



Queensland

TAFE Queensland (Dual Sector Entities) Amendment Act 2014

Act No. 24 of 2014



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TAFE Queensland (Dual Sector Entities) Amendment Act 2014

Act No. 24 of 2014

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

[Assented to 21 May 2014]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

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

2 Commencement

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

Part 2 Amendment of TAFE Queensland Act 2013

3 Act amended

This part amends the *TAFE Queensland Act 2013*.

4 Amendment of s 8 (Functions)

(1) Section 8(1)(i)—

renumber as section 8(1)(j).

(2) Section 8(1)—

insert—

- (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;

5 Amendment of s 49 (Relevant TAFE entities)

(1) Section 49(1)(e)—

renumber as section 49(1)(f).

(2) Section 49(1)—

insert—

(e) a dual sector entity;

6 Insertion of new pt 4A

After section 57—

insert—

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.

[s 6]

- (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.
- (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]

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.

[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.

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.

[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.
- (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

[s 6]

- 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
 - (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.

[s 6]

- (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.

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

8 Amendment of s 64 (Annual report)

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

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]

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

dual sector entity see section 57A.

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.

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.

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.

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

10 **Act amended**

This part amends the *Central Queensland University Act 1998*.

11 **Insertion of new s 14A**

After section 14—

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*.
- (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.
- (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.
- (4) In this section—

VET qualified person means a person with substantial knowledge or experience of vocational education and training.

vocational education and training see the *TAFE Queensland Act 2013*, schedule 1.