

CLAUSE NOTES

TasTAFE (Skills and Training Business) Bill 2021

Clause 1 Short Title

The short title will be the *TasTAFE (Skills and Training Business) Act 2021*

Clause 2 Commencement

This clause provides that, once passed, the provisions of the Act commence on a day, or days, to be proclaimed.

Clause 3 Interpretation

This clause provides meanings for terms used in this Act.

Part 2 – TASTAFE

Division 1 – TasTAFE

Clause 4 TasTAFE continued

The organisation continued as TasTAFE under section 56(2) of the *Training and Workforce Development Act 2013*, continues as TasTAFE under this Act.

TasTAFE may use and operate under a trading name that is approved by the Minister for all or any part of its operations.

Clause 5 Functions and Powers of TasTAFE

This clause defines the term *educational provider* for the purpose of this section.

Establishes the functions of TasTAFE:

- to provide vocational education and training (VET) that is responsive to employers, its students and the community.
- to provide foundation skills training to lead to qualifications that enables participation in the workforce or in further education and training.
- in accordance with the statement of expectations, to provide VET in Tasmania including in rural and isolated communities and communities where other VET providers cannot or are not meeting demand effectively.
- to collaborate with industry, employers and other educational providers on VET models or pathways.
- to advise the minister on significant developments relation to the provision of VET by TasTAFE.

Establishes the powers of TasTAFE:

- to provide VET training, or other education and training, to undertake commercial activities or research incidental to this

training, and to offer services to assist employers better use the existing skills of their employees.

- To enter into a range of property and service transactions and specifies those which require the written approval of the Minister and the Treasurer.

Division 2 – TasTAFE Board

Clause 6 TasTAFE Board

Provides that the TasTAFE Board consists of between five and seven directors, appointed by the Minister and may include the appointment of the TasTAFE CEO as a director.

The Minister may appoint a director, other than a director that is also the TasTAFE CEO, to be the chair of the TasTAFE Board.

Before appointing a person as a director, the Minister is to ensure that in aggregate the directors have the relevant knowledge and skills to ensure the functions and powers of TasTAFE are performed and exercised appropriately.

Schedule 1 applies to TasTAFE directors and the meetings of the Board.

Clause 7 Functions and powers of TasTAFE Board

Provides that the TasTAFE Board has the following functions:

- to ensure that the functions and powers of TasTAFE are performed and exercised in an appropriate manner.
- to ensure that the business affairs of TasTAFE are managed and conducted in accordance with sound business practice, the statement of expectations, to achieve the objectives specified in the corporate plan and consistent with each Ministerial direction.
- to establish annual performance objectives for the TasTAFE CEO.

The TasTAFE Board has the power to do all things necessary and convenient to perform its functions and may delegate its functions (other than the power of delegation).

Clause 8 Appointment of acting TasTAFE directors

Provides that if a TasTAFE director is absent, the Minister may appoint an acting director. A person who is appointed as an acting director is not the chair of TasTAFE Board if the absent director is the chair.

A director is absent if they are absent from their duty as a TasTAFE director or is otherwise unable to perform the functions of that office.

An acting director appointment ends if the absent director recommences performing the functions of a director or resigns or the minister revokes the absent director's or acting director's appointment.

Clause 9 TasTAFE Board to notify Minister in certain circumstances

Provides that the TasTAFE Board is to notify the Minister as soon as practicable of any matter that is considered may significantly affect TasTAFE's ability to comply with any Ministerial directions or its statement of expectations, ability to act in accordance with its corporate plan, or affect its financial viability or operating ability.

Division 3 – TasTAFE Staff

Clause 10 TasTAFE CEO

Provides that following consultation with the Minister, the TasTAFE Board may appoint a person as the CEO of TasTAFE.

The TasTAFE CEO must perform any functions and powers granted to that position under the Act, or delegated by the TasTAFE board, and is responsible to the Board for the general administration and management of TasTAFE.

The TasTAFE CEO may delegate their functions and powers (other than the power of delegation).

Clause 11 TasTAFE Employees

Provides that TasTAFE may appoint a person for the purposes of the Act or the purposes of providing vocational education and training or other education and training, by or on behalf of TasTAFE, on terms and conditions that TasTAFE considers appropriate.

Clause 12 Effect of appointment under this Division

This clause clarifies that:

- the *State Service Act 2000* does not apply to the TasTAFE CEO or a TasTAFE employee in those capacities.
- a TasTAFE CEO or TasTAFE employee can hold those positions in conjunction with State Service employment in respect of another position.
- a person appointing a TasTAFE CEO or TasTAFE employee is not a public sector employer for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2019*.
- the *Long Service Leave (State Employees) Act 1994* applies to the TasTAFE CEO and TasTAFE employees.
- the *Public Sector Superannuation Reform Act 2016* applies to the TasTAFE CEO and TasTAFE employees.

Division 4 – TasTAFE Students

Clause 13 Student records

Provides that TasTAFE is required to maintain accurate student records and these are to contain information and matters prescribed in regulations or any other information that TasTAFE considers appropriate (other than information that regulations prescribe are not to be contained in the records).

Clause 14 Fees, levies and charges for students

Subclause (1) defines the terms *overseas student* and *post-Year 10 education and training* for the purposes of this section.

Other than in respect of the provision of post-year 10 secondary education and training to a person:

- who is entitled under section 96 of the *Education Act 2006* to attend TasTAFE in that year or part of a year; and
- is less than 19 years before 1 January in that year; and
- is not an overseas student.

TasTAFE may impose any fees, levies and charges it considers appropriate in respect of goods or services provided in relation to any of its functions and powers.

TasTAFE may exempt a person or class of persons from the obligation to pay all or part of any fee, levy or charge if satisfied that it is equitable or appropriate to do so in the circumstances.

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

Division 5 – TasTAFE Committees

Clause 15 **Audit and risk management committee**

Provides that the TasTAFE Board must establish an audit and risk management committee which is to provide advice on:

- the establishment and review of an audit charter and systems of financial reporting and internal control for TasTAFE.
- the resources necessary to carry out an internal audit or risk evaluation or management of TasTAFE.
- any other matter referred to it by the TasTAFE Board.

Schedule 2 applies to the audit and risk management committee.

Clause 16 **Other committees**

Provides that the TasTAFE Board may establish other committees that it considers appropriate in relation to its functions and powers, or operation of TasTAFE and these committees are to provide advice to the TasTAFE Board on each matter set out in its terms of reference.

Schedule 2 applies to any committee established under this clause.

Part 3 – ADMINISTRATION OF TASTAFE

Division I – Administrative requirements for TasTAFE

Clause 17 **Statement of expectations**

Provides that following consultation with the TasTAFE Board, the Minister must provide the Board with a statement of expectations for TasTAFE specifying strategic objectives and policy expectations. The Minister must table a copy of the statement of expectations in Parliament within 10 sitting days.

The statement of expectations takes effect on the day on which it is provided to the Board, or a later day as specified in the statement.

The Minister may at any time, or on application of the Board, amend or revoke and provide a new statement of expectations.

Clause 18 **Ministerial directions**

Provides that the Minister may give the TasTAFE Board directions at any time regarding the discharge of the functions and powers of TasTAFE.

In making a direction the Minister is to have regard to the objectives, functions and powers of TasTAFE and may not give a direction that is contrary to the statement of expectations.

A direction is not to exert control or influence over the exercise by TasTAFE or the TasTAFE Board of its powers or TasTAFE, the content of education, training and services provided by TasTAFE or the content of events or activities conducted or supported by TasTAFE.

A direction must be in writing and signed by the Minister.

Clause 19 Corporate plan

Provides that the TasTAFE Board is to prepare a draft corporate plan in respect of at least a 3-year period commencing on 1 July in that.

The draft plan is to include:

- a statement of the objectives, policies and programs of TasTAFE and how they comply with the statement of expectations.
- a statement of the TasTAFE financial plans for the period.
- major strategies to achieve objectives and give effect to policies, programs and financial plans.
- performance targets and the criteria for assessing the achievement of those targets.

The Board is to provide a copy of the draft corporate plan to the Minister for approval at least two months before the plan is to commence.

In consultation with the Treasurer, the Minister may approve the draft plan, at which time it becomes the corporate plan for TasTAFE or require the Board to amend the draft plan.

The Board may draft an amendment to the corporate plan at any time for consideration by the Minister, in consultation with the Treasurer.

TasTAFE must act in accordance with the corporate plan, unless otherwise authorised by the Minister, after consulting with the Treasurer.

Clause 20 Child safe code of conduct

Provides that the TasTAFE Board must prepare a child safe code of conduct in relation to all persons employed or engaged in relation to TasTAFE that specifies the expected behaviours when interacting with TasTAFE students, children and young people, and those behaviours that are unacceptable.

The code of conduct is to published on the TasTAFE website and must be complied with by all persons employed or engaged in relation to TasTAFE.

Division 2 – Assets of TasTAFE

Clause 21 Funds of TasTAFE

Provides that the funds of TasTAFE consist of any money received from fees, levies and charges, otherwise in the course of its business or received by the Board from any source.

The funds of TasTAFE funds are to be used for payment of the remuneration of TasTAFE directors, CEO and employees and in the payment of expenses etc. incurred by TasTAFE in the course of its business.

Clause 22 Authorised deposit-taking institution

Provides that TasTAFE may open accounts at a deposit-taking institution as it considers necessary, with the written approval of the Treasurer.

Clause 23 Transfer of Crown land

Provides that the Minister, with the approval of the Treasurer and the Minister administering the *Crown Lands Act 1976* and TasTAFE agreeing to the transfer, may, by notice published in the *Gazette*, transfer of Crown land to TasTAFE.

On recommendation from the Minister, the Treasurer may by notice in the *Gazette*, exempt TasTAFE from liability to pay State charges, taxes or duties in relation to the transfer.

Clause 24 Transfer of property and liabilities

Provides that the Minister, by notice published in the *Gazette*, may transfer property (other than Crown land) and liabilities of the Crown, to TasTAFE.

Division 3 – Financial arrangements of TasTAFE

Clause 25 Borrowings by TasTAFE

Provides that TasTAFE, or a subsidiary of TasTAFE, may borrow from the Tasmanian Public Finance Corporation, or otherwise with the approval of the Treasurer.

Clause 26 Accounting records

Provides that TasTAFE is to keep accounting records of its transactions and financial position and keep those records in a manner that enables accounts to be prepared and audited. The records are to comply with relevant accounting standards (subject to any contrary direction by the Treasurer) and with any written directions of the Treasurer. Accounting records are required to be retained for seven years, or longer if determined.

Clause 27 TasTAFE financial statements

Provides that the TasTAFE Board is to prepare financial statements within 45 days after the end of each financial year and as soon as practicable provide a copy of the statements to the Auditor-General. The Treasurer may give directions to the TasTAFE Board in respect of the form and content of the financial statements.

Clause 28 Report of Auditor-General

Provides that the Auditor-General is to provide copies their opinion and formal communication of audit findings under the *Audit Act 2008* to the TasTAFE Board, the Minister and the Treasurer.

Clause 29 Effect of the *Financial Agreement Act 1994*

Provides that TasTAFE must comply with any requirement of the Treasurer issued under section 5(1) of the *Financial Management Act 1994*.

Division 4 – Annual reports

Clause 30 Annual reports

Provides that as soon as practicable after the end of the financial year the TasTAFE Board is to prepare an annual report for TasTAFE for the financial year.

This clause sets out the information and documents that are to be included in the annual report.

The Board is to provide the annual report to the Minister as soon as practical after its preparation.

Clause 31 Tabling of annual report

The clause requires the Minister to table the TasTAFE annual report before both Houses of Parliament within four months after the end of the financial year to which the report relates and sets out the procedures if this is unable to be complied with.

Division 5 – TasTAFE by-laws

Clause 32 TasTAFE By-laws

Provides that the TasTAFE Board may make by-laws in respect of any matters relating to the functions and powers of TasTAFE, the conduct and discipline of any persons in respect of facilities and equipment of TasTAFE and its provision of vocational education and training and the operation of student organisations.

The by-laws may provide that contravention is an offence and impose a fine in respect of the offence.

Part 4 – COMPLIANCE AND ENFORCEMENT

Division 1 – Offences

Clause 33 Offences relating to TasTAFE director

Requires that a TasTAFE director must act honestly when taking an action (or refusing to take an action) in accordance with the Act. Fine not exceeding 100 penalty units.

A TasTAFE director must act honestly, and exercise reasonable care and diligence when performing (or refusing to perform) a function or exercising a power under the Act. Fine not exceeding 100 penalty units.

Clause 34 Offences relating to TasTAFE CEO

Requires that the TasTAFE CEO must act honestly when taking an action (or refusing to take an action) in accordance with the Act. Fine not exceeding 100 penalty units.

The TASTAFE CEO must act honestly, and exercise reasonable care and diligence, when performing (or refusing to perform) a function or exercise a power under the Act. Fine not exceeding 100 penalty units.

Clause 35 Misuse of information

Requires that the TasTAFE CEO or director (or former CEO or director) must not improperly use information acquired in those positions or use those positions to gain advantage or cause damage to TasTAFE. Fine not exceeding 100 penalty units or imprisonment not exceeding five years.

Clause 36 Breaches of child safe code of conduct

Clause (1) defines the terms *allegation* and *investigator* for the purposes of this section.

The TasTAFE CEO, or TasTAFE Board regarding an allegation made in respect of the CEO, is to appoint an appropriately qualified person to investigate an allegation. Except as specified in this section, the Board may determine how an investigation is to be conducted.

After completing an investigation, the investigator is to report their findings to the person who appointed them (the relevant authority). The relevant authority may determine whether the person against whom the allegation was made breached the child safe code of conduct.

If a person is found to have breached the code of conduct, the relevant authority may take action including counselling, notifying the Registrar (within the meaning of the *Registration to Work with Vulnerable People Act 2013*) or Board (within the meaning of the *Teachers Registration Act 2000*), determine whether the breach amounts to misconduct within the meaning of the *Fair Work Act 2009* or refer the matter to the police.

Clause 37 False and misleading information

Provides that in answering a question or providing information under the Act, a person must not knowingly make a false or misleading statement or omit a matter from a statement knowing that it would result in a false or misleading statement. Fine not exceeding 100 penalty units.

In answering a question or providing information to another person under the Act, a person must not provide a document known to be false or misleading without providing the basis for believing it to be false or misleading, or any information where the correct document may be held. Fine not exceeding 100 penalty units.

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

Clause (1) defines the term *specified offence* for the purposes of this section.

Within fourteen days of being charged with a specified offence, a TasTAFE employee must give written notice to the TasTAFE CEO. Fine not exceeding 10 penalty units.

Within fourteen days of the outcome of the charge, a TasTAFE employee must give written notice to the TasTAFE CEO. Fine not exceeding 10 penalty points.

Division 2 – Enforcement and related provisions

Clause 39 **Complaints**

Provides that a person may complain about the professional conduct of a person who is or was the TasTAFE CEO or a TasTAFE employee, in writing.

A complaint is to be made within six months after the complainant becomes aware of the conduct.

As soon as practicable after receiving the complaint, the TasTAFE CEO or TasTAFE Board is to ensure that an inquiry is held in accordance with section 41 as expeditiously as possible.

Clause 40 **TasTAFE employees may be suspended in certain circumstances**

Provides that the TasTAFE CEO may immediately suspend an employee if they believe, on reasonable grounds, that the employee has:

- harmed, or may pose a risk of harm to a TasTAFE student or another TasTAFE employee; or
- has committed a serious misconduct within the meaning of the *Fair Work Act 2009*.

On suspending an employee, the TasTAFE CEO is to

- serve written notice on the employee in respect of the suspension (at which time the suspension takes effect).
- if the employee is a registered teacher under the *Teachers Registration Act 2000*, give a copy of the written notice to the Board (within the meaning of that Act)
- ensure an inquiry into the matter giving rise to the suspension is held in accordance with section 41.

Clause 41 **Inquiries**

The TasTAFE CEO must hold an inquiry in respect of a matter giving rise to the suspension of a TasTAFE employee under clause 40.

If the TasTAFE CEO or TasTAFE Board believes on reasonable grounds that it is in the public interest to do so, may hold an inquiry in respect of a written complaint under section 39.

The inquiry may be held by the TasTAFE CEO or Board, or by a committee of inquiry on their behalf.

Clause 42 Effect of offences committed by body corporate

Clause (1) defines the term *officer* for the purposes of this section.

Sets out the liability of an officer for an offence committed by a body corporate under the Act.

Clause 43 Court orders on finding of guilt

This clause provides a mechanism for compensation of any compensable loss as a result of a TasTAFE director or the TasTAFE CEO being found guilty of committing an offence under clause 33, 34 or 35. It clarifies that TasTAFE may apply to recover the loss separately if an order for compensation is not made at the time at which the person is found guilty of the offence.

Clause 44 Evidentiary matters

Provides that a document that has the seal of TasTAFE affixed to it, is taken to be a true document of TasTAFE unless the contrary intention is proven.

PART 5 – MISCELANEOUS

Clause 45 Infringement notice offences

Clause (1) defines the term *infringement offence* for the purposes of this section.

The TasTAFE CEO may issue and serve an infringement notice on a person if they reasonably believe that person has committed an infringement offence.

The regulations may prescribe the penalties payable in a relation to an infringement offence under the Act or regulations and the by-laws may specify the penalty that is payable for an infringement offence under the by-laws.

Clause 46 Regulations

Provides that the Governor may make regulations for the purposes of the Act, including an offence for failure to comply with the regulations and imposition of a fine not exceeding 50 penalty units.

Clause 47 Savings and transitional provisions

Clause (1) defines the term former Act for the purposes of this section

The savings and transitional provisions specified in Schedule 3 have effect. In addition, the Governor may also make regulations of a savings and transitional nature following the enactment of the Act to facilitate the transition from the former Act to this Act.

This section does not authorise regulations made under this Act to reduce or limit entitlements and rights accrued by a TasTAFE employee under the former Act, except in order to be consistent with an award or agreement that applies on the day on which the first section of this Act commences.

Clause 48 Effect of consequential amendment of regulations

Provides that amending subordinate legislation may also be further amended or rescinded by subordinate legislation.

Clause 49 Administration of Act

Until provision is made in the *Administrative Arrangements Act 1990*, the administration of the Act is assigned to the Minister for Skills, Training and Workforce Growth and the Department of State Growth is the responsible department.

Clause 50 Consequential Amendments

Provides for consequential amendments within Schedule 4.

SCHEDULE 1 – TASTAFE BOARD

Part 1 - PRELIMINARY

Clause 1 Interpretation

This clause defines the term *chair* for the purpose of this Schedule.

Part 2 – TASTAFE DIRECTORS

Clause 2 Term of office

Provides a TasTAFE director may be appointed for a period of up to three years as specified in the instrument of appointment and may only be reappointed for a further two consecutive terms, other than the TasTAFE CEO.

Clause 3 Holding other office

Provides that a person who holds other employment is not disqualified from being appointed to the TasTAFE Board and be remunerated as a director.

Clause 4 Application of the *State Service Act 2000*

Provides that the *State Service Act 2000* does not apply to TasTAFE directors in that capacity, but this does not prevent a person from being TasTAFE director in conjunction with State Service employment.

Clause 5 Remuneration and conditions of appointment

Provides that a TasTAFE director is entitled to be paid the remuneration and allowances determined by the Minister, other than a State Service officer or employee who holds that position unless approved by the Minister administering the *State Service Act 2000*.

In addition to matters provided for in the Act, a TasTAFE director holds office on the conditions specified in the instrument of appointment.

Clause 6 Vacation of office

Establishes the circumstances in which a TasTAFE director vacates office and the circumstances in which the Minister may remove a TasTAFE director from office.

Clause 7 Filling of vacancies

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

Clause 8 Validation of proceedings, & c.

Provides that an act or proceeding of the TasTAFE Board, or a person acting under any direction of the Board, is not invalidated solely because at that time there was a vacancy in the office of a TasTAFE director or defect in the appointment of a TasTAFE director.

Clause 9 Presumptions

Provides that in any proceedings by or against the TasTAFE Board, proof is not required as to the constitution of the Board or the appointment of any director, unless evidence is given to the contrary.

Part 3 – MEETINGS OF TASTAFE BOARD

Clause 10 Frequency of meetings

Requires that the TasTAFE Board must meet at least six times in each calendar year.

Clause 11 Convening of meetings

Provides how the chair is to, or must, convene meetings of the TasTAFE Board, and how a meeting may be convened if the chair is absent.

Clause 12 Presiding at meetings

Requires the chair to preside at all meetings of the TasTAFE Board at which they are present. If the chair is not present at a meeting, the TasTAFE directors present at the meeting are to elect a director to preside.

Clause 13 Quorum and voting at meetings

Requires that a quorum of a meeting of the TasTAFE Board is constituted by a clear majority of appointed directors at the time of the meeting and is to be present to transact any business of the Board.

At a meeting a question is decided by a majority of votes of the directors present and voting or in the negative if there are equal votes of the directors present and voting. The TasTAFE director presiding at the meeting has a deliberative vote only.

At a meeting where a director is excluded from being present and taking part in the consideration and decision of the Board, a quorum in relation to that matter is the number of directors specified as constituting a quorum less the number of directors excluded from the decision.

Clause 14 Conduct of meetings

Subject to the Act, the TasTAFE Board may regulate the calling and conduct of business at its meetings as it considers appropriate.

The Board may permit directors to participate in meetings by phone, video conference or other means of communication approved by the Board.

The Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

Clause 15 Resolutions without meetings

Provides that a resolution is taken to have been passed at a TasTAFE Board meeting if a clear majority of directors sign a document containing a statement that they are in favour of a resolution in the terms set out in the document.

The Board meeting is taken to have been held on the day on which the document is signed or if the directors do not sign the document on the same day, the day on which the last director signs.

Each director is to be immediately advised and provided with a copy of the terms of a resolution that has been passed.

Clause 16 Minutes

Requires the TasTAFE Board to keep accurate minutes of its meetings.

Clause 17 Disclosure of interests

Provides that if a TasTAFE director has a direct or indirect pecuniary interest in a matter being considered by the Board, they must disclose the nature of the interest to the Board as soon as practicable. Fine not exceeding 100 penalty units.

Unless the Board determines otherwise, a director who has made a disclosure must not be present during any deliberation or take part in any decision of that matter by the Board.

A director to whom a determination relates must not be present during deliberation or making of the determination.

Disclosure of interest does not apply in relation to a contract for goods or services ordinarily supplied by TasTAFE on the same terms and conditions or in respect of an interest that arises because a director is also a State Service officer or employee.

Clause 18 General procedure

Provides that the TasTAFE Board may regulate its own proceedings except as provided by the Act

Clause 19 Presumptions

Provides that in any proceedings by or against the TasTAFE Board, proof is not required of any resolution of the Board or the presence of a quorum of any meeting, unless evidence is given to the contrary.

SCHEDULE 2 – MEMBERSHIP AND MEETINGS OF COMMITTEES

Part 1 – PRELIMINARY

Clause 1 Interpretation

This clause defines the terms *committee* and *member* for the purpose of this Schedule.

Part 2 – MEMBERSHIP OF COMMITTEES

Clause 2 Term of office

Provides that a committee member may be appointed for a period of up to three years as specified in the instrument of appointment and may be reappointed.

Clause 3 Holding other office

Provides that a person who holds other employment is not disqualified from being appointed to a committee and remunerated as a committee member.

Clause 4 Application of the *State Service Act 2000*

Provides that the *State Service Act 2000* does not apply to a committee member in that capacity, but this does not prevent a person from holding that office in conjunction with State Service employment.

Clause 5 Remuneration and conditions of appointment

Provides that a committee member is entitled to be paid the remuneration and allowances determined by the Minister, other than a State Service officer or employee who holds that position approved by the Minister administering the *State Service Act 2000*.

In addition to matters provided for in the Act, a committee member holds office on the conditions specified in the instrument of appointment.

Clause 6 Validation of proceedings, &c.

Provides that an act or proceeding of a committee, or a person acting under any direction of a committee, is not invalidated solely because at that time there was a vacancy in the office of a member or defect in the appointment of a member.

Clause 7 Presumptions

Provides that in any proceeding by or against a committee, proof is not required of the constitution of the committee or the appointment of any member, unless evidence is given to the contrary.

Part 3 – MEETINGS OF COMMITTEE

Clause 8 Quorum and voting at meetings

Provides that a quorum at a committee meeting is constituted by a majority of the total number of members appointed and is to be present to transact any business of the committee.

Clause 9 Minutes

Requires a committee is to keep accurate minutes of its meetings.

Clause 10 Disclosure of interests

Requires that if a member has a direct or indirect pecuniary interest in a matter being considered by the committee, they must disclose the nature of the interest to the committee as soon as practicable. Fine not exceeding 100 penalty units.

Unless a committee determines otherwise, a member who has made a disclosure must not be present during any deliberation or take part in any decision of that matter by the committee.

A committee member to whom a determination relates must not be present during deliberation or making of the determination.

Disclosure of interest does not apply in relation to a contract for goods or services ordinarily supplied by TasTAFE on the same terms and conditions or in respect of an interest that arises because a director is also a State Service officer or employee.

Clause 11 General procedure

Provides that a committee may regulate its own proceedings except as provided by the Act

Clause 12 Presumptions

Provides that in any proceedings by or against a committee, proof is not required of any resolution of the committee or the presence of a quorum of any meeting, unless evidence is given to the contrary.

SCHEDULE 3 - SAVINGS AND TRANSITIONAL PROVISIONS

Clause 1 Interpretation

This clause defines the terms *commencement day*, *former Act*, *former TasTAFE* and *former TasTAFE employee* for the purpose of this Schedule.

Clause 2 TasTAFE continues

Provides that for the avoidance of doubt, TasTAFE is the legal successor in title to all property and contracts, authorised deposit taking institution accounts and rights and liabilities of the former TasTAFE.

A reference to the former TasTAFE in any document or instrument is to be a reference to TasTAFE.

Clause 3 TasTAFE Board continues

Provides that on commencement day the TasTAFE Board constituted immediately before that day continues on the same terms and conditions.

Clause 4 TasTAFE directors continue

Provides that on commencement day, a person who held the position of TasTAFE director or acting director immediately before that day continues

to hold that position on the same terms and conditions and the director appointed chair of the Board continues to be appointed in that position.

Clause 5 **TasTAFE CEO appointed**

This clause provides that the person whose appointment as the TasTAFE CEO under the former Act is terminated under clause 7, is taken to be on that termination appointed to the position of TasTAFE CEO.

The appointment is on the terms and conditions specified in the persons notification of appointment under this Act.

For the avoidance of doubt this Act applies to a person taken to be appointed as the TasTAFE CEO under this clause, as if the person was appointed under section 10 and a notification of appointment is taken to be the persons instrument of appointment as the TasTAFE CEO.

Clause 6 **Former TasTAFE employees taken to be appointed as TasTAFE employees**

This clause provides that a person whose appointment or employment as a former TasTAFE employee is terminated under clause 7, is taken to be on that termination appointed as a TasTAFE employee.

The appointment is on the terms and conditions specified in the person's notification of appointment under this Act.

For the avoidance of doubt this Act applies to a person taken to be appointed as a TasTAFE employee under this clause, as if the person was appointed under section 11 and a notification of appointment given to a person is taken to be the persons instrument of appointment as a TasTAFE employee.

Clause 7 **Termination of Certain Appointments, &c.**

This clause provides that on commencement day the appointment of a person under the former Act as the TasTAFE CEO and a person's appointment or employment as a former TasTAFE employee (regardless of whether the appointment or employment was for a fixed term or otherwise) are terminated.

The *State Service Act 2000* ceases to apply to the TasTAFE chief executive officer or a former TasTAFE employee.

A person who appointed the chief executive officer or 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*.

The clause provides that the termination of a person's appointment or employment:

- does not entitle the person to compensation or another form of consideration or payment due to the termination; and
- is not a State Service action for the purposes of section 50 of the *State Service Act 2000*.

Clause 8 **Certain service taken to be continuous employment**

Clause 8 defines *transitioned employee* for the purposes of this section.

This clause provides recognition of continuous service with the State Service for TasTAFE employees if the person:

- is a transitioned employee;
- within five years of the commencement day, the person is appointed or employed in a position that, in accordance with another Act or instrument, entitles or provides for the leave or entitlements for the person to be calculated as if the person was a State Service employee or State Service officer.
- remained a TasTAFE employee during the period between commencement day and appointment to the new position.

Clause 9 **Committees under the former Act continue**

Provides that an audit and risk management committee or other committee established under the former Act immediately before commencement day is continued.

Clause 10 **Students, and courses, of TasTAFE continue**

In this clause, for the avoidance of doubt on and after commencement day:

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

Clause 11 **By-laws continue**

Provides that on commencement day the *TasTAFE By-laws 2014* are taken to be made under section 33 of the Act and continue until the tenth anniversary of their making unless earlier rescinded.

Clause 12 **Legal matters**

For the avoidance of doubt on and after commencement day:

- legal proceedings may be continued against TasTAFE if the proceedings are instituted by or against the former TasTAFE or the Crown in respect of the former TasTAFE and are pending on commencement day.
- Legal proceedings may be instigated by or against TasTAFE if the proceedings relate to a right or liability that had accrued and was in existence immediately before commencement day and if the Act

had not commenced could have been instituted by or against the former TasTAFE or the Crown in respect of the former TasTAFE.

A judgement or order of the court obtained by, or against, the former TasTAFE may be enforced by, or against TasTAFE.

Clause 13 Ministerial directions and expectations

Provides that a ministerial direction given under the former Act in respect of the former TasTAFE continues on or after commencement date, to be a ministerial direction given under this Act in respect of TasTAFE.

The policy expectations provided under the former Act in respect of the former TasTAFE are taken to be on or after commencement date, to be the statement of expectations provided under this Act in respect of TasTAFE.

Clause 14 Records and other documents

Provides that on and after commencement day:

- a record, statement or other document required to be kept by the former TasTAFE under the former Act is taken to be in relation to TasTAFE required to be kept under the Act.
- the TasTAFE corporate plan continues.

If the Act commences during a financial year, the annual report is to be prepared as if the Act was in force for the whole of that financial year.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS

Building Regulations 2016

Regulation 3(1)(c) definition of educational institution amended to reference a campus of TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

Children, Your Persons and their Families Act 1997

Section 32(10)(k) amended to redefine the reference to TasTAFE as continued by the *TasTAFE (Skills and Training Business Act) 2021*.

Collections for Charities (Approved Organisations) Order 2002

Schedule 1 amended redefine the reference to TasTAFE as continued under the *TasTAFE (Skills and Training Business) Act 2021*.

Education Act 2016

Section 5 definition of TasTAFE amended to reference TasTAFE as continued under the *TasTAFE (Skill and Training Business) Act 2021*.

Section 61(4)(j) amended to reference TasTAFE CEO within the meaning of the *TasTAFE (Skills and Training Business) Act 2021*.

Section 246(2) amended to redefine the reference to levy imposed under the *TasTAFE (Skills and Training Business) Act 2021*.

Financial Management Act 2016

Schedule 1 amended to redefine the TasTAFE CEO within the meaning of the *TasTAFE (Skills and Training Business) Act 2021*.

Financial Management Determination 2019

Clause 3 amended to reference the *TasTAFE (Skills and Training Business) Act 2021*.

Judicial Review Act 2000

Schedule 1 amended to reference TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

Poisons Act 1971

Section 3(1) definition of public institution amended to reference TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

Poisons Regulations 2018

Regulation 3(1) amended to reference TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021* and TasTAFE CEO as having the same meaning as in the *TasTAFE (Skills and Training Business) Act 2021*.

Regulation 58(2)(c) and (3) reference to TasTAFE chief executive officer amended to TasTAFE CEO.

Regulation 59(2) and (3) reference to TasTAFE chief executive officer amended to TasTAFE CEO.

Regulation 60(3) and (4) reference to TasTAFE chief executive officer amended to TasTAFE CEO.

Regulation 130(1) definition of TasTAFE employee is substituted to have the same meaning as in the *TasTAFE (Skills and Training Business) Act 2021*.

Regulation 130(2)(a)(ii)(A) and (2)(ii)(B) reference to TasTAFE chief executive officer amended to TasTAFE CEO.

Radiation Protection Regulations 2016

Regulation 47(1) definition of educational institution amended to reference TasTAFE as continued by the *TasTAFE (Skill and Training Business) Act 2021*.

Registration to Work with Vulnerable People Regulations 2014

Regulation 3 definition of TasTAFE amended to mean TasTAFE as continued under the *TasTAFE (Skills and Training Business Act) 2021*.

Regulation 4(1) definition of school amended to reference as TAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

Residential Tenancy Act 1997

Regulation 3(1) definition of boarding premises amended to reference the *TasTAFE (Skills and Training Business) Act 2021*.

Sentencing Act 1997

Section 42AB meaning of boarding premises amended to reference the *TasTAFE (Skills and Training Business) Act 2021*.

State Service Act 2000

Schedule 1 Part 2 amended to omit TasTAFE as an Agency in Column 1 and Chief executive officer as Head of Agency in Column 2.

Teachers Registration Act 2000

Section 3: definition of practicing teacher amended to omit TasTAFE.

- definition of student amended to omit TasTAFE.
- definition of TasTAFE amended to reference TasTAFE as continued by the *TasTAFE (Skills and Training Business) Act 2021*.

Section 6(1)(j) amended for punctuation arising from omitting (k) and (l).

Section 6(1) amended to omit (k) and (l) relating to TasTAFE nominations to the Teachers Registration Board.

Section 11(1) amended to omit TasTAFE from the requirement for a person to be registered to teach and to omit (5).

Section 17D(1)(a)(i) amended to omit TasTAFE.

Section 27(2) amended to provide that section 27(1) (relating to offences for employing unregistered teachers) does not apply to TasTAFE.

Section 32 amended to apply only to TasTAFE teachers who are registered with the Tasmanian Registration Board.

Training and Workforce Development Act 2013

Long title amended to omit 'to establish TasTAFE'.

Section 3(3)(c) amended to omit establishing TasTAFE as achieving the object of the Act.

Section 4(1) amended to:

- omit the definitions of TasTAFE Board, TasTAFE chief executive officer, TasTAFE corporate plan, TasTAFE director, TasTAFE employee, TasTAFE financial statements and TasTAFE students
- the definition of TasTAFE is amended to reference TasTAFE as continued under the *TasTAFE (Skills and Training Business) Act 2021*.

Part 5 is repealed.

Section 93(4) is amended to omit subsection (b).

Schedules 2 and 3 are repealed.