



Queensland

# **TAFE Queensland Act 2013**

**Act No. 27 of 2013**





Queensland

# TAFE Queensland Act 2013

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Queensland

## **TAFE Queensland Act 2013**

### **Act No. 27 of 2013**

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**An Act to provide for the establishment of TAFE Queensland, provide for other matters relating to vocational education and training services, amend this Act for particular purposes, and make related consequential and minor amendments to other legislation**

**[Assented to 3 June 2013]**

**The Parliament of Queensland enacts—**

**Part 1 Preliminary**

**1 Short title**

This Act may be cited as the *TAFE Queensland Act 2013*.

**2 Commencement**

This Act commences on a day to be fixed by proclamation.

**3 Dictionary**

The dictionary in schedule 2 defines particular words used in this Act.

**4 References to functions**

In this Act—

- (a) a reference to a function includes a reference to a power;  
and
- (b) a reference to performing a function includes a reference to exercising a power.

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## Part 2 TAFE Queensland

### Division 1 Establishment

#### 5 Establishment and status

- (1) TAFE Queensland is established.
- (2) TAFE Queensland—
  - (a) is a body corporate; and
  - (b) has a common seal; and
  - (c) may sue and be sued in its corporate name.

#### 6 TAFE Queensland represents the State

- (1) TAFE Queensland represents the State.
- (2) Without limiting subsection (1), TAFE Queensland has the status, privileges and immunities of the State.

#### 7 Application of other Acts

- (1) TAFE Queensland is—
  - (a) a statutory body under the *Financial Accountability Act 2009* (the **FA Act**); and
  - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* (the **SBFA Act**).
- (2) The SBFA Act, part 2B sets out the way in which TAFE Queensland's powers under this Act are affected by the SBFA Act.

## **Division 2                      Functions and powers**

### **8                      Functions**

- (1) TAFE Queensland has the following functions—
  - (a) to provide vocational education and training services;
  - (b) to provide further education, and other forms of education, to support and complement the provision of vocational education and training services;
  - (c) to produce and sell vocational education and training products;
  - (d) to prepare, publish, distribute or license the use of literary or artistic work, audio or audiovisual material, or computer software;
  - (e) to undertake research and development on matters relating to its functions;
  - (f) to contribute to and actively engage with industry on matters relating to its functions;
  - (g) to exploit commercially TAFE Queensland’s resources, including any study, research or knowledge or the practical application of any study, research or knowledge;
  - (h) to report to the Minister on the performance of its functions;
  - (i) any other functions given to it under an Act.
- (2) TAFE Queensland is to perform its functions—
  - (a) in a way that is efficient, effective and responsive to the needs of industry, students and the general community; and
  - (b) on a not-for-profit basis.

## **9 Key objective**

- (1) The key objective of TAFE Queensland is to be efficient and effective in performing its functions.
- (2) Subject to section 8(2)(b), it is also an objective of TAFE Queensland to be commercially successful in performing its functions.
- (3) The commercial success, efficiency and effectiveness of TAFE Queensland is to be measured against its financial and non-financial performance targets stated in its operational plan.

## **10 Powers**

TAFE Queensland has all the powers of an individual, and may, for example—

- (a) enter into contracts or agreements; and
- (b) acquire, hold, deal with, and dispose of, property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants and researchers; and
- (e) charge a fee for services and other facilities it supplies; and
- (f) do anything else necessary or convenient to be done in performing its functions.

## **11 Extraterritoriality**

TAFE Queensland may perform its functions inside and outside Queensland, including outside Australia.

## **Division 3            Board**

### **Subdivision 1        Establishment and functions**

#### **12        Establishment**

- (1) A board is established as the governing body of TAFE Queensland.
- (2) The board consists of the following persons appointed by the Governor in Council—
  - (a) 1 nominee of the Minister;
  - (b) at least 6 but no more than 8 persons who are eligible for appointment as a member under section 14.
- (3) The members are appointed under this Act and not the *Public Service Act 2008*.

#### **13        Functions**

The board has the following functions for TAFE Queensland—

- (a) to ensure it operates in accordance with its operational plan and, as far as possible, achieves the performance targets and objectives stated in the plan;
- (b) to account to the Minister for its performance as required under an Act;
- (c) to ensure it otherwise performs its functions in a proper, effective and efficient way.

### **Subdivision 2        Membership**

#### **14        Eligibility for appointment**

- (1) A person is eligible for appointment as a member if—

- (a) the person is not disqualified under section 19 from becoming a member; and
  - (b) the person has—
    - (i) direct industry experience or direct experience in the education, training or employment sectors; or
    - (ii) skills, experience or expertise in commerce, corporate governance, economics, finance, law or management.
- (2) However, the following persons are ineligible for appointment—
- (a) a member of Parliament;
  - (b) a councillor of a local government;
  - (c) the chief executive officer.

## **15 Conditions of appointment**

- (1) A member is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Governor in Council.

## **16 Term of appointment**

- (1) A member is appointed for the term, of no more than 4 years, stated in the member's instrument of appointment.
- (2) The Minister may extend the term until the earlier of the following—
  - (a) the member's successor is appointed;
  - (b) 1 year after the term would have expired under the member's instrument of appointment.
- (3) However, the term ends if the member becomes disqualified under section 19 from continuing as a member.

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## **17 Chairperson**

- (1) The Governor in Council must appoint a member as the chairperson of the board.
- (2) A person may be appointed as the chairperson at the same time as the person is appointed as a member.
- (3) The chairperson holds office for the term, ending not later than the person's term of appointment as a member, stated in the person's appointment as chairperson.
- (4) A vacancy occurs in the office of chairperson if the person holding office—
  - (a) resigns from office by giving notice of the resignation to the Minister; or
  - (b) stops being a member.
- (5) However, a person resigning the office of chairperson may continue to be a member.

## **18 Deputy chairperson**

- (1) The board must appoint a member, other than the chairperson, as its deputy chairperson.
- (2) The deputy chairperson holds office for the term decided by the board.
- (3) A vacancy occurs in the office of deputy chairperson if the person holding office—
  - (a) resigns from office by giving notice of the resignation to the Minister; or
  - (b) stops being a member.
- (4) However, a person resigning the office of deputy chairperson may continue to be a member.
- (5) The deputy chairperson is to act as chairperson—
  - (a) during a vacancy in the office of chairperson; and

- 
- (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

## **Subdivision 3 Other provisions about board**

### **19 Disqualification from membership**

- (1) A person is disqualified from becoming, or continuing as, a member if the person—
  - (a) has a conviction for an indictable offence and the conviction is not a spent conviction, unless the Minister has taken action under subsection (4) for the conviction; or
  - (b) is an insolvent under administration, unless the Minister has taken action under subsection (4) for the person being an insolvent under administration; or
  - (c) is not able to manage a corporation because of the Corporations Act, part 2D.6.
- (2) Also, a person can not—
  - (a) become a member if the person does not consent to the Minister requesting a report about the person's criminal history under section 34; or
  - (b) continue as a member if the person is absent from 3 consecutive board meetings of which proper notice has been given unless—
    - (i) the board has given permission for the person to be absent from the meetings; or
    - (ii) the meetings occurred during the period of a leave of absence approved for the member by the Minister under section 21.
- (3) The Minister may act under subsection (4) if the Minister considers it would be reasonable to do so having regard to—

- (a) the circumstances of the indictable offence of which a person has been convicted; or
  - (b) the circumstances under which a person became an insolvent under administration.
- (4) The Minister may—
- (a) if the person was a member when the person was convicted or became an insolvent under administration, and the term of the person's appointment as a member has not since ended, give the chairperson and the person notice (*approval notice*) that—
    - (i) the person is restored as a member; and
    - (ii) the person may be later reappointed, despite the conviction or being an insolvent under administration; or
  - (b) otherwise—give written approval for the person to become a member despite the conviction or being an insolvent under administration.
- (5) On the day the chairperson receives the approval notice the person is restored as a member.
- (6) The restored member's term of appointment as a member ends when it would have ended if the member had not been convicted of the offence or become an insolvent under administration.
- (7) In this section—
- conviction*, for an indictable offence, does not include a finding of guilt, or the acceptance of a plea of guilty, by a court, in relation to the offence, without recording a conviction for the offence.
- insolvent under administration* has the meaning given by the Corporations Act, section 9.

## 20 Resignation

- (1) A member may resign by signed notice given to the Minister.

- (2) The resignation takes effect—
  - (a) on the date the notice is given; or
  - (b) if a later date is stated in the notice—on the later date.

## **21 Leave of absence**

- (1) The Minister may approve a leave of absence for a member (the *approved absent member*).
- (2) The Minister may appoint someone else to act in the office of the approved absent member while the member is absent on the leave.
- (3) Subsection (2) does not limit the Governor in Council's power under the *Acts Interpretation Act 1954*, section 25(1)(b)(v) to appoint a person to act in the office.

## **22 Disclosure of interests**

- (1) This section applies to a member if—
  - (a) the member has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, by the board; and
  - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a meeting of the board.  
Maximum penalty—100 penalty units.
- (3) The disclosure must be recorded in the board's minutes.
- (4) Unless the board otherwise decides, the member must not—
  - (a) be present when the board considers the matter; or
  - (b) take part in a decision of the board on the matter.

Maximum penalty—100 penalty units.

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- (5) The member must not be present when the board is considering the decision.

Maximum penalty—100 penalty units.

- (6) Another member who also has a direct or indirect financial or personal interest in the matter must not—

- (a) be present when the board is considering the decision;  
or  
(b) take part in making the decision.

Maximum penalty for subsection (6)—100 penalty units.

## **23 Duty to act in TAFE Queensland's interest**

A member, in performing functions as a member, must—

- (a) act honestly and in the best interests of TAFE Queensland; and  
(b) exercise reasonable skill, care and diligence.

## **Division 4 Chief executive officer**

### **24 Appointment**

- (1) TAFE Queensland must have a chief executive officer.  
(2) The chief executive officer must be appointed by the board with the prior written approval of the Minister.

### **25 Conditions of appointment**

For matters not provided for under this Act or stated in the contract of employment, the chief executive officer holds office on the terms of appointment decided by the board.

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## **26 Responsibilities**

- (1) The chief executive officer is, under the board, responsible for—
  - (a) the day-to-day management of TAFE Queensland; and
  - (b) helping TAFE Queensland in the performance of its functions.
- (2) The chief executive officer has all the powers necessary for carrying out those responsibilities.

## **27 Appointment of acting chief executive officer**

- (1) The board may, without the Minister's approval, appoint a person to act as TAFE Queensland's chief executive officer.
- (2) Subsection (1) does not affect the application of the *Acts Interpretation Act 1954*, section 24B or 25 for the appointment.

## **28 Resignation**

The chief executive officer may resign by signed notice given to the chairperson.

## **Division 5 Other staff**

### **29 Other staff**

- (1) TAFE Queensland may employ other staff it considers appropriate to perform its functions.
- (2) The other staff are appointed under this Act and not the *Public Service Act 2008*.

### **30 Work performance arrangements**

- (1) The chief executive officer may enter into, and give effect to, an arrangement (a *work performance arrangement*) under which—
- (a) an employee of TAFE Queensland performs work for a department or another entity; or
  - (b) a person employed by or within a department or another entity performs work for TAFE Queensland.

*Examples of another entity—*

- another government entity
  - an entity of the Commonwealth or another State, including, for example, any of the following—
    - (a) a department of government, or part of a department of government, of the Commonwealth or other State;
    - (b) an entity, or part of an entity, corresponding to a public service office;
    - (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under a law of the jurisdiction or under an authorisation of the Commonwealth or other State for its public or other purposes;
    - (d) a part of an entity mentioned in paragraph (c)
- (2) A work performance arrangement must be made with the chief executive of the department or the appropriate authority of the other entity.
- (3) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (4) A work performance arrangement may, for example, provide for—
- (a) the appointment of, and holding by, a public service employee or someone else to any office for the arrangement; and
  - (b) the authorising of a public service employee or someone else to exercise any powers for the arrangement; and

- (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

### **31 Interchange arrangements**

- (1) The chief executive officer may enter into, and give effect to, an arrangement (an *interchange arrangement*) under which—
  - (a) an employee of TAFE Queensland performs duties in another entity; or
  - (b) a person employed by or within another entity performs duties in TAFE Queensland.

*Note—*

For examples of other entities, see section 30(1), examples.

- (2) An interchange arrangement must be made with the appropriate authority of the other entity.
- (3) An interchange arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.

### **32 Preservation of rights of public service employee appointed to TAFE Queensland**

- (1) This section applies to a person who—
  - (a) is appointed as an employee of TAFE Queensland; and
  - (b) was, immediately before taking up the appointment, a public service employee.
- (2) The person is entitled to retain all existing and accruing rights as if service as an employee of TAFE Queensland were a continuation of service as a public service employee.
- (3) If the person was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*, the person keeps all the person's existing and accruing rights relating to superannuation.

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### **33 Preservation of rights of TAFE Queensland employee appointed to public service**

- (1) This section applies to a person who—
  - (a) is appointed as a public service employee; and
  - (b) was, immediately before taking up the appointment, an employee of TAFE Queensland.
- (2) The person's service as an employee of TAFE Queensland must be regarded as service as a public service employee.

## **Division 6 Criminal history**

### **34 Report about person's criminal history**

- (1) This section applies to a person as follows—
  - (a) a member;
  - (b) a prospective member;
  - (c) an employee of TAFE Queensland;
  - (d) a prospective employee.
- (2) The Minister (the *requesting authority*) may make investigations about a person mentioned in subsection (1)(a) or (b) to decide whether the person is disqualified under section 19(1)(a).
- (3) TAFE Queensland (also the *requesting authority*) may make investigations about a person mentioned in subsection (1)(c) or (d) to decide whether the person is an appropriate person for performing, or continuing to perform, the particular duties of the person as an employee of TAFE Queensland.
- (4) Without limiting subsection (2) or (3), the requesting authority may ask the commissioner of police for—
  - (a) a written report about the person's criminal history; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.

- (5) However, the requesting authority may make the request for a prospective member or prospective employee only if the person has given the requesting authority written consent for the request.
- (6) The commissioner of police must comply with the request.
- (7) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.
- (8) The requesting authority must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

### **35 Criminal history is confidential document**

- (1) This section applies to a person who possesses a report, or information contained in a report, given under section 34, because the person is, or was, an officer, employee or agent of the department or TAFE Queensland.
- (2) The person must not, directly or indirectly, disclose the report or information to anyone else, unless the disclosure is permitted under subsection (3).

Maximum penalty—100 penalty units.

- (3) The person may disclose the information to someone else—
  - (a) to the extent necessary to perform the person's functions under this Act; or
  - (b) if the disclosure is authorised under an Act; or
  - (c) if the disclosure is otherwise required or permitted by law; or
  - (d) if the person to whom the information relates consents to the disclosure; or
  - (e) if the disclosure is in a form that does not disclose the identity of the person to whom the information relates; or

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- (f) if the information is, or has been, lawfully accessible to the public.

### **36 Requirement to disclose changes in criminal history**

- (1) This section applies to a person as follows—
  - (a) a member;
  - (b) an employee of TAFE Queensland.
- (2) If there is a change in the criminal history of the person, the person must, unless the person has a reasonable excuse, immediately disclose the change to the relevant requesting authority under section 34.

Maximum penalty—100 penalty units.

- (3) If the person does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires one.
- (4) To comply with subsection (2)—
  - (a) the information disclosed must include all of the following—
    - (i) the existence of the conviction;
    - (ii) when the offence was committed;
    - (iii) details adequate to identify the offence;
    - (iv) the sentence imposed on the person; and
  - (b) the disclosure must be in writing.

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## **Part 3                      Planning and accountability**

### **Division 1                Operational plans**

#### **Subdivision 1        Preliminary**

##### **37        Definition for div 1**

In this division—

*community service obligation*, for TAFE Queensland, means an obligation of TAFE Queensland to perform an activity or provide a service that—

- (a) is not in TAFE Queensland's commercial interests to perform or provide; and
- (b) is purchased by the State.

##### **38        Purpose of div 1**

The purpose of this division is to provide for requirements for TAFE Queensland's operational plan and for compliance with the plan.

#### **Subdivision 2        Making plan**

##### **39        Preparation of draft plan**

- (1) TAFE Queensland must give the Minister, for the Minister's agreement, a draft operational plan for each financial year.
- (2) The draft must be given at least 2 months before the start of the financial year.
- (3) It is Parliament's expectation that TAFE Queensland and the Minister should reach agreement about the draft plan at least 1 month before the start of the financial year.

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#### **40 Content of plan**

TAFE Queensland's operational plan must include, for the financial year to which it relates, the following matters about TAFE Queensland—

- (a) an outline of its objectives;
- (b) its financial and non-financial performance targets for its functions;
- (c) performance indicators for the performance targets;
- (d) an outline of the nature and scope of the activities proposed to be undertaken during the financial year;
- (e) an outline of the major investments and borrowings proposed to be undertaken;
- (f) an outline of policies about managing the risk associated with investments or borrowings that may adversely affect its financial position;
- (g) the community service obligations it must perform during the financial year;
- (h) an outline of the arrangements for people performing work for it whether under work performance arrangements, or interchange arrangements, or as employees;
- (i) the information required to be given to the Minister during the financial year and when it is to be given;
- (j) any other matter relevant to its functions and required to be included in the operational plan by the Minister.

#### **41 When plan has effect**

- (1) When TAFE Queensland's draft operational plan is agreed to by the Minister, the draft operational plan becomes its operational plan for the financial year to which it relates.
- (2) The Minister may impose conditions on the agreement.

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## **42 Plan pending agreement**

- (1) This section applies if a draft operational plan has not been agreed to by the Minister by the start of the financial year to which it relates.
- (2) The draft plan submitted, or last submitted, by TAFE Queensland to the Minister, with any modifications made by TAFE Queensland at the direction of the Minister, whether before or after that time, is taken to be its operational plan.
- (3) Subsection (2) applies until a draft operational plan becomes the institute's operational plan under section 41.

## **Subdivision 3 Compliance and other matters**

### **43 Requirement to comply**

TAFE Queensland must comply with its operational plan for each financial year.

### **44 Amendment of plan**

- (1) TAFE Queensland may amend its operational plan only with the Minister's written agreement.
- (2) The Minister may impose conditions on the agreement.
- (3) The Minister may, by notice, direct TAFE Queensland to amend its operational plan.

### **45 Relationship with FA Act plan**

- (1) The requirements stated in this division apply in addition to the requirements for the operational plan under the FA Act.
- (2) If there is an inconsistency between a requirement under this division and a requirement under the FA Act, a requirement under this division prevails to the extent of the inconsistency.

## **Division 2                      Powers of Minister**

### **46            Minister may require information**

- (1) The Minister may, by notice, require TAFE Queensland to give the Minister information about the performance of its functions under this Act.
- (2) The notice must state the day by which the information must be given.
- (3) The requirement may include a requirement to produce a document for inspection by the Minister.
- (4) TAFE Queensland must comply with the requirement.

### **47            Minister may give direction in public interest**

- (1) The Minister may give TAFE Queensland a written direction if the Minister is satisfied it is necessary to give the direction in the public interest.
- (2) Before giving the direction, the Minister must—
  - (a) consult with TAFE Queensland; and
  - (b) ask TAFE Queensland to advise whether, in its opinion, complying with the direction would not be in its financial interest.
- (3) TAFE Queensland must comply with the direction.

### **48            Notice of concern about financial viability**

- (1) This section applies if—
  - (a) TAFE Queensland is given a direction under section 47; and
  - (b) TAFE Queensland is concerned about its financial viability; and

- (c) in TAFE Queensland's opinion, the cause or a substantial cause of its concern would be compliance with the direction.
- (2) TAFE Queensland must immediately give the Minister notice of the concern and its reasons for the opinion (the *response*).
- (3) The response must state that it is given under this section.
- (4) The giving of the response operates to suspend the direction until—
  - (a) the Minister gives TAFE Queensland written advice that the Minister is not satisfied that—
    - (i) TAFE Queensland's concern mentioned in subsection (1)(b) is well-founded; or
    - (ii) TAFE Queensland's opinion mentioned in subsection (1)(c) is justified; or
  - (b) the direction is revoked.
- (5) If TAFE Queensland was given a direction, and the Minister is satisfied TAFE Queensland's concern is well-founded, the Minister must immediately—
  - (a) if the Minister is also satisfied TAFE Queensland's opinion is justified—revoke the direction; and
  - (b) in any case—give TAFE Queensland the written directions the Minister considers necessary or desirable, including any directions necessary or desirable to ensure—
    - (i) TAFE Queensland does not incur further debts; or
    - (ii) TAFE Queensland will be able to pay all its debts as and when they become due.
- (6) Without limiting subsection (5), a direction under this section may require TAFE Queensland to stop or limit particular activities.
- (7) TAFE Queensland must comply with a direction under this section.



- 
- (iv) granting a sublease;
  - (f) for trust land for which the relevant TAFE entity is the trustee—
    - (i) removing the relevant TAFE entity as trustee; or
    - (ii) appointing another relevant TAFE entity as trustee; or
    - (iii) changing the purpose for which the trust land was reserved or granted in trust, including to a purpose other than a community purpose;
  - (g) whether and, if so, the extent to which the relevant TAFE entity is the successor in law of another relevant TAFE entity;
  - (h) a legal proceeding that is being, or may be, taken by or against the relevant TAFE entity to be continued or taken by or against another relevant TAFE entity;
  - (i) the transfer or application of an instrument to the relevant TAFE entity, including, for example—
    - (i) whether the relevant TAFE entity is a party to an instrument; and
    - (ii) whether an instrument, or a benefit or right provided by an instrument, is taken to have been given to, by or in favour of the relevant TAFE entity; and
    - (iii) whether a reference to an entity in an instrument is a reference to the relevant TAFE entity; and
    - (iv) whether, under an instrument, an amount is or may become payable to or by the relevant TAFE entity or other property is, or may be, transferred to or by the relevant TAFE entity; and
    - (v) whether a right or entitlement under an instrument is held by the relevant TAFE entity;
  - (j) the transfer of an employee of the relevant TAFE entity to another relevant TAFE entity;

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- (k) the employees of the relevant TAFE entity transferred under paragraph (j), and their terms and conditions of employment, rights and entitlements;
  - (l) the application of a particular industrial instrument to—
    - (i) the employees mentioned in paragraph (k); or
    - (ii) the relevant TAFE entity to which the employees mentioned in paragraph (k) are transferred; or
    - (iii) other employees of the relevant TAFE entity mentioned in subparagraph (ii);
  - (m) the transfer of a student enrolment from the relevant TAFE entity to another relevant TAFE entity;
  - (n) whether any of the following registrations is taken to have been given to, or in favour of, the relevant TAFE entity or another relevant TAFE entity—
    - (i) registration as a registered provider under the *Education (Overseas Students) Act 1996*;
    - (ii) registration of a registered course under the *Education (Overseas Students) Act 1996*;
  - (o) whether a relevant TAFE entity is taken to be the supervising registered training organisation for a training contract under the VETE Act, chapter 3;
  - (p) the records of the relevant TAFE entity;
  - (q) anything incidental, consequential or supplemental to the restructure of the relevant TAFE entity.
- (2) A transfer regulation—
- (a) may transfer an asset attached to land without transferring the land, even though the asset would otherwise be a part of the land; and
  - (b) has effect despite any other law or instrument; and
  - (c) may provide for a matter by reference to a document held by an entity.

- 
- (3) To remove any doubt it is declared that a transfer regulation applies despite—
    - (a) the *Industrial Relations Act 1999*; and
    - (b) any industrial instrument.
  - (4) Subsection (2)(c) does not by implication limit the *Statutory Instruments Act 1992*, section 26.
  - (5) A transfer regulation may make provision about—
    - (a) how consideration mentioned in subsection (1)(b) is to be decided; and
    - (b) the changing of the consideration.
  - (6) A transfer regulation may make provision about accounting treatment in relation to a matter mentioned in subsection (1).
  - (7) In this section—

*employee*, of a relevant TAFE entity mentioned in section 49(1)(d), does not include a member of the board of the entity.

*record* includes any document.

## 51 Ministerial direction

- (1) The Minister may give a direction (a *transfer direction*) to a relevant entity or its board requiring the entity or board to do something the Minister considers necessary or convenient for effectively restructuring the entity under this part.
- (2) Without limiting subsection (1), a transfer direction may be about—
  - (a) the timing of transfers of particular businesses, assets and liabilities, instruments and employees; or
  - (b) executing an instrument; or
  - (c) disclosing information.
- (3) A transfer direction must be a signed notice.
- (4) A relevant entity must comply with a transfer direction given to it.

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- (5) A relevant entity's board must—
  - (a) if a transfer direction is given to the board—comply with the direction; or
  - (b) if a transfer direction is given to the entity—take the action necessary to ensure the entity complies with the direction.
- (6) A relevant entity's employees must help the entity or its board comply with a transfer direction given to the entity or board.
- (7) In this section—

*board*, of a relevant entity, means—

  - (a) for TAFE Queensland—the board; or
  - (b) for an entity prescribed under a regulation for section 49—the appropriate authority of the entity.

*relevant entity* means—

  - (a) TAFE Queensland; or
  - (b) an entity prescribed under a regulation for section 49.

## 52 Registering authority to register or record transfer or other dealing

- (1) A registering authority must, on written application by a relevant TAFE entity, register or record in the appropriate way a transfer of, or other dealing affecting, an asset, liability or instrument provided for under a transfer regulation.
- (2) The relevant TAFE entity must comply with any relevant procedures required by the registering authority for the purpose of registering or recording the transfer or other dealing.

*Example—*

The registering authority may require the relevant TAFE entity to complete and submit a particular form.

- (3) In this section—

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**registering authority** means the registrar of titles or another entity required or authorised by law to register or record transactions affecting assets, liabilities or instruments.

### **53 Regulation dissolving statutory TAFE institute**

- (1) This section applies if all the assets and liabilities of a statutory TAFE institute have become the assets and liabilities of another relevant TAFE entity or have been otherwise disposed of by the statutory TAFE institute.
- (2) A regulation may—
  - (a) dissolve the statutory TAFE institute; and
  - (b) make provision about—
    - (i) any matter relating to the dissolution for which it is necessary or convenient to make provision; and
    - (ii) the preparation of the institute’s final statements and report; and
    - (iii) access to information and documents for preparing the institute’s final statements and report; and
    - (iv) the entity that is to prepare the institute’s final statements and report.
- (3) Subsection (2)(b)(iv) applies despite the *Financial and Performance Management Standard 2009*, sections 48(1) and 53.
- (4) In this section—

**final statements and report**, of a statutory TAFE institute, means its final financial statements and final report under the FA Act, sections 62 and 63.

### **54 References in documents after dissolution**

- (1) This section applies if a regulation is made under section 53 to dissolve a statutory TAFE institute.

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- (2) A reference in a document to the institute is, if the context permits, taken to be a reference to—
  - (a) one or more relevant TAFE entities prescribed under a regulation; or
  - (b) if no entity is prescribed—the relevant TAFE entity to which the institute’s assets and liabilities were transferred before its dissolution.

## **55 Rights of transferred employees etc.**

- (1) This section applies if there is a transfer of an employee (a *transferred employee*) from a relevant TAFE entity (the *transferor*) to another relevant TAFE entity (the *transferee*) under a transfer regulation.
- (2) The transfer does not—
  - (a) reduce the transferred employee’s total remuneration; or
  - (b) prejudice the transferred employee’s existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
  - (c) affect a right or entitlement of the transferred employee to be employed as a public service employee accrued—
    - (i) immediately before the commencement under former section 220X(4); or
    - (ii) before, on or after the commencement under the *Public Service Act 2008*, section 123; or
  - (d) interrupt continuity of service, including continuity of service under former section 220W(4), except that the transferred employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service; or
  - (e) constitute a termination, retrenchment or redundancy of the transferred employee’s employment by the transferor; or

- 
- (f) entitle the transferred employee to a payment or other benefit merely because he or she is no longer employed by the transferor; or
  - (g) require the transferor to make any payment for the transferred employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the transferor and the transferred employee.
- (3) The transfer has effect despite any other contract, law or instrument.
  - (4) If the transfer regulation provides for the application of a particular industrial instrument to an employee of the transferee other than a transferred employee, the provision does not reduce the other employee's total remuneration.
  - (5) In this section—

*commencement* means the day this section commences.

*former section 220W(4)* means the VETE Act, section 220W(4) as in force immediately before the commencement.

*former section 220X(4)* means the VETE Act, section 220X(4) as in force immediately before the commencement.

## **56 Things done under this part**

- (1) A thing may be done under this part despite any other law or instrument.
- (2) To remove any doubt, it is declared that a thing is taken to be done under this part if it is done by, or in compliance with, a transfer regulation or transfer direction, even if the thing includes taking steps under another Act.

## **57 Effect on legal relationships**

- (1) Nothing done under this part—

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- (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
  - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (c) except as provided for under a transfer regulation, is taken to fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or
    - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
    - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iv) requires any money to be paid before its stated maturity; or
  - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this part, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this Act, giving notice to a person would be necessary to do something under this part, the notice is taken to have been given.
- (4) In this section—
- relevant entity*** means—
- (a) the State or an employee or agent of the State; or

- 
- (b) a relevant TAFE entity, a member of the relevant TAFE entity's board, or an employee or agent of the relevant TAFE entity.

## **Part 5                      Miscellaneous provisions**

### **Division 1                TAFE brand**

#### **58            Use of protected terms**

- (1) A person must not use a protected term in its name, or in a description of its activities, operations or services, in connection with its operations in and from Queensland if having regard to the circumstances in which it is used a reasonable person would think that—

- (a) the person is a TAFE entity; or
- (b) the activity, operation or service is being provided by a TAFE entity.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a TAFE entity; or
  - (b) a person to whom the Minister has given approval under subsection (3) to use the protected term in its name or in connection with its activities, operations or services.
- (3) The Minister may give a person an approval to use a protected term in its name or in connection with its activities, operations or services if the Minister is satisfied—
  - (a) the person is established by or operates in association with TAFE Queensland; or
  - (b) it is unlikely that a reasonable person would think that, because of the use of the protected term in its name or in

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connection with its activities, operations or services, the person is a TAFE entity.

(4) The Minister must publish details of approvals in force under subsection (3) on the department's website on the internet.

(5) In this section—

***protected term*** means the following terms—

- (a) TAFE;
- (b) technical and further education.

***TAFE entity*** means—

- (a) TAFE Queensland; or
- (b) a TAFE institute established under the VETE Act, chapter 6; or
- (c) an entity prescribed under a regulation.

## **59 Injunction to prevent or restrain a contravention**

(1) This section applies if the Minister reasonably believes a person (an ***offending party***) has engaged, is engaging or is proposing to engage in conduct that contravened, is contravening or would contravene section 58.

(2) The Minister may apply to the Supreme Court of Queensland (the ***court***) for an injunction restraining the offending party from engaging, or continuing to engage, in the conduct.

(3) The court may grant an interim injunction restraining the offending party from engaging, or continuing to engage, in the conduct pending a decision about the application.

(4) After considering the application the court may—

- (a) if it is satisfied on the balance of probabilities that the offending party has engaged, or is likely to engage or continue to engage, in the conduct—grant the injunction; or
- (b) refuse to grant the injunction.

(5) The court may grant the injunction—

- (a) if it is satisfied the offending party has engaged in the conduct—whether or not it considers the offending party intended to engage again, or continue to engage, in the conduct; or
- (b) if it is satisfied the offending party will likely engage again, or continue to engage, in the conduct if the injunction is not granted—
  - (i) whether or not the offending party has previously engaged in the conduct; and
  - (ii) whether or not there is an imminent danger of substantial damage to a person if the offending party engaged in the conduct.
- (6) If the court is satisfied there is an adequate reason for doing so, it may grant an injunction under subsection (3) or (4) without notice to the offending party.

## **Division 2                    Delegations**

### **60            Delegation by TAFE Queensland**

TAFE Queensland may delegate a function to—

- (a) a member; or
- (b) the chief executive officer; or
- (c) an appropriately qualified employee of TAFE Queensland; or
- (d) an appropriately qualified person performing work under a work performance arrangement or performing duties under an interchange arrangement.

### **61            Delegation by chief executive officer**

The chief executive officer may delegate a function of the officer to—

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- (a) an appropriately qualified employee of TAFE Queensland; or
- (b) an appropriately qualified person performing work under a work performance arrangement or performing duties under an interchange arrangement.

## **62 Delegation by Minister**

The Minister may delegate a function to an appropriately qualified public service employee.

## **Division 3 Other matters**

### **63 Crime and Misconduct Act 2001**

TAFE Queensland is a unit of public administration under the *Crime and Misconduct Act 2001*.

### **64 Annual report**

TAFE Queensland's annual report for a financial year under the FA Act must include copies of—

- (a) directions and notices to TAFE Queensland by the Minister under this Act in the financial year to which the report relates; and
- (b) all authorisations under section 66(3)(d) given in the financial year.

### **65 Protection from liability**

- (1) This section applies to the following persons—
  - (a) the Minister;
  - (b) the chief executive;
  - (c) a member;
  - (d) the chief executive officer;

- 
- (e) an employee of TAFE Queensland;
  - (f) a person performing work for TAFE Queensland under a work performance arrangement;
  - (g) a person performing duties in TAFE Queensland under an interchange arrangement.
- (2) The person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (3) If subsection (2) prevents a liability attaching to the person, the liability attaches instead to the State.

## 66 Protection of confidentiality

- (1) This section applies to a person who acquires information about another person (the *other person*)—
- (a) in performing a function under this Act; or
  - (b) because of an opportunity provided by the performance of the person's function under this Act.
- (2) The person must not do any of the following (each a *disclosure*)—
- (a) make a record of the information;
  - (b) whether directly or indirectly, divulge or communicate the information;
  - (c) use the information to benefit any person.
- Maximum penalty—50 penalty units.
- (3) However, subsection (2) does not apply if—
- (a) the disclosure is—
    - (i) necessary to perform the person's functions under this Act; or
    - (ii) authorised under an Act; or
    - (iii) necessary to perform official duties under the *Public Records Act 2002*; or
    - (iv) otherwise required or permitted by law; or

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- (v) ordered by a court, commission or tribunal constituted by law in proceedings before it; or
- (vi) in a form that does not disclose the identity of the other person; or
- (b) the other person is an adult and consents to the disclosure; or
- (c) the other person is a child and the child's parent or guardian consents to the disclosure; or
- (d) the Minister considers the disclosure is in the public interest and gives the person written authorisation for the disclosure.

#### **67 Regulation-making power**

The Governor in Council may make regulations under this Act or relating to any or all of the functions of TAFE Queensland under this Act.

## **Part 6 Transitional provisions for TAFE Queensland Act 2013**

#### **68 Appointment of TAFE Queensland's first chief executive officer**

- (1) Despite section 24(2), the Minister may appoint the first chief executive officer of TAFE Queensland.
- (2) Despite section 25, for matters not provided for under this Act or stated in the contract of employment, the first chief executive officer holds office on the terms of appointment decided by the Minister.
- (3) This Act applies to the first chief executive officer as if he or she had been appointed under section 24.

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**69 TAFE Queensland's first operational plan**

Despite sections 39 to 42—

- (a) TAFE Queensland's first draft operational plan must be—
  - (i) for the period starting on the commencement of this section and ending on 30 June 2014; and
  - (ii) given to the Minister within 4 months after this section commences; and
- (b) it is Parliament's expectation that the Minister and TAFE Queensland should reach agreement, for the first draft operational plan, as soon as possible; and
- (c) if the Minister and TAFE Queensland have not reached agreement within 5 months after the commencement, the first draft operational plan submitted, or last submitted, by TAFE Queensland to the Minister is taken to be its first operational plan.

**Part 7 Acts amended**

**70 Acts amended in sch 1**

Schedule 1 amends the Acts it mentions.

## **Schedule 1            Consequential and minor amendments**

section 70

### **Part 1                    Amendment of this Act**

**1            Long title—**

*omit, insert—*

**An Act to provide for the establishment of TAFE Queensland and for other matters relating to vocational education and training services**

**2            Section 3, ‘schedule 2’—**

*omit, insert—*

schedule 1

**3            Schedule 2—**

*renumber* as schedule 1.

### **Part 2                    Amendment of other Acts**

#### **Acquisition of Land Act 1967**

**4            Schedule 1, part 3, sixth dot point—**

*omit, insert—*

- TAFE institutes under the *Vocational Education, Training and Employment Act 2000* or TAFE Queensland under the *TAFE Queensland Act 2013*

## Biodiscovery Act 2004

### 5 Section 54(4), definition *educational institution*, paragraph (b)—

*omit, insert—*

- (b) a registered training organisation under the *Vocational Education, Training and Employment Act 2000*.

## Building Act 1975

### 6 Section 216(5), definition *educational institution*, paragraphs (c) and (d)—

*omit, insert—*

- (c) a TAFE institute under the *Vocational Education, Training and Employment Act 2000*;
- (d) TAFE Queensland under the *TAFE Queensland Act 2013*;
- (e) a university.

## **Charitable and Non-Profit Gaming Act 1999**

**7 Section 10(5), definition *educational purpose*, paragraph (a)(i) and (ii)—**

*omit, insert—*

- (i) a school, college or university;
- (ii) a TAFE institute under the *Vocational Education, Training and Employment Act 2000* or TAFE Queensland under the *TAFE Queensland Act 2013*;
- (iii) an educational institution other than an entity mentioned in subparagraph (i) or (ii);
- (vi) a school of arts or public library; or

## **Criminal Law (Rehabilitation of Offenders) Act 1986**

**8 Section 9A(1), table, item 7(d), 'or a statutory TAFE institute'—**

*omit.*

**9 Section 9A(1), table—**

*insert—*

- |  |  |
|--|--|
| <p>7A Person employed by TAFE Queensland under the <i>TAFE Queensland Act 2013</i> as—</p> <p>(a) an educational administrator; or</p> <p>(b) a teacher; or</p> <p>(c) an educational assistant; or</p> <p>(d) a member of TAFE Queensland’s administrative, building or ground staff.</p> | <p>7A(1) An offence defined in the Criminal Code, chapter 22, 32, 33 or 34 or the <i>Drugs Misuse Act 1986</i>, part 2.</p> <p>(2) An offence of a similar nature committed in Queensland or elsewhere.</p> <p>(3) An offence of a sexual nature whether committed in Queensland or elsewhere.</p> |
|--|--|

## Education (Accreditation of Non-State Schools) Act 2001

**10 Section 6(2)(e)—**  
*renumber* as section 6(2)(f).

**11 Section 6(2)(d)—**  
*omit, insert—*

- (d) a TAFE institute under the *Vocational Education, Training and Employment Act 2000*;
- (e) TAFE Queensland under the *TAFE Queensland Act 2013*;

## Education (General Provisions) Act 2006

- 12 Section 232, table, column 2, item 4, ‘TAFE institute, statutory TAFE institute or’—**

*omit.*

- 13 Section 235(b), example, ‘a TAFE institute or statutory TAFE institute’—**

*omit, insert—*

TAFE Queensland

- 14 Schedule 4, definitions *statutory TAFE institute* and *TAFE institute*—**

*omit, insert—*

*TAFE Queensland* means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

## Education (Overseas Students) Act 1996

- 15 Section 17(3), ‘statutory TAFE institute’—**

*omit, insert—*

TAFE Queensland under the *TAFE Queensland Act 2013*

- 16 Schedule, definition *statutory TAFE institute*—**

*omit.*

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**Education (Queensland Studies Authority) Act 2002****17 Section 15(f)—***insert—*

(ia) TAFE Queensland;

**18 Section 15(f)(ix)—***omit.***19 Section 15(f)(ia) to (viii)—***renumber* as section 15(f)(iii) to (ix).**20 Section 21P(1)—***omit, insert—*

- (1) This section applies to a provider that is a TAFE institute, TAFE Queensland or a registered training organisation.

**21 Section 21P(4), definition *statutory TAFE institute*—***omit.***22 Section 21T(6), definition *prescribed agent, 'statutory TAFE institute or'*—***omit, insert—*

TAFE Queensland or a

**23 Schedule 2—***insert—*

*TAFE Queensland* means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

## **Education (Work Experience) Act 1996**

**24 Section 5(1)(e)—**

*omit, insert—*

- (e) if the student is enrolled in the agricultural college under the *Agricultural College Act 2005*—the college; or

## **Environmental Protection Act 1994**

**25 Section 440K, definition *educational institution*, paragraphs (c) and (d)—**

*omit, insert—*

- (c) a TAFE institute under the *Vocational Education, Training and Employment Act 2000*; or
- (d) TAFE Queensland under the *TAFE Queensland Act 2013*; or
- (e) a university.

## **Plumbing and Drainage Act 2002**

**26 Section 121(2), definition *designated person*, paragraph (a)(i), ‘under the *Vocational Education, Training and Employment Act 2000*’—**

*omit, insert—*

under the VETE Act

**27 Section 121(2), definition *designated person*, paragraph (b)—**

*omit, insert—*

- (b) has agreed with an employer and a TAFE institute or TAFE Queensland to take part in a vocational placement scheme under the VETE Act.

**28 Section 121(2)—**

*insert—*

*TAFE institute* see the VETE Act, section 191.

*TAFE Queensland* means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

*VETE Act* means the *Vocational Education, Training and Employment Act 2000*.

## Public Interest Disclosure Act 2010

**29 Section 6(1)(h), ‘statutory TAFE institute’—**

*omit, insert—*

TAFE Queensland

**30 Section 6—**

*insert—*

- (4) In this section—

*TAFE institute* means a TAFE institute under the *Vocational Education, Training and Employment Act 2000*.

*TAFE Queensland* means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

- 31**     **Schedule 4, definitions *statutory TAFE institute* and *TAFE institute*—**  
*omit.*

## **Public Sector Ethics Act 1994**

- 32**     **Schedule, definition *statutory TAFE institute*—**  
*omit, insert—*

*TAFE Queensland* means TAFE Queensland established under the *TAFE Queensland Act 2013*, section 5(1).

- 33**     **Schedule, definition *public service agency*, paragraph (b), ‘*statutory TAFE institute*’—**  
*omit, insert—*

TAFE Queensland

## **Vocational Education, Training and Employment Act 2000**

- 34**     **Chapter 6A—**  
*omit.*

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**35 Section 282(4)—**

*omit, insert—*

(4) In this section—

***disclosure body*** means any of the following—

- (a) a TAFE institute council;
- (b) Skills Queensland;
- (c) a committee established by an entity mentioned in paragraph (a) or (b);
- (d) a committee established by the chief executive.

**36 Schedule 3, definitions *amalgamation regulation, dissolution regulation, community service obligation, operational plan, return, statutory committee* and *statutory TAFE institute*—**

*omit.*

## Schedule 2 Dictionary

### section 3

***appropriately qualified*** includes having qualifications, experience or standing appropriate for the function.

***board*** means the board of TAFE Queensland established under section 12(1).

***chairperson*** means the chairperson of the board holding office under section 17.

***chief executive officer*** means the chief executive officer of TAFE Queensland holding office under section 24.

***commissioner of police*** means the commissioner of the police service.

***community service obligation*** see section 37.

***criminal history***—

- (a) of a member or prospective member—means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986* to the extent the criminal history relates to indictable offences, other than spent convictions; or
- (b) of an employee of TAFE Queensland or prospective employee—means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

***FA Act*** see section 7(1)(a).

***industrial instrument*** see the *Industrial Relations Act 1999*, schedule 5.

***interchange arrangement*** see section 31(1).

***member***, for a provision about TAFE Queensland or its board or if no body is mentioned, means a member of the board.

***notice*** means a notice in writing.

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***operational plan***, of TAFE Queensland, means the operational plan TAFE Queensland is required to develop under the FA Act.

***police service*** means the Queensland Police Service.

***prospective employee*** means a person being considered for employment as an employee of TAFE Queensland.

***prospective member*** means a person being considered for appointment as a member.

***relevant TAFE entity*** see section 49(1).

***spent conviction*** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

***statutory TAFE institute*** means a statutory TAFE institute established under the VETE Act, former chapter 6A.

***TAFE institute*** means a TAFE institute established under the VETE Act, chapter 6.

***TAFE Queensland*** means TAFE Queensland established under section 5(1).

***transfer direction*** see section 51(1).

***transfer regulation*** see section 50(1).

***VETE Act*** means the *Vocational Education, Training and Employment Act 2000*.

***work performance arrangement*** see section 30(1).