



Queensland

TAFE Queensland (Dual Sector Entities) Amendment Bill 2014



Queensland

TAFE Queensland (Dual Sector Entities) Amendment Bill 2014

Contents

		Page
Part 1	Preliminary	
1	Short title	4
2	Commencement	4
Part 2	Amendment of TAFE Queensland Act 2013	
3	Act amended	4
4	Amendment of s 8 (Functions)	4
5	Amendment of s 49 (Relevant TAFE entities).	5
6	Insertion of new pt 4A.	5
	Part 4A Dual sector entities	
	Division 1 Preliminary	
	57A Definitions.	5
	Division 2 Establishing dual sector entity	
	57B Dual sector entity may be prescribed	5
	Division 3 Operational plans	
	57C Application of division.	6
	57D Relationship with operational plan requirements under FA Act	6
	57E Purpose and operation of division	7
	57F Preparation of draft plan.	7
	57G Content of plan.	8
	57H When plan has effect	9
	57I Plan pending agreement	9
	57J Requirement to comply	10
	57K Amendment of plan	10
	57L First operational plan	10
	Division 4 Reporting to the Minister	

Contents

	57M	Application of division	11
	57N	Quarterly reports	11
	57O	Notice of proposed significant action	12
	57P	Minister may require information	13
	Division 5	Minister's reserve powers	
	57Q	Application of division	13
	57R	Minister may give direction in public interest	13
	57S	Notice of concern about financial viability because of direction	14
	Division 6	Payment of returns	
	57T	Application of division	15
	57U	Requirement to pay annual return	15
	57V	Amount of annual return	15
	Division 7	Miscellaneous	
	57W	Annual report	16
	57X	Review of performance of VET operations	17
7		Amendment of s 58 (Use of protected terms)	17
8		Amendment of s 64 (Annual report)	17
9		Amendment of sch 1 (Dictionary)	17
Part 3		Amendment of Central Queensland University Act 1998	
10		Act amended	18
11		Insertion of new s 14A	18
	14A	University as a dual sector entity	19

2014

A Bill

for

An Act to amend the *TAFE Queensland Act 2013* to provide for the establishment and regulation of dual sector entities and to amend the *Central Queensland University Act 1998* for related purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *TAFE Queensland (Dual Sector Entities) Amendment Act 2014*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

Part 2 Amendment of TAFE Queensland Act 2013 8
9

Clause 3 Act amended 10

This part amends the *TAFE Queensland Act 2013*. 11

Clause 4 Amendment of s 8 (Functions) 12

(1) Section 8(1)(i)— 13

renumber as section 8(1)(j). 14

(2) Section 8(1)— 15

insert— 16

(i) to advise and make recommendations to the 17

Minister about matters relevant to the 18

performance of its functions and any other 19

matters referred to it by the Minister; 20

Clause 5	Amendment of s 49 (Relevant TAFE entities)	1	
(1)	Section 49(1)(e)—	2	
	<i>renumber</i> as section 49(1)(f).	3	
(2)	Section 49(1)—	4	
	<i>insert</i> —	5	
	(e) a dual sector entity;	6	
Clause 6	Insertion of new pt 4A	7	
	After section 57—	8	
	<i>insert</i> —	9	
	Part 4A	Dual sector entities	10
	Division 1	Preliminary	11
	57A Definitions		12
	In this part—		13
	<i>dual sector entity</i> means an entity prescribed as a dual sector entity under division 2.		14 15
	<i>VET operations</i> , in relation to a dual sector entity, means the operations of the dual sector entity that involve the delivery of vocational education and training.		16 17 18 19
	Division 2	Establishing dual sector entity	20 21
	57B Dual sector entity may be prescribed		22
	(1) A regulation may prescribe an entity as a dual sector entity.		23 24

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.
- (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—

[s 6]

<i>operational plan year</i> , for a dual sector entity, means—	1
	2
(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	3
	4
	5
	6
(b) otherwise—	7
(i) a financial year; or	8
(ii) a period of 1 year, other than a financial year, prescribed under a regulation.	9
	10
	11

57G Content of plan 12

(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.	13
	14
	15
	16
(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—	17
	18
	19
	20
(a) an outline of its objectives;	21
(b) its financial and non-financial performance targets for its operations;	22
	23
(c) performance indicators for the performance targets;	24
	25
(d) an outline of the nature and scope of the activities proposed to be undertaken during the operational plan year;	26
	27
	28
(e) an outline of the major investments and borrowings proposed to be undertaken;	29
	30
(f) an outline of policies about managing the risk associated with investments or	31
	32

borrowings that may adversely affect its financial position;	1 2
(g) an outline of the arrangements for people performing work for it, including as employees;	3 4 5
(h) the information required to be given to the Minister in quarterly reports under division 4;	6 7 8
(i) any other information required to be given to the Minister during the year and when it is to be given;	9 10 11
(j) any other matter relevant to its operations and required to be included in the operational plan by the Minister.	12 13 14
57H When plan has effect	15
(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.	16 17 18 19
(2) The Minister's agreement may be given subject to conditions.	20 21
57I Plan pending agreement	22
(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.	23 24 25 26
(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.	27 28 29 30 31 32

[s 6]

- (3) Subsection (2) applies until a draft operational plan becomes the dual sector entity's operational plan as provided for in this division. 1
2
3

57J Requirement to comply 4

A dual sector entity must comply with its operational plan for each operational plan year. 5
6

57K Amendment of plan 7

- (1) A dual sector entity may amend its operational plan only with the Minister's written agreement. 8
9
- (2) The Minister's agreement may be given subject to conditions. 10
11
- (3) The Minister may, by notice, direct a dual sector entity to amend its operational plan. 12
13

57L First operational plan 14

- (1) This section applies for when an entity first becomes a dual sector entity. 15
16
- (2) The dual sector entity's first draft operational plan must be— 17
18
- (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 19
20
21
22
- (b) given to the Minister as soon as possible after the start day. 23
24
- (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. 25
26
27
28
- (4) If the Minister and the dual sector entity have not reached agreement within 3 months after the start 29
30

day, the first draft operational plan submitted, or last submitted, by the entity to the Minister is taken to be its first operational plan.	1 2 3
(5) Subsection (4) applies until the first of the following to happen—	4 5
(a) the dual sector entity’s first draft operational plan is agreed to by the Minister;	6 7
(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.	8 9 10
Division 4 Reporting to the Minister	11
57M Application of division	12
(1) This division applies to a dual sector entity in the performance of all its operations.	13 14
(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.	15 16 17 18 19
57N Quarterly reports	20
(1) A dual sector entity must give the Minister a report on the entity’s operations for each quarter.	21 22
(2) A quarterly report must be given to the Minister—	23 24
(a) within 6 weeks after the end of the quarter; or	25 26
(b) if another period after the end of the quarter is agreed between the entity and the Minister—within the agreed period.	27 28 29

[s 6]

- (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. 1
2
3
4
- (4) In this section— 5
quarter means each of the following periods in any year— 6
7
- (a) 1 January to 31 March; 8
(b) 1 April to 30 June; 9
(c) 1 July to 30 September; 10
(d) 1 October to 31 December. 11

570 Notice of proposed significant action 12

- (1) This section applies if a dual sector entity proposes to— 13
14
- (a) do anything that may have a significant adverse effect on the entity's ability to meet its obligations under its operational plan; or 15
16
17
- (b) sell, lease or mortgage property transferred to the entity, as a relevant TAFE entity, under a transfer regulation; or 18
19
20
- (c) enter into an arrangement for any of its operations that commits to spending more than the amount prescribed under a regulation. 21
22
23
24
- (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. 25
26
27
28
29
- (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 30
31
32

clear intention to take the action, are included in 1
the entity's operational plan for its current 2
operational plan year. 3

57P Minister may require information 4

- (1) The Minister may, by notice given to a dual 5
sector entity, require the entity to give the 6
Minister information about the performance of 7
any of its operations. 8
- (2) The notice must state the day by which the 9
information must be given. 10
- (3) The entity must give the Minister the information 11
by the stated day. 12
- (4) Without limiting subsection (1), a requirement to 13
give information may include a requirement to 14
produce a document for inspection by the 15
Minister. 16

Division 5 Minister's reserve powers 17

57Q Application of division 18

- (1) This division applies to a dual sector entity in the 19
performance of all of its operations. 20
- (2) However, if a regulation under this section 21
prescribes a day for the entity, this division 22
applies to the entity on and from the prescribed 23
day only to the extent of the performance of its 24
VET operations. 25

57R Minister may give direction in public interest 26

- (1) The Minister may give a dual sector entity a 27
written direction if the Minister is satisfied it is 28

[s 6]

necessary to give the direction in the public interest.	1 2
(2) Before giving the direction, the Minister must—	3
(a) consult with the dual sector entity; and	4
(b) ask the entity to advise whether, in its opinion, complying with the direction would not be in its financial interest.	5 6 7
(3) The dual sector entity must comply with the direction.	8 9
57S Notice of concern about financial viability because of direction	10 11
(1) This section applies if—	12
(a) a dual sector entity is given a direction under section 57R; and	13 14
(b) the entity is concerned that its financial viability could be seriously compromised if it is required to comply with the direction.	15 16 17
(2) The entity must immediately give the Minister notice of the concern.	18 19
(3) The notice must state—	20
(a) the entity’s reasons for the concern; and	21
(b) that the notice is given under this section.	22
(4) The giving of the notice operates to suspend the direction until—	23 24
(a) the Minister gives the entity written advice that the Minister is not satisfied that the entity’s concern is well-founded; or	25 26 27
(b) the direction is revoked.	28
(5) The Minister must immediately revoke the direction if the Minister is satisfied that the entity’s concern is well-founded.	29 30 31

-
- (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. 1
2
3
4
5
6
7
- (7) A further direction given under subsection (6) is not a direction under section 57R. 8
9
- (8) The entity must comply with a further direction given under subsection (6). 10
11

Division 6 Payment of returns 12

57T Application of division 13

This division applies to a dual sector entity only to the extent of the performance of its VET operations. 14
15

57U Requirement to pay annual return 16

- (1) A dual sector entity must pay to the State, for each year, an annual return of the amount decided by the Minister. 17
18
19
- (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. 20
21
22

57V Amount of annual return 23

- (1) During the estimate advice period in each year, a dual sector entity must give the Minister— 24
25
- (a) an estimate of its VET surplus for the year; 26
and 27
- (b) a recommendation about the amount of the annual return to be paid for the year. 28
29

[s 6]

- (2) The dual sector entity is not stopped from recommending that no return is payable for a particular year. 1
2
3
- (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
5
6
7
- (4) The amount of the annual return must not be more than the VET surplus for the year. 8
9
- (5) In this section— 10
- estimate advice period*, in a year, means the period from 1 November to 15 November in the year. 11
12
13
- 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— 14
15
16
17
- (a) providing for income tax or its equivalent; 18
and 19
- (b) excluding any unrealised capital gains from upwards revaluation of non-current assets. 20
21

Division 7 Miscellaneous 22

57W Annual report 23

- (1) This section applies to a dual sector entity that is a statutory body under the FA Act. 24
25
- (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. 26
27
28
29
30

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.

Clause 7 Amendment of s 58 (Use of protected terms)

- (1) Section 58(5), definition *TAFE entity*, paragraph (c)—
renumber as paragraph (d).
- (2) Section 58(5), definition *TAFE entity*—
insert—
(c) a dual sector entity; or

Clause 8 Amendment of s 64 (Annual report)

- Section 64(a), after 'notices'—
insert—
given

Clause 9 Amendment of sch 1 (Dictionary)

- Schedule 1—
insert—
AQF means the Australian Qualifications Framework as defined in the Commonwealth Act, section 3.

[s 10]

<i>Commonwealth Act</i> means the <i>National Vocational Education and Training Regulator Act 2011</i> (Cwlth).	1 2 3
<i>dual sector entity</i> see section 57A.	4
<i>FA Act</i> means the <i>Financial Accountability Act 2009</i> .	5 6
<i>FA standards</i> means the standards made under the FA Act about the policies and principles to be observed in financial and performance management.	7 8 9 10
<i>operational plan year</i> , for a dual sector entity, see section 57F(6).	11 12
<i>operations</i> , of a dual sector entity, includes anything the entity does in the performance of its functions.	13 14 15
<i>VET operations</i> see section 57A.	16
<i>vocational education and training</i> means the education and training and qualifications and statements of attainment under the vocational education and training provisions of the AQF.	17 18 19 20

Part 3	Amendment of Central Queensland University Act 1998	21 22 23
---------------	--	----------------

Clause 10	Act amended	24
	This part amends the <i>Central Queensland University Act 1998</i> .	25 26

Clause 11	Insertion of new s 14A	27
	After section 14—	28

insert—

14A University as a dual sector entity

- (1) This section applies if the university is a dual sector entity under the *TAFE Queensland Act 2013*. 1
- (2) On the next appointment of an appointed member to happen after the university becomes a dual sector entity, the person appointed must be a VET qualified person unless the appointed members already include a VET qualified person. 2
- (3) Subject to subsection (2), it is a requirement for the appointment of members under section 14 that the appointed members always include at least 1 person who is a VET qualified person. 3
- (4) In this section— 4
- VET qualified person*** means a person with substantial knowledge or experience of vocational education and training. 5
- vocational education and training*** see the *TAFE Queensland Act 2013*, schedule 1. 6