



# **TAFE Queensland (Dual Sector Entities) Amendment Bill 2014**

**Report No. 31**  
**Education and Innovation Committee**  
**April 2014**

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## Education and Innovation Committee

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## Acknowledgements

The committee thanks those who briefed the committee, made submissions, gave evidence and participated in its inquiry. In particular the committee acknowledges the assistance provided by the Department of Education, Training and Employment and the Queensland Parliamentary Library and Research Service.

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## Abbreviations and definitions

CQIT	Central Queensland Institute of TAFE
CQUniversity	Central Queensland University
CQU Act	Central Queensland University Act
Dual sector entity	An entity that provides both higher education and vocational education and training
QTAMA	Queensland Training Assets Management Authority Bill 2014
QTU	Queensland Teachers' Union
RTO	Registered training organisation
THLGC	Transport, Housing and Local Government Committee
VET	Vocational education and training

## Chair's foreword

This report presents a summary of the committee's examination of the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The introduction of dual sector entities in Queensland is an exciting time in the provision of vocational education and training and higher education, and will provide new opportunities for students. The inaugural dual sector entity being established between Central Queensland University and the Central Queensland Institute of TAFE will be watched closely by many stakeholders and the committee wishes these organisations every success as they embark on this undertaking together.

On behalf of the committee I thank those individuals and organisations who lodged written submissions on this Bill, and others who have informed the committee's deliberations: officials from the Department of Education, Training and Employment, the committee's secretariat, the Technical Scrutiny secretariat and the Parliamentary Library.

The committee makes four recommendations, including three unanimously, and seeks four points for clarification. Recommendation two is made by majority decision.



Rosemary Menkens MP

**Chair**

April 2014

## Recommendations

**Recommendation 1** **2**

The committee recommends that the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 be passed.

**Recommendation 2** **10**

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.

**Recommendation 3** **12**

The committee recommends 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.

**Recommendation 4** **15**

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

## Points for clarification

**Point for clarification 1** **7**

The committee requests that the Minister for Housing and Public Works clarifies whether the Queensland Training Assets Management Authority Bill 2014 provides for the transfer of TAFE assets to a future dual sector entity, and how such assets would be managed post-transfer.

**Point for clarification 2** **8**

The committee requests that the Minister for Education, Training and Employment clarifies in the government response to this report how a transfer regulation would provide for the separation of dual sector entities back to two independent entities, including how assets would be distributed between the entities.

**Point for clarification 3** **17**

The committee requests that the Minister for Education, Training and Employment advises how the annual returns of dual sector entities will be calculated and whether guidance will be provided and published to assist in the calculation of annual returns.

**Point for clarification 4** **18**

The committee requests that the Minister for Education, Training and Employment clarifies whether the Bill would allow the Minister to amend a dual sector entity's operational plan beyond the scope of VET matters.



## 1. Introduction

### 1.1 Role of the committee

The Education and Innovation Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

Section 93 of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of fundamental legislative principles to the Bill.

### 1.2 Inquiry process

The [TAFE Queensland \(Dual Sector Entities\) Amendment Bill 2014](#) (the Bill) was referred to the committee on 4 March 2014, and the committee is required to report to the Legislative Assembly by 29 April 2014.

The committee was briefed by the Department of Education, Training and Employment (the department) on 5 March 2014 and 2 April 2014, and received two written submissions from stakeholders (see Appendix A). The committee held a public hearing on 2 April 2014 at Parliament House and heard from four witnesses (see Appendix B). Transcripts of briefings and hearings, and submissions received and accepted by the committee are published on the committee's webpage at [www.parliament.qld.gov.au/eic](http://www.parliament.qld.gov.au/eic).

### 1.3 Policy objectives of the Bill

The Bill would amend the [TAFE Queensland Act 2013](#) (the Act) to provide a framework for the recognition of dual sector entities in Queensland. It would also amend the [Central Queensland University Act 1998](#) (CQU Act) to provide that the university's council has at least one member with knowledge and experience of vocational education and training (VET).

The [Explanatory Notes](#) provide that 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
6. provide that one appointed member of the Central Queensland University Council must be a person with knowledge and experience of VET.

### 1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After examination of the Bill, consideration of submissions, and the further information provided from the department, the committee is satisfied the Bill should be passed. The committee has made further specific recommendations and points for clarification in relation to the Bill throughout this report.

**Recommendation 1**

The committee recommends that the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 be passed.

## 2. Background

### 2.1 Vocational education and training and higher education in Australia

Australia's post-secondary education options are either vocational education and training (VET) or higher education.

There were 2,110 VET training providers delivering publicly funded VET in Australia in 2012.<sup>1</sup> Most VET students (65 per cent) were enrolled at government funded providers such as TAFE, while 28 per cent were enrolled with 'other registered providers'.<sup>2</sup> Australia's VET courses and providers are regulated nationally, by the Australian Skills Quality Authority.<sup>3</sup> VET is funded mainly by the state government, although the Commonwealth government also provides funding.

Higher education is funded by the federal government. Providers that receive federal government funding can be publicly or privately operated, and can be either self-accrediting or non self-accrediting institutions. Self-accrediting institutions primarily include universities, and they have the authority to award formal qualifications. Non self-accrediting higher education providers are accredited by state and territory authorities. They are mainly private providers of varying sizes and include business colleges and other providers that offer courses in areas such as information technology, natural therapies, hospitality, health, theology, law and accounting.<sup>4</sup>

### 2.2 Dual sector entities

Dual sector entities are not defined in the Bill, and there is no established definition. In Australia to date, they are public institutions providing both higher education and vocational education and training.

#### Australia

There are currently six dual sector entities in Australia, five of which were the result of amalgamations of a traditional VET provider and a higher education university provider. The dual sector entities include four in Victoria (Victoria University, RMIT University, Swinburne University of Technology, Federation University Australia (formerly the University of Ballarat)) and two in the Northern Territory (Charles Darwin University and Batchelor Institute of Indigenous Tertiary Education).<sup>5</sup>

In addition to these six dual sector entities, there are 84 mixed sector institutions in Australia registered to offer both higher education and VET programs.<sup>6</sup> These mixed sector entities are either universities with a small amount of VET provision, TAFEs that offer a small amount of higher education, or private providers offering both.<sup>7</sup>

<sup>1</sup> National Council for Vocational Education Research, 2013. Students and Courses, 2012. <http://www.ncver.edu.au/wps/wcm/connect/2f20a5b0-58d4-4627-bf67-fd3cc27d5c43/2012-students-and-courses-2642.pdf?MOD=AJPERES>

<sup>2</sup> Ibid

<sup>3</sup> Federal Government, Australian Skills Quality Authority, [About VET](#) (2014)

<sup>4</sup> [Education and Training: Higher Education](#) in Australian Bureau of Statistics, Year Book of Australia (2012)

<sup>5</sup> Gavin Moodie, National Centre for Vocational Education Research, [Research Overview: Mixed-sector tertiary education](#), (2012) p 2; Gavin Moodie, [VET in a dual sector context: augury or anomaly?](#) Paper delivered at the 11<sup>th</sup> Australian Vocational Education and Training Research Association (AVETRA) Conference (2008) p2

<sup>6</sup> Leesa Wheelahan, Sophie Arkoudis, Gavin Moodie, Nick Fredman and Emmaline Bexley, [Shaken not stirred? The development of one tertiary education sector in Australia](#), National Vocational Education and Training Research Program Monograph Series 08/2012 (2012) p7

<sup>7</sup> Gavin Moodie ['Enrolment data missing detail on private for-profit providers'](#), *Australian* (15 June 2011) p25

Dual sector entities are relatively rare in Australia where there are ‘sharp distinctions between vocational and higher education.’<sup>8</sup> This is seen to be a consequence of the division of funding between the federal government for universities and the state governments for vocational education.<sup>9</sup>

### International

Dual sector entities exist in a number of international jurisdictions, including Austria, Canada, England, Germany, Ireland, New Zealand, South Africa, Switzerland and the United States of America (community colleges).<sup>10</sup>

### Key issues

While dual sector entities have been in operation in Australia for some time, significant issues have been identified with “... double reporting, double funding arrangements, differing regulations between sectors, the complexity of FEE-HELP applications, different industrial regimes for teachers in two sectors and even separate calendars.”<sup>11</sup> The main issues that have arisen in the development and implementation of dual sector entities include:

- complexity of mergers
- economies of scale
- funding
- external regulation
- internal regulation (organisational structures, academic board, reporting and student load, industrial relations, central corporate services)
- blurring of distinctions between universities and TAFE
- research roles of institutions
- pathways for students
- neglect of the smaller sector.

## 2.3 Central Queensland University and Central Queensland Institute of TAFE

Central Queensland University (CQUniversity) and Central Queensland Institute of TAFE (CQIT) have been working towards a merger for some time with extensive negotiations taking place between the state and the federal governments. In September 2013 the Queensland government executed an agreement to establish a dual sector entity by merging the two entities.

Legislative amendments are required to enable the merger to proceed, including enabling the transfer of state assets to a university. The Bill also provides for the establishment of other dual sector entities in Queensland.

The explanatory notes to the Bill indicate that the anticipated benefits of dual sector entities are:

- improved ability for VET and higher education courses to meet the changing needs of Queensland regions

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<sup>8</sup> Gavin Moodie, ‘[Across the great divide](#)’, *Australian* (11 August 2010) p28

<sup>9</sup> Ibid

<sup>10</sup> Kevin J Dougherty, ‘English Further Education through American Eyes’, (2009) 63(4) *Higher Education Quarterly* 343, p343

<sup>11</sup> ACT Government Steering Group, [Creating a collaborative venture between the University of Canberra and the Canberra Institute of Technology](#) (December 2011) p8

- 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
- strengthened organisational culture across sectors when combining the research and academic traditions of higher education with the responsive industry engagement of VET.

### 3. Examination of the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014

#### 3.1 Policy issues

##### Transfer of assets

The *TAFE Queensland Act 2013* has a regulation making power that provides for the transfer of assets, employees and other matters from TAFE Queensland to another relevant TAFE entity.<sup>12</sup> The Bill recognises dual sector entities as relevant TAFE entities (clause 5), which would “... allow a transfer regulation to be made to transfer assets, staff and other matters to the dual sector entity”.<sup>13</sup>

With regard to the CQUniversity and CQIT merger, the Explanatory Notes to the Bill advise that:

*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 ...*<sup>14</sup>

The Queensland Government is contributing “... \$116 million in assets and \$40 million in expected revenue per year towards the merger.”<sup>15</sup> In recognition of the assets provided to dual sector entities by the state, dual sector entities “... may be required to pay a return to the state. This requirement only applies to the entity’s VET operations ...”<sup>16</sup> Issues regarding the payment of an annual return are considered in section 4.1 of this report.

The Queensland Training Assets Management Authority Bill 2014 (QTAMA Bill) would establish an authority to manage state-owned physical assets that are used primarily to provide VET. The QTAMA Bill was introduced by the Minister for Housing and Public Works on 4 March 2014 and was referred to the Transport, Housing and Local Government Committee (THLGC) for consideration. QTAMA would be an independent, statutory body tasked with owning and managing the state’s training assets.<sup>17</sup> It is anticipated that QTAMA would commence from 1 July 2014.<sup>18</sup>

The Queensland Teachers’ Union (QTU) suggested that clarification is required on whether assets transferred to a dual sector entity would be exempt from QTAMA legislation, and if not, what the relationship would be between QTAMA and the entity.<sup>19</sup>

When providing comment on submissions, the department confirmed that assets transferred to CQUniversity under the Bill would not be managed by QTAMA, and that the “... dual sector entity would be responsible for the management of those assets.”<sup>20</sup>

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<sup>12</sup> *TAFE Queensland Act 2013*, s50

<sup>13</sup> TAFE Queensland (Dual Sector Entities) Amendment Bill 2014, Explanatory Notes, p3

<sup>14</sup> Ibid, p2

<sup>15</sup> Media release, Minister for Education, Training and Employment, *Langbroek moves to save CQUniversity/CQIT merger*, 21 January 2014, p1

<sup>16</sup> Hansard, Minister for Education, Training and Employment, 4 March 2014, p332

<sup>17</sup> Hansard, Minister for Housing and Public Works, 4 March 2014, p335

<sup>18</sup> Department of Education, Training and Employment, [www.training.qld.gov.au/information/investing-in-skills/great-skills-real-opportunities/qtama.html](http://www.training.qld.gov.au/information/investing-in-skills/great-skills-real-opportunities/qtama.html), site accessed 16 April 2014

<sup>19</sup> Submission 1, Queensland Teachers’ Union, p3

<sup>20</sup> Department of Education, Training and Employment, Correspondence, 28 March 2014, p4

The committee asked representatives from CQUniversity what the process would be if the dual sector entity wished to transfer or dispose of any of the TAFE assets that had been transferred to it:

*It is clearly laid out in our merger agreement ... There is a covenant that exists that we have agreed to of what is to be delivered on those sites and also there is a clear process with the Queensland Government where the university would have to seek agreement on any disposal of assets. There is no intent by the university to pursue that action.<sup>21</sup>*

#### Committee comment

The committee notes that the Bill provides for the transfer of assets from TAFE Queensland to a dual sector entity. In addition, the committee is satisfied that assets transferred to the proposed CQUniversity/CQIT dual sector entity would not be managed by QTAMA, rather they would be managed by the new dual sector entity.

The committee also notes that TAFE assets would be transferred to QTAMA under the QTAMA Bill. While the Bill provides for the transfer of assets from TAFE Queensland to a dual sector entity it does not, and obviously cannot, provide for the transfer of assets from QTAMA to a dual sector entity. Although clarification has been provided on how assets would be managed for the CQUniversity/CQIT merger, questions remain about the management of assets transferred to future dual sector entities given the proposed establishment of QTAMA to control TAFE Queensland assets from July 2014.

While the committee acknowledges there are no other dual sector entities currently planned, the Bill does provide for the broader establishment of dual sector entities beyond the CQUniversity/CQIT merger.

#### Point for clarification 1

The committee requests that the Minister for Housing and Public Works clarifies whether the Queensland Training Assets Management Authority Bill 2014 provides for the transfer of TAFE assets to a future dual sector entity, and how such assets would be managed post-transfer.

#### Separation of a dual sector entity

At the public hearing, the committee sought information regarding the management of assets in the event that the two entities that merged to form a dual sector entity decided to separate back to original separate entities. The department advised that this is not provided for specifically by the Bill, rather it relies upon the transfer regulation power in the Act:

*That regulation-making power in the TAFE Queensland Act currently allows for the transfer of assets between, in this case, the state and then the to be established dual sector entity. That transfer regulation would also allow in appropriate circumstances for the transfer back of assets that had been transferred from the state to the dual sector entity.<sup>22</sup>*

The process to separate a dual sector entity is also not provided by the Bill, however, the transfer regulation "... deals with those matters that are transferred—staff, assets and the things listed in the TAFE Queensland Act." The department also advised:

*We are relying on that regulation-making power for the establishment of it. The way that section 50 of the TAFE Queensland Act is drafted, we believe the policy intent of that*

<sup>21</sup> Central Queensland University, Public hearing, 2 April 2014, p8

<sup>22</sup> Department of Education, Training and Employment, Public briefing, 2 April 2014, p11

*would allow for the transfer to the dual sector entity and then the transfer back of those matters if necessary.*<sup>23</sup>

The department noted that amendment to the CQU Act would likely be required if the proposed CQUniversity/CQIT dual sector entity was to separate.<sup>24</sup>

#### **Committee comment**

The committee notes that the separation of a dual sector entity and the distribution of its assets would be provided for under a transfer regulation. These provisions are considered important when seeking to ensure that all potential outcomes of a dual sector entity have been planned for, including the treatment of state-owned training assets.

The committee would like assurance that the separation of a dual sector entity has been adequately provided for in the Bill or elsewhere.

#### **Point for clarification 2**

The committee requests that the Minister for Education, Training and Employment clarifies in the government response to this report how a transfer regulation would provide for the separation of dual sector entities back to two independent entities, including how assets would be distributed between the entities.

#### **Transfer of employees**

As with the transfer of assets to a dual sector entity, the Bill recognises dual sector entities as TAFE entities, which would allow the Minister to issue a transfer regulation under the *TAFE Queensland Act 2013* to effect the transfer of employees from TAFE Queensland to a dual sector entity.<sup>25</sup>

The QTU considers the scope of the transfer regulation needs to be tightly defined to prevent it from being used inappropriately, as it believes there is currently wide scope for the alteration of working conditions.<sup>26</sup> The QTU recommended that the transfer regulation should not reduce the transferred employee's conditions specified in the relevant industrial instrument, policy or procedure.<sup>27</sup>

The QTU sought clarification about whether employees transferred from CQIT would retain coverage by the state industrial relations system, or whether they would be transferred to the federal system,<sup>28</sup> by which university employees are covered.

In correspondence to the committee, the department confirmed that CQIT employees transferred to CQUniversity would be covered by the national industrial relations system (the Commonwealth [Fair Work Act 2009](#)).<sup>29</sup> It also confirmed, that under federal legislation, state public sector employees have their industrial instruments and entitlements transferred with them when a transfer of business occurs. This is also the intention of the department, and is noted by the department as having been agreed by CQUniversity.<sup>30</sup>

The QTU told the committee that it was satisfied with the department's response.<sup>31</sup>

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<sup>23</sup> Department of Education, Training and Employment, Public briefing, 2 April 2014, p11

<sup>24</sup> Ibid

<sup>25</sup> TAFE Queensland (Dual Sector Entities) Amendment Bill 2014, Explanatory Notes, p3

<sup>26</sup> Submission 1, Queensland Teachers' Union, p1

<sup>27</sup> Ibid, p3

<sup>28</sup> Ibid

<sup>29</sup> Department of Education, Training and Employment, Correspondence, 28 March 2014, p2

<sup>30</sup> Ibid, p1

<sup>31</sup> Queensland Teachers' Union, Public hearing, 2 April 2014, p1

**Committee comment**

The committee considers that the issues raised by the QTU have been adequately addressed.

**TAFE as a public provider**

The Bill does not define dual sector entities as public providers of VET or preclude private VET providers from forming dual sector entities. The QTU recommends that the Bill be amended to provide that dual sector entities are public providers of VET.<sup>32</sup> At the public hearing, representatives from the QTU further explained:

*... the Bill ... lays a basis for the establishment down the line of future dual sector entities. That is the aspect of the Bill that is the most worrying to us in that, unlike Central Queensland University and TAFE, which are both public education providers, there is no requirement that that be the case for any future dual sector entity. Therefore, there is the risk that the word 'TAFE', which is being specifically restricted at the present time to public providers, will in the future be able to be used by private providers and that will dilute the brand.<sup>33</sup>*

The QTU advised that “... all dual sector entities to date have been public university, public VET provider, dual sector entities” and that the Bill opens “... up the possibility of there being a private entry and then private use of TAFE.”<sup>34</sup>

The department advised it is anticipated that the operational plan of dual sector entities would recognise their role as public providers of VET.<sup>35</sup> In response to the department’s advice, the QTU told the committee:

*It is ... still a concern in relation to the department’s response in respect of the issue of the public role of the VET provider in this legislation, in particular the provisions around a protection of the TAFE brand. That comes into sharp focus in the context of what we perceive to be a very narrow and instrumental conception of what VET is about, that is, that the Government’s position appears to us to be that it is about the provision of specific skill sets to individuals and employers and does not recognise the broader role of the public provider or provide a basis for differentiating the role of TAFEs from those private providers.<sup>36</sup>*

Specifically, the QTU considers that public VET providers, as opposed to private providers, do the following things:

- address issues of access, providing services in a range of often rural and remote locations
- provide courses across a range of vocational and general knowledge skills areas
- set a quality benchmark for VET delivery.<sup>37</sup>

**Committee comment**

The committee notes that the Bill does not define dual sector entities as public providers of VET. Although dual sector entities are not defined in the *TAFE Queensland Act 2013* either, the committee acknowledges that TAFE Queensland is identified as the public provider of VET in the policy objectives of the Explanatory Notes to the TAFE Queensland Bill 2013.

<sup>32</sup> Submission 1, Queensland Teachers’ Union, p2

<sup>33</sup> Queensland Teachers’ Union, Public hearing, 2 April 2014, p2

<sup>34</sup> Ibid, p3

<sup>35</sup> Department of Education, Training and Employment, Correspondence, 28 March 2014, p2

<sup>36</sup> Queensland Teachers’ Union, Public hearing, 2 April 2014, pp1-2

<sup>37</sup> Ibid

The role of dual sector entities as public providers of VET is supported by the committee. This role was also acknowledged by the department, through anticipating that the operational plan of dual sector entities will recognise their role as public providers of VET. Given this expectation, the committee recommends that the Minister clarifies that dual sector entities are public providers of VET.

### **Recommendation 2**

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.

### **TAFE Queensland and dual sector entity relationship**

The QTU highlighted that the relationship between TAFE Queensland and a dual sector entity is not defined in the Bill, even though these entities would be permitted to use the TAFE brand. The QTU considers that a formal process of consultation and cooperation should be established, to ensure the integrity of the TAFE 'brand' in terms of objectives of the public provider of TAFE.<sup>38, 39</sup>

When representatives from CQUniversity were asked by the committee whether they saw any benefit in establishing a formal process for consultation and cooperation between the dual sector entity and TAFE Queensland, they responded that was already happening on an informal basis:

*The view of the university and the university council and the university executive is that we would want to form a natural partnership with TAFE Queensland. I have already spoken to the acting TAFE Queensland CEO ... we are just beginning to start those discussions at the moment. There is also the opportunity, I guess, for more progress to be jointly delivered across Queensland through our university within the other TAFE Queensland sites.<sup>40</sup>*

Correspondence from the department notes that although dual sector entities can use the term 'TAFE' and be recognised as part of the broader TAFE network, they are "... independent of TAFE Queensland and will be competing with TAFE Queensland in the VET sector". The department therefore does not consider it appropriate to require these entities to consult and cooperate.<sup>41</sup>

At the second public briefing the department further advised that it considers:

*... it is not really appropriate to impose an obligation on the entities to consult. Certainly the Bill does not prevent them from working together in whatever way they consider appropriate. CQUniversity indicated this morning that it is doing that or it is looking to do that. So I would say that the Bill does not prevent that from happening, but ... it may not be appropriate to impose an obligation for that to occur given that the entities are independent of each other and accountable in different ways.<sup>42</sup>*

The QTU indicated that as all TAFE institutes would be competing against each other, this argument was not sustainable.<sup>43</sup>

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<sup>38</sup> Submission 1, Queensland Teachers' Union, p2

<sup>39</sup> Queensland Teachers' Union, Public hearing, 2 April 2014, p2

<sup>40</sup> Central Queensland University, Public hearing, 2 April 2014, p7

<sup>41</sup> Department of Education, Training and Employment, Correspondence, 28 March 2014, p3

<sup>42</sup> Department of Education, Training and Employment, Public briefing, 2 April 2014, p9

<sup>43</sup> Queensland Teachers' Union, Public hearing, 2 April 2014, p4

**Committee comment**

The committee notes the concerns raised by the QTU regarding the definition of the relationship between TAFE Queensland and a dual sector entity. The committee also acknowledges the response to this issue provided by the department, including that dual sector entities are not prevented from having a relationship with TAFE Queensland, that they are independent entities, will be competing against one another and are free to work together in whatever way they deem appropriate.

It is pleasing to learn that the proposed QCU/CQIT dual sector entity intends to have a constructive relationship with TAFE Queensland, given the important role both of these entities would have in the public provision of VET in Queensland. However, the committee considers it important to look beyond the CQUniversity/CQIT merger to other dual sector entities established in the future, for the purpose of the Bill. It cannot be assumed that such an amiable relationship would be intended, or result, between future entities. The committee considers ongoing cooperation and communication between the two entities is important in the provision of VET in Queensland and should be encouraged.

The committee also notes that the TAFE Queensland Act is very clear about the importance of protecting the TAFE brand as the public provider of VET in Queensland. To be consistent with that position, it would seem important to ensure a formal connection between the entities allowed to use the TAFE brand, and TAFE Queensland.

The committee therefore considers that the establishment of future dual sector entities would benefit from the expectation of the relationship between TAFE Queensland and dual sector entities being outlined by the Minister, or in the Explanatory Notes.

**Central Queensland University**VET qualified person

The Bill requires CQUniversity to include a VET qualified person on its Council (clause 11). The QTU notes that this requirement does not apply to the board of TAFE Queensland, and recommends that it should.<sup>44</sup>

This suggestion is not supported by the department, which noted that the *TAFE Queensland Act 2013* provides for Board appointees to have experience in education and training, and that the Act already enables the TAFE Queensland board to include persons with experience in VET.<sup>45</sup> The QTU agrees with this assertion, however, told the committee that the Bill:

*... does not require that to happen [the appointment of a VET qualified person] and, as a consequence, a board could be constituted without any relevant vocational education and training expertise, and that is a concern.*<sup>46</sup>

Pilot

In its submission, CQUniversity encourages the state government to consider the university's merger with CQIT as a pilot project and model for future dual sector developments in Queensland.<sup>47</sup> At the public hearing, representatives from CQUniversity told the committee:

*I think it very much could be used as a pilot. We have documented our process that we have gone through quite significantly and there are certainly opportunities to pick up that pilot. I guess the side of caution that I err on is that it has taken significant investment. We have had significant investment from the federal government as well as*

<sup>44</sup> Submission 1, Queensland Teachers' Union, p3

<sup>45</sup> Department of Education, Training and Employment, Correspondence, 28 March 2014, p3

<sup>46</sup> Queensland Teachers' Union, Public hearing, 2 April 2014, p2

<sup>47</sup> Submission 2, Central Queensland University, p2

*the state government—the state government with the assets, the federal government with our grant funding to pursue this merger. That is probably the only restriction I would think that would exist against doing that. Apart from that, to be a pilot site I think would be very exciting for us to be part of that process to provide that information to people.*<sup>48</sup>

#### **Committee comment**

The concerns raised by the QTU regarding Council membership are noted by the committee, however, it is not within the scope of this inquiry to recommend changes to the TAFE Queensland board.

With regard to the CQUniversity recommendation for the government to consider the university's potential merger with CQIT as a pilot project, the committee agrees that there would be benefit in review of the merger in some detail to inform future entities established under this legislation.

#### **Recommendation 3**

The committee recommends 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.

#### **Reporting and funding**

While dual sector entities have been in operation in Australia for some time, research shows there continues to be significant issues with “... double reporting, double funding arrangements, differing regulations between sectors, the complexity of FEE-HELP applications, different industrial regimes for teachers in two sectors and even separate calendars.”<sup>49</sup> Dual sector entities can end up with two cultures within the one organisation.<sup>50</sup>

At the public hearing, CQUniversity confirmed that a number of these issues had been taken into account during development of the potential dual sector entity:

*... it has been considered, and we have been working really closely with the department around our reporting requirements as per the merger agreement that we have agreed to with the department. As part of the process what the university will do is produce an operational plan and work through a funding agreement with the department prior to commencing the process. Probably the biggest issue that we are having at the moment is the lag time in the department being able to provide us with the correct pricing of courses, just to finalise that operational plan. Once the Ministerial Industry Council finalises that pricing that process will then go ahead.*

*We do not envisage there will be any issues around dual access to funding. We have been very careful to ensure that the higher education funding and the vocational funding is very much separate. We have been doing a lot of work I guess on pathwaying and articulations and embedding qualifications within qualifications so that our community has easy access to exit qualifications and parallel qualifications, but no issues with dual funding.*<sup>51</sup>

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<sup>48</sup> Central Queensland University, Public hearing, 2 April 2014, p8

<sup>49</sup> ACT Government Steering Group, Creating a collaborative venture between the University of Canberra and the Canberra Institute of Technology (December 2011), p8

<sup>50</sup> Dual-Sector Collaboration Project, University of Ballarat, Dual-Sector University Cohesion Report (December 2011), pxi

<sup>51</sup> Central Queensland University, Public hearing, p6

### Committee comment

The committee considers that Queensland is fortunate to be in a position to learn from the establishment of dual sector entities in other jurisdictions. In addition, the committee recommendation 3, for the government to consider the CQUniversity/CQIT merger as a pilot project would provide further opportunities to formally document and learn from the establishment of the inaugural dual sector entity in Queensland. It is the committee's hope that issues such as those identified above would, where possible, be addressed and assist in the efficient implementation of future dual sector entities.

### Proposed significant action

If a dual sector entity proposes to take 'significant action', such as sell, lease or mortgage property, the Bill requires that it give the Minister *notice* of the action, unless the action is included in the operational plan (new section 57O). The QTAMA Bill 2014, currently before the Parliament, would require that the QTAMA not take proposed significant action unless the Minister *agrees* to it (new section 46(6)). In addition, the Minister administering the future QTAMA Act "... *must consult with the Treasurer and the Minister administering the Further Education and Training Act 2014 about the proposed significant action.*"<sup>52</sup>

There is no requirement in the TAFE Queensland (Dual Sector Entities) Amendment Bill 2014 for Ministerial approval of significant action, or for the Minister to consult with the Treasurer or other Ministers about the proposed action.

At the second public briefing, the department advised the committee that approval of significant action would be given by the Minister if the action was included in the approved operational plan. With regard to the differences between the QTAMA Bill and this Bill, the department advised:

*... it is a slightly different situation in terms of the relationships involved between the different ministers and agencies compared to what we have here, where we have a single minister responsible for oversight of a dual sector entity.*<sup>53</sup>

The Bill identifies what is required to be included in an operational plan (new section 57G), but does not specify that significant action be included. Content of an operational plan must include, for example, the objectives, financial and non-financial performance targets and indicators, nature and scope of activities to be undertaken, major investments and borrowings, risk management policies associated with investments or borrowings and any other matter required by the Minister.<sup>54</sup>

The department also noted that although the dual sector entity is not required to obtain Ministerial consent, if the Minister received a notice of proposed significant action he or she:

*... has reserve powers to give directions to a dual sector entity, which is in division 5, and other powers to request information which would always apply. Although it does not specifically say that after giving a notice you have to wait for approval, there are other provisions that could come into play if the Minister decided that he or she wanted to take action in response to receiving a notice.*<sup>55</sup>

The committee notes that CQUniversity does not intend to take the 'significant action' of disposing of assets transferred to it by the state:

*It is clearly laid out in our merger agreement ... There is a covenant that exists that we have agreed to of what is to be delivered on those sites and also there is a clear process*

<sup>52</sup> Queensland Training Asset Management Authority Bill 2014, Explanatory Notes, p8

<sup>53</sup> Department of Education, Training and Employment, Public briefing, 2 April 2014, p10

<sup>54</sup> TAFE Queensland (Dual Sector Entities) Amendment Bill 2014, clause 57G

<sup>55</sup> Department of Education, Training and Employment, Public briefing, 2 April 2014, p10

*with the Queensland Government where the university would have to seek agreement on any disposal of assets. There is no intent by the university to pursue that action.*<sup>56</sup>

#### **Committee comment**

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<sup>57</sup>) and then sold. Although the committee acknowledges this is not anticipated, given the value of assets being transferred, it believes tighter controls are required.

While the requirement for the Minister to approve operational plans goes some way to addressing this issue, operational plans are not required to include significant actions proposed to be undertaken by a dual sector entity. If they were, this would provide the committee with assurance of appropriate Ministerial involvement. There may also be the possibility that a decision to undertake significant action could be made after an operational plan has been approved. The committee is therefore not satisfied that the operational plan process provides adequate safeguards on this matter.

The committee notes the other potential safeguards identified by the department, regarding the Minister's reserve powers and the power to request information. The question remains, however, about why this Bill and the QTAMA Bill have such different provisions regarding the undertaking of significant action, when action under both Bills applies to TAFE assets.

The committee considers the provisions in the QTAMA Bill more comprehensive, identifying what class of assets require Ministerial approval before significant action is taken; requiring that notice be provided to the Minister; that the Minister consults with specific individuals and that action may not be taken without Ministerial approval. In comparison, the TAFE Queensland (Dual Sector Entities) Bill 2014 simply requires that notice be provided to the Minister.

The committee is not satisfied that there are adequate safeguards to prevent a dual sector entity from undertaking significant action, such as selling state-owned TAFE assets, without adequate Ministerial involvement. The committee has had extensive discussion about why the provisions regarding 'significant action' are different in this Bill to those provided for in the QTAMA Bill, and specifically:

- Why the minister is not required to consult with Treasury
- What safeguards are in place to prevent significant action from being undertaken without adequate ministerial involvement
- What the financial implications are for the government if a dual sector entity sells a TAFE asset.

Although it is outside the scope of this Bill, the committee notes with concern that the Minister administering the QTAMA Bill is not required to consult with Minister administering the *TAFE Queensland Act 2013* in respect of proposed significant actions. TAFE Queensland is the largest provider of VET services in Queensland, and so TAFE assets have a significant impact on the delivery of VET services. Instead, the QTAMA Bill would require the Minister responsible for QTAMA to consult with the Minister responsible for the future Further Education and Training Act. That Act will relate more to the regulation of apprentices and trainees than to the provision of VET. It would seem more relevant that consultation occur with the Minister responsible for TAFE Queensland.

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<sup>56</sup> Central Queensland University, Public hearing, 2 April 2014, p8

<sup>57</sup> Media release, Minister for Education, Training and Employment, *Langbroek moves to save CQU/CQIT merger*, 21 January 2013, p1

**Recommendation 4**

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

## 4. Fundamental legislative principles

As well as considering the policy to be given effect by the legislation, portfolio committees are required to review Bills in respect of their lawfulness, and advise the Legislative Assembly on whether fundamental legislative principles have been given appropriate regard.

Section 4 of the [Legislative Standards Act 1992](#) states that fundamental legislative principles are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee has examined the application of fundamental legislative principles to the Bill and identified the following issues.

### 4.1 Rights and liberties of individuals

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.<sup>58</sup> This principle may be extended to encompass the University Council's ability to appoint members and manage its affairs pursuant to the objectives of the CQU Act.

Clause 6 of the Bill requires that dual sector entities pay the state an annual return of an amount decided by the Minister (new s57U) for its VET operations (new s57T), being no more than the VET surplus for that year (new s57V(4)). However, under the CQU Act, the university council has the power to manage and control the university's finances (s9(2)(c)) and must act in a way that promotes the university's interests (s10).

Representatives from CQUUniversity were asked by the committee about the impact of the new financial requirements of a dual sector entity on the role of the Central Queensland University Council, such as the role of the council with respect to providing an annual return to the state:

*The council obviously oversees and has a governance role over the entire entity and actually has responsibility for ensuring that we meet all the requirements set in the merger agreement as far as generating a return. Part of the agreement is that any losses from the TAFE side of the business will be underwritten by the department for the first three years as we get going. We do not envisage that there will be losses. Currently TAFE is at a break-even point in its history. The only issue I guess that we will pick up as a new entity is that we will pick up the depreciation which has always been funded on a cost recovery basis by Treasury. That will not be the case. There will be some efficiencies gained through not having to use the department's shared services provision and all the efficiencies going from back office work and services work within the university. We do not envisage there will be losses and we have developed a growth strategy with the department and also a strategy where we will be working really hard to diversify the fund sources of the TAFE.<sup>59</sup>*

With regard to the use of revenue raised through annual returns, the department advised that:

*As the legislation is silent on the use of funds returned to the state under the new provisions, any returns would be paid to the Consolidated Fund as state revenue. Its use*

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<sup>58</sup> *Legislative Standards Act 1992, S4(2)(a)*

<sup>59</sup> *Central Queensland University, Public hearing, 2 April 2014, p6*

*would then be determined by the Cabinet Budget Review Committee. This process does not preclude the Government from reinvesting revenue raised back into VET.*<sup>60</sup>

An annual report must be prepared for the dual sector entity under the [Financial Accountability Act 2009](#) and provided to the Minister (new s57W). The annual reporting requirement is not limited by the Bill to VET operations in the way that the payment of an annual return is.

At the public briefing, the department advised that there will not be any duplicate reporting with the *TAFE Queensland Act 2013*. There may be duplicate reporting with the CQU Act, however, this has been minimised.

#### Committee comment

The committee considered whether being a dual sector entity could compromise an entity's financial obligations and, for example, the university council's existing obligations to manage and control the university's finances and act in a way that promotes the university's interests.<sup>61</sup> The committee is satisfied that the financial obligations under the Bill would not conflict with the role of the university council.

With regard to the calculation of annual returns, the committee notes that the Bill is silent on how they would be calculated. To ensure they are calculated transparently and consistently by dual sector entities, the committee recommends that the Minister advise the House how the annual returns of dual sector entities would be calculated and whether guidance would be provided and published to assist in the calculation of returns.

The committee also considered whether the Bill would result in duplicate reporting by a dual sector entity, and is satisfied that in general, it will not. The duplicate reporting with the CQU Act that was noted by the department is noted as having been minimised.

#### Point for clarification 3

The committee requests that the Minister for Education, Training and Employment advise how the annual returns of dual sector entities will be calculated and whether guidance will be provided and published to assist in the calculation of annual returns.

## 4.2 Clear and precise drafting

Some provisions in the Bill apply to a dual sector entity in the performance of *all* of its operations, such as those relating to operational plans (new division 3, s57C(1)), reporting to the Minister (new division 4, s57M(1)) and the Minister's reserve powers (new division 5, s57Q(1)). However, the following sub-section of each of these provisions provides that a regulation can limit the application to VET operations only.

The Bill also enables the Minister to receive an operational plan and reports for a dual sector entity and this has not been expressly limited to VET operations. The plans could not be amended without the Minister's written agreement, could be amended at the Minister's direction and the Minister could impose conditions on the agreement provided (new s57K).

#### Committee comment

It remains unclear whether the provisions in the Bill that apply to a dual sector entity in the performance of all its operations are within the scope of the Bill's objectives, as they may permit the Minister to amend an operational plan beyond VET matters. Clarification is therefore sought from the Minister.

<sup>60</sup> Department of Education Training and Employment, Correspondence, 10 April 2014, p1

<sup>61</sup> *Central Queensland University Act 1988*, s9(2)(c) and s10

**Point for clarification 4**

The committee requests that the Minister for Education, Training and Employment clarifies whether the Bill would allow the Minister to amend a dual sector entity's operational plan beyond the scope of VET matters.

### 4.3 Explanatory Notes

**Committee comment**

The committee considers that the Explanatory Notes provided with the Bill are fairly detailed and contain the information required by part 4 of the *Legislative Standards Act 1992*. They contain a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Possible typographical error

The committee notes a possible typographical error on page 9 of the Explanatory Notes, where a word is repeated: - *Clause 10 provides that this this part amends the Central Queensland University Act 1998.*

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## Appendix A – List of submissions

Sub #	Submitter
1	Queensland Teachers' Union
2	Central Queensland University

## Appendix B - Witnesses at public briefings and public hearing

### Witnesses at public briefing, 5 March 2014

#### Department of Education, Training and Employment

- Ms Gabrielle Sinclair, Deputy Director-General, Policy and Programs
- Mr Stuart Busby, Executive Director, Policy and Programs
- Mr Geoff Favell, Assistant Director-General, Employment, Skills and Training
- Ms Carina Muller, Executive Director, Strategic Policy and Portfolio Relations
- Mr Christopher Roney, Director, Legislative Services

### Witnesses at public hearing, 2 April 2014

#### Queensland Teachers' Union

- Mr Kevin Bates, President
- Dr John McCollow, Research Officer

#### Central Queensland University (via videoconference)

- Mr Nic Babovic, Deputy Vice-Chancellor (Industry & VET)
- Ms Jenny Moore – Executive Officer to Deputy Vice-Chancellor (Industry & VET)

### Witnesses at public briefing, 2 April 2014

#### Department of Education, Training and Employment

- Mr Stuart Busby, Executive Director, Policy and Programs
- Mr Geoff Favell, Assistant Director-General, Employment, Skills and Training
- Ms Carina Muller, Executive Director, Strategic Policy and Portfolio Relations
- Mr Christopher Roney, Principal Advisor, Legislative Services
- Mr Wayne Stephens, Director, Queensland Apprenticeship and Traineeship Office

## Statement of reservation

**YVETTE D'ATH MP**

SHADOW MINISTER FOR EDUCATION AND TRAINING

SHADOW MINISTER FOR DISABILITY SERVICES

SHADOW MINISTER FOR SCIENCE, INFORMATION TECHNOLOGY AND INNOVATION

MEMBER FOR REDCLIFFE

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28 April 2014

Ms Bernice Watson  
Research Director  
Education and Innovation Committee  
Parliament House  
George St  
Brisbane QLD 4000

Dear Ms Watson

**Re: TAFE Queensland (Dual Sector Entities) Amendment Bill 2014**

I wish to notify the committee of my reservations about aspects of Report No. 31 of the Education and Innovation Committee into the *TAFE Queensland (Dual Sector Entities) Amendment Bill 2014*. The opposition will detail the reasons for our concerns during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in blue ink that reads "Yvette D'Ath".

Yvette D'Ath MP  
**Member for Redcliffe**  
**Shadow Minister for Education and Training**