

TASMANIA

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**TRAINING AND WORKFORCE DEVELOPMENT  
BILL 2013**

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**TRAINING AND WORKFORCE DEVELOPMENT  
BILL 2013**

*(Brought in by the Minister for Education and Skills, the  
Honourable Nicholas James McKim)*

**A BILL FOR**

**An Act to provide for the administration of a system of  
training and workforce development, to establish  
TasTAFE 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 *Training and  
Workforce Development Act 2013*.

**2. Commencement**

This Act commences on 1 July 2013.

**3. Object of Act**

- (1) The object of this Act is to establish a system of training and workforce development that supports a skilled and productive workforce and contributes to economic and social progress in Tasmania.

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- (2) The system of training and workforce development consists of the following areas:
- (a) vocational education and training, including Tasmania's traineeship and apprenticeship system;
  - (b) other training, or skills, and workforce development;
  - (c) foundations skills.
- (3) The object is mainly achieved by –
- (a) providing funding for training that is responsive to the needs of employers, industry and the community; and
  - (b) providing opportunities for individuals to acquire skills and qualifications; and
  - (c) establishing TasTAFE; and
  - (d) administering Tasmania's traineeship and apprenticeship system.

#### **4. Interpretation**

- (1) In this Act –

*Agency* has the same meaning as in the *State Service Act 2000*;

*amend* means –

- (a) omit any matter; or
- (b) insert or add any matter; or



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- (c) omit any matter and substitute other matter;

***apprentice*** means an employee who is described as an apprentice and is a party to a training contract that provides for the employee to undergo training leading to a qualification under the Australian Qualifications Framework;

***Australian Qualifications Framework*** means the national policy of that name for accredited qualifications in Australian education and training (including addenda to that policy added from time to time) that –

- (a) defines qualifications recognised nationally in education and training undertaken within Australia; and
- (b) is endorsed and published by the Australian Qualifications Framework Council; and
- (c) took effect on 1 July 2011 –

as amended or substituted from time to time;

***Australian Qualifications Framework Council*** means the council –

- (a) established under the authority of the National Ministerial Council

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responsible for education,  
training and employment; and

- (b) that has responsibilities for the  
Australian Qualifications  
Framework;

***dispute*** means a dispute relating to the terms,  
conditions or operation of a training  
contract or a vocational placement  
agreement;

***employer*** includes, if appropriate, a group  
training organisation;

***foundation skills*** means skills in the English  
language, literacy and numeracy together  
with skills required for participation in  
modern workplaces and contemporary  
life;

***group training organisation*** means a person  
or organisation whose business includes  
employing trainees or apprentices, or  
both, under training contracts and placing  
those trainees or apprentices with host  
employers;

***higher education*** means education in relation  
to which a higher education award,  
within the meaning of the *Tertiary  
Education Quality and Standards Agency  
Act 2011* of the Commonwealth, may be  
issued;

***host employer*** means an employer that, under  
a written agreement with a group training

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organisation, trains trainees or apprentices, or both, employed by that group training organisation under a training contract entered into by that group training organisation, regardless of whether that training takes place in Tasmania or elsewhere;

***listable group training organisation*** has the meaning given by section 10;

***listed group training organisation*** means a group training organisation that is listed in the Register of Listed Group Training Organisations maintained under section 16;

***Ministerial Council*** means a council that comprises the Ministers for each State and Territory and the Commonwealth who have responsibility for tertiary education and skills;

***national policy agreement*** means any agreement that relates to nationally agreed policy for vocational education and training made by the Premier or the Minister on behalf of Tasmania and –

- (a) the appropriate Minister or other person on behalf of the Commonwealth; or
- (b) the appropriate Ministers or other persons on behalf of the Commonwealth, the other States and the Territories;

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***person*** includes –

- (a) a State school, or a registered school, as defined in the *Education Act 1994*; and
- (b) a group of such State schools or registered schools, or both; and
- (c) a department, as defined in the *Administrative Arrangements Act 1990*, or part of such a department;

***qualification*** has the same meaning as in the Australian Qualifications Framework;

***registered training organisation*** means a registered training organisation within the meaning of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth;

***Register of Listed Group Training Organisations*** means the Register of Listed Group Training Organisations maintained under section 16;

***regulations*** means regulations made and in force under section 93;

***Secretary*** means the Secretary of the Department;

***TasTAFE*** means TasTAFE created under section 56;

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***TasTAFE Board*** means the Board of Directors of TasTAFE established under section 60;

***TasTAFE chief executive officer*** means the TasTAFE chief executive officer of TasTAFE appointed under section 66;

***TasTAFE corporate plan*** means the corporate plan of TasTAFE approved under section 74, as amended from time to time;

***TasTAFE director*** means –

- (a) a person appointed to the TasTAFE Board under section 60; or
- (b) a person appointed to a vacant office of TasTAFE director under section 63;

***TasTAFE employee*** means a person appointed or employed for the purposes of TasTAFE, as specified in section 69;

***TasTAFE financial statements*** means the financial statements for TasTAFE required to be prepared under section 79;

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

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***trainee*** means an employee who, whether described as a trainee or otherwise, is a party to a training contract that provides for the employee to undergo training leading to a qualification, but does not include an employee described as an apprentice;

***training contract*** means a contract between an employer and another person entered into under section 30;

***Training Contracts Register*** means the register maintained under section 41;

***TTAC*** means the Tasmanian Traineeships and Apprenticeships Committee established under section 17;

***TTAC guidelines*** means guidelines issued by the TTAC, and in force, under section 21;

***vocational education and training*** means the vocational education and training, and attainment of associated qualifications or statements of attainment, under level 1, 2, 3, 4, 5 and 6 of the Australian Qualifications Framework;

***vocational placement*** means a placement that provides paid or unpaid employment, for a period of less than 240 hours in a 12-month period, at a work place as part of training leading to a qualification;

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*workforce development* means building the capacity of enterprises to develop and use the skills of their workforces to maximum advantage for the benefit of the enterprises, industry and the community.

- (2) For the purposes of this Act, if a group training organisation enters into a training contract –
- (a) that group training organisation is taken to be the employer of the trainee or apprentice who is the other party to the training contract; and
  - (b) training provided to the trainee or apprentice by a host employer is taken to have been provided by that group training organisation.

**5. Priorities for training and workforce development system**

The Minister is to establish priorities in relation to training and workforce development that promote and further the object of this Act.

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**PART 2 – GENERAL ADMINISTRATION OF  
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SYSTEM**

*Division 1 – Role of Secretary*

**6. Responsibilities of Secretary**

(1) The Secretary has the following responsibilities in relation to the administration of Tasmania's system of training and workforce development:

(a) to advise the Minister on priorities in relation to training and workforce development;

(b) to ensure that funding provided for the purposes of this Act, other than Part 5, is used for, or in relation to –

(i) the purchase of training from TasTAFE and other registered training organisations; and

(ii) the support of workforce development activities –

in a manner that is consistent with furthering the object of this Act and in accordance with the Minister's priorities in relation to training and workforce development;

(c) to provide to the Minister, by no later than 30 April in each year, a written



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report on the performance of Tasmania's system of training and workforce development.

- (2) In providing advice under subsection (1)(a), the Secretary is to –
- (a) liaise with industries, businesses, communities and relevant interest groups and take their views into account; and
  - (b) consider the needs of the Tasmanian workforce for training, or skills, and workforce development; and
  - (c) ensure that the advice promotes and furthers the object of this Act.
- (3) The report referred to in subsection (1)(c) is in addition to the annual report required under Section 36 of the *State Service Act 2000* and is not to be included in that annual report.

**7. Advisory committees**

- (1) The Secretary may establish such committees as he or she considers appropriate to advise him or her in relation to the performance and exercise of his or her responsibilities, functions and powers under this Act.
- (2) A committee established under subsection (1) is to report to and advise the Secretary on the matters referred to it by the Secretary.

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- (3) A member of a committee established under subsection (1) holds office as a member for the term, and on the conditions, specified in his or her instrument of appointment.
- (4) The Secretary may provide for the regulation of the proceedings of a committee established under subsection (1) in writing provided to the committee.
- (5) Except as provided otherwise by the Secretary, a committee established under subsection (1) may regulate its own proceedings.

**8. Fees and charges**

- (1) The Secretary, with the approval of the Minister, may impose any fee, levy or charge the Secretary considers appropriate in respect of any goods or services provided in relation to the operation of this Act.
- (2) The Secretary, with the approval of the Minister, 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 (1) if satisfied that it is equitable or appropriate to do so in the circumstances.

**9. Delegation by Secretary**

The Secretary may delegate any of his or her functions or powers under this Act, other than this power of delegation.

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***Division 2 – Listing of certain group training organisations***

**10. Listable group training organisation**

- (1) A group training organisation is a listable group training organisation if, under training contracts, it trains at any one time more than the maximum allowable number of trainees and apprentices as determined under subsection (2).
- (2) The Secretary may determine the maximum allowable number of trainees and apprentices for a group training organisation that is not a listed group training organisation.
- (3) The Secretary is to publish, in such manner as the Secretary considers appropriate, the maximum allowable number of trainees and apprentices for a group training organisation that is not a listed group training organisation as determined under subsection (2).

**11. Requirement for registration of certain group training organisations**

A group training organisation must not enter into a training contract if –

- (a) it is a listable group training organisation or, by so entering into the training contract, it would become a listable group training organisation; and

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- (b) it is not registered as a listed group training organisation in the Register of Listed Group Training Organisations.

Penalty: Fine not exceeding 100 penalty units.

**12. Application to be registered as listed group training organisation**

- (1) A group training organisation may apply to the Secretary to be registered as a listed group training organisation.
- (2) An application is to be –
  - (a) in the form approved by the Secretary; and
  - (b) accompanied by any application fee prescribed in the regulations.
- (3) On receipt of an application, the Secretary may require the applicant to provide such information and documents as he or she considers relevant to the application.

**13. Registration as listed group training organisation**

- (1) On receipt of an application under section 12, the Secretary –
  - (a) is to register the applicant group training organisation as a listed group training organisation in the Register of Listed Group Training Organisations unless –

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- (i) the TTAC has notified the Secretary that it has refused to approve a training contract to which the applicant is a party under section 32(2)(d) on the basis that the TTAC is not satisfied that the group training organisation is a fit and proper person within the meaning of section 48; and
- (ii) the TTAC has not notified the Secretary that it now considers the group training organisation to be such a fit and proper person; or
- (b) is to refuse to register the applicant as a listed group training organisation if –
- (i) the TTAC has notified the Secretary as specified in paragraph (a)(i); and
- (ii) the TTAC has not notified the Secretary as specified in paragraph (a)(ii).
- (2) On registering an applicant group training organisation as a listed group training organisation, the Secretary is to issue to the listed group training organisation a certificate of registration.

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- (3) The registration of an applicant group training organisation as a listed group training organisation –
  - (a) commences on the day on which the Secretary so registers it; and
  - (b) is for the term of 5 years.
- (4) If the Secretary refuses to register the applicant group training organisation as a listed group training organisation, the Secretary is to notify the applicant, in writing, of that refusal and the reason for it.

**14. Listed group training organisation to comply with standards, &c.**

- (1) In this section –

*ANTA Ministerial Council* means the ANTA Ministerial Council –

- (a) established under the Australian National Training Authority Agreement which is a Schedule to the *Australian National Training Authority Act 1992* of the Commonwealth; and
- (b) comprising the Commonwealth, State and Territory Ministers responsible for vocational education and training;

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***National Standards*** means the National Standards for Group Training Organisations adopted as agreed by the ANTA Ministerial Council on 24 May 2002, as amended or substituted from time to time;

***Tasmanian Operational Requirements*** means the TTAC Guidelines relating to the Tasmanian operational requirements for group training organisations.

- (2) A listed group training organisation must comply with the National Standards and the Tasmanian Operational Requirements.

Penalty: Fine not exceeding 100 penalty units.

**15. Cancellation of registration as listed group training organisation**

- (1) The Secretary is to remove a listed group training organisation from the Register of Listed Group Training Organisations on the application of the listed group training organisation.
- (2) If the Secretary receives notice from the TTAC that it has refused to approve a training contract to which the applicant is a party under section 32(2)(d) on the basis that the TTAC is not satisfied that the group training organisation is a fit and proper person within the meaning of section 48, the Secretary is to –

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- (a) note on the Register of Listed Group Training Organisations that the group training organisation is a listed group training organisation only in relation to those training contracts which it entered into and that have been approved by the TTAC under section 32 but is not registered as a listed group training organisation for the purposes of any other training contracts it has entered into; and
  - (b) once all those training contracts entered into by the group training organisation and approved by the TTAC under section 32 have been completed, remove the group training organisation from the Register of Listed Group Training Organisations.
- (3) In the case of a listed group training organisation referred to in subsection (1), its registration as a listed group training organisation is cancelled on the day on which the group training organisation is removed from the Register of Listed Group Training Organisations.
- (4) In the case of a listed group training organisation referred to in subsection (2), its registration as a listed group training organisation –
- (a) is cancelled on the day on which the note referred to in subsection (2)(a) is made in the Register of Listed Group Training Organisations in relation to those training



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contracts which it entered into and that have not been approved by the TTAC under section 32 before that day; and

- (b) is cancelled for all purposes on the day on which the group training organisation is removed from the Register of Listed Group Training Organisations.

**16. Register of Listed Group Training Organisations**

The Secretary is to maintain a Register of Listed Group Training Organisations specifying –

- (a) the name and address of each listed group training organisation; and
- (b) any matter prescribed in the regulations; and
- (c) such other matters as the Secretary considers appropriate.

***Division 3 – Tasmanian Traineeships and Apprenticeships  
Committee***

**17. Tasmanian Traineeships and Apprenticeships  
Committee**

- (1) The Tasmanian Traineeships and Apprenticeships Committee is established.
- (2) The Tasmanian Traineeships and Apprenticeships Committee consists of 7 members appointed by the Minister.

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- (3) The Minister is to appoint one of the members as chairperson of the Tasmanian Traineeships and Apprenticeships Committee.
- (4) Before appointing a person as a member of the Tasmanian Traineeships and Apprenticeships Committee, the Minister is to call for expressions of interest in the appointment by advertising in at least 3 daily newspapers printed, and circulating, in Tasmania.
- (5) The Minister need not comply with subsection (4) if re-appointing a person to the office of member of the Tasmanian Traineeships and Apprenticeships Committee for a consecutive term.
- (6) Schedule 1 has effect with respect to the membership and meetings of the Tasmanian Traineeships and Apprenticeships Committee.

**18. Objective of TTAC**

The objective of the TTAC is to ensure that Tasmania has effective and accessible systems and procedures for training contracts and vocational placements.

**19. Functions of TTAC**

The TTAC has the following functions:

- (a) overseeing the administration of training contracts and vocational placements;

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- (b) to advise the Minister, and make recommendations, on policies and guidelines in relation to the operation of training contracts and vocational placements;
- (c) to monitor the effectiveness of training contracts and vocational placements;
- (d) other functions imposed by this Act;
- (e) other functions imposed by the Minister.

**20. Powers of TTAC**

The TTAC has the following powers:

- (a) to develop and issue policies and guidelines relating to training contracts and vocational placements;
- (b) to do all things necessary or convenient to perform its functions.

**21. TTAC guidelines**

- (1) The TTAC may issue guidelines relating to any of the following matters:
  - (a) entering into training contracts;
  - (b) the conditions with which a training contract, or the parties to a training contract, in relation to a particular qualification must comply, including

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- conditions relating to the employment of a person under a training contract for a period of probation;
- (c) the extension of such a period of probation;
  - (d) conditions in respect of the training or the provision of training under a training contract leading to a particular qualification, a class of qualifications or all qualifications;
  - (e) operational requirements for group training organisations in Tasmania;
  - (f) any other matter relating to the form and content, entering into, approval or administration of training contracts;
  - (g) a prescribed matter;
  - (h) any other matter relating to a function or power of the TTAC in relation to which the TTAC considers it appropriate to issue guidelines.
- (2) In issuing guidelines relating to the form and contents of a training contract, the TTAC is to have regard to the form and contents of the training contract agreed by the Ministerial Council.
- (3) Guidelines may be made so as to apply differently according to matters, limitations or

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restrictions, whether as to time, circumstance or otherwise, specified in the guidelines.

- (4) If the Secretary amends any guidelines, the amendment is taken to be incorporated with those guidelines and a reference to those guidelines is a reference to those guidelines as so amended.

**22. Directions by Minister**

The Minister may give directions, in writing, to the TTAC in relation to the performance and exercise of its functions and powers, other than the exercise of functions and powers in relation to an individual training contract or vocational placement agreement.

**23. Delegation by TTAC**

The TTAC may delegate any of its functions or powers under this Act, other than this power of delegation, to any of the following persons:

- (a) a member of the TTAC;
- (b) a State Service officer, or a State Service employee, employed in or for the purposes of the Department.

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***Division 4 – Arrangements with registered training organisations, &c., for purchase of vocational education and training***

**24. Minister may enter into agreements with certain registered training organisations, &c., for purchase of vocational education and training**

(1) In this section –

***prescribed Agency*** means an Agency, part of an Agency or a body corporate that is an instrumentality of this State.

(2) The Minister, on behalf of the Crown, may enter into an agreement with a registered training organisation, or another person, that is not a prescribed Agency in relation to the purchase of vocational education and training and the performance by that organisation or person of vocational education and training functions.

(3) The Minister may delegate his or her power to enter into an agreement under subsection (2) to the Secretary.

(4) If the Minister delegates to the Secretary his or her power to enter into an agreement under subsection (2), the Secretary may sub-delegate that power to a State Service officer, or State Service employee, employed in or for the purposes of the Department.

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**25. Secretary may enter into arrangements with certain registered training organisations, &c., for provision of vocational education and training**

(1) In this section –

*prescribed Agency* means an Agency, part of an Agency or a body corporate that is an instrumentality of this State but not an Agency or part of an Agency;

*prescribed Head* means –

- (a) in relation to an Agency or part of an Agency, the Head of that Agency; or
  - (b) in relation to a body corporate that is an instrumentality of this State but not an Agency or part of an Agency, the body corporate, the chief executive officer of the body corporate or a person performing the functions of a chief executive officer in the body corporate (whatever the title of that person).
- (2) If a prescribed Agency is a registered training organisation, the Secretary may enter into an arrangement with the prescribed Head of that prescribed Agency in relation to the provision of vocational education and training and the performance by that prescribed Agency of vocational education and training functions.

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***Division 5 – Miscellaneous***

**26. Payment of funds from Commonwealth**

(1) In this section –

***national partnership payment*** means a payment made to Tasmania under section 16 of the *Federal Financial Relations Act 2009* of the Commonwealth;

***national specific purpose payment*** means a payment made to Tasmania under section 12 of the *Federal Financial Relations Act 2009* of the Commonwealth.

(2) The Minister is to ensure that Commonwealth financial assistance paid to Tasmania –

(a) as a national specific purpose payment for the purposes of skills and workforce development; or

(b) as a national partnership payment in relation to vocational education, training, skills, workforce development or any one or combination of these matters –

is applied to expenditure as specified in the national specific purpose payment or national partnership payment or as otherwise required by the *Federal Financial Relations Act 2009* of the Commonwealth.



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**27. Award of scholarships, bursaries and prizes**

The Minister, on the recommendation of the Department, may award a scholarship, bursary or prize.

**28. Collection of records, statistics and information**

(1) In this section –

*unique student identifier* means a unique student identifier created for a person under the agreement –

- (a) between the Commonwealth and the States and Territories; and
- (b) that was signed on 13 April 2012; and
- (c) that provides for the creation of unique student identifiers in relation to vocational education and training –

as amended or substituted from time to time.

(2) The Secretary may require a person or organisation that is a party to an agreement under section 24, or the registered training organisation that is the subject of an arrangement under section 25, to –

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- (a) collect and keep records, statistics and information in relation to vocational education and training; and
  - (b) make available or provide those records, statistics and information to the Secretary.
- (3) The Secretary may give directions as to the manner in which records, statistics and information are to be collected, kept and made available.
- (4) The Secretary, despite anything to the contrary in the *Personal Information Protection Act 2004* may –
- (a) make the records available; and
  - (b) provide copies of the records or any part of the records –

to the government, or a body established by or representing the government, of the Commonwealth, another State or a Territory for the purpose of meeting Tasmania's obligations regarding the administration of unique student identifiers.

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**PART 3 – TRAINING CONTRACTS AND  
VOCATIONAL PLACEMENT AGREEMENTS**

*Division 1 – Training contracts*

**29. Offence to train person without training contract**

An employer must not train a person as if that person were a trainee or apprentice unless –

- (a) the employer has entered into a training contract with that person; and
- (b) that training contract has effect at the time the training takes place.

Penalty: Fine not exceeding 100 penalty units.

**30. Employer may enter into training contract**

- (1) Subject to section 31, an employer may enter into a contract with another person relating to the provision of training to that other person that results in a qualification being issued to that other person.
- (2) Within 28 days after entering into a contract under subsection (1), an employer must forward the contract to the TTAC for approval under section 32.

Penalty: Fine not exceeding 100 penalty units.

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**31. Limits on entering into training contract**

- (1) An employer may not enter into a training contract under section 30 in relation to a particular qualification if the Secretary has determined under subsection (4) that a training contract may not be entered into in relation to that qualification.
- (2) An employer may not enter into a training contract under section 30 in relation to a particular qualification if the contract would contravene, or would require the parties to the contract to contravene, any conditions set out in the TTAC guidelines in relation to that qualification.
- (3) An employer may not enter into a training contract under section 30 if that contract –
  - (a) does not specify the date on which the contract takes effect; and
  - (b) is not in a form, and does not have the contents, set out in the TTAC guidelines.
- (4) The Secretary may determine that training contracts may not be entered into in relation to a particular qualification.

**32. Approval of training contract**

- (1) The TTAC may –
  - (a) approve a training contract with or without amendments and conditions; or

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- (b) refuse to approve the training contract.
- (2) The TTAC may only approve a training contract if satisfied that –
- (a) the contract does not relate to a qualification determined by the Secretary under section 31(4) to be a qualification in relation to which training contracts may not be entered into; and
  - (b) the contract does not contravene, and does not require a party to it to contravene, any conditions set out in the TTAC guidelines in relation to the particular qualification to which the contract relates; and
  - (c) the contract is in the form, and contains the contents, set out in the TTAC guidelines; and
  - (d) the employer and any proposed host employer are fit and proper persons within the meaning of section 48; and
  - (e) the number of trainees and apprentices employed by the employer does not exceed any maximum allowable number as determined by the TTAC.
- (3) If the TTAC approves a training contract, with or without amendment, that approval is effective on and from the day specified in the contract as the day on which the contract takes effect, regardless of whether that day is the day on

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which the approval is given, an earlier day or a later day.

- (4) If the TTAC approves a training contract with amendment –
  - (a) that amendment, if the contract takes effect on or after the day on which the approval is given, takes effect when the contract takes effect; or
  - (b) that amendment, if the contract takes effect before the day on which the approval is given, only takes effect on the day the approval is given.
- (5) If the TTAC approves a training contract with conditions and –
  - (a) the contract takes effect on or after the day on which the approval is given, the contract is subject to those conditions from the time it takes effect; or
  - (b) the contract takes effect before the day on which the approval is given, the contract is subject to those conditions only on and from the day the approval is given.
- (6) If the TTAC refuses to approve a training contract –
  - (a) the contract is of no effect and is taken never to have been in effect; but

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(b) any training provided by the employer to the other party to the contract –

(i) on and after the day specified in the contract as the day on which it takes effect; but

(ii) before the refusal is given –

is taken to have been provided under a training contract that had been approved by the TTAC under this section.

(7) The TTAC is to notify the parties to a training contract, in writing –

(a) as to whether it has approved or refused to approve the contract; and

(b) if it has approved the contract with amendment or conditions, of the amendment or conditions.

**33. Transfer of training contract**

(1) A party to a training contract, with the approval of and subject to any conditions determined by the TTAC, may transfer the contract to another employer in the qualification or set of qualifications to which the agreement relates.

(2) If an employer who is a party to a training contract sells or otherwise disposes of the business, or any part of the business, that relates to a qualification or set of qualifications to which the contract relates –

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- (a) that employer, in writing and within 14 days after the completion of the sale or other disposal, must notify the TTAC of –
    - (i) the reference number of the training contract; and
    - (ii) the details of the sale or other disposal, in accordance with any relevant TTAC guidelines; and
    - (iii) the name and address of the person acquiring the business or part of the business; and
    - (iv) any other information required by the TTAC guidelines; and
  - (b) despite subsection (1), the training contract, in so far as it relates to that qualification or set of qualifications, is transferred to the purchaser or other person who acquires the business or part of the business.
- (3) If a partnership, or a partner in a partnership, is the employer under a training contract and a partner or that partner dies, resigns or is removed from office –
- (a) the surviving or continuing partners, in writing and within 14 days after the death, resignation or removal from office, must notify the TTAC of –



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- (i) the reference number of the training contract; and
  - (ii) the death, resignation or removal from office of the partner; and
  - (iii) any other information required by the TTAC guidelines; and
- (b) if –
  - (i) the partnership is the employer under the training contract, the training contract continues; or
  - (ii) that partner is the employer under the training contract, the training contract is transferred to all the surviving or continuing partners.
- (4) A transfer of a training contract –
  - (a) in the case of a transfer referred to in subsection (1), is for –
    - (i) the period agreed, in writing, by the parties to the agreement; or
    - (ii) if the parties do not so agree, the remainder of the term of the training contract; and
  - (a) in the case of a transfer referred to in subsection (2) or (3), is for the remainder of the term of the training contract.

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- (5) On the transfer of a training contract to an employer under this section, that employer becomes a party to the training contract.

**34. Compliance with training contract**

The parties to a training contract must comply with its terms.

Penalty: Fine not exceeding 100 penalty units.

**35. Amendment of training contract**

- (1) A training contract may be amended –
- (a) by the agreement of the parties to the contract, if the TTAC approves the amendment; or
  - (b) by the TTAC if it is satisfied that it is desirable to do so.
- (2) The TTAC, by notice in writing, must notify each party to a training contract of its intention to amend the contract under subsection (1)(b).

**36. Suspension of training contract**

- (1) A training contract may be suspended –
- (a) by the agreement of the parties to the contract, if the TTAC approves the suspension; or

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- (b) by the TTAC by written notice provided to the parties if it is satisfied that it is desirable to do so.
- (2) The suspension of a training contract under subsection (1)(a) –
  - (a) takes effect on the day agreed by the parties, being a day not earlier than the day on which the TTAC gives its approval; and
  - (b) continues for the period, or until the day, agreed by the parties.
- (3) The suspension of a training contract under subsection (1)(b) –
  - (a) takes effect on the day specified by the TTAC in the notice provided under that subsection; and
  - (b) continues for the period, or until the day, specified by the TTAC in that notice.
- (4) The parties to a training contract which is suspended are not bound by the terms of the contract during that suspension except –
  - (a) as may be agreed between them, in writing; or
  - (b) if the TTAC otherwise determines.
- (5) A training contract which is suspended is extended by the period of suspension unless the TTAC determines otherwise.

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- (6) The TTAC, by notice in writing, must notify each party to a training contract of its intention to suspend the training contract under subsection (1)(b).

**37. Completion of training contract**

A training contract is completed on the first occurring of the following days:

- (a) on the day on which the training contract is completed or expires under its terms;
- (b) on the day on which all requirements for completion of a training contract set out in guidelines made under section 20(a) have been met by the parties to the training contract.

**38. Cancellation of training contract**

- (1) A training contract may be cancelled –
- (a) by the agreement of the parties to the training contract if the TTAC approves its cancellation; or
  - (b) by the TTAC if it is satisfied that –
    - (i) it is desirable to do so; or
    - (ii) the training contract does not comply with this Act.
- (2) The TTAC, by notice in writing, must notify each party to a training contract of its intention

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to cancel the training contract under subsection (1)(b).

**39. Training subject to conditions**

- (1) The TTAC may determine conditions in respect of the training, or the provision of training, under a training contract leading to a particular qualification, a class of qualifications or all qualifications.
- (2) Both the employer and the trainee or apprentice under a training contract are to comply with any relevant conditions determined under subsection (1).

**40. Directions by TTAC**

- (1) The TTAC may direct a party to a training contract to take any action the TTAC considers appropriate or refrain from doing any act if the TTAC is of the opinion that –
  - (a) the party has contravened the training contract; or
  - (b) the party has contravened this Act; or
  - (c) it is otherwise appropriate to give the direction.
- (2) A direction is to be in writing provided to the party to the training contract.

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- (3) A party to the training contract must comply with a direction provided to him or her under this section.

Penalty: Fine not exceeding 100 penalty units.

**41. Training Contracts Register**

The Secretary is to maintain a register of training contracts specifying –

- (a) the names and addresses of each party to each training contract; and
- (b) the starting and finishing date of each training contract; and
- (c) any matter prescribed in the regulations; and
- (d) such other matters as the Secretary considers appropriate.

***Division 2 – Vocational placements***

**42. Vocational placement agreement**

- (1) A ***vocational placement agreement*** is a written agreement between an employer and a registered training organisation –
- (a) under which the employer may provide vocational placements for persons undertaking the training required for a qualification with the registered training organisation; and

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- (b) which sets out the obligations and rights of –
  - (i) the employer; and
  - (ii) the registered training organisation; and
  - (iii) the persons referred to in paragraph (a) who are provided with vocational placements with or by the employer.

(2) A vocational placement agreement –

- (a) must contain the provisions, or provisions of a type, determined by the TTAC that are relevant to the vocational placements being provided; and
- (b) may contain other appropriate provisions.

**43. Vocational placement of no effect unless under vocational placement agreement**

(1) In this section –

*registered employee organisation* means an association of employees registered as an organization under Part V of the *Industrial Relations Act 1984* or a federally registrable employee association registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

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- (2) An employer must not provide a vocational placement to a person –
- (a) without having first entered into a vocational placement agreement with a registered training organisation that is providing, or is to provide, training to that person; and
  - (b) without the approval of any relevant registered employee organisation.

Penalty: Fine not exceeding 50 penalty units.

**44. Offence to contravene vocational placement agreement**

A party to a vocational placement agreement must not contravene the agreement.

Penalty: Fine not exceeding 50 penalty units.

**45. Workers compensation**

If an employer is providing a vocational placement to a person under a vocational placement agreement and pays the person in relation to his or work undertaken in the vocational placement, the employer must provide workers compensation under the *Workers Rehabilitation and Compensation Act 1988* for the person.



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**46. Indemnity insurance**

(1) In this section –

*person undertaking training*, in relation to a registered training organisation, means a person undertaking the training required for a qualification with the registered training organisation.

(2) If a registered training organisation under a vocational placement agreement arranges for a person undertaking training to undertake an unpaid vocational placement with an employer, the registered training organisation must obtain indemnity insurance to cover–

(a) the registered training organisation against–

(i) proceedings for damages for injury to the person undertaking training or loss of, or damage to, that person’s property arising out of the unpaid employment under the vocational placement; and

(ii) loss or damage to the employer’s property caused by the person undertaking training during unpaid employment under the vocational placement; and

(b) the person undertaking training against proceedings for damages for injury to a person, or loss or damage to property,

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arising out of the unpaid employment  
under the vocational placement.

- (3) The maximum amount payable in respect of a single claim or action is \$10 000 000.

**47. Directions by TTAC**

- (1) The TTAC may direct a party to a vocational placement to take any action, or refrain from doing any act, as the TTAC considers appropriate if the TTAC considers that –
- (a) the party has contravened the vocational placement agreement; or
  - (b) the party has contravened this Act; or
  - (c) it is otherwise appropriate to give the direction.
- (2) A direction is to be in writing provided to the party to the vocational placement.
- (3) A party to the vocational placement must comply with a direction provided to him or her under this section.

Penalty: Fine not exceeding 50 penalty units.

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***Division 3 – Restrictions on entering into training contract or vocational placement agreement***

**48. Employers who are not fit and proper persons for purposes of training contracts or vocational placement agreements**

- (1) After allowing an employer a reasonable opportunity to make submissions in respect of the matter, the TTAC may determine that the employer is not a fit and proper person for the purposes of entering into training contracts or vocational placement agreements.
- (2) In determining whether an employer is not a fit and proper person for the purposes of entering into training contracts or vocational placement agreements, the TTAC may take into account –
  - (a) whether or not a host employer, or proposed host employer, of the employer is a fit and proper person for the purposes of training trainees or apprentices, or both, employed by that employer under a training contract; and
  - (b) whether or not the employer has contravened this Act; and
  - (c) the previous behaviour of the employer in Tasmania in relation to the fulfilment of training contracts and vocational placement agreements; and
  - (d) the previous behaviour of the employer in any place in relation to the fulfilment

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- of agreements made elsewhere than Tasmania but which are similar in effect to training contracts or vocational placement agreements; and
- (e) whether or not the employer has failed to comply with any directions given by the TTAC; and
  - (f) any other matter the TTAC considers relevant.
- (3) For the purposes of the TTAC determining under subsection (2)(a) whether or not a host employer or proposed host employer is a fit and proper person for the purposes of training trainees or apprentices, or both, employed by an employer under a training contract, subsections (1) and (2) apply to the host employer as if he, she or it were an employer.
- (4) If the TTAC determines that an employer is not a fit and proper person for the purposes of entering into training contracts or vocational placement agreements, the TTAC –
- (a) is to notify the employer, in writing –
    - (i) of that determination; and
    - (ii) that the employer is not entitled to enter into a training contract or vocational placement agreement; and
  - (b) may notify a person or body in another State or a Territory that has functions

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that correspond to those of the TTAC, or of the Secretary under this Part, of that determination; and

- (c) may notify a department, or agency, of the Commonwealth that has responsibility for matters relating to vocational education and training of that determination.
- (5) If the TTAC determines that a host employer or proposed host employer is not a fit and proper person for the purposes of training trainees or apprentices, or both, employed by an employer under a training contract, the TTAC –
- (a) is to notify the host employer or proposed host employer and the employer, in writing –
    - (i) of that determination; and
    - (ii) that the host employer or proposed host employer is not entitled to enter into an agreement with a group training organisation to train trainees or apprentices, or both, employed by that group training organisation under a training contract entered into by that group training organisation; and
  - (b) may notify a person or body in another State or a Territory that has functions that correspond to those of the TTAC, or

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of the Secretary under this Part, of that determination; and

(c) may notify a department, or agency, of the Commonwealth that has responsibility for matters relating to vocational education and training of that determination.

(6) A notice under subsection (4)(a) or subsection (5)(a) –

(a) takes effect when the notice is provided to the employer, or to the host employer or proposed host employer, as appropriate; and

(b) has effect until revoked.

**49. Offence to enter into training contract or vocational placement agreement**

An employer in respect of whom a notice under section 48(4)(a) is in effect must not enter into a training contract or a vocational placement agreement.

Penalty: In the case of –

(a) a training contract, a fine not exceeding 100 penalty units; or

(b) a vocational placement agreement, a fine not exceeding 50 penalty units.

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**50. Offence for host employer to enter into agreement with group training organisation**

A person in respect of whom a notice under section 48(5)(a) is in effect must not enter into an agreement with a group training organisation to train trainees or apprentices, or both, employed by that group training organisation under a training contract entered into by that group training organisation.

Penalty: Fine not exceeding 100 penalty units

**51. Revocation of notice that employer or host employer not fit and proper person for purposes of training contract or vocational placement agreement**

- (1) The TTAC may revoke a notice provided to an employer under section 48(4)(a) or to a host employer or proposed host employer under section 48(5)(a) –
  - (a) on the application of the employer or the host employer or proposed host employer; or
  - (b) at its own discretion.
- (2) An employer, host employer or proposed host employer may not make an application within 12 months after –
  - (a) the notice was provided under section 48(4)(a) or section 48(5)(a); or

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- (b) the determination of the last such application.
- (3) An application is to be in writing and accompanied by any fee prescribed in the regulations.
- (4) On determining to revoke a notice provided under section 48(4)(a) or section 48(5)(a), the TTAC is to notify the following persons, bodies, departments and agencies of that determination, in writing:
  - (a) in the case of a notice under section 48(4)(a) –
    - (i) the employer; and
    - (ii) each body, department or agency notified under section 48(4)(b) or (c) of the determination that the employer was not a fit and proper person for the purposes of entering into training contracts or vocational placement agreements;
  - (b) in the case of a notice under section 48(5)(a) –
    - (i) the host employer or proposed host employer and the employer; and
    - (ii) each body, department or agency notified under section 48(5)(b) or (c) of the determination that the host employer or proposed host



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employer was not a fit and proper person for the purposes of training trainees or apprentices, or both, employed by an employer under a training contract.

- (5) On determining not to revoke a notice provided under section 48(4)(a) or section 48(5)(a), the TTAC is to notify the applicant of that determination, in writing.

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**PART 4 – DISPUTES, INQUIRIES AND INSPECTIONS**

**52. Disputes relating to training contracts and vocational placement agreements**

- (1) A party to a training contract or vocational placement agreement may apply to the TTAC to hear and determine any dispute relating to the terms, conditions or operations of that training contract or vocational placement agreement.
- (2) An application is to set out –
  - (a) full details of the dispute; and
  - (b) details of any action taken by any party to resolve the dispute; and
  - (c) any other matter the TTAC may require.
- (3) In hearing and determining a dispute, the TTAC, by notice in writing, may require any person to attend a hearing or conference.
- (4) A notice is to –
  - (a) specify the day, time and place at which the hearing or conference is to be held; and
  - (b) specify the matter to be discussed at the hearing or conference; and
  - (c) be served on the person at least 7 days before the day of the hearing or conference.

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- (5) A person who, under subsection (3), has been notified that he or she is required to attend a hearing or conference must attend the hearing or conference.

Penalty: Fine not exceeding 50 penalty units.

- (6) After hearing a dispute, TTAC may determine to –
- (a) amend the training contract or vocational placement agreement; or
  - (b) transfer the training contract; or
  - (c) suspend the training contract; or
  - (d) terminate the training contract or vocational placement agreement; or
  - (e) give any directions the TTAC considers appropriate to either party, or both parties, to the training contract or vocational placement agreement.

**53. Inquiries**

- (1) Any person may apply to the Secretary to carry out an inquiry into the process followed by the TTAC in making a decision in relation to –
- (a) the approval of a training contract or vocational placement agreement; or
  - (b) the conditions to which the approval of a training contract is subject; or

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- (c) the amendment, transfer, suspension or termination of a training contract; or
  - (d) the amendment or termination of a vocational placement agreement; or
  - (e) whether or not an employer is a fit and proper person for the purposes of entering into training contracts or vocational placement agreements.
- (2) An application under subsection (1) –
- (a) may not relate to the merit of the decision; and
  - (b) is to be –
    - (i) in writing; and
    - (ii) lodged with the Secretary within 14 days after the decision is notified or made known to the person; and
    - (iii) accompanied by any fee prescribed in the regulations.
- (3) The Secretary, on his or her own motion, may carry out an inquiry into –
- (a) a matter referred to in subsection (1); or
  - (b) a contravention, or suspected contravention, of –
    - (i) a provision of this Act; or

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- (ii) a provision of a training contract or vocational placement agreement.
- (4) The Secretary is to –
  - (a) commence an inquiry within 2 months after an application under subsection (1) is lodged; and
  - (b) complete the inquiry within 6 months after commencing it.
- (5) Part 3 and sections 5(2), 11, 33, 34 and 35 of the *Commissions of Inquiry Act 1995* apply to the carrying out of an inquiry, and for that purpose the Secretary is taken to be a Commission established under that Act.
- (6) After carrying out an inquiry, the Secretary –
  - (a) may make any decision he or she considers appropriate; and
  - (b) is to notify, in writing –
    - (i) if the inquiry related to a training contract or vocational placement agreement, the parties to the training contract or vocational placement agreement; or
    - (ii) if the inquiry related to a decision as to whether or not an employer was a fit and proper person for the purposes of entering into training contracts or vocational

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placement agreements, the employer; or

(iii) if the inquiry related to a contravention, or suspected contravention, of a provision of this Act, the person whose actions or behaviour was investigated and any other person the Secretary considers has an interest in the matter; or

(iv) if the inquiry related to a contravention, or suspected contravention, of a provision of a training contract or vocational placement agreement, the person whose actions or behaviour was investigated and all other parties to the training contract or vocational placement agreement.

**54. Inspections**

(1) In this section –

*authorised person* means a State Service officer, or State Service employee, authorised under subsection (2) to exercise the powers specified in subsection (3).

(2) The Secretary, by certificate of authority issued to a State Service officer, or State Service employee, employed in or for the purposes of the Department, may authorise the officer or

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employee to exercise the powers specified in subsection (3).

- (3) At any reasonable time, an authorised person may do any one or more of the following:
- (a) require a person to produce to the authorised person or the Secretary any record or document relating to –
    - (i) a training contract; or
    - (ii) training or assessments to which a training contract relates; or
    - (iii) a vocational placement agreement; or
    - (iv) training or assessments provided under a vocational placement agreement;
  - (b) make a copy of, or take an extract from, any such record or document;
  - (c) seize any such record or document;
  - (d) require a person to answer any question or provide any information with respect to such a record or document;
  - (e) require a person to give any assistance reasonably necessary to carry out any of the powers referred to in this subsection.
- (4) An authorised person may only exercise a power under subsection (3) on the production of the certificate of authority.

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- (5) A requirement to produce a record or document includes a requirement to –
- (a) produce, in a written form, a record or document which is recorded or stored by any mechanical, electronic or other means; and
  - (b) provide a document containing a clear reproduction in writing of the matters in the record or document.
- (6) A person must not –
- (a) obstruct, delay, threaten or attempt to intimidate an authorised person in the exercise of his or her powers under subsection (3); or
  - (b) without reasonable excuse, fail to comply with a requirement lawfully made by an authorised person under subsection (3).

Penalty: Fine not exceeding 50 penalty units.

**55. Search warrants**

- (1) In this section –

*authorised person* means a person authorised under section 54(2) to exercise the powers specified in section 54(3).

- (2) An authorised person, with the consent of the Secretary, may apply to a justice or magistrate for the issue of a search warrant if the authorised



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person believes on reasonable grounds that the provisions of this Act are being contravened.

- (3) The grounds of an application for a warrant must be verified by affidavit.
- (4) The justice or magistrate, if satisfied that there are reasonable grounds, may issue a search warrant authorising an authorised person named in the warrant and any assistants, using such force as is necessary and reasonable, to enter the premises specified in the warrant for the purpose of searching for any records or documents relating to the provision of training or assessments leading to a qualification.
- (5) Section 15 of the *Search Warrants Act 1997* applies, with necessary modifications and adaptations, in respect of an application for a warrant under this section and a warrant issued as a result of such an application.
- (6) A person who executes a warrant must, on or as soon as practicable after executing the warrant –
  - (a) prepare a notice containing –
    - (i) his or her name and a statement that he or she is an authorised person; and
    - (ii) the name of the justice or magistrate who issued the warrant and the day and time of its issue; and

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- (iii) a description of the premises to which the warrant relates and of the authority conferred by the warrant; and
  - (b) provide the notice to the occupier or person apparently in charge of the premises in respect of which the warrant was issued or leave it in a prominent position on the premises.
- (7) A warrant expires at the end of one month after the day on which it was issued.

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**PART 5 – TASTAFE**

***Division 1 – Establishment of TasTAFE***

**56. Establishment of TasTAFE**

(1) In this section –

***Tasmanian Polytechnic*** means the Tasmanian Polytechnic continued as a State educational institution by section 5 of the *Education and Training (Tasmanian Polytechnic) Act 2008*, as in force immediately before the commencement of this Act;

***Tasmanian Skills Institute*** means the Tasmanian Skills Institute established by section 5 of the *Education and Training (Tasmanian Skills Institute) Act 2008*, as in force immediately before the commencement of this Act.

(2) The Tasmanian Polytechnic and the Tasmanian Skills Institute are merged and continued as TasTAFE.

(3) TasTAFE –

(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

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- (d) is an instrumentality of the Crown.
- (4) If TasTAFE has a seal –
  - (a) it is to be kept and used as authorised by TasTAFE; 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 TasTAFE.
- (5) TasTAFE may use and operate under a trading name approved by the Minister.

**57. Functions of TasTAFE**

- (1) In this section –
  - education provider* means a person, organisation or institution providing vocational education and training or other education or training, including a school within the meaning of the *Education Act 1994*, a university and a registered training organisation.
- (2) TasTAFE has the following functions:
  - (a) to provide to persons vocational education and training that –
    - (i) benefits the Tasmanian economy and builds the productivity of the Tasmanian workforce; and
    - (ii) is of a high quality; and

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- (iii) results in those persons obtaining nationally recognised skills and qualifications;
- (b) to provide to persons foundation skills training that when successfully completed may lead, or may lead when so completed in conjunction with other training, to those persons obtaining a qualification;
- (c) to develop, in consultation with relevant industry associations, models for the provision of vocational education and training to employed persons for the purposes of developing skills, including developing skills needed to alleviate or prevent skill shortages in the Tasmanian workforce;
- (d) to collaborate with employers in relation to the development of the skills of their employees;
- (e) to provide vocational education and training in accordance with the Minister's priorities in relation to training and workforce development for communities in Tasmania, including –
  - (i) rural and isolated communities; and
  - (ii) other communities where other providers of vocational education and training cannot, or are not,

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effectively meeting the demand for it;

- (f) to provide, for the purposes of developing skills in the current and future Tasmanian workforces, services to TasTAFE students, and employers and their employees, in relation to the provision of vocational education and training and other education or training;
- (g) to consult with and, where practicable and appropriate, enter into partnerships with other education providers in relation to vocational education and training or other education or training;
- (h) to collaborate with the principals of schools, within the meaning of the *Education Act 1994*, other providers of vocational education and training, providers of higher education and employers in relation to the support of persons as they move through school, vocational education and training, higher education and other education or training and into the Tasmanian workforce;
- (i) to advise the Minister on significant developments relating to the provision of vocational education and training;
- (j) other functions imposed on TasTAFE by this or any other Act.

**58. Powers of TasTAFE**

- (1) TasTAFE has the following powers:
- (a) to provide vocational education and training, or other education or training, for the purposes of enabling persons to acquire qualifications and participate in the workforce or further education and training;
  - (b) to provide to persons other education or training that is or may be required for employment in a specific occupation;
  - (c) to undertake commercial activities incidental to the provision of vocational education and training and other education or training;
  - (d) to undertake research incidental to the provision of vocational education and training and other education or training;
  - (e) to offer services that assist employers to better use their employees' existing skills;
  - (f) to hire out property;
  - (g) to lease, sell, otherwise dispose of, buy or otherwise acquire property, other than real property;
  - (h) with the written approval of the Minister, to lease, sell, otherwise dispose of, buy or otherwise acquire real property;

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- (i) to enter into contracts;
  - (j) to provide services, including consultancy services, to other persons and organisations in accordance with such contracts;
  - (k) to do anything necessary or convenient in relation to the performance of its functions.
- (2) TasTAFE 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 one or more of the following arrangements for the purpose of the sharing of profits:
    - (i) a joint venture;
    - (ii) a partnership;
    - (iii) any other arrangement.

**59. TasTAFE to have regard to object of Act**

In performing its functions and exercising its powers, TasTAFE is to have regard to the object



of this Act set out in section 3 to the extent that it is relevant.

***Division 2 – Board of Directors of TasTAFE***

**60. Board of Directors of TasTAFE**

- (1) TasTAFE has a Board of Directors consisting of 7 members appointed by the Minister.
- (2) Before appointing a person to the TasTAFE Board, the Minister must call for expressions of interest in the appointment by advertising in at least 3 daily newspapers printed, and circulating, in Tasmania.
- (3) Subsection (2) does not apply to the reappointment of a person to the TasTAFE Board for a consecutive term.
- (4) In appointing a person to the TasTAFE 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 TasTAFE are performed competently; and
    - (ii) an understanding of the needs of employers and TasTAFE students, both current and future, in relation to training and workforce development and the

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- requirements for meeting those needs; and
  - (iii) business skills, corporate governance skills and financial management skills; and
  - (iv) strategic planning expertise; and
  - (v) expertise in the provision of vocational education and training or other education or training; and
- (b) consider expressions of interest received in response to the advertisements referred to in subsection (2); and
  - (c) take into account the desirability of having as directors both men and women; and
  - (d) take into account the desirability of having as directors persons from all regions of Tasmania.
- (5) The Minister may appoint a director as chairperson of the TasTAFE Board.
  - (6) Schedule 2 has effect with respect to the directors and the meetings of the TasTAFE Board.

**61. Responsibilities and powers of TasTAFE Board**

- (1) The TasTAFE Board is responsible to the Minister for –

- (a) the performance of the functions of TasTAFE; and
  - (b) the achievement by TasTAFE of the objectives specified in the TasTAFE corporate plan; and
  - (c) ensuring that the business and affairs of TasTAFE 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 72; and
  - (d) in consultation with the Minister, setting annual performance objectives for the TasTAFE chief executive officer.
- (2) The TasTAFE Board has the power to do any thing necessary or convenient in relation to its responsibilities under this Act.

## **62. Delegation by TasTAFE Board**

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

## **63. Acting TasTAFE directors**

- (1) In this section –
- absent* means –

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- (a) absent from duty; or
  - (b) otherwise unable to perform the functions of a TasTAFE director.
- (2) The Minister may appoint a person to act as a TasTAFE director if a TasTAFE director is absent.
  - (3) A person appointed to act as a TasTAFE director under this section is taken to be a TasTAFE director.
  - (4) The appointment of a person to act as a TasTAFE director terminates when the absent TasTAFE director resumes the performance of the functions of TasTAFE director or the absent TasTAFE director resigns or is removed from the office of TasTAFE director.

**64. Offences as TasTAFE director**

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

Penalty: Fine not exceeding 50 penalty units.

- (2) In performing and exercising the functions and powers of a TasTAFE director, a TasTAFE 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 TasTAFE director or former TasTAFE director must not use improperly, whether within Tasmania or elsewhere, information acquired as a TasTAFE director –

(a) to gain, 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.

(4) A TasTAFE director or former TasTAFE director must not use improperly, whether within Tasmania or elsewhere, his or her position as a TasTAFE director or the fact that he or she is or was a TasTAFE director –

(a) to gain, 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.

## **65. Repayment of improper profit**

If a person is found guilty of an offence under section 64, TasTAFE may recover in a court of competent jurisdiction as a debt due to it –

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- (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 – TasTAFE chief executive officer and other TasTAFE employees***

**66. TasTAFE chief executive officer**

- (1) Subject to and in accordance with the *State Service Act 2000*, a chief executive officer of TasTAFE may be appointed.
- (2) The TasTAFE chief executive officer is not eligible to hold the office of TasTAFE director.

**67. Responsibilities of chief executive officer**

- (1) The TasTAFE chief executive officer is responsible to the TasTAFE Board for –
  - (a) the general administration and management of TasTAFE; and
  - (b) attaining his or her performance objectives set under section 61(1)(d).
- (2) The TasTAFE chief executive officer –
  - (a) must carry out any responsibilities, and may exercise any powers, delegated by the TasTAFE Board; and

- (b) must perform any functions or carry out any responsibilities imposed, and may exercise any powers granted, by this or any other Act.

**68. Delegation by TasTAFE chief executive officer**

The TasTAFE chief executive officer may delegate any of his or her responsibilities, functions or powers, other than –

- (a) the responsibility for the attainment of his or her performance objectives set under section 61(1)(d); and
- (b) this power of delegation.

**69. TasTAFE employees**

- (1) In this section –

*training session* means a vocational 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) teaching;
  - (iii) mentoring;
  - (iv) coaching;
  - (v) observation;

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- (vi) demonstration;
    - (vii) the conduct of assessment activities; and
  - (b) impart knowledge, skills and attitudes.
- (2) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed for the purposes of this Part.
- (3) Despite section 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 TasTAFE employee to undertake duties for the purpose of delivering training sessions.
- (4) A person appointed as a sessional TasTAFE employee pursuant to subsection (3) –
  - (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*.
- (5) Subsections (3) and (4) are incorporated with, and are to be read together with, the *State Service Act 2000*.



***Division 4 – Committees***

**70. Audit and risk management committee**

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

**71. Other committees**

- (1) The TasTAFE Board may establish any committee it considers appropriate in relation to the functions and powers of TasTAFE.
- (2) A committee is to provide advice to the TasTAFE Board on any matter referred to it by the TasTAFE Board.

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- (3) Schedule 3 has effect with respect to the membership and meetings of a committee.

***Division 5 – Directions, expectations and plans***

**72. Ministerial directions**

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

**73. Policy expectations**

- (1) Within 3 months after the day on which this Act commences, and within the same 3 months of each succeeding year, the Minister must provide TasTAFE with the policy expectations of the Minister for TasTAFE, including –
- (a) the nature and scope of the operations to be undertaken by TasTAFE; and
  - (b) the arrangements for the costing and funding of non-commercial operations.
- (2) In determining the policy expectations to be provided, the Minister is to take into account the priorities for training and workforce development established under section 5.
- (3) The Minister may at any time at his or her own discretion or on the application of TasTAFE –

- (a) amend the policy expectations; or
  - (b) rescind the policy expectations and substitute other policy expectations.
- (4) Before or while preparing the policy expectations or an amendment to the policy expectations, the Minister must consult with TasTAFE.
- (5) The policy expectations and any amendment to the policy expectations –
- (a) are to be in writing signed by the Minister; and
  - (b) take effect on a day specified in the policy expectation or amendment.
- (6) The policy expectations, as amended from time to time, have effect until the next, or any substitute, policy expectations are provided by the Minister to TasTAFE.
- (7) The TasTAFE Board must ensure that the business and affairs of the Authority are conducted in a manner that is consistent with the policy expectations.

#### **74. Corporate plan**

- (1) The TasTAFE Board, by 31 May in each year, is to prepare a draft corporate plan in respect of at least a 3-year period commencing on 1 July in that year.

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- (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 policy expectations provided by the Minister under section 73;
  - (b) a statement of TasTAFE's financial plans;
  - (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 a copy of the draft corporate plan to the Minister for approval.
- (4) The Minister, after consultation with the Treasurer, may –
  - (a) approve the draft corporate plan; or
  - (b) require the TasTAFE Board to amend the draft corporate plan before approving it.
- (5) On being approved by the Minister the draft corporate plan becomes the corporate plan of TasTAFE.

- (6) The TasTAFE Board may prepare an amendment of the TasTAFE corporate plan at any time.
- (7) An amendment of the TasTAFE corporate plan takes effect when the Minister, after consultation with the Treasurer, approves it.
- (8) Except where the Minister, after consulting with the Treasurer, otherwise approves, TasTAFE must act in accordance with the TasTAFE corporate plan.

#### **75. Notification of developments**

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

- (a) significantly affect the ability of TasTAFE to comply with any directions or policy expectations given or provided by the Minister under section 72 or 73; or
- (b) prevent or significantly affect the achievement of the objectives specified in the TasTAFE corporate plan; or
- (c) significantly affect the financial viability or operating ability of TasTAFE; or
- (d) significantly affect any other policy or program specified in the TasTAFE corporate plan.

***Division 6 – Financial affairs***

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

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

**77. Funds of TasTAFE**

- (1) The funds of TasTAFE consist of any money –
  - (a) received by it by way of fees and charges under this Part; 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 TasTAFE are to be applied –
  - (a) in payment of the remuneration of the TasTAFE directors, the TasTAFE chief executive officer and the TasTAFE employees; and
  - (b) in payment or discharge of the expenses, charges and obligations incurred or undertaken by TasTAFE in the performance and exercise of its functions and powers.

**78. Accounting records**

The TasTAFE 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 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 Australian 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, in writing provided to the TasTAFE Board.

**79. TasTAFE financial statements**

- (1) Within 45 days after the end of the financial year, the Board is to –
  - (a) prepare the financial statements for TasTAFE relating to that financial year; and
  - (b) provide the Auditor-General with those financial statements.
- (2) The financial statements, in relation to 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 (3);
  - (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, the statement of financial position and the statement of cash flows.
- (3) The Treasurer, in writing, may give directions to the TasTAFE Board in respect of the form of the financial statements.



- (4) The TasTAFE Board is to ensure that the financial statements comply with any directions given under subsection (3).

**80. Report of Auditor-General**

In addition to providing, under section 19 of the *Audit Act 2008*, his or her opinion and any formal communication of audit findings to the Minister and the accountable authority for TasTAFE under that Act, the Auditor-General also must provide that opinion and any such formal communication to the Treasurer.

**81. Treasurer's Instructions**

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

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

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

***Division 7 – Annual report***

**83. Annual report**

- (1) The TasTAFE Board is to prepare for TasTAFE an annual report for each financial year.
- (2) The annual report is to include the following:
  - (a) the TasTAFE financial statements for the financial year to which the annual report relates;
  - (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 any directions given by the Minister under section 72 and any action taken by the TasTAFE Board in respect of those directions;
  - (d) the details of the policy expectations provided by the Minister under section 73 and any action taken by TasTAFE in respect of those policy expectations;
  - (e) a summary of the TasTAFE corporate plan;
  - (f) a report on the performance of TasTAFE with reference to 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, as set out in the TasTAFE corporate plan;

- (g) a report on the operations of TasTAFE;
  - (h) any information the Minister requires relating to the TasTAFE directors, TasTAFE chief executive officer and TasTAFE employees;
  - (i) any other information the Minister requires;
  - (j) any other information the TasTAFE Board considers is appropriate or necessary to properly inform the Minister and Parliament as to the performance and progress of TasTAFE.
- (3) The TasTAFE 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 TasTAFE Board.

#### **84. Tabling of annual report**

- (1) The Minister is to lay a copy of the annual report of TasTAFE provided under section 83 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

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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 –
- (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 8 – By-laws***

**85. 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

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- (b) the conduct and discipline of any persons in respect of –
    - (i) any facilities and equipment owned, occupied, managed or used by TasTAFE; or
    - (ii) its provision of vocational education and training and other 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 by-laws.
  - (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.
  - (4) The by-laws may authorise any matter to be from time to time determined, applied or regulated by the TasTAFE Board, the TasTAFE 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*.

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***Division 9 – Miscellaneous***

**86. Fees, levies and charges**

(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
- (b) a permanent resident in Australia or a dependant of such a permanent resident; or
- (c) a refugee resident in Australia;

***post-Year 10 education and training*** has the same meaning as in section 47B of the *Education Act 1994*.

- (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 and other education and 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 by TasTAFE of post-Year 10 education and training to a person who –

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- (a) is entitled under section 47B(2) of the *Education Act 1994* 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 also 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 are to be paid into the funds of TasTAFE.

**87. TasTAFE student records**

- (1) TasTAFE is to maintain accurate records relating to TasTAFE students.
- (2) The records –
  - (a) are to contain the information and matters prescribed in the regulations; and
  - (b) 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.

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(3) TasTAFE may, despite anything to the contrary in the *Personal Information Protection Act 2004* –

- (a) make the records available; and
- (b) provide copies of the records or any part of the records –

to the State Training Authority, within the meaning of the *Skilling Australia's Workforce Act 2005* of the Commonwealth, so as to allow that Authority to meet Tasmania's obligations regarding the administration of unique student identifiers.

(4) In subsection (3) –

*unique student identifier* means a unique student identifier created for a person under the agreement –

- (a) between the Commonwealth and the States and Territories; and
- (b) that was signed on 13 April 2012; and
- (c) that provides for the creation of unique student identifiers in relation to vocational education and training –

as amended or substituted from time to time.



**88. 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.
- (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 TasTAFE –
  - (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 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.

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- (5) A notice under subsection (4) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**89. 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 TasTAFE as specified in that notice.
- (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 –
- (a) the property and rights specified in the notice vest in TasTAFE; and
  - (b) the liabilities and obligations specified in the notice become the liabilities and obligations of TasTAFE.

**PART 6 – MISCELLANEOUS**

**90. Evidence**

The production of –

- (a) the Training Contracts Register; or
- (b) a copy of that Register or part of that Register; or
- (c) an extract, or copy of an extract, from an entry in that Register –

certified by the Secretary is evidence of the facts contained in that Register or extract.

**91. False and misleading statements**

- (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 misleading.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person must not provide under this Act a document that the person knows to be false or misleading without informing the person to whom the document is provided of that knowledge.

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Penalty: Fine not exceeding 50 penalty units.

**92. Liability of director, &c., if offence by body corporate**

(1) In this section –

*officer* has the same meaning as in the Corporations Act.

(2) If –

(a) a body corporate commits an offence against this Act; and

(b) it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, an officer of the body corporate or a person who was purporting to act as an officer of the body corporate –

that officer or person, as well as the body corporate, commits the offence.

(3) An officer or other person referred to in subsection (2)(b) may be found guilty of the offence referred to in subsection (2) whether or not the body corporate is charged with or found guilty of the offence.

**93. Regulations**

(1) The Governor may make regulations for the purposes of this Act.

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- (2) The regulations may –
  - (a) provide that a contravention of, or a failure to comply with, 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.
- (3) 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.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by any of the following persons:
  - (a) the Secretary of the Department;
  - (b) TasTAFE, the TasTAFE Board or the TasTAFE chief executive officer;
  - (c) any other person specified in the regulations.
- (5) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of this Act or any Act which amends this Act.
- (6) A provision referred to in subsection (5) may take effect on and from the day on which this

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Act commences, or the Act amending this Act commences, or a later day.

**94. 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, other than Part 5 and except in so far as it relates to TasTAFE, is the Department of Education; and
- (c) the department responsible to that Minister in relation to the administration of Part 5 and this Act in so far as it relates to TasTAFE is TasTAFE.

**SCHEDULE 1 – MEMBERSHIP AND MEETINGS OF  
TTAC**

Section 17(6)

**PART 1 – PRELIMINARY**

**1. Interpretation**

In this Schedule –

*chairperson* means the member appointed as chairperson of the TTAC under section 17(3);

*member* means a member of the TTAC.

**PART 2 – MEMBERSHIP OF TTAC**

**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 –

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- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

**4. *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) A person may hold 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. Vacation of office**

- (1) A member vacates office if he or she –



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- (a) dies; or
  - (b) resigns by written notice provided to the Minister; or
  - (c) is removed from office under subclause (2).
- (2) The Minister may remove a member from office if the member –
- (a) is absent from 3 consecutive meetings of the TTAC without the permission of the other members of the TTAC; or
  - (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
  - (c) is convicted of an offence under this Act; or
  - (d) fails to disclose a pecuniary interest as required under clause 16; or
  - (e) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the TTAC, other than a contract for a good or service ordinarily supplied by the TTAC and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation; or
  - (f) in the opinion of the Minister, is unable to perform adequately or competently the duties of office; or

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(g) for any other reason the Minister considers appropriate.

**7. Filling of vacancies**

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

**8. Validation of proceedings, &c.**

An act or proceeding of the TTAC or of a person acting under any direction of the TTAC 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 member or a defect in the appointment of a member.

**9. Presumptions**

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

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

**PART 3 – MEETINGS OF TTAC**

**10. Convening of meetings**

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

**11. Presiding at meetings**

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

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**12. Quorum and voting at meetings**

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

**13. Conduct of meetings**

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

**14. Resolutions without meetings**

- (1) If 4 members 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 TTAC held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

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- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
  - (a) advised immediately of the matter; and
  - (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 members, is taken to constitute one document.

**15. Minutes**

The TTAC is to keep accurate minutes of its meetings.

**16. 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 the TTAC, 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 TTAC.

Penalty: Fine not exceeding 50 penalty units.

- (2) Unless the TTAC 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 TTAC in relation to the matter; or

- (b) take part in any decision of the TTAC 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 TTAC 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 TTAC if those services are ordinarily supplied by the TTAC 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.

## **17. General procedure**

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

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**18. Presumptions**

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

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



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**SCHEDULE 2 – TASTAFE DIRECTORS AND  
MEETINGS OF TASTAFE BOARD**

Section 60(6)

**PART 1 – PRELIMINARY**

**1. Interpretation**

In this Schedule –

*chairperson* means the person appointed as chairperson of the Board under section 60(5).

**PART 2 – TASTAFE DIRECTORS**

**2. Term of office**

A TasTAFE director is appointed for such period, not exceeding 3 years, as is specified in the TasTAFE director'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 TasTAFE director; or

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- (b) accepting any remuneration payable to a TasTAFE director.

**4. *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) A person may hold 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*.
- (3) A TasTAFE director holds office on such conditions in relation to matters 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 their benefit; or
  - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 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 a good or service ordinarily supplied by the

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TasTAFE Board and supplied on the same terms as that good or service is 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 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 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**

**10. Frequency of meetings**

The TasTAFE Board is to meet not less than 6 times in each calendar year.

**11. Convening of meetings**

- (1) The chairperson, 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 chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by –

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- (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 chairperson is to preside at all meetings of the TasTAFE Board at which he or she is present.
- (2) If the chairperson 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) Four TasTAFE directors constitute a quorum at a meeting of the TasTAFE Board.
- (2) A meeting of the TasTAFE Board at which a quorum is present is competent to transact any business of the TasTAFE Board.
- (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 under a permission granted 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 4 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 on the day on which the document is signed or, if the TasTAFE directors do not sign it 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
  - (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 50 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

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- (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 TasTAFE Board if those goods or services are ordinarily supplied by the TasTAFE Board 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.

**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.

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**SCHEDULE 3 – MEMBERSHIP AND MEETINGS OF  
TASTAFE COMMITTEES**

Section 70(3) and section 71(3)

**PART 1 – PRELIMINARY**

**1. Interpretation**

In this Schedule –

*committee* means the audit and risk management committee established under section 70 or another committee established under section 71;

*member* means a member of a committee.

**PART 2 – MEMBERSHIP OF COMMITTEE**

**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 –

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- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

**4. *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) A person may hold 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. Vacation of office**

- (1) A member vacates office if he or she –

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- (a) dies; or
  - (b) resigns by written notice provided to the TasTAFE Board; or
  - (c) is removed from office under subclause (2).
- (2) The TasTAFE Board may remove a member from office if the member –
- (a) is absent from 3 consecutive meetings of the committee without the permission of the other members of the committee; or
  - (b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or
  - (c) is convicted of an offence under this Act; or
  - (d) fails to disclose a pecuniary interest as required under clause 16; or
  - (e) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the committee, other than a contract for a good or service ordinarily supplied by the committee and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation; or
  - (f) in the opinion of the TasTAFE Board, is unable to perform adequately or competently the duties of office; or

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- (g) for any other reason the TasTAFE Board considers appropriate.

**7. Filling of vacancies**

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

**8. 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 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 member or a defect in the appointment of a member.

**9. 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**

**10. Convening of meetings**

- (1) The chairperson of a committee, after giving each member 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 members.
- (2) If the chairperson of a committee is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by –
  - (a) two or more other members; 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 committee.

**11. Presiding at meetings**

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

**12. 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.
- (3) At a meeting of a committee –
  - (a) the member presiding has a deliberative vote only; and
  - (b) a question is decided –
    - (i) by a majority of votes of the members present and voting; or
    - (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of a committee where a member is excluded from being present and taking part in the consideration and decision of the committee 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.



**13. Conduct of meetings**

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

**14. Resolutions without meetings**

- (1) If a majority of all members appointed 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 committee held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.

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- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
  - (a) advised immediately of the matter; and
  - (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 members, is taken to constitute one document.

**15. Minutes**

A committee is to keep accurate minutes of its meetings.

**16. 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 50 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 the committee if those services are ordinarily supplied by the committee 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.

## **17. General procedure**

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

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**18. 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.