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SPECIAL

Vocational Education and Training Act 1990
**MINISTERIAL DIRECTION ON TAFE
COLLEGE EMPLOYMENT 1993**

PART 1—PRELIMINARY

Purpose

1.1 The purpose of this instrument is to give directions to the Councils of TAFE institutions about the employment of staff of TAFE Colleges and University TAFE Divisions.

Application of Direction

- 1.2 This Direction is given to—
- the Councils of all TAFE Colleges; and
 - the Council of the Royal Melbourne Institute of Technology; and
 - the Council of the Swinburne University of Technology; and
 - the Council of the Victoria University of Technology.

Authority for Direction

- 1.3 This Direction is given under—
- section 6A of the *Vocational Education and Training Act 1990* and in accordance with section 13 of the *Interpretation of Legislation Act 1984*; and
 - section 14 of the *Public Authorities (Equal Employment Opportunity) Act 1990*; and
 - section 13 of the *Annual Reporting Act 1983*; and
 - in relation to the Council of the Gordon Technical College only, section 5 (d) of the *Gordon Technical College Act 1976*; and
 - all other enabling powers.

Name of Direction

1.4 This Direction is called the Ministerial Direction on TAFE College Employment 1993.

Commencement Date

1.5 This Direction takes effect on and from 1 July 1993.

Interpretation

1.6 (1) In this Direction, unless inconsistent with the context or subject-matter—

“the Act” means the *Vocational Education and Training Act 1990*;

“Chief Commission Administration Officer” means the Chief Commission Administration Officer under the *Employee Relations Act 1992*;

“classification level” in relation to an executive officer or a management staff position, means a level specified in column 1 of Schedule 1 to this Direction;

“College Director” means a person for the time being holding, acting in or performing the duties of—

- a position of College director referred to in section 34A (1) (a) of the Act;
- the position of director of the Technical and Further Education Division of the Royal Melbourne Institute of Technology referred to in section 25 (4) of the *Royal Melbourne Institute of Technology Act 1992*; and
- the position of director of the Technical and Further Education Division of the Swinburne University of Technology referred to in section 25 (4) of the *Swinburne University of Technology Act 1992*; and
- the position of director of the Victoria University of Technology referred to in section 25 (4) of the *Victoria University of Technology Act 1990*;

“Council” means—

- a Council of a TAFE College within the meaning of the Act; and
- the Council of the Royal Melbourne Institute of Technology in its capacity as the

governing authority of the Technical and Further Education Division of that University; and

- (c) the Council of Swinburne University of Technology in its capacity as the governing authority of the Technical and Further Education Division of that University; and
- (d) the Council of the Victoria University of Technology in its capacity as the governing authority of the Technical and Further Education Division of that University;

“**College**” means a TAFE College within the meaning of the Act;

“**contract of employment**” means a contract of employment, between an executive officer and his or her employer, of the kind referred to in clause 4 of Schedule 2 to the Act;

“**Director, OTFE**” means the person for the time being holding, acting in or performing the duties of the position of Director of the Office of Training and Further Education of the Department of Education;

“**employment agreement**” has the same meaning as in the **Employee Relations Act 1992**;

“**employment benefit**” means—

- (a) contributions payable to a superannuation scheme by an executive officer’s employer in respect of the officer, including any liability of that employer to make any such contributions or to pay costs associated with that scheme; or
- (b) the provision by an executive officer’s employer of a motor vehicle for private use by the officer; or
- (c) the entitlement of an executive officer to approved leave with pay; or
- (d) any other approved benefit of a private nature provided to an executive officer at the cost of the officer’s employer;

“**executive officer**” has the same meaning as in the Act;

“**full-time position**” means a position for which the normal hours of duty are not less than 76 hours in each fortnight;

“**institution**” means a College or a University TAFE Division;

“**management staff position**” means a position or a position in a class of positions which has been declared under section 6B of the Act to be part of the management staff of a College or University TAFE Division;

“**member of staff**” means a person employed by a Council in a College or a University TAFE Division;

“**monetary remuneration**” includes allowances paid in money, but does not include—

- (a) travelling or subsistence allowances; or
- (b) allowances in relation to relocation expenses; or
- (c) any other allowances in relation to expenses incurred in the discharge of the duties of a member of staff;

“**occupational superannuation standards**” means the occupational superannuation standards specified or prescribed by or under the Commonwealth Occupational Superannuation Standards Act 1987 and as amended and in force from time to time;

“**part-time position**” means a position for which the normal hours of duty are less than 76 hours in each fortnight;

“**position**” includes any position at a TAFE College or a University TAFE Division in which a member of staff is employed, any position which is vacant and any position in which it is proposed to employ a member of staff;

“**power**” includes a function or duty;

“**remuneration package**” means the remuneration package for an executive officer determined in accordance with Schedule 1;

“**Secretary**” means the Secretary to the Department of Education;

“**statutory superannuation scheme**” has the same meaning as in the *Superannuation (Public Sector) Act 1992*; and

“University TAFE Division” means the TAFE division of a university referred to in section 6A (1) (b) of the Act.

(2) References in this Direction to amounts of remuneration are made on the basis that a position is a full-time position. In relation to a part-time position, a reference in this Direction to an amount of remuneration must be construed as a reference to an amount equal to—

$$\frac{HW}{76} \times \frac{AR}{1}$$

where—

HW represents the normal hours of duty in each fortnight of the occupant of the position;

AR represents the amount of remuneration for a full-time position.

Compliance with this Direction

1.7 (1) Subject to sub-clause (2)—

(a) Councils of TAFE Colleges must comply with and give effect to this Direction in the employment of staff by those Councils; and

(b) Councils of Universities which have a University TAFE Division must comply with and give effect to this Direction in the employment of staff in those University TAFE Divisions.

(2) This Direction is not intended to operate so as to confer or impose rights, liabilities or obligations as between a Council and a person employed by the Council or to affect the application of any law, employment agreement or State or Federal award which applies to a matter dealt with by this Direction. Nevertheless, to the extent that a Council has discretion under such a law, employment agreement or State or Federal award, the Council must comply with and give effect to this Direction in the exercise of that discretion.

(3) A Council must exercise its powers under section 34A (4) of the Act to require its College Director to exercise the Director’s powers in accordance with this Direction.

(4) A Council must take all practicable steps to ensure that its employees, servants and agents also give effect to this Direction.

PART 2—MANAGEMENT OF COLLEGE EMPLOYMENT

General Principles

2.1 In the management of employee relations a Council must have regard to—

- (a) the objectives and functions of the Council or institution; and
- (b) the efficient operation of the institution; and
- (c) the employee relations and economic policies of the Government of Victoria; and
- (d) the personnel management principles set out in section 8 of the *Public Authorities (Equal Employment Opportunity) Act 1990*; and
- (e) this Direction and any other guideline or direction under the Act; and
- (f) the health, welfare and safety of the staff and students of the institution and of any other person whose health, welfare or safety may be affected by the institution’s operations; and
- (g) all other requirements imposed on the Council under statute or at common law.

Management Practices

2.2 (1) Each Council must develop policies on employment and employee relations which are designed—

- (a) to ensure compliance with the principles of personnel management set out in section 8 of the *Public Authorities (Equal Employment Opportunity) Act 1990*; and
- (b) to ensure compliance with relevant State and Federal laws relating to employee relations and industrial relations; and
- (c) to ensure that all ongoing financial liabilities incurred by the institution in relation to employment can be satisfied out of the institution’s income.

(2) Councils must ensure that employment management practices are consistent with the policies developed in accordance with sub-clause (1).

(3) Councils must make copies of the policies prepared in accordance with sub-clause (1) freely available to members of staff.

Employment Agreements

2.3 A Council must ensure that an employment agreement does not contain a provision which is inconsistent with this Direction.

Consent Awards and Certified Agreements under the Commonwealth Industrial Relations Act 1988

2.4 (1) A Council must not consent to the making of an award under the Commonwealth Industrial Relations Act 1988.

(2) A Council must not make or be a party to an application under section 134c (3) of the Commonwealth Industrial Relations Act 1988.

Council Determinations

2.5 A Council must not make a determination under section 34c of the Act any provision of which is inconsistent with this Direction.

Hours of Duty

2.6 In negotiating employment agreements and in making determinations under section 34c of the Act, Councils will have regard to the fact that the current standard for hours of duty for the staff of TAFE Colleges and University TAFE Divisions is 38 hours each week with 4 weeks' annual leave.

Provision of Information to the Secretary

2.7 (1) A Council must provide to the Secretary a copy of every collective employment agreement at the same time as a copy is lodged with the Chief Commission Administration Officer in accordance with section 13 (1) of the *Employee Relations Act 1992*.

(2) A Council must provide to the Secretary a copy of every return under section 13 (2) of the *Employee Relations Act 1992* at the same time as the return is provided to the Chief Commission Administration Officer.

(3) A Council which becomes a party to an industrial dispute or other matter under the Commonwealth Industrial Relations Act 1988, or which enters into negotiations in relation to such a dispute or matter must immediately notify the Secretary.

PART 3—TERMS AND CONDITIONS OF EMPLOYMENT FOR NON-EXECUTIVE STAFF

Limit on Non-Executive Remuneration

3.1 (1) A Council must not pay a salary which is the same as or greater than the relevant sum specified in sub-clause (3) to a member of staff who is not an executive officer.

(2) A Council must not provide to a member of staff who is not an executive officer remuneration and employment benefits which, in total amount, are equal to or greater than \$73 181.

(3) The sums specified for the purposes of this clause are—

(a) in relation to a full-time member of staff, \$57 471; and

(b) in relation to a part-time member of staff, an amount equal to—

$$\frac{HW}{76} \times \frac{FTS}{1}$$

where—

HW represents the normal hours of duty in each fortnight of the occupant of the position;

FTS represents the sum specified in paragraph (a).

Redundancy

3.2 (1) Councils must ensure that an employment agreement in respect of a member of staff who is not a member of a statutory superannuation scheme and who is not an executive officer includes a statement about the entitlements, if any, of that member of staff in the event that his or her employment is terminated for redundancy.

(2) A Council must not, without the written consent of the Secretary, terminate the employment of a member of staff who is a member of a statutory superannuation scheme in circumstances which would constitute retrenchment for the purposes of that statutory superannuation scheme.

(3) If a Council does retrench a member of staff who is a member of a statutory superannuation scheme without the written consent of the Secretary, then the Council is liable for all employer liabilities incurred as a result of that retrenchment and must reimburse the Consolidated Fund or the relevant

superannuation scheme (as the case requires) the liability which the Secretary certifies in writing as having been incurred as a result of the retrenchment.

**PART 4—MATTERS TO BE CONTAINED IN
EMPLOYMENT AGREEMENTS OR
COUNCIL DETERMINATIONS**

Requirement to include certain matters

4.1 (1) A Council must ensure that employment agreements with members of staff contain provisions of the kind specified by this Part (where applicable), unless—

- (a) such a provision is included in another applicable employment agreement made on or after 1 July 1993 or in an award; or
- (b) the Secretary or the Director, OTFE gives written consent.

(2) If provisions of the kind specified by this Part do not apply to a member of staff under an employment agreement or award, then a Council must exercise its power under section 34c of the Act (to the extent that power allows) to determine terms and conditions of employment no less favourable than those specified by this Part.

Superannuation

4.2 In the case of staff who are not members of a statutory superannuation scheme, an employment agreement must—

- (a) include provisions setting out processes to be followed in cases of redundancy; and
- (b) include a statement of non-superannuation benefits, if any, in cases of redundancy; and
- (c) provide for the member of staff to be a member of a superannuation scheme which is a complying fund in accordance with the occupational superannuation standards and to which employer contributions are not less than the minimum requirement under the Commonwealth Superannuation Guarantee Charge Act 1992.

Sick Leave

4.3 (1) Every employment agreement must include provision for sick leave.

(2) In the case of a member of staff who was employed immediately prior to 1 July 1993, a provision in an employment agreement in

relation to sick leave must confer an entitlement which is not less than the entitlement that the member of staff had at that time.

Maternity, Paternity and Adoption Leave

4.4 (1) Every employment agreement must include provision for maternity, paternity and adoption leave.

(2) In the case of a member of staff who was employed immediately prior to 1 July 1993, a provision in an employment agreement in relation to paternity, maternity and adoption leave must confer an entitlement which is not less than the entitlement that the member of staff had at that time.

Long Service Leave

4.5 (1) In the case of a member of staff who was employed at an institution immediately prior to 1 July 1993, an employment agreement must confer an entitlement for long service leave which is not less than the entitlement that the member of staff had at that time.

(2) This clause does not apply in relation to a person whose entitlements in relation to long service leave are fixed by section 20 of the *Vocational Education and Training (College Employment) Act 1993*.

Leave for Jury Service

4.6 (1) Every employment agreement must include provision for leave for jury service.

(2) A provision in an employment agreement in relation to leave for jury service must confer an entitlement for a member of staff who is required, under the *Juries Act 1967*, to appear and serve as a juror in any court to leave with full pay for the period during which attendance of the member of staff at court is required.

WorkCover: make-up pay

4.7 (1) An employment agreement must not provide for make-up pay for a period greater than six months.

(2) In this clause, "make-up pay" means a payment to cover the difference between the normal monetary remuneration paid to a member of staff and any benefit paid to a member of staff under the *Accident Compensation Act 1985*.

Defence Force Service

4.8 Every employment agreement must include provision for leave for service in the Australian Defence Forces on terms no less

favourable than those which were fixed by Determination 29.5 of the *Public Service Determinations* 1985 as at 28 February 1993 in respect of members of the Victorian Public Service.

Portability of Entitlements

4.9 (1) Every employment agreement must provide for the recognition of entitlements, in relation to matters referred to in this Part, which have been accrued by members of staff who were, immediately before being employed at the relevant institution, employed—

- (a) by or in another TAFE College or University TAFE Division; or
- (b) in the Public Service of Victoria; or
- (c) by Deakin University; or
- (d) by La Trobe University; or
- (e) by Monash University; or
- (f) by the Royal Melbourne Institute of Technology; or
- (g) by the University of Melbourne; or
- (h) by Swinburne University of Technology; or
- (i) by Victoria University of Technology; or
- (j) by a public authority as defined by section 4 of the *Public Sector Management Act* 1992.

(2) This clause does not require a Council to include in an employment agreement provision for the recognition of entitlements greater than entitlements which would have accrued in respect of equivalent employment with that Council.

(3) A Council may not make recognition of entitlements under this clause conditional on a payment to the Council by the former employer.

PART 5—EXECUTIVE OFFICERS

Content of Contracts for Executive Officers

5.1 A Council must ensure that contracts of employment with executive officers are consistent with this Direction.

Content of Contracts of Employment for Executive Officers

5.2 (1) A contract of employment must specify the date on which it expires which must not be more than 5 years after the date on which it comes into force.

(2) A contract of employment may be varied at any time by a further contract between the

parties. However, the term of the contract may not be increased beyond 5 years.

(3) A contract of employment between an executive officer and his or her employer may contain provisions concerning some or all of the terms and conditions of employment including—

- (a) the duties of the executive officer's position (including performance criteria for the purpose of reviews of the officer's performance); and
- (b) the monetary remuneration and employment benefits for the executive officer as referred to in clause 5.4 (including the nomination of the amount of the remuneration package if a range of amounts has been specified in Schedule 1 for the remuneration package).

(4) A contract of employment may provide for any matter to be determined—

- (a) by further agreement between the parties; or
- (b) by further agreement between the executive officer and some other person specified in the contract; or
- (c) by the Minister, the Secretary or the Director, OTFE or some other person or body specified in the contract.

Performance Review and Performance-Related Incentive Payments

5.3 (1) The performance of an executive officer must be reviewed, at least annually, by the officer's employer or by some other person nominated by that employer.

(2) Any such review is to have regard to any performance criteria contained in the contract of employment and any other relevant matter.

(3) A performance-related incentive payment must not be made to an executive officer unless that payment is in accordance with the officer's contract of employment.

(4) A provision of a contract of employment in relation to the review of performance of an executive officer—

- (a) must provide for an annual assessment of performance; and
- (b) must specify criteria on which performance will be assessed and the process by which the assessment will be conducted.

(5) A provision of a contract of employment in relation to performance-related incentive payments—

- (a) must specify the amount of performance-related incentive payment which may be paid which must be expressed as a percentage (not more than 20%) of the remuneration package of the executive officer; and
- (b) must require any payment to be based on satisfactory work performance as determined by the employer in the annual assessment of performance; and
- (c) must require the amount of payment to be calculated annually as part of the annual assessment of performance; and
- (d) must provide that any payment to which the officer is entitled is not payable until completion of the period of appointment but that no payment is payable if the officer's employment is terminated before the completion of the contract for unsatisfactory performance or misconduct.

Remuneration Packages

5.4 (1) Schedule 1 specifies ranges of remuneration packages which may be provided to executive officers who are employed under contracts of employment at the relevant classification levels.

(2) A contract of employment may specify a remuneration package which is within the range of remuneration packages specified in Schedule 1 for the classification of the executive officer. If no remuneration package is specified in the contract of employment then the executive officer's remuneration package is the minimum amount for the relevant classification level.

(3) A contract of employment must specify the monetary remuneration and employment benefits to which the executive officer is entitled.

(4) At least 50 per cent of an executive officer's remuneration package must be taken as salary.

(5) The total amount of—

- (a) the annual rate of monetary remuneration for an executive officer; and
- (b) the annual cost to his or her employer of employment benefits provided for an executive officer—

under his or her contract of employment must be equal to the amount of the remuneration package for the executive officer.

Calculation of Employment Benefits

5.5 (1) The cost of employment benefits will be calculated in the manner approved in writing for the purposes of this Division by the Secretary or the Director, OTFE.

(2) The following payments are not to be included in the calculation of employment benefits—

- (a) performance-related incentive payments of the kind referred to in clause 5.3 made to an executive officer; or
- (b) remuneration or benefits to which an executive officer is otherwise entitled by law (such as fees for attendance at meetings); or
- (c) allowances payable under the contract of employment or a determination by the Council in accordance with clause 5.6.

Travelling and subsistence allowances, etc.

5.6 (1) A contract of employment may include entitlements for an executive officer to be paid—

- (a) travelling or subsistence allowances; and
- (b) allowances in relation to relocation expenses; and
- (c) other allowances in relation to expenses incurred in the discharge of the officer's duties.

(2) A Council may from time to time, in exercise of its powers under section 34c of the Act, determine allowances of the kind specified in sub-clause (1).

Classification of Management Staff Positions

5.7 (1) The employer in respect of a management staff position must assign a classification level to that position and the employer may vary that classification level from time to time.

(2) The classification level of a position of College Director may not be varied without the written consent of the Secretary or the Director, OTFE.

(3) The classification level of an existing management staff position is the level specified by Schedule 2 of this Direction in relation to the

salary payable in respect of that position on 30 June 1993.

(4) In this clause, "existing management staff position" means a position held by an executive officer to whom clause 7 of Schedule 2 to the Act applies.

Incumbent Executive Officers not employed under Contract

5.8 An employer may not increase the remuneration of a person who continues to hold a management staff position under clause 9 of Schedule 2 to the Act unless that person enters into a contract of employment for that position or unless the Secretary or the Director, OTFE give written consent.

Terms and Conditions of persons who do not enter into contracts of employment

5.9 Where, by operation of section 19 of the *Vocational Education and Training (College Employment) Act 1993*, a person is taken to be employed by a Council on 1 July 1993 and the salary payable to that person is the same as or exceeds the amount specified in clause 3.1 (3), then a Council must not, by employment agreement or by a determination under section 34c of the Act, vary the terms and conditions of that person's employment unless and until—

- (a) the position held by that person is declared under section 6b of the Act to be part of management staff; and
- (b) the person enters into a contract of employment for the position.

SCHEDULE 1

Ranges of Remuneration Packages for Executive Officers

<i>Column 1 Classification (TAFE Executive Level)</i>	<i>Column 2 Minimum</i>	<i>Column 3 Maximum</i>
	\$	\$
TEL 6	140 213	155 788
TEL 5	124 290	133 653
TEL 4	114 227	120 242
TEL 3	103 607	109 067
TEL 2	92 473	97 335
TEL 1	84 542	88 992

SCHEDULE 2

Translation of Incumbents to TAFE Executive Level Classifications

<i>Column 1 Existing Salary is— same or greater than</i>	<i>Column 2 New Classification (TAFE Executive Level)</i>
\$	\$
57 471	59 985 TEL 1
59 985	64 738 TEL 2
64 738	69 390 TEL 3
69 390	TEL 4

Dated 28 June 1993

DON HAYWARD
Acting Minister for Tertiary
Education and Training

Vocational Education and Training Act 1990

**TAFE MANAGEMENT STAFF POSITIONS
ORDER 1993**

Purpose of Order

1. The purpose of this Ministerial Order is to declare positions and classes of positions on the staff of TAFE Colleges and University TAFE Divisions to be part of those institutions' management staff.

Authority for Order

2. This Ministerial Order is made under section 6b of the *Vocational Education and Training Act 1990* and in accordance with section 13 of the *Interpretation of Legislation Act 1984* and all other enabling powers.

Name of Order

3. This Order is called the TAFE Management Staff Positions Order 1993.

Date of Effect

4. This Order takes effect on and from 2 July 1993.

Meaning of Terms

5. In this Order, unless inconsistent with the context or subject-matter—

"the Act" means the *Vocational Education and Training Act 1990*;

"position" includes any position at a TAFE College or University TAFE Division in which a staff member is employed, any position which is vacant and any position

in which it is proposed to employ a staff member;

“salary” means the total amount of monetary remuneration payable annually in respect of a position and includes allowances paid in money but does not include—

- (a) any performance-related incentive payment; or
- (b) any travelling or subsistence allowance; or
- (c) any allowances in relation to relocation expenses; or
- (d) any other allowances in relation to expenses incurred in the discharge of a staff member’s duties; and

“University TAFE Division” means the TAFE Division of a university referred to in section 6A (1) (b) of the Act.

Declaration of College Directors as Management Staff

6. The following positions are declared to be part of the management staff of the relevant TAFE College or University TAFE Division:

- (a) All positions of College Director referred to in section 34A (1) (a) of the Act;
- (b) The position of the director of the Technical and Further Education Division of the Royal Melbourne Institute of Technology referred to in section 25 (4) of the *Royal Melbourne Institute of Technology Act 1992*;
- (c) The position of director of the Technical and Further Education Division of the Swinburne University of Technology referred to in section 25 (4) of the *Swinburne University of Technology Act 1992*; and
- (d) The position of director of the Victoria University of Technology referred to in section 25 (4) of the *Victoria University of Technology Act 1990*.

Declaration of other Management Staff Positions

7. (1) The following positions are declared to be part of the management staff of the relevant TAFE College or University TAFE Division:

- (a) All positions for which the salary is the same as or exceeds the sum specified in sub-clause (2);

- (b) Where the normal hours of duty for a position are less than 76 hours in each fortnight, all positions for which the salary is the same as or exceeds the sum calculated in accordance with sub-clause (3).

(2) The sum specified for the purposes of this clause is \$57 471.

(3) The sum to be calculated for the purposes of sub-clause (1) (b) is equal to—

$$\frac{HW}{76} \times \frac{FTS}{1}$$

where—

HW represents the normal hours of duty in each fortnight of the occupant of the position;

FTS represents the sum specified in sub-clause (2).

(4) This clause applies to all positions whether in existence at the time this Order takes effect or whether created at a later time.

Dated 22 June 1993

DON HAYWARD
Acting Minister for Tertiary
Education and Training

Vocational Education and Training Act 1990

ABOLITION OF FLAGSTAFF COLLEGE
OF TECHNICAL AND FURTHER
EDUCATION

The Governor in Council, acting under section 23 of the *Vocational Education and Training Act 1990* and on a recommendation of the State Training Board of Victoria given in accordance with that section:

- 1. Abolishes the Flagstaff College of Technical and Further Education; and
- 2. Amends the Schedule to that Act by removing the name of “Flagstaff College of Technical and Further Education”.

This Order takes effect on and from 30 June 1993.

Dated 29 June 1993

Responsible Minister:

HADDON STOREY, QC, MLC
Minister for Tertiary Education and Training

DAMIEN O’SHEA
Clerk of Executive Council

Vocational Education and Training Act 1990
**ABOLITION OF COUNCIL OF FLAGSTAFF
COLLEGE OF TECHNICAL AND FURTHER
EDUCATION**

Purpose

1. The purpose of this Order is to abolish the Council of the Flagstaff College of Technical and Further Education and to assign its property, rights and obligations to the Council of the Western Metropolitan College of Technical and Further Education.

Authority

2. The Governor in Council makes this Order under section 24 of the *Vocational Education and Training Act 1990* and on the recommendation of the State Training Board of Victoria made in accordance with that section.

*Revocation of the Constitution of the Flagstaff
College of Technical and Further Education
Council Order 1991*

3. The Order in Council called the Constitution of the Flagstaff College of Technical and Further Education Council Order 1991 made on 23 December 1991, notice of which was published in the *Government Gazette* on 8 January 1992, is revoked and members of the Council established by that Order go out of office.

*Saving of validity of actions of the Abolished
Council*

4. This Order does not affect the validity or continuity of anything which has been validly done in accordance with the revoked Order before this Order takes effect.

Transfer of property, rights and obligations

5. On the day this Order takes effect—

- (a) all the real and personal property vested immediately before that day in the abolished Council or in any person in trust for that Council becomes vested in the Council of the Western Metropolitan College of Technical and Further Education, subject to any trusts attaching to the property; and
- (b) all rights and obligations of the abolished Council existing immediately before that day become the rights and obligations of the Council of the Western Metropolitan

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College of Technical and Further Education.

Meaning of Terms

6. **“Abolished Council”** means the Council of Flagstaff College of Technical and Further Education established by the revoked Order.

“Act” means the *Vocational Education and Training Act 1990*.

“Council of the Western Metropolitan College of Technical and Further Education” means the Council of that name established by the Order in Council made on 26 February 1991 called the Constitution of the Western Metropolitan College of Technical and Further Education Council Order 1991, as amended by the Order in Council made on 30 July 1991 called the Constitution of the Western Metropolitan College of Technical and Further Education (Amendment) Order 1991.

“Revoked Order” means the Order in Council called the Constitution of the Flagstaff College of Technical and Further Education Council Order 1991 made on 23 December 1991.

Date of Effect

7. This Order takes effect on and from 30 June 1993.

Dated 29 June 1993

Responsible Minister:

HADDON STOREY, QC, MLC
Minister for Tertiary Education and Training
DAMIEN O'SHEA
Clerk of Executive Council

*Vocational Education And Training (College
Employment) Act 1993*

The Governor in Council makes the following Order:

Dated 29 June 1993

Responsible Minister:

HADDON STOREY, QC, MLC
Minister for Tertiary Education and Training
DAMIEN O'SHEA
Clerk of Executive Council

TAFE COLLEGE EMPLOYMENT
(TRANSITIONAL PROVISIONS) ORDER
1993

under the *Post-Secondary Education Act*
1978.

Title

Interpretation

1. This Order may be cited as the TAFE College Employment (Transitional Provisions) Order 1993.

6. This Order is not intended to affect the application of the *Interpretation of Legislation Act* 1984 to matters which are the subject of this Order.

Commencement

General Transitional Provision

2. This Order comes into operation on the day on which it is published in the *Government Gazette*.

7. (1) If, immediately before 1 July 1993 any process, proceedings, transaction or other matter under Part III of the *Post-Secondary Education Act* 1978 or any provision of the *Public Sector Management Act* 1992 which applied to the TTS had been commenced but not completed, then those processes, proceedings, transactions or matters may be completed under those Acts as in force immediately before 1 July 1993.

Objective

3. The objective of this Order is to make provisions of a savings and transitional nature consequent on the enactment of the *Vocational Education and Training (College Employment) Act* 1993.

(2) Without limiting the generality of sub-clause (1), the following are processes, proceedings, transactions or matters to which that sub-clause applies—

Authorising Provision

4. This Order is made under the powers conferred by section 23 of the *Vocational Education and Training (College Employment) Act* 1993.

(a) the filling of vacancies advertised in the *TAFE Gazette* before 1 July 1993; and

(b) the finalisation of disciplinary processes against a former officer; and

(c) the finalisation of proceedings relating to an application under section 93 of the *Post-Secondary Education Act* 1978; and

(d) gratuities in relation to definite special work performed by a former officer before 1 July 1993; and

(e) the finalisation of any inquiry into the fitness and capacity of a former officer which commenced under section 91 of the *Post-Secondary Education Act* 1978; and

(f) any process under section 78 of the *Public Sector Management Act* in relation to redundancy.

Definitions

5. In this Order—

“**continuing provision**” means a provision of the *Post-Secondary Education Act* 1978 or of the *Public Sector Management Act* 1992 which continues to apply by operation of clause 7;

“**former officer**” means a person who was, immediately before 1 July 1993, an officer of the Technical and Further Education Teaching Service;

“**powers**” includes duties and functions;

“**Secretary**” means the Secretary to the Department of Education;

“**TAFE College**” means—

(a) a College listed in Schedule 1 to the Principal Act; and

(b) a TAFE Division of a university referred to in section 6A (1) (b) of the Principal Act as amended by the *Vocational Education and Training (College Employment) Act* 1993;

“**TAFE Gazette**” has the same meaning as in the *Post-Secondary Education Act* 1978; and

“**TTS**” means the Technical and Further Education Teaching Service established

Completion of Current Selection Processes

8. If a person has applied for a vacant TTS position which was advertised before 1 July 1993 in the *TAFE Gazette* and is subsequently promoted, transferred or appointed to that position, then that person must be taken to be employed by the Council of the TAFE College at which the advertised vacancy is located on and from the date of confirmation of the

promotion, transfer or appointment (as the case may be). In this case, the person must be taken to be employed from that date under an employment agreement with that College Council. The terms and conditions of such an employment agreement will be those which would have applied under section 19 of the *Vocational Education and Training (College Employment) Act 1993* had the person been the holder of the relevant TTS office immediately before 1 July 1993.

Completion of Current Disciplinary Processes

9. For the purposes of this Order, disciplinary processes against a former officer are to be taken as having commenced under the *Post-Secondary Education Act 1978* if, before 1 July 1993—

- (a) the former officer had been requested, in accordance with section 111 (1) of the *Post-Secondary Education Act 1978*, to provide a written explanation; or
- (b) the former officer had been informed in writing by the Secretary or a delegate of the Secretary that consideration was to be given to the taking of action against the officer under section 119 of the *Post-Secondary Education Act 1978*.

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Boards

10. (1) For the purposes of continuing provisions, the following Boards may continue to meet and to exercise powers and functions under those continuing provisions—

- (a) the Registration Board of technical and further education teaching service offices which was established by section 73 of the *Post-Secondary Education Act 1978*;
- (b) the Technical and Further Education Teaching Service Appeals Board which was established by section 107 of the *Post-Secondary Education Act 1978*;
- (c) the Technical and Further Education Discipline Appeals Board which was established under section 118 of the *Post-Secondary Education Act 1978*.

(2) If a member of a Board referred to in sub-clause (1) is not able or willing to serve on that Board or if a vacancy arises in the membership of that Board, the Secretary may appoint a suitably qualified person as member.

(3) In the case of the illness or absence of a member of a Board referred to in sub-clause (1), the Secretary may appoint a person to act in that member's position.

Expiry

11. This Order expires on 1 July 1994.



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