

TASMANIA

**TASTAFE (SKILLS AND TRAINING BUSINESS)
BILL 2021**

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TASTAFE (SKILLS AND TRAINING BUSINESS) BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
9 November 2021

*(Brought in by the Minister for Skills, Training and Workforce
Growth, the Honourable Sarah Jane Courtney)*

A BILL FOR

An Act to continue TasTAFE as an organisation to provide vocational education and training that benefits the Tasmanian community by contributing to the Tasmanian economy and providing skilled workers for the Tasmanian workforce

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *TasTAFE (Skills and Training Business) Act 2021*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act –

accounting standards means the accounting standards, and other requirements, issued by the Australian Accounting Standards Board continued in existence under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

annual report, in relation to a financial year, means the annual report of TasTAFE prepared under section 30 in respect of the financial year;

Australian Qualifications Framework has the same meaning as in the *Training and Workforce Development Act 2013*;

by-laws means the by-laws made under section 32 and in force;

child safe code of conduct means the code of conduct prepared under section 20 and in force;

corporate plan means the corporate plan of TasTAFE approved under section 19(4)(a) and in force;

Ministerial direction means a direction of the Minister in force under section 18;

regulations means the regulations made under this Act;

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statement of expectations means a statement of expectations provided by the Minister under section 17 and in force;

TasTAFE means TasTAFE as continued under section 4(1);

TasTAFE Board means the board of directors appointed by the Minister under section 6(1);

TasTAFE CEO means the person appointed as chief executive officer of TasTAFE under section 10;

TasTAFE director includes –

- (a) a person appointed as a director on the TasTAFE Board under section 6; and
- (b) a person appointed under section 8(1) to act as a TasTAFE director;

TasTAFE employee means a person appointed under section 11;

TasTAFE student means a person who is undertaking vocational education and training, or another course of education and training, with TasTAFE;

vocational education and training means the vocational education and training, and attainment of associated qualifications or statements of attainment, under levels 1,

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2, 3, 4, 5 and 6 of the Australian
Qualifications Framework.

PART 2 – TASTAFE

Division 1 – TasTAFE

4. TasTAFE continued

- (1) The organisation continued as TasTAFE under section 56(2) of the *Training and Workforce Development Act 2013* is, on the commencement of this Act, continued as TasTAFE.
- (2) TasTAFE, as continued under subsection (1) –
 - (a) is a body corporate with perpetual succession; and
 - (b) may have a seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is an instrumentality of the Crown.
- (3) All or any part of TasTAFE may use, and operate under, a trading name that is approved by the Minister.

5. Functions and powers of TasTAFE

- (1) In this section –

educational provider means a person, organisation or institution providing vocational education and training or other education and training.

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- (2) TasTAFE has the following functions:
- (a) to provide vocational education and training, to a high standard, that is responsive to the needs of employers, students of TasTAFE and the community;
 - (b) to provide foundation skills training to persons that, when successfully completed or completed in conjunction with other training, may lead to those persons obtaining a qualification that enables the person to participate in the workforce or in further education and training;
 - (c) to provide vocational education and training in Tasmania, in accordance with the statement of expectations, for members of communities including but not limited to –
 - (i) rural and isolated communities; and
 - (ii) other communities where other providers of vocational education and training cannot, or are not, meeting demand effectively;
 - (d) to collaborate with industry, employers and other educational providers on the provision of, and the development of models or pathways for, vocational education and training;

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- (e) to advise the Minister on significant developments relating to the provision of vocational education and training by TasTAFE;
 - (f) such other functions as are imposed on TasTAFE by this or any other Act.
- (3) TasTAFE has the following powers, subject to this Act:
- (a) the power to do all things necessary or convenient –
 - (i) to provide vocational education and training, or other education or training, to enable persons to acquire qualifications and participate in the workforce or in further education and training; or
 - (ii) to undertake commercial activities incidental to the provision of vocational education and training or other education or training; or
 - (iii) to undertake research incidental to the provision of vocational education and training or other education or training; or
 - (iv) to offer other services that assist employers to better utilise the existing skills of the employees of the employer; or

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- (v) to perform its functions;
- (b) to hire out property and assets owned, or operated, by TasTAFE;
- (c) to lease, sell, otherwise dispose of, or buy or otherwise acquire, property other than real property;
- (d) to enter into contracts and to provide services, including consultancy services, to other persons in accordance with such contracts;
- (e) with the written approval of the Minister, to lease, sell, otherwise dispose of, or buy or otherwise acquire, real property;
- (f) with the written approval of the Minister and the Treasurer –
 - (i) to participate in a trust; or
 - (ii) to form, or participate in the formation of, a company; or
 - (iii) to participate in one or more of the following arrangements for the purpose of sharing the profits:
 - (A) a joint venture;
 - (B) a partnership;
 - (C) another formal arrangement;

- (g) to borrow money in accordance with section 25.

Division 2 – TasTAFE Board

6. TasTAFE Board

- (1) The Minister is to appoint a board of directors for TasTAFE that consists of no less than 5 members but no more than 7 members.
- (2) Nothing in subsection (1) prevents the Minister from appointing the TasTAFE CEO as a TasTAFE director.
- (3) Before appointing a person as a director on the TasTAFE Board, the Minister is to ensure that the directors, in aggregate, have the relevant knowledge and skills to ensure that the functions and powers of TasTAFE are performed and exercised appropriately.
- (4) The Minister may appoint a TasTAFE director, other than a TasTAFE director who is also the TasTAFE CEO, to be the chair of the TasTAFE Board.
- (5) Schedule 1 has effect in respect of –
 - (a) the TasTAFE directors; and
 - (b) the meetings of the TasTAFE Board.

7. Functions and powers of TasTAFE Board

- (1) The TasTAFE Board has the following functions:
 - (a) to ensure that the functions and powers of TasTAFE are performed and exercised in an appropriate manner;
 - (b) to ensure that the business and affairs of TasTAFE are managed and conducted –
 - (i) in accordance with sound business practice; and
 - (ii) in accordance with the statement of expectations; and
 - (iii) in a manner that achieves the objectives specified in the corporate plan; and
 - (iv) in a manner that is consistent with each applicable Ministerial direction;
 - (c) to establish the annual performance objectives for the TasTAFE CEO.
- (2) The TasTAFE Board has the power to do all things necessary or convenient to perform its functions under this Act.
- (3) The TasTAFE Board may delegate, by written notice, any or all of its functions or powers under this Act, other than this power of delegation, as specified in the notice.

8. Appointment of acting TasTAFE directors

- (1) The Minister may appoint a person to act as a TasTAFE director if a TasTAFE director is absent (the *absent TasTAFE director*).
- (2) For the purposes of subsection (1), a TasTAFE director is absent if the director –
 - (a) is absent from his or her duty as a TasTAFE director; or
 - (b) is otherwise unable to perform the functions of the office of TasTAFE director.
- (3) A person appointed to act as a TasTAFE director under this section –
 - (a) is taken, for the purposes of this Act, to be a TasTAFE director; and
 - (b) if the relevant absent TasTAFE director is the chair of the TasTAFE Board, is not taken to be the chair of the TasTAFE Board solely by virtue of his or her appointment under this section.
- (4) The appointment of a person under this section to act as a TasTAFE director terminates when whichever of the following first occurs:
 - (a) the absent TasTAFE director, for whom the person has been appointed to act, recommences performing the functions of a TasTAFE director;
 - (b) the absent TasTAFE director resigns;

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- (c) the Minister revokes the appointment to the TasTAFE Board of the absent TasTAFE director;
- (d) the Minister revokes the appointment of the person to act as a TasTAFE director.

9. TasTAFE Board to notify Minister in certain circumstances

The TasTAFE Board is to notify the Minister, as soon as practicable, of any matter or circumstance that, in the opinion of the TasTAFE Board, may –

- (a) significantly affect the ability of TasTAFE to comply with –
 - (i) any Ministerial directions that are in force; or
 - (ii) the statement of expectations; or
- (b) prevent or significantly affect the ability of TasTAFE to act in accordance with the corporate plan; or
- (c) significantly affect the financial viability or operating ability of TasTAFE; or
- (d) significantly affect any other objective, policy or program specified in the corporate plan.

Division 3 – TasTAFE staff

10. TasTAFE CEO

- (1) The TasTAFE Board may appoint a person as the chief executive officer of TasTAFE.
- (2) Before appointing someone as the TasTAFE CEO, the TasTAFE Board is to consult with the Minister in respect of that appointment.
- (3) The TasTAFE CEO –
 - (a) must perform any functions, and may exercise any powers, granted to the TasTAFE CEO under this Act or any other Act; and
 - (b) must perform any functions, and may exercise any powers, delegated to the TasTAFE CEO by the TasTAFE Board; and
 - (c) is responsible to the TasTAFE Board for the general administration and management of TasTAFE.
- (4) The TasTAFE CEO may delegate, by written notice, any or all of his or her functions or powers under this Act, other than this power of delegation, as specified in the notice.

11. TasTAFE employees

- (1) TasTAFE may appoint a person for one or more of the following purposes:

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- (a) the purposes of this Act;
 - (b) the purposes of providing vocational education and training, or other education and training, by or on behalf of TasTAFE.
- (2) A person may be appointed under subsection (1) on such terms and conditions that TasTAFE considers appropriate.

12. Effect of appointment under this Division

- (1) For the avoidance of doubt, the *State Service Act 2000* does not apply to –
- (a) the TasTAFE CEO in his or her capacity as the TasTAFE CEO; or
 - (b) a TasTAFE employee in his or her capacity as a TasTAFE employee.
- (2) Despite subsection (1), nothing in this section prevents a person from holding the position of TasTAFE CEO, or TasTAFE employee, in conjunction with State Service employment in respect of another position.
- (3) A person appointing the TasTAFE CEO, or a TasTAFE employee, under this Division is not a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.
- (4) The *Long Service Leave (State Employees) Act 1994* applies to the TasTAFE CEO, and each

TasTAFE employee, as if TasTAFE were a State authority within the meaning of that Act.

- (5) The TasTAFE CEO and each TasTAFE employee is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

Division 4 – TasTAFE students

13. Student records

- (1) TasTAFE is to maintain accurate records relating to TasTAFE students.
- (2) The records relating to TasTAFE students –
- (a) are to contain the information and matters prescribed in the regulations; and
 - (b) may contain any other information and matters that TasTAFE considers appropriate, other than information and matters that the regulations prescribe are not to be contained in the records.

14. Fees, levies and charges for students

- (1) In this section –

overseas student means a student who is in Australia on a temporary visa or provisional visa, other than –

- (a) a New Zealand citizen or a dependant of a New Zealand citizen; or

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(b) a permanent resident of Australia or a dependant of such a permanent resident; or

(c) a refugee resident in Australia;

post-Year 10 secondary education and training has the same meaning as in section 96 of the *Education Act 2016*.

- (2) TasTAFE may impose any fees, levies and charges it considers appropriate in respect of goods and services provided in relation to any of its functions and powers, including the provision of vocational education and training or other education or training.
- (3) Despite subsection (2), TasTAFE is not entitled to impose for a year, or part of a year, a fee or charge in respect of the provision of post-Year 10 secondary education and training to a person, by TasTAFE, if the person –
- (a) is entitled under section 96 of the *Education Act 2016* to attend TasTAFE in that year or part of a year; and
 - (b) has not attained the age of 19 years before 1 January in that year; and
 - (c) is not an overseas student.
- (4) TasTAFE may exempt a person or class of persons from the obligation to pay all or part of any fee, levy or charge otherwise payable under subsection (2) if satisfied that it is equitable or appropriate to do so in the circumstances.

- (5) Any fees, levies and charges received by TasTAFE under this section are to be paid into the funds of TasTAFE.

Division 5 – TasTAFE committees

15. Audit and risk management committee

- (1) The TasTAFE Board must establish an audit and risk management committee.
- (2) The audit and risk management committee established under subsection (1) is to provide advice to the TasTAFE Board on each of the following matters:
- (a) the establishment and review of an audit charter for TasTAFE;
 - (b) the establishment and review of systems of financial reporting and internal control for TasTAFE;
 - (c) the resources necessary to carry out an internal audit, or risk evaluation or management, of TasTAFE;
 - (d) any other matter referred to it by the TasTAFE Board.
- (3) Schedule 2 has effect in respect of the membership and meetings of the audit and risk management committee.

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16. Other committees

- (1) The TasTAFE Board may establish any committee it considers appropriate in relation to the functions and powers, or operation, of TasTAFE.
- (2) A committee established under subsection (1) is to provide advice to the TasTAFE Board on each matter specified in the terms of reference that establish the committee.
- (3) Schedule 2 has effect in respect of the membership and meetings of each committee established under subsection (1).

PART 3 – ADMINISTRATION OF TASTAFE

Division 1 – Administrative requirements for TasTAFE

17. Statement of expectations

- (1) The Minister must provide the TasTAFE Board with a statement of expectations for TasTAFE that specifies the expectations relating to the strategic objectives, and policy expectations, of TasTAFE.
- (2) Before providing a statement of expectations under subsection (1), the Minister is to consult with the TasTAFE Board in respect of the statement of expectations.
- (3) A statement of expectations provided under subsection (1) –
 - (a) is to be in writing and signed by the Minister; and
 - (b) takes effect on the day on which it is provided to the TasTAFE Board under subsection (1) or such later day as is specified in the statement.
- (4) The Minister may, at any time, on the Minister's own initiative or on the application of the TasTAFE Board –
 - (a) amend a statement of expectations provided under subsection (1); or
 - (b) revoke a statement of expectations, provided under subsection (1), and

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provide a new statement of expectations under that subsection.

- (5) The Minister must table a copy of a statement of expectations, provided under subsection (1), before both Houses of Parliament within 10 sitting-days after the statement of expectations was signed by the Minister.

18. Ministerial directions

- (1) The Minister may give the TasTAFE Board directions at any time regarding the performance and exercise of the functions and powers of TasTAFE.
- (2) In making a direction under subsection (1), the Minister –
- (a) is to have regard to the objectives, functions and powers of TasTAFE; and
 - (b) may not give a direction that conflicts with, or contradicts, the statement of expectations.
- (3) A direction under subsection (1) is not to purport to exert control or influence over –
- (a) the exercise by TasTAFE, or the TasTAFE Board, of its powers under this Act or any other Act; or
 - (b) the content of education, training or services provided by TasTAFE; or

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- (c) the content of events or activities conducted, promoted or supported by TasTAFE.
- (4) A direction under subsection (1) is to be in writing and signed by the Minister.

19. Corporate plan

- (1) In each year, the TasTAFE Board is to prepare a draft corporate plan in respect of a period of at least 3 years commencing on 1 July in that year.
- (2) The draft corporate plan is to include the following:
 - (a) a statement of TasTAFE's objectives, policies and programs and how they comply with the statement of expectations;
 - (b) a statement of TasTAFE's financial plans for the period;
 - (c) the major strategies to be used to achieve the objectives and give effect to the policies, programs and financial plans;
 - (d) the targets to be met by TasTAFE in achieving its objectives, policies, programs and financial plans and the criteria for assessing the achievement of those targets.
- (3) The TasTAFE Board is to provide the Minister with a copy of a draft corporate plan, prepared

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under subsection (1), at least 2 months before the plan is to commence.

- (4) The Minister, in consultation with the Treasurer, may –
 - (a) approve the draft corporate plan of TasTAFE; or
 - (b) require the TasTAFE Board to amend the draft corporate plan one or more times before approving it under paragraph (a).
- (5) On being approved by the Minister under subsection (4)(a), the draft corporate plan becomes the corporate plan of TasTAFE for the period specified in the plan.
- (6) The TasTAFE Board may draft an amendment of the corporate plan at any time.
- (7) A draft of an amendment of the TasTAFE corporate plan under subsection (6) takes effect when the Minister, in consultation with the Treasurer, approves it.
- (8) Unless otherwise authorised by the Minister, in consultation with the Treasurer, TasTAFE must act in accordance with the corporate plan.

20. Child safe code of conduct

- (1) Within 3 months after the commencement of this section, the TasTAFE Board must prepare a code of conduct in respect of TasTAFE that specifies, in relation to all persons employed or engaged in relation to TasTAFE –

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- (a) the expected behaviours when interacting with TasTAFE students, children and young people; and
 - (b) behaviours that are unacceptable when interacting with TasTAFE students, children and young people.
- (2) The TasTAFE Board is to ensure that the code of conduct prepared under subsection (1) is published on a website operated by, or on behalf of, TasTAFE, while that code of conduct remains in force.
- (3) A person employed, or engaged, in relation to TasTAFE must comply with the child safe code of conduct prepared under this section.

Division 2 – Assets of TasTAFE

21. Funds of TasTAFE

- (1) The funds of TasTAFE consist of any money –
- (a) received by it by way of fees, levies and charges; and
 - (b) otherwise received by it in the course of performing its functions and exercising its powers; and
 - (c) received by it, or the TasTAFE Board, from any other source.
- (2) The funds of TasTAFE are to be applied –

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- (a) in the payment of the remuneration of the TasTAFE directors, the TasTAFE CEO and the TasTAFE employees; and
- (b) in the payment or discharge of the expenses, charges and obligations incurred or undertaken by TasTAFE in the performance and exercise of its functions and powers.

22. Authorised deposit-taking institution accounts

TasTAFE, with the written approval of the Treasurer, may open and maintain such accounts at an authorised deposit-taking institution as it considers necessary.

23. Transfer of Crown land

- (1) The Minister, by notice published in the *Gazette*, may transfer Crown land specified in the notice to TasTAFE if –
 - (a) the Treasurer and the Minister administering the *Crown Lands Act 1976* approve that transfer; and
 - (b) TasTAFE has agreed to the transfer of the land.
- (2) On the day on which a notice under subsection (1) takes effect, the Crown land specified in the notice vests in TasTAFE –
 - (a) subject only to those estates in the land specified in the notice; or

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- (b) if the notice does not specify that the land vests subject to an estate, free from all encumbrances.
- (3) On the recommendation of the Minister, the Treasurer, by notice in the *Gazette*, may exempt TasTAFE from any liability to pay any State charges, taxes or duties specified in the notice in respect of the vesting of land under this section.
- (4) A notice under subsection (1) or (3) –
 - (a) takes effect on the day on which it is published in the *Gazette* or such later day as is specified in the notice; and
 - (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

24. Transfer of property and liabilities

- (1) The Minister, by notice published in the *Gazette*, may transfer one or more of the following, as specified in the notice, to TasTAFE:
 - (a) any property and rights, other than Crown land, of the Crown;
 - (b) any liabilities and obligations, whether actual, prospective or contingent, of the Crown.
- (2) On the day on which a notice under subsection (1) takes effect –
 - (a) each property and right transferred under the notice vests in TasTAFE; and

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- (b) each liability and obligation transferred under the notice becomes a liability and obligation of TasTAFE.
- (3) A notice under subsection (1) –
 - (a) takes effect on the day on which it is published in the *Gazette* or such later day as is specified in the notice; and
 - (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Division 3 – Financial arrangements for TasTAFE

25. Borrowing by TasTAFE

Except with the written approval of the Treasurer, TasTAFE, or a subsidiary of TasTAFE, must not borrow from any person other than the Tasmanian Public Finance Corporation established by the *Tasmanian Public Finance Corporation Act 1985*.

26. Accounting records

TasTAFE is to –

- (a) keep accounting records that correctly record and explain the transactions made by (including any transactions as trustee), and the financial position of, TasTAFE; and
- (b) keep those records in a manner that –

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- (i) allows true and fair accounts of TasTAFE to be prepared from time to time; and
 - (ii) allows the accounts of TasTAFE to be conveniently and properly audited or reviewed; and
 - (iii) subject to any contrary direction of the Treasurer, complies with the relevant accounting standards; and
 - (iv) complies with any written directions of the Treasurer; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or for a longer period determined by the Treasurer, as specified in writing and provided to the TasTAFE Board.

27. TasTAFE financial statements

- (1) Within 45 days after the end of each financial year, the TasTAFE Board is to –
 - (a) prepare the financial statements for the financial year in accordance with –
 - (i) the *Audit Act 2008*; and
 - (ii) each relevant direction of the Treasurer under subsection (2); and

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- (iii) the accounting standards; and
 - (b) as soon as practicable after preparing the financial statements under paragraph (a) for a financial year, provide a copy of the statements to the Auditor-General.
- (2) The Treasurer may give written directions to the TasTAFE Board in respect of the form and content of the financial statements.

28. Report of Auditor-General

The Auditor-General must provide each of the following to the Treasurer, the Minister and the TasTAFE Board:

- (a) each opinion of the Auditor-General, prepared under section 19 of the *Audit Act 2008*, in respect of the financial statements prepared by the TasTAFE Board under section 27;
- (b) each formal communication of audit findings of the Auditor-General, under section 19 of the *Audit Act 2008*, in respect of the financial statements prepared by the TasTAFE Board under section 27.

29. Effect of *Financial Agreement Act 1994*

If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires TasTAFE to do or to refrain from doing anything for the purpose of implementing the Agreement,

within the meaning of that Act, TasTAFE must comply with that requirement.

Division 4 – Annual reports

30. Annual reports

- (1) As soon as practicable after the end of a financial year, the TasTAFE Board is to prepare an annual report, in respect of TasTAFE, for the financial year.
- (2) An annual report, prepared in respect of TasTAFE under subsection (1), is to include the following information and documents in respect of the financial year to which the annual report relates:
 - (a) the TasTAFE financial statements prepared under section 27;
 - (b) a copy of the report of the Auditor-General received under section 19 of the *Audit Act 2008* in respect of those TasTAFE financial statements;
 - (c) the details of –
 - (i) each Ministerial direction in force during the financial year; and
 - (ii) any action taken by the TasTAFE Board in respect of those directions;
 - (d) the details of –

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- (i) each statement of expectations that has been in force during the financial year; and
 - (ii) any action taken by the TasTAFE Board in respect of those statements of expectations;
- (e) a summary of the corporate plan in force in respect of the financial year;
- (f) a report on the performance of TasTAFE with reference to the following, as set out in the corporate plan:
 - (i) the targets to be met by TasTAFE in achieving its objectives, policies, programs and financial plans;
 - (ii) the criteria for assessing the achievement of those targets;
- (g) a report on the operations of TasTAFE during the financial year;
- (h) any information that the Minister has requested that relates to the TasTAFE directors, the TasTAFE CEO or the TasTAFE employees;
- (i) any other information that the Minister has requested;
- (j) any other information that the TasTAFE Board considers relevant, appropriate or necessary to properly inform the Minister

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and Parliament with regard to the performance and progress of TasTAFE in the financial year.

- (3) As soon as practicable after preparing an annual report under this section, the TasTAFE Board is to provide the annual report to the Minister.

31. Tabling of annual report

- (1) The Minister is to lay a copy of the annual report of TasTAFE, that is provided to the Minister under section 30, before each House of Parliament within 4 months after the end of the financial year to which the annual report relates.
- (2) If the Minister is unable to comply with subsection (1) for a reason other than that a House of Parliament is not sitting at the expiration of the period specified in that subsection, the Minister, before the expiration of that period, is to lay before each House of Parliament a statement specifying –
- (a) the reasons for the failure to comply with that subsection; and
 - (b) an estimate of the day by which a copy of the annual report of TasTAFE may be ready to be laid before each House of Parliament.
- (3) If the Minister is unable to lay a copy of the annual report of TasTAFE before a House of Parliament within the period specified in subsection (1), or by the day specified in a

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statement referred to in subsection (2)(b) in respect of the report, because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –

- (a) provide a copy of the annual report to the Clerk of that House of Parliament as soon as possible after the expiration of that period or that day; and
- (b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

Division 5 – TasTAFE by-laws

32. TasTAFE by-laws

- (1) The TasTAFE Board may make by-laws in respect of –
 - (a) any matter relating to the functions and powers of TasTAFE; and
 - (b) the conduct and discipline of any persons in respect of –
 - (i) any facilities, assets and equipment owned, occupied, managed or used by TasTAFE; or
 - (ii) the provision of vocational education and training and other education or training by TasTAFE; and
 - (c) the operation of student organisations.

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- (2) The by-laws may be made so as to apply differently according to factors specified in the by-laws.
- (3) The by-laws may authorise any matter to be from time to time approved, determined, applied or regulated by the TasTAFE Board, the TasTAFE CEO or another person specified in the by-laws.
- (4) The by-laws may –
 - (a) provide that a contravention of any of the by-laws is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (5) By-laws made under this section are statutory rules for the purposes of the *Rules Publication Act 1953*.

PART 4 – COMPLIANCE AND ENFORCEMENT

Division 1 – Offences

33. Offences relating to TasTAFE director

- (1) A TasTAFE director must act honestly when taking an action, or refusing to take an action, in accordance with this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) A TasTAFE director must act honestly, and exercise reasonable care and diligence, when performing a function or exercising a power, or refusing to perform a function or exercise a power, under this Act.

Penalty: Fine not exceeding 100 penalty units.

34. Offences relating to TasTAFE CEO

- (1) The TasTAFE CEO must act honestly when taking an action, or refusing to take an action, in accordance with this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) The TasTAFE CEO must act honestly, and exercise reasonable care and diligence, when performing a function or exercising a power, or refusing to perform a function or exercise a power, under this Act.

Penalty: Fine not exceeding 100 penalty units.

35. Misuse of information

- (1) A person who is, or was, the TasTAFE CEO or a TasTAFE director must not improperly use, whether in Tasmania or elsewhere, information acquired as the TasTAFE CEO, or as a TasTAFE director –
- (a) to gain, whether directly or indirectly, a personal advantage or an advantage for another person; or
 - (b) to cause damage to TasTAFE.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

- (2) A person who is, or was, the TasTAFE CEO or a TasTAFE director must not improperly use, whether in Tasmania or elsewhere, his or her position as the TasTAFE CEO or a TasTAFE director, or a former TasTAFE CEO or TasTAFE director –
- (a) to gain, whether directly or indirectly, a personal advantage or an advantage for another person; or
 - (b) to cause damage to TasTAFE.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 5 years, or both.

36. Breaches of child safe code of conduct

(1) In this section –

allegation, in relation to a person, means an allegation that the person has breached the child safe code of conduct;

investigator, in relation to an allegation, means the person appointed under this section to investigate the allegation.

(2) Subject to subsection (3), the TasTAFE CEO is to appoint a person to investigate an allegation if the TasTAFE CEO is satisfied that the person has the appropriate qualifications and skills to undertake such an investigation.

(3) Despite subsection (2), if an allegation is made in respect of the TasTAFE CEO, the TasTAFE Board is to appoint a person to investigate the allegation if the Board is satisfied that the person has the appropriate qualifications and skills to undertake such an investigation.

(4) After completing an investigation of an allegation, the investigator in relation to the allegation is to report his or her findings in respect of the allegation to the person who appointed the investigator under this section (the *relevant authority*).

(5) After receiving the report of an investigator under subsection (4) in respect of an allegation, the relevant authority in respect of the investigation may determine whether or not the person, against whom the allegation was made,

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is found to have breached the child safe code of conduct.

- (6) If, as a result of an investigation under this section, a person is found to have breached the child safe code of conduct, the relevant authority in respect of the investigation may take one or more of the following actions in respect of the person:
- (a) direct that the person undergo counselling as specified by the relevant authority;
 - (b) notify the Registrar, within the meaning of the *Registration to Work with Vulnerable People Act 2013*, in respect of the breach;
 - (c) if the person is a registered teacher within the meaning of the *Teachers Registration Act 2000*, notify the Board, within the meaning of that Act, in respect of the breach;
 - (d) determine whether the breach amounts to serious misconduct within the meaning of the *Fair Work Act 2009* of the Commonwealth;
 - (e) refer the matter to the Police Service.
- (7) Except as specified in this section, the TasTAFE Board may determine how an investigation into an allegation is to be conducted.

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- (8) Nothing in this section affects the rules of procedural fairness that may apply to an investigation into an allegation under this section.

37. False and misleading information

- (1) A person must not, in answering a question or providing information under this Act –
- (a) make a statement knowing it to be false or misleading; or
 - (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not, in answering a question or providing information to another person under this Act, provide a document that the person knows to be false or misleading without specifying to the other person to whom the document is provided –
- (a) that the person providing the document believes it to be false or misleading; and
 - (b) the basis for the belief; and
 - (c) the manner in which the person believes the document is false or misleading; and
 - (d) any information that the person has concerning who had access to the document that is false or misleading; and

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- (e) any information that the person has concerning where a document, that is not false or misleading, may be held.

Penalty: Fine not exceeding 100 penalty units.

38. Notification of charge or finding of guilt for certain offences

- (1) In this section –

specified offence means –

- (a) an offence, committed in Tasmania, which is punishable by a term of imprisonment; or
 - (b) an offence, committed outside of Tasmania, which, if committed in Tasmania, is punishable by a term of imprisonment.
- (2) If a TasTAFE employee is charged with a specified offence in Tasmania or elsewhere, the person must give written notice to the TasTAFE CEO of the charge, and the details of the alleged specified offence, within 14 days after the person is so charged.

Penalty: Fine not exceeding 10 penalty units.

- (3) If a TasTAFE employee is charged with a specified offence in Tasmania or elsewhere and –

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- (a) a court has made a finding of guilty or not guilty, or another finding, in relation to the charge; or
- (b) a court adjourns proceedings on the charge *sine die*; or
- (c) the charge is dismissed or withdrawn –
the person must notify the TasTAFE CEO, in writing, of that fact within 14 days after the court has made the relevant finding, or adjournment, or the charge is dismissed or withdrawn.

Penalty: Fine not exceeding 10 penalty units.

Division 2 – Enforcement and related provisions

39. Complaints

- (1) A person may complain about the professional conduct of a person who is or was –
 - (a) the TasTAFE CEO; or
 - (b) a TasTAFE employee.
- (2) A complaint under subsection (1) may only be made within the 6-month period after the complainant becomes aware of the professional conduct that is the subject of the complaint.
- (3) A complaint under subsection (1) is to –
 - (a) be in writing to –

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- (i) if the complaint relates to the TasTAFE CEO, the TasTAFE Board; and
 - (ii) if the complaint relates to a TasTAFE employee, the TasTAFE CEO; and
 - (b) contain the details of the professional conduct that is the subject of the complaint, as they are known to the complainant; and
 - (c) disclose the name of, and contact information for, the complainant; and
 - (d) be signed by the complainant.
- (4) As soon as practicable after receiving a complaint under this section, the TasTAFE CEO or the TasTAFE Board is to ensure that an inquiry into the complaint is held, in accordance with section 41, and concluded as expeditiously as possible.

40. TasTAFE employees may be suspended in certain circumstances

- (1) The TasTAFE CEO may immediately suspend a TasTAFE employee if the TasTAFE CEO believes, on reasonable grounds, that –
 - (a) the TasTAFE employee has harmed, or may pose a risk of harm, to a TasTAFE student or another TasTAFE employee; or

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- (b) the TasTAFE employee has committed serious misconduct within the meaning of the *Fair Work Act 2009* of the Commonwealth.
- (2) On suspending a TasTAFE employee under this section, the TasTAFE CEO is to –
 - (a) serve a written notice on the employee in respect of the suspension; and
 - (b) if the employee is a registered teacher under the *Teachers Registration Act 2000*, give a copy of the written notice referred to in paragraph (a) to the Board within the meaning of that Act; and
 - (c) ensure that an inquiry into the matter giving rise to the suspension is held, in accordance with section 41, and concluded as expeditiously as possible.
- (3) The suspension of a TasTAFE employee under this section takes effect upon the TasTAFE employee being served with a written notice, in respect of the suspension, in accordance with subsection (2)(a).

41. Inquiries

- (1) The TasTAFE CEO must hold an inquiry in respect of a matter giving rise to the suspension of a TasTAFE employee under section 40.
- (2) If the TasTAFE CEO believes on reasonable grounds that it is in the public interest to do so,

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the TasTAFE CEO may hold an inquiry in respect of a complaint given to the TasTAFE CEO under section 39.

- (3) If the TasTAFE Board believes on reasonable grounds that it is in the public interest to do so, the TasTAFE Board may hold an inquiry in respect of a complaint given to the TasTAFE Board under section 39.
- (4) The TasTAFE CEO, or the TasTAFE Board, may –
 - (a) hold an inquiry under this section; or
 - (b) appoint a committee of inquiry to hold the inquiry on behalf of the TasTAFE CEO or the TasTAFE Board.
- (5) An inquiry under this section –
 - (a) is to be held subject to this Act and in accordance with any directions of the TasTAFE Board or, in the case of a committee of inquiry appointed by the TasTAFE CEO, the TasTAFE CEO; and
 - (b) may otherwise be held in any manner that the person holding it thinks appropriate.
- (6) If a decision is made as a result of an inquiry under this section, the person who held the inquiry is to give notice, in writing, of that decision to –

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- (a) the person who is the subject of the inquiry; and
 - (b) if the inquiry is the result of a complaint under section 39, the person who made the complaint; and
 - (c) if the person who is the subject of the inquiry is registered under the *Teachers Registration Act 2000*, the Board within the meaning of that Act.
- (7) Nothing in this section affects the rules of procedural fairness that may apply to an inquiry held under this section.

42. Effect of offences committed by body corporate

- (1) In this section –
 - officer* has the same meaning as in the Corporations Act.
- (2) If a body corporate commits an offence under this Act, each officer of the body corporate or another person concerned in the management of the body corporate is also taken to have committed the offence, except where it is proved that the officer or other person could not have prevented the commission of the offence by the exercise of reasonable diligence.
- (3) An officer of a body corporate or another person may be found guilty in respect of an offence in accordance with subsection (2) whether or not

the body corporate is charged with, or found guilty of, the offence.

43. Court orders on finding of guilt

- (1) If a person is found guilty of an offence under section 34, 33 or 35, the court determining the proceedings for the offence may, in addition to any other order, make an order for compensation to be paid to TasTAFE in respect of –
 - (a) any profit made by the person, or another person, as a result of the commission of the offence; and
 - (b) an amount equal to the loss and damage suffered by TasTAFE as a result of the commission of the offence.
- (2) Nothing in subsection (1) prevents TasTAFE from applying to a court of competent jurisdiction to recover an amount referred to in that subsection, as a debt due and owing by the person convicted of the offence, if an order for compensation is not made at the time at which the person is found guilty of the offence.

44. Evidentiary matters

All courts and persons acting judicially are to take judicial notice of the seal of TasTAFE affixed to a document and, unless the contrary intention is proven, are to presume that the seal was duly affixed to the document.

PART 5 – MISCELLANEOUS

45. Infringement notice offences

(1) In this section –

infringement offence means an offence under this Act, the regulations or the by-laws –

- (a) in relation to an offence under this Act or the regulations, that is prescribed as an infringement offence; and
- (b) in relation to an offence under the by-laws, that is specified in the by-laws as an infringement offence.

(2) The TasTAFE CEO may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice –

- (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
- (b) is not to relate to 4 or more offences.

(4) In relation to an infringement offence under this Act or the regulations, the regulations may prescribe –

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- (a) the penalty that is payable, for that offence, under an infringement notice; and
 - (b) different penalties for bodies corporate and individuals.
- (5) In relation to an infringement offence under the by-laws, the by-laws may specify the penalty that is payable, for that offence, under an infringement notice.

46. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
 - (a) prescribe the practices and procedures for complaints and inquiries under this Act; and
 - (b) provide for fees and charges payable in respect of any matter under the Act; and
 - (c) provide for the requirement for further information, or documentation, to be provided in respect of a matter under the Act.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

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- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (4) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by TasTAFE, the TasTAFE Board, the TasTAFE CEO or any other person specified in the regulations.

47. Savings and transitional provisions

- (1) In this section –
 - former Act* means Part 5 of the *Training and Workforce Development Act 2013* as in force immediately before the commencement of this section.
- (2) The savings and transitional provisions specified in Schedule 3 have effect.
- (3) In addition to section 46, the Governor may also make regulations of a savings and transitional nature, consequent on the enactment of this Act, to effect, and facilitate, the transition from the former Act to this Act.

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- (4) Without limiting the generality of subsection (3), regulations made under that subsection may –
- (a) clarify, or amend, the status, entitlements or rights of the TasTAFE CEO and TasTAFE employees transitioned to this Act from the former Act; and
 - (b) provide for the transition of training and courses offered or provided under the former Act; and
 - (c) provide for the preservation, continuation, variation or revocation of decisions or actions taken under the former Act; and
 - (d) provide for the preservation, continuation, variation or revocation of notices, instruments or other documents given or issued under the former Act; and
 - (e) deal with any other incidental, transitional or ancillary matter in respect of the former Act.
- (5) Regulations made under subsection (3) may –
- (a) take effect on the day on which the first section of this Act commences or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made; and

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- (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
- (c) authorise any matter to be from time to time determined applied or regulated by –
 - (i) the Secretary of the Department;
or
 - (ii) the TasTAFE Board.
- (6) Subject to subsection (7), nothing in this section authorises regulations made under this Act to reduce or limit the entitlements and rights, accrued by a TasTAFE employee as such an employee.
- (7) Subsection (6) does not apply in respect of a regulation that amends the entitlements and rights if the amendment is required for the entitlements and rights to be consistent with an award or agreement that applies, and is in force, in respect of a TasTAFE employee as such an employee.

48. Effect of consequential amendment of regulations

The amendment by this Act of a provision of any subordinate legislation does not prevent that provision, or any other provisions, of that subordinate legislation from being amended or rescinded by subordinate legislation.

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49. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Skills, Training and Workforce Growth; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of State Growth.

50. Consequential amendments

The legislation specified in Schedule 4 is amended as specified in that Schedule.

SCHEDULE 1 – TASTAFE BOARD

Section 6(5)

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

chair means the TasTAFE director appointed to be the chair of the TasTAFE Board under section 6(4).

PART 2 – TASTAFE DIRECTORS

2. Term of office

(1) A TasTAFE director –

(a) is appointed for such period, not exceeding 3 years, as is specified in the TasTAFE director's instrument of appointment; and

(b) subject to subclause (2), may be reappointed.

(2) A TasTAFE director, other than the TasTAFE CEO, may only be reappointed as a TasTAFE director for 2 further consecutive terms.

3. Holding other office

The holder of an office who, under the terms of his or her employment in that office, is required to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office in addition to the position of a TasTAFE director; or
- (b) accepting any remuneration payable to a TasTAFE director.

4. Application of *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a TasTAFE director in his or her capacity as a TasTAFE director.
- (2) Nothing in subclause (1) prevents a person from holding the office of TasTAFE director in conjunction with State Service employment.

5. Remuneration and conditions of appointment

- (1) A TasTAFE director is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A TasTAFE director who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

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- (3) A TasTAFE director holds office on such conditions, that are not provided for by this Act, as are specified in the TasTAFE director's instrument of appointment.

6. Vacation of office

- (1) A TasTAFE director vacates office if he or she –
- (a) dies; or
 - (b) resigns by written notice provided to the Minister; or
 - (c) is removed from office under subclause (2) or (3).
- (2) The Minister may remove a TasTAFE director from office if the TasTAFE director –
- (a) is absent from 3 consecutive meetings of the TasTAFE Board without the permission of the other TasTAFE directors; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the TasTAFE director's creditors or makes an assignment of the TasTAFE director's remuneration or estate for the benefit of the director; or
 - (c) is convicted, in Tasmania or elsewhere, of an offence punishable by a term of imprisonment of 12 months or longer; or

- (d) is convicted of an offence under this Act;
or
 - (e) fails to disclose a pecuniary interest as required under clause 17; or
 - (f) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the TasTAFE Board, other than a contract for goods or services ordinarily supplied by TasTAFE and supplied on the same terms as those goods or services are ordinarily supplied to other persons in the same situation.
- (3) The Minister may remove a TasTAFE director from office if satisfied that the TasTAFE director is unable to perform adequately or competently the duties of office.
- (4) A TasTAFE director must not be removed from office otherwise than in accordance with this clause.

7. Filling of vacancies

If the office of a TasTAFE director becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that TasTAFE director's term of office.

8. Validation of proceedings &c.

An act or proceeding of the TasTAFE Board or of a person acting under any direction of the TasTAFE Board is not invalidated solely on the

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basis that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a TasTAFE director or a defect in the appointment of a TasTAFE director.

9. Presumptions

In any proceeding by or against the TasTAFE Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the TasTAFE Board;
or
- (b) the appointment of any TasTAFE director.

PART 3 – MEETINGS OF TASTAFE BOARD

10. Frequency of meetings

The TasTAFE Board is to meet no fewer than 6 times in each calendar year.

11. Convening of meetings

- (1) The chair, after giving each TasTAFE director reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other TasTAFE directors.

- (2) If the chair is absent from duty or otherwise unable to perform the duties of the office, a meeting of the Board may be convened, after reasonable notice of the meeting has been given of the meeting, by –
 - (a) two or more other TasTAFE directors; or
 - (b) a person authorised by the TasTAFE Board to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the TasTAFE Board.

12. Presiding at meetings

- (1) The chair is to preside at all meetings of the TasTAFE Board at which he or she is present.
- (2) If the chair is not present at a meeting of the TasTAFE Board, a TasTAFE director elected by the TasTAFE directors present at the meeting is to preside.

13. Quorum and voting at meetings

- (1) A quorum of a meeting of the TasTAFE Board is constituted by a clear majority of the directors appointed to the Board at the time of the meeting.
- (2) A meeting of the TasTAFE Board at which a quorum is present is competent to transact any business of the TasTAFE Board.

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- (3) At a meeting of the TasTAFE Board –
 - (a) the TasTAFE director presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the TasTAFE directors present and voting; or
 - (ii) in the negative if there is an equality of votes of the TasTAFE directors present and voting.
- (4) At a meeting of the TasTAFE Board where a TasTAFE director is excluded from being present and taking part in the consideration and decision of the TasTAFE Board in relation to a matter, a quorum for the purposes of considering and making a decision in relation to that matter is constituted by the number of TasTAFE directors specified as constituting a quorum in subclause (1) less the number of TasTAFE directors so excluded.

14. Conduct of meetings

- (1) Subject to this Act, the TasTAFE Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The TasTAFE Board may permit TasTAFE directors to participate in a particular meeting or all meetings by –

- (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the TasTAFE Board.
- (3) A TasTAFE director who participates in a meeting as permitted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the TasTAFE Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

15. Resolutions without meetings

- (1) If a clear majority of the TasTAFE directors sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the TasTAFE Board held –
- (a) on the day on which the document is signed; or
 - (b) if the TasTAFE directors do not sign the document on the same day, on the day on which the last of the TasTAFE directors signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each TasTAFE director is to be –
- (a) advised immediately of the matter; and

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- (b) provided with a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more TasTAFE directors, is taken to constitute one document.

16. Minutes

The TasTAFE Board is to keep accurate minutes of its meetings.

17. Disclosure of interests

- (1) If a TasTAFE director has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the TasTAFE Board, the TasTAFE director must, as soon as practicable after the relevant facts come to the TasTAFE director's knowledge, disclose the nature of the interest to the TasTAFE Board.

Penalty: Fine not exceeding 100 penalty units.

- (2) Unless the TasTAFE Board otherwise determines, a TasTAFE director who has made a disclosure under subclause (1) in relation to a matter must not –
 - (a) be present during any deliberation of the TasTAFE Board in relation to the matter;
or

- (b) take part in any decision of the TasTAFE Board in relation to the matter.
- (3) For the purpose of making a determination under subclause (2), the TasTAFE director to whom the determination relates must not –
 - (a) be present during any deliberation of the TasTAFE Board for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply –
 - (a) in respect of a contract for goods or services supplied by TasTAFE if those goods or services are ordinarily supplied by TasTAFE and are supplied on the same terms as they are ordinarily supplied to other persons in the same situation; or
 - (b) in respect of an interest that arises only because the TasTAFE director is also a State Service officer or State Service employee.

18. General procedure

Except as provided by this Act, the TasTAFE Board may regulate its own proceedings.

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19. Presumptions

In any proceeding by or against the TasTAFE Board, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the TasTAFE Board; or
- (b) the presence of a quorum at any meeting of the TasTAFE Board.

**SCHEDULE 2 – MEMBERSHIP AND MEETINGS OF
COMMITTEES**

Division 5 of Part 2

PART 1 – PRELIMINARY

1. Interpretation

In this Schedule –

committee means a committee, including the audit and risk management committee, established under Division 5 of Part 2;

member means a member of a committee.

PART 2 – MEMBERSHIP OF COMMITTEES

2. Term of office

A member is appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and may be reappointed.

3. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or

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- (b) accepting any remuneration payable to a member.

4. Application of *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) Nothing in subclause (1) prevents a person from holding the office of member in conjunction with State Service employment.

5. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

6. Validation of proceedings, &c.

An act or proceeding of a committee, or of a person acting under any direction of a committee, is not invalidated solely on the basis

that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the office of a member or a defect in the appointment of a member.

7. Presumptions

In any proceeding by or against a committee, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the committee; or
- (b) the appointment of any member.

PART 3 – MEETINGS OF COMMITTEE

8. Quorum and voting at meetings

- (1) At a meeting of a committee, a quorum is constituted by a majority of the total number of members appointed.
- (2) A meeting of a committee at which a quorum is present is competent to transact any business of the committee.

9. Minutes

A committee is to keep accurate minutes of its meetings.

10. Disclosure of interests

- (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by a committee, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the committee.

Penalty: Fine not exceeding 100 penalty units.

- (2) Unless a committee otherwise determines, a member who has made a disclosure under subclause (1) in relation to a matter must not –
- (a) be present during any deliberation of the committee in relation to the matter; or
 - (b) take part in any decision of the committee in relation to the matter.
- (3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –
- (a) be present during any deliberation of the committee for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply –
- (a) in respect of a contract for goods or services supplied by TasTAFE if those goods or services are ordinarily supplied by TasTAFE and are supplied on the same terms as they are ordinarily

supplied to other persons in the same situation; or

- (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

11. General procedure

Except as provided by this Act, a committee may regulate its own proceedings.

12. Presumptions

In any proceeding by or against a committee, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the committee; or
- (b) the presence of a quorum at any meeting of the committee.

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**SCHEDULE 3 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 47(2)

1. Interpretation

In this Schedule –

commencement day means the day on which Part 2 of this Act commences;

former Act means Part 5 of the *Training and Workforce Development Act 2013* as in force immediately before the commencement day;

former TasTAFE means TasTAFE, as continued under the former Act, as constituted immediately before the commencement day;

former TasTAFE employee means a person who, immediately before the commencement day, was –

- (a) a TasTAFE employee within the meaning of the former Act; or
- (b) a person who was purportedly a TasTAFE employee within the meaning of the former Act.

2. TasTAFE continues

- (1) For the avoidance of doubt, on the commencement day, TasTAFE is the legal successor in title in relation to –
 - (a) all property and contracts of the former TasTAFE; and
 - (b) all authorised deposit-taking institution accounts that are maintained in the name of the former TasTAFE; and
 - (c) all rights and liabilities of the former TasTAFE.
- (2) If the context requires, a reference to the former TasTAFE in any document or instrument is taken, on and after the commencement day, to be a reference to TasTAFE.

3. TasTAFE Board continues

The TasTAFE Board, within the meaning of the former Act, as constituted immediately before the commencement day is taken, on the commencement day, to be the board of directors appointed by the Minister under section 6(1) on the same terms and conditions.

4. TasTAFE directors continue

- (1) A person who, immediately before the commencement day, held the position of TasTAFE director within the meaning of the former Act, is taken, on and after the

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commencement day, to hold the position of TasTAFE director under this Act on the same terms and conditions.

- (2) For the avoidance of doubt, subclause (1) applies to a TasTAFE director under the former Act regardless of whether the TasTAFE director was appointed under section 60 or section 63 of the former Act.
- (3) The TasTAFE director under the former Act who was the chairperson of the TasTAFE Board, immediately before the commencement day, is taken on the commencement day to be appointed as the chair of the TasTAFE Board under this Act.

5. TasTAFE CEO appointed

- (1) A person whose appointment as the TasTAFE chief executive officer under the former Act is terminated under clause 7(1) is taken, on that termination, to be appointed to the position of TasTAFE CEO on the terms and conditions specified in the person's notification of appointment under this Act.
- (2) For the avoidance of doubt –
 - (a) this Act applies to a person taken to be appointed as the TasTAFE CEO under subclause (1) as if the person were appointed under section 10 as the chief executive officer of TasTAFE; and

- (b) a person's notification of appointment under subclause (1) is taken to be the person's instrument of appointment as the TasTAFE CEO.

6. Former TasTAFE employees taken to be appointed as TasTAFE employees

- (1) A person whose appointment or employment as a former TasTAFE employee is terminated under clause 7(2) is taken, on that termination, to be appointed as a TasTAFE employee on the terms and conditions specified in the person's notification of appointment under this Act.
- (2) For the avoidance of doubt –
 - (a) this Act applies to a person taken to be appointed as a TasTAFE employee under subclause (1) as if the person were appointed under section 11 as a TasTAFE employee; and
 - (b) a person's notification of appointment under subclause (1) is taken to be the person's instrument of appointment as a TasTAFE employee.

7. Termination of certain appointments, &c.

- (1) On the commencement day –
 - (a) the appointment of a person under the former Act as the TasTAFE chief executive officer is terminated; and

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- (b) the *State Service Act 2000* ceases to apply to the person referred to in paragraph (a) in respect of his or her appointment under the former Act as the TasTAFE chief executive officer; and
 - (c) the person who appointed the person as TasTAFE chief executive officer under the former Act is taken not to be a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.
- (2) On the commencement day –
- (a) a person's appointment or employment as a former TasTAFE employee is terminated, regardless of whether the appointment or employment was for a fixed term or otherwise; and
 - (b) the *State Service Act 2000* ceases to apply to a person to whom paragraph (a) applies, in respect of his or her appointment or employment under the former Act as a former TasTAFE employee; and
 - (c) the person who appointed a former TasTAFE employee under the former Act is taken not to be a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*.

- (3) The termination of a person's appointment or employment as the TasTAFE CEO, or as a TasTAFE employee, under this clause –
- (a) does not entitle the person to compensation, or another form of consideration or payment, solely due to the termination of appointment or employment under this clause; and
 - (b) is not a State Service action for the purposes of section 50 of the *State Service Act 2000*.

8. Certain service taken to be continuous employment

- (1) In this clause –

transitioned employee includes –

- (a) a person who is taken to be the TasTAFE CEO by virtue of clause 5(1); and
 - (b) a person who is taken to be a TasTAFE employee by virtue of clause 6(1).
- (2) The period for which a person serves as a TasTAFE employee is taken to be continuous service as a State Service employee for the purpose of calculating leave, or other entitlements, if –
- (a) the person is a transitioned employee; and

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- (b) within 5 years after the person became a transitioned employee, the person is appointed or employed in a position that, in accordance with another Act or instrument, entitles or provides for the leave, or other entitlements, of the person to be calculated as if the person was a State Service employee or a State Service officer; and
- (c) the person was continuously appointed as a TasTAFE employee under this Act for the period –
 - (i) commencing on the person becoming a transitioned employee; and
 - (ii) ending on the person's appointment to the position referred to in paragraph (b).

9. Committees under former Act continue

- (1) A committee that was established under section 70 of the former Act and is in force, immediately before the commencement day, is taken, on and after the commencement day, to be the audit and risk management committee established, under section 15, on the same terms and conditions.
- (2) A committee that was established under section 71 of the former Act and is in force, immediately before the commencement day, is taken, on and after the commencement day, to be a committee

established, under section 16, on the same terms and conditions.

- (3) For the avoidance of doubt, this Act applies in relation to the membership, meetings, dissolving and winding-up of a committee established under section 70 or 71 of the former Act that is continued under this clause.

10. Students, and courses, of TasTAFE continue

For the avoidance of doubt –

- (a) a student of the former TasTAFE immediately before the commencement day is taken, on and after the commencement day, to be a student of TasTAFE on the same terms and conditions; and
- (b) an offer of enrolment, or placement, made by the former TasTAFE that was to occur after the commencement day is taken, on and after the commencement day, to have been an offer of enrolment, or placement, made by TasTAFE on the same terms and conditions; and
- (c) a course being provided by the former TasTAFE immediately before the commencement day is, on and after the commencement day, to be continued to be provided by TasTAFE.

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11. By-laws continue

- (1) On the commencement day, the *TasTAFE By-laws 2014* –
 - (a) are taken to have been made under section 32; and
 - (b) continue in force until the tenth anniversary of the day on which their making was notified in the *Gazette*, unless earlier rescinded.
- (2) A reference in the *TasTAFE By-laws 2014* to a section of the former Act is taken, on and after the commencement day, to be a reference to the equivalent provision of this Act.
- (3) Unless a contrary intention applies, or the context requires –
 - (a) a term used in the *TasTAFE By-laws 2014* has the same meaning as in this Act; or
 - (b) if a term used in the *TasTAFE By-laws 2014* is not defined in this Act but is defined in the former Act, the term has the same meaning as in the former Act.

12. Legal matters

- (1) For the avoidance of doubt, legal proceedings may be continued against TasTAFE on and after the commencement day if the proceedings –
 - (a) are instituted by or against –

- (i) the former TasTAFE; or
 - (ii) the Crown in respect of the former TasTAFE; and
 - (b) are pending on the commencement day.
- (2) For the avoidance of doubt, legal proceedings may be instigated by or against TasTAFE on and after the commencement day if the proceedings –
- (a) relate to a right or liability that had accrued, and was in existence, immediately before the commencement day; and
 - (b) if this Act had not commenced, could have been instituted by or against –
 - (i) the former TasTAFE; or
 - (ii) the Crown in respect of the former TasTAFE.
- (3) For the avoidance of doubt, a judgement or order of the court obtained by or against the former TasTAFE may, on and after the commencement day, be enforced by or against TasTAFE.

13. Ministerial directions and expectations

- (1) A direction of the Minister given under section 72 of the former Act in respect of the former TasTAFE is taken, on and after the commencement day, to be a Ministerial direction given under this Act in respect of TasTAFE.

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- (2) The policy expectations provided by the Minister under section 73 of the former Act in respect of the former TasTAFE are taken, on and after the commencement date, to be the statement of expectations provided under this Act in respect of TasTAFE.

14. Records and other documents

- (1) A record, statement or other document required to be kept by the former TasTAFE under the former Act is taken to be, on and after the commencement day –
- (a) a record, statement or document in relation to TasTAFE; and
 - (b) a record, statement or document required to be kept under the equivalent provision of this Act in respect of TasTAFE.
- (2) The TasTAFE corporate plan in force under the former Act, immediately before the commencement day, is taken, on and after the commencement day, to be the corporate plan in force under this Act.
- (3) If this Act commences during a financial year, the annual report prepared under this Act in respect of the financial year is to be prepared as if –
- (a) this Act was in force for the whole of that financial year; and

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- (b) the former TasTAFE was TasTAFE under this Act for such part of the financial year in respect of which the former Act was in force.

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SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Section 50

Building Regulations 2016

1. Regulation 3(1) is amended by omitting paragraph (c) from the definition of *educational institution* and substituting:
 - (c) a campus of TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*;

Children, Young Persons and Their Families Act 1997

1. Section 32(10) is amended by omitting paragraph (k) and substituting the following paragraph:
 - (k) if there are concerns about the child’s education and the child attends TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*, a person nominated by TasTAFE;

Collections for Charities (Approved Organisations) Order 2002

1. Schedule 1 is amended by omitting “TasTAFE created by the *Training and Workforce Development Act 2013*” from column 2 of item 13 and substituting “TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*”.

Education Act 2016

1. Section 5 is amended by omitting the definition of *TasTAFE* and substituting the following definition:

TasTAFE means TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*;

2. Section 61(4) is amended by omitting paragraph (j) and substituting the following paragraph:

(j) the TasTAFE CEO within the meaning of the *TasTAFE (Skills and Training Business) Act 2021*;

3. Section 246(2)(a) is amended by omitting “section 86 of the *Training and Workforce Development Act 2013* and imposed” and substituting “the *TasTAFE (Skills and Training Business) Act 2021*”.

Financial Management Act 2016

1. Schedule 1 is amended by omitting

| | |
|---------|---|
| TasTAFE | The chief executive officer of TasTAFE appointed under section 66 of the <i>Training and Workforce Development Act 2013</i> |
|---------|---|

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from Part 1 and substituting:

TasTAFE

The TasTAFE CEO
within the meaning of
the *TasTAFE (Skills
and Training Business)*
Act 2021

Financial Management Determination 2019

1. Clause 3 is amended by omitting paragraph (g) and substituting the following paragraph:

(g) *TasTAFE (Skills and Training Business) Act 2021.*

Judicial Review Act 2000

1. Clause 10(2) of Schedule 3 is amended by omitting paragraph (a) and substituting the following paragraph:

(a) TasTAFE, as continued by the *TasTAFE (Skills and Training Business) Act 2021*;

Poisons Act 1971

1. Section 3(1) is amended by omitting paragraph (d) from the definition of *public institution* and substituting:

(d) TasTAFE, as continued by the *TasTAFE (Skills and Training Business) Act 2021*;
and

Poisons Regulations 2018

1. Regulation 3(1) is amended by omitting the definitions of *TasTAFE* and *TasTAFE chief executive officer* and substituting the following definitions:

TasTAFE means *TasTAFE* as continued by the *TasTAFE (Skills and Training Business) Act 2021*;

TasTAFE CEO has the same meaning as in the *TasTAFE (Skills and Training Business) Act 2021*.

2. Regulation 58 is amended as follows:
 - (a) by omitting from subregulation (2)(c) “*TasTAFE chief executive officer*” and substituting “*TasTAFE CEO*”;
 - (b) by omitting from subregulation (3) “*TasTAFE chief executive officer*” and substituting “*TasTAFE CEO*”.
3. Regulation 59 is amended as follows:
 - (a) by omitting from subregulation (2) “*TasTAFE chief executive officer*” and substituting “*TasTAFE CEO*”;
 - (b) by omitting from subregulation (3) “*TasTAFE chief executive officer*” and substituting “*TasTAFE CEO*”.

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4. Regulation 60 is amended as follows:

- (a) by omitting from subregulation (3) “TasTAFE chief executive officer” and substituting “TasTAFE CEO”;
- (b) by omitting from subregulation (4) “TasTAFE chief executive officer” and substituting “TasTAFE CEO”.

5. Regulation 130 is amended as follows:

- (a) by omitting the definition of *TasTAFE employee* from subregulation (1) and substituting the following definition:

TasTAFE employee has the same meaning as in the *TasTAFE (Skills and Training Business) Act 2021*.

- (b) by omitting from subregulation (2)(a)(ii)(A) “TasTAFE chief executive officer” and substituting “TasTAFE CEO”;
- (c) by omitting from subregulation (2)(a)(ii)(B) “TasTAFE chief executive officer” and substituting “TasTAFE CEO”.

Radiation Protection Regulations 2016

- 1.** Regulation 47(1) is amended by omitting paragraph (c) from the definition of *educational institution* and substituting:

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- (c) *TasTAFE* as continued by the *TasTAFE (Skills and Training Business) Act 2021*;

***Registration to Work with Vulnerable People Regulations
2014***

1. Regulation 3 is amended by omitting the definition of *TasTAFE* and substituting the following definition:

TasTAFE means *TasTAFE* as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

2. Regulation 4(1) is amended by omitting “*TasTAFE* within the meaning of the *Training and Workforce Development Act 2013*” from paragraph (c) of the definition of *school* and substituting “*TasTAFE* as continued by the *TasTAFE (Skills and Training Business) Act 2021*”.

Residential Tenancy Act 1997

1. Section 3(1) is amended by omitting “*Training and Workforce Development Act 2013*” from paragraph (d) of the definition of *boarding premises* and substituting “*TasTAFE (Skills and Training Business) Act 2021*”.

Sentencing Act 1997

1. Section 42AB is amended by omitting “*Training and Workforce Development Act 2013*” from

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paragraph (d) of the definition of *boarding premises* and substituting “*TasTAFE (Skills and Training Business) Act 2021*”.

State Service Act 2000

1. Schedule 1 is amended by omitting

| | |
|---------|-------------------------|
| TasTAFE | Chief executive officer |
|---------|-------------------------|

from Part 2.

Teachers Registration Act 2000

1. Section 3 is amended as follows:
 - (a) by omitting “or TasTAFE” from the definition of *practising teacher*;
 - (b) by omitting “or TasTAFE” from the definition of *student*;
 - (c) by omitting the definition of *TasTAFE* and substituting the following definition:

TasTAFE means TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

2. Section 6(1) is amended as follows:
 - (a) by omitting from paragraph (j) “school;” and substituting “school.”;
 - (b) by omitting paragraphs (k) and (l).

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3. Section 11 is amended as follows:
 - (a) by omitting from subsection (1) “or TasTAFE”;
 - (b) by omitting subsection (5).
4. Section 17D(1)(a)(i) is amended by omitting “or TasTAFE”.
5. Section 27 is amended by omitting subsection (2) and substituting the following subsection:
 - (2) For the avoidance of doubt, subsection (1) does not apply to TasTAFE.
6. Section 32 is amended as follows:
 - (a) by omitting “form of all persons teaching at the school or TasTAFE as at 1 July that year.” and substituting “form of –”;
 - (b) by inserting the following paragraphs before the penalty:
 - (a) in the case of TasTAFE, all registered teachers at TasTAFE as at 1 July that year; and
 - (b) in the case of any other school, all persons teaching at the school as at 1 July that year.

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Training and Workforce Development Act 2013

1. The long title is amended by omitting “, to establish TasTAFE”.
2. Section 3(3) is amended by omitting paragraph (c).
3. Section 4(1) is amended by omitting the definitions of *TasTAFE*, *TasTAFE Board*, *TasTAFE chief executive officer*, *TasTAFE corporate plan*, *TasTAFE director*, *TasTAFE employee*, *TasTAFE financial statements* and *TasTAFE student* and substituting the following definition:

TasTAFE means TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*;
4. Part 5 is repealed.
5. Section 93(4) is amended by omitting paragraph (b).
6. Schedules 2 and 3 are repealed.