

TASMANIA

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**EDUCATION AND TRAINING (TASMANIAN  
POLYTECHNIC) BILL 2008**

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**CONTENTS**

**PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Guiding principle
4. Interpretation

**PART 2 – TASMANIAN POLYTECHNIC**

***Division 1 – Establishment of Tasmanian Polytechnic***

5. Establishment of Tasmanian Polytechnic
6. Functions of Polytechnic
7. Powers of Polytechnic

***Division 2 – Board of Polytechnic***

8. Board of Polytechnic
9. Responsibilities and powers of Board
10. Delegation by Board
11. Acting directors
12. Offences as director
13. Repayment of improper profit

***Division 3 – Chief executive officer***

14. Chief executive officer

15. Responsibilities of chief executive officer

16. Delegation by chief executive officer

***Division 4 – Employees***

17. Employees

***Division 5 – Committees***

18. Audit committee

19. Other committees

***Division 6 – Directions and plans***

20. Ministerial directions

21. Corporate plan

22. Notification of developments

**PART 3 – FINANCIAL AFFAIRS AND REPORTS**

***Division 1 – Financial provisions***

23. Authorised deposit-taking institution accounts

24. Funds of Polytechnic

25. Effect of *Financial Agreement Act 1994*

***Division 2 – Accounting records and financial statements***

26. Accounting records

27. Financial statements

28. Report of Auditor-General

***Division 3 – Annual report and other information***

29. Annual report

30. Tabling of annual report

***Division 4 – Miscellaneous***

31. Treasurer's Instructions

**PART 4 – BY-LAWS**

32. By-laws

**PART 5 – MISCELLANEOUS**

33. Fees, levies and charges

34. Reviews

- 35. Transfer of Crown land
- 36. Transfer of property and liabilities
- 37. Regulations
- 38. Administration of Act

**SCHEDULE 1 – DIRECTORS**

**SCHEDULE 2 – MEETINGS OF BOARD**

**SCHEDULE 3 – COMMITTEES**



# **EDUCATION AND TRAINING (TASMANIAN POLYTECHNIC) BILL 2008**

*(Brought in by the Minister for Education and Skills, the  
Honourable David John Bartlett)*

## **A BILL FOR**

**An Act to establish the Tasmanian Polytechnic, to require the Tasmanian Polytechnic to provide post-Year 10 education and training to enable persons to acquire qualifications and participate in the workforce and further education and training and for related purposes**

Be it enacted by His 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 *Education and Training (Tasmanian Polytechnic) Act 2008*.

### **2. Commencement**

This Act commences on 1 January 2009.

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**THIS BILL IS COGNATE WITH THE *EDUCATION AND TRAINING (TASMANIAN ACADEMY) BILL 2008*, THE *EDUCATION AND TRAINING (TASMANIAN SKILLS INSTITUTE) BILL 2008*, THE *EDUCATION AND TRAINING (REPEALS AND TRANSITIONAL PROVISIONS) BILL 2008*, THE *EDUCATION AND TRAINING (MISCELLANEOUS AND CONSEQUENTIAL AMENDMENTS) BILL 2008* AND THE *EDUCATION AND TRAINING (FURTHER CONSEQUENTIAL AMENDMENTS) BILL 2008***

### **3. Guiding principle**

In the administration of this Act, regard is to be had to the principle that the Polytechnic is to work collaboratively with the Tasmanian Academy established by the *Education and Training (Tasmanian Academy) Act 2008* and the Tasmanian Skills Institute established by the *Education and Training (Tasmanian Skills Institute) Act 2008* so as to maximise the qualifications and skills of Tasmanians obtained through education and training undertaken after the completion of Year 10.

### **4. Interpretation**

In this Act –

**“Board”** means the Board of Directors of the Polytechnic established under section 8;

**“chief executive officer”** means the chief executive officer of the Polytechnic appointed under section 14;

**“corporate plan”** means the corporate plan approved under section 21;

**“director”** means –

- (a) a person appointed to the Board under section 8; or
- (b) a person appointed to a vacant office of director under clause 6 of Schedule 1;

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

Part 1 – Preliminary

s. 4

---

**“employee”** means a person appointed or employed for the purposes of the Polytechnic, as specified in section 17;

**“financial statements”** means the financial statements referred to in section 27;

**“overseas student”** means a student who –

- (a) is not entitled to reside permanently in Australia; and
- (b) would not normally be resident in Australia if he or she were not attending the Polytechnic or a similar institution;

**“Polytechnic”** means the Tasmanian Polytechnic established under section 5;

**“post-Year 10 education and training”** means education and training that is usually undertaken by persons following the completion of Year 10 but does not include higher education, within the meaning of the *Tasmanian Qualifications Authority Act 2003*;

**“student”** means a person who is undertaking post-Year 10 education and training with the Polytechnic;

**“student organisation”** means an organisation formed for the benefit of students;

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 4

Part 1 – Preliminary

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**“Year 10”** means the year of secondary education commonly known as Year 10.

## **PART 2 – TASMANIAN POLYTECHNIC**

### ***Division 1 – Establishment of Tasmanian Polytechnic***

#### **5. Establishment of Tasmanian Polytechnic**

- (1) The Tasmanian Polytechnic is established.
- (2) The Polytechnic –
  - (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) If the Polytechnic has a seal –
  - (a) it is to be kept and used as authorised by the Polytechnic; and
  - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Polytechnic.

#### **6. Functions of Polytechnic**

The Polytechnic has the following functions:

- (a) to provide and promote, in accordance with any directions provided by the

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 6

Part 2 – Tasmanian Polytechnic

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- Minister, post-Year 10 education and training for the purpose of enabling persons to acquire qualifications and participate in the workforce and further education and training;
- (b) to provide services, career development support and other support for students in relation to post-Year 10 education and training for the purpose of enabling them to acquire qualifications and participate in the workforce and further education and training;
  - (c) if practicable, to consult and enter into partnerships with other education providers, including schools, in respect of making available to persons in rural and isolated communities post-Year 10 education and training for the purpose of enabling such persons to acquire qualifications and participate in the workforce and further education and training;
  - (d) to advise the Minister of any significant development relating to the provision of post-Year 10 education and training for the purpose of enabling persons to acquire qualifications and participate in the workforce and further education and training;
  - (e) any other function of the Polytechnic under this or any other Act.

## **7. Powers of Polytechnic**

- (1) The Polytechnic has the following powers:
- (a) subject to any other Act, to provide education and training, other than post-Year 10 education and training, for the purpose of enabling persons to acquire qualifications and participate in the workforce and further education and training;
  - (b) to undertake commercial activities incidental to the provision of post-Year 10 education and training for the purpose of enabling persons to acquire qualifications and participate in the workforce and further education and training;
  - (c) to hire or hire out property;
  - (d) to lease, sell, otherwise dispose of or buy property, other than real property;
  - (e) with the approval of the Minister, to lease, sell, otherwise dispose of or buy real property;
  - (f) to enter into contracts;
  - (g) to provide services to other persons and organisations in accordance with such contracts;

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 8

Part 2 – Tasmanian Polytechnic

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- (h) to do anything necessary or convenient in relation to the performance of its functions.
- (2) The Polytechnic also has the following powers:
  - (a) with the written approval of the Minister and the Treasurer, to form, or participate in the formation of, a company;
  - (b) with the written approval of the Minister and the Treasurer, to participate in a trust;
  - (c) with the written approval of the Minister and the Treasurer, to participate in any or all of the following arrangements for the purpose of the sharing of profits:
    - (i) a joint venture;
    - (ii) a partnership;
    - (iii) any other arrangement.

***Division 2 – Board of Polytechnic***

**8. Board of Polytechnic**

- (1) The Polytechnic has a Board of Directors consisting of 7 persons appointed by the Minister.
- (2) Before appointing a person to the Board, the Minister may call for expressions of interest in the appointment by advertising in at least 3 daily

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

Part 2 – Tasmanian Polytechnic

s. 8

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newspapers printed, and circulating, in Tasmania.

- (3) In appointing a person to the Board, the Minister is to –
- (a) have regard to the need for the directors together to have –
    - (i) the knowledge and skills necessary to ensure that the functions of the Polytechnic are performed competently; and
    - (ii) business and financial skills; and
    - (iii) an understanding of the post-Year 10 education and training needs of students and potential students and the requirements for meeting those needs; and
    - (iv) an understanding of the needs of the community and industry for persons with the knowledge and skills provided by post-Year 10 education and training and the requirements for meeting those needs; and
  - (b) if the Minister has called for expressions of interest, consider any expressions of interest received; and
  - (c) take into account the desirability of having as directors both men and women; and

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 9

Part 2 – Tasmanian Polytechnic

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- (d) take into account the desirability of having as directors persons with an understanding of the interests of parents and the community; and
  - (e) take into account the desirability of having as directors persons from all regions of the State.
- (4) The Minister may appoint a director as chairperson of the Board.
  - (5) Schedule 1 has effect with respect to the directors.
  - (6) Schedule 2 has effect with respect to meetings of the Board.

**9. Responsibilities and powers of Board**

- (1) The Board is responsible to the Minister for –
  - (a) the performance of the functions of the Polytechnic; and
  - (b) the achievement by the Polytechnic of the objectives specified in its corporate plan; and
  - (c) ensuring that the business and affairs of the Polytechnic are managed and conducted –
    - (i) in accordance with sound business practice; and

- (ii) in a manner that is consistent with any directions given by the Minister under section 20.
- (2) The Board has power to do anything necessary or convenient in relation to its responsibilities under this Act.

#### **10. Delegation by Board**

The Board may delegate any of its powers or responsibilities, other than this power of delegation.

#### **11. Acting directors**

- (1) In this section –
- “absent”** means –
- (a) absent from duty; or
  - (b) otherwise unable to perform the functions of a director.
- (2) The Minister may appoint a person to act as a director if a director is absent.
- (3) A person appointed to act as a director under this section is taken to be a director.
- (4) The appointment of a person to act as a director terminates when the absent director resumes the performance of the functions of director or the

absent director resigns or is removed from the office of director.

## **12. Offences as director**

- (1) A director must act honestly in the performance and exercise of the functions and powers of a director.

Penalty: Fine not exceeding 50 penalty units.

- (2) In performing and exercising the functions and powers of a director, a director must exercise the same degree of care and diligence that a person in a similar position in a corporation, within the meaning of the Corporations Act, is required to exercise.

Penalty: Fine not exceeding 50 penalty units.

- (3) A director or former director must not use improperly, whether within Tasmania or elsewhere, information acquired as a director –

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Polytechnic.

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

- (4) A director or former director must not use improperly, whether within Tasmania or

elsewhere, his or her position as a director or the fact that he or she is or was a director –

- (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
- (b) to cause damage to the Polytechnic.

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

### **13. Repayment of improper profit**

If a person is found guilty of an offence under section 12, the Polytechnic may recover in a court of competent jurisdiction as a debt due to it –

- (a) any profit made by that person or another person as a result of the commission of the offence; and
- (b) an amount equal to any loss and damage it suffered as a result of the commission of the offence.

### ***Division 3 – Chief executive officer***

#### **14. Chief executive officer**

- (1) Subject to and in accordance with the *State Service Act 2000*, a chief executive officer of the Polytechnic may be appointed.

- (2) The chief executive officer is not eligible to hold the office of director.

**15. Responsibilities of chief executive officer**

- (1) The chief executive officer is responsible to the Board for the general administration and management of the Polytechnic.
- (2) The chief executive officer –
- (a) must carry out any responsibilities, and may exercise any powers, delegated by the Board; and
  - (b) must perform any functions or carry out any responsibilities imposed on, and may exercise any other powers granted by, this or any other Act.

**16. Delegation by chief executive officer**

The chief executive officer may delegate any of his or her responsibilities, functions or powers, other than this power of delegation.

***Division 4 – Employees***

**17. Employees**

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purpose of this Act.

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

Part 2 – Tasmanian Polytechnic

s. 17

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- (2) Despite sections 37(1) and (3) of the *State Service Act 2000*, the Minister administering that Act may appoint, for the purposes of this Act, a person under that Act as a sessional employee to undertake duties for the purpose of delivering training sessions.
- (3) A person appointed as a sessional employee pursuant to subsection (2) –
- (a) is taken, for all purposes, to be an employee within the meaning of the *State Service Act 2000*; but
  - (b) is not, by reason only of that appointment, to be regarded for any purpose as being in full-time employment, part-time employment or casual employment within the meaning of the *Industrial Relations Act 1984*.
- (4) In this section –
- “**training session**” means a workplace-oriented course or part of a course that is designed to –
- (a) facilitate or supervise learning through any one or more of the following:
    - (i) instruction;
    - (ii) mentoring;
    - (iii) coaching;
    - (iv) observation;

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 18

Part 2 – Tasmanian Polytechnic

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- (v) demonstration;
  - (vi) the conduct of assessment activities; and
  - (b) impart knowledge, skills and attitudes.
- (5) Subsections (2), (3) and (4) are incorporated with, and are to be read together with, the *State Service Act 2000*.

***Division 5 – Committees***

**18. Audit committee**

- (1) The Board must establish an audit committee.
- (2) An audit committee is to provide the Board with advice on any of the following:
  - (a) the audit charter of the Polytechnic;
  - (b) monitoring the systems of financial reporting and internal control;
  - (c) the resources necessary to carry out internal audit of the Polytechnic;
  - (d) any other matter referred to it by the Board.
- (3) Schedule 3 has effect with respect to the membership and meetings of the audit committee.

**19. Other committees**

- (1) The Board may establish any committee it considers appropriate in relation to the functions and powers of the Polytechnic.
- (2) A committee is to provide advice to the Board on any matter referred to it by the Board.
- (3) Schedule 3 has effect with respect to the membership and meetings of a committee.

***Division 6 – Directions and plans***

**20. Ministerial directions**

- (1) After consulting with the Board, the Minister, by notice in writing, may give the Board directions in connection with the functions and powers of the Polytechnic.
- (2) The Board must comply with any direction given by the Minister.

**21. Corporate plan**

- (1) The Board, by 31 May in each year, is to prepare a corporate plan in respect of at least a 3-year period commencing on 1 July in that year.
- (2) The corporate plan is to include the following:
  - (a) a statement of the Polytechnic's objectives, policies and programs;

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 22

Part 2 – Tasmanian Polytechnic

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- (b) a statement of the Polytechnic's financial plans;
  - (c) the major strategies to be used to achieve the objectives and give effect to the policies, programs and plans.
- (3) The Board is to provide a copy of the proposed corporate plan to the Minister for approval.
- (4) The Minister, after consultation with the Treasurer, may –
  - (a) approve the corporate plan; or
  - (b) require the Board to amend the corporate plan before approving it.
- (5) The Board may prepare an amendment of its corporate plan at any time.
- (6) An amendment of the corporate plan takes effect when the Minister, after consultation with the Treasurer, approves the amendment.
- (7) Except where the Minister, after consulting with the Treasurer, otherwise approves, the Polytechnic must act in accordance with its corporate plan or amended corporate plan.

**22. Notification of developments**

The Board is to notify the Minister, as soon as practicable, of any developments that, in the opinion of the Board, may –

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

Part 2 – Tasmanian Polytechnic

**s. 22**

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- (a) prevent or significantly affect the achievement of the objectives specified in the corporate plan; or
- (b) significantly affect the financial viability or operating ability of the Polytechnic; or
- (c) significantly affect any other policy or program specified in the corporate plan.

**PART 3 – FINANCIAL AFFAIRS AND REPORTS**

***Division 1 – Financial provisions***

**23. Authorised deposit-taking institution accounts**

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

**24. Funds of Polytechnic**

- (1) The funds of the Polytechnic consist of any money –
  - (a) received by it by way of fees and charges under this Act; and
  - (b) otherwise received by it in the course of performing its functions and exercising its powers; and
  - (c) received by it from any other source.
- (2) The funds of the Polytechnic are to be applied –
  - (a) in payment of the remuneration of the directors, the chief executive officer and the employees; and
  - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by the Polytechnic in the

performance and exercise of its functions and powers.

**25. Effect of *Financial Agreement Act 1994***

If the Treasurer, under section 5(1) of the *Financial Agreement Act 1994*, requires the Polytechnic to do or refrain from doing anything for the purpose of implementing the Agreement, within the meaning of that Act, the Polytechnic must comply with that requirement.

***Division 2 – Accounting records and financial statements***

**26. Accounting records**

The Board is to –

- (a) keep accounting records that correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
  - (i) allows true and fair accounts of the Polytechnic to be prepared from time to time; and
  - (ii) allows the accounts of the Polytechnic to be conveniently and properly audited or reviewed; and

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 27

Part 3 – Financial Affairs and Reports

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- (iii) subject to any contrary direction of the Treasurer, complies with the Australian Accounting Standards; and
- (iv) complies with any written directions of the Minister.

**27. Financial statements**

- (1) Within 45 days after the end of the financial year, the Board is to –
  - (a) prepare the financial statements for the Polytechnic relating to that financial year; and
  - (b) provide the Auditor-General with the financial statements of the Polytechnic.
- (2) Financial statements in respect of a financial year are to consist of the following:
  - (a) an operating statement for that financial year;
  - (b) a statement of financial position as at the end of that financial year;
  - (c) a statement of the cash flows for that financial year;
  - (d) any other financial information required to be included by a direction given under subsection (4);

- (e) any statements, reports and notes, other than a directors' report or an auditor's report, attached to, or intended to be read with, the operating statement and the statement of financial position.
- (3) The financial statements are to –
- (a) comply with any direction given under subsection (4); and
  - (b) subject to that direction, comply with the Australian Accounting Standards.
- (4) The Treasurer may give any written directions to the Board in respect of the form of the financial statements.

## **28. Report of Auditor-General**

The Auditor-General must provide the Board, the Minister and the Treasurer with a copy of his or her report made under section 40 of the *Financial Management and Audit Act 1990* in respect of the financial statements of the Polytechnic.

### ***Division 3 – Annual report and other information***

## **29. Annual report**

- (1) The Board is to prepare for the Polytechnic an annual report for each financial year.
- (2) The annual report is to include the following:

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 29

Part 3 – Financial Affairs and Reports

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- (a) the financial statements of the Polytechnic for the financial year to which the annual report relates;
  - (b) a copy of the report of the Auditor-General received under section 28 in respect of the financial statements;
  - (c) a summary of the corporate plan of the Polytechnic;
  - (d) a report on the performance of the Polytechnic;
  - (e) a report on the operations of the Polytechnic;
  - (f) any information the Minister requires relating to the directors, chief executive officer and employees;
  - (g) the details of any directions given by the Minister under section 20 and any action taken by the Board in respect of those directions;
  - (h) any other information the Minister requires;
  - (i) any other information the Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of the Polytechnic.
- (3) The Board is to provide the annual report to the Minister.

- (4) Section 36 of the *State Service Act 2000* does not apply in respect of the Board.

**30. Tabling of annual report**

- (1) The Minister is to lay a copy of the annual report of the Polytechnic provided under section 29 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 any 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 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 before a House of Parliament within the period specified in subsection (1) or by the day specified in a statement referred to in subsection (2) because either House of Parliament is not sitting at the expiration of that period or on that day, the Minister is to –

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 31

Part 3 – Financial Affairs and Reports

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- (a) provide a copy of the annual report to the Clerk of that House of Parliament immediately 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 4 – Miscellaneous***

**31. Treasurer's Instructions**

Treasurer's Instructions issued under the *Financial Management and Audit Act 1990* apply to the Polytechnic as if it were an Agency within the meaning of that Act.

**PART 4 – BY-LAWS**

**32. By-laws**

- (1) The Board may make by-laws in respect of –
  - (a) any matter relating to the functions and powers of the Polytechnic; and
  - (b) the conduct and discipline of any persons in respect of –
    - (i) any facilities and equipment owned, occupied, managed or used by the Polytechnic; or
    - (ii) the provision of post-Year 10 education and training; and
  - (c) the operation of student organisations.
- (2) By-laws may be made so as to apply differently according to factors specified in the regulations.
- (3) 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.

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

s. 32

Part 4 – By-laws

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- (4) The by-laws may authorise any matter to be from time to time determined, applied or regulated by the Board, the chief executive officer or another person specified in the by-laws.
- (5) The by-laws are statutory rules for the purposes of the *Rules Publication Act 1953*.

## **PART 5 – MISCELLANEOUS**

### **33. Fees, levies and charges**

- (1) The Polytechnic, subject to this section, may impose, as it considers appropriate –
  - (a) fees and charges in respect of the provision of post-Year 10 education and training; and
  - (b) levies in respect of incidental costs and expenses incurred in providing post-Year 10 education and training; and
  - (c) fees and charges in respect of other goods and services it provides.
- (2) The Polytechnic 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 education and training referred to in subsection (1)(a) to a student who –
  - (a) is entitled under section 47B(2) of the *Education Act 1994* to attend the Polytechnic in that year; and
  - (b) has not attained the age of 19 years before 1 January in that year; and
  - (c) is not an overseas student.
- (3) The Polytechnic may exempt a person, or a class of persons, from the obligation to pay all or part

of any fee, levy or charge that would otherwise be payable.

### **34. Reviews**

At the direction of the Minister, the Secretary of the department responsible for the administration of the *Education Act 1994* is to carry out such reviews as the Minister considers appropriate for the purposes of assessing –

- (a) the acquisition of qualifications by students; and
- (b) whether on having attended the Polytechnic the students have acquired qualifications and are able to participate in the workforce and further education and training; and
- (c) the relevance of the qualifications acquired by the students to their ability to participate in the workforce and further education and training.

### **35. Transfer of Crown land**

- (1) The Minister, by notice published in the *Gazette*, may transfer Crown land specified in the notice to the Polytechnic if –
  - (a) the Treasurer and the Minister administering the *Crown Lands Act 1976* approve that transfer; and

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

Part 5 – Miscellaneous

s. 35

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- (b) the Polytechnic has agreed to the transfer.
- (2) A notice under subsection (1) –
    - (a) takes effect on the day it is published in the *Gazette* or a later day specified in the notice; and
    - (b) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
  - (3) On the day on which a notice under subsection (1) takes effect, the Crown land specified in the notice vests in the Polytechnic –
    - (a) subject only to those estates in the land specified in the notice; or
    - (b) if the notice does not specify that the land vests subject to an estate, free from all encumbrances.
  - (4) On the recommendation of the Minister, the Treasurer, by notice in the *Gazette*, may exempt the Polytechnic 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.
  - (5) A notice under subsection (4) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**36. Transfer of property and liabilities**

- (1) The Minister, by notice published in the *Gazette*, may transfer any property and rights (other than Crown land) and liabilities and obligations, whether actual, prospective or contingent, of the Crown to the Polytechnic as specified in that notice.
- (2) On the day on which a notice under subsection (1) takes effect –
  - (a) the property and rights specified in the notice vest in the Polytechnic; and
  - (b) the liabilities and obligations specified in the notice become the liabilities and obligations of the Polytechnic.
- (3) A notice under subsection (1) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**37. Regulations**

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (3) The regulations may –
  - (a) provide that a contravention of any of the regulations is an offence; and

- (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) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Board or the chief executive officer.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (6) A provision referred to in subsection (5) may take effect on and from the day on which this Act commences or a later day.

### **38. 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 Education and Skills; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Education.

**SCHEDULE 1 – DIRECTORS**

Section 8(5)

**1. Term of office**

A director is appointed for such period, not exceeding 3 years, as is specified in the instrument of appointment and, if eligible, may be reappointed.

**2. Holding other office**

The holder of an office who is required under any Act to devote the whole time to the duties of that office is not disqualified from –

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

**3. *State Service Act 2000***

- (1) The *State Service Act 2000* does not apply in relation to a director in his or her capacity as a director.
- (2) A person may hold the office of director in conjunction with State Service employment.

**4. Remuneration and conditions of appointment**

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

**5. Vacation of office**

- (1) A 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 this section.
- (2) The Minister may remove a director from office if the director –
  - (a) is absent from 3 consecutive meetings of the Board without the permission of the other directors; or

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

**sch. 1**

---

- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the director's creditors or makes an assignment of the director's remuneration or estate for their benefit; or
  - (c) is convicted, in Tasmania or elsewhere, of a crime or offence punishable by imprisonment for 12 months or longer; or
  - (d) is convicted of an offence under this Act; or
  - (e) under this Act, ceases to be eligible to hold the office; or
  - (f) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Polytechnic, other than a contract for goods or services supplied by the Polytechnic, if those goods or services are ordinarily supplied by the Polytechnic on the same terms as are ordinarily supplied to other persons in the same situation; or
  - (g) fails to disclose a pecuniary interest as required under clause 7 of Schedule 2.
- (3) The Minister may remove a director from office if satisfied that the director is unable to perform, or is not performing, adequately or competently the duties of office.

- (4) The Minister may remove all directors from office if satisfied that the Board has wilfully disregarded any directions given by the Minister under section 20.
- (5) If the Minister removes all the directors under subclause (4), the Minister is to lay a copy of the reasons for their removal before each House of Parliament within 21 sitting-days after their removal.

#### **6. Filling of vacancies**

- (1) If the office of a director becomes vacant, the Minister may appoint a person to the vacant office for a period not exceeding 3 years.
- (2) In appointing a person as a director under subclause (1), the Minister is to comply with section 8(3).

#### **7. Validation of proceedings, &c.**

- (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a director.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a director or that any other

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

**sch. 1**

---

person was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act as, or capable of being, a director, and as if the Board had been fully constituted.

**8. Presumptions**

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

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

**SCHEDULE 2 – MEETINGS OF BOARD**

Section 8(6)

**1. Convening of meetings**

- (1) The Board is to meet at least 6 times in each calendar year.
- (2) The chairperson, after giving each 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 directors; and
  - (c) must convene a meeting in accordance with any resolution of a previous meeting.
- (3) If the chairperson of the Board is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice has been given of the meeting, by –
  - (a) two or more other directors; or
  - (b) a person authorised by the Board to do so.
- (4) For the purposes of subclauses (2) and (3), what constitutes reasonable notice is to be determined by the Board.

**2. Presiding at meetings**

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

**3. Quorum and voting at meetings**

- (1) At a meeting of the Board, a quorum is constituted by the majority of the total number of directors.
- (2) A meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) At a meeting of the Board –
  - (a) the director presiding has a deliberative vote only; and
  - (b) a question is decided –
    - (i) by a majority of votes of the directors present and voting; or
    - (ii) in the negative if there is an equality of votes of the directors present and voting.
- (4) At a meeting of the Board where a member is excluded from being present and taking part in

the consideration and decision of the 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 members specified as constituting a quorum in subclause (1) less the number of members so excluded.

#### **4. Conduct of meetings**

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit 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 Board.
- (3) A director who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (2), the Board may allow persons to attend any meeting or part of a meeting for the purpose of advising or informing the Board on any matter.

**5. Resolutions without meetings**

- (1) If all 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 Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the directors signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each director is to be –
  - (a) advised immediately of the matter; and
  - (b) given 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 directors, constitute one document.

**6. Minutes**

The Board is to keep accurate minutes of meetings.

**7. Disclosure of interests**

- (1) If a director has a direct or indirect pecuniary interest in a matter that is being considered, or about to be considered, by the Board, the

director must, as soon as practicable after the relevant facts come to the director's knowledge, disclose the nature of the interest to the Board.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Unless the Board otherwise determines, a director who has made a disclosure under subclause (1) must not –
  - (a) be present during any deliberation of the Board in relation to the matter; or
  - (b) take part in any decision of the Board in relation to the matter.
- (3) For the purpose of making a determination under subclause (2), the director to whom the determination relates must not –
  - (a) be present during any deliberation of the 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 the Polytechnic if those goods or services are ordinarily supplied by the Polytechnic on the same terms as they are ordinarily supplied to other persons in the same situation; or

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

**sch. 2**

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

**8. General procedure**

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

**9. Presumptions**

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

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

**SCHEDULE 3 – COMMITTEES**

Section 18(3) and 19(3)

**1. Interpretation**

In this Schedule –

“committee” means –

- (a) the audit committee established under section 18; and
- (b) a committee established under section 19.

**2. Membership of committees**

- (1) A committee consists of any number of persons the Board determines.
- (2) The chief executive officer must not be a member of the audit committee.
- (3) The Board is to appoint a director as chairperson of a committee.

**3. Conditions of appointment**

- (1) A member of a committee is entitled to be paid any remuneration and allowances the Minister determines.
- (2) A member of a committee who is a State Service employee or State Service officer 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 of a committee holds that office for the period, and on the conditions, the Board determines.

#### **4. Meetings**

- (1) Meetings of a committee are to be held in accordance with any directions given by the Board.
- (2) A committee may obtain assistance, information and advice from any person.
- (3) Except as otherwise provided by this Schedule and the Board, a committee may regulate the calling of, and the conduct of business at, its meetings.

#### **5. Disclosure of interests**

- (1) If –
  - (a) a member of a committee has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the committee; and
  - (b) the interest could conflict with the proper performance of the member's duties in relation to consideration of the matter –

the member, as soon as practicable after the relevant facts come to the member's knowledge, must disclose the nature of the interest to a meeting of the committee.

Penalty: Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

- (2) Unless the committee otherwise determines, the member of the committee 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 of the committee 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 the Polytechnic if those goods or services are ordinarily supplied by the Polytechnic on the same terms as they are ordinarily supplied to other persons in the same situation; or

*Education and Training (Tasmanian Polytechnic) Act 2008*  
*Act No. of*

**sch. 3**

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