



TAFE Queensland Act 2013

Current as at 30 June 2017



Queensland

TAFE Queensland Act 2013

Contents

		Page
Part 1	Preliminary	
1	Short title	5
2	Commencement	5
3	Dictionary	5
4	References to functions	5
Part 2	TAFE Queensland	
Division 1	Establishment	
5	Establishment and status	6
6	TAFE Queensland represents the State	6
7	Application of other Acts	6
Division 2	Functions and powers	
8	Functions	7
9	Key objective	8
10	Powers	8
11	Extraterritoriality	8
Division 3	Board	
Subdivision 1	Establishment and functions	
12	Establishment	9
13	Functions	9
Subdivision 2	Membership	
14	Eligibility for appointment	9
15	Conditions of appointment	10
16	Term of appointment	10
17	Chairperson	11
18	Deputy chairperson	11
Subdivision 3	Other provisions about board	
19	Disqualification from membership	12

Contents

20	Resignation	13
21	Leave of absence	14
22	Disclosure of interests	14
23	Duty to act in TAFE Queensland's interest	15
Division 4	Chief executive officer	
24	Appointment	15
25	Conditions of appointment	15
26	Responsibilities	16
27	Appointment of acting chief executive officer	16
28	Resignation	16
Division 5	Other staff	
29	Other staff	16
30	Work performance arrangements	17
31	Interchange arrangements	18
32	Preservation of rights of public service employee appointed to TAFE Queensland	18
33	Preservation of rights of TAFE Queensland employee appointed to public service	19
Division 6	Criminal history	
34	Report about person's criminal history	19
35	Criminal history is confidential document	20
36	Requirement to disclose changes in criminal history	21
Part 3	Planning and accountability	
Division 1	Operational plans	
Subdivision 1	Preliminary	
37	Definition for div 1	22
38	Purpose of div 1	22
Subdivision 2	Making plan	
39	Preparation of draft plan	22
40	Content of plan	23
41	When plan has effect	23
42	Plan pending agreement	24
Subdivision 3	Compliance and other matters	
43	Requirement to comply	24
44	Amendment of plan	24
45	Relationship with FA Act plan	24

Division 2	Powers of Minister	
46	Minister may require information	25
47	Minister may give direction in public interest	25
48	Notice of concern about financial viability	25
Part 4	Restructuring TAFE	
49	Relevant TAFE entities	27
50	Transfer of assets, liabilities etc. to relevant TAFE entity	27
51	Ministerial direction	30
52	Registering authority to register or record transfer or other dealing	31
53	Regulation dissolving statutory TAFE institute	32
54	References in documents after dissolution	33
55	Rights of transferred employees etc.	33
56	Things done under this part	34
57	Effect on legal relationships	35
Part 4A	Dual sector entities	
Division 1	Preliminary	
57A	Definitions	36
Division 2	Establishing dual sector entity	
57B	Dual sector entity may be prescribed	36
Division 3	Operational plans	
57C	Application of division	37
57D	Relationship with operational plan requirements under FA Act	37
57E	Purpose and operation of division	37
57F	Preparation of draft plan	37
57G	Content of plan	38
57H	When plan has effect	39
57I	Plan pending agreement	39
57J	Requirement to comply	40
57K	Amendment of plan	40
57L	First operational plan	40
Division 4	Reporting to the Minister	
57M	Application of division	41
57N	Quarterly reports	41
57O	Notice of proposed significant action	42
57P	Minister may require information	42
Division 5	Minister's reserve powers	

Contents

57Q	Application of division	43
57R	Minister may give direction in public interest	43
57S	Notice of concern about financial viability because of direction	43
Division 6	Payment of returns	
57T	Application of division	44
57U	Requirement to pay annual return	45
57V	Amount of annual return	45
Division 7	Miscellaneous	
57W	Annual report	46
57X	Review of performance of VET operations	46
Part 5	Miscellaneous provisions	
Division 1	TAFE brand	
58	Use of protected terms	46
59	Injunction to prevent or restrain a contravention	48
Division 2	Delegations	
60	Delegation by TAFE Queensland	49
61	Delegation by chief executive officer	49
62	Delegation by Minister	49
Division 3	Other matters	
63	Crime and Misconduct Act 2001	49
64	Annual report	50
65	Protection from liability	50
66	Protection of confidentiality	50
67	Regulation-making power	51
Part 6	Transitional provisions for TAFE Queensland Act 2013	
68	Appointment of TAFE Queensland's first chief executive officer	52
69	TAFE Queensland's first operational plan	52
Schedule 1	Dictionary	53

TAFE Queensland Act 2013

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

Part 1 Preliminary

1 Short title

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

2 Commencement

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

3 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

4 References to functions

In this Act—

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

Part 2 TAFE Queensland

Division 1 Establishment

5 Establishment and status

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

6 TAFE Queensland represents the State

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

7 Application of other Acts

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

Division 2 Functions and powers

8 Functions

- (1) TAFE Queensland has the following functions—
 - (a) to provide vocational education and training services;
 - (b) to provide further education, and other forms of education, to support and complement the provision of vocational education and training services;
 - (c) to produce and sell vocational education and training products;
 - (d) to prepare, publish, distribute or license the use of literary or artistic work, audio or audiovisual material, or computer software;
 - (e) to undertake research and development on matters relating to its functions;
 - (f) to contribute to and actively engage with industry on matters relating to its functions;
 - (g) to exploit commercially TAFE Queensland’s resources, including any study, research or knowledge or the practical application of any study, research or knowledge;
 - (h) to report to the Minister on the performance of its functions;
 - (i) to advise and make recommendations to the Minister about matters relevant to the performance of its functions and any other matters referred to it by the Minister;
 - (j) any other functions given to it under an Act.
- (2) TAFE Queensland is to perform its functions—
 - (a) in a way that is efficient, effective and responsive to the needs of industry, students and the general community; and

(b) on a not-for-profit basis.

9 Key objective

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

10 Powers

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

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

11 Extraterritoriality

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

Division 3 Board

Subdivision 1 Establishment and functions

12 Establishment

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

13 Functions

The board has the following functions for TAFE Queensland—

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

Subdivision 2 Membership

14 Eligibility for appointment

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

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

15 Conditions of appointment

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

16 Term of appointment

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

17 Chairperson

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

18 Deputy chairperson

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

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

Subdivision 3 Other provisions about board

19 Disqualification from membership

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

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

20 Resignation

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

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

21 Leave of absence

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

22 Disclosure of interests

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

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

Maximum penalty—100 penalty units.

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

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

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

23 Duty to act in TAFE Queensland's interest

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

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

Division 4 Chief executive officer

24 Appointment

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

25 Conditions of appointment

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

26 Responsibilities

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

27 Appointment of acting chief executive officer

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

28 Resignation

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

Division 5 Other staff

29 Other staff

- (1) TAFE Queensland may employ other staff it considers appropriate to perform its functions, including, for example, on a temporary basis to meet temporary circumstances.
- (2) The other staff are appointed under this Act and not the *Public Service Act 2008*.

30 Work performance arrangements

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

Examples of another entity—

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

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

31 Interchange arrangements

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

Note—

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

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

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

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

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

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

Division 6 Criminal history

34 Report about person's criminal history

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

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

35 Criminal history is confidential document

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

Maximum penalty—100 penalty units.

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

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

36 Requirement to disclose changes in criminal history

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

Maximum penalty—100 penalty units.

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

Part 3 Planning and accountability

Division 1 Operational plans

Subdivision 1 Preliminary

37 Definition for div 1

In this division—

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

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

38 Purpose of div 1

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

Subdivision 2 Making plan

39 Preparation of draft plan

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

40 Content of plan

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

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

41 When plan has effect

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

42 Plan pending agreement

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

Subdivision 3 Compliance and other matters

43 Requirement to comply

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

44 Amendment of plan

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

45 Relationship with FA Act plan

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

Division 2 Powers of Minister

46 Minister may require information

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

47 Minister may give direction in public interest

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

48 Notice of concern about financial viability

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

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

Part 4 Restructuring TAFE

49 **Relevant TAFE entities**

- (1) Each of the following entities is a *relevant TAFE entity*—
 - (a) the department;
 - (b) TAFE Queensland;
 - (c) a TAFE institute;
 - (d) a statutory TAFE institute;
 - (e) a dual sector entity;
 - (f) an entity prescribed under a regulation for this section.
- (2) However, the regulation may only prescribe—
 - (a) an entity established under an Act; or
 - (b) an entity ultimately owned by a relevant TAFE entity or the State.

50 **Transfer of assets, liabilities etc. to relevant TAFE entity**

- (1) A regulation (a *transfer regulation*) may make provision about all or any of the following for a relevant TAFE entity—
 - (a) the transfer of a business, asset or liability of the relevant TAFE entity to another relevant TAFE entity;
 - (b) the consideration for a business, asset or liability transferred under paragraph (a);
 - (c) the grant of a lease, easement or other right from the relevant TAFE entity to another relevant TAFE entity;
 - (d) the variation or extinguishment of a lease, easement or other right held by the relevant TAFE entity;
 - (e) for a lease held by the relevant TAFE entity under the *Land Act 1994*—
 - (i) transferring the lease; or
 - (ii) changing a purpose for which the lease is issued; or

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

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

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

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

record includes any document.

51 Ministerial direction

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

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

board, of a relevant entity, means—

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

relevant entity means—

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

52 Registering authority to register or record transfer or other dealing

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

Example—

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

(3) In this section—

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

53 Regulation dissolving statutory TAFE institute

(1) This section applies if all the assets and liabilities of a statutory TAFE institute have become the assets and liabilities of another relevant TAFE entity or have been otherwise disposed of by the statutory TAFE institute.

(2) A regulation may—

(a) dissolve the statutory TAFE institute; and

(b) make provision about—

(i) any matter relating to the dissolution for which it is necessary or convenient to make provision; and

(ii) the preparation of the institute's final statements and report; and

(iii) access to information and documents for preparing the institute's final statements and report; and

(iv) the entity that is to prepare the institute's final statements and report.

(3) Subsection (2)(b)(iv) applies despite the *Financial and Performance Management Standard 2009*, sections 48(1) and 53.

(4) In this section—

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

54 References in documents after dissolution

- (1) This section applies if a regulation is made under section 53 to dissolve a statutory TAFE institute.
- (2) A reference in a document to the institute is, if the context permits, taken to be a reference to—
 - (a) one or more relevant TAFE entities prescribed under a regulation; or
 - (b) if no entity is prescribed—the relevant TAFE entity to which the institute’s assets and liabilities were transferred before its dissolution.

55 Rights of transferred employees etc.

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

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

commencement means the day this section commences.

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

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

56 Things done under this part

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

57 Effect on legal relationships

- (1) Nothing done under this part—
- (a) makes a relevant entity liable for a civil wrong or a contravention of a law or for a breach of a contract or confidence; or
 - (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (c) except as provided for under a transfer regulation, is taken to fulfil a condition that—
 - (i) terminates, or allows a person to terminate, an instrument or obligation; or
 - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
 - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iv) requires any money to be paid before its stated maturity; or
 - (d) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this part, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this Act, giving notice to a person would be necessary to do something under this part, the notice is taken to have been given.
- (4) In this section—

relevant entity means—

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

Part 4A Dual sector entities

Division 1 Preliminary

57A Definitions

In this part—

dual sector entity means an entity prescribed as a dual sector entity under division 2.

VET operations, in relation to a dual sector entity, means the operations of the dual sector entity that involve the delivery of vocational education and training.

Division 2 Establishing dual sector entity

57B Dual sector entity may be prescribed

- (1) A regulation may prescribe an entity as a dual sector entity.
- (2) The Minister may recommend the making of a regulation under subsection (1)—
 - (a) only with the entity's agreement; and
 - (b) only if the Minister is satisfied the entity is a suitable entity for performing VET operations at an appropriate standard.

Division 3 Operational plans

57C Application of division

- (1) This division applies to a dual sector entity in the performance of all its operations.
- (2) However, if a regulation under this section prescribes a day for the entity, this division applies to the entity on and from the prescribed day only to the extent of the performance of its VET operations.

57D Relationship with operational plan requirements under FA Act

- (1) The requirements applying to a dual sector entity under this division are in addition to any requirements about an operational plan that may apply to the entity as a statutory body or otherwise under the FA Act.
- (2) Subsection (1) does not stop the dual sector entity combining its compliance with this division with its compliance with the FA standards to the extent it is reasonable and practicable to do so.

57E Purpose and operation of division

The purpose of this division is to require a dual sector entity to have an operational plan and to comply with the plan.

57F Preparation of draft plan

- (1) A dual sector entity must give the Minister, for the Minister's agreement, a draft operational plan for each operational plan year for the entity (the *relevant year*).
- (2) This section does not apply for a dual sector entity's first operational plan as provided for in section 57L.
- (3) The draft must be given at least 2 months before the start of the relevant year.

[s 57G]

- (4) It is Parliament's expectation that the Minister and the dual sector entity should reach agreement about the draft plan at least 1 month before the start of the relevant year.
- (5) Despite subsections (3) and (4), if an entity becomes a dual sector entity in the last 3 months immediately before the start of the relevant year—
 - (a) the draft plan must be given as soon as possible; and
 - (b) it is Parliament's expectation that the Minister and the dual sector entity should reach agreement about the draft plan as soon as possible, whether before or after the start of the relevant year.

Note—

Section 57L would nevertheless apply to require a first draft operational plan for the period before the relevant year starts.

- (6) In this section—

operational plan year, for a dual sector entity, means—

 - (a) if the dual sector entity is a university established under an Act—the period stated under that Act as the university's financial year; or
 - (b) otherwise—
 - (i) a financial year; or
 - (ii) a period of 1 year, other than a financial year, prescribed under a regulation.

57G Content of plan

- (1) A dual sector entity's operational plan must to the greatest practicable extent conform with the requirements for an operational plan applying under the FA standards.
- (2) Despite subsection (1), a dual sector entity's operational plan must include, for the operational plan year to which it relates, the following matters about the entity—
 - (a) an outline of its objectives;

-
- (b) its financial and non-financial performance targets for its operations;
 - (c) performance indicators for the performance targets;
 - (d) an outline of the nature and scope of the activities proposed to be undertaken during the operational plan year;
 - (e) an outline of the major investments and borrowings proposed to be undertaken;
 - (f) an outline of policies about managing the risk associated with investments or borrowings that may adversely affect its financial position;
 - (g) an outline of the arrangements for people performing work for it, including as employees;
 - (h) the information required to be given to the Minister in quarterly reports under division 4;
 - (i) any other information required to be given to the Minister during the year and when it is to be given;
 - (j) any other matter relevant to its operations and required to be included in the operational plan by the Minister.

57H When plan has effect

- (1) When a dual sector entity's draft operational plan is agreed to by the Minister, the draft operational plan becomes the entity's operational plan for the operational plan year to which it relates.
- (2) The Minister's agreement may be given subject to conditions.

57I Plan pending agreement

- (1) This section applies if a draft operational plan has not been agreed to by the Minister, as provided for in section 57F, by the start of the operational plan year to which it relates.
- (2) The draft operational plan submitted, or last submitted, by the dual sector entity to the Minister, with any modifications

made by the entity at the direction of the Minister, whether before or after the plan was submitted, is taken to be its operational plan.

- (3) Subsection (2) applies until a draft operational plan becomes the dual sector entity's operational plan as provided for in this division.

57J Requirement to comply

A dual sector entity must comply with its operational plan for each operational plan year.

57K Amendment of plan

- (1) A dual sector entity may amend its operational plan only with the Minister's written agreement.
- (2) The Minister's agreement may be given subject to conditions.
- (3) The Minister may, by notice, direct a dual sector entity to amend its operational plan.

57L First operational plan

- (1) This section applies for when an entity first becomes a dual sector entity.
- (2) The dual sector entity's first draft operational plan must be—
 - (a) for the period starting on the day it becomes a dual sector entity (the *start day*) and ending at the end of the operational plan year; and
 - (b) given to the Minister as soon as possible after the start day.
- (3) It is Parliament's expectation that the Minister and the dual sector entity should reach agreement about the first draft operational plan as soon as possible.
- (4) If the Minister and the dual sector entity have not reached agreement within 3 months after the start day, the first draft

operational plan submitted, or last submitted, by the entity to the Minister is taken to be its first operational plan.

- (5) Subsection (4) applies until the first of the following to happen—
- (a) the dual sector entity's first draft operational plan is agreed to by the Minister;
 - (b) the commencement of the plan that is, or is taken to be, the entity's operational plan for the entity's next operational plan year.

Division 4 Reporting to the Minister

57M Application of division

- (1) This division applies to a dual sector entity in the performance of all its operations.
- (2) However, if a regulation under this section prescribes a day for the entity, this division applies to the entity on and from the prescribed day only to the extent of the performance of its VET operations.

57N Quarterly reports

- (1) A dual sector entity must give the Minister a report on the entity's operations for each quarter.
- (2) A quarterly report must be given to the Minister—
 - (a) within 6 weeks after the end of the quarter; or
 - (b) if another period after the end of the quarter is agreed between the entity and the Minister—within the agreed period.
- (3) A quarterly report must contain the information required to be given in the report under the entity's operational plan as provided for in division 3.
- (4) In this section—

quarter means each of the following periods in any year—

- (a) 1 January to 31 March;
- (b) 1 April to 30 June;
- (c) 1 July to 30 September;
- (d) 1 October to 31 December.

57O Notice of proposed significant action

- (1) This section applies if a dual sector entity proposes to—
 - (a) do anything that may have a significant adverse effect on the entity’s ability to meet its obligations under its operational plan; or
 - (b) sell, lease or mortgage property transferred to the entity, as a relevant TAFE entity, under a transfer regulation; or
 - (c) enter into an arrangement for any of its operations that commits to spending more than the amount prescribed under a regulation.
- (2) Before taking any action mentioned in subsection (1) (the **proposed significant action**), and as soon as practicable after proposing to take the action, the dual sector entity must give the Minister notice of the action.
- (3) A dual sector entity is not required to comply with subsection (2) before taking the proposed significant action if details of the action, and a clear intention to take the action, are included in the entity’s operational plan for its current operational plan year.

57P Minister may require information

- (1) The Minister may, by notice given to a dual sector entity, require the entity to give the Minister information about the performance of any of its operations.
- (2) The notice must state the day by which the information must be given.

- (3) The entity must give the Minister the information by the stated day.
- (4) Without limiting subsection (1), a requirement to give information may include a requirement to produce a document for inspection by the Minister.

Division 5 Minister's reserve powers

57Q Application of division

- (1) This division applies to a dual sector entity in the performance of all of its operations.
- (2) However, if a regulation under this section prescribes a day for the entity, this division applies to the entity on and from the prescribed day only to the extent of the performance of its VET operations.

57R Minister may give direction in public interest

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

57S Notice of concern about financial viability because of direction

- (1) This section applies if—
 - (a) a dual sector entity is given a direction under section 57R; and

[s 57T]

- (b) the entity is concerned that its financial viability could be seriously compromised if it is required to comply with the direction.
- (2) The entity must immediately give the Minister notice of the concern.
- (3) The notice must state—
 - (a) the entity's reasons for the concern; and
 - (b) that the notice is given under this section.
- (4) The giving of the notice operates to suspend the direction until—
 - (a) the Minister gives the entity written advice that the Minister is not satisfied that the entity's concern is well-founded; or
 - (b) the direction is revoked.
- (5) The Minister must immediately revoke the direction if the Minister is satisfied that the entity's concern is well-founded.
- (6) Whether or not the Minister revokes the direction, the Minister may give any further directions the Minister considers necessary or desirable for the entity's financial viability, including, for example, a further direction requiring the entity to stop or limit particular activities.
- (7) A further direction given under subsection (6) is not a direction under section 57R.
- (8) The entity must comply with a further direction given under subsection (6).

Division 6 Payment of returns

57T Application of division

This division applies to a dual sector entity only to the extent of the performance of its VET operations.

57U Requirement to pay annual return

- (1) A dual sector entity must pay to the State, for each year, an annual return of the amount decided by the Minister.
- (2) The return must be paid within 6 months after the end of the year for which it is payable or a longer period allowed by the Minister.

57V Amount of annual return

- (1) During the estimate advice period in each year, a dual sector entity must give the Minister—
 - (a) an estimate of its VET surplus for the year; and
 - (b) a recommendation about the amount of the annual return to be paid for the year.
- (2) The dual sector entity is not stopped from recommending that no return is payable for a particular year.
- (3) Before the year ends, the Minister must either accept the recommendation or give the dual sector entity a direction to pay an annual return of a different stated amount.
- (4) The amount of the annual return must not be more than the VET surplus for the year.
- (5) In this section—

estimate advice period, in a year, means the period from 1 November to 15 November in the year.

VET surplus, for a dual sector entity for a year, means the surplus generated by the entity for the year in the performance of its VET operations after—

- (a) providing for income tax or its equivalent; and
- (b) excluding any unrealised capital gains from upwards revaluation of non-current assets.

Division 7 Miscellaneous

57W Annual report

- (1) This section applies to a dual sector entity that is a statutory body under the FA Act.
- (2) In the dual sector entity's annual report under the FA Act, the entity must include copies of all directions given to the entity by the Minister under this Act during the year to which the report relates.

57X Review of performance of VET operations

- (1) The Minister must review a dual sector entity's performance of its VET operations every 5 years.
- (2) The first review must be completed within 12 months after the fifth anniversary of the entity becoming a dual sector entity.
- (3) Subsequent reviews must be completed within 12 months after each subsequent fifth anniversary.
- (4) The purpose of a review is to ensure the dual sector entity is operating efficiently and effectively.

Part 5 Miscellaneous provisions

Division 1 TAFE brand

58 Use of protected terms

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

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to—
 - (a) a TAFE entity; or
 - (b) a person to whom the Minister has given approval under subsection (3) to use the protected term in its name or in connection with its activities, operations or services.
- (3) The Minister may give a person an approval to use a protected term in its name or in connection with its activities, operations or services if the Minister is satisfied—
 - (a) the person is established by or operates in association with TAFE Queensland; or
 - (b) it is unlikely that a reasonable person would think that, because of the use of the protected term in its name or in connection with its activities, operations or services, the person is a TAFE entity.
- (4) The Minister must publish details of approvals in force under subsection (3) on the department's website on the internet.
- (5) In this section—

protected term means the following terms—

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

TAFE entity means—

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

59 Injunction to prevent or restrain a contravention

- (1) This section applies if the Minister reasonably believes a person (an *offending party*) has engaged, is engaging or is proposing to engage in conduct that contravened, is contravening or would contravene section 58.
- (2) The Minister may apply to the Supreme Court of Queensland (the *court*) for an injunction restraining the offending party from engaging, or continuing to engage, in the conduct.
- (3) The court may grant an interim injunction restraining the offending party from engaging, or continuing to engage, in the conduct pending a decision about the application.
- (4) After considering the application the court may—
 - (a) if it is satisfied on the balance of probabilities that the offending party has engaged, or is likely to engage or continue to engage, in the conduct—grant the injunction; or
 - (b) refuse to grant the injunction.
- (5) The court may grant the injunction—
 - (a) if it is satisfied the offending party has engaged in the conduct—whether or not it considers the offending party intended to engage again, or continue to engage, in the conduct; or
 - (b) if it is satisfied the offending party will likely engage again, or continue to engage, in the conduct if the injunction is not granted—
 - (i) whether or not the offending party has previously engaged in the conduct; and
 - (ii) whether or not there is an imminent danger of substantial damage to a person if the offending party engaged in the conduct.
- (6) If the court is satisfied there is an adequate reason for doing so, it may grant an injunction under subsection (3) or (4) without notice to the offending party.

Division 2 Delegations

60 Delegation by TAFE Queensland

TAFE Queensland may delegate a function to—

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

61 Delegation by chief executive officer

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

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

62 Delegation by Minister

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

Division 3 Other matters

63 Crime and Misconduct Act 2001

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

64 Annual report

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

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

65 Protection from liability

(1) This section applies to the following persons—

- (a) the Minister;
- (b) the chief executive;
- (c) a member;
- (d) the chief executive officer;
- (e) an employee of TAFE Queensland;
- (f) a person performing work for TAFE Queensland under a work performance arrangement;
- (g) a person performing duties in TAFE Queensland under an interchange arrangement.

(2) The person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a liability attaching to the person, the liability attaches instead to the State.

66 Protection of confidentiality

(1) This section applies to a person who acquires information about another person (the *other person*)—

- (a) in performing a function under this Act; or
- (b) because of an opportunity provided by the performance of the person's function under this Act.

(2) The person must not do any of the following (each a *disclosure*)—

- (a) make a record of the information;
- (b) whether directly or indirectly, divulge or communicate the information;
- (c) use the information to benefit any person.

Maximum penalty—50 penalty units.

(3) However, subsection (2) does not apply if—

- (a) the disclosure is—
 - (i) necessary to perform the person’s functions under this Act; or
 - (ii) authorised under an Act; or
 - (iii) necessary to perform official duties under the *Public Records Act 2002*; or
 - (iv) otherwise required or permitted by law; or
 - (v) ordered by a court, commission or tribunal constituted by law in proceedings before it; or
 - (vi) in a form that does not disclose the identity of the other person; or
- (b) the other person is an adult and consents to the disclosure; or
- (c) the other person is a child and the child’s parent or guardian consents to the disclosure; or
- (d) the Minister considers the disclosure is in the public interest and gives the person written authorisation for the disclosure.

67 Regulation-making power

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

Part 6 Transitional provisions for TAFE Queensland Act 2013

68 Appointment of TAFE Queensland's first chief executive officer

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

69 TAFE Queensland's first operational plan

Despite sections 39 to 42—

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

Schedule 1 Dictionary

section 3

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

AQF means the Australian Qualifications Framework as defined in the Commonwealth Act, section 3.

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

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

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

commissioner of police means the commissioner of the police service.

Commonwealth Act means the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

community service obligation see section 37.

criminal history—

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

dual sector entity see section 57A.

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

FA Act means the *Financial Accountability Act 2009*.

FA standards means the standards made under the FA Act about the policies and principles to be observed in financial and performance management.

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

interchange arrangement see section 31(1).

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

notice means a notice in writing.

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

operational plan year, for a dual sector entity, see section 57F(6).

operations, of a dual sector entity, includes anything the entity does in the performance of its functions.

police service means the Queensland Police Service.

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

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

relevant TAFE entity see section 49(1).

spent conviction means a conviction—

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

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

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

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

transfer direction see section 51(1).

transfer regulation see section 50(1).

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

VET operations see section 57A.

vocational education and training means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the AQF.

work performance arrangement see section 30(1).

1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations

2 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amd	= amendment	prov	= provision
t			
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notf	= notified	rv	= revised version
d			
num	= numbered	s	= section
o in	= order in council	sch	= schedule
c			

Key	Explanation	Key	Explanation
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2012
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Current as at	Amendments included	Notes
1 July 2013	2013 Act No. 27	RA ss 7(1)(k), 37, 40 and 42A
22 November 2013	2013 Act No. 49	
1 July 2014	2014 Act No. 24	

Current as at	Amendments included	Notes
30 June 2017	2016 Act No. 64	

4 List of legislation

TAFE Queensland Act 2013 No. 27

date of assent 3 June 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2013 (2013 SL No. 108)

amending legislation—

TAFE Queensland Act 2013 No. 27 ss 1–2, 70 sch 1 pt 1

date of assent 3 June 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2013 (2013 SL No. 108)

Vocational Education, Training and Employment (Skills Queensland) and Another Act Amendment Act 2013 No. 49 pts 1, 4

date of assent 29 October 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 22 November 2013 (2013 SL No. 227)

TAFE Queensland (Dual Sector Entities) Amendment Act 2014 No. 24 pts 1–2

date of assent 21 May 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2014 (2014 SL No. 100)

Revenue and Other Legislation Amendment Act 2016 No. 64 ss 1, 2(c)–(d), 79 sch 1

date of assent 9 December 2016

ss 1–2 commenced on date of assent

s 79 sch 1 commenced 30 June 2017 (2017 SL No. 100)

5 List of annotations

Long title sub 2013 No. 27 s 70 sch 1 pt 1

Dictionary

s 3 amd 2013 No. 27 s 70 sch 1 pt 1

Functions

s 8 amd 2014 No. 24 s 4

Other staff

s 29 amd 2013 No. 49 s 27

Preservation of rights of public service employee appointed to TAFE Queensland

s 32 amd 2016 No. 64 s 79 sch 1

Relevant TAFE entities

s 49 amd 2014 No. 24 s 5

PART 4A—DUAL SECTOR ENTITIES

pt hdg ins 2014 No. 24 s 6

Division 1—Preliminary

div 1 (s 57A) ins 2014 No. 24 s 6

Division 2—Establishing dual sector entity

div 2 (s 57B) ins 2014 No. 24 s 6

Division 3—Operational plans

div 3 (ss 57C–57L) ins 2014 No. 24 s 6

Division 4—Reporting to the Minister

div 4 (ss 57M–57P) ins 2014 No. 24 s 6

Division 5—Minister’s reserve powers

div 5 (ss 57Q–57S) ins 2014 No. 24 s 6

Division 6—Payment of returns

div 6 (ss 57T–57V) ins 2014 No. 24 s 6

Division 7—Miscellaneous

div 7 (ss 57W–57X) ins 2014 No. 24 s 6

Use of protected terms

s 58 amd 2014 No. 24 s 7

Annual report

s 64 amd 2014 No. 24 s 8

SCHEDULE 1—DICTIONARY

sch 1 (prev sch 2) renum 2013 No. 27 s 70 sch 1 pt 1

def *AQF* ins 2014 No. 24 s 9

def *Commonwealth Act* ins 2014 No. 24 s 9

def *dual sector entity* ins 2014 No. 24 s 9

def *FA Act*, 2nd mention, ins 2014 No. 24 s 9

def *FA standards* ins 2014 No. 24 s 9

def *operational plan year* ins 2014 No. 24 s 9

def *operations* ins 2014 No. 24 s 9

def *VET operations* ins 2014 No. 24 s 9

def *vocational education and training* ins 2014 No. 24 s 9