member.
- (2) To avoid any doubt, remedial action with respect to a member of staff is not required to be taken before disciplinary action is taken under this section with respect to the staff member.
- (3) However, the appropriate Division Head may take disciplinary action with respect to a member of staff under this section only if:
  - (a) the staff member has been placed on a performance improvement plan in accordance with the procedural guidelines and been given a reasonable opportunity to improve his or her performance, and
  - (b) the Division Head is of the opinion that the staff member's performance is still unsatisfactory.

## **Division 4 Miscellaneous provisions**

### **22K Disciplinary action may be taken if staff member is convicted of serious offence**

- (1) If a member of staff is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more, or is convicted elsewhere than in New South Wales of an offence that, if it were committed in New South Wales, would be an offence so punishable, the appropriate Division Head may decide to do either or both of the following:
  - (a) take disciplinary action with respect to the staff member,
  - (b) take remedial action with respect to the staff member.
- (2) Before any disciplinary action is taken with respect to a member of staff under this section, the staff member must be given an opportunity to make a submission in relation to the disciplinary action that the appropriate Division Head is considering taking.
- (3) A reference in subsection (1) to the conviction of a member of staff for an offence punishable by imprisonment for 12 months or more includes a reference to the staff member having been found guilty by a court of such an offence but where no conviction is recorded.

### **22L Suspension of staff members from duty pending decision in relation to misconduct or**

### **criminal conviction**

- (1) If an allegation that a member of staff has engaged in misconduct is being dealt with as a disciplinary matter in accordance with the procedural guidelines, the appropriate Division Head may suspend the staff member from duty until the allegation of misconduct has been dealt with.
- (2) If a member of staff is charged with:
  - (a) an offence referred to in section 22K, or
  - (b) an offence that would, on conviction, result in the member of staff being a prohibited person as referred to in Part 6B,the appropriate Division Head may suspend the staff member from duty until the staff member is notified by the Division Head that the suspension has been lifted.
- (3) Any salary payable to a person as a member of staff while the person is suspended from duty under this section is (if the appropriate Division Head so directs) to be withheld.
- (4) The salary withheld under subsection (3) is forfeited to the State unless the appropriate Division Head otherwise directs or that salary was due to the person in respect of a period before the suspension was imposed.

### **22M Implementation of decisions under this Part**

A decision of the appropriate Division Head to take disciplinary action or remedial action under this Part with respect to a member of staff may be carried into effect at any time.

### **22N Effect of dismissal of senior executive officers**

If a senior executive officer is dismissed from the Government Service under this Part:

- (a) the term for which the staff member was appointed is to be regarded as having come to an end, and
- (b) no compensation is payable in respect of the dismissal.

### **22O Provisions relating to certain forms of disciplinary action**

- (1) Any appointment required as the result of the taking of disciplinary action comprising demotion to a lower position in a Division of the Government Service is to be made by the Division Head for that Division.
- (2) If a fine is imposed under this Part on a member of staff, the person responsible for paying the staff member's salary is, on receiving notice of the imposition of the fine, to deduct the amount of the fine from the salary payable (including any termination payment) to the staff member in such manner as the appropriate Division Head

directs.

## **22P Staff members retiring or resigning before disciplinary action is taken**

- (1) An allegation that a member of staff has engaged in misconduct may be dealt with under this Part, and disciplinary action may be taken with respect to the member of staff, even though the staff member has retired or resigned.
- (2) The taking of disciplinary action (other than a fine) with respect to the former staff member does not affect the former staff member's retirement or resignation or the benefits, rights and liabilities arising from the retirement or resignation.
- (3) A fine imposed under any such disciplinary action may be recovered from the former staff member as a debt due to the Crown in any court of competent jurisdiction, or out of any money payable to or in respect of the former staff member by the Crown, or both.
- (4) A reference in this section to the resignation of a member of staff is a reference to a resignation that has been accepted by the appropriate Division Head.

## **22Q Staff member whose address is unknown**

If the address for the time being of a member of staff is unknown to the appropriate Division Head, any notice required to be given to the member under this Part may be posted to the address of the member last known to the Division Head.

## **Part 6B Termination of employment of prohibited persons**

### **22R Definitions**

In this Part:

**child-related employment** means child-related employment to which Part 7 of the [Commission for Children and Young People Act 1998](#) applies.

**Commission** means the Commission for Children and Young People.

**prohibited person** has the same meaning as in Division 2 of Part 7 of the [Commission for Children and Young People Act 1998](#).

#### **Note—**

A "prohibited person" is a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence (as defined in section 33B of the [Commission for Children and Young People Act 1998](#)) or who is a registrable person under the [Child Protection \(Offenders Registration\) Act 2000](#). It is an offence under the 1998 Act for a person who becomes a prohibited person to enter or remain in child-related employment (such as teaching) and it is also an offence for an employer to employ a prohibited person in child-related employment.

## **22S Operation of this Part**

- (1) This Part has effect despite any other provision of this Act or the provisions of any other Act or law (including the *Industrial Relations Act 1996*). Accordingly, a provision of this Part prevails to the extent of any inconsistency between it and any other provision of this Act or of any other Act or law.
- (2) Without limiting subsection (1), this Part operates to terminate the employment of a prohibited person without any disciplinary action having been taken in respect of the person under Part 6A or any other law.

## **22T Termination of employment of prohibited persons**

- (1) A member of staff who is or becomes a prohibited person and who is employed in child-related employment at a TAFE establishment is, by operation of this section, dismissed from the Government Service.
- (2) The dismissal takes effect:
  - (a) if the person becomes a prohibited person after being appointed as a member of staff—when the person becomes such a prohibited person, or
  - (b) if the person was a prohibited person immediately before the commencement of this section—on the commencement of this section, or
  - (c) if the person became a prohibited person after the commencement of this section and before being appointed as a member of staff—when the appropriate Division Head becomes aware that the person is such a prohibited person.
- (3) The dismissal takes effect immediately without any right to a hearing or any requirement to comply with the rules of procedural fairness.
- (4) A reference in this section to a prohibited person who is employed in child-related employment at a TAFE establishment includes a reference to a prohibited person whose substantive position as a member of staff involves child-related employment but who is, for the time being, performing other duties that do not involve child-related employment.
- (5) The regulations may make provision for or with respect to the entitlements of a person whose employment is terminated by operation of this section and who has received any payment in respect of a leave, superannuation or other employment-related entitlement in respect of a period following the date of the termination.
- (6) Any regulation made under subsection (5) has effect despite any other Act or law.

## **22U Offences and prohibited person status to be notified to appropriate Division Head**

- (1) A member of staff who:



- (a) is charged with a serious sex offence, the murder of a child or a child-related personal violence offence, or
  - (b) who becomes a prohibited person,
- must immediately report that fact to the appropriate Division Head.
- (2) On becoming aware of the fact that a member of staff has been charged with an offence referred to in subsection (1), or is a prohibited person, the person in charge of the TAFE establishment at which the member is employed must also immediately report that fact to the appropriate Division Head.
  - (3) The requirement to report to the appropriate Division Head under this section does not apply if the matter has already been reported under section 21B.
  - (4) In this section, **child-related personal violence offence** and **serious sex offence** have the same meanings as in Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*.

#### **22V Review of prohibited person status**

- (1) If a review application is made by a prohibited person under section 33H or 33I of the *Commission for Children and Young People Act 1998*, the Commission or relevant tribunal to which the application is made is to notify the appropriate Division Head of the application if it appears to the Commission or relevant tribunal that the prohibited person is a member of staff or former member of staff.
- (2) The appropriate Division Head is entitled:
  - (a) to appear and be represented at any proceedings arising out of an application under section 33I of the *Commission for Children and Young People Act 1998*, and
  - (b) in the case of an application under section 33H of the *Commission for Children and Young People Act 1998*—to make written submissions to the Commission.

#### **22W Effect of person ceasing to be prohibited person**

- (1) This section applies to a person who is dismissed under section 22T and who subsequently ceases to be a prohibited person.

**Note—**

A person ceases to be a prohibited person in relation to an offence if an order is made under the *Commission for Children and Young People Act 1998* that the relevant provisions of that Act do not apply in respect of the offence or if the relevant conviction is overturned on appeal.

- (2) If the person ceases to be a prohibited person because the conviction for the offence in respect of which the person is a prohibited person is overturned by a court on appeal, the person is entitled to be reinstated to, or re-employed in, a position in the TAFE Commission Division of the Government Service that is similar to the position

that the person held when the person's employment was terminated under section 22T.

(3) If:

(a) the person ceases to be a prohibited person because of an order under Subdivision 2 of Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*, and

(b) a period of not more than 12 months has elapsed since the date on which the person's employment was terminated under section 22T,

the person is entitled to be reinstated to, or re-employed in, a position in the TAFE Commission Division of the Government Service that is similar to the position that the person held when his or her employment was terminated.

(4) A person, on being reinstated or re-employed under this section, is taken:

(a) to have never been dismissed from the Government Service, and

(b) to have been on leave without pay during the period between dismissal and reinstatement or re-employment.

(5) The regulations may make provision for or with respect to the entitlements of a person who is reinstated or re-employed under this section after the person's employment is terminated by operation of this Part and who has received any payment in respect of a leave, superannuation or other employment-related entitlement as a result of the termination.

(6) Any regulation made under subsection (5) has effect despite any other Act or law.

(7) For the purposes of this section, a person does not cease to be a prohibited person if a stay of the operation of the prohibition is granted under section 33K of the *Commission for Children and Young People Act 1998*.

#### **22X Disciplinary action may be taken against person who ceases to be prohibited person**

Nothing in this Part prevents a person who ceases to be a prohibited person, and who is reinstated or re-employed under this Part, from being dealt with under any other provision of this Act in relation to any matter related to the reasons why the person was a prohibited person.

#### **22Y Protection of persons relating to this Part**

Anything done or omitted by the appropriate Division Head or any other person in good faith and with reasonable care for the purposes of this Part does not subject the Division Head or other person to any action, liability, claim or demand.

## **22Z No compensation or other industrial remedies**

The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order the reinstatement or re-employment of a person contrary to a termination of employment by this Part or order the payment of damages or compensation (on any ground) for any such termination or other related matter done or omitted in accordance with this Part.

### **22ZA Protection for exercise of functions in connection with this Part**

- (1) This section applies to a function exercised by the appropriate Division Head, or a person authorised by the appropriate Division Head, in connection with the termination of employment of a person, or the reinstatement or re-employment of a person, under this Part (a **protected function**).
- (2) Without limiting the functions that are protected functions under this Part, a decision by the appropriate Division Head not to accept the resignation of a person or not to permit the retirement of a person is a protected function.
- (3) Except as provided by this section, the exercise by a person of a protected function may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
  - (b) restrained, removed or otherwise affected by any proceedings.
- (4) Without limiting subsection (3):
  - (a) that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by any such person, with the provisions of this Part or the rules of procedural fairness, and
  - (b) the exercise of a protected function is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (5) Accordingly (and except as provided by this section), no court of law or administrative review body has jurisdiction or power to consider any question involving compliance or non-compliance, by any such person, with those provisions or those rules so far as they apply to the exercise of any protected function.
- (6) However, nothing in this section prevents any person who is expressly authorised or permitted by a provision of the *Commission for Children and Young People Act 1998* to bring proceedings from bringing such proceedings or being granted such relief in those proceedings as may be authorised or permitted by this Part.
- (7) In this section:

**exercise** of functions includes:

- (a) the purported exercise of functions, and
- (b) the non-exercise or improper exercise of functions, and
- (c) the proposed, apprehended or threatened exercise of functions.

**proceedings** includes:

- (a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
- (b) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*.

## **22ZB Transitional provision**

A reference in this Part to a provision of the *Commission for Children and Young People Act 1998* is, until such time as Schedule 1 [31] to the *Commission for Children and Young People Amendment Act 2005* commences, to be construed as a reference to the corresponding provision of the *Child Protection (Prohibited Employment) Act 1998*.

**Note—**

The *Commission for Children and Young People Amendment Act 2005* repeals the *Child Protection (Prohibited Employment) Act 1998* and re-enacts its provisions in the *Commission for Children and Young People Act 1998*.

## **Part 7 Provisions relating to property**

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

- (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.

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

- (1) If any property used wholly or mainly for the conduct of a TAFE establishment 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.

## **25 (Repealed)**

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

- (1) If land on which a TAFE establishment 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.

## **27 Acquisition and disposal of land by Minister**

- (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 (including an interest in land) by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

- (1A) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (1B) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.
- (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.

## **28 (Repealed)**

## **29 Delegation**

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 Investment**

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.

### **31 Financial year**

- (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*.

### **32 Personal liability of members etc**

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.

### **33 Seal of the TAFE Commission**

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 staff 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.

### **34 Service of documents on the TAFE Commission**

- (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.

### **35 Recovery of charges etc by the TAFE Commission**

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.

### **36 Regulations**

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.

### **37 Repeals**

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

### **38 (Repealed)**

### **39 Savings, transitional and other provisions**

Schedule 4 has effect.

## **Schedule 1 Provisions relating to members and procedure of the TAFE Commission Board**

(Section 11)

### **1 Definitions**

In this Schedule:

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

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

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

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

(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.

### **3 Deputies**

- (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.
- (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.

### **4 Terms of office of appointed members**

- (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 staff 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.

### **5 Remuneration**

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.

## **6 Vacancy in office of appointed member**

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

- (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 Chapter 5 of the *Public Sector Employment and Management Act 2002*, 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 that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, 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.

## **7 Disclosure of pecuniary interests**

(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,

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

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

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

## **9 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* 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.

## **10 General procedure**

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.

## **11 Quorum**

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

## **12 Presiding member**

- (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.

## **13 Voting**

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.

## **14 Transaction of business outside meetings or by telephone etc**

- (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.

(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.

## **15 Committees of the TAFE Commission Board**

- (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.

## **16 First meeting**

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

## **Schedule 2 Repeals**

(Section 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 (Repealed)**

## Schedule 4 Savings, transitional and other provisions

(Section 39)

### Part 1 Savings and transitional regulations

#### 1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Technical and Further Education Commission Amendment (Staff) Act 2005*

*Education Legislation Amendment (Staff) Act 2006*, but only to the extent that it amends this Act

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

#### 2 Abolition of the TAFE Authority and TAFE Teaching Service

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.

#### 3 Dissolution of Council of Technical and Further Education

- (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.

#### **4 Construction of certain references**

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

- (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.

#### **5 Transfer of assets etc to the TAFE Commission**

- (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 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.

## **6 Board of studies or advisory committees**

- (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.

## **7 (Repealed)**

## **Part 3 Provisions relating to transfer of existing staff**

### **8 Existing staff of Department**

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.

### **9 Continuation of existing conditions of employment**

- (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 Services 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.

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

- (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 Relations Act 1996* 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.

### **Part 4 Provisions consequent on enactment of *Education Legislation Amendment (Staff) Act 2006***

#### **11 Prior conduct**

Part 6A of this Act extends to conduct occurring before the commencement of that Part.

#### **12 Existing disciplinary matters**

(1) Any breach of discipline by a member of staff to whom Part 6A applies that was, immediately before the commencement of that Part, being dealt with under any disciplinary determination that applied to that member, is to continue to be dealt with as if that Part had not been enacted.

(2) In this clause:

***disciplinary determination*** means a determination made under section 16 of this Act (as in force before its repeal by the *Public Sector Employment Legislation Amendment Act 2006*) in relation to the discipline of members of staff and continued by the operation of clause 19 of Schedule 4 to the *Public Sector Employment and Management Act 2002*.