

# TAFE Queensland (Dual Sector Entities) Amendment Bill 2014

## Explanatory Notes

### Short title

The short title of the Bill is the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014.

### Policy objectives and the reasons for them

The Bill provides a framework for the recognition of dual sector entities in Queensland. A dual sector entity is an entity that provides both higher education and vocational education and training (VET).

The objectives of the Bill are to:

1. provide for a dual sector entity to be prescribed in a regulation;
2. recognise dual sector entities as 'relevant TAFE entities' for the purpose of transfer regulations made under the *TAFE Queensland Act 2013*;
3. recognise dual sector entities as TAFE entities permitted to use the protected term TAFE under the *TAFE Queensland Act 2013*;
4. establish the governance, accountability and reporting requirements for dual sector entities;
5. give TAFE Queensland a function to advise the Minister in relation to the performance of its functions and any other matters referred to it by the Minister; and
6. provide that one appointed member of the Central Queensland University Council must be a person with knowledge and experience of VET.

#### Recognition of dual sector entities

In September 2013, the Queensland Government executed an agreement with the Central Queensland University (CQU) to establish a dual sector entity by merging CQU with the Central Queensland Institute of TAFE (CQIT). In order to establish this dual sector entity at CQU it is necessary to provide for the transfer of CQIT to CQU and other matters to recognise CQU as a public provider of VET in Queensland.

The anticipated benefits of recognising dual sector entities include:

- improved ability for VET and higher education courses to meet the changing needs of Queensland regions;
- improved integration and learning opportunities for VET and higher education students by optimising articulation and credit transfer processes;

- increased capacity for newly established dual sector entities to deliver a wider range of courses across many sites through the sharing of common resources; and
- strengthened organisational culture across sectors when combining the research and academic traditions of higher education with the responsive industry engagement of VET.

There is currently no provision for the establishment or operation of a dual sector entity in Queensland by transferring State assets to a university. As a consequence, higher education providers (universities) and State VET providers (TAFE) have operated as separate entities, despite the benefits associated with establishing dual sector entities.

#### Transfer of assets to dual sector entities

The Queensland Government will transfer significant public assets to CQU to support the establishment of CQU as a dual sector entity. This transfer will occur under the existing transfer regulation power in section 50 of the *TAFE Queensland Act 2013*. In order to protect these public assets and ensure viability into the future, a framework of governance, accountability and reporting will be introduced, as detailed below.

#### Use of protected term TAFE

The term Technical and Further Education, or TAFE, has a special meaning in the VET sector. It represents the delivery of VET by the public provider in Queensland as opposed to delivery of VET by a private registered training organisation. Section 58 of the *TAFE Queensland Act 2013* protects the term TAFE by limiting the entities which may use this term in connection with their products and services.

It is already possible for a university to deliver VET by establishing a registered training organisation and becoming accredited to deliver VET courses. To distinguish dual sector entities from providers who offer both higher education and VET, dual sector entities will be permitted to use the protected term TAFE in relation to their VET courses.

#### Governance, reporting and accountability arrangements for dual sector entities

Dual sector entities will be established by transferring assets, staff and other matters from the State to the entity under section 50 of the *TAFE Queensland Act 2013*. The creation of dual sector entities requires new governance, reporting and accountability arrangements to be introduced, to ensure that dual sector entities achieve the Government's policy objectives and remain viable into the future.

#### Modified functions of TAFE Queensland

TAFE Queensland needs a function to advise the Minister, at the Minister's request, on matters relevant to TAFE Queensland's functions and other matters referred to it by the Minister. As the largest public provider of VET in Queensland, TAFE Queensland has expertise which the Minister may need to call upon when considering VET issues, including issues relating to dual sector entities.

### Membership of CQU Council to include person with VET experience

In a dual sector entity, VET is an integral part of the entity's operations and it is necessary for such an entity to have a person with substantial knowledge or experience of VET on its governing body. This will ensure that the governing body has the necessary skills to effectively manage the new entity which provides both higher education and VET.

## **Achievement of policy objectives**

### Recognition of dual sector entities

The Bill provides for the recognition of dual sector entities by prescribing dual sector entities under a regulation. The Bill will facilitate the recognition of CQU as a dual sector entity. It will also enable other entities to be established as dual sector entities in the future.

The Bill achieves this by amending section 49 of the *TAFE Queensland Act 2013* to recognise that a dual sector entity can be prescribed in a regulation as a Relevant TAFE entity.

### Transfer of assets to dual sector entities

The Bill will recognise dual sector entities as relevant TAFE entities for the purpose of section 50 *TAFE Queensland Act 2013*. This will allow a transfer regulation to be made to transfer assets, staff and other matters to the dual sector entity.

### Use of protected term TAFE

The Bill will recognise dual sector entities as TAFE entities which are permitted to use the protected term TAFE under section 58 of the *TAFE Queensland Act 2013*. This will enable CQU to use the term 'TAFE at CQU'.

### Governance, reporting and accountability arrangements for dual sector entities

The Bill provides for a new chapter in the *TAFE Queensland Act 2013*, which will contain provisions for the following arrangements with dual sector entities:

- the provision of operational plans to the Minister annually;
- the submission of quarterly reports on operations to the Minister;
- the capacity for payment of annual return on the dual sector entity's VET operations (if appropriate) to the State; and
- powers for the Minister to request information and give directions to dual sector entities.

In a dual sector entity, higher education and VET operations will become closely integrated. It is proposed that the requirements for operational plans, quarterly reports and Ministerial powers will apply to all of the entity's operations. To provide flexibility, the Bill allows a regulation to be made which limits the application of these provisions to an entity's VET operations.

The requirement to make recommendations about, and payment of annual returns, will be limited to VET operations only. The purpose of this provision is to allow the State to share in

the success of a dual sector entity's VET operations which were made possible by the transfer of State assets. It is not appropriate for payment of returns to extend to operations other than VET operations.

#### Modified functions of TAFE Queensland

The Bill amends the functions of TAFE Queensland to include a function of providing advice on matters relevant to its functions at the request of the Minister. This will allow the Minister to access TAFE Queensland's expertise as required.

#### Council membership of Central Queensland University to include person with VET experience

The Bill amends the membership of CQU Council to require that, while CQU is a dual sector entity, one of the members appointed by Governor-in-Council is a person with substantial knowledge or experience of VET. This will be achieved by ensuring that the next time an appointed member is due to be appointed a person with VET experience is appointed. The Bill will not impact on current members or increase the total number of council members.

### **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than legislation that provides for dual sector entities.

### **Estimated cost for government implementation**

The costs of establishing dual sector entities will include a contribution of approximately \$116.7 million in assets and approximately \$40 million in expected revenue in the first 18 months towards the dual sector university.

### **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles.

### **Consultation**

The Department of Education, Training and Employment conducted consultation with CQU and TAFE Queensland during the drafting of the Bill.

### **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state. However, other jurisdictions, including Victoria and the Northern Territory, have implemented reforms of the higher education and

VET providers to establish dual sector entities. The Bill takes a similar approach to legislation in other jurisdictions.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* provides that the short title of the Act is the *TAFE Queensland (Dual Sector Entities) Amendment Act 2014*.

*Clause 2* provides that the Act commences on a day to be fixed by proclamation.

### Part 2 Amendment of TAFE Queensland Act 2013

*Clause 3* states that this part amends part of the *TAFE Queensland Act 2013*.

*Clause 4* amends section 8 of the *TAFE Queensland Act 2013* to add that a further function of TAFE Queensland is to advise and make recommendations to the Minister about matters relevant to TAFE Queensland's functions, and any other matters referred to it by the Minister. It is intended that this function would allow TAFE Queensland to provide advice to the Minister about matters relating to dual sector entities generally, if requested by the Minister. Dual sector entities will not be accountable to TAFE Queensland.

*Clause 5* amends section 49 of the *TAFE Queensland Act 2013* to provide that a dual sector entity is a Relevant TAFE entity. This will allow a transfer regulation to be made under section 49 of the *TAFE Queensland Act 2013* to transfer assets between the State and dual sector entities.

*Clause 6* inserts a new Part 4A (Dual sector entities) in the *TAFE Queensland Act 2013*.

New section 57A defines terms used in the new Part 4A.

New section 57B provides that a dual sector entity may be prescribed in a regulation.

New section 57C states that Division 3, which relates to operational plans, applies to the dual sector entity in the performance of all of its operations. To provide flexibility, the section allows for a regulation to be made which limits the application of Division 3 to an entity's VET operations.

New section 57D describes the relationship between the operational plan required under this Act and the operational plan required under the *Financial Accountability Act 2009*. If a plan that combines the requirements of the *Financial Accountability Act 2009* with the requirements of this Act can be reasonably and practically prepared, this is permitted.

New section 57E states that the purpose of Division 3 is to require a dual sector entity to have an operational plan, and to comply with the operational plan. The operational plan of the dual sector entity will guide the activities of the dual sector entity each year.

New section 57F provides for the preparation of a draft operational plan for the Minister's agreement. The section defines the 'operational plan year' for a dual sector entity to ensure

that, where a dual sector entity is a university established under an Act, its operational plan year is the period stated as the university's financial year.

New section 57G provides that the operational plan must conform with the requirements of the *Financial Accountability Act 2009* and must also contain:

- (a) an outline of its objectives;
- (b) financial and non-financial performance targets;
- (c) performance indicators for the performance targets;
- (d) an outline of the proposed nature and scope of the activities;
- (e) an outline of the proposed major investments and borrowings;
- (f) an outline of policies about managing risks associated with investments and borrowings;
- (g) an outline of the arrangements for employees ;
- (h) information required to be given to the Minister in quarterly reports;
- (i) other information required to be given to the Minister and when it is to be given; and
- (j) any other matter relevant to its functions and required to be included by the Minister.

New section 57H provides that the operational plan has effect from the start of the year to which the operational plan relates, and allows the Minister to impose conditions on the agreement.

New section 57I provides that if an operational plan has not been agreed between the dual sector entity and the Minister by the start of the year to which the operational plan relates, the most recently submitted version of the operational plan will be taken to be the operational plan until the plan is agreed to by the Minister.

New section 57J provides that the dual sector entity must comply with the operational plan.

New section 57K prevents the operational plan from being amended without the Minister's written agreement, and allows the operational plan to be amended at the Minister's direction and for the Minister to impose conditions on the agreement.

New section 57L provides for the process for establishing the first operational plan for a dual sector entity.

New section 57M provides that Division 4, which relates to reporting requirements, applies to the dual sector entity in the performance of all its operations. To allow flexibility, the section allows for a regulation to be made which limits the application of Division 4 to an entity's VET operations.

New section 57N provides that a dual sector entity must give quarterly reports to the Minister within six weeks after the end of each quarter, or within another period if agreed between the entity and the Minister. The quarterly report must contain the information that is required to be reported under the operational plan for the dual sector entity.

New section 57O provides for a dual sector entity to give notice to the Minister of proposed significant actions before the action is taken. A dual sector entity will not be required to give notice under this section if it has included the details of the proposed action in its operational plan for the current year.

New section 57P provides for the Minister to give notice to the dual sector entity requiring the entity to give the Minister information about the performance of its operations. This reporting function allows the Minister to obtain information from the dual sector entity throughout the year on an as-needed basis.

New section 57Q provides that Division 5, which relates to the Minister's reserve powers, applies to the dual sector entity in the performance of all its operations. To allow flexibility about the application of Minister's reserve power, the section enables a regulation to be made to limit the application of Division 5 to an entity's VET operations.

New section 57R provides that the Minister may give a dual sector entity a direction if satisfied that it is necessary in the public interest. The Minister must consult with the dual sector entity about the direction and ask the entity whether compliance with the direction would not be in the financial interest of the entity.

New section 57S provides that the dual sector entity must immediately inform the Minister if, in response to receiving a Minister's direction, the dual sector entity is concerned that complying with the direction would affect its financial viability. The direction is then suspended until the Minister determines whether or not to revoke the direction. This provision ensures that the Minister is aware of the implications of a direction on the dual sector entity.

New section 57T provides that Division 6, which relates to payment of returns, applies to the dual sector entity's VET operations only.

New section 57U provides that the dual sector entity must pay an annual return to the State within six months of the each of each year, or a longer period if allowed by the Minister.

New section 57V provides how the amount of annual return paid to the State is to be determined. A dual sector entity will be required to give an estimate of its VET surplus for the year and a recommendation about the amount of annual return payable. The entity may recommend that no return is payable. The section includes a definition of VET surplus.

New section 57W in the new Division 7, which relates to miscellaneous matters, provides that an annual report must be prepared for the dual sector entity under the *Financial Accountability Act 2009* and provided to the Minister. The annual report must be comprehensive and include all directions given to the entity by the Minister each year.

New section 57X provides that the Minister must review the efficiency and effectiveness of VET operations of a dual sector entity at intervals of five years, with the first review being completed within 12 months of the fifth anniversary of the entity becoming a dual sector entity.

*Clause 7* amends section 58 of the *TAFE Queensland Act 2013* to provide that a dual sector entity may use the protected term "TAFE" in relation to its operations.

*Clause 8* corrects a minor error in section 64 of the *TAFE Queensland Act 2013*.



*Clause 9* inserts definitions for terms relating to dual sector entities in in Schedule 1 of the *TAFE Queensland Act 2013*.

### **Part 3 Amendment of Central Queensland University Act 1998**

*Clause 10* provides that this this part amends the *Central Queensland University Act 1998*.

*Clause 11* provides that, if the university is a dual sector entity under the *TAFE Queensland Act 2013*, the next appointment of a member must be a VET qualified person, unless the appointed members already include a VET qualified person. This provision will not impact upon current members or increase the number of members required, but will ensure that the members appointed include a representative with relevant knowledge and experience in TAFE operations. The section defines VET qualified person.