

Briefing Note:

TasTAFE (Skills and Training Business) Bill 2021

Introduction

The focus of this briefing will be the TasTAFE (Skills and Training Business) Bill 2021, but context is important, so some background for this legislation and the policy framework has been provided below.

As the legislation is now before the Upper House, we will begin with a short summary of more recent issues raised. We will respond to some of the new attempts from the State Government to justify the legislation.

You will also find some deeper analysis of Clauses in the Bill below.

Recent issues and Government claims

The Australian Education Union Tasmanian Branch provided an extensive submission on the Draft Bill, most of which remains relevant as the legislation is largely unchanged from the Draft Bill.

We were also provided with opportunity to brief Members of the Legislative Council on the TasTAFE (Skills and Training Business) Bill 2021, for which we were very grateful.

We would like to address some of the questions raised by MLCs, as well as addressing points raised in briefings and materials prepared by the State Government and the TasTAFE Board and CEO.

The topics covered in the initial part of this Briefing Note are:

- TasTAFE employment processes
- Meeting the needs of Tasmanian industry
- Employment conditions for TasTAFE teachers and staff

Publicly aired critiques of rarely concise or consistent. Here we deal with the key themes while noting that the Bill proposed will not address issues and, in some instances, exacerbate existing problems such as the teacher shortage.

TasTAFE employment processes

The TasTAFE CEO and State Government, through the Department of State Growth, have recently added a new claim as to why the TasTAFE (Skills and Training Business) Bill 2021 is needed: that employment processes in the State Service are somehow too “rigid” or “inflexible”.

Firstly, it is important to note that this apparent problem has not been raised in any of the processes that led to the State Government’s policy of expelling all TasTAFE teachers and staff from the public service. Concerns have never been raised with the AEU in any consultation, or previous or current rounds of bargaining on industrial agreements.

Flexibility already exists

Secondly, it would be incorrect to assert that there is not flexibility in the current employment options and processes available to TasTAFE. Here are options currently available under the existing model:

- Sessional teachers can be and are employed on a casual basis.
- Teachers and staff can be and are employed on fixed-term contracts.
- “Teachers under supervision”, without a Certificate IV Training and Assessment qualification, can be and are employed by TasTAFE, providing new teachers the time they need to obtain their teaching qualification while assisting qualified TasTAFE teachers to deliver courses and support student learning.
- Industry experts can be brought in for “masterclasses” or to add to the extensive industry experience and competence required of TasTAFE teachers.

Merit-based employment vs nepotism

Legislators should be very concerned about any move to avoid the sound State Service employment practices for people employed with public funding.

The recruitment practices of TasTAFE, as an employer of state service employees using taxpayer money, require it to meet standards of proper process and transparency.

Section 11 (2) of the Bill (more details below) gives the Board very broad powers to appoint staff as it “considers appropriate”, circumventing transparent, accountable and merit-based recruitment.

This is a backward step that threatens to take TasTAFE back to the dark days of nepotism scandals. The Government commissioned Audit Report of TasTAFE, released in 2018 followed a damning Integrity Commission report, identified as one of the issues the need to strengthen processes around recruitment and selection. It is unconscionable that the State Government, under whose watch the unethical behaviour at TasTAFE happened, would now seek to wind back transparency and accountability measures.

If there are problems with state service recruitment processes then they need to be urgently reviewed and any issues addressed, but across the board and not in just one area of Tasmania’s public service.

An Integrity Commission inquiry of 2017 found that employment processes were not followed by the TasTAFE CEO Stephen Conway and a beneficiary was someone with whom he had a conflict of interest and close relationship. The person was quickly promoted, progressing from a base salary of \$121,318 to \$176,167 in just 12 months, in addition to tens of thousands of dollars in “incentive payments” and other payments not offered to other employees.

The Integrity Commission found a position was created for the benefit of someone the TasTAFE CEO had a close relationship with, rather than any genuine needs of TasTAFE. The investigation found the failure to follow employment processes was also adopted by the Executive who benefitted initially.

The unethical employment practices and misuse of public money uncovered by the Integrity Commission was appalling and cost Tasmanians enormous amounts of money, as well as severely harming the reputation of TasTAFE.

This serious incident highlights the reason for public service employment processes. They are not needlessly inflexible and rigid. They are there to ensure people employed with public funds are chosen on merit and through proper process rather than nepotism.

Meeting the needs of Tasmanian industry

The most important consideration when addressing concerns raised about whether TasTAFE is meeting the needs of industry in Tasmania is whether the proposed legislation will do anything to better meet those needs.

There is nothing in the proposed legislation that will allow TasTAFE to do anything to meet industry needs they cannot already do.

The State Growth Briefing Note raises various issues that do not relate to the content of the TasTAFE (Skills and Training Business Bill) 2021, we offer some brief responses below:

- Out of hours training – already provided and can continue to be provided. There is no employment framework that provides the ability to compel staff to work hours they are not contracted for or agree to. Employment conditions such as hours of work are already flexible – teachers start as early as 6am and work well into the evenings. Changes to employment conditions that place any limits on these hours can be negotiated under the Tasmanian industrial relations system as well as the Fair Work system, in fact it is seen as a preferable system for achieving consensus and good industrial relationships.
- Seasonal training or training required at various times during the year – this is already provided and can continue to be provided. Nothing in the Bill changes these arrangements. It is the job of managers working with teachers and staff to engage with industry, plan and meet training requirements where possible. If there are policy or industrial constraints identified they can be addressed under the current system – employment Agreements that define working conditions would still require the approval of employees, as they do now.

Workforce planning and industry needs

We (the AEU) understand there has been some inability for TasTAFE to plan and react to industry needs and it is something we have raised several times with Government and TasTAFE. We put forward policies and procedures during the last EBA negotiations to address these issues because we knew that some teams were having issues with delivering programs. However, changes were deemed unnecessary by the State Government and TasTAFE management.

If proper workforce planning was done, then management would know where the high growth areas were and recruit and manage staff to meet needs.

TasTAFE teachers and education managers know industry needs very well. Teachers are required to maintain competency, which includes returning to work in their industries for periods of time.

Teachers attend industry professional learning to keep pace with evolving technologies and improve their teaching practice. For instance, automotive teachers attend industry workshops on electric vehicle technologies to be incorporated into their student learning.

So what is the main barrier to forward planning for industry needs?

The short answer is resources.

The TasTAFE Business Bill will not compel managers to do planning work that some may feel is not currently being done and it won't deliver TasTAFE education managers the time and resources they need to do planning work.

Here's what an AEU survey of TasTAFE members found:

- *In your general observations, do you believe the Educational Managers have enough time to do what is expected of them?* – 85% NO
- *Do you believe that the Educational Managers are well supported by senior management?* – 90% NO
- *Are you sufficiently resourced to deliver your training?* - 74% NO
- *Do you believe that the VET Consultants should be better resourced and staffed to support delivery teams?* – 89% YES

Just as funding the employment of more teachers would allow TasTAFE to enrol more students and better meet the needs of industry, additional resources would allow Education Managers to better engage with industry and do the forward planning required to meet their needs into the future.

Industry connections by management

Teachers have previously raised concerns about industry knowledge of Educational Managers and the need for improvement, but nothing was done by the State Government or TasTAFE executive management.

The Bill offers no changes to TasTAFE operations or governance structures that would address or improve the entity's ability to better engage with industry and manage workforce planning. In fact, the Bill diminishes TasTAFE's connection to industry needs by no longer requiring its Board to have industry experience or expertise in VET delivery.

Serving students and all Tasmanians

TasTAFE serves the Tasmanian people, our industries, students, and communities. It is not, and should never be, a vehicle for the public subsidy of individual businesses.

All businesses have the responsibility to train their staff for the work required of them, to ensure it is done safely, efficiently, and satisfactorily. TasTAFE can and does assist with the individual needs of businesses, but they are not resourced or compelled to address every unique training need of every business in Tasmania.

Every Registered Training Organisation, including TasTAFE, is required to meet national standards and follow national regulations. This includes industry training packages which are determined at the national level.

The TasTAFE (Skills and Training Business Bill) 2021 would not change the national standards and regulation TasTAFE is required to follow as an RTO and will not change the training packages developed by industry that have to be delivered.

TasTAFE performance

The evidence shows that TasTAFE is a national leader in student satisfaction, with consistently high employer satisfaction and apprentice completion rates.

In 2020, as in the previous two years, employer satisfaction was over 85%. Of note were responses to three quality indicator statements:

- Overall, we are satisfied with the training – 86%
- We would recommend TasTAFE to others – 87%
- We would recommend the training to others – 89%.

Student satisfaction is also recorded by the National Centre for Vocational Education Research (NCVER) and TasTAFE has received consistently high, nation-leading levels of student satisfaction.

Here's what the State Government had to say about student satisfaction in 2020:

TasTAFE gets top mark from students (Minister Rockliff, 2 July 2020)

Another outstanding achievement for TasTAFE with the latest data showing 91 per cent of TasTAFE graduates are satisfied with the overall quality of their training.

The National Centre for Vocational Education Research's (NCVER) VET Student Outcomes 2019 survey found TasTAFE is performing at a high level and meeting the needs of Tasmanian students.

The fantastic result is up from 88.4 per cent in the previous year and higher than the average of 88.1 per cent across vocational education and training (VET) providers nationally.

The survey also found 92.7 per cent of TasTAFE graduates would recommend their training to others, ahead of the national average of 90.6 per cent for all VET providers.

Tasmania also has the highest apprentice completion rates in the country, which means a tradie is more likely to complete in Tasmania than anywhere else in Australia, with TasTAFE training the majority of these apprentices.

Nothing in the TasTAFE Business Bill will improve these impressive results – in fact the Bill threatens to de-skill TasTAFE by cutting the conditions of TasTAFE teachers where a teacher shortage is already preventing TasTAFE from meeting the needs of students and industry.

It cannot be suggested with any seriousness that increasing the use of insecure forms of employment such as short-term contracts and casual employment will attract the quality teachers TasTAFE needs now and into the future.

Operating more like a business

In a survey in 2017, 97 per cent of TasTAFE teachers said their managers were “more focused on running a business and meeting budgets than educational outcomes”. This means managers are so concerned with budgets and bottom lines that education outcomes and engaging with industry have been

sacrificed. Yet the reason for the legislation is allegedly so TasTAFE can operate more like a business – this is likely to be more of what industry now says is failing.

If you examine the clause notes below in this Briefing Paper, you will find the Bill actually makes TasTAFE operate less like a business in many respects compared to the current model and legislation. For instance, the Minister may in fact have more influence over TasTAFE and TasTAFE would have powers not granted to any business in the private sector.

Employment conditions for TasTAFE teachers and staff

The Better Off Overall Test (BOOT)

Unfortunately, despite its name, the provision in the Fair Work Act called the Better Off Overall Test (BOOT) will not ensure TasTAFE employees have their working conditions protected.

We put this question about the BOOT to Kim Evans, Secretary of the Department of State Growth. Here is the written question and response of 20 October 2021:

Question: Does the Fair Work Act Better Off Overall Test (BOOT) mean that existing terms and conditions will automatically transfer under a new Enterprise Agreement?

Answer: No. The BOOT test applies as against the modern award.

Further explanation is given on the [Fair Work Commission](#) and it says:

“The better off overall test considers the terms that are more beneficial and less beneficial to employees in an agreement, compared to the terms in the relevant modern award. The better off overall test requires the identification of agreement terms which are more beneficial, and the terms which are less beneficial, and then an overall assessment is made as to whether employees would be better off under the agreement than under the relevant award.”

The BOOT does not consider the terms of an existing or previous Agreement, it only measures a proposed Agreement against the ‘Modern Award’. The Award that will cover future employees of TasTAFE is the Educational Services (Post-Secondary Education) Award 2020. While referred to as a “modern” Award it is better described as a “basic” award because its employment conditions and salaries are far inferior to the existing TasTAFE teaching awards and agreements.

Our analysis shows that teachers and staff would suffer a 30 percent pay cut, more in some cases, and lose many entitlements and conditions on the applicable basic award. The BOOT offers no protection to this loss. It is important to note that TasTAFE Teachers have no current Agreement in operation at this time and the Agreement covering TasTAFE support staff expires on 30th Jun 2022, the day proposed to transition all TasTAFE employees out of the public service.

Without an employment Agreement in operation at the time of transition, the conditions in expired Agreements will not be transferred under the Fair Work Act and every TasTAFE employee at the time will be dropped from their current conditions to the basic national Award. In other words, every TasTAFE employee will be much worse off on 1st July 2022 under the proposed legislation.

Employee flexibility and directing staff to work different hours

The existing TasTAFE employment structure is as flexible as any reputable industry in Tasmania. Basic industrial relation principles apply to all employers. Industry, as with TasTAFE, must consult with staff to vary their hours and remunerate accordingly. No employer can direct staff without notice or negotiation to work additional or different hours.

TasTAFE staff can and do work outside of normal hours, if required, and the current enterprise agreement enables this flexibility. Of course, employees are entitled to relevant remuneration for undertaking this work and it should be noted that students who would be attending session out of normal hours would also be entitled to receive similar payments if the training forms part of their employment as a trainee or apprentice.

In fact, the Tasmanian Traineeships and Apprenticeships Committee policy and guidelines, which can be found [here](#), state that all trainees and apprentices must be allowed to attend their RTO in normal paid time.

TasTAFE can also hire teachers on short term contracts - what are called “sessional teachers”. It can also employ Teachers Under Supervision who have industry expertise but not yet teaching qualifications.

The Bill does not increase the already very flexible employment options of TasTAFE.

Paying teachers more (market rates)

Recent comment from the State Government has included the astonishing statement that they want to pay TasTAFE teachers more, referring to ‘market rates’. This is astonishing for the union representing TasTAFE teachers because such a proposal has never been brought to negotiations by the State Government, which would be the forum where it can be delivered.

There are already mechanisms in the current Agreement that allow for TasTAFE teachers to be placed on higher salary scales in recognition of skills, qualification and experience. The Australian Education Union has proposed salary classification statements in the current round of bargaining that would allow employees to be moved to a higher salary scale where they meet those descriptors.

We have also proposed mechanisms to allow for higher wages to retain teachers in high industry demand areas, but the State Government has not yet agreed to these proposals.

Background/Summary

The TasTAFE Business Bill is just part of the Government's adopted policy for TasTAFE, our celebrated and award-winning public education and training institution.

In adopting the recommendations for TasTAFE that came out of the PESRAC Report just before the state election this year, the Government adopted a policy that turns away from public education and training as we know it.

Only one written submission to PESRAC made any criticism of TasTAFE and its current structure. Many submissions supported TasTAFE and called for additional investment to allow TasTAFE to lead economic recovery with quality training and education.

The single submission critical of TasTAFE came from lobby group NCK Evers, who called for a "Jetstar model" for TasTAFE. The submission, again the only one to do so, suggested removing all TasTAFE teachers and staff from the public service and into the private sector employment system.

The NCK Evers Network was founded by the PESRAC Chairman. The final PESRAC report almost replicated the wording of the NCK Evers submission in recommending, among other things, that teachers and staff at TasTAFE be expelled from the public service.

PESRAC did not consult with TasTAFE teachers or students. The TasTAFE CEO himself said the first he heard of the Government's new TasTAFE agenda was on the day the Premier announced it in his State of the State speech.

This lack of consultation shows in the report, now adopted as Government policy. PESRAC said "TasTAFE needs to be much more like the businesses that it serves". Yet this shows a complete misunderstanding of TasTAFE. Most students come to TasTAFE directly, not through a business.

TasTAFE had 18,059 students in the 2020 calendar year and 5,349 apprentices and trainees attached to a business or employer. Again, most students come to TasTAFE to start a career path, make themselves employable, add to their skills or obtain basic skills like literacy and numeracy. It's not a business, it's a public education and training institution that benefits individuals, industry, community, and our economy.

TasTAFE does not primarily serve individual businesses, it is a public education and training institution that serves the Tasmanian people, our community. It does so well and every dollar of public money invested is multiplied in economic benefit for Tasmania.

PESRAC recommended TasTAFE operate on a "full cost recovery" basis. Not only does this ignore the economic benefits of investment in TasTAFE, but it's also a certain recipe for the same decimation of TAFE that can be seen in New South Wales and South Australia where similar changes are being made.

Student and employer costs go up to recover costs, regional campuses that don't return enough money are closed and sold, courses that don't return a profit are cancelled and the quality of education and training falls as private training companies pick up the slack with cost-cut options.

The policy agenda is clear, written into PESRAC and adopted by the State Government, which brings us to the TasTAFE Business Bill.

The Government's rhetoric on this Bill seems to be that it's a magic pudding – change that gives everyone what they want without making any changes at all.

The reality is that the TasTAFE Bill changes almost nothing but the employment conditions of TasTAFE teachers and staff – which will make an existing teacher shortage worse, but I'll return to this point.

The first 34 pages of this Bill are almost entirely copied and pasted out of the current legislation governing TasTAFE. The rest, other than expelling TasTAFE staff from the public service, is governance, compliance and enforcement required because TasTAFE would no longer be subject to the requirements of a statutory authority as it is now, nor will it fit in the existing Government Business Enterprise legislation or the Employment Directions that cover state service employees.

There is nothing in this Bill that changes any of these governance frameworks substantially, and it is certainly not “bespoke” legislation when it is mostly copied from the existing framework.

Most importantly, this Bill does nothing to improve what TasTAFE can offer students or industry. All Registered Training Organisations are required to deliver accredited courses, written, and approved by industry at a national level. TasTAFE is an RTO and will still have to deliver these accredited courses and qualifications.

What this Bill does change is the employment of TasTAFE teachers and staff. It expels them from the public service and into the private sector employment system under the Fair Work Act.

Contrary to Government claims, this reduces the workplace rights of all employees and cuts their conditions. If there is not a current Agreement in place, which is currently the case as the TasTAFE Teachers Agreement expired on 30th June 2021, all staff will immediately fall onto the minimum national Award – a dramatic cut in pay and conditions.

If there is a new TasTAFE Teachers Agreement in place, conditions will still be lost at the end of that Agreement and the TasTAFE Business Bill has specific provision to reduce or limit “entitlements and rights to be consistent with an award or agreement that applies” - Section 47, subsection 7. So the Government wouldn't even have to wait until the end of an Agreement to begin cutting conditions.

If a TasTAFE teacher is currently on a fixed term contract that expires before 30th June and they are offered a new contract on 1st July, it will be on the minimum national Award, around 30 percent less pay and dramatically cut conditions. That's worse off, no doubt about it.

For non-teaching TasTAFE staff, their Public Sector Agreement expires on 30th June 2021, the very last day for these employees in the public service if the TasTAFE Business Bill is passed. A remarkable coincidence that means if a new Agreement is not in place before the current one expires all TasTAFE staff will be immediately dumped onto the minimum national Award conditions.

Government assurances mean nothing when it is not matched by the legislation presented.

There are two big questions about this Bill that have not been answered:

1. What exactly will TasTAFE be able to do under these new laws that they can't do now?
2. If the only substantial change is to change the employment arrangements of TasTAFE teachers and staff, why is this being done through legislation and not brought to good faith negotiations as required by the Industrial Relations Act?

There's a reason the Government hasn't answered the first question – because the answer is nothing. TasTAFE teachers can and do currently work through school holidays, some starting their day at 6:00am with employers and others finishing well into the evening at TasTAFE Drysdale restaurants.

As I already outlined, courses will be unchanged because they are industry accredited at the national level.

The evidence shows the Government doesn't even know what actual changes they want, because they've brought nothing of substance to negotiations on TasTAFE teacher conditions.

So, why is the Parliament being asked to take on a role that is already clearly defined by the Industrial Relations Act? Why are good faith negotiations being replaced by industrial relations through legislation?

We haven't had an answer to these questions from the Government. It's not as though the Government has put forward substantial proposals in negotiations that we've rejected. There's been no case in the Tasmanian Industrial Commission or wide-spread strikes and disputation.

In fact, during the previous round of TasTAFE Teachers Agreement negotiations with the AEU, the Government rejected proposals we put to them that would give TasTAFE more flexibility and recognise the work done by teachers out of ordinary hours.

The AEU is very keen to consistently improve what TasTAFE offers our students, industries and community. That's why we've always been such strong advocates for additional investment in facilities and the teachers we need.

Included in our current Log of Claims in TasTAFE Teachers Agreement negotiations is a proposal for a review of the TasTAFE organisational structure, to ensure it is fit for purpose and able to respond to learners' educational needs. We would welcome Legislative Council members undertaking a review of TasTAFE for this purpose and would fully commit to participating in any such review.

Given we can see no positive outcomes of the proposed legislation for students, staff, community or industry and the major change of removing teachers and staff from the public service will make an existing teacher shortage worse, we aren't in a position to recommend amendments that would make the Bill an improvement on the current TasTAFE legal framework.

The Bill - clauses and implications

Section 5 (Bill) – Function and powers of TasTAFE

No focus on accredited training or addressing Tasmania's workforce shortages

Despite revisions from the Draft Bill, the proposed functions and powers (PART 2, Section 5), still have a lesser focus on delivering quality and accredited training when compared to the existing [Training and Workforce Development Act 2013](#)

The following key functions that are in Section 57 of the current Training and Workforce Development Act 2013, are omitted in the TasTAFE Business Bill:

- (2)(a) to provide to persons vocational education and training that -- (i) benefits the Tasmanian economy and **builds the productivity of the Tasmanian workforce** (OMITTED)
- (2)(c) to develop, in consultation with relevant industry associations, models for the provision of vocational education and training to employed persons for the purposes of developing skills, **including developing skills needed to alleviate or prevent skill shortages in the Tasmanian workforce** (OMITTED)
- (2)(h) **to collaborate with principals of schools** in relation to the support of students as they move through school, vocational education and training (VET) and into further education or training and into the workforce. (OMITTED)

Commercial Activities – incidental to provision of education and training

TasTAFE has the power to undertake commercial activities, incidental to the provision of education and training. The intent of this section has not been explained, but it would allow TasTAFE's Intellectual Property (IP) to be sold off to private providers, as has happened in South Australia. From the perspective of wanting a robust and competitive TAFE for the long term benefit of Tasmanians, giving TAFE the capacity to sell off its intellectual property is disturbing. Disturbing not least as in the context of **Section 5 (3)(a)(ii)** there is capacity for privatisation to occur under the radar.

Section 5 (3)(a)(ii)

(3) TasTAFE has the following powers, subject to this Act:

- (a) the power to do all things necessary or convenient –
 - (ii) to undertake commercial activities incidental to the provision of vocational education and training or other education or training; or

Joint ventures

Section 5(3)(f) of the Bill enables TasTAFE to create ventures that could compete with TasTAFE itself, and these new ventures need not have employees subject to the Award(s) relating to TasTAFE's employees.

- **Risks** – this allows for the outsourcing of training and trainers in other states or countries and for the sale of TasTAFE's intellectual property.

- **Two-tiered workforce** - this allows the development of a two-tiered workforce where a subset of TasTAFE employees would be subjected to worse working conditions. Any venture should be subject to the same Award that relates to the TasTAFE's employees.
- **Sale of IP** – the Board is given the capacity to run a “hidden” sale of key intellectual property and courses that effectively privatises Tas TAFE over time, piece by piece.
- **Unclear purpose** – more explanation as to the purpose of these powers is required provided.

Section 5 (3) (f) with the written approval of the Minister and the Treasurer –

(i) to participate in a trust; or

(ii) to form, or participate in the formation of, a company; or

(iii) to participate in one or more of the following arrangements for the purpose of sharing the profits:

(A) a joint venture;

(B) a partnership;

(C) another formal arrangement;

Section 6 (Bill) – TasTAFE Board appointment

Under *existing* legislation, appointment of the TasTAFE Board members in the *Training and Workforce Development Act 2013* includes references to:

- a gender balance
- expertise in delivery of vocational education and training
- regional representation from all parts of Tasmania

In the Bill (Section 6) these are no longer requirements for consideration on appointment of Board members.

The existing legislation - the **Training and Workforce Development Act 2013** states:

Section 60. Board of Directors of TasTAFE

(1) TasTAFE has a Board of Directors consisting of 7 members appointed by the Minister.

(4) In appointing a person to the TasTAFE Board, the Minister is to –

(a) have regard to the need for the directors together to have –

(v) expertise in the provision of vocational education and training or other education or training; and

(DELETED)

(c) take into account the desirability of having as directors both men and women (DELETED)

(d) take into account the desirability of having as directors persons from all regions of Tasmania (DELETED)

Section 11 (Bill) – TasTAFE employees

The Bill allows TasTAFE to appoint an employee on “such terms and conditions that TasTAFE considers appropriate”.

Section 11 (2) of the Bill states:

A person may be appointed under subsection (1) on such terms and conditions that TasTAFE considers appropriate.

This is a very broad power and in the context of the removal of the transparent and fair process that applies to the appointment of state service employees to the new entity, which is the foundation of the community and employees’ faith in the public sector, it indicates an intention to move away from fair and managed employment practices and fair and transparent agreed Awards to a series of individual agreements.

There is no reason why protections, such as transparent and fair processes, could not have been maintained in this Bill. It is not these protections that inhibit recruitment but the loss of conditions and the unclear and unsettled future that TasTAFE employees face after being removed from public sector.

Section 12 (Bill) – Tasmanian employees expelled from State Service

Removes TasTAFE employees from Tasmanian public sector and industrial relations system and puts them under the power of the commonwealth – Fair Work.

Section 12. (3)

(3) A person appointing the TasTAFE CEO, or a TasTAFE employee, under this Division is not a public sector employer for the purposes of the Industrial Relations (Commonwealth Powers) Act 2009.

NOTES ON THIS CLAUSE AND THE FAIR WORK TRANSITION

- **No added flexibility** - there is no automatic additional flexibility regarding management’s power to direct employees that could not be negotiated under the current Tasmanian TasTAFE Awards.
- **Adversarial system** - The Commonwealth system (Fair Work) is time consuming and costly for workers and employers because it is an unduly technical and procedural system. In contrast, Tasmania’s Industrial Relations system operates on consensus and conciliation.
- We (AEU) as part of TasTAFE teachers Agreement negotiations have been seeking to explore options for the negotiation of new industrial arrangements for TasTAFE employees within the state jurisdiction, through good faith bargaining.
 - However, the introduction of this Bill in the middle of an Enterprise agreement bargaining, which is meant to be negotiated in good faith, is effectively usurping the process. The Government by seeking to circumvent the negotiation process and force changes to employment arrangements through overriding legislation. No other Tasmanian public servants are being treated in this way.
- **Existing employees immediately worse off** – The claim that no existing employees will be worse off” is a falsehood. The claim that no existing employees will be worse off is inaccurate because of the existing staff being forced out of the state service. This immediately disadvantages

employees as they lose access to the significant rights and protections of being a state service employee.

Caveats on the “expulsion” - one foot in, one foot out

The Government recognises that TasTAFE employees will be worse off under Fair Work and so has had to add several “no change” clauses to the Bill, in order to protect key entitlements such as superannuation and long service leave.

These include:

Section 12. (4) Long Service leave provision

The Long Service Leave (State Employees) Act 1994 applies to the TasTAFE CEO, and each TasTAFE employee, as if TasTAFE were a State authority within the meaning of that Act.

Section 12. (5) Superannuation

The TasTAFE CEO and each TasTAFE employee is an employee for the purposes of the Public Sector Superannuation Reform Act 2016.

Transitional arrangements – limited protection for existing staff

Existing employees will have entitlements protected for, we understand, a maximum of five years. However, this period of protection is dependent on having a current Agreement in place, which TasTAFE Teachers do not currently have, and support staff will not have after 30 June unless new agreements are made before then. The period of protection remains only until the current Agreement, in place at the time of the change, expires. As a party to the TasTAFE employment Agreements, the Government could refuse to sign new Agreements before the 30th of June, leaving current employees with no protected conditions whatsoever. Recent TasTAFE Teachers Agreements have had a period of operation of one to three years.

If an Agreement covering TasTAFE staff has expired prior to the transition, we understand no Agreement would be transferred over. Noting that under Fair Work Act (FWA) clause 768AK makes it clear that a transferred agreement is taken to be on the same terms as the original, and 768AM(1)(b) makes it clear that the copied state agreement applies to transferred employees if it “is in operation”. Given the Public Sector Unions Workers Agreement covering non-teaching staff at TasTAFE expires on 30th June 2022, they are very likely to be left without an Agreement in operation and workers at TasTAFE would be transferred without a current Agreement.

At this point those workers could be faced with having to work under the so-called modern award that would result in loss of conditions and pay. Our estimate is that pay rates for TasTAFE teachers would be cut by 30 percent in this situation.

How the transition to Fair Work paves way for salary cuts and reduction in conditions

The modern Award that will cover future employees of TasTAFE is the [Educational Services \(Post-Secondary Education\) Award 2020](#). While referred to as a “modern” Award it is better described as a “basic” award because its employment conditions and salaries are far inferior to the existing TasTAFE

teaching awards and agreements. See the appendix for a comparison of TasTAFE Agreement salary scale and of the Educational Services Awards.

The lesser pay and conditions on the *Education Services Award* will exacerbate the existing teacher shortage crisis in Tasmania.

The State Government have provided misleading information on transitional arrangements, claiming that the Fair Work Act somehow protects the current conditions and entitlements of TasTAFE staff. There is no such protection. The Better Off Overall Test (BOOT) has been referenced by the Government, but this test compares conditions to the basic national Award, not the terms of the employee's previous Agreement. In other words, conditions and entitlements for TasTAFE employees without a transitioning current Agreement would only be measured against the basic national Award, so there is no protection against 30 percent pay cuts and losses in conditions.

Section 17,18,10 – contradictions over control

These sections effectively ensure government retains control of TasTAFE. We note that the scope of the directions that the Minister can make have expanded to give them more control over TasTAFE. This directly contradicts the Government's pretext for creating a GBE – as the endorsed PESRAC report stated: "Tasmanian employers want TasTAFE to succeed but a key reason it's not doing so now is that it's operating with far too many constraints."

Section 32 – TasTAFE by-laws

It is inappropriate for an extremely broad power to create by-laws, that impose significant financial penalties that are subject to civil enforcement, be given to the TasTAFE Board. Interestingly no private provider can impose such a regime on its employees.

Section 37 – False and misleading information

This provision fails to meet even the most basic requirements for a fair and just disciplinary process. There are no provisions, such as, regarding representation or the right to reply. It also doubles the penalties that TAFE employees are currently subject to.

Section 40 – Suspension of employees

Firstly, the Act should make it clear that a suspended worker is to be suspended on full pay as per the current situation for TasTAFE employees. Secondly, sub section (2) (c) requires an expeditious inquiry, which prima facie is positive but there is no mention of ensuring that the process is procedurally fair and equitable. The result of this is that speed will have to be prioritised over fairness and equity.

Section 41 – Inquiries

This section in sub section (5) gives the committee of inquiry or CEO an unfettered discretion regarding how inquiries are managed. They can do it "in any manner that the person holding it thinks appropriate". The Bill does not provide a procedurally fair and equitable process that gives due process to the accused that does not allow the pursuit of a process that is as conducted as "expeditiously as possible" (s.41) to compromise due process.

Section 45 – Infringement notice offences

The only monetary penalty under the State Service Act relates to a breach of the Code of Conduct. There is also no equivalent broad right to create "by-laws", as per Section 33, that could be subject to a fine.

Employers in the private sector are unable to impose fines and no case has been made to justify TasTAFE having these unprecedented powers. If Section 46 remains it should be limited to those infringements relating to specific breaches of this Bill only.

Teachers Registration

The Bill, **Schedule 4**, removes the requirement for TasTAFE teachers to be registered by the Teacher Registration Board (TRB)

State Service Act 2000

1. *Schedule 1 is amended by omitting*

from Part 2.

Teachers Registration Act 2000

1. *Section 3 is amended as follows:*

(a) by omitting “or TasTAFE” from the definition of practicing teacher;

(b) by omitting “or TasTAFE” from the definition of student;

(c) by omitting the definition of TasTAFE and substituting the following definition:

TasTAFE *means TasTAFE as continued by the TasTAFE (Skills and Training Business) Act 2021.*

The Government has stated that it wishes to remove the requirement for TasTAFE teachers to be registered by the Teachers Registration Board (TRB), which is alongside a change of language use from the Minister. In the context of the recent independent report into child sexual abuse in DoE, why on earth would TasTAFE teachers no longer be TRB registered? The TRB plays an important independent role of assessing a person’s fitness to teach.

APPENDIX

SALARY SCALES - [Educational Services \(Post-Secondary Education\) Award 2020](#) – Fair Work Act

(c) Teachers and tutor/instructors

[15.1(c) varied by [PR718893,PR729334](#) ppc 01Jul21]

Employee classification level	Minimum annual rate ¹ (full-time employee)	Minimum weekly rate ² (full-time employee)	Minimum hourly rate	Casual daily rate ³	Casual hourly rate ⁴
	\$	\$	\$	\$	\$
Level 1	52,762.95	1011.43	26.62	252.70	50.54
Level 2	53,466.48	1024.92	26.97	256.07	51.21
Level 3	54,523.56	1045.18	27.50	261.13	52.23
Level 4	55,591.27	1065.65	28.04	266.24	53.25
Level 5	57,839.82	1108.75	29.18	277.01	55.40
Level 6	59,338.77	1137.48	29.93	284.19	56.84
Level 7	60,703.53	1163.65	30.62	290.73	58.15
Level 8	62,202.59	1192.38	31.38	297.91	59.58
Level 9	63,708.67	1221.25	32.14	305.12	61.02
Level 10	65,653.13	1258.53	33.12	314.43	62.89
Level 11	67,463.31	1293.23	34.03	323.10	64.62
Level 12	69,061.29	1323.86	34.84	330.75	66.15

Schedule B—Classifications—Teachers and Tutor/Instructors

B.1 Teachers and tutor/instructors will be paid according to the salary scale set out in clause [15.1\(c\)](#).

B.1.1 On appointment a teacher will be placed on a salary level commensurate with the minimum salary for their qualifications and experience as determined by this schedule. The progress for a teacher classified as Category A,B,C,or D will be as follows:

(a) Category A commences at Level 4 and progresses to a maximum of Level 12.

(b) Category B commences at Level 3 and progresses to a maximum of Level 12.

(c) Category C commences at Level 2 and progresses to a maximum of Level 12.

(d) Category D commences at Level 1 and progresses to a maximum of Level 9.

Provided that a Category D employee who achieves Level 9 may be promoted beyond that level where that employee can demonstrate that they are able to carry on the full duties of a Category A, B, or C teacher.

B.3 Teachers other than TESOL teachers

B.3.1 A teacher other than a TESOL teacher will be classified in accordance with the following:

(a) Category A—a teacher with a 5-year degree or equivalent at university level in a field relevant to the teaching area.

(b) Category B—a teacher with a 4-year degree or equivalent at university level in a field relevant to the teaching area.

(c) Category C—a teacher with a 3-year degree or equivalent at university level in a field relevant to the teaching area.

(d) Category D—any other teacher, including a Vocational Education and Training (VET) tutor who has the qualifications required by the accredited curriculum or training package and who delivers and/or assesses nationally recognised competency-based training which may result in a qualification or Statement of Attainment under the Australian Recognition Framework (ARF).

SALARY SCALES – TasTAFE Teachers Agreement 2019 – Current Agreement

Note: teacher salaries finish at Band 1, Level 9 as an Advanced Skills Teacher 1. Band 1, Level 8 is the top of the unpromoted teacher scale.

Salaries above Band 1, Level 9 are non-teaching positions.

ANNUAL SALARIES

Classification	Current salary from August 2019	2.3% increase from FFPPCOOA 1 March 2020	2.3% increase from FFPPCOOA 1 March 2021
Band 1, Level 2	\$67,032	\$68,574	\$70,151
Band 1, Level 3	\$73,359	\$75,046	\$76,772
Band 1, Level 4	\$77,342	\$79,121	\$80,941
Band 1, Level 5	\$81,115	\$82,981	\$84,890
Band 1, Level 6	\$85,291	\$87,253	\$89,260
Band 1, Level 7	\$89,632	\$91,694	\$93,803
Band 1, Level 8	\$93,792	\$95,949	\$98,156
Band 1, Level 9	\$97,037	\$99,269	\$101,552
Band 2, Level 1	\$105,107	\$107,524	\$109,997
Band 2, Level 2	\$109,884	\$112,411	\$114,996
Band 3, Level 1	\$105,107	\$107,524	\$109,997
Band 3, Level 2	\$111,821	\$114,393	\$117,024
Band 3, Level 3	\$117,634	\$120,340	\$123,108
Band 3, Level 4	\$126,381	\$129,288	\$132,262
Band 3, Level 5	\$134,160	\$137,246	\$140,403
Band 3, Level 6	\$139,076	\$142,275	\$145,547
Band 3, Level 7	\$143,638	\$146,942	\$150,322
Band 3, Level 8	\$149,146	\$152,576	\$156,085