Speech By

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TAFE QUEENSLAND (DUAL SECTOR ENTITIES) AMENDMENT BILL; FURTHER EDUCATION AND TRAINING BILL

Ms D'ATH (Redcliffe—ALP) (6.14 pm): I rise to make a contribution to the cognate debate on the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 and the Further Education and Training Bill 2014. The opposition will not be opposing either of these bills. I will first speak to the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 and then to the Further Education and Training Bill.

The Queensland opposition will not be opposing the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014, and fully supports the merging of Central Queensland University and the Central Queensland Institute of TAFE to form Queensland's first dual sector entity. I wish to take this opportunity to comment on a number of the recommendations of the Education and Innovation Committee and highlight some concerns the opposition maintains with regard to the legislation.

The passing of this legislation will enable the merging of Central Queensland University with the Central Queensland Institute of TAFE to create Queensland's first dual sector entity. The merging of these two institutions has not happened overnight and a dedicated group of individuals have been working hard on this project for a number of years.

I would like to thank the staff of CQU and CQIT for their participation in the merger process. Without the cooperation and dedication of staff, this merger would not have been possible. I would like to make particular mention of Scott Bowman, the Vice Chancellor of CQU, and Garry Kinnon, the Director of CQIT, for their ongoing dedication to this merger and the many, many hours of hard work they have put into this project.

The previous Labor government first lent its support to this project in August 2011. The state Labor government assisted in securing nearly $74 million worth of funding from the federal Labor government under the Structural Adjustment Fund, ensuring that the merger process was well on its way. This merger will represent over half a billion dollars worth of combined assets, 40,000 students, 2,000 staff and over 20 campuses. Importantly, it has the support of both industry and the local community. This new entity will enhance the future of regional Queensland.

The Education and Innovation Committee made four recommendations in its report on the bill. I would like to speak to some of these recommendations. Recommendation 2 states—

The committee recommends that the Minister for Education, Training and Employment amends the Bill or, as with the TAFE Queensland Bill, the Explanatory Notes to the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 to clarify that dual sector entities are public providers of VET.

This issue was raised by the Queensland Teachers Union in their initial submission to the committee. It was seeking that the committee recommend that—

... the Bill be amended to restrict the designation of "dual sector entities" to public provider institutions (i.e. those combining TAFE and public university provision).

The opposition supports this recommendation. The bill in its current form does not preclude private VET providers from forming dual sector entities. This opens the door to the possibility that future dual sector entities could be comprised a private VET provider whom, under this legislation, would be entitled to use the protected title of TAFE without necessarily offering the same quality of training or meeting the high expectations of those seeking vocational education and training through a TAFE branded public provider.

The committee's third recommendation states—

... that the Minister for Education, Training and Employment considers the CQUniversity/CQIT merger as a pilot project for dual sector entities in Queensland, conducting an evaluation and publishing a report on the establishment of the dual sector entity once the dual sector entity is well established.

The opposition supports this recommendation as well. As mentioned previously, the merger of CQU and CQIT will create Queensland's very first dual sector entity and, as with many firsts, there are lessons to be learnt from the experience. This makes it essential—and I welcome the comments of the minister—that he support recommendation 3 to designate the CQU and CQIT merger as a pilot project and ensure a thorough evaluation is completed so that future dual sector entities in Queensland can benefit from the lessons learned in this initial merger.

One significant concern the opposition has with this legislation is that it focuses very much on the commercial and financial viability of dual sector entities. The bill states that the minister's reserve powers allow the minister to give direction in the public interest. The bill states—

Before giving 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.

The following section of the bill provides for the dual sector entity to give notice of concern about financial viability because of the minister's direction. There is no opportunity for recourse if the dual sector entity has concerns about the 'academic' viability of the institution in response to the minister's direction.

Universities and vocational education and training providers were not designed solely to make a profit. The opposition acknowledges that an educational institution cannot continue to operate at a financial loss, but some consideration needs to be given to the academic costs associated with certain decisions and the flow-on effects to the community.

Many VET students fall into at least one category of disadvantage, whether that be related to their socioeconomic status, prior education level or a disability. TAFE was designed to be a major social and educational institution, not just a provider of workplace skills and, while the latter is a significant part of TAFE's role, it is not the only part.

Professor Lawrence Angus, the head of the School of Education and Arts at Ballarat University, is the author of a recent article in the *Campus Review*, titled 'Social emphasis missing in TAFE plan'. I table a copy of the article for the benefit of members.

Tabled paper: Article from www.campusreview.com.au, undated, titled 'Social emphasis missing in TAFE plan' [5058].

The article discusses the public vocational education and training sector in Victoria and the reforms that have occurred there in the past few years. Professor Angus states—

Institutes and colleges were set up to train people and fulfil community services obligations; unfortunately the latter is now disappearing.

The opposition fears that Queensland is following Victoria's lead in neglecting the community service obligations of public VET providers. Instead, we should learn from the mistakes of other jurisdictions and improve the opportunities available to all individuals in Queensland seeking to increase their education, training and employability.

The final concern I wish to raise on behalf of the opposition relates to the committee's fourth recommendation, which states—

... that the Minister for Education, Training and Employment amends the TAFE Queensland (Dual Sector Entities) Bill 2014 to require that Ministerial approval be required before a dual sector entity undertakes significant action.

The opposition supports this recommendation but believes it is necessary to seek further changes in relation to 'significant actions' relating to the transfer of state assets. As noted by the committee in their report—

Evidence received by the committee does not provide adequate assurance that dual sector entities can take significant action only with appropriate Ministerial involvement. Without appropriate safeguards, assets could be transferred to an entity ($116 million in the case of CQUniversity/CQIT) and then sold. Although the committee acknowledges this is not anticipated, given the value of assets being transferred, it believes tighter controls are required.

It must be remembered that this bill is not solely relating to the dual sector entity of CQU and CQIT. It will be the underpinning law for all future dual sector entities. There are two areas of concern with this provision: firstly, that the dual sector entity needs to merely notify the minister of their intention to take significant action, which extends to sell property transferred to the entity, as a relevant TAFE entity. In fact, the bill allows for that notice to be given to the minister after such action is taken where the action is included in the entity's operation plan.

This is considerably different to the QTAMA Bill, which requires the agreement of the minister to take significant action. No explanation was provided to the committee to explain why the two bills have been drafted differently in dealing with TAFE assets. I note that the minister today has given some explanation, but I do not believe that that provides the assurances that the opposition seeks in relation to ensuring that there is some oversight in relation to the disposal of TAFE assets. Secondly, the issue as raised in the QTAMA Bill equally applies to this bill, and that is defining 'significant action'. What is the trigger?

The committee notes the minister's reserve powers under the bill, as referred to by the department. However, this does not provide the assurance that the opposition believes is needed to ensure that there is at least some mechanism for oversight and protection by the minister of assets transferred to dual sector entities. This bill also fails to provide any clarity as to how future assets will be transferred to dual sector entities and managed into the future once the Queensland Training Assets Management Authority is established. This issue was also raised by the committee in their report. I think this is an important point because, once QTAMA is operational come 1 July, all assets will be transferred over. All future dual sector entities will then have to have those assets transferred to them from QTAMA, but there is no reference in this bill in relation to dual sector entities as to how that transfer will occur.

The bill needs to show where dual sector entity assets fall in relation to the QTAMA Act. Do assets provided by the state government to a dual sector entity come under the control of QTAMA, the minister, the department or another entity entirely? The bill needs to clearly identify to whom a dual sector entity must apply before completing any 'significant actions' in relation to the management of government assets and what the approval process must involve. Although the bill states that the minister is to be notified, it ignores that role of QTAMA and the fact that such assets would have initially been transferred from QTAMA in the formation of the dual sector entity. The opposition does not believe that the government has adequately addressed this issue and calls on the government to do so in relation to any underlying regulations or policy in this matter to provide certainty about how those transfers will occur and assets management will occur into the future.

The TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 enables the formation of dual sector entities for the first time in Queensland. This is an exciting time for post-secondary education in our state, and I look forward to seeing some great outcomes for students, industry and our economy. I support the committee's recommendations, requesting the minister to ensure that dual sector entities are public providers of VET and that the CQU and CQIT merger be viewed as a pilot project—and, again, I welcome the comments of the minister today that that will occur. The opposition does maintain some concerns about the commercial focus of this bill. While it is important for a dual sector entity to be financially viable, it is also important for VET providers to meet their community service obligations, something which is not emphasised at all in this bill.

I now move to consideration of the Further Education and Training Bill 2014. As I advised previously, the opposition will not be opposing this bill but, as noted in my statement of reservation to the committee, we do maintain some concerns regarding some elements of the bill. I will expand upon some of the submissions provided to the committee and raise some of the opposition's concerns with the bill and ask the minister to address those issues in his speech in reply.

Firstly, I would like to refer to the amendments to be moved during consideration in detail that have been circulated by the minister. I note that an exemption has been included in relation to an application to extend a probationary period—that is, for an apprentice or trainee who is under 18 years, the application will not have to include the signed consent of their parent. This is in line with the exemption provided under clause 30 for an application for suspension of a registered training contract. Because apprentices or trainees under 18 are at some negotiation disadvantage because of their age, I ask the minister whether the department will be providing some support or advice for those who seek it?

There is also an amendment to clause 23 providing capacity for the chief executive to extend the nominal term of a registered training organisation where an application is made after the end of the nominal term if the chief executive believes it is appropriate in the circumstances. I note that, if the chief executive refuses to approve the application, they are required to provide written notice of the decision to the parties and the reasons for the decision. There does not appear to be a mechanism for review of the decision. It is not included in clause 167 or 168, so I ask the minister what recourse someone who is dissatisfied with the decision would have.

I also note the amendment to clause 48, which provides a process whereby one of the parties fails to sign a completion agreement because they have refused or neglected to do so after having been requested to do so. This plugs a loophole that was present in the bill, and I am pleased to see this amendment included.

I now move to the provisions of the bill that were considered by the committee. This bill is the final step in the legislative framework that provides for the replacement of Skills Queensland as the regulatory body for training requirements for apprentices and traineeships. When Skills Queensland was abolished by the Vocational Education Training and Employment Bill 2013, the regulatory functions were transferred to the Director-General of the Department of Education, Training and Employment for a transitional period of 12 months to allow the replacement legislative framework to be implemented. Whilst the opposition recognises the need for continual improvement of the vocational education and training sector in Queensland to ensure training meets the needs of industry in this state, we have some concerns about the extent that this bill will allow for the outsourcing of the delivery of VET in Queensland and undermines the protections provided for trainees and apprentices as compared with the provisions of the previous legislation.

The bill envisages the separation of employment contracts and apprenticeship or training contracts. Employment contracts are regulated under the Commonwealth's Fair Work Act 2009. This bill regulates the apprenticeship and training contracts. There is necessarily a correlation between an employment contract and a training or apprenticeship contract. The bill provides the grounds on which the chief executive may cancel a registered training contract. One of these grounds is that the employment of the apprentice or trainee by the employer has ceased. There are no parameters around the exercise of this power by the chief executive.

The opposition has concerns about what happens to an apprenticeship or training contract when the corresponding employment contract is terminated unfairly. Unfair dismissal processes under the Fair Work Act can take some time to complete, so we have concerns about what happens to the training of that person pending the determination of their employment matters. I note that the committee report includes a point of clarification as to how terminated employment contracts will be monitored to ensure procedural fairness, particularly where the department has not been required to intervene. I note that there is no amendment proposed to deal with this situation.

Sitting suspended from 6.30 pm to 7.30 pm.

Ms D'ATH: If this is not to be included in the bill, there should be some policy framework established by the director-general so that everyone is aware of the processes to be adopted in those circumstances and to perhaps allow for a stay of the process until this has been finalised. I ask the minister to please clarify how the director-general will deal with the situation where there is a dispute about the termination of employment. One of the identified gaps in the Fair Work Act is that apprentices employed on a probationary basis have no right of appeal to the Industrial Relations Commission. Therefore, because there is no formal process for challenging the termination in those circumstances, there needs to be some method of considering whether and how the training could continue in those circumstances.

The committee report refers to advice sought by committee members from the department as to the process around the termination of contracts. Mr Martin from the QCU gave evidence about the probationary period. He stated—

> First of all, there is a probationary period which is an exclusion from taking any action for unfair dismissal. That probationary period is three months unless otherwise agreed so that could be 12 months quite easily. That would get into an esoteric debate about whether that is reasonable or not, but it is quite perceivable that an apprentice would have a one-year probationary period during which they would have to remedy for unfair dismissal.

Mr Stephens from the department also gave evidence on this point. He stated—

> If the probation period is, say, three months, I understand that federally you can extend it for another three months to up to six months. If your organisation has fewer than 15 employees, yes, there is a 12-month probation period as a period. If it has more than 15 employees, I think it is a six-month probation period. Within that, that is the probation period.

The Fair Work Act 2009 specifically provides that, where an employer has fewer than 15 employees, employees will need to have worked for the business for 12 months in order to be eligible

to make a claim for unfair dismissal. This is the case whether the probationary period has been extended or not. Unfortunately, the committee has chosen to disregard the evidence provided to the committee and has proceeded on the basis that there are limits to the length of the probationary period under the Commonwealth legislation, so 'the apprentice or trainee in such a situation could in fact apply for a review of employment termination under that Act'. This ignores the evidence from the department and the QTU that it is possible for a probationary period to be extended to six months where the organisation has 15 or more employees, and 12 months where the organisation has fewer than 15 employees. It also ignores the fact that the Fair Work Act has limitations on the ability to make an unfair dismissal application in certain circumstances.

The issue of churn then arises, where unscrupulous employers might employ a first-year apprentice on low wages for an extended 12-month probationary period and then terminate their employment and replace them with another apprentice or trainee on the same terms and continue this practice, thereby having a continuous supply of employees available on low wages. Without recourse to unfair dismissal processes, there is little opportunity for the trainee or apprentice to protect their employment and training rights in those circumstances. Various submitters to the committee have expressed concerns about the lack of appeal mechanisms provided in the bill. As the explanatory notes provide, there are limited administrative review rights to QCAT and QIRC for decisions made by the chief executive.

The bill sets out in clause 167 the circumstances in which an aggrieved person can apply to QCAT for review of a decision. All of the matters set out in that clause relate to training and employment providers. Clause 168 sets out the decisions that are appealable to QIRC. These include decisions made under section 36(c), (e) or (h). However, it does not include a decision under subsection (i), which is the cancellation of a registered training contract because the employment of the apprentice or trainee by the employer has ceased. The explanatory notes are misleading on this aspect because they state at page 5 that 'Administrative rights will be available in the Queensland Industrial Relations Commission relating to a decision to cancel a training contract under clause 36'.

However, as I have said, the clause clearly provides that those review rights are only available in respect of decisions made under subsections 36(c), (e) or (h). The committee has relied on the statement in the explanatory notes and has therefore commented—

> The explanatory notes ... say that administrative review rights will exist in the Queensland Industrial Relations Commission ... regarding some training matters (cancelling a training contract, making a disciplinary order, cancelling a completion certificate, declaring a prohibited employer)
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> ...
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> The committee is generally satisfied with the rights to review of decisions relating to apprenticeships and traineeships that would be available should the Bill be passed.

The report then goes on to seek clarification from the minister in respect of terminated employment contracts and whether there is a risk for some apprentices or trainees to fall through the cracks. This then leads to the question of what action can be taken by an apprentice or trainee where their apprenticeship or traineeship contract is terminated by the director-general and they believe that termination is unfair or wrongful. There are no other administrative review rights than those specified under the act so these decisions remain unreviewable.

The opposition's concern goes further than those expressed by the committee, and I call on the minister to include subsection 36(i) in the appeal rights under clause 168, to allow a right of appeal to the QIRC. As I have asked before, if the issue of termination of training and apprenticeship contracts because of termination of employment is not to be addressed in the bill, will the minister ensure that there is a policy developed whereby, when the director-general is making a decision to terminate a training contract, they take into account the capacity of the apprentice or trainee to access review processes under the Fair Work Act? There should also be a further policy so that, if there is no unfair dismissal process open to a trainee or apprentice whose employment is terminated, there is some way for the director-general to take into account the merits of the dismissal when exercising a power under 36(i).

The Independent Education Union expressed some concerns about how the bill will impact on school based apprenticeships and traineeships. The current VETE Act contains in the objects the important aim of 'community commitment to supporting young people in the compulsory participation phase'. The bill does not contain a similar clause, and we share the union's concern that this may imply a reduced commitment to fulfil the community commitment to young people and does not adequately acknowledge the role of schools as RTOs for young people in the compulsory phases of participation.

The anecdotal evidence of members that withdrawal of government supported TAFE programs is leading to a reduction of school based VET programs, particularly in rural and regional areas where TAFE facilities have closed, is of real concern to the opposition. It would be disturbing if access to training was so heavily dependent on where you live that regional and rural Queensland missed out on these opportunities. Many of the industries that rely on training provided through apprenticeships and traineeships are located in rural and regional areas, and provision of training opportunities where these industries are located simply is common sense.

The committee has noted that the first *Annual Skills Priority Report* was published by the Ministerial Industry Commission in March 2013 and that budget allocations for VET will be determined as part of the 2014-15 budget process. The opposition will be keeping an eye on that budgetary process to ensure that there is no reduction of services. Following are the issues that the opposition has identified as concerns with this bill. Vocational education and training provides a significant contribution to the economy of this state. The age and sometimes inexperience of many of the participants in the sector mean that there should be significant protections provided to ensure they are not exploited in any way. Deregulation may mean that some of those protections that have existed may no longer apply. Ensuring the smooth continuation of training to these young people is important in providing the greatest benefit to the economy and community.

As I stated, the opposition will not be opposing the bill, but we do have concerns about how deregulation will affect the sector. We will be keeping an eye on how things pan out with the government's ongoing reforms in this area.