



Queensland

# TAFE Queensland Amendment Regulation (No. 1) 2014

## Subordinate Legislation 2014 No. 101

made under the

*TAFE Queensland Act 2013*

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**1 Short title**

This regulation may be cited as the *TAFE Queensland Amendment Regulation (No. 1) 2014*.

**2 Commencement**

This regulation commences on 1 July 2014.

**3 Regulation amended**

This regulation amends the *TAFE Queensland Regulation 2013*.

**4 Omission of pt 1, div 2, hdg (Purpose)**

Part 1, division 2, heading—  
*omit.*

**5 Amendment of s 3 (Purpose of regulation—Act, s 50)**

(1) Section 3, heading, ‘regulation’—

*omit, insert—*

**pt 2**

(2) Section 3, ‘this regulation’—

*omit, insert—*

this part

(3) Section 3—

*relocate* to part 2 and *renumber* as section 5A.

**6 Replacement of pt 1, div 3, hdg (Interpretation)**

Part 1, division 3, heading—  
*omit, insert—*

**Division 2**

**Interpretation**

[s 7]

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**7 Amendment of s 4 (Key definitions)**

Section 4(1), definition *changeover day*—  
*omit.*

**8 Insertion of new pts 3–5**

After section 15—  
*insert—*

**Part 3 Dual sector entities**

**16 Dual sector entity—Act, s 57B**

For the Act, section 57B(1), CQ university is prescribed as a dual sector entity.

**17 Prescribed amount for proposed significant action—Act, s 57O**

For the Act, section 57O(1)(c), the prescribed amount for proposed significant action for CQ university is \$3000000.

**Part 4 Transfer regulation provisions for TAFE institutes other than CQIT**

**Division 1 Preliminary**

**18 Purpose of pt 4—Act, s 50**

The purpose of this part is to provide for the transfer of businesses, assets and liabilities and other related matters for TAFE institutes, other than CQIT.

## 19 Definitions for pt 4

In this part—

*excluded assets and liabilities schedule*, for a TAFE institute, means the schedule held by the chief executive showing particular assets and liabilities of the State relating to the TAFE institute immediately before the transfer day.

*instrument schedule*, for a TAFE institute, means the schedule held by the chief executive showing the instruments applying to the TAFE institute immediately before the transfer day.

*TAFE-related instrument*, for a TAFE institute, means an instrument shown in the instrument schedule for the TAFE institute.

*transfer day* means 1 July 2014.

*transferring businesses, assets and liabilities* see section 20(1).

*transferring employee* see section 21(1).

*transferring student* see section 26.

## 20 Meaning of *transferring businesses, assets and liabilities*

- (1) The *transferring businesses, assets and liabilities* are the businesses, assets and liabilities of the State relating to a TAFE institute other than the assets and liabilities shown in the excluded assets and liabilities schedule for the TAFE institute.
- (2) To remove any doubt, it is declared that the businesses, assets and liabilities of the State relating to a new TAFE institute include the businesses, assets and liabilities of the related former statutory TAFE institute that were transferred to the department under section 6.

## **21 Meaning of *transferring employee***

- (1) Each of the following persons is a *transferring employee*—
  - (a) a person, other than a person shown in the excluded employee schedule, who—
    - (i) became an employee of the department under section 10(2) and was an employee of the department immediately before the transfer day; or
    - (ii) was otherwise an employee of the department in relation to a TAFE institute immediately before the transfer day;
  - (b) a person shown in the transferring employee schedule.
- (2) In this section—

*excluded employee schedule*, means the schedule of that name held by the chief executive showing particular persons who were employed by the department in relation to the TAFE institute immediately before the transfer day.

*transferring employee schedule* means the schedule of that name held by the chief executive showing particular persons who were employed by the department in relation to a TAFE institute immediately before the transfer day.

## **Division 2      Transfer provisions**

### **22 Transfer of transferring businesses, assets and liabilities**

On the transfer day, the transferring businesses, assets and liabilities become the businesses, assets and liabilities of TAFE Queensland.

## 23 Accounting treatment for transferring assets and liabilities

- (1) For accounting purposes, the department and TAFE Queensland must treat—
  - (a) the transfer of the transferring assets to, and the assumption of the transferring liabilities by, TAFE Queensland as a redemption of, or increase in, contributed equity, as applicable; and
  - (b) the value of the transferring assets transferred to, and the transferring liabilities assumed by, TAFE Queensland as being equivalent to the carrying value of the assets and liabilities, as applicable, recorded in the accounts of the department immediately before the transfer day.
- (2) In this section—

*transferring assets* means the assets of the State relating to a TAFE institute, other than the assets shown in the excluded assets and liabilities schedule for the TAFE institute.

*transferring liabilities* means the liabilities of the State relating to a TAFE institute, other than the liabilities shown in the excluded assets and liabilities schedule for the TAFE institute.

## 24 Successor in law

TAFE Queensland is the successor in law of each TAFE institute, other than in relation to the following—

- (a) the assets and liabilities of the State relating to the TAFE institute shown in the excluded assets and liabilities schedule for the TAFE institute;

- (b) the employees of the department relating to the TAFE institute who are not transferring employees;
- (c) the records of the State relating to the TAFE institute that are not transferred to TAFE Queensland under section 30.

## **25 Instruments**

- (1) A TAFE-related instrument for a TAFE institute applies to TAFE Queensland in place of the TAFE institute.
- (2) Without limiting subsection (1)—
  - (a) any right, title, interest or liability of the TAFE institute arising under or relating to the TAFE-related instrument is taken to be transferred from the TAFE institute to TAFE Queensland; and
  - (b) the TAFE-related instrument, including a benefit or right provided by the TAFE-related instrument, given to, by or in favour of the TAFE institute is taken to have been given to, by or in favour of TAFE Queensland; and
  - (c) TAFE Queensland is taken to be a party to the TAFE-related instrument in place of the TAFE institute; and
  - (d) a reference to the TAFE institute in the TAFE-related instrument is taken to be a reference to TAFE Queensland; and
  - (e) an application in relation to the TAFE-related instrument made in the name of the TAFE institute is taken to have been made in TAFE Queensland's name; and
  - (f) if an amount is, or may become, payable to or by the TAFE institute under the TAFE-related instrument, the instrument is



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taken to be an instrument under which the amount is, or may become, payable to or by TAFE Queensland in the way the amount was, or might have become, payable to or by the TAFE institute; and

- (g) if property, other than money, is or may become liable to be transferred, conveyed or assigned to or by the TAFE institute under the TAFE-related instrument, the instrument is taken to be an instrument under which property is, or may become liable to be, transferred, conveyed or assigned to or by TAFE Queensland in the way the property was, or might have become, liable to be transferred, conveyed or assigned to or by the TAFE institute.

## 26 Student enrolments

A person (a *transferring student*) who, immediately before the transfer day, was enrolled as a student of a TAFE institute is taken on the transfer day to be enrolled as a student of TAFE Queensland.

## 27 Transfer of employees

- (1) On the transfer day—
- (a) each transferring employee stops being an employee of the department and becomes an employee of TAFE Queensland; and
- (b) the liabilities of the State relating to each transferring employee's accrued rights to annual, sick, long service or other leave and superannuation become the liabilities of TAFE Queensland.
- (2) To remove any doubt, it is declared that a transferring employee is not a public service employee.

## **28 Supervising registered training organisation**

- (1) This section applies if, immediately before the transfer day, a TAFE institute was, under the VETE Act, chapter 3, part 2, a supervising registered training organisation for an apprentice or trainee.
- (2) On the transfer day, TAFE Queensland is taken to be the supervising registered training organisation for the apprentice or trainee.

## **29 Pending legal proceedings**

- (1) This section applies for a legal proceeding that, before the transfer day, could have been started or continued by or against the State in relation to any of the following—
  - (a) a TAFE-related instrument;
  - (b) any of the transferring businesses, assets and liabilities;
  - (c) a transferring employee;
  - (d) a transferring student;
  - (e) a record transferred to TAFE Queensland under section 30.
- (2) The legal proceeding must be started or continued by or against TAFE Queensland.

## **30 Transfer of records**

On the transfer day, the following records become the records of TAFE Queensland—

- (a) the records of the State relating to the transferring businesses, assets and liabilities;
- (b) the records of the State relating to each transferring employee and transferring student.

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## Part 5                      Transfer regulation provisions for CQIT

### Division 1                Preliminary

#### 31 Purpose of pt 5—Act, s 50

The purpose of this part is to provide for the transfer of businesses, assets and liabilities and other related matters for CQIT.

#### 32 Definitions for pt 5

In this part—

*CQIT instrument* means an instrument shown in the CQIT instrument schedule as an instrument applying to CQIT.

*CQIT instrument schedule* means a schedule held by the chief executive showing the instruments applying to CQIT immediately before the transfer day.

*excluded CQIT assets and liabilities schedule* means the schedule held by the chief executive showing particular assets and liabilities of the State relating to CQIT immediately before the transfer day.

*transfer day* means 1 July 2014.

*transferring CQIT businesses, assets and liabilities* see section 33.

*transferring CQIT employee* see section 34(1).

*transferring CQIT student* see section 38.

**33 Meaning of *transferring CQIT businesses, assets and liabilities***

The *transferring CQIT businesses, assets and liabilities* are the businesses, assets and liabilities of the State relating to CQIT other than the assets and liabilities shown in the excluded CQIT assets and liabilities schedule.

**34 Meaning of *transferring CQIT employee***

(1) A *transferring CQIT employee* is a person, other than a person shown in the excluded employee schedule, who was an employee of the department in relation to CQIT immediately before the transfer day.

(2) In this section—

*excluded employee schedule* means the schedule held by the chief executive showing particular persons who were employed by the department in relation to CQIT immediately before the transfer day.

**Division 2            Transfer provisions**

**35 Transfer of *transferring CQIT businesses, assets and liabilities***

On the transfer day, the transferring CQIT businesses, assets and liabilities become the businesses, assets and liabilities of CQ university.

**36 Successor in law**

CQ university is the successor in law of CQIT, other than in relation to the following—

- 
- (a) the assets and liabilities of the State relating to CQIT shown in the excluded CQIT assets and liabilities schedule;
  - (b) employees of the department relating to CQIT who are not transferring CQIT employees;
  - (c) records of the State relating to CQIT that are not transferred to CQ university under section 43.

### **37 Instruments**

- (1) A CQIT instrument applies to CQ university in place of CQIT.
- (2) Without limiting subsection (1)—
  - (a) any right, title, interest or liability of CQIT arising under or relating to a CQIT instrument is taken to be transferred from CQIT to CQ university; and
  - (b) a CQIT instrument, including a benefit or right provided by a CQIT instrument, given to, by or in favour of CQIT is taken to have been given to, by or in favour of CQ university; and
  - (c) CQ university is taken to be a party to each CQIT instrument in place of CQIT; and
  - (d) a reference to CQIT in a CQIT instrument is taken to be a reference to CQ university; and
  - (e) an application in relation to a CQIT instrument made in the name of CQIT is taken to have been made in CQ university's name; and
  - (f) a CQIT instrument under which an amount is, or may become, payable to or by CQIT is taken to be an instrument under which the amount is, or may become, payable to or by

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CQ university in the way the amount was, or might have become, payable to or by CQIT; and

- (g) a CQIT instrument under which property, other than money, is or may become liable to be transferred, conveyed or assigned to or by CQIT is taken to be an instrument under which property is, or may become liable to be, transferred, conveyed or assigned to or by CQ university in the way the property was, or might have become, liable to be transferred, conveyed or assigned to or by CQIT.

### **38 Student enrolments**

A person (a *transferring CQIT student*) who, immediately before the transfer day, was enrolled as a student of CQIT is taken on the transfer day to be enrolled as a student of CQ university.

### **39 Transfer of CQIT employees**

On the transfer day—

- (a) each transferring CQIT employee stops being an employee of the department and becomes an employee of CQ university; and
- (b) the liabilities of the State relating to each transferring CQIT employee's accrued rights to annual, sick, long service or other leave and superannuation become the liabilities of CQ university.

### **40 Effect of transfer of employees**

The transfer of an employee under section 39 does not—

- (a) affect whether the employee is employed on a full-time, part-time or casual basis; or
- (b) affect the employee's ordinary weekly hours of work; or
- (c) affect the employee's entitlements in relation to overtime; or
- (d) affect the employee's total remuneration; or
- (e) prejudice the employee's existing or accruing rights to superannuation or annual, sick, long service or other leave; or
- (f) interrupt the employee's continuity of service, except that the employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service; or
- (g) constitute a retrenchment, redundancy or termination of the employee's employment; or
- (h) entitle the employee to a payment or other benefit because the employee is no longer employed by the department.

#### **41 Supervising registered training organisation**

- (1) This section applies if, immediately before the transfer day, CQIT was, under the VETE Act, chapter 3, part 2, a supervising registered training organisation for an apprentice or trainee.
- (2) On the transfer day, CQ university is taken to be the supervising registered training organisation for the apprentice or trainee.

#### **42 Pending legal proceedings**

- (1) This section applies for a legal proceeding that, before the transfer day, could have been started or

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continued by or against the State in relation to any of the following—

- (a) a CQIT instrument;
  - (b) any of the transferring CQIT businesses, assets and liabilities;
  - (b) a transferring CQIT employee;
  - (c) a transferring CQIT student;
  - (d) a record transferred to CQ university under section 43.
- (2) The legal proceeding must be started or continued by or against CQ university.

#### **43 Transfer of records**

- (1) On the transfer day, the following records become the records of CQ university—
- (a) the records of the State relating to the transferring CQIT businesses, assets and liabilities, other than the excluded records;
  - (b) the records of the State relating to each transferring CQIT employee and transferring CQIT student.
- (2) Despite subsection (1)(a), the State must give CQ university the excluded hard copy records reasonably required by the university if the university makes a written request for the records.
- (3) In this section—
- excluded hard copy records* means excluded records that are—
- (a) kept in the form of a hard copy; and
  - (b) usually kept on premises mentioned in the excluded CQIT assets and liabilities schedule.



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*excluded records* means the following records of the State relating to the transferring CQIT businesses, assets and liabilities—

- (a) tax returns;
- (b) financial reports;
- (c) records that also relate to another TAFE institute;
- (d) other records required to be kept under a law of the State, another State or the Commonwealth.

## 9 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definition *changeover day*—

*omit.*

- (2) Schedule 1—

*insert—*

*changeover day*, for part 2, means 1 July 2013.

*CQIT* means the TAFE institute known as the Central Queensland Institute of TAFE.

*CQIT instrument*, for part 5, see section 32.

*CQIT instrument schedule*, for part 5, see section 32.

*CQ university* means the Central Queensland University established under the *Central Queensland University Act 1998*, section 4.

*excluded assets and liabilities schedule*, for part 4, see section 19.

*excluded CQIT assets and liabilities schedule*, for part 5, see section 32.

*instrument schedule*, for part 4, see section 19.

*TAFE-related instrument*, for part 4, see section 19.

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*transfer day*—

- (a) for part 4, see section 19; or
- (b) for part 5, see section 32.

*transferring businesses, assets and liabilities*, for part 4, see section 20(1).

*transferring CQIT businesses, assets and liabilities*, for part 5, see section 33.

*transferring CQIT employee*, for part 5, see section 34.

*transferring CQIT student*, for part 5, see section 38.

*transferring employee*, for part 4, see section 21.

*transferring student*, for part 4, see section 26.

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#### ENDNOTES

- 1 Made by the Governor in Council on 19 June 2014.
- 2 Notified on the Queensland legislation website on 20 June 2014.
- 3 The administering agency is the Department of Education, Training and Employment.

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Authorised by the Parliamentary Counsel