

Department of Education, Training and Employment response to submissions received on TAFE Queensland Bill 2013

	Submission	Support	Issues Raised	Departmental response
1	██████████	Yes	Definition of appropriately qualified for delegations may not be sufficient.	<p>The definition used for appropriately qualified, in schedule 2 of the dictionary, is a standard definition used in Queensland legislation, see for example sections 431 and 432 <i>Education (General Provisions) Act 2006</i> and Schedule 4 <i>Public Service Act 2008</i>.</p> <p>The Minister, TAFE Queensland and the Chief Executive may need to delegate a wide range of functions including human resources, financial and administrative decision making functions. It is necessary for the delegator to consider whether the person they propose to delegate the function to has appropriate qualifications, experience or standing. Each of these terms has a particular meaning. Standing refers to matters such as a person's classification level for a public service employee.</p>
2	Resources Registered Training Organisation Association Incorporated	Yes	Supportive of the aims of the Bill.	Noted

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3	Queensland Teachers' Union		Broad framing of regulation making power:	
			Clause 30 – will work performance arrangements be a transitional or more permanent measure? It is unclear why such arrangements are necessary.	<p>Public service agencies are given the ability to enter into work performance and interchange arrangements. These provide chief executives of those agencies with flexibility to access staff other than by directly employing them. A work performance arrangement allows for a temporary transfer (of a public service officer) without loss of entitlements. The Bill therefore ensures that TAFE Queensland has the same ability to access these arrangements as public service agencies.</p> <p>Initially, these arrangements may be used as a transitional measure to allow TAFE Queensland to obtain the assistance of corporate and administrative staff from the department until TAFE Queensland has its exemption from the <i>Fair Work Act 2009</i> (Cwlth). The future use of this power will be a matter for TAFE Queensland to determine. It would allow TAFE Queensland to secure the services of public service agency staff without employing them under the Bill.</p>
			Clause 50 – regulation making power is too broad	The regulation making power is broad because it is necessary to provide for a range of restructuring

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				<p>activities that will occur over time. The regulation provides for matters such as transfers of assets and interests in property, legal proceedings, registrations, enrolments and transfer of staff. Most of the regulation making powers relate to assets and legal issues. The clause adopts current Queensland drafting practice for legislation restructuring public bodies and ensures there is sufficient power to deal with restructuring of TAFE Queensland. Regulations will only be made as necessary and to deal with matters listed in the clause.</p>
			<p>The QTU is particularly concerned about the treatment of staff under the regulation making power.</p>	<p>The Government's policy and stated intention is to negotiate a new enterprise bargaining agreement with staff which will determine the conditions of TAFE Queensland employees.</p> <p>Any regulation made under clause 50 must be consistent with the preservation of employees' rights under Clause 55. Clause 55 therefore limits the scope of a regulation made under Clause 50 by preventing a regulation from changing matters such as an employee's total remuneration, accrued leave and access to superannuation.</p>

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				<p>It is noted that Clause 50 provides for a regulation to deal with the terms and conditions of employment as part of transferring employees. A regulation made will apply despite the <i>Industrial Relations Act 1999</i> or an industrial instrument. This would allow a regulation to change the terms and conditions of employment as part of transferring staff. The regulation could only change terms and conditions that are not protected by Clause 55. Clause 55 protects the key conditions of employment such as a person's total remuneration, leave entitlements and superannuation. An example of the type of term or condition that could be changed under a regulation would be hours of duty.</p> <p>It is likely that any change in terms and conditions made under a regulation would be limited to those changes necessary to facilitate the restructuring of TAFE entities.</p>
			Does a transfer regulation have a date of expiry?	There is no date of expiry as a number of future transfer regulations will need to be made subject to how TAFE Queensland is restructured. It is necessary to provide for future regulations to be made as required.

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			Can regulations be made after the transfer of employees has been effected?	A regulation can only be made under clause 50 as part of a restructure and a transfer of staff from one entity to another. The regulation making power does not provide for changes to conditions of employees generally.
			Clause 51 transfer directions	The purpose of this provision is to allow the Minister, if necessary or convenient, to give a direction to a board of an entity about how to deal with a transfer matter. This power supplements the regulation making power in clause 50. It allows the Minister to direct an entity about how to deal with a transfer matter, such as signing documents or when particular events should occur.
			Clause 55 protection of employee entitlements needs to be expanded	<p>Clause 55 provides for the rights of transferred employees. The rights and entitlements mentioned in the clause, total remuneration, leave and superannuation, are protected from being changed by a regulation transferring staff.</p> <p>The Clause has been drafted to ensure that a transfer does not result in the termination of employment, remove rights and entitlements already accrued or reduce total remuneration. This limits the regulation making power by preventing the change of rights and entitlements as part of a</p>

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				<p>transfer regulation.</p> <p>The Clause also clarifies that the transfer of an employee does not amount to termination or retrenchment. This will ensure that staff who are transferred cannot claim that they have been retrenched and therefore entitlement to a redundancy payment under their contract of employment.</p> <p>The Clause does not provide for the unilateral alteration of working conditions. As outlined above for Clause 50, a regulation could provide for terms and conditions of employment of employees who are transferred where that was necessary to facilitate restructuring.</p> <p>It is necessary to provide for the transfer to have effect despite any other contract, law or instrument because an employee may have a contract of employment which prevents transfer. In order for the restructure of TAFE Queensland to be implemented it is necessary for the transfer of employees to occur despite such a clause in a person's contract of employment. It should be noted that employees who are transferred will not have their remuneration reduced or rights and</p>

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				<p>entitlements affected as a result of the transfer.</p> <p>The clause already provides sufficient protection for the rights and entitlements of transferred workers. It is not necessary to expand the clause.</p>
			<p>Clause 56 is very broad and allows a thing to be done despite any other law or instrument</p>	<p>Part 4 of the Bill contains a range of provisions which facilitate the restructuring of TAFE and the transfer of various matters between relevant TAFE entities. The objective of these provisions is to allow the effective restructuring of TAFE and to facilitate transfers of matters between relevant TAFE entities.</p> <p>Clause 56 is one of a number of provisions which provide for the effective management of the restructuring. It allows for a regulation made or other action taken under Part 4 to be taken despite any other law or instrument. The regulation making power in clause 50 lists the matters about which a regulation can be made. Clause 56 ensures that a regulation made under clause 50 can be made even if another instrument would otherwise prohibit it. For example, a TAFE entity may have leased premises and promised the lessor that it would not transfer the lease without the lessor's approval. This type of clause would allow the transfer to be</p>

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				made without the lessor's approval. This type of provision is necessary to ensure that the Government's policy of restructuring TAFE Queensland can be implemented effectively.
			Clause 57 is another example of a clause exempting the Minister from requirements in law	Similar to clause 56, Clause 57 deals with the situation where a transfer would otherwise be in contravention of a contract or agreement. The section ensures that the relevant entity does not become liable for a breach of this contract. It also ensures that such a transfer does not result in the termination of a contract. In the example given above about the transfer of a lease, the lessor may have a right under the lease to terminate the lease or seek damages. Clause 57 will prevent this type of liability from arising. The various matters listed in clause 57 cover the range of possible issues that may be encountered when restructuring TAFE. Subsection (2) deals with the situation where a party has promised not to transfer an asset without another party's consent, the Clause therefore allows the transfer to occur and deems that the other party has given their consent. Subsection (3) deals with the situation where notice is required to be given before taking action, for example a lease may require the lessee to give notice before assigning a lease. This section will

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				<p>allow the transfer to occur and deem that notice was given.</p> <p>These types of provisions in the Bill are necessary to ensure a smooth transition to a new structure for TAFE Queensland. The restructuring of TAFE Queensland is a complex process and if it was necessary to individually manage each transfer of a lease, agreement or asset in accordance with individual contracts there is a risk that the restructure would not occur in a timely manner or effectively. Provisions in the Bill like Clause 57 will ensure that the restructuring can be carried out in accordance with Government policy.</p>
			Other issues	
			Clause 14 board composition	A transparent process is currently underway in relation to the recruitment of members to the TAFE Queensland Board with Expressions of Interest called via electronic and print media on Saturday, 27 April 2013 with applications closing on 13 May 2013. This process has been adopted to ensure applications are received from a wide cross section of the community, business and industry.
			Clause 34 criminal history check needs additional	Clause 34 is a standard criminal history checking provision used in Queensland legislation. It reflects

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			<p>subsection to share material received as part of criminal history check</p>	<p>current practice for public service appointments and criminal history checking. It reflects current practice for appointment of employees of TAFE institutes as these staff are public service officers. This provision is necessary because TAFE Queensland is not a public service agency and the <i>Public Service Act 2008</i> criminal history check provisions do not apply.</p> <p>A person must consent to a check before it is conducted. For potential employees, the person consents to the check as part of making an application for employment. Checks are usually only conducted on the successful applicant before finalising the appointment.</p> <p>The procedure to be adopted by TAFE Queensland for criminal history screening will be a matter for TAFE Queensland to consider once it is established. The current procedure in the Department of Education, Training and Employment (DETE) is described below. It is likely that TAFE Queensland would adopt this procedure as it represents the accepted practice for criminal history screening for public service appointments.</p>

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				<p>It is considered best practice to only carry out criminal history checks on the nominated applicant. Where that applicant is found to be unsuitable other applicants will be checked in order of merit.</p> <p>When DETE conducts a criminal history check and receives a report which indicates a person may not be suitable to perform the duties of the position DETE provides the person with a reasonable opportunity to make written representations about their criminal history report.</p> <p>The principles of procedural fairness dictate that the applicant would need to be provided with sufficient information in order to respond. However, as the applicant would likely be aware of their own criminal history, advice that an adverse check had been returned, and the reasons why their criminal history was considered to be relevant to their suitability to perform the duties of the position would ordinarily be sufficient to provide procedural fairness. It would not be necessary to provide a full copy of the criminal history findings. It is not necessary to provide in the Bill for TAFE Queensland to make available criminal history</p>

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				material to a potential employee.
			Clause 37 propose a more specific definition of community service obligation	The definition of community service obligation has been taken from the <i>Vocational Education, Training and Employment Act 2000</i> . The community service obligations of TAFE Queensland will be detailed in its operational plans. The definition in the Bill is sufficient and provides sufficient flexibility for TAFE Queensland and the Minister to determine community service obligations.
			Clauses 58 and 59 protection of TAFE brand.	Noted
4	Lifelong Learning Council Queensland Inc		Clause 8 vocational education and training not defined	<p>TAFE Queensland will have the function of providing vocational education and training as well as further education and other forms of education that complement the provision of vocational education and training.</p> <p>The term 'vocational education and training' or VET refers to accredited vocational education and training, regulated under the <i>National Vocational Education and Training Regulator Act 2011</i> (Cwlth). TAFE Queensland will be able to offer accredited VET, subject to its scope of registration.</p>

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				<p>VET is generally understood to mean certificate and diploma courses from Australian Qualifications Framework (AQF) level 1 to 6.</p> <p>(See Attachment A for definition of AQF).</p> <p>TAFE Queensland will also be able to offer higher education. Some institutes currently offer higher education courses and this will continue to occur after TAFE Queensland is established subject to the scope of TAFE Queensland's registration. Higher education courses are regulated under the <i>Tertiary Education and Quality Standards Agency Act 2011</i> (Cwlth).</p>
			<p>Will TAFE Queensland be able to establish senior secondary technical colleges?</p>	<p>TAFE Queensland will not have the function of delivering secondary education and will not be able to establish secondary schools. State schools may only be established under the <i>Education (General Provisions) Act 2006</i>. TAFE Queensland may, as TAFE institutes currently do, deliver VET courses to secondary school students as an arrangement between the students' school and the TAFE institute.</p>
			<p>The Bill should limit TAFE Queensland's role to VET at</p>	<p>The Bill provides the functions and powers necessary for TAFE Queensland to provide vocational education and training in Queensland,</p>

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			AQF levels 3 to 6.	<p>interstate and overseas.</p> <p>Limiting TAFE Queensland's role to delivering VET at AQF levels 3 – 6 would not be consistent with the public provider's current or future roles, or the operations of its competitors and peers.</p> <p>TAFE Queensland delivers VET courses across levels 1 – 6. It should not be limited to only providing VET for AQF levels 3 – 6.</p> <p>This Bill does not provide for the VET Investment Framework.</p>
			The Department took the easy option of funding Certificate III courses in Community Services qualifications which did not address skills shortages	This Bill does not provide for the VET Investment Framework.
			Clause 8 allows non VET training to be delivered.	TAFE Queensland delivers accredited and non-accredited training to rural and regional communities. The Bill provides for the continuation of this type of delivery.
			How does the Bill allow TAFE Queensland to	This Bill is delivering on the Qld Skills and Training Taskforce recommendation to establish TAFE

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			compete with other education providers?	<p>Queensland, as a parent entity, separate from the DETE, with a commercially focussed board.</p> <p>The Bill is also consistent with the Government's response to the Commission of Audit Final Report which supports the need for greater delineation between the public purchaser and provider roles (Recommendation 92). The Bill provides TAFE Queensland with the autonomy, flexibility and agility to operate within an increasingly competitive training environment.</p>
			The Bill provides for governance of TAFE but not outline how delivery of VET is reformed.	<p>By providing for a new governance arrangement the Bill allows for a significant change in the way publicly provided VET is delivered in Queensland.</p> <p>TAFE Queensland will develop strategic and operational plans each year and these will outline how it will achieve its objectives. The Bill cannot provide for these detailed matters as it is the role of TAFE Queensland to develop these plans in consultation with the Minister.</p>
5	Queensland Tourism Industry Council	Yes	Full support of the Bill.	Noted.
6	ACPET	Yes	Government should clearly articulate the role they want	Where possible the Bill outlines the functions and objectives of TAFE Queensland. TAFE

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			TAFE Queensland to play.	Queensland's role in achieving government policy will be articulated in strategic and operational plans developed by TAFE Queensland and by Queensland Government policy.
7	Health and Community Services Workforce Council Inc	Yes		<p>Noted. The Government has committed to rejuvenating industry engagement arrangements to more effectively identify the state's key skills shortages and advise the prioritisation of government funding to qualifications that match training with job opportunities.</p> <p>The Bill will ensure TAFE Queensland is responsive to industry's training needs through performing its functions in way that is responsive to industry.</p>

Attachment A – Australian Qualifications Framework

The Australian Qualifications Framework (AQF) is the national policy for regulated qualifications in Australian education and training. It incorporates the qualifications from each education and training sector into a single comprehensive national qualifications framework.

An AQF qualification is the result of an accredited complete program of learning that leads to formal certification that a graduate has achieved learning outcomes as described in the AQF.

School, work-based qualifications and academic qualifications are part of a single system of qualifications, allowing maximum flexibility in career planning and continuous learning.

Level 1 – Certificate I

Level 2 – Certificate II

Level 3 – Certificate III

Level 4 – Certificate IV

Level 5 – Diploma

Level 6 – Advanced Diploma / Associate Degree

Level 7 – Bachelor Degree

Level 8 – Bachelor Honours Degree / Graduate Certificate / Graduate Diploma

Level 9 – Masters Degree

Level 10 – Doctoral Degree