

South Australia

TAFE SA Act 2012

An Act to establish TAFE SA; and for other purposes.

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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 *TAFE SA Act 2012*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

chief executive means a person holding or acting in the office of chief executive of TAFE SA;

director means a member of the board of TAFE SA;

TAFE SA grounds means all land owned or occupied by TAFE SA or of which TAFE SA has the care, control and management;

technical and further education means—

- (a) education and training recognised for the purposes of a law of the Commonwealth or a law of the State as—
 - (i) vocational education and training; or
 - (ii) higher education; or
- (b) other post-compulsory education and training in any academic, vocational or practical discipline.

Part 2—TAFE SA

4—Establishment of corporation

- (1) TAFE SA is established.
- (2) TAFE SA—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred by or under this or any other Act.

5—Application of *Public Corporations Act 1993*

TAFE SA is a statutory corporation to which the provisions of the *Public Corporations Act 1993* (other than section 35) apply.

Note—

Consequently, TAFE SA is subject to control and direction by the Minister as provided for in the *Public Corporations Act 1993*.

6—Functions

- (1) The functions of TAFE SA are—
 - (a) to provide technical and further education in a manner that is efficient, effective and responsive to the needs of industry, students and the general community; and
 - (b) to undertake or facilitate research that relates to technical and further education; and
 - (c) to provide consultancy or other services, for a fee or otherwise, in any area in which staff of TAFE SA have particular expertise developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education; and
 - (d) to undertake or provide for the development or use, for commercial, community or other purposes, of any intellectual property, product or process created or developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education; and
 - (e) to perform any other function assigned to it by the Minister.
- (2) In providing technical and further education, TAFE SA may (without limitation)—
 - (a) provide services at campuses and premises established for the purpose, at industry and commercial premises and elsewhere, whether within or outside the State; and
 - (b) provide Internet based services; and
 - (c) provide services to domestic and international students; and
 - (d) in order to provide students with practical training and experience—
 - (i) establish or carry on an enterprise or activity, for commercial, community or other purposes, in which students are to participate; and
 - (ii) provide for the participation of students, on such conditions as TAFE SA thinks fit, in a commercial, community or other enterprise or activity carried on by some other person or body; and
 - (e) provide scholarships or establish other schemes to assist students; and
 - (f) charge fees for goods and services.
- (3) TAFE SA may, to the extent of its rights in respect of land, buildings, equipment, facilities or services used for technical and further education, authorise their use for commercial, community or other purposes for a fee or otherwise.

7—Establishment of board

- (1) A board of directors is established as the governing body of TAFE SA.
- (2) The board is to consist of not less than 6 and not more than 11 members appointed by the Governor.
- (3) At least 2 members must be women and at least 2 must be men.
- (4) The board's membership must include persons who together have, in the Governor's opinion, the expertise, abilities and experience required for the effective performance of TAFE SA's functions and the proper discharge of its business and management obligations (including in the areas of education and training, business, industry and community affairs and strategic planning).
- (5) The Governor will appoint 1 of the members to chair meetings of the board.
- (6) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

8—Conditions of office of director

- (1) A director will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) A director is entitled to such remuneration, allowances and expenses as may be determined by the Governor.
- (3) The Governor may remove a director from office on the recommendation of the Minister.
- (4) The Minister may recommend the removal of a director on any ground that the Minister considers sufficient.
- (5) The office of a director becomes vacant if the director—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (e) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (g) is removed from office under subsection (3).

9—Board proceedings

- (1) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (2) If the director appointed to chair meetings of the board is absent from a meeting of the board, a director chosen by the directors present at the meeting will preside at the meeting.

- (3) A quorum of the board consists of one-half of the members of the board (ignoring any fraction resulting from the division) plus 1.
- (4) Subject to subsection (3), the board may act notwithstanding vacancies in its membership or a defect in appointment of a member.
- (5) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (6) Each director present at a meeting of the board has 1 vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (7) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (8) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, email, fax or other written communication setting out the terms of the resolution.
- (9) The board must cause accurate minutes to be kept of its proceedings.
- (10) Subject to this Act, the board may determine its own procedures.

10—Conflict of interest under Public Corporations Act

A director will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Corporations Act 1993* by reason only of the fact that the director has an interest in a matter that is shared in common with those engaged in or associated with the technical and further education sector generally, or a substantial section of those engaged in or associated with the technical and further education sector.

11—Common seal and execution of documents

- (1) The common seal of TAFE SA must not be affixed to a document except pursuant to a decision of the board, and the affixing of the seal must be attested by the signatures of 2 directors.
- (2) TAFE SA may, by instrument under its common seal, authorise a director, an employee (whether nominated by name or by duties or position) or any other person to execute documents on behalf of TAFE SA subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of TAFE SA.

- (4) A document is duly executed by TAFE SA if—
 - (a) the common seal of TAFE SA is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of TAFE SA by a person or persons in accordance with an authority conferred under this section.

12—Chief executive

- (1) There is to be a chief executive of TAFE SA.
- (2) The chief executive is to be appointed by the board with the approval of the Minister on terms and conditions approved by the Minister.
- (3) The chief executive is responsible to the board of TAFE SA for—
 - (a) giving effect to the board's policies and decisions; and
 - (b) the attainment of performance objectives set from time to time by the board; and
 - (c) the effective management of TAFE SA and the general conduct of its employees.
- (4) The chief executive may not be a director but may, on the invitation of the board, attend a meeting of the board in an advisory capacity.
- (5) The board must not remove a person as chief executive except with the approval of the Minister.

13—Delegation by chief executive

- (1) The chief executive may delegate to a person (including a person for the time being performing particular duties or holding or acting in a specified position) a function or power under this or any other Act.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.

14—Other staff

- (1) The other staff of TAFE SA comprise persons employed by the chief executive on terms and conditions determined, subject to this Act, by the chief executive.
- (2) Terms and conditions determined by the chief executive under subsection (1) must be approved by the Commissioner for Public Sector Employment.
- (3) The Minister may not give a direction to TAFE SA relating to the employment, transfer, remuneration, discipline or termination of employment of a particular employee of the chief executive.

- (4) The chief executive may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to an employee of the chief executive who was, immediately before the commencement of this section, a contributor under that Act.
- (5) A person who is transferred to the employment of the chief executive under this Act and who was immediately before the commencement of this clause, a contributor under the *Superannuation Act 1988* may, subject to that Act, remain a contributor.
- (6) This Act does not exclude the operation of the *Fair Work Act 1994* in relation to persons employed under this section.

15—Use of services or staff of administrative unit

TAFE SA may, under an arrangement established by the Minister administering an administrative unit of the Public Service, make use of the services or staff of that administrative unit.

Part 3—Rules and by-laws

16—Power to make rules

- (1) TAFE SA may make rules for all or any of the following purposes:
 - (a) to provide for the formation of an association of students, or students and staff, of TAFE SA for the purposes of promoting the interests of students or of students and staff;
 - (b) to provide for matters relating to residential accommodation for students;
 - (c) to provide a scheme for disciplinary action against students, including review of a decision to take disciplinary action;
 - (d) to provide for any other matter affecting the administration of TAFE SA.
- (2) Rules made by TAFE SA—
 - (a) must be submitted to the Governor for confirmation; and
 - (b) take effect on the day of confirmation or on a later day fixed in the rules.
- (3) The *Subordinate Legislation Act 1978* does not apply to or in relation to a rule made under this section.
- (4) A monetary penalty imposed for contravention of a rule is a debt due to TAFE SA and is recoverable by TAFE SA by action in a court of competent jurisdiction.

17—Power to make by-laws

- (1) TAFE SA may, with the approval of the Minister, make by-laws for all or any of the following purposes:
 - (a) to prohibit persons from trespassing on TAFE SA grounds;
 - (b) to prevent damage to TAFE SA grounds or property of TAFE SA and to provide for the recovery of compensation for damage done to TAFE SA grounds or property of TAFE SA;

- (c) to regulate the driving, riding and parking of vehicles on TAFE SA grounds, including through prohibitions and restrictions relating to speed, mass, traffic flow and other matters, requiring compliance with directions and providing for permits;
 - (d) to prescribe fees for the parking of motor vehicles on TAFE SA grounds and provide for the recovery of those fees;
 - (e) to regulate the conduct of persons on or entering TAFE SA grounds, including by—
 - (i) prohibiting disorderly or offensive behaviour; and
 - (ii) regulating, restricting or prohibiting the bringing of animals onto the grounds and the handling of animals while within the grounds; and
 - (iii) regulating, restricting or prohibiting the bringing of alcoholic liquor, tobacco or other substances onto the grounds and the consumption or use of alcoholic liquor, tobacco or other substances within the grounds; and
 - (iv) regulating the conduct of assemblies or the provision of entertainment;
 - (f) to provide for the removal from TAFE SA grounds by persons authorised in writing by TAFE SA of persons found contravening a by-law, intoxicated persons, or vehicles brought onto or left on the grounds in contravention of a by-law;
 - (g) to provide for the confiscation by persons authorised in writing by TAFE SA of any thing brought onto, left on, possessed or used on TAFE SA grounds in contravention of a by-law;
 - (h) to prescribe fines (not exceeding \$1 250) for offences against the by-laws;
 - (i) to prescribe expiation fees (not exceeding \$160) for alleged offences against the by-laws;
 - (j) to prescribe other matters expedient for the maintenance of good order on TAFE SA grounds or for the protection of property or for the prevention of hindrance to or interference with activities conducted on TAFE SA grounds.
- (2) A by-law operates generally throughout TAFE SA grounds unless its operation is expressly or by necessary implication limited to a particular part or particular parts of TAFE SA grounds.
- (3) The *Subordinate Legislation Act 1978* (except section 10AA) applies to a by-law made under this section (and consequently a by-law must be laid before Parliament and is subject to disallowance under that Act).
- (4) A by-law is to be made and takes effect as follows:
- (a) a copy of the proposed by-law is to be sent to each director at least 14 days before the meeting of the board at which the by-law is to be considered;
 - (b) if a majority of all the directors vote at a meeting in favour of the proposed by-law, the by-law is to be submitted to the Minister for approval;
 - (c) if the Minister approves the proposed by-law, the by-law is to be submitted to the Governor for confirmation;

- (d) the by-law must be published in the Gazette at the expense of TAFE SA after confirmation;
 - (e) the by-law is taken to be made on the day of publication and takes effect from that day or a later day fixed by the by-law.
- (5) If a by-law has been confirmed by the Governor and published in the Gazette, all conditions precedent to the making of the by-law will be conclusively presumed to have been fulfilled.
- (6) A by-law cannot take away or restrict civil or criminal liability under another Act or at common law.

18—Evidentiary provision

- (1) An allegation in a complaint that a specified place is within TAFE SA grounds will be taken to be proved in the absence of proof to the contrary.
- (2) In proceedings relating to an offence against a by-law, an allegation in the complaint that a specified person was the owner or driver of a specified vehicle on a specified day will be taken to be proved in the absence of proof to the contrary.
- (3) If, in proceedings relating to an offence against a by-law, it is proved that a vehicle was parked in TAFE SA grounds in contravention of a by-law, it will be presumed, in the absence of evidence to the contrary, that the vehicle was so parked by the owner of the vehicle.

19—Fines and expiation fees

A fine recovered in respect of an offence against a by-law, and an expiation fee paid in relation to an expiation notice issued for an alleged offence against a by-law, must be paid to TAFE SA.

20—Availability of rules and by-laws

- (1) TAFE SA must ensure that a copy of each rule and by-law (in up-to-date form) is published on the Internet and kept available for public inspection without charge during normal office hours at the principal office of TAFE SA.
- (2) A person is entitled, on payment of a fee fixed by TAFE SA, to a copy of a rule or by-law.

Part 4—Miscellaneous

21—Protection of proprietary interests of TAFE SA

- (1) TAFE SA has a proprietary interest in all official insignia.
- (2) A person must not, without the consent of TAFE SA—
 - (a) assume a name or description that consists of, or includes official insignia; or
 - (b) assume a name or description that consists of, or includes "TAFE" or "technical and further education" in circumstances in which it would be reasonably understood to indicate that the person is TAFE SA; or
 - (c) in the course of a trade or business—

- (i) use an official title for the purpose of promoting the sale of services or the provision of benefits; or
- (ii) sell goods marked with official insignia; or
- (iii) use official insignia for the purpose of promoting the sale of goods or services; or
- (iv) use "TAFE" or "technical and further education" for the purposes of promoting the sale of goods or services or the provision of benefits, or sell goods marked with "TAFE" or "technical and further education", in circumstances in which it would be reasonably understood to indicate that the goods, services or benefits are provided by or in association with TAFE SA.

Maximum penalty: \$20 000.

- (3) A consent under this section—
 - (a) may be given with or without conditions (including conditions requiring payment to TAFE SA); and
 - (b) must be given in writing addressed to the applicant for the consent; and
 - (c) may be revoked by TAFE SA for a breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (4) The Supreme Court may, on the application of TAFE SA, grant an injunction to restrain a breach of this section.
- (5) The court by which a person is convicted of an offence against this section may, on the application of TAFE SA, order the convicted person to pay compensation of an amount fixed by the court to TAFE SA.
- (6) Subsections (4) and (5) do not derogate from any civil remedy that may be available to TAFE SA apart from those subsections.
- (7) The Minister may, by notice in the Gazette, declare a design to be a logo in respect of TAFE SA and may, by subsequent notice in the Gazette, revoke such a declaration.
- (8) In this section—

logo means a design (the copyright of which is vested in TAFE SA) in respect of which a declaration under subsection (7) is in force;

official insignia means a logo or official title or a combination of a logo and official title;

official title means TAFE SA.

22—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the terms and conditions on which employees are employed, their rights to leave of absence and any other privileges, their rights on retirement from employment and any other matter affecting their employment (and in doing so may relate to circumstances that occurred before the commencement of this section).

- (3) A regulation may not be made under subsection (2) unless the Minister has taken reasonable steps to consult with employees who, in the opinion of the Minister, would be directly affected by the regulation, or persons who, in the opinion of the Minister, represent such employees.
- (4) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors; and
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, TAFE SA or the chief executive.

Schedule 1—Transitional provisions

1—Transfer of staff

- (1) A person holding office under section 15 of the *Technical and Further Education Act 1975* immediately before the commencement of this clause is transferred to the employment of the chief executive of TAFE SA on terms and conditions of employment that are the same as the terms and conditions of appointment as applied to the person as an officer immediately before that commencement, subject to this Act.
- (2) A person employed under section 39AAB of the *Technical and Further Education Act 1975* immediately before the commencement of this clause is transferred to the employment of the chief executive of TAFE SA on the same terms and conditions of employment as applied to the person immediately before that commencement, subject to this Act.
- (3) The Minister may, by notice in the Gazette, transfer a person who, immediately before the commencement of this clause, was an employee of the chief executive of the administrative unit that was under the Minister responsible for the administration of the *Technical and Further Education Act 1975* to the employment of the chief executive of TAFE SA on the same terms and conditions of employment as applied to the person immediately before that commencement, subject to this Act.
- (4) The whole of Part 7 of the *Public Sector Act 2009* applies, subject to any modifications prescribed by regulation, to the employment of persons who, immediately before their transfer to the employment of the chief executive of TAFE SA under subclause (3), were Public Service employees while those employees remain in the employment of the chief executive of TAFE SA.
- (5) A transfer of a person under this clause does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.

2—Regulations

The *Technical and Further Education Regulations 1999* as in force immediately before the commencement of this clause continue in force as if they were made under this Act and will be taken for the purposes of Part 3A of the *Subordinate Legislation Act 1978* to have been made on the day of commencement of this clause.