

New South Wales

Technical and Further Education Commission Amendment (Staff Employment) Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Technical and Further Education Commission Act 1990*:

- (a) to provide that the Technical and Further Education Commission (the **Commission**) may employ its own staff, and
- (b) to transfer to the employment of the Commission staff currently employed in the TAFE Commission Division of the Government Service and in the Department of Education and Communities to assist the Commission in the exercise of its functions.

The Bill also makes consequential amendments to other Acts.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Technical and Further Education Commission Act 1990 No 118

Schedule 1 [3] amends section 5 of the Act to remove a prohibition on the Commission employing staff.

Schedule 1 [4] inserts sections 15 and 16 into the Act which specifically enable the Commission to employ staff to assist it in the exercise of its functions and to fix the salary, wages and conditions of employment of its staff to the extent that they are not otherwise fixed by law. Existing section 17 of the Act, which enables regulations to be made in relation to conditions of employment of the Commission's staff, is substituted to update references and extend the regulation-making power to the discipline of staff. The regulations have effect subject to relevant awards and industrial agreements.

Schedule 1 [13] and [14] amend Schedule 4 to the Act to include provisions of a savings and transitional nature consequent on the enactment of the proposed Act. In particular, persons employed in the TAFE Commission of the Government Service and persons employed in the Department of Education and Communities to assist the Commission in the exercise of its functions (other than persons employed in the executive service) are transferred to the employment of the Commission. The TAFE Commission is to take such measures as are available to it to ensure that the terms and conditions applying to those persons in their previous employment will continue to apply to them for 12 months after the transfer or until they are covered by an enterprise agreement under the *Fair Work Act 2009* of the Commonwealth.

Section 22 of the Act is preserved which retains the current scheme for extended or long service leave in relation to employees of the Commission.

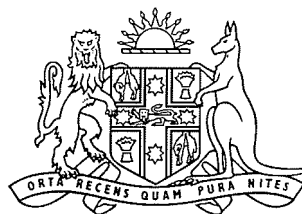
The amendments also provide that the Industrial Relations Commission has no jurisdiction to determine any industrial matter in relation to those transferred employees if the *Fair Work Act 2009* of the Commonwealth has excluded the application of State industrial laws to the matter or the matter relates to promotion appeals and disciplinary appeals.

Schedule 1 [1], [2] and [5]–[12] make consequential amendments, including repealing Parts 6A (Management of conduct and performance) and 6B (Termination of employment of prohibited persons) of the Act.

Schedule 2 Amendment of other Acts

Schedule 2.3 amends the *Public Sector Employment and Management Act 2002* to abolish the TAFE Commission Division of the Government Service.

Schedule 2.1, 2.2 and 2.4 make amendments to other Acts as a consequence of the enactment of the proposed Act.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Technical and Further Education Commission Act 1990 No 118	3
Schedule 2 Amendment of other Acts	8



New South Wales

Technical and Further Education Commission Amendment (Staff Employment) Bill 2011

No. , 2011

A Bill for

An Act to amend the *Technical and Further Education Commission Act 1990* with respect to the employment of staff; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Technical and Further Education Commission
Amendment (Staff Employment) Act 2011*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Technical and Further Education Commission Act 1990 No 118

[1] Section 3 Definitions

Omit the definition of *appropriate Division Head* (including the note) from
section 3 (1).

[2] Section 3 (1), definition of “member of staff (or staff member)”

Omit the definition. Insert instead:

member of staff or *staff member* means a member of staff of the
TAFE Commission employed under section 15.

[3] Section 5 Functions

Omit section 5 (3) and the note to the subsection.

[4] Sections 15–17

Omit section 17. Insert instead:

15 Employment of staff

The TAFE Commission may employ such staff as it requires to
exercise its functions.

16 Salary, conditions etc of staff

The TAFE Commission may fix the salary, wages and conditions
of employment of its staff in so far as they are not otherwise fixed
by or under any Act or law.

17 Regulations relating to staff

- (1) The regulations may make provision for or with respect to the
employment of the staff of the TAFE Commission, including the
conditions of employment and the discipline of any such staff.
- (2) Any such regulations relating to the conditions of employment or
the discipline of staff:
 - (a) have effect subject to any relevant award made by a
competent industrial tribunal and to any industrial
agreement to which the Commission is a party, and
 - (b) have effect despite any determination of the Commission
under section 16.

[5] Section 19 Legal proceedings not to be brought

Omit section 19 (1), (2) and (4).

Technical and Further Education Commission Amendment (Staff
Employment) Bill 2011

Schedule 1 Amendment of Technical and Further Education Commission Act 1990
No 118

[6] Section 19 (3)	1
Omit “in the TAFE Commission Division of the Government Service”.	2
Insert instead “on the staff of the TAFE Commission”.	3
[7] Sections 20, 21, 21A (1)–(3), 21B (1) and (2) and 21C	4
Omit “appropriate Division Head” wherever occurring.	5
Insert instead “TAFE Commission”.	6
[8] Section 21 (b)	7
Omit “the Division Head” wherever occurring.	8
Insert instead “the TAFE Commission”.	9
[9] Section 21B Notification of serious offences committed by members of staff	10
Omit section 21B (3).	11
[10] Section 22 Extended or long service leave	12
Omit section 22 (4).	13
[11] Part 6A Management of conduct and performance	14
Omit the Part.	15
[12] Part 6B Termination of employment of prohibited persons	16
Omit the Part.	17
[13] Schedule 4 Savings, transitional and other provisions	18
Insert at the end of clause 1 (1):	19
<i>Technical and Further Education Commission Amendment (Staff</i>	20
<i>Employment) Act 2011</i>	21
	22

[14] Schedule 4, Part 5

Insert after Part 4:

**Part 5 Provisions consequent on enactment of
Technical and Further Education
Commission Amendment (Staff
Employment) Act 2011**

13 Definitions

In this Part:

commencement date means the date on which section 15 was
inserted by the *Technical and Further Education Commission
Amendment (Staff Employment) Act 2011*.

existing staff member means:

- (a) a person who, immediately before the commencement
date, was employed under Chapter 1A of the *Public Sector
Employment and Management Act 2002* in the TAFE
Commission Division of the Government Service, or
- (b) a person who:
 - (i) immediately before the commencement date, was
employed in the Department of Education and
Communities, and
 - (ii) in the opinion of the Director-General of the
Department given in writing, was so employed
primarily to assist the TAFE Commission in the
exercise of its functions, and
 - (iii) was not so employed under Part 3.1 of the *Public
Sector Employment and Management Act 2002*.

transferred staff member means an existing staff member who is
transferred to the employment of the TAFE Commission by
operation of clause 14.

transitional period, in relation to a transferred staff member,
means whichever is the shorter of the following periods:

- (a) the period of 12 months beginning on the commencement
date,
- (b) the period beginning on the commencement date and
ending immediately before the date on which an enterprise
agreement (within the meaning of the *Fair Work Act 2009*
of the Commonwealth) first takes effect in relation to the
staff member.

14	Transfer of existing staff members to employ of TAFE Commission	1
	On the commencement date, each existing staff member is transferred to the employment of the TAFE Commission.	2 3
15	Employment arrangements for transferred staff members	4
(1)	The TAFE Commission is to take such action as is available to it as an employer of a transferred staff member to ensure that the provisions of this clause are implemented.	5 6 7
(2)	During the transitional period, the employment of a transferred staff member with the TAFE Commission is to be on the same terms and conditions relating to the following matters as applied immediately before the commencement date to the person's employment as an existing staff member:	8 9 10 11 12
	(a) hours of work,	13
	(b) salary,	14
	(c) shift, overtime and penalty rates,	15
	(d) allowances,	16
	(e) leave (other than extended leave or long service leave).	17
(3)	A transferred staff member:	18
	(a) retains any rights to annual leave, extended or long service leave, sick leave, and other forms of leave, accrued or accruing in his or her employment as an existing staff member, and	19 20 21 22
	(b) is not entitled to receive any payment or other benefit merely because the member ceases to be in the employment from which the member was transferred, and	23 24 25
	(c) is not entitled to claim, both under this Act or any other Act, dual benefits of the same kind for the same period of service.	26 27 28
(4)	Without limiting subclause (3), a transferred staff member is not, despite any other provision of this or any other Act, entitled to elect, because of that transfer, to be paid the money value of any extended or annual leave that the member accrued in the employment from which the member was transferred.	29 30 31 32 33
16	Jurisdiction of Industrial Relations Commission	34
(1)	On and from the commencement date, the Industrial Relations Commission has no jurisdiction to determine an industrial matter (within the meaning of the <i>Industrial Relations Act 1996</i>) relating to a member of staff if:	35 36 37 38

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- | | | |
|-----|--|-------------------|
| (a) | the <i>Fair Work Act 2009</i> of the Commonwealth has excluded the application of State industrial laws (within the meaning of section 26 of that Act) in relation to the matter, or | 1
2
3
4 |
| (b) | the matter is an appeal to which Part 7 of Chapter 2 of the <i>Industrial Relations Act 1996</i> applies. | 5
6 |
| (2) | This clause does not affect the jurisdiction of the Industrial Relations Commission in relation to a matter that is the subject of an application under section 146B of the <i>Industrial Relations Act 1996</i> . | 7
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9
10 |

Schedule 2	Amendment of other Acts	1
2.1	Children and Young Persons (Care and Protection) Act 1998 No 157	2
		3
	Section 27A Alternative reporting arrangements	4
	Omit paragraph (f) of the definition of <i>relevant agency</i> in section 27A (1).	5
	Insert instead:	6
	(f) the TAFE Commission,	7
2.2	Commission for Children and Young People Act 1998 No 146	8
	Section 33 Definitions	9
	Omit paragraph (c) of the definition of <i>relevant agency</i> in section 33 (1).	10
	Insert instead:	11
	(c) the TAFE Commission,	12
2.3	Public Sector Employment and Management Act 2002 No 43	13
	Schedule 1 Divisions of the Government Service	14
	Omit the matter relating to the TAFE Commission Division from Columns 1 and 2 of Part 2.	15
		16
2.4	Teaching Service Act 1980 No 23	17
	Section 8 Delegation of functions	18
	Omit paragraph (c) of the definition of <i>authorised person</i> in section 8 (3).	19
	Insert instead:	20
	(c) a member of staff of the TAFE Commission.	21