

Impact Analysis Statement

A Summary Impact Analysis Statement (IAS) must be completed for all regulatory proposals. Once completed, the IAS must be published.

Summary IAS

Details

Lead department	Department of Employment, Small Business and Training
Name of the proposal	Sunset review of the <i>TAFE Queensland Regulation 2013</i> (TAFEQ Regulation)
Submission type (<i>Summary IAS / Consultation IAS / Decision IAS</i>)	Summary IAS
Title of related legislative or regulatory instrument	<i>TAFE Queensland Act 2013</i>
Date of issue	22 July 2024

*For all other proposals***What is the nature, size and scope of the problem? What are the objectives of government action?**

Provision and access to a high quality, modern and responsive vocational education and training (VET) system throughout Queensland is critical to ensure we have the skilled workers required both now and into the future to drive growth in the Queensland economy, and provide Queenslanders with access to good jobs with better pay.

In 2013 the Queensland Government implemented a range of reforms to improve the efficiency and competitiveness of the public provision of VET within the broader VET market in Queensland. It was identified that a substantial reform of the TAFE sector structure was required including replacing the existing network of TAFE Institutes and Statutory TAFE Institutes (STIs) with a new independent body - TAFE Queensland (TAFEQ). TAFEQ has a Board that controls its own budget, revenues and staffing arrangements and is accountable to the Minister. The reforms included a number of transitional arrangements including abolishing the TAFE Institutes and STIs and transitioning them to TAFEQ, (e.g. transfer of staff, contracts, assets and liabilities, legal proceedings and student enrolments)

The *TAFE Queensland Act 2013* (the Act) was enacted to implement this structural reform by establishing:

1. TAFEQ as a statutory body with the function to deliver, subject to the Minister's, oversight, VET and related activities;
2. the mechanism to permit entities to deliver in both the higher education and VET sectors also subject to Ministerial oversight (dual sector entities); and
3. the mechanism for the Government, by regulation, to transfer the business, assets, liabilities, students and staff between TAFE entities to carry out this reform.

The Act provides for a Regulation to:

- s. 49 add to the list of organisations that can be listed as a relevant TAFE entity.
- s. 50 provide for the transfer of a relevant TAFE entity's business, assets, liabilities, employees, students and associated matters to another relevant TAFE entity.
- s. 53 dissolve an STI.
- s. 57B create a dual sector entity (i.e. an entity that provides both higher education and VET services).

Consistent with these provisions the TAFEQ Regulation has a narrow scope and provides for a few matters:

- Part 2 relates to the restructure of STIs.
- Part 3 establishes CQUniversity (CQU) as a dual sector entity.
- Part 4 establishes transfer arrangements for the former TAFE institutes, excluding Central Queensland Institute of Technology (CQIT).
- Part 5 establishes transfer arrangements for CQIT.

The TAFEQ Regulation facilitated the structural reform by:

- abolishing two statutory TAFE institutes;
- prescribing CQU to be a dual sector entity, and
- implementing a restructure of the six regional TAFE institutes, operated by the former Department of Education, Training and Employment, and the two former statutory TAFE institutes that existed at 30 June 2014, into a public provider structure comprising the relevant entities of TAFEQ and CQU, from 1 July 2014.

Review of the TAFEQ Regulation demonstrates that it largely relates to a set of past transitional arrangements and many provisions can be deleted from the Regulation as they are no longer relevant. However, Government policy continues to support the restructure introduced by the 2013-2014 reforms, by continuing to support the role of TAFEQ and CQU established as the principal public providers of VET in Queensland.

Although consultation has not identified a need for the declaration of additional TAFE entities or dual sector entities, the framework in the Act permits the Government to implement a further re-structure if policy changes require it. Accordingly, the Act is not under review.

Therefore, the impact assessment of the sunset expiry of the TAFEQ Regulation is primarily concerned with ascertaining the ongoing viability of the current structure of VET public provider delivery through TAFEQ and CQU with Part 3 of the TAFEQ Regulation remaining relevant in the context of s,57B(1) and (2) of the Act.

Effect of Expiry of TAFEQ Regulation

The majority of the provisions in the TAFEQ Regulation will continue to have legal effect even after expiration. For example, the transfer to TAFEQ and CQU of staff, assets and students etc effected by the TAFEQ Regulation will survive. Despite this, the Department’s analysis is the expiry of the TAFEQ Regulation will cause CQU’s status as a dual sector entity to lapse, meaning the provisions in the Act that provide for the Minister’s oversight of CQU’s VET delivery function will not apply. There will also be doubt about the survival of a person’s right to commence legal proceedings against TAFEQ or CQU as the successors in law to the TAFE institutes as they were constituted prior to 1 July 2014.

Therefore, only the provisions necessary to facilitate the existing legal framework ought to be re-made in support of an entity (CQU) within the meaning of the Act, so that it continues to be prescribed as a dual sector entity from 1 September 2024.

CQU is to continue to be prescribed as a dual sector entity under s 57B of the Act. For the purposes of s 57B(2) of the Act, CQU’s Vice-Chancellor and President has conveyed CQU’s agreement to continue as a dual sector entity, and the Minister is satisfied CQU continues to be a suitable entity to perform VET operations at the requisite standard. This is most recently demonstrated by the marking of their tenth anniversary as Queensland’s only dual sector entity and the achievement of 24,000 VET qualifications completions over this time.

What options were considered?

First Option – Regulation expires, and non-regulatory proposals implemented to continue the 2013-14 re-structure of public providers of VET.

Second Option – remake the TAFEQ Regulation to the extent necessary to ensure:

- CQU continues as a dual sector entity subject to the current level of Ministerial oversight; and
- the continuation of any regulations necessary to support the ongoing operation of the 2013-14 re-structure.

What are the impacts?

The legislative framework established by the Act requires certain matters to be contemporaneously prescribed by regulation for the re-structure to continue. In particular, expiry of the TAFEQ Regulation without any extension or remake would result in CQU losing its status as a dual sector entity. Although CQU will be eligible to continue to deliver VET as a private registered training organisation, (subject to Australian Skills Quality Authority (ASQA) approval) and would be eligible to apply for Skills Assure Supplier status, it would no longer be subject to the oversight or direction of the Minister. In effect CQU would transition from being a public provider of VET to a private provider of VET, while retaining the significant benefit of assets accrued, in the form of staff, enrolments, infrastructure etc while operating as the former CQIT, and as prescribed by the State under the TAFEQ Regulation.

As a dual sector entity, Part 4A of the Act requires CQU to agree an annual operational plan with the Minister (s 57G) and provide quarterly reports (s 57N). The Minister may require the dual sector entity to provide information about its performance (s 57P). Significantly a dual sector entity must notify the Minister of its proposal to take “significant action” (s 57O) before committing to that action.

The TAFEQ Regulation prescribed a threshold of \$3,000,000 as the amount that constitutes a significant action. The Minister has 'reserve' powers to direct the dual sector entity in the public interest about the performance of its obligations (s 57R). These features of the dual sector entity status cannot be replicated through any non-regulatory instrument, such as a services agreement or grant.

Expiry of the TAFEQ Regulation will not affect TAFEQ as its existence is established and continued by the Act. It will continue to be the operator of TAFE Institutes and retain the benefit of assets, staff and students transferred to it under the TAFEQ Regulation. Except for the minor matters mentioned below, the legal effects of the TAFEQ Regulation on TAFEQ have completed and are preserved.

The TAFEQ Regulation provides for TAFEQ and CQU to be the successors in law to the TAFE Institutes that existed at 30 June 2014. This was to ensure, in part, legal claims against those institutes survived the re-structure and can be resolved and finalised with TAFEQ and CQU. Sections 29 and 42 of the TAFEQ Regulation, relating to prospective legal proceedings against the former institutes, will not survive expiry due to their wording. Although there is a minimal chance this situation will arise, the continuation of these sections is justified to ensure the successful implementation of the 2013-14 re-structure. Furthermore, an individual's right to commence legal proceedings is a human right (section 24 of the *Human Rights Act 2019*) and the State must act in a way that is compatible with human rights.

It is anticipated that remaking of the regulation will not pose any direct or additional compliance costs on either TAFEQ, CQU or the Queensland Government. Compliance with national regulation will remain unchanged as governed by ASQA. Similarly, compliance expectations for the delivery of Queensland Government subsidised training arrangements will remain in place. Not remaking the regulation will have the same outcome – national and state compliance mechanisms will remain in place maintaining the status quo of current arrangements.

Similarly, remaking of the regulation will not pose any direct or additional government costs to TAFEQ, CQU and the Queensland Government, with funding agreements between these entities currently in place remaining unchanged. Failure to remake the regulation may impose financial burden on CQU by the removal of their entitlement to a State Contribution Grant and have the unintended consequence of impeding the delivery of state subsidised training needed by those in Central Queensland if they are to access good jobs and power the economy of this region.

Who was consulted?

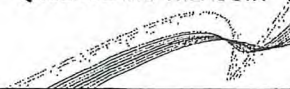
DESBT met with members of CQU's executive on 14 June 2024 to provide advice on the process for the proposed re-make of the TAFEQ Regulation, and the implications of progressing or otherwise with this course of action. CQU representatives attending this meeting signalled their understanding of the reasons and proposal for the remake of the TAFEQ Regulation, implications of this action and the processes associated with finalising these arrangements.

Similarly, on 17 June 2024, DESBT met with members of TAFEQ's executive to provide advice on the process for the proposed re-make of the TAFEQ Regulation, and the implications of progressing or otherwise with this course of action. TAFEQ representatives attending this meeting signalled their understanding of the reasons and proposal for the remake of the TAFEQ Regulation, implications of this action and the processes associated with finalising these arrangements.

Both TAFEQ and CQU conveyed their support for the removal of obsolete provisions and that minimal changes to the Regulation would support the status quo and that any regulatory burden remains unchanged.

As per section 57B(2)(a) of the Act, the Minister can recommend the making of a regulation, declaring an entity to be a dual sector entity only with the agreement of that entity. On 24 June 2024 CQU's Vice-Chancellor and President conveyed CQU's agreement to continue as a dual sector entity.

What is the recommended option and why?



Second Option – Remake the TAFEQ Regulation to the extent necessary to ensure:

- CQU continues as a dual sector entity subject to the current level of Ministerial oversight,
- The continuation of any regulations necessary to support the ongoing operation of the 2013-14 re-structure.

The rationale for remaking part of the TAFEQ Regulation is to ensure the continuation of the legal framework that underpins the existing structure of TAFE Queensland operating TAFE Institutions and CQU as a dual sector entity. The expiry of the TAFEQ Regulation would change CQU from a public provider to a private provider which is inconsistent with a key purpose of the 2013-14 re-structure; namely to improve the competitiveness of public provision of VET within the broader VET market.

Continuation of provisions relating to the commencement of legal proceedings arising from the acts or omissions of the former TAFE Institutes, while unlikely to arise, must be preserved through the TAFEQ Regulation to ensure the State is acting compatibly with human rights.

Impact assessment

All proposals – complete:

	First full year	First 10 years**
Direct costs – Compliance costs*	0 As noted above	0
Direct costs – Government costs	0 As noted above	0

* The *direct costs calculator tool* (available at www.treasury.qld.gov.au/betterregulation) should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero. **Agency to note where a longer or different timeframe may be more appropriate.

Signed

Director-General
 Department of Employment, Small Business and
 Training

Date: 06.08.2024

Minister for Employment and Small Business
 Minister for Training and Skills Development

Date: 8/8/24