

South Australia

Statutes Amendment and Repeal (TAFE SA Consequential Provisions) Bill 2012

A BILL FOR

An Act to amend the *TAFE SA Act 2012*; to amend certain provisions of the *Technical and Further Education Act 1975* and relocate them in the *TAFE SA Act 2012* and then to repeal the *Technical and Further Education Act 1975*; and to amend the *Aboriginal Lands Trust Act 1966*, the *Education Act 1972*, the *Public Sector Act 2009*, the *SACE Board of South Australia Act 1983* and the *Training and Skills Development Act 2008*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment and Repeal (TAFE SA Consequential Provisions) Act 2012*.

2—Commencement

This Act will come into operation immediately after the *TAFE SA Act 2012* comes into operation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *TAFE SA Act 2012*

4—Redesignation of Schedule 1

Schedule 1—re designate the Schedule as Schedule 3

Part 3—Relocation of certain provisions of *Technical and Further Education Act 1975*

5—Amendment, redesignation and relocation

- (1) The following provisions of the *Technical and Further Education Act 1975* (as amended by Schedule 1) are relocated to the *TAFE SA Act 2012* and merged to form Schedule 1 of the *TAFE SA Act 2012*:

section 4(2) and (3)

Part 3

section 39A

- (2) The sections are redesignated as clauses of Schedule 1 of the *TAFE SA Act 2012* as follows:

section 4(2) as clause 1(2)

section 4(3) as clause 1(3)

5 section 15 as clause 3

section 15A as clause 5

section 16 as clause 6

section 17 as clause 7

section 17A as clause 8

10 section 19 as clause 9

section 20 as clause 10

section 21 as clause 11

section 22 as clause 12

section 23 as clause 13

15 section 24 as clause 14

section 25 as clause 15

section 26 as clause 16

section 27 as clause 17

section 39A as clause 4

- 20 (3) The Schedule of the *Technical and Further Education Act 1975* (as amended by Schedule 1) is relocated to the *TAFE SA Act 2012* and redesignated as Schedule 2.

Part 4—Repeal of *Technical and Further Education Act 1975*

6—Repeal

25 Immediately following the amendment, relocation and redesignation of provisions as referred to in Part 3 and Schedule 1, the *Technical and Further Education Act 1975* is repealed.

Part 5—Amendment of *Aboriginal Lands Trust Act 1966*

7—Amendment of section 20A—Business Advisory Panel

30 Section 20A(3)(c)—delete "*Technical and Further Education Act 1975*" and substitute:

Training and Skills Development Act 2008

Part 6—Amendment of *Education Act 1972*

8—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *adult* insert:

AEU means the Australian Education Union, South Australian Branch;

- 5 (2) Section 5(1), definition of *the Institute of Teachers*—delete the definition

9—Amendment of section 29—Classification review panels

- (1) Section 29—delete "Institute of Teachers" wherever occurring and substitute in each case:

AEU

- 10 (2) Section 29(4)—delete "Institute" and substitute:

AEU

10—Amendment of section 45—Teachers Appeal Board

- (1) Section 45(2)(c)—delete "Institute of Teachers" and substitute:

AEU

- 15 (2) Section 45(2)—delete paragraphs (d) and (e) and substitute:

(d) the members of a panel of prescribed employees appointed by the Governor on the nomination of TAFE SA; and

(e) the members of a panel of prescribed employees appointed by the Governor on the nomination of the AEU made after elections have been held in accordance with the regulations.

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- (3) Section 45(4)—delete "an officer of the teaching service under the *Further Education Act 1976*" and substitute:

a prescribed employee

- (4) Section 45(4)(b)—delete "Director-General of Further Education" and substitute:

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chief executive of TAFE SA

- (5) Section 45(6)—after the definition of *member of the Industrial Court* insert:

prescribed employee means a prescribed employee within the meaning of Schedule 1 of the *TAFE SA Act 2012*.

11—Amendment of section 53—Appeals in respect of appointments to promotional level positions

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Section 53(3)(b)—delete "Institute of Teachers (one or more of whom must be nominees of the Institute)" and substitute:

AEU (1 or more of whom must be nominees of the AEU)

12—Amendment of section 75D—Approved learning programs

Section 75D(1)(a)(iii)—delete "a college (within the meaning of the *Technical and Further Education Act 1975*)" and substitute:

TAFE SA; or

5 **Part 7—Amendment of *Public Sector Act 2009***

13—Amendment of section 25—Public Service employees

Section 25(2)(l)—delete paragraph (l) and substitute:

- (l) an employee of the chief executive of TAFE SA under the *TAFE SA Act 2012*;

10 **Part 8—Amendment of *SACE Board of South Australia Act 1983***

14—Amendment of Schedule 1—Designated entities

Schedule 1, clause 1(b)—delete paragraph (b) and substitute:

- (b) the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Training and Skills Development Act 2008*;

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- (ba) TAFE SA;

Part 9—Amendment of *Training and Skills Development Act 2008*

15—Amendment of section 15—Staff

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- (1) Section 15(1)(b)—delete paragraph (b)
(2) Section 15(2)(a)—delete paragraph (a) and substitute:
(a) exclude Public Service employees who are members of the Commission's staff from specified provisions of the *Public Sector Act 2009*; and

25 **16—Amendment of section 23—Delegation by Training Advocate**

Section 23(1)—delete ", or an officer or employee under the *Technical and Further Education Act 1975*,"

17—Amendment of section 24—Staff

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- (1) Section 24(1)(b)—delete paragraph (b)
(2) Section 24(2)(a)—delete paragraph (a) and substitute:
(a) exclude Public Service employees who are members of the Training Advocate's staff from specified provisions of the *Public Sector Act 2009*; and

Schedule 1—Amendments of *Technical and Further Education Act 1975*

Provision amended	How amended
Section 4(2)	Delete "this Act" wherever occurring and substitute in each case: this Schedule Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "officer's" wherever occurring and substitute in each case: employee's Delete "employing authority" wherever occurring and substitute in each case: chief executive Delete "any period" and substitute: a period
Section 4(3)	Delete "employing authority" and substitute: chief executive Delete "any specified officers, or officers of any" and substitute a specified prescribed employee, or a prescribed employee Delete "this Act" and substitute: this Schedule

Provision amended	How amended
Part 3	Delete the Part heading and substitute: Schedule 1—Employment of prescribed employees 1—Interpretation In this Schedule— <i>Appeal Board</i> means the Teachers Appeal Board established under the <i>Education Act 1972</i> ; <i>prescribed employee</i> means an employee of the chief executive of TAFE SA employed on an ongoing basis or term basis (that is, for a specified term or for the duration of a specified project, but not on a weekly, daily or hourly basis) as an employee of any of the following classifications: (a) Lecturer; (b) Lecturer's Assistant; (c) Educational Manager; (d) a classification prescribed by the regulations; <i>public sector employment</i> has the same meaning as in the <i>Public Sector Act 2009</i> . 2—Application The conditions of employment set out in this Schedule are subject to relevant awards, determinations and enterprise agreements under the <i>Fair Work Act 1994</i> . Delete the Division headings
Heading to section 15	Note—The heading will be altered to read "Basis of employment".
Section 15(1)	Delete subsection (1)
Section 15(2)	Delete subsection (2) and substitute: (2) A prescribed employee may be employed on a full-time or part-time basis. Redesignate subsection (2) as subclause (1)
Section 15(3)	Delete "An appointment under this section may be made" and substitute: A prescribed employee may be employed Redesignate subsection (3) as subclause (2)
Section 15(4)	Delete "employing authority" and substitute: chief executive Redesignate subsection (4) as subclause (3)

Provision amended	How amended
Section 15(5)	Delete "officer appointed" and substitute: prescribed employee employed Delete "appointment" and substitute: employment Delete "the provisions of this Act" and substitute: this Schedule Redesignate subsection (5) as subclause (4)
Section 15(6)	Delete subsection (6)
Section 15(7)	Delete subsection (7)
Heading to section 15A	Note—The heading will be altered to read "Termination of employment of employees on probation".
Section 15A(1)	Delete "employing authority" and substitute: chief executive Delete "appointment of an officer" and substitute: employment of a prescribed employee Remove the designation of the subsection as subsection (1)
Section 15A(2)	Delete subsection (2)
Heading to section 16	Note—The heading will be altered to read "Retrenchment".
Section 16(1)	Delete "Where" and substitute: If Delete "employing authority" wherever occurring and substitute in each case: chief executive Delete "officers" wherever occurring and substitute in each case: prescribed employees Delete "an officer" and substitute: a prescribed employee Delete "that officer" and substitute: that employee
Section 16(2)	Delete "An officer" and substitute: A prescribed employee Delete "the provisions of this section" and substitute: this clause Delete "twelve" wherever occurring and substitute in each case: 12 Delete "where" and substitute: if
Section 16(3)	Delete subsection (3)

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Schedule 1—Amendments of *Technical and Further Education Act 1975*

Provision amended	How amended
Heading to section 17	Note—The heading will be altered to read "Incapacity".
Section 17	Delete "Chief Executive Officer" wherever occurring and substitute in each case: chief executive Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "the officer" wherever occurring and substitute in each case: the employee Delete "employment in the Government of the State" wherever occurring and substitute in each case: public sector employment
Section 17(1)	Delete "the office occupied by"
Section 17(1)(a)	Delete "office established under section 15" and substitute: position as a prescribed employee
Section 17(1)(d)	Delete paragraph (d) and substitute: (d) retire the employee.
Section 17(2)	Delete "or recommending the transfer of" Delete "an office or position" wherever occurring and substitute in each case: a position Delete ", or recommending that an officer be retired"
Section 17(3)	Delete "Where" and substitute: If Delete "an office" and substitute: a position Delete "pursuant to subsection (1)(a)" and substitute: under subclause (1)(a)
Section 17(4)	Delete "subsection (1)(b)" and substitute: subclause (1)(b) Delete "recommend to the employing authority that the officer be appointed to an office or position under section 39AAB" and substitute: transfer the employee to employment by the chief executive other than as a prescribed employee
Section 17(5)	Delete subsection (5)

Provision amended	How amended
Section 17A(1)	Delete "An officer" and substitute: A prescribed employee Delete "Division" and substitute: Schedule Delete "officer's" and substitute: employee's Delete "the officer" and substitute: the employee
Section 17A(2)	Delete "section" and substitute: clause Delete "where" and substitute: if Delete "the officer" and substitute: the employee Delete "an officer" and substitute: an employee
Section 19(1)	Delete "An officer's" and substitute: A prescribed employee's Delete "the officer" wherever occurring and substitute: the employee
Section 19(2)	Delete "Where" and substitute: If Delete "an officer" and substitute: a prescribed employee Delete "officer's" and substitute: employee's
Section 19(4)	Delete "Division" and substitute: Schedule
Section 20	Delete "section" wherever occurring and substitute in each case: clause Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "Chief Executive Officer" wherever occurring and substitute in each case: chief executive
Section 20(4)	Delete "the Department" and substitute: TAFE SA

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Schedule 1—Amendments of *Technical and Further Education Act 1975*

Provision amended	How amended
Section 20(5)	Delete "where" wherever occurring and substitute in each case: if
Section 20(5)(a)	Delete "officer's" and substitute: employee's Delete "the officer" and substitute: the employee
Section 20(6)	Delete "An officer" and substitute: A prescribed employee Delete "officer's" and substitute: employee's
Section 20(7)	Delete "Where" and substitute: If Delete "the officer" and substitute: the employee
Section 21	Delete "Where" wherever occurring and substitute in each case: If Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "officer's" wherever occurring and substitute in each case: employee's Delete "employing authority" wherever occurring and substitute in each case: chief executive
Section 21(4)	Delete "section" and substitute: clause Delete "the officer" and substitute: the employee
Section 22	Delete "Where" wherever occurring and substitute in each case: If Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "Division" wherever occurring and substitute in each case: Schedule Delete "employing authority" wherever occurring and substitute in each case: chief executive Delete "section" wherever occurring and substitute in each case: clause

Provision amended	How amended
Section 22(3)	Delete "subsection (2)" and substitute: subclause (2)
Section 22(4)	Delete "officer's" and substitute: employee's
Section 23	Delete "Where" wherever occurring and substitute in each case: If Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "section" wherever occurring and substitute in each case: clause
Section 23(1)	Delete "appointed" and substitute: employed Delete "this Act" and substitute: this Schedule
Section 23(2), definition of <i>prescribed employment</i> , (c)	Delete paragraph (c) and substitute: (c) other public sector employment; and
Section 23(3)	Delete "officer's" and substitute: employee's
Section 23(5)	Delete "employing authority" and substitute: chief executive
Heading to section 24	Note—The heading will be altered to read "Recognition of service as employee in future employment".
Section 24	Delete "Where" wherever occurring and substitute in each case: If Delete "an officer" wherever occurring and substitute in each case: a prescribed employee
Section 24(1)	Delete "employment in the Government of the State" and substitute: public sector employment Delete "this section" and substitute: this clause Delete "section 23" and substitute: clause 12 Delete "this Act" and substitute: this Schedule
Section 25(1)	Delete "An officer" and substitute: A prescribed employee Remove the designation of the subclause as subclause (1)

Provision amended	How amended
Section 26	Delete "an officer" wherever occurring and substitute in each case: a prescribed employee Delete "the officer" wherever occurring and substitute in each case: the employee Delete "that officer" wherever occurring and substitute in each case: that employee Delete "section" wherever occurring and substitute in each case: clause
Section 26(1)	Delete "any provision of" Delete "any lawful direction" and substitute: a lawful direction
Section 26(2) to (5)	Delete subsections (2) to (5) (inclusive) and substitute: <ol style="list-style-type: none">(2) If the chief executive finds that there is sufficient cause for disciplinary action under this clause, he or she may by written determination—<ol style="list-style-type: none">(a) reprimand the employee; or(b) impose a fine on the employee not exceeding the amount of 1 week's salary of the employee; or(c) reduce the classification of the employee; or(d) suspend the employee from duty; or(e) dismiss the employee.(3) A prescribed employee may, within 14 days after he or she receives notice of a determination under this section, appeal to the Appeal Board against the determination.(4) The Appeal Board may, on the hearing of an appeal under this section, vary or revoke the determination subject to appeal, and, if the determination has taken effect, order that the prescribed employee be re-instated as an employee as if no such determination had been made.
Section 26(6)	Delete "Any" and substitute "A" Redesignate subsection (6) as subclause (5)
Section 27	Delete "Where" wherever occurring and substitute in each case: If Delete "the officer" wherever occurring and substitute in each case: the employee

Provision amended	How amended
Section 27(1)	Delete "Chief Executive Officer" wherever occurring and substitute: chief executive Delete "any matter" and substitute: a matter Delete "an officer" and substitute: a prescribed employee
Section 27(2)	Delete "subsection (1)" and substitute: subclause (1)
Section 27(3)	Delete "employing authority" and substitute: chief executive Delete "section" and substitute: clause
Section 27(4)	Delete "subsection (3)" wherever occurring and substitute in each case: subclause (3) Delete "officer" wherever occurring and substitute in each case: employee
Heading to section 39A	Note—The heading will be altered to read "Special provisions relating to rate of remuneration for part-time employees".
Section 39A	Delete "an officer" wherever occurring and substitute: a prescribed employee Delete "the officer" wherever occurring and substitute in each case: the employee Delete "the commencement of this section" wherever occurring and substitute in each case: 1 July 1992
Section 39A(1)	Delete "Where" and substitute: If Delete "any" first occurring and substitute: a After "full-time basis)" insert: ,
Section 39A(2)	Delete "subsection (3), subsection (1)" and substitute: subclause (3), subclause (1)
Section 39A(2)(a)	Delete "notwithstanding" and substitute: despite Delete "any contract of employment, award or industrial agreement" and substitute: a contract of employment, award or enterprise agreement

Provision amended	How amended
Section 39A(2)(b)	Delete "industrial agreement" and substitute: enterprise agreement
Section 39A(2)(d)	Delete "any" and substitute: a
Section 39A(3)	Delete "any" and substitute: an Delete "that commencement" and substitute: that date
Schedule	Delete "an officer of the teaching service under this Act will be construed as a reference to an officer" and substitute: an officer, or an officer of the teaching service, under the <i>Technical and Further Education Act 1975</i> is to be construed as a reference to a prescribed employee within the meaning of Schedule 1.

Schedule 2—Schedules as they will appear in TAFE SA Act

For information purposes, the following Schedules show the provisions of the *Technical and Further Education Act 1975* as they will appear in the *TAFE SA Act 2012* following their amendment, relocation and redesignation.

5 **Schedule 1—Employment of prescribed employees**

1—Interpretation

(1) In this Schedule—

Appeal Board means the Teachers Appeal Board established under the *Education Act 1972*;

10 *prescribed employee* means an employee of the chief executive of TAFE SA employed on an ongoing basis or term basis (that is, for a specified term or for the duration of a specified project, but not on a weekly, daily or hourly basis) as an employee of any of the following classifications:

- 15 (a) Lecturer;
 (b) Lecturer's Assistant;
 (c) Educational Manager;
 (d) a classification prescribed by the regulations;

public sector employment has the same meaning as in the *Public Sector Act 2009*.

20 (2) A reference in this Schedule to the effective service of a prescribed employee is a reference to—

- (a) the period (if any) of the employee's continuous service as a prescribed employee; and

- (b) any other period (if any) that is, by determination of the chief executive, to be regarded as forming the whole, or part, of the employee's effective service,

but does not include a period that is, by determination of the chief executive, not to be regarded as a period of effective service for the purposes of this Schedule.

- (3) The chief executive may, by instrument in writing, determine in relation to a specified prescribed employee or a prescribed employee of a specified class, that a period referred to in the instrument is, or is not, to be regarded as a period of effective service for the purposes of this Schedule.

2—Application

The conditions of employment set out in this Schedule are subject to relevant awards, determinations and enterprise agreements under the *Fair Work Act 1994*.

3—Basis of employment

- (1) A prescribed employee may be employed on a full-time or part-time basis.
- (2) A prescribed employee may be employed on probation.
- (3) The probation will be for such period of effective service (not exceeding 2 years' effective service) as may be determined by the chief executive.
- (4) No prescribed employee employed on a permanent basis may be dismissed, retrenched or retired, or have his or her appointment otherwise terminated, except in accordance with this Schedule.

4—Special provisions relating to rate of remuneration for part-time employees

- (1) If a prescribed employee is employed on a part-time basis (that is to say, on the basis that he or she will work in a pay period a specified percentage of the time ordinarily expected of a prescribed employee employed on a full-time basis), the rate of remuneration applicable to the employee (including any allowances that may be payable) is that same percentage applied to the rate of remuneration that would apply if he or she were employed on a full-time basis.
- (2) Subject to subclause (3), subclause (1)—
- (a) applies in relation to salary, despite any Act or law (including the provisions of a contract of employment, award or enterprise agreement) to the contrary; and
- (b) applies in relation to an allowance, subject to any express provision of a contract of employment, award or enterprise agreement that provides for payment of the full amount of the allowance to the employee; and
- (c) applies regardless of the number of working days, and the period of time in any 1 day, over which the employee performs the required amount of work in a pay period; and

- (d) applies in relation to a past or present entitlement to remuneration, whether it arose before or arises after 1 July 1992.
- (3) Nothing in this clause affects the payment in full of any allowance to a prescribed employee employed on a part-time basis if—
- 5 (a) the payment was made before 1 July 1992; or
- (b) the payment is made after 1 July 1992 in respect of an allowance that was being paid in full immediately prior to that date.

5—Termination of employment of employees on probation

10 The chief executive may by written determination at any time terminate the employment of a prescribed employee who is on probation.

6—Retrenchment

- (1) If the chief executive is satisfied that—
- (a) the volume of work for prescribed employees in a section has diminished; and
- 15 (b) in consequence a reduction in the number of prescribed employees has become necessary in the interest of economy; and
- (c) a prescribed employee should be retrenched for that purpose,
- the chief executive may, by written determination, retrench that employee as from a date specified in the determination.
- 20 (2) A prescribed employee who is retrenched under this clause is entitled to receive—
- (a) at least 12 weeks' notice in writing prior to the date of retrenchment; or
- 25 (b) if the notice is less than 12 weeks, a sum equal to his or her salary for the period by which the notice falls short of 12 weeks.

7—Incapacity

- (1) If the chief executive is satisfied that a prescribed employee is, by reason of mental or physical illness or disability, incapable of performing satisfactorily the duties of the employee, the chief executive may do 1 or more of the following:
- 30 (a) by written determination, transfer the employee to some other position as a prescribed employee;
- (b) determine to take steps to transfer the employee to some other public sector employment;
- 35 (c) grant the employee leave of absence (without remuneration);
- (d) retire the employee.
- (2) The chief executive must, before transferring a prescribed employee to a position of reduced status, be satisfied that transfer of the employee to a position of equivalent status is not reasonably practicable in the
- 40 circumstances.

- (3) If a prescribed employee is transferred to a position of reduced status under subclause (1)(a), the chief executive must alter the classification of the employee accordingly.
- 5 (4) The chief executive may, in acting under subclause (1)(b), transfer the employee to employment by the chief executive other than as a prescribed employee or attempt to secure for the employee some other appropriate public sector employment.

8—Appeal against termination, retrenchment, transfer or retirement

- 10 (1) A prescribed employee may, within 14 days after receiving notice of a determination or decision under this Schedule to terminate the employee's appointment or retrench, transfer or retire the employee, appeal to the Appeal Board against the determination or decision.
- 15 (2) On the hearing of an appeal under this clause, the Appeal Board may revoke the determination or decision and, if effect has been given to the determination or decision, order that the employee be reinstated as an employee as if no such determination or decision had been made.

9—Long service leave

- (1) A prescribed employee's entitlement to long service leave accrues as follows:
- 20 (a) the employee is entitled to 63 days' leave in respect of the first 7 years of effective service;
- (b) the employee is then entitled to 0.75 of a day's leave for each subsequent complete month of effective service.
- (2) If long service leave is taken by a prescribed employee, the employee's entitlement to long service leave is reduced accordingly.
- 25 (3) Every day from the commencement to the conclusion of a period of long service leave (whether a working day or not) will be counted as a day of that leave.
- (4) This Schedule—
- 30 (a) does not affect an entitlement to long service leave or payment in lieu of long service leave that accrued before the commencement of the *Technical and Further Education Act Amendment Act 1987*; and
- 35 (b) does not prejudice an entitlement to pro rata long service leave arising after 5 years' effective service that would have come into existence if the *Technical and Further Education Act Amendment Act 1987* had not been enacted.

10—Taking of long service leave

- (1) Subject to this clause, a prescribed employee who has completed at least 10 years' effective service is entitled to take long service leave.
- 40 (2) The chief executive may permit a prescribed employee who has completed at least 7 years' effective service to take long service leave.

- (3) Long service leave may only be taken in respect of completed years of effective service.
- (4) Long service leave may only be taken at times and for periods that are, in the opinion of the chief executive, convenient to TAFE SA.
- 5 (5) Subject to this clause, the salary to which a prescribed employee is entitled during long service leave is—
- (a) if the effective service of a prescribed employee consists of full-time service—the salary applicable to the employee's substantive classification level during that leave (excluding any additional salary attributable to a higher classification level temporarily assigned to the employee);
- 10 (b) if the effective service of a prescribed employee consists in whole or in part of part-time service—a salary determined by the chief executive.
- 15 (6) A prescribed employee may elect to take long service leave on half salary and, in that event, may take 2 days' leave for each whole day of the employee's entitlement.
- (7) If the effective service of a prescribed employee consists in whole or in part of part-time service, the employee may elect to take long service leave on the salary applicable to full-time service and, in that event, the period of the long service leave will be reduced accordingly.
- 20 (8) The chief executive may authorise payment to a prescribed employee on long service leave of such additional salary or allowances as the chief executive considers appropriate.

25 **11—Payment in lieu of long service leave**

- (1) If a person ceases to be a prescribed employee after not less than 7 years' effective service, the person is entitled to payment of the monetary equivalent of the employee's long service leave entitlement as at the date of cessation of service.
- 30 (2) If a prescribed employee dies, the chief executive must ensure that there is paid to—
- (a) the employee's personal representative; or
- (b) such of the employee's dependants as the chief executive, with the approval of the Minister, considers appropriate,
- 35 the monetary equivalent of the employee's long service leave entitlement as at the date of death.
- (3) In determining the monetary equivalent of a long service leave entitlement no allowance will be made for an increase in salary that may or would have been made if the employee's service had not ceased.
- 40 (4) The chief executive may apply any amount payable to or in respect of a prescribed employee under this clause in satisfaction of a claim against the employee.

12—Interruption of service

- (1) If a person is re-employed as a prescribed employee—
- (a) at any time after his or her service as a prescribed employee was interrupted by retirement on the ground of incapacity; or
 - (b) within 2 years after his or her service as a prescribed employee was interrupted otherwise than by resignation, dismissal for misconduct or retirement on the ground of incapacity,
- the person's effective service before the interruption and his or her effective service after the interruption will, for the purposes of this Schedule, be taken into account as if the service were continuous.
- (2) If a person is re-employed as a prescribed employee more than 2 years after his or her service as a prescribed employee was interrupted otherwise than by resignation, dismissal for misconduct or retirement on the ground of incapacity, the chief executive may grant a certificate under this clause.
- (3) If the chief executive grants a certificate under subclause (2), the person's effective service before the interruption and his or her effective service after the interruption will, for the purposes of this Schedule, be taken into account as if the service were continuous.
- (4) If long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of effective service that is required by this clause to be taken into account as if it were continuous with subsequent service, the employee's entitlement to long service leave in respect of the total period of his or her effective service will be taken to have reduced accordingly.

13—Recognition of previous employment

- (1) If a prescribed employee was in prescribed employment prior to being employed as a prescribed employee and there is continuity of service between that prescribed employment and his or her effective service as a prescribed employee, the long service leave to which he or she is entitled under this Schedule must, subject to this clause, be determined on the basis that the period of his or her service that would have been taken into account for the purpose of determining his or her entitlement to long service leave in respect of the prescribed employment, as at the cessation of that employment, was effective service as a prescribed employee.
- (2) In this clause—
- prescribed employment* means—
- (a) employment in the Public Service of the Commonwealth; and
 - (b) employment in the Public Service of this State; and
 - (c) other public sector employment; and
 - (d) employment in the Public Service of another State or a Territory of the Commonwealth; and
 - (e) employment by a University established in this State; and

(f) any other employment approved by the Minister.

5 (3) If long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of service in prescribed employment required by this clause to be regarded as effective service as a prescribed employee, the employee's entitlement to long service leave in respect of the total period of his or her effective service will be taken to have reduced accordingly.

10 (4) For the purposes of this clause, continuity of service is not interrupted by an interval, not exceeding 3 months, between the cessation of prescribed employment and the commencement of employment as a prescribed employee.

15 (5) If there is an interval of more than 3 months between the cessation of prescribed employment and the commencement of employment as a prescribed employee, the chief executive may, if he or she thinks that special reasons exist for so doing, declare that the interval does not disrupt the continuity of service for the purposes of this clause, and such a declaration has effect according to its terms.

14—Recognition of service as employee in future employment

20 (1) If a prescribed employee is transferred to other public sector employment and his or her service in that employment is continuous with his or her effective service as a prescribed employee, the long service leave to which he or she is entitled in respect of that other employment must, subject to this clause, be determined on the basis that—

25 (a) his or her effective service as a prescribed employee; and

(b) any service required under clause 13 to be regarded as effective service as a prescribed employee in determining his or her long service leave entitlement under this Schedule,

was service in that other employment.

30 (2) If long service leave has been granted, or payment has been made in lieu of long service leave, in respect of a period of effective service as a prescribed employee (or a period required to be regarded as effective service as a prescribed employee), the person's entitlement to long service leave in respect of the total period of his or her service will be taken to have reduced accordingly.

15—Retiring age

35 A prescribed employee may retire on or after the day on which he or she reaches the age of 55 years.

16—Disciplinary action

40 (1) If a prescribed employee—

(a) contravenes or fails to comply with this Act; or

(b) contravenes or fails to comply with a lawful direction given to the employee under this Act; or

- (c) is negligent, inefficient or incompetent in the discharge of his or her duties; or
- (d) is absent from duty without proper cause; or
- (e) is guilty of any disgraceful or improper conduct,

5 there is sufficient cause for disciplinary action against that employee.

(2) If the chief executive finds that there is sufficient cause for disciplinary action under this clause, he or she may by written determination—

- (a) reprimand the employee; or
- (b) impose a fine on the employee not exceeding the amount of 1 week's salary of the employee; or
- (c) reduce the classification of the employee; or
- (d) suspend the employee from duty; or
- (e) dismiss the employee.

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(3) A prescribed employee may, within 14 days after he or she receives notice of a determination under this section, appeal to the Appeal Board against the determination.

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(4) The Appeal Board may, on the hearing of an appeal under this section, vary or revoke the determination subject to appeal, and, if the determination has taken effect, order that the prescribed employee be reinstated as an employee as if no such determination had been made.

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(5) A fine imposed on a prescribed employee under this clause may be deducted from the salary or other remuneration payable to that employee.

17—Suspension

(1) If, in the opinion of the chief executive, the nature or circumstances of a matter alleged against a prescribed employee is such that the employee should not continue in the performance of his or her duties, the chief executive may suspend the employee.

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(2) A suspension under subclause (1) may be given whether or not the employee has been charged with an offence.

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(3) Unless the chief executive otherwise determines, a person suspended under this clause is entitled to his or her salary in respect of the period of suspension.

(4) If a direction has been given under subclause (3), and the guilt of the suspended employee of the matter alleged against that employee is not established by due process of law, he or she is entitled to receive the salary to which he or she would have been entitled if there had been no direction under subclause (3).

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Schedule 2—Interpretation of other Acts and instruments

1—References to officers of the teaching service

A reference in an Act or in any other instrument (whether the instrument is of a legislative character or not) to an officer, or an officer of the teaching service, under the *Technical and Further Education Act 1975* is to be construed as a reference to a prescribed employee within the meaning of Schedule 1.

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