

South Australia

TAFE SA Regulations 2012

under the *TAFE SA Act 2012*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *TAFE SA Regulations 2012*.

4—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *TAFE SA Act 2012*;

the board means the board of directors of TAFE SA;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

duty day means a day on which a prescribed employee is required to be on duty;

duty hour means an hour during which a prescribed employee is required to be on duty;

industrial award or agreement means an award or agreement under the *Fair Work Act 1994*, as in force from time to time;

medical certificate means a medical certificate from a legally qualified medical practitioner, or, if a prescribed employee does not reside in the vicinity of a legally qualified medical practitioner, such other medical evidence as the chief executive requires;

part-time, in relation to a prescribed employee, means a prescribed employee employed on the basis that he or she will work in any pay period a specified percentage of the time ordinarily expected of a prescribed employee employed on a full-time basis (regardless of the number of working days and the period of time in any one day over which the prescribed employee performs the required amount of work in any pay period);

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:

- (a) Lecturer;
- (b) Lecturer's Assistant;
- (c) Educational Manager;

the previous regulations means—

- (a) the *Technical and Further Education Regulations 1976* (see *Gazette 29.4.1976 p2233*), as varied; or
- (b) the *Technical and Further Education Regulations 1997* (see *Gazette 28.8.1997 p565*), as varied; or
- (c) the *Technical and Further Education Regulations 1998* (see *Gazette 10.8.1998 p854*), as varied;

spouse—a person is the spouse of another if they are legally married;

student means a person enrolled at or attending a course or class at TAFE SA;

TAFE year means the period from 1 February to 31 January in the following year (both dates inclusive);

the Union means the South Australian Branch of the Australian Education Union.

Part 2—Prescribed employees

Division 1—Employment and classification

5—Application for employment

- (1) The chief executive may require a person who applies for employment as a prescribed employee to provide any of the following:
 - (a) a certified birth extract from an official register of births or such other evidence of the applicant's age as is satisfactory to the chief executive;
 - (b) a medical certificate certifying that the applicant is of sound health and free from a physical or mental defect likely to impair the applicant's efficiency in the performance of the duties he or she would be required to perform if employed;

- (c) documentary evidence of the applicant's experience and qualifications or other evidence satisfactory to the chief executive of the applicant's suitability to perform the duties that he or she would be required to perform if employed.
- (3) TAFE SA must pay the medical expenses, if any, incurred by an applicant under this regulation.

6—Employment and classification

- (1) The chief executive may appoint a prescribed employee to a classification level determined by the chief executive.
- (2) The board may determine the qualifications required for appointment of a person as a prescribed employee.
- (3) However, the chief executive may appoint as a prescribed employee a person who does not have all of the required qualifications.
- (4) The chief executive may, if a prescribed employee applies for a position at a lower classification level than the employee's existing position, appoint the employee to that position.

7—Committee to make recommendation on certain applications

- (1) An application for appointment at a classification level of Educational Manager must be considered by a committee established under this regulation.
- (2) The committee must make a recommendation to the chief executive on the application.
- (3) The committee for the purposes of this regulation will consist of—
 - (a) at least 1 representative of TAFE SA appointed by the chief executive; and
 - (b) at least 1 representative of the Union, appointed by the chief executive from a panel supplied at his or her request by the managing committee of the Union.
- (4) The panel from which the representatives of the Union are chosen must be reviewed by the managing committee of the Union at least every 3 years.

9—Re-employment after resignation to contest election

- (1) If—
 - (a) a prescribed employee resigns for the purpose of standing as a candidate for election to the Parliament of the State or of the Commonwealth; and
 - (b) the resignation takes effect not more than 1 month before the issue of the writ for the election; and
 - (c) the former prescribed employee is not elected and applies in writing for re-employment as a prescribed employee within 2 months after the return of the writ for the election,

the chief executive must re-employ that person as a prescribed employee (without probation) at the classification and salary level that he or she enjoyed immediately before resigning to contest the election.

- (2) For the purposes of determining the rights of a person re-employed under this regulation—
 - (a) he or she will be taken not to have resigned; and
 - (b) the period between the resignation and re-employment will be taken to have been leave without pay granted under these regulations.

10—Acting appointments

- (1) If—
 - (a) a vacancy occurs and the chief executive determines that it is inexpedient to make a permanent appointment to fill the vacancy at that time; or
 - (b) a prescribed employee is unable for any reason to perform his or her duties, the chief executive may appoint a prescribed employee to the unoccupied position in an acting capacity.
- (2) If a prescribed employee is appointed in an acting capacity to a position at a higher classification level than the employee's existing position, the employee is entitled—
 - (a) if he or she acts in that capacity for a period of more than 1 week—to receive as from the date of that appointment and while he or she continues to so act the salary and increments applicable to that higher classification level (but not if the employee's salary would thereby be reduced); and
 - (b) if he or she acts in that capacity for a period of more than 3 months—to receive as from the date of that appointment and while he or she continues to so act the non-attendance days applicable to that higher classification level.
- (3) If a prescribed employee, while acting in a position at such a higher classification level, is appointed to a position at that level, his or her service in that acting capacity will for all purposes of salary and promotion be taken to have been service at that higher classification level.

Division 2—Leave and non-attendance days

11—Application for leave and non-attendance days

- (1) Subject to subregulation (3), a prescribed employee who proposes to be or is absent from duty must apply to the chief executive for the appropriate type of leave or for non-attendance days, as the case may be.
- (2) Application must be made in writing in a form approved by the chief executive.
- (3) If it is not practicable for a prescribed employee to apply for leave or non-attendance days, an application may be made on the employee's behalf by another prescribed employee employed at his or her place of work.

12—Recreation leave

- (1) Subject to this regulation, a prescribed employee is entitled to recreation leave as follows:
 - (a) such recreation leave as is specified in an applicable industrial award or agreement; but

- (b) if a determination by the board in relation to recreation leave entitlements is at any time in force—such recreation leave as is specified in that determination.
- (2) A determination referred to in subregulation (1)(b)—
 - (a) may relate to prescribed employees of a specified class; and
 - (b) cannot provide for recreation leave entitlements that are less than those that would, but for that determination, apply under an applicable industrial award or agreement.
- (3) A part-time prescribed employee is entitled to *pro rata* recreation leave in respect of his or her hours of duty.
- (4) Recreation leave accrues on an annual basis in respect of completed years of service, but if a prescribed employee resigns or retires before the end of a given year of service, the employee is in respect of that year entitled to payment of recreation leave entitlements on a *pro rata* basis.
- (5) The chief executive may require a prescribed employee to take recreation leave at specified times, and if a prescribed employee who has not completed a year of service is so required, leave will be granted on a *pro rata* basis.
- (6) Recreation leave must be taken within 1 year of accrual unless the chief executive approves otherwise, but all such leave must be taken within a period of 2 years from accrual.

13—Recreation leave loading allowance

- (1) A prescribed employee is entitled to be paid a recreation leave loading allowance in accordance with this regulation.
- (2) Subject to this regulation, the allowance—
 - (a) is 17½% of the salary payable to a prescribed employee for the first 4 weeks' recreation leave commenced in a TAFE year; and
 - (b) in the case of a prescribed employee who has his or her services terminated, may be paid *pro rata* in accordance with each complete month for which the employee has not been granted recreation leave; and
 - (c) only applies to a prescribed employee who is employed for the whole of the TAFE year; and
 - (d) is not cumulative.
- (3) The recreation leave loading allowance for prescribed employees eligible for the allowance for a TAFE year must not exceed the maximum amount that would be payable if the employee were a Public Service employee entitled to recreation leave loading.
- (4) The chief executive may authorise the payment of a proportionate recreation leave loading allowance to a prescribed employee who has not been employed for the whole of the TAFE year.

- (5) For the purposes of this regulation, the salary payable to a prescribed employee includes the Whyalla cost of living loading and any other allowance (other than a locality allowance) payable to the employee in accordance with an applicable industrial award or agreement.

14—Non-attendance days

- (1) Subject to this regulation, a prescribed employee is entitled to non-attendance days as follows:
 - (a) such non-attendance days as are specified in an applicable industrial award or agreement; but
 - (b) if a determination by the board in relation to non-attendance day entitlements is at any time in force—such non-attendance days as are specified in that determination.
- (2) The entitlement of a prescribed employee to non-attendance days is subject to any conditions that the board may from time to time determine and specify in non-attendance day determinations.
- (3) A determination referred to in subregulation (1)(b) or (2)—
 - (a) may relate to prescribed employees of a specified class; and
 - (b) cannot provide for non-attendance day entitlements that are less than those that would, but for that determination, apply under an applicable industrial award or agreement.
- (4) A part-time prescribed employee is entitled to *pro rata* non-attendance days in respect of his or her hours of duty.
- (5) Non-attendance days accrue on an annual basis in respect of completed years of service, but if a prescribed employee resigns or retires before the end of a given year of service, the employee is in respect of that year entitled to payment of non-attendance day entitlements on a *pro rata* basis.
- (6) The chief executive may require a prescribed employee to take non-attendance days at specified times and if a prescribed employee who has not completed a year of service is so required, non-attendance days will be granted on a *pro rata* basis.
- (7) Non-attendance days must be taken within 1 year of accrual.

15—Sick leave

- (1) Subject to these regulations, the chief executive will grant sick leave with pay to a prescribed employee on the ground of sickness or injury for a period not exceeding the sick leave standing to the credit of that employee.
- (2) The sick leave standing to the credit of a prescribed employee (other than a prescribed employee at the classification level of Lecturer's Assistant), whenever employed, is, subject to this regulation—
 - (a) 70 duty hours credited on the employee's employment as a prescribed employee; plus
 - (b) 70 duty hours credited on each 1 January succeeding the day of employment during the continuous service of the employee,

less the number of duty hours of sick leave (debited in hours and quarters of an hour, to the nearest quarter of an hour) that have been taken by the employee under these regulations or the previous regulations.

- (3) The sick leave standing to the credit of a prescribed employee at the classification level of Lecturer's Assistant, whenever employed, is, subject to this regulation—
- (a) 45 duty hours credited on the employee's employment as a prescribed employee; plus
 - (b) the duty hours credited as follows:
 - (i) in the case of a prescribed employee employed during the period 1 January to 30 June (inclusive) in any year—90 duty hours credited on each 1 July succeeding the day of employment during the continuous service of the employee; or
 - (ii) in the case of a prescribed employee employed during the period 1 July to 31 December (inclusive) in any year—
 - (A) 45 duty hours credited on the 1 January next succeeding the day of employment; and
 - (B) 90 duty hours credited on each 1 July thereafter,during the continuous service of the employee,

less the number of duty hours of sick leave (debited in hours and quarters of an hour, to the nearest quarter of an hour) that have been taken by the employee under these regulations or the previous regulations.

- (4) However—
- (a) a prescribed employee referred to in subregulation (3) who is appointed to a position at a higher classification level will retain the sick leave standing to his or her credit in accordance with subregulation (3) and will from the time of that appointment (except where it is an acting appointment) be credited with sick leave in accordance with subregulation (2)(b); and
 - (b) a person who is appointed as a prescribed employee at the classification level of Lecturer's Assistant is not entitled to be granted paid sick leave exceeding—
 - (i) 45 duty hours in aggregate during the first 6 months; or
 - (ii) 90 duty hours in aggregate during the first 12 months,

of his or her service at that level or in an acting capacity at a higher classification level.

- (5) For the purposes of determining the sick leave entitlement of a prescribed employee, the following provisions apply:
- (a) leave of absence on full pay will be taken to be service as a prescribed employee;
 - (b) leave of absence without pay or on part pay will be taken to be service as a prescribed employee to the extent (if any) determined by the chief executive;

- (c) if leave of absence is determined under paragraph (b) not to be service as a prescribed employee, the sick leave credit to which the employee would otherwise be entitled under this regulation is reduced by 7 duty hours (or, in the case of a prescribed employee whose substantive classification level is that of Lecturer's Assistant, 7.5 duty hours) for each complete 4 weeks of that leave of absence, to a maximum reduction of 70 duty hours (or, in the case of a Lecturer's Assistant, 75 duty hours) for the year ending on 31 December in which the leave of absence is taken;
 - (d) if a prescribed employee takes a period of long service leave on half salary, the employee will be taken to be on full pay for the first half of that period and on leave without pay for the remainder of that period;
 - (e) if a prescribed employee is retired by reason of invalidity or physical or mental incapacity and is subsequently re-employed as a prescribed employee, his or her continuity of service will not be taken to have been broken by the retirement;
 - (f) a prescribed employee's prior service in prescribed employment (as defined in section 23(2) of the *Technical and Further Education Act 1975*) that is continuous with his or her service as a prescribed employee will be taken to be service as a prescribed employee, unless the sick leave taken during that prior service is not established to the satisfaction of the chief executive, in which case the sick leave credited to the employee in respect of that prior service (if any) may be determined by the chief executive.
- (6) The sick leave entitlement of a part-time officer must be determined on a *pro rata* basis in respect of his or her hours of duty (to the nearest quarter of an hour).
 - (7) If a prescribed employee is absent from duty due to sickness or injury for a period exceeding 3 duty days, the employee must provide a medical certificate with the employee's application for sick leave.
 - (8) The chief executive may, at his or her discretion, require a prescribed employee who applies for sick leave for a period of 3 duty days or less to provide evidence satisfactory to the chief executive of the existence of the sickness or injury claimed by the employee.
 - (9) If a medical certificate or other evidence required by the chief executive is not provided by a prescribed employee in respect of a period of absence in accordance with this regulation, the leave will be taken to be leave without pay.
 - (10) If a prescribed employee suffers or sustains sickness or injury while on recreation leave, he or she may, on provision of a medical certificate and with the approval of the chief executive, convert the relevant period of recreation leave into a debit against any sick leave standing to the employee's credit.
 - (11) If a prescribed employee, while on long service leave (other than long service leave taken immediately prior to the resignation, retirement, retrenchment or other termination of the services of the employee), is confined to a residence or hospital for a period of at least 14 days due to sickness or injury suffered or sustained by the employee, he or she may—
 - (a) on provision of a medical certificate satisfactory to the chief executive as evidence of that fact; and

(b) with the approval of the chief executive,
convert that period of long service leave into a debit against any sick leave standing to the employee's credit.

16—Special leave

- (1) The chief executive may, where reasonable cause exists, grant to a prescribed employee special leave with pay for a period or periods not exceeding, in aggregate, 15 duty days in any 1 TAFE year.
- (2) The chief executive may grant to a prescribed employee special leave with pay or with part pay for such period and on such conditions as the chief executive thinks fit.
- (3) The chief executive may, where reasonable cause exists, grant to a prescribed employee special leave without pay for such period and on such conditions as the chief executive thinks fit.
- (4) Special leave granted under this regulation is in addition to any other leave to which a prescribed employee may be entitled.

17—Special leave for infectious diseases

- (1) If a prescribed employee is absent from duty and provides to the chief executive a medical certificate indicating that he or she has an infectious disease, the chief executive must, if satisfied that the infectious disease was probably contracted by the employee while on duty or as a result of the employee's contact with the students or staff of TAFE SA, grant the employee special leave with pay (not debited against sick leave credits) for the period of the employee's absence from duty due to the infectious disease.
- (2) Special leave granted under this regulation must not exceed a total of 52 weeks in aggregate for any particular infectious disease.
- (3) Special leave granted under this regulation is in addition to any other leave to which a prescribed employee may be entitled.
- (4) In this regulation—

infectious disease means Chicken Pox, Diphtheria, Erysipelas, Glandular Fever, Infectious Hepatitis, Herpetic Whitlow, Infectious Mononucleosis, Measles, Meningitis, Mumps, Poliomyelitis, Rubella, Scarlet Fever, Staphylococcal Infection of a cutaneous nature, Typhoid, Whooping Cough, or any other disease determined by the board to be an infectious disease for the purposes of this regulation.

18—Special leave for war service disabilities

- (1) The chief executive may grant a prescribed employee who provides evidence that he or she is absent from duty because of a disability accepted by the Commonwealth Repatriation Commission as due to war service special leave with pay (not debited against sick leave credits) for a period not exceeding the leave standing to the credit of that employee under this regulation.
- (2) The special leave standing to the credit of a prescribed employee absent due to a disability arising from war service is as follows:
 - (a) a non-accumulative credit of 45 duty days credited on 1 July 1955 or on employment as a prescribed employee (whichever is the later); plus

- (b) a cumulative credit of 15 duty days credited on 1 July 1964, or on employment as a prescribed employee (whichever is the later) and on the anniversary of that date in each succeeding year to a maximum accumulation of 45 duty days at any one time under this paragraph,
less the number of duty days of leave that have been taken by the employee under this regulation or a corresponding provision of the previous regulations, debited in accordance with subregulation (3).
- (3) The special leave standing to the credit of a prescribed employee under subregulation (2)(b)—
 - (a) may only be taken after the special leave standing to the employee's credit under subregulation (2)(a) has been exhausted; and
 - (b) re-accumulates in accordance with subregulation (2)(b) if taken, but not so as to exceed the specified maximum accumulation.
- (4) Special leave granted under this regulation is in addition to any other leave to which a prescribed employee may be entitled.

19—Maternity leave

- (1) Subject to these regulations, the chief executive will grant a female prescribed employee who is pregnant maternity leave for a period commencing at any time after the issue of a medical certificate confirming the employee's pregnancy and ending no later than the close of the TAFE year in which the first anniversary of the birth falls.
- (2) An application for maternity leave must—
 - (a) specify the period for which leave is sought; and
 - (b) be accompanied by a medical certificate indicating the expected date of birth.
- (3) The chief executive may, on application by a prescribed employee, vary the period of leave previously specified in an application for leave under this regulation (but not so as to extend the leave beyond the end of the period specified in subregulation (1)).
- (4) Maternity leave granted in accordance with this regulation is without pay, but—
 - (a) a prescribed employee entitled to long service leave under the Act may use any of that entitlement during the period that she is on leave; and
 - (b) if a prescribed employee, while on maternity leave, suffers or sustains a sickness or injury that is, in the opinion of the chief executive, unconnected with the pregnancy or birth or is a significant abnormal medical condition arising out of the pregnancy or birth, the chief executive may, on application by the employee accompanied by a medical certificate, grant the employee paid sick leave for a period not exceeding the sick leave standing to the credit of the employee.
- (5) A prescribed employee who has been granted maternity leave must give the chief executive at least 4 weeks' prior notice in writing of the date on which she intends to resume duty.
- (6) A prescribed employee who resumes duty after a period of maternity leave will, subject to any agreement to the contrary between the employee and the chief executive, resume in the position she held at the time she commenced that leave.

20—Determination of long service leave entitlements

For the purposes of determining the long service leave entitlements of a prescribed employee—

- (a) leave of absence on full pay will be taken to be service as a prescribed employee; and
- (b) leave of absence without pay or on part pay will be taken to be service as a prescribed employee to the extent (if any) determined by the chief executive; and
- (c) if a prescribed employee takes a period of long service leave on half salary, the employee will be taken to be on full pay for the first half of that period and on leave without pay for the remainder of that period.

21—Certain prescribed employees subject to Public Service conditions

If the chief executive appoints a prescribed employee to a position the duties of which do not, in the chief executive's opinion, justify the employee working normal hours and taking the recreation leave and non-attendance days that would otherwise apply, the chief executive may declare that the employee is subject to the hours of work, recreation leave, non-attendance days and overtime applicable to Public Service employees.

22—Failure to resume duty after leave or non-attendance days

A prescribed employee who fails to resume duty on completion of leave or non-attendance days will be taken to be absent from duty without proper cause.

23—Continuity of service

The continuity of service of a prescribed employee is not broken by leave or non-attendance days under this Division.

Division 3—Remuneration

24—Remuneration for temporary duties not covered by award

If a prescribed employee performs, on a temporary basis, duties to which no industrial award or agreement applies, the chief executive may determine the remuneration payable in respect of those duties.

25—Commencing salary at higher increment

If a prescribed employee is employed in a position the salary of which has a number of incremental levels, the chief executive may determine that the commencing salary for the employment is to be at a particular incremental level, despite the fact that the employee does not meet the requirements for payment at that level.

26—Increments not payable in certain circumstances

If a prescribed employee—

- (a) resigns under regulation 42(2)(a); or
- (b) retires on or after the day on which he or she reaches the age of 55 years,

and the effective date of resignation or retirement is 31 January in any year, the employee is not entitled to be paid an increment that would otherwise have been payable to the employee from 1 January of that year.

27—Reduction of salary for absence from duty

- (1) If—
 - (a) a prescribed employee has, without proper cause, absented himself or herself from the employee's place of work during ordinary hours of duty (or other hours during which the employee is lawfully directed to work); or
 - (b) has not discharged his or her duties as a result of or in the furtherance of industrial action taken by the employee,

the chief executive may direct that the employee's remuneration be reduced by one seventieth (or in the case of a prescribed employee at the classification level of Lecturer's Assistant, one seventy-fifth) of the employee's fortnightly salary for each hour (or part of an hour) for which the employee was so absent or so failed to discharge his or her duties.

- (2) For the purposes of this regulation, the fortnightly salary of a prescribed employee who is employed on a part-time basis is the fortnightly salary that the employee would be entitled to receive if he or she were employed on a full-time basis.

28—TAFE SA may recover remuneration wrongly paid to prescribed employee

The chief executive may require a prescribed employee who has in any circumstances received remuneration to which he or she is not entitled to repay the amount of the overpayment and, in default of repayment, may recover the amount as a debt due and owing by the employee to TAFE SA.

29—Travelling expenses

- (1) A prescribed employee must be reimbursed in accordance with this regulation for expenses reasonably and actually incurred in undertaking, in connection with his or her duties, travel approved by the chief executive.
- (2) Reimbursement must be at the same rate as would be applicable to a Public Service employee, but if it appears necessary because of special circumstances, the chief executive may authorise reimbursement at a different rate.

30—Removal expenses

- (1) Subject to subregulation (2), if a prescribed employee is transferred to another place of employment with TAFE SA and moves residence as a result of that transfer, the employee is entitled to be paid the following:
 - (a) the cost of the removal of the employee's household furniture and effects removed under arrangements made or approved by the chief executive; and
 - (b) a packing allowance determined by the chief executive; and
 - (c) the cost of any fares paid for moving the employee and his or her dependent family to the new residence; and
 - (d) such other expenses as the chief executive may determine—

- (i) of which satisfactory proof is provided; and
 - (ii) that have been, in the opinion of the chief executive, necessarily and reasonably incurred by the employee or his or her dependent family in connection with the transfer.
- (2) Subregulation (1) does not apply if a prescribed employee is transferred solely at his or her own request after less than 3 years' satisfactory service at a place of employment with TAFE SA.
- (3) Where a person is first employed as a prescribed employee and moves residence as a result of that employment, the employee is entitled to be paid the following:
 - (a) if he or she was resident in this State at the time of the employment—the amounts specified in subregulation (1); or
 - (b) if he or she was resident outside this State at the time of the employment—any amount approved by the chief executive prior to the employment for costs and expenses of a kind referred to in subregulation (1).
- (4) If a prescribed employee retires or dies while employed at a location to which he or she moved wholly or largely at the expense of TAFE SA and the employee, or his or her surviving spouse or domestic partner, (as the case may be) moves residence on that retirement or death to another location in South Australia, the employee or surviving spouse or domestic partner is entitled to be paid the amounts specified in subregulation (1), subject to the following limitations:
 - (a) in the case of a prescribed employee who was resident in this State at the time of his or her employment as a prescribed employee—travelling expenses are limited to not more than the amounts that would be payable under that subregulation on removal from his or her current location back to that original residence;
 - (b) in the case of a prescribed employee resident outside this State at the time of his or her employment as a prescribed employee—all amounts specified in subregulation (1) are limited to not more than the amounts that would be payable under that subregulation on removal from his or her current location to Adelaide.
- (5) The chief executive may authorise the payment to a prescribed employee who is transferred to another place of employment with TAFE SA and moves residence as a result of that transfer of an allowance approved by the chief executive for the depreciation of the employee's household furniture and effects, except where—
 - (a) the employee is establishing a home for the first time; or
 - (b) the employee has less than 3 years' satisfactory service at a place of employment with TAFE SA and is transferred solely at his or her own request.
- (6) The chief executive may, where travelling expenses are payable under this regulation, grant an allowance to the employee concerned in lieu of payment of those expenses.
- (7) Despite this regulation, the chief executive may approve the payment—
 - (a) of an allowance greater than is otherwise payable under this regulation; or
 - (b) the whole or part of an allowance of a kind provided for in this regulation to a prescribed employee who is not entitled to claim such an allowance.

- (8) For the purposes of this regulation a transfer will not be taken to be solely at an employee's own request if the employee applied for the transfer to another place of employment with TAFE SA in response to a call by TAFE SA for such applications.

Division 4—Appeals and disciplinary provisions

31—Rights of review in respect of administrative acts or decisions

- (1) If a prescribed employee is aggrieved by an administrative act or decision of the chief executive or any other employee in TAFE SA that directly affects the employee, the employee may apply in writing to the chief executive for a review of the act or decision.
- (2) An application under subregulation (1) must be made within 28 days after the date of the act or decision in question.
- (3) The chief executive must notify the employee in writing of any act or decision of the chief executive resulting from the review.
- (4) If the employee is aggrieved by an act or decision of the chief executive resulting from the review, the employee may, within 14 days after receiving written notification of that act or decision, apply to SAET under Part 3 Division 1 of the *South Australian Employment Tribunal Act 2014* for a review of the act or decision.
- (5) An application cannot be made under subregulation (4) in relation to an act or decision that concerns the initial employment of a person as a prescribed employee or the promotion of a prescribed employee.
- (6) Nothing in this regulation prevents the reference of a dispute concerning the employment of a person as a prescribed employee to a Board of Reference established for that purpose under an applicable industrial award or agreement.

33—Selection of panel members for particular SAET proceedings

If the President of SAET determines under section 18(2) of the *Technical and Further Education Act 1975* that SAET is to sit with supplementary panel members for the purposes of particular proceedings, the President must not select a person who took the action or made the decision to which the proceedings relate.

34—Suspension of further action while proceedings underway

If SAET is hearing review proceedings brought by an employee, the chief executive must take no further action against the employee in respect of the matter until SAET has made a determination in those proceedings.

35—Suspension of proceedings on commencement of criminal proceedings

- (1) If a prescribed employee is charged with a criminal offence, any proceedings by the chief executive or before SAET arising out of the incident that is the subject of that charge must be suspended pending the determination of the criminal proceedings.
- (2) Despite subregulation (1), a prescribed employee may be suspended by the chief executive pending the outcome of all proceedings in relation to the employee.

Division 5—Duties of prescribed employees

36—Prescribed employees to serve where required

A prescribed employee must, at any time during his or her service, serve in such part of the State as the chief executive may require.

37—Prescribed employees to comply with regulations, determinations

A prescribed employee must comply with these regulations, and any determination of the board under these regulations, as in force from time to time.

38—Outside employment

- (1) A prescribed employee must not engage in remunerative employment or in an occupation or business outside TAFE SA unless he or she—
 - (a) is a prescribed employee employed on a part-time basis; or
 - (b) obtains the permission of the chief executive.
- (2) The chief executive may at any time withdraw permission given under this regulation.
- (3) The chief executive must, when deciding whether to give or withdraw permission under this regulation, have regard to the following:
 - (a) whether the employment, occupation or business is to be, or has been, conducted outside the hours of duty of the prescribed employee; and
 - (b) whether the employment, occupation or business is likely to affect, or has affected, the performance of the employee's duties as a prescribed employee; and
 - (c) whether the employment, occupation or business may give rise, or has given rise, to a conflict or potential conflict of interest with the employee's duties as a prescribed employee.

39—Impartiality of instruction

If, in the course of his or her duties, a prescribed employee discusses social, religious or political issues with students, the employee must present those issues impartially.

40—Political intervention to obtain unfair advantage

A prescribed employee must not seek political intervention to obtain an unfair advantage in appointment, reclassification, transfer or any other aspect of his or her employment as a prescribed employee.

41—Prescribed employee not to incur liability on behalf of TAFE SA

Except as otherwise provided in these regulations, a prescribed employee must not incur any liability or make or alter any contract on behalf of TAFE SA, or attempt to do so, without the prior written authority of the chief executive.

Division 6—Resignation

42—Notice of resignation

- (1) Subject to these regulations, a prescribed employee who seeks to resign must give the chief executive at least 6 weeks' prior notice in writing of that intention to resign.
- (2) Despite subregulation (1)—
 - (a) a prescribed employee who is on maternity leave (or long service leave taken during maternity leave) may resign at any time during that leave on giving the chief executive at least 2 weeks' prior notice in writing of her intention to resign; and
 - (b) a prescribed employee appointed on a temporary basis may resign on giving the chief executive at least 2 weeks' prior notice in writing of his or her intention to do so.
- (3) The chief executive may, where reasonable cause exists, waive notice of resignation and permit a resignation to take effect at a time other than that provided for in this regulation.
- (4) If a prescribed employee resigns without complying with this regulation, the chief executive may, by notice in writing, require the employee to pay to TAFE SA—
 - (a) in the case of a failure to comply with subregulation (1)—an amount not exceeding 6 weeks' salary of that employee; or
 - (b) in the case of a failure to comply with subregulation (2)(b)—an amount not exceeding 2 weeks' salary of that employee.
- (5) If a prescribed employee fails to pay an amount required to be paid under this regulation, the amount may be recovered as a debt due and owing by the employee to TAFE SA.

Division 7—Retrenchment

43—Retrenchment

- (1) If the chief executive is satisfied that—
 - (a) the volume of work for prescribed employees in a section has diminished; and
 - (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.
- (2) A prescribed employee who is retrenched under this regulation is entitled to receive—
 - (a) at least 12 weeks notice in writing prior to the date of retrenchment; or
 - (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.

Part 5—Miscellaneous

63—Compulsory medical examination of prescribed employee

- (1) A prescribed employee must, if required to do so by the chief executive, submit himself or herself to examination by a legally qualified medical practitioner selected by the chief executive.
- (2) The chief executive must, before making a requirement under subregulation (1), consult with the President of the Union.
- (3) If a medical examination is required in respect of a prescribed employee under subregulation (1)—
 - (a) the examination must be at the expense of TAFE SA; and
 - (b) the medical practitioner conducting the examination must, if so required by the employee or a member of the employee's family, consult with some other medical practitioner nominated by the employee or member of the employee's family.

66—Notice and notification

A notice or other written notification required or authorised to be given to a person under the Act or these regulations may be given—

- (a) by personal service on the person or the agent of the person; and
- (b) in the case of a notice or written notification to an employee—
 - (i) by personal delivery to the employee's place of employment with TAFE SA in an envelope addressed to the employee; and
 - (ii) by post to the employee at the employee's place of employment with TAFE SA or last known residential address; and
- (c) in the case of a notice or written notification to the Minister or chief executive—by personal delivery, or by post, to the office of the Minister or chief executive;
- (d) in the case of a notice or written notification to TAFE SA—by personal delivery, or by post, to an office of TAFE SA designated by the chief executive for the purposes of this regulation.

67—Election of officers as supplementary panel members

- (1) In this regulation—

AEU means the Australian Education Union (SA Branch).
- (2) Elections must be held in accordance with this regulation whenever there is a vacancy in the membership of a panel of officers under section 18(1)(b) of the *Technical and Further Education Act 1975*.
- (3) The Branch Returning Officer of the AEU must publish in a publication that is circulated to members of the AEU a notice specifying—
 - (a) the number of vacancies to be filled; and

- (b) the date (being not less than 21 days after the date of the notice) and the hour by which nominations for candidates for election to those vacancies must be received by the Branch Returning Officer; and
 - (c) such other information as the Branch Returning Officer thinks fit.
- (4) If the number of candidates duly nominated is the same as or is less than the number of vacancies to be filled, the Branch Returning Officer of the AEU must declare those candidates to be duly elected.
- (5) If the number of candidates nominated is greater than the number of vacancies to be filled, an election must be held at a meeting of the Branch Council of the AEU.

Schedule—Transitional provision

1—Transitional provision

An administrative act (including the fixing of a fee) under a provision of the previous regulations that substantially corresponds to a provision of these regulations will, subject to later administrative acts and these regulations, be taken to be an administrative act under the corresponding provision of these regulations.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Formerly

Technical and Further Education Regulations 1999

Legislation revoked by principal regulations

The *TAFE SA Regulations 2012* revoked the following:

Technical and Further Education Regulations 1976

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
1999	166	<i>Gazette 12.8.1999 p784</i>	12.8.1999: r 2
2004	220	<i>Gazette 21.10.2004 p4028</i>	21.10.2004: r 2
2005	160	<i>Gazette 7.7.2005 p2309</i>	7.7.2005: r 2
2007	51	<i>Gazette 26.4.2007 p1410</i>	1.6.2007: r 2
2010	11	<i>Gazette 28.1.2010 p356</i>	Pt 19 (rr 21—24)—1.2.2010: r 2
2011	234	<i>Gazette 10.11.2011 p4475</i>	10.11.2011: r 2
2012	215	<i>Gazette 4.10.2012 p4593</i>	1.11.2012: r 2
2012	238	<i>Gazette 22.11.2012 p5179</i>	22.11.2012: r 2
2015	220	<i>Gazette 29.10.2015 p4747</i>	29.10.2015: r 2
2017	57	<i>Gazette 16.5.2017 p1292</i>	1.7.2017: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 1	varied by 215/2012 r 4	1.11.2012
<i>rr 2 and 3</i>	<i>omitted under the Legislation Revision and Publication Act 2002</i>	<i>21.10.2004</i>

r 4		
<i>the Act</i>	<i>deleted by 215/2012 r 5(1)</i>	1.11.2012
Act	inserted by 215/2012 r 5(1)	1.11.2012
<i>administrative instructions</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>Appeal Board</i>	<i>inserted by 215/2012 r 5(2)</i>	1.11.2012
	<i>deleted by 57/2017 r 4</i>	1.7.2017
the Board	inserted by 215/2012 r 5(2)	1.11.2012
<i>college premises</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>college property</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>college staff</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>college year</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>council fund</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>council fund account</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
<i>director</i>	<i>deleted by 215/2012 r 5(2)</i>	1.11.2012
domestic partner	inserted by 51/2007 r 31(1)	1.6.2007
duty day	varied by 215/2012 r 5(3)	1.11.2012
duty hour	varied by 215/2012 r 5(3)	1.11.2012
industrial award or agreement	varied by 215/2012 r 5(4)	1.11.2012
medical certificate	varied by 215/2012 r 5(3), (5), (6)	1.11.2012
part-time	varied by 215/2012 r 5(3), (7)	1.11.2012
prescribed employee	inserted by 215/2012 r 5(8)	1.11.2012
	varied by 238/2012 r 4	22.11.2012
spouse	inserted by 51/2007 r 31(2)	1.6.2007
student	varied by 215/2012 r 5(9)	1.11.2012
TAFE year	inserted by 215/2012 r 5(10)	1.11.2012
Pt 2		
heading	substituted by 215/2012 r 6	1.11.2012
Pt 2 Div 1		
heading	substituted by 215/2012 r 6	1.11.2012
r 5		
r 5(1)	varied by 215/2012 r 7(1)—(3)	1.11.2012
r 5(2)	<i>deleted by 215/2012 r 7(4)</i>	1.11.2012
r 5(3)	varied by 215/2012 r 7(5)	1.11.2012
r 6		
r 6(1)	varied by 220/2004 r 4	21.10.2004
	(g) and (h) deleted by 220/2004 r 4	21.10.2004
	substituted by 234/2011 r 4	10.11.2011
	substituted by 215/2012 r 8(1)	1.11.2012
r 6(2)	varied by 215/2012 r 8(2), (3)	1.11.2012
r 6(3)	varied by 215/2012 r 8(3), (4)	1.11.2012

r 6(4)	varied by 215/2012 r 8(3)—(6)	1.11.2012
r 7		
r 7(1)	substituted by 220/2004 r 5	21.10.2004
	substituted by 234/2011 r 5	10.11.2011
	substituted by 215/2012 r 9(1)	1.11.2012
r 7(2)	varied by 215/2012 r 9(2)	1.11.2012
r 7(3)	varied by 215/2012 r 9(3), (4)	1.11.2012
r 8	<i>deleted by 234/2011 r 6</i>	<i>10.11.2011</i>
r 9		
r 9(1)	varied by 215/2012 r 10(1)—(6)	1.11.2012
r 9(2)	varied by 215/2012 r 10(4), (7)	1.11.2012
r 10		
r 10(1)	varied by 215/2012 r 11(1)—(3)	1.11.2012
r 10(2)	varied by 215/2012 r 11(1), (3)—(5)	1.11.2012
r 10(3)	varied by 215/2012 r 11(1), (3)	1.11.2012
Pt 2 Div 2		
r 11		
r 11(1)	varied by 215/2012 r 12(1), (2)	1.11.2012
r 11(2)	varied by 215/2012 r 12(2)	1.11.2012
r 11(3)	substituted by 215/2012 r 12(3)	1.11.2012
r 12		
r 12(1)	varied by 215/2012 r 13(1), (2)	1.11.2012
r 12(2)	varied by 215/2012 r 13(3)—(5)	1.11.2012
r 12(3)	varied by 215/2012 r 13(6)	1.11.2012
r 12(4)	varied by 215/2012 r 13(1), (7), (8)	1.11.2012
r 12(5)	varied by 215/2012 r 13(1), (8)	1.11.2012
r 13		
r 13(1)	varied by 215/2012 r 14(1)	1.11.2012
r 13(2)	varied by 215/2012 r 14(2)—(4)	1.11.2012
r 13(3)	varied by 11/2010 r 21	1.2.2010
	varied by 215/2012 r 14(3)—(5)	1.11.2012
r 13(4)	varied by 215/2012 r 14(2), (3), (6)	1.11.2012
r 13(5)	varied by 215/2012 r 14(2), (4)	1.11.2012
r 14		
r 14(1)	varied by 215/2012 r 15(1), (2)	1.11.2012
r 14(2)	varied by 215/2012 r 15(1), (3), (4)	1.11.2012
r 14(3)	varied by 215/2012 r 15(5)—(7)	1.11.2012
r 14(4)	varied by 215/2012 r 15(8)	1.11.2012
r 14(5)	varied by 215/2012 r 15(1), (9)	1.11.2012
r 14(6)	varied by 215/2012 r 15(1), (10)	1.11.2012
r 15		
r 15(1)	varied by 215/2012 r 16(1)—(3)	1.11.2012
r 15(2)	varied by 215/2012 r 16(2), (4)—(7)	1.11.2012

r 15(3)	varied by 215/2012 r 16(2), (4)—(7)	1.11.2012
r 15(4)	varied by 215/2012 r 16(2)	1.11.2012
r 15(5)	varied by 215/2012 r 16(2), (7)—(14)	1.11.2012
r 15(7)	varied by 215/2012 r 16(2), (4), (7), (15)	1.11.2012
r 15(8)	varied by 215/2012 r 16(1), (2), (7)	1.11.2012
r 15(9)	varied by 215/2012 r 16(1), (2), (15)	1.11.2012
r 15(10)	varied by 215/2012 r 16(1), (2), (4), (15)	1.11.2012
r 15(11)	varied by 215/2012 r 16(1), (2), (4), (7), (15)	1.11.2012
r 16		
r 16(1)	varied by 215/2012 r 17(1)—(3)	1.11.2012
r 16(2)	substituted by 215/2012 r 17(4)	1.11.2012
r 16(3)	varied by 215/2012 r 17(2), (5)	1.11.2012
r 16(4)	varied by 215/2012 r 17(2)	1.11.2012
r 17		
r 17(1)	substituted by 215/2012 r 18(1)	1.11.2012
r 17(3)	varied by 215/2012 r 18(2)	1.11.2012
r 17(4)	varied by 215/2012 r 18(3)	1.11.2012
r 18		
r 18(1)	varied by 215/2012 r 19(1)—(3)	1.11.2012
r 18(2)	varied by 215/2012 r 19(2), (4), (5)	1.11.2012
r 18(3)	varied by 215/2012 r 19(2), (6)	1.11.2012
r 18(4)	varied by 215/2012 r 19(2)	1.11.2012
r 19		
r 19(1)	varied by 215/2012 r 20(1)—(4)	1.11.2012
r 19(3)	varied by 215/2012 r 20(1), (5)	1.11.2012
r 19(4)	varied by 215/2012 r 20(1), (5), (6)	1.11.2012
r 19(5)	varied by 215/2012 r 20(1), (7)	1.11.2012
r 19(6)	varied by 215/2012 r 20(1), (6), (7)	1.11.2012
r 20	varied by 215/2012 r 21(1)—(4)	1.11.2012
r 21	varied by 11/2010 r 22	1.2.2010
	varied by 215/2012 r 22(1)—(5)	1.11.2012
r 22	varied by 215/2012 r 23(1), (2)	1.11.2012
r 23	varied by 215/2012 r 24	1.11.2012
Pt 2 Div 3		
r 24	varied by 215/2012 r 25(1), (2)	1.11.2012
r 25	substituted by 215/2012 r 26	1.11.2012
r 26	varied by 215/2012 r 27(1)—(3)	1.11.2012
r 27		
r 27(1)	varied by 215/2012 r 28(1)—(4)	1.11.2012
r 27(2)	varied by 215/2012 r 28(1), (3)	1.11.2012
r 28	varied by 215/2012 r 29(1)—(3)	1.11.2012
r 29		
r 29(1)	varied by 215/2012 r 30(1), (2)	1.11.2012

r 29(2)	varied by 11/2010 r 23	1.2.2010
	varied by 215/2012 r 30(2), (3)	1.11.2012
r 30		
r 30(1)	varied by 215/2012 r 31(1)—(5)	1.11.2012
r 30(2)	varied by 215/2012 r 31(1), (2)	1.11.2012
r 30(3)	varied by 215/2012 r 31(1), (3), (5)—(7)	1.11.2012
r 30(4)	varied by 51/2007 r 32(1), (2)	1.6.2007
	varied by 215/2012 r 31(1), (3), (8), (9)	1.11.2012
r 30(5)	varied by 215/2012 r 31(1)—(5)	1.11.2012
r 30(6)	varied by 215/2012 r 31(3), (5)	1.11.2012
r 30(7)	varied by 215/2012 r 31(1), (5), (10)	1.11.2012
r 30(8)	varied by 215/2012 r 31(2)—(4), (8)	1.11.2012
Pt 2 Div 4		
r 31		
r 31(1)	varied by 215/2012 r 32(1)—(4)	1.11.2012
r 31(3)	varied by 215/2012 r 32(2), (4)	1.11.2012
r 31(4)	varied by 215/2012 r 32(2), (4), (5)	1.11.2012
	varied by 57/2017 r 5(1)	1.7.2017
r 31(5)	varied by 215/2012 r 32(1), (6)	1.11.2012
	substituted by 57/2017 r 5(2)	1.7.2017
r 31(6)	varied by 215/2012 r 32(1), (7)	1.11.2012
r 32	deleted by 57/2017 r 6	1.7.2017
r 33	varied by 215/2012 r 33(1), (2)	1.11.2012
	substituted by 57/2017 r 7	1.7.2017
r 34	varied by 215/2012 r 34(1)—(3)	1.11.2012
	substituted by 57/2017 r 8	1.7.2017
r 35		
r 35(1)	varied by 215/2012 r 35(1), (2)	1.11.2012
	varied by 57/2017 r 9	1.7.2017
r 35(2)	varied by 215/2012 r 35(3), (4)	1.11.2012
Pt 2 Div 5		
heading	varied by 215/2012 r 36	1.11.2012
r 36	varied by 215/2012 r 37(1), (2)	1.11.2012
r 37	substituted by 215/2012 r 38	1.11.2012
r 38		
r 38(1)	varied by 215/2012 r 39(1)—(4)	1.11.2012
r 38(2)	varied by 215/2012 r 39(4)	1.11.2012
r 38(3)	varied by 215/2012 r 39(3)—(6)	1.11.2012
r 39	varied by 215/2012 r 40(1)—(3)	1.11.2012
r 40	varied by 215/2012 r 41(1), (2)	1.11.2012
r 41	varied by 215/2012 r 42(1)—(3)	1.11.2012
r 42		
r 42(1)	varied by 215/2012 r 43(1), (2)	1.11.2012

r 42(2)	varied by 215/2012 r 43(1), (2)	1.11.2012
r 42(3)	varied by 215/2012 r 43(2)	1.11.2012
r 42(4)	substituted by 215/2012 r 43(3)	1.11.2012
r 42(5)	varied by 215/2012 r 43(1), (4)	1.11.2012
Pt 2 Div 7	inserted by 220/2015 r 4	29.10.2015
<i>Pt 3 before deletion by 215/2012</i>		
r 45		
r 45(1)	varied by 234/2011 r 7	10.11.2011
Pt 3	deleted by 215/2012 r 44	1.11.2012
<i>Pt 4 before deletion by 215/2012</i>		
r 53A	inserted by 160/2005 r 4	7.7.2005
r 56	substituted by 160/2005 r 5	7.7.2005
r 56A	inserted by 160/2005 r 5	7.7.2005
r 57 before substitution by 11/2010	substituted by 160/2005 r 5	7.7.2005
r 57(11)	varied by 51/2007 r 33	1.6.2007
r 57	substituted by 11/2010 r 24	1.2.2010
Pt 4	deleted by 215/2012 r 45	1.11.2012
Pt 5		
r 62	deleted by 215/2012 r 46	1.11.2012
r 63		
r 63(1)	varied by 215/2012 r 47(1), (2)	1.11.2012
r 63(2)	varied by 215/2012 r 47(2)	1.11.2012
r 63(3)	varied by 215/2012 r 47(3)—(7)	1.11.2012
<i>r 64 before deletion by 215/2012</i>		
r 64(1)	substituted by 160/2005 r 6(1)	7.7.2005
r 64(2)	deleted by 160/2005 r 6(1)	7.7.2005
r 64(3)	varied by 160/2005 r 6(2)	7.7.2005
	deleted by 234/2011 r 8	10.11.2011
r 64	deleted by 215/2012 r 48	1.11.2012
r 65	deleted by 215/2012 r 49	1.11.2012
r 66	substituted by 215/2012 r 50	1.11.2012
r 67	deleted by 215/2012 r 51	1.11.2012
r 67	inserted by 57/2017 r 10	1.7.2017
r 68	deleted by 215/2012 r 52	1.11.2012
r 69	deleted by 215/2012 r 53	1.11.2012

Transitional etc provisions associated with regulations or variations

Technical and Further Education Variation Regulations 2004 (No 220 of 2004)

6—Transitional provision

- (1) An officer who was, immediately before the commencement of this regulation, classified at the level of Educational Manager 1 will, after the commencement of this regulation—
 - (a) be taken to be classified at the level of Educational Manager A Step 1; or
 - (b) if the officer has the qualifications determined for the purpose by the Minister in administrative instructions—be taken to be classified at the level of Educational Manager A Step 2.
- (2) An officer who was, immediately before the commencement of this regulation, classified at the level of Educational Manager 2 will, after the commencement of this regulation, be taken to be classified at the level of Educational Manager A Step 2.
- (3) An officer who was, immediately before the commencement of this regulation, classified at the level of Educational Manager 3 or 4 will, after the commencement of this regulation, be taken to be classified at the level of Educational Manager B.
- (4) An officer who was, immediately before the commencement of this regulation, classified at the level of Educational Manager 5 will, after the commencement of this regulation, be taken to be classified at the level of Educational Manager C.

Historical versions

21.10.2004
7.7.2005
1.6.2007
1.2.2010
10.11.2011
1.11.2012
22.11.2012
29.10.2015