

South Australia

# **TAFE SA Bill 2025**

A BILL FOR

An Act to continue TAFE SA, to repeal the *TAFE SA Act 2012*, to make consequential amendments to certain other Acts, and for other purposes.

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**The Parliament of South Australia enacts as follows:****Part 1—Preliminary****1—Short title**This Act may be cited as the *TAFE SA Act 2025*.**5 2—Commencement**

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

**3—Object**

The object of this Act is to provide for TAFE SA to develop and deliver high quality, responsive and accessible technical and further education and training that—

- 10 (a) boosts productivity and supports South Australians to obtain the skills they require; and
- (b) contributes to the development of the State's current and future workforce, with a focus on essential and emerging industries; and
- 15 (c) supports the social and economic development priorities of the State through responsible fiscal management; and

- (d) is a critical enabler of inclusion and economic equality, with a focus on supporting groups that have experienced disadvantages in accessing education, training and work, as well as regional and remote students; and
- (e) contributes to delivering outcomes for First Nations people, with dedicated investment and action to promote equality in the provision of education, training and support to First Nations students; and
- (f) serves the community and the public interest through a focus on innovation, excellence, and equitable outcomes in training and employment; and
- (g) enriches the lives of students by providing an inclusive and culturally safe environment on TAFE SA campuses.

#### 4—Interpretation

In this Act—

**Chief Executive** means a person holding or acting in the office of Chief Executive of TAFE SA under section 14;

**Board** means the TAFE SA Board established under section 8;

**business plan**—see section 18;

**director** means a member of the Board of TAFE SA;

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

**technical and further education** means—

- (a) education and training recognised for the purposes of a law of the Commonwealth or a law of the State as—
  - (i) vocational education and training; or
  - (ii) higher education; or
- (b) other higher education and training in any academic, vocational or practical discipline including—
  - (i) further education and skills training; or
  - (ii) short courses; or
  - (iii) higher education for providing graduates with access to employment or further tertiary study; or
- (c) education and skills training delivered through applied learning methods and approaches where the curriculum is informed by industry.

## Part 2—Administration

### Division 1—TAFE SA

#### 5—TAFE SA

- (1) TAFE SA as established under the *TAFE SA Act 2012* continues in existence.

(2) TAFE SA—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name; and
- (d) has all the powers of an individual that are capable of being exercised by a body corporate.

(3) TAFE SA—

- (a) is an instrumentality of the Crown and holds its property on behalf of the Crown; and
- (b) is subject to the control and direction of the Minister.

(4) Any direction given to TAFE SA by the Minister must be in writing.

## **6—Functions and powers**

(1) The functions of TAFE SA are—

- (a) to provide technical and further education in a manner that is efficient, effective and responsive to the needs of industry, students and the general community; and
- (b) to provide education and skills training to persons that, if successfully completed or completed in conjunction with other training, may lead to those persons obtaining a qualification that enables them to participate in the workforce or in further education and training; and
- (c) to undertake or facilitate research in the State that relates to technical and further education for the benefit of the community; and
- (d) to implement training innovation and continuous improvement in the State for the benefit of the community, including—
  - (i) improving pathways through training to employment; and
  - (ii) contributing to the principles of lifelong learning; and
- (e) to provide consultancy or other services, for a fee or otherwise, in any area in which staff of TAFE SA have particular expertise developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education; and
- (f) to undertake or provide for the development or use, for commercial, community or other purposes, of any intellectual property, product or process created or developed (whether wholly or partly) in the course of, or incidentally to, the provision of technical and further education; and
- (g) to develop, make and enforce rules and policies relating to the administration, functions or powers of TAFE SA in accordance with this Act; and
- (h) to perform any other function assigned to it by the Minister; and
- (i) any other functions conferred on TAFE SA by or under this or any other Act.

(2) TAFE SA has power to do anything that is necessary for, or incidental to, its objects or functions under this or any other Act.

- (3) Without limiting subsection (2), TAFE SA may—
- (a) in providing technical and further education—
    - (i) provide services at campuses and premises established for the purpose, at industry and commercial premises and elsewhere, whether within or outside the State; and
    - (ii) provide appropriate student support services to assist students in achieving their education and training outcomes; and
    - (iii) provide services to domestic and international students; and
    - (iv) in order to provide students with practical training and experience—
      - (A) establish or carry on an enterprise or activity, for commercial, community or other purposes, in which students are to participate; and
      - (B) provide for the participation of students, on such conditions as TAFE SA thinks fit, in a commercial, community or other enterprise or activity carried on by some other person or body; and
    - (v) provide scholarships or establish other schemes to assist students; and
  - (b) hold, acquire, deal with and dispose of real and personal property; and
  - (c) authorise the use of land, buildings, equipment, facilities or services used for technical and further education for commercial, community or other purposes for a fee or otherwise; and
  - (d) participate in commercial or business activity in accordance with its objects and functions; and
  - (e) make and enforce policies in relation to anything associated with TAFE SA; and
  - (f) set and charge fees for goods and services and provide for the collection and waiver of such fees.
- (4) The net proceeds of any sale of an interest in property that is held by, on behalf or for the benefit of, TAFE SA must be applied towards a purpose or purposes associated with the provision of technical or further education within the State.
- (5) TAFE SA must undertake its commercial activities in accordance with prudent commercial principles and use its best endeavours to achieve a level of profit consistent with its functions.

## 7—Protection of proprietary interests

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

(c) in the course of a trade or business—

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

Maximum penalty: \$20 000.

(3) A consent under this section—

- (a) may be given with or without conditions (including conditions requiring payment to TAFE SA); and
- (b) must be given by written notice addressed to the applicant for the consent; and
- (c) may be revoked by TAFE SA for a breach of a condition by written notice given to a person who has the benefit of the consent.

(4) The Supreme Court may, on the application of TAFE SA, grant an injunction to restrain a breach of this section.

(5) The court by which a person is convicted of an offence against this section may, on the application of TAFE SA, order the convicted person to pay compensation of an amount fixed by the court to TAFE SA.

(6) Subsections (4) and (5) do not limit any civil remedy that may be available to TAFE SA apart from those subsections.

(7) The Minister may, by notice in the Gazette, declare a design to be a logo in respect of TAFE SA.

(8) In this section—

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

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

**official title** means TAFE SA.

## Division 2—TAFE SA Board

### 8—TAFE SA Board

(1) A Board of directors is established as the governing body of TAFE SA.

(2) The Board is to consist of not less than 6 and not more than 11 members appointed by the Governor.

- (3) The Board's membership must include persons who together have, in the Governor's opinion, the expertise, abilities and experience required for the effective performance of TAFE SA's functions including—

- (a) direct industry experience or direct experience in the education, training or employment sectors; and
- (b) knowledge or expertise in the education and training of persons who have experienced disadvantage in accessing education, training and work or are from regional or remote areas; and
- (c) skills, experience or expertise in commerce, corporate governance, economics, finance, law or management.

- (4) The Governor must seek to achieve a reasonable gender balance in the membership of the Board.

- (5) The Governor will appoint 1 of the members to chair meetings of the Board.

- (6) On the office of a director becoming vacant, a person may be appointed under this section to the vacant office.

## 9—Conditions of office of director

- (1) A director will be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.

- (2) A director is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

- (3) The Governor may remove a director from office on the recommendation of the Minister.

- (4) The Minister may recommend the removal of a director on any ground that the Minister thinks fit.

- (5) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
- (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (f) is removed from office under subsection (3).

## 10—Committees and subcommittees

- (1) The Board may establish committees or subcommittees as the Board thinks fit to advise TAFE SA on any aspect of its objects or functions, or to assist TAFE SA in the performance of its functions.

- (2) A committee or subcommittee established under subsection (1) may, but need not, consist of, or include, a director.

- (3) The procedures to be observed in relation to the conduct of business of a committee or a subcommittee of the Board will be—

- (a) as determined by the Board; or  
(b) insofar as the procedure is not determined by the Board—as determined by the relevant committee or subcommittee.

- (4) The *Public Sector (Honesty and Accountability) Act 1995* applies to a member of a committee or subcommittee of the Board as if the committee or subcommittee were an advisory body and the Minister responsible for the administration of this Act were the relevant Minister.

## 11—Board proceedings

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



**12—Common seal**

The following provisions apply in relation to the common seal of TAFE SA:

- (a) the seal can only be affixed to a document pursuant to a resolution of the Board to that effect;
- (b) TAFE SA may, by instrument under its common seal, authorise a director, an employee (whether nominated by name or by duties or position) or any other person to execute documents on behalf of TAFE SA subject to conditions and limitations (if any) specified in the instrument of authority;
- (c) the affixture of the seal to a document must be witnessed in accordance with any determination or policy of the Board;
- (d) if an apparently genuine document purports to bear the common seal of TAFE SA and appears to be duly witnessed, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal was duly affixed to the document.

**13—Minister's or Treasurer's representative may attend meetings**

- (1) A person authorised in writing by the Minister or the Treasurer may attend (but not participate in) any meeting of the Board and may have access to papers provided to directors for the purposes of the meeting.
- (2) If the Board considers that a matter dealt with at a meeting attended by a representative of the Minister or the Treasurer should be treated for any reason as confidential, the Board may advise the Minister or the Treasurer (as the case requires), of that opinion giving the reason for the opinion, and the Minister or the Treasurer may, subject to subsection (3), act on that advice as the Minister or the Treasurer thinks fit.
- (3) If the Minister or the Treasurer is satisfied on the basis of the Board's advice under subsection (2) that the Board owes a duty of confidence in respect of a matter, the Minister or the Treasurer (as the case may be) must ensure the observance of that duty in respect of the matter, but this subsection does not prevent the Minister or the Treasurer from disclosing the matter as required in the proper performance of ministerial functions or duties.

**Division 3—Chief Executive and other staff****14—Chief Executive**

- (1) There will be a Chief Executive of TAFE SA.
- (2) The Chief Executive will be responsible to the Board for the conduct of the business of the Board.
- (3) The Chief Executive will be appointed by the Governor on the recommendation of the Minister on terms and conditions approved by the Minister.
- (4) The Minister must consult with the Board before the Minister makes a recommendation for the purposes of subsection (3).
- (5) The Chief Executive may not be a director but may, on the invitation of the Board, attend a meeting of the Board in an advisory capacity.

- (6) The Board may appoint a suitable person to act in the office of Chief Executive during any period for which the Chief Executive is absent or unavailable to carry out official duties, or for which there is a temporary vacancy in the office.

### 15—Other staff

- (1) The other staff of TAFE SA comprise persons employed by the Chief Executive on terms and conditions determined, subject to this Act, by the Chief Executive.
- (2) Terms and conditions determined by the Chief Executive under subsection (1) must be approved by the Commissioner for Public Sector Employment.
- (3) The Minister may not give a direction to TAFE SA relating to the employment, transfer, remuneration, discipline or termination of employment of a particular employee of the Chief Executive.
- (4) The Chief Executive may enter into arrangements contemplated by section 5 of the *Superannuation Act 1988* with respect to an employee of the Chief Executive who was, immediately before the commencement of this section, a contributor under that Act.
- (5) A person who is transferred to the employment of the Chief Executive under this Act and who was immediately before the commencement of this section, a contributor under the *Superannuation Act 1988* may, subject to that Act, remain a contributor.
- (6) This Act does not exclude the operation of the *Fair Work Act 1994* in relation to persons employed under this section.

### 16—Use of staff etc of administrative unit of Public Service

The Chief Executive may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## Division 4—Rules

### 17—Power to make rules

- (1) TAFE SA may make rules in connection with the governance, operation or administration of TAFE SA (including TAFE SA grounds).
- (2) Without limiting subsection (1), a rule may do 1 or any of the following:
- (a) provide for the formation of an association of students, or students and staff, of TAFE SA for the purposes of promoting the interests of students or of students and staff;
  - (b) provide for matters relating to residential accommodation for students;
  - (c) provide a scheme for disciplinary action against students, including review of a decision to take disciplinary action;
  - (d) set standards relating to—
    - (i) student admission and selection; or
    - (ii) staff behaviour or conduct; or
    - (iii) academic standards applicable to staff or students;

- (e) regulate the driving, riding and parking of vehicles on TAFE SA grounds, including—
- 5           (i) imposing prohibitions and restrictions relating to speed, mass, traffic flow and other matters, requiring compliance with directions and providing for permits; and
- (ii) setting fees for the parking of motor vehicles on TAFE SA grounds and provide for the recovery of those fees; and
- (iii) removal from TAFE SA grounds by an authorised person of vehicles brought onto or left on the grounds in contravention of a rule;
- 10       (f) regulate the conduct of persons on or entering TAFE SA grounds;
- (g) provide for an authorised person to remove a person from TAFE SA grounds if the authorised person believes, on reasonable grounds, that the person—
- (i) has acted in contravention of a rule; or
- (ii) is intoxicated or affected by an illegal substance;
- 15       (h) provide for the confiscation by an authorised person of any thing brought onto, left on, possessed or used on TAFE SA grounds in contravention of a rule;
- (i) provide that an authorised person may request that a person provide their name and address (including evidence of their name and address) if the
- 20           authorised person believes, on reasonable grounds, that the person has acted in contravention of a rule;
- (j) provide that a matter or thing in respect of which a rule may be made is to be determined according to the discretion of TAFE SA or the Chief Executive;
- (k) impose monetary penalties (not exceeding \$2 500) for a contravention of a
- 25           rule (which must be paid to TAFE SA).
- (3) A copy of the proposed rules must be provided to each director at least 14 days before the meeting of the Board at which the rules are to be considered.
- (4) The *Legislative Instruments Act 1978* does not apply to a rule made under this section.
- (5) Rules made by TAFE SA—
- 30       (a) take effect on a day specified by the Board in the rule; and
- (b) must be made publicly available on a website determined by the Board.
- (6) A monetary penalty imposed for contravention of a rule is a debt due to TAFE SA and is recoverable by TAFE SA by action in a court of competent jurisdiction.
- (7) This section does not limit the ability of the Board to make and enforce policies that
- 35           apply in relation to TAFE SA or any part or aspect of TAFE SA.
- (8) In this section—
- authorised person** means a person authorised in writing by the Board for the purposes of this section.

## Division 5—Reporting and information requirements

### 18—Business plan

TAFE SA must prepare a business plan that—

- (a) sets out a budget in respect of a financial year (including estimates of its income and expenditure for that period); and
- (b) addresses the strategic direction of TAFE SA (including matters contained in any strategic plan of TAFE SA) in respect of a financial year or such other period as may be notified to TAFE SA by the Minister; and
- (c) complies with any other requirements notified to TAFE SA by the Minister in relation to the form or content of the plan.

### 19—Annual report

- (1) TAFE SA must, on or before 30 September in each year, provide a report to the Minister on the performance of its functions and the exercise of its powers under this Act during the previous financial year.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before each House of Parliament.

### 20—Provision of information to Minister

- (1) TAFE SA must, at the written request of the Minister, provide the Minister with information or documents in the possession or control of TAFE SA that the Minister may require in the manner and form specified by the Minister in the request.
- (2) If documents are provided to the Minister under this section, the Minister may make, retain and deal with copies of the documents as the Minister thinks fit.

## Division 6—Statement of priority

### 21—Minister may provide statement of priority

- (1) The Minister may, at any time, provide TAFE SA with a written statement (a *statement of priority*) outlining the government's priorities for TAFE SA in respect of a financial year or such other period specified by the Minister in the statement.
- (2) The Minister must, before providing a statement of priority to TAFE SA, consult with the Treasurer in relation to the proposed statement.
- (3) If the Minister provides a statement of priority under this section, TAFE SA must, in preparing its business plan, have regard to, and address the requirements set out in, the statement.

## Division 7—Delegation

### 22—Delegation

- (1) The Minister or the Chief Executive may delegate a function or power under this Act—
  - (a) to a specified person or body; or

- (b) to a person occupying a specified office or position.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or made subject to conditions; and
  - 5 (c) is revocable at will; and
  - (d) does not limit the power of the Minister or Chief Executive (as the case may be) to act in any matter; and
  - (e) may, if the instrument of delegation so provides, be further delegated.

## Part 3—Miscellaneous

### 23—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may—
  - 15 (a) provide for the terms and conditions on which employees are employed, their rights to leave of absence and any other privileges, their rights on retirement from employment and any other matter affecting their employment (and in doing so may relate to circumstances that occurred before the commencement of this section); and
  - (b) be of general, limited or varied application according to the matter, 20 circumstances or any other specified factor to which the regulation is expressed to apply; and
  - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act; and
  - 25 (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, TAFE SA or the Chief Executive.
- (3) Before a regulation is made under subsection (2)(a), the Minister must undertake consultation (in such manner as the Minister thinks fit) with employees who, in the opinion of the Minister, would be directly affected by the regulation, or persons who, 30 in the opinion of the Minister, represent such employees.
- (4) A provision of a regulation made under subsection (2)(c) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not 35 operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.

## Schedule 1—Repeal, amendments, saving and transitional provisions

### Part 1—Repeal of Act

#### 1—Repeal of *TAFE SA Act 2012*

5           The *TAFE SA Act 2012* is repealed.

### Part 2—Amendment of *Education and Children's Services Act 2019*

#### 2—Amendment of section 110—Interruption of service where officer leaves teaching service

10           Section 110(8), definition of *prescribed employment*, (f)—delete "*TAFE SA Act 2012*" and substitute:

*TAFE SA Act 2025*

#### 3—Amendment of section 113—Entitlement of persons transferred to the teaching service

15           Section 113(7), definition of *prescribed employment*, (f)—delete "*TAFE SA Act 2012*" and substitute:

*TAFE SA Act 2025*

### Part 3—Amendment of *South Australian Skills Act 2008*

#### 4—Amendment of section 23—Staff

20           Section 23—delete "*TAFE SA Act 2012*" wherever occurring and substitute in each case:

*TAFE SA Act 2025*

### Part 4—Saving and transitional provisions

#### 5—Interpretation

25           In this Part—  
*repealed Act* means the *TAFE SA Act 2012*.

#### 6—Continuation of Board and Chief Executive

- 30           (1) The board of directors established under section 7 of the repealed Act continues in existence and will, on and after the commencement of this clause, be taken to be the Board established under section 8.
- (2) A person holding office as a director under section 8 of the repealed Act immediately before the commencement of this clause continues as a director on and after that commencement as if the person was appointed under section 9.

- (3) The person holding office as chief executive of TAFE SA under section 12 of the repealed Act immediately before the commencement of this clause continues to hold office on and after that commencement as if the person was appointed under section 14.

**7—Staff**

- (1) A person employed by the chief executive under section 14 of the repealed Act as in force immediately before the commencement of this clause is transferred to the employment of the Chief Executive of TAFE SA on terms and conditions of employment that are the same as the terms and conditions of appointment as applied to the person immediately before that commencement, subject to this Act.
- (2) A transfer of a person under this clause does not constitute a breach of the person's contract of employment or termination of the person's employment, or affect the continuity of the person's employment for any purpose.
- (3) An application made by a prescribed employee to the Chief Executive under a provision of the repealed Act as in force immediately before the commencement of this clause will, on that commencement, be taken to have been made under the corresponding provision of this Act.