

# Technical and Further Education Commission Act 1990 No 118

[1990-118]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#), Sch 4.103 (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:

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

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

**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) (Repealed)

### **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 person employed in the Department of Industry:
  - (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 person employed in the Department of Industry, 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 Public Service senior executive employed in the Department of Industry, for the time being nominated by the Minister,
  - (c), (d) (Repealed)
  - (e) a person for the time being nominated by the Minister for Education,
  - (f) 10 members appointed by the Minister.
- (3) The senior member of staff, or the Public Service senior executive employed in the Department of Industry, 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) Schedule 1A contains provisions relating to the Managing Director.
- (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 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.

#### **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**

- (1), (2) (Repealed)
- (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) (Repealed)

**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 TAFE Commission 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 TAFE Commission notice of the bankruptcy, composition, arrangement or assignment, and
- (b) within such period as the TAFE Commission specifies, provide the TAFE Commission with such further information with respect to the cause of the bankruptcy or of the making of the composition, arrangement or assignment as the TAFE Commission 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 TAFE Commission.
- (2) The TAFE Commission 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 TAFE Commission 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 TAFE Commission.
- (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 TAFE Commission.
- (3) (Repealed)

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

The TAFE Commission may prepare and maintain a list of persons who the TAFE Commission 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 as Public Service employees under the [Government Sector Employment Act 2013](#).
- (3), (4) (Repealed)

**Parts 6A, 6B**

**22A-22ZB (Repealed)**

## **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 Land Management Act 2016* 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) if the TAFE Commission is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the TAFE Commission is permitted to invest money under that Part, or
- (b) if the TAFE Commission is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*:
  - (i) in any way authorised for the time being for the investment of trust funds, and
  - (ii) in any other way 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
  - (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) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to 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 1A Provisions relating to Managing Director**

(Section 13 (2))

### **1 Term of office**

The Managing Director holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **2 Full-time office**

The office of Managing Director is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

### **3 Employment and remuneration**

- (1) The employment of the Managing Director is (subject to this Schedule) to be governed by a contract of employment between the Managing Director and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Managing Director (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive,
  - (d) provisions relating to the termination of employment of an executive.

### **4 Vacancy in office**

- (1) The office of Managing Director becomes vacant if the holder:
  - (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) 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

(e) becomes a mentally incapacitated person, or

(f) 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, or

(g) is removed from office under clause 3.

(2) If the office of Managing Director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **5 Managing Director not Public Service employee**

The office of Managing Director is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

## **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

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

- (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*.

## **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*.