

BRIEFING FOR THE COMMUNITY SUPPORT AND SERVICES COMMITTEE

Arts (Statutory Bodies) and Other Legislation amendment Bill 2024

Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

1. BACKGROUND

The Arts Statutory Bodies (ASB) Acts within the Arts portfolio are the *Queensland Performing Arts Trust Act 1977*, *Queensland Art Gallery Act 1987*, *Libraries Act 1988*, *Queensland Theatre Company Act 1970* and the *Queensland Museum Act 1970* (the Acts).

2. OVERVIEW OF THE BILL

A summary of the main provisions in the Bill is set out below. Please refer to the explanatory notes for a detailed description of the provisions.

Purpose of the Bill

The main purposes of the Bill are to -

1. enshrine a greater recognition of First Nations peoples, to make the Acts consistent with the government's priority for honouring our cultural history; and
2. modernise governance provisions through improved accountability and integrity measures and removal of operational barriers to ASB functions and performance.

Main principle of the Bill

The main principle of the Bill is to amend the enabling Acts for the Statutory Bodies within the Arts portfolio: *Queensland Performing Arts Trust Act 1977*, *Queensland Art Gallery Act 1987*, *Libraries Act 1988*, *Queensland Theatre Company Act 1970* and the *Queensland Museum Act 1970* (the Acts) to enshrine a greater recognition of First Nations peoples and modernise governance provisions.

Key elements of the Bill

First Nations amendments:

The draft Bill presents the five-part approach to enshrining a greater recognition of First Nations peoples:

- an overarching statement on First Nations and arts and culture
- revising and improving the Acts' Guiding Principles
- mandating two Board positions are to be for First Nations peoples
- including a new section to establish a First Nations Committee
- requiring First Nations initiatives/plans be included in Strategic Plans.

The Guiding Principles outline the common provisions of cultural and creative rights and self-determination. Both provisions highlight the connection between these principles and the *Human Rights Act 2019* (detailed below) while extending the application of these rights to the practices within the cultural sector relating to the fair and transparent arrangements for First Nations arts.

The amendments take a position against the ‘fake art’ issues experienced within the visual arts community, which was identified by First Nations peoples as a significant impediment to economic participation in the arts (and examined in detail in the Productivity Commission’s report on Aboriginal and Torres Strait Islander visual arts and crafts). In addition, these amendments also encompass the cultural protocols in sharing First Nations stories by the performing arts community. In doing so, the draft Bill further extends the leadership of the Queensland arts and cultures sector nationally.

Individual principles for each ASB provide a connection between function and purpose as a cultural institution and their primary First Nations engagement (e.g. as a collecting institution, repatriation responsibilities).

The First Nations Committee (operating as a sub-committee of the Board) has a dedicated outline of its board advisory role, expanding on the cultural governance approved at ATP. The provisions were co-designed and shaped to acknowledge the role learning and knowledge play in integrating cultural ways into organisational governance.

The draft Bill also provides for the *Queensland Performing Arts Trust Act 1977* and *Queensland Theatre Company Act 1970* to be Reframing Entities under the *Public Sector Act 2022*. This creates consistency across the Arts portfolio for the five ASBs, demonstrating the portfolios’ commitment to embedding values required to that of the Public Sector.

Governance amendments:

The governance provisions achieve the modernised accountability sought as well as the clarity of operational arrangements. The below table summarises the amendments by governance issue.

External membership to sub-committees	The amendments will provide for external membership to be applied consistently across all ASBs, in line with reviews of government board processes.
Temporary appointments and temporary leave arrangements	Time limited (3 month) temporary appointments for Chief Executive and Board members, with approval points which do not limit Governor in Council arrangements.
Board member consultation	Ministerial consideration of Board recommendations provided for, in line with government board reviews.
Reporting	Removal of extraneous and conflicting details for ASB reporting. This removes the potential for an ASB to be in breach of their own Acts by referring to the primary Acts and policies in this area (e.g. <i>Financial Accountability Act 2009</i>).
Civil liability Indemnity provisions	Seeking to extend the civil indemnity provisions (s268(1)(g) of the <i>Public Sector Act 2022</i> to additional ASBs as part of the amendment proposing external members (and removal of s75 for avoidance of any conflict). This provision has the purpose of ensuring a person does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity in accordance with s269 of the <i>Public Sector Act</i> .
Grant allocations (Library Board)	Draft provisions provide for the separation of Ministerial (methodology) and Board (payment) approvals.

Functions of ASBs	<p>Amendments include within ASB roles, the performance of related activities within the Queensland Cultural Centre (reflecting collaboration and acknowledgement of the delivery outside building boundaries) and partnerships, including philanthropic partnerships (in acknowledgement of its performance of its functions and a funding source).</p> <p>Additionally, the Office of Queensland Parliamentary Council (OQPC) has included in the amendments revisions which clarify and modernise the references to functions and powers of a Statutory Body (namely that the function which corresponds to a power, can be delegated with that power).</p>
De-accessioning funds (QAG)	Revised to limit the use of de-accessioning funds for the building and care of the Collection
Criminal History Checking	Provision within the ASB Acts for criminal history checks to be undertaken for Board members (per the expectation that these are undertaken for Board Appointments) and consistent across the statute book. This includes provisions for the privacy of this information.
Temporary Extensions of Chief Executives	Operational streamlining by time limited extension (3 month) for Chief Executive position approved by the Minister – without limiting Governor in Council arrangements
Foundation Committee Appointments	<p>The ATP included for Foundation appointments to be endorsed by the Minister and enabling Boards to appoint existing Board members to Foundations.</p> <p>Arts Queensland sought advice from DPC for clarity as to the determination of Foundations being government bodies, citing as example, the QAGOMA Foundation which is a sub-committee of the Board and not a separate legal entity. There has historically been an inconsistent application across the portfolio.</p> <p>To resolve this issue, the Foundation Committees and First Nations Committees (that are operating as sub-committees of the Arts Statutory Bodies) to be regarded as sub-committees and not government bodies for appointment processes. It is noted that the remuneration for sub-committees will continue to be determined by applying the <i>Remuneration Procedures for Part time Chairs and Queensland Government Bodies</i>.</p>
Past Director's Term (QAG)	Removed as no longer relevant.
Statement of Expectations	Ministerial provision for a Statement of Expectations letter (in line with other Government legislation), to support the Ministerial powers of direction.
Foundation Committee established (Library)	Establishing the Foundation Committee within legislation, with the QAG Foundation Committee provisions used as the basis.
Abandoned property	<p>Omits provisions relating to abandoned property.</p> <p>ASBs were consulted on this approach and supported this as it provides less administrative burden to an operational task.</p>

Ticket scalping	Including provisions within the QPAT Act to provide for an offence for ticket scalping. These are modelled on the <i>Major Sports Facilities Act 2001</i> provisions, with the exception of excluding buyer penalties (which is consistent with the approaches under consideration by Department of Tourism and Sport).
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3. STAKEHOLDER CONSULTATION

Government consultation

Government consultation has focused on central agencies (Department of the Premier and Cabinet and Queensland Treasury) with additional consultation with Public Sector Commission and the Departments of Justice and Attorney-General and Tourism, Innovation and Sport (regarding ticket scalping and the provisions being modelled on the *Major Sports Facilities Act* provisions).

Arts Queensland’s First Nations Arts and Cultures Panel (FNACP)

The FNACP co-designed the amendments, with the Panel providing a range of detailed directions on the details of the First Nations Committee, cultural governance and guiding principles. The full FNACP met on 4 August and 3 November 2023 and provided its support for the proposed amendments developed through co-design with the FNACP sub-committee.

Arts Statutory Bodies

The ASB Chairs, CEOs and First Nations representatives were consulted on the development of the draft Bill and were provided a briefing paper to support their engagement with the amendments.

ASB representatives (Chair, Chief Executive and First Nations representatives) were invited to participate in a Roundtable discussion, which included a detailed discussion on the First Nations Committee’s role, functions and membership.

ASBs were also provided subsequent briefings on the development of the submission, including the draft First Nations Guiding Principles provisions as relating to their individual ASB.

4. OVERVIEW OF IMPLEMENTATION ACTIVITIES

The implementation of the legislative amendments will be the responsibility of the ASB Boards. ASB Boards and Management have been actively engaged in the development of the proposed amendments and are therefore no significant issues are identified for the implementation.

The Bill provides transitional arrangements to the establishment of the new First Nations Committees, of up to 12 months. This timeframe is considered appropriate as all ASBs currently have a version of this committee and are transitioning towards this consistent model.

5. FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Committee is referred to pages 2 to 6 of the Explanatory Notes to the Bill where potential breaches of the fundamental legislative principles are identified and justified.

6. COMPATIBILITY WITH HUMAN RIGHTS

The Committee is referred to the Statement of Compatibility, which outlines that the Bill extends and promotes the rights of First Nations people within this Act, in a manner consistent with the *Human Rights Act 2019*.