

Education, Employment and Training Committee

Inquiry into the Queensland University of Technology Amendment Bill 2021

Background

1. The objectives of the Queensland University of Technology Amendment Bill 2021 (the Bill) are to: implement governance reforms for the Queensland University of Technology (QUT) to reduce the size of the QUT Council (the Council) from 22 to 15 members; and enable an appropriate balance between the number of members and mix of necessary skills and expertise required for effective governance on the Council.
2. Queensland public universities are statutory bodies, each established by a relevant Act (collectively, the University Acts). The overall management of public universities is the responsibility of their governing body (Council or Senate). The composition of the respective governing bodies is prescribed under each relevant University Act.
3. QUT is a statutory body established under the *Queensland University of Technology Act 1998* (QUT Act). The QUT Act establishes the Council as QUT's governing body and gives it overall responsibility to ensure sound and effective governance of QUT.
4. The QUT Act confers powers on the Council to:
 - appoint QUT's staff;
 - manage and control QUT's affairs and property; and
 - manage and control QUT's finances.
5. Under the QUT Act, the composition of the Council comprises of 22 members, made up of four categories: official, appointed, elected and additional:
 - *Official members* (three) are members of the Council due to their position at QUT. The Council's official members are QUT's Chancellor, Vice-Chancellor, and Chairperson of the academic committee;
 - *Appointed members* (eight) are appointed by the Governor in Council (GiC) for a term of not more than four years;
 - *Elected members* (nine) are elected pursuant to the QUT Act. Persons are eligible for election to the Council if they are members of QUT's academic or professional staff, or if they are QUT students or QUT alumni. Academic staff, professional staff, and QUT Alumni elected to the Council, hold office for four years. Students elected to the Council hold office for two years; and
 - *Additional members* (two) are appointed by the Council for a term of not more than four years and must not be a QUT student or a member of QUT's academic or professional staff.
6. In 2017, as part of public university reforms, the *University Legislation Amendment Act 2017* (ULAA) included amendments to the governance structure of the James Cook University Council (JCU Council) to allow it to determine the size of its governing body by way of membership resolution. While the ULAA amended the governance structure of the JCU Council, broader governance reforms for the other six public universities (including QUT) were not considered.
7. In 2017, the Government invited the other public universities to consider their governance arrangements and whether they would like to pursue similar governance reforms.

8. Following consultation with its university community stakeholders, QUT proposed reforms to its Council and provided a new governance model for the changed composition, similar to the current governance structure of the JCU (after its Council determined its size and structure). The QUT model has a prescribed number of members, and set numbers in each member category, while the JCU model determines membership numbers by Council resolution (which may change), and prescribed percentages of member categories.
9. QUT's 22-member Council is one of the largest governing bodies of Queensland's public universities. The proposed reduction in size is intended to allow the Council to be more flexible and responsive in its operations, and is in line with Universities Australia's *Voluntary Code of Best Practice for the Governance of Australian Universities* (**Attachment 1**), which states a university governing body should desirably be no more than 15 members.
10. It is the view of the QUT Council that reducing its membership and changing the composition will: achieve a well-balanced membership in terms of skills, experience, gender, and diversity; facilitate efficient and effective governance and enable faster decision-making; and improve the effectiveness of Council meetings and operations, while maintaining QUT's key public sector responsibilities.

Purpose of the Bill – Amendments

11. The Bill amends the QUT Act to streamline QUT's governance by reducing the size of the Council from 22 to 15 members. The Bill makes no changes to the numbers of elected student members (two) or official members (three), but provides for changed numbers in other member categories as follows:
 - three GiC appointed members (reduced from eight);
 - five elected members (reduced from nine) including:
 - two members of the academic staff of QUT (reduced from three);
 - one member of the professional staff of QUT (reduced from two);
 - no elected QUT alumni members (reduced from two); and
 - four additional members (increased from two).
12. The Bill also introduces requirements to assist with the balance of representation on the Council, including that:
 - at least two additional members are alumni of QUT – this ensures representation of the QUT community given the removal of the QUT alumni class from the elected members category; and
 - of the two elected student members, one is to be an undergraduate student and one a postgraduate student – changing the requirement in the elected student class is considered by the Council as pertinent having regard for QUT's objects in research, and consistent with current arrangements for other Queensland universities (for example, sections 15(2)(d) and (e) of the *University of Queensland Act 1998*).
13. The Bill makes consequential amendments to the QUT Act on matters relating to the proper constitution of the Council and removal of a member from office, as a result of reducing the size of the Council.
14. The Bill includes transitional arrangements to enable an ordered and timely transition from the current structure to the proposed new Council membership, with as few additional processes and as little disruption to the Council as possible.

15. These arrangements include provisions for reducing appointed and elected members, increasing additional members, and changing the requirement in the elected students and additional member categories. In particular the following transitional arrangements will apply:

- To reduce the number of GiC appointed members, the Bill provides that the Minister may notify the appointed member of the appointed member's removal from office by written notice. When making the decision to remove the member, the Minister may have regard to the desirability of appointed members having a range of knowledge, experience or skills relevant to the functions of the Council.
- To reduce the number of elected members (academic and professional staff), the Bill provides that the member who received the least number of votes in the same Council election will cease to be a member. In the event of a tie, the candidate to fill the position is determined by lot drawn by an appropriately qualified member of the university's staff (who is to be nominated in writing by the Council to draw the lot).
- To reduce the number of elected members (QUT Alumni), the Bill provides the two QUT Alumni members elected immediately before the commencement of the Bill will cease to be elected members.
- To increase the number of additional members and change the requirement for alumni of QUT, the Bill provides the number of additional members increase from two to four, and that at least two additional members are alumni of QUT.
- To change the requirement in student elected members to comprise of one undergraduate student and one postgraduate student, the Bill provides that this requirement will commence at the end of the respective term of office of the two student members who were elected immediately before commencement of the Bill. That is, each elected student member of the Council immediately before commencement of the Bill are to continue for the remainder of the member's respective term of office, as if the Bill had not commenced. The provisions relating to filling a casual vacancy for elected student members also continue to apply for the respective term of office (regardless of the undergraduate or postgraduate category of the student members).
- The terms of office of those members who will remain as Council members will continue to run as per their current appointment.

16. The Bill also makes minor editorial amendments consistent with drafting best practice.

17. A comparative analysis of the current and proposed council membership, comparing the QUT model to the JCU model and composition of each governing body for Queensland's public universities, is provided at **Attachment 2**.

Consultation

18. The stakeholders consulted and outcomes of those consultations are outlined on pages 3 to 4 of the Explanatory Notes to the Bill.

19. No changes were made to the Bill as a result of the consultation on the exposure draft of the Bill.

Fundamental Legislative Principles

20. Potential breaches of Fundamental Legislative Principles (FLPs) raised by the amendments are considered justified. The FLPs and justification are outlined on page 3 of the Explanatory Notes to the Bill.

Human Rights

21. The amendments are considered compatible with human rights under the *Human Rights Act 2019*. The human rights issues and justification are outlined in the Statement of Compatibility for the Bill.



Voluntary Code of Best Practice for the Governance of Australian Public Universities

As amended at the Universities Australia and University Chancellors Council
joint meeting on 15th May 2018

Introduction

As Australia's higher education sector has continued to grow, universities have become increasingly complex and sophisticated organisations that manage very substantial budgets, employ tens of thousands of staff, and educate hundreds of thousands of students. Good internal governance is central to ensuring that universities retain their reputations as highly respected institutions of learning and research, benefiting Australian society politically, economically, socially and culturally.

This Code seeks to provide support and guidance to university governing bodies and to university leadership more broadly. It outlines the key roles and responsibilities of functions of governing bodies, and provides a series of recommendations to support their effective implementation.

Good university governance requires above all a set of strong relationships based on mutual respect, trust and honesty between the governing body and the Vice-Chancellor and his or her senior management team. While clearly defined boundaries between oversight and management functions are important, nothing is more important in governing body/ management relations than the exercise of plain common sense on both sides. When issues arise which straddle the borderline between oversight and management functions – for example, personnel or budgetary decisions which are clearly management prerogatives but nonetheless may be exposing the university to external reputational risk – it is critical that they be resolved through effective consultation and communication designed to produce genuine consensus.

The Code is intended to operate in conjunction with each university's establishing Act, and does not seek to replace or overrule existing legislation. The Code is voluntary, and not all items in it may be relevant to all universities. But it is expected that all Australian universities will report on their alignment with the Code in their annual reports, providing reasons for any areas of non-compliance. Universities should approach these statements as an opportunity to demonstrate their understanding of and involvement with proper governance procedures.

Roles and Responsibilities of Governing Body

1. A university should have its objectives and/or functions specified in its enabling legislation.
2. A university's governing body should adopt a statement of its roles and responsibilities, which should include:
 - a) Strategic Oversight
 - approving the mission and strategic direction of the university;
 - ensuring that values, visions and goals are turned into effective management systems; and
 - monitoring implementation of the university's mission statement and strategic plan.
 - b) Ensuring Effective Overall Management
 - appointing the Vice-Chancellor as the Chief Executive Officer of the university, and monitoring his or her performance;
 - appointing other senior officers of the university as considered appropriate;
 - overseeing and reviewing overall management performance; and
 - overseeing and monitoring the academic governance and activities of the university.
 - c) Ensuring Responsible Financial and Risk Management
 - approving the annual budget and business plan;
 - approving and monitoring systems of control and accountability, including general overview of any controlled entities (entities satisfying the test of control in s.50AA of the *Corporations Act*);
 - overseeing and monitoring the assessment and management of risk across the university, including commercial undertakings;
 - establishing policy and procedural principles, consistent with legal requirements and community expectations, including remuneration policies for the Vice-Chancellor and senior officers; and
 - ensuring compliance with legal and government policy requirements.

A university's governing body, while retaining its ultimate governance responsibilities, may have an appropriate system of delegations to ensure the effective discharge of these responsibilities.

Duties of Members

3. A university should have the duties of the members of the governing body and sanctions for the breach of these duties specified in its enabling legislation. Other than the Chancellor, the Vice-Chancellor and the Presiding Member of the Academic Board, each member should be appointed or elected *ad personam*. All members of the governing body must be responsible and accountable to the governing body. When exercising the functions of a member of the governing body, a member of the governing body must always act in the best interests of the university.

Duties of members should include the requirements to:

- a) act always in the best interests of the university as a whole, with this obligation to be observed in priority to any duty a member may owe to those electing or appointing him or her;
- b) act in good faith, honestly and for a proper purpose;
- c) exercise appropriate care and diligence;
- d) not improperly use their position to gain an advantage for themselves or someone else; and
- e) disclose and avoid conflicts of interest (with appropriate procedures for that purpose similar to those for public companies).

There should be safeguards, exemptions and protections for members of a university's governing body for matters or things done or omitted in good faith in pursuance of the relevant legislation. Without limitation, this should include such safeguards, exemptions and protections as are the equivalent of those that would be available were the member a director under the *Corporations Act*. A university (with the exception of those subject to the *Corporations Act*) must have a requirement that the governing body has the power (by a two-thirds majority) to remove any member of the governing body from office if the member breaches the duties specified above included in its enabling legislation. A member must automatically vacate the office if he or she is, or becomes, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the *Corporations Act*.

4. If permitted by its enabling legislation, a university should develop procedures:
 - a) to provide that the Chancellor and Deputy Chancellor hold office subject to retaining the confidence of the governing body; and
 - b) to deal with removal from that office if the governing body determines that such confidence is no longer held.
5. Each governing body must make available a programme of induction and professional development for members to build the expertise of the governing

body and to ensure that all members are aware of the nature of their duties and responsibilities.

6. On a regular basis, at least once each two years, the governing body should assess its performance, the performance of its members and performance of its committees, including appropriately constituted committees for finance, and audit and risk management. The Chancellor should have responsibility for organising the assessment process, drawing on external resources if required. On an annual basis, the governing body should also review its conformance with this Code of Best Practice and identify needed skills and expertise for the future.

Composition of Governing Body and Appointment of Members

7. The size of the governing body should not exceed 22, and desirably be no more than 15 members, and include members with strong expertise in and knowledge of higher education and/or other education sectors. There should be at least two members having financial expertise (as demonstrated by relevant qualifications and financial management experience at a senior level in the public or private sector) and at least one member with commercial expertise (as demonstrated by relevant experience at a senior level in the public or private sector). Where the size of the governing body is limited to less than 10 members, one member with financial expertise and one with commercial expertise would be considered as meeting the requirements. There should be a majority of external independent members who are neither enrolled as a student nor employed by the university. There should not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.
8. The university should adopt systematic procedures for the nomination of prospective members of the governing body for those categories of members that are not elected. The responsibility for proposing such nominations for the governing body may be delegated to a nominations committee of the governing body that the Chancellor would ordinarily chair.

Members so appointed should be selected on the basis of their ability to contribute to the effective working of the governing body by having needed skills, knowledge and experience, an appreciation of the values of a university and its core activities of teaching and research, its independence and academic freedom and the capacity to appreciate what the university's external community needs from that university.

The governing body should seek to ensure that any government appointments take these appointment criteria into account and that such appointments are made in consultation with, and so far as possible in accordance with

recommendations of, the governing body or a nominations committee appointed by it.

To provide for the introduction of new members consistent with maintaining continuity and experience, members' terms should generally overlap and governing bodies should establish the maximum period to be served. This should not generally exceed 12 years unless otherwise specifically agreed by the majority of the governing body.

Risk Management

9. A university should codify its internal grievance procedures and publish them with information about the procedure for submitting complaints to the relevant ombudsman or the equivalent relevant agency.
10. The annual report of a university should be used for reporting on high level outcomes, including financial and environmental sustainability, and performance against the university's mission statement and strategic plan.
11. The annual report of a university should include a report on risk management within the organisation.
12. The governing body should oversee controlled entities by:
 - a) ensuring that the entity's board possesses the skills, knowledge and experience necessary to provide proper stewardship and control of the entity;
 - b) appointing some directors to the board of the entity who are not members of the governing body or officers or students of the university;
 - c) ensuring that the board adopts and regularly evaluates a written statement of its own governance principles;
 - d) ensuring that the board documents a clear corporate and business strategy which reports on and updates annually the entity's long-term objectives and includes an annual business plan containing achievable and measurable performance targets and milestones; and
 - e) establishing and documenting clear expectations of reporting to the governing body, such as a draft business plan for consideration and approval before the commencement of each financial year and at least quarterly reports against the business plan.
13. A university should assess the risk arising from its involvement in the ownership of any entity (including an associated company as defined in the Accounting Standards issued by the Australian Accounting Standards Board), partnership and joint venture. The governing body of the university should, where appropriate in light of the risk assessment, use its best endeavours to obtain an auditor's report

(including audit certification and management letter) of the entity by a State, Territory or Commonwealth Auditor-General or by an external auditor.

Compliance with Code of Conduct

14. A university should disclose in its Annual Report its compliance with this Code of Best Practice and provide reasons for any areas of non-compliance.

Queensland University of Technology proposed governance reforms

Proposed governance model

In August 2019, the Queensland University of Technology (QUT) submitted a proposal to the Minister for Education for a 15-member Council, a total reduction of seven members from the existing 22-member Council. Table 1 outlines the current and proposed QUT Council composition.

Table 1: Current QUT Council membership and proposed Council membership

| Category | Details | Current QUT Council composition | QUT's proposed Council composition | Difference – percentage points |
|--------------------|---|---------------------------------|--|--------------------------------|
| Official members | <ul style="list-style-type: none"> Chancellor Vice-Chancellor Chair of University Academic Board | 3 (14%) | 3 (20%) | 6% increase |
| Appointed members | Appointed by Governor in Council | 8 (36%) | 3 (20%) | 16% decrease |
| Elected members | Academic staff | 3 (14%) | 2 (13%) | 1% decrease |
| | Professional staff | 2 (9%) | 1 (7%) | 2% decrease |
| | Students | 2 (9%) | 2 (13%) | 4% increase |
| | Alumni | 2 (9%) | - | |
| | Total | 9 (41%) | 5 (33%) | 8% decrease |
| Additional members | Appointed by Council | 2 (9%) | 4 (27%) (at least 2 members to be alumni) | 18% increase |
| Total | | 22 (100%) | 15 (100%) | |

Official members – The number of official members is unchanged at three members. However, given the reduction in the overall size of the Council, official members will constitute 20% of the Council, previously 14%.

Appointed members – The proportion of appointed members has reduced by 16%, from eight members to three members. Appointed members will account for effectively 20% of the Council membership.

Elected members – The total number of elected members has been reduced by four to five members as follows:

- a reduction of two staff members – one academic staff member and one professional staff member;
- no change to the number of elected student representatives; and
- two alumni members have been removed from this membership class but have been provided for in the additional membership class.

This equates to an overall decrease of 8% of the proportion of elected members and does not take into account that the two alumni members are to be included in the additional members. Elected members will remain the largest membership category on the Council at 33%.

Additional members – Additional membership will increase from two members to four members, an 18% increase. Additional members will account for 27% of the Council composition.

Comparison to a Government approved equivalent model

In 2017, the Government approved governance amendments to the *James Cook University Act 1997* (JCU Act) as part of the public university reforms in the *University Legislation Amendment Act 2017* (ULAA). James Cook University (JCU), similar to QUT, had a 22-member Council with a high representation of appointed and elected members.

The governance amendments provided JCU with the ability to determine the size of its governing body by way of a membership resolution which allows the university to ensure an appropriate gender balance and mix of skills and experience. The JCU Council must have between 11 and 21 members. A comparison of the QUT proposed model with the JCU Council membership is provided at Table 2.

Table 2: QUT proposed Council membership compared with JCU governance model

| Category | Details | QUT proposed Council composition | JCU Council composition (with the option of a membership resolution) |
|--------------------|---|--|---|
| Official members | <ul style="list-style-type: none"> Chancellor Vice-Chancellor Chair of University Academic Board | 3 | 2 or 3 |
| Appointed members | Appointed by Governor in Council | 3 | 3 – 6 |
| Elected members | Academic staff | 2 | ♦ (total number of elected staff members must be greater than the number of elected student members) |
| | Professional staff | 1 | ♦ (total number of elected staff members must be greater than the number of elected student members) |
| | Students | 2 | ♦ |
| | Total | 5 | 3 – 6 3 or 25% of the total number of members (whichever is the greater), but not more than 6 |
| Additional members | Appointed by Council | 4 | 3 – 6 (at least 2 members must be graduates of the university) |
| Total | | 15 (at least 2 additional members to be alumni) | 11 – 21 |

♦ must be represented

It is difficult to accurately compare the QUT proposed governance model with the JCU model as JCU has a flexible model with each class of membership either expressed as a percentage of the total Council or a number within a set range. This prevents any true representation of what the JCU Council composition may resemble.

However, the QUT proposed model broadly aligns with the JCU governance model. The number of members in each class of the QUT proposed model is either consistent or within the parameters of the JCU model. In particular, the number of elected members proposed by QUT fully complies with the parameters for elected representation in the JCU Act (that is, number of elected staff must be greater than elected students).

To give an accurate comparison of both models of governance, it is necessary to compare the composition of the JCU governing body where a membership resolution has been passed by the Council.

JCU Council adopted a membership resolution for the term commencing 20 April 2018 to 19 April 2022, which reduced the membership of Council from 22 to 15 members as follows:

Table 3: QUT proposed Council membership compared with JCU Council Membership with a membership resolution

| Membership category | QUT Proposed Council membership | JCU Current Council membership (after adopting a membership resolution) |
|---------------------|---------------------------------|---|
| Official members | 3 (20%) | 3 (20%) |
| Appointed members | 3 (20%) | 3 (20%) |
| Elected members | 2 Academic staff (13%) | 2 Academic staff (13%) |
| | 1 Professional staff (7%) | 1 Professional staff (7%) |
| | 2 Students (13%) | 1 Student (7%) |
| | 5 (33%) | 4 (27%) |
| Additional members | 4 (27%) | 5 (33%) |
| Total: | 15 (100%) | 15 (100%) |

The total membership of both Councils is identical at 15 members. The number of elected staff members is the same with two academic staff and one professional staff member. The only variance in the total composition is the number of students and additional members with QUT proposing one more elected student member and one less additional member.

Composition of Queensland public university governing bodies

The total membership of each Queensland public university governing body ranges from 14 to 22.

Table 4 outlines the composition of each governing body by membership category and illustrates that the QUT proposed model is relatively consistent with the majority of the other Queensland public universities.

Table 4: Composition of each public university governing body, by membership category

| University | Official | Appointed | Elected | Additional | Total |
|---|--------------|--------------|--------------|--------------|----------------|
| Central Queensland University | 3 (20%) | 5 (33%) | 3 (20%) | 4 (27%) | 15 |
| Griffith University | 2 (11%) | 7 (39%) | 5 (28%) | 4 (22%) | 18 |
| James Cook University (with adopted resolution) | 3 (20%) | 3 (20%) | 4 (27%) | 5 (33%) | 15 |
| Queensland University of Technology (proposed model) | 3 (20%) | 3 (20%) | 5 (33%) | 4 (27%) | 15 |
| University of Queensland | 3 (14%) | 8 (36%) | 8 (36%) | 3 (14%) | 22 |
| University of Southern Queensland | 3 (21%) | 5 (36%) | 3 (21%) | 3 (21%) | 14 |
| University of Sunshine Coast | 3 (17%) | 6 (33%) | 5 (28%) | 4 (22%) | 18 |
| Total number range | 2 – 3 | 3 – 8 | 3 – 8 | 3 – 5 | 14 – 22 |

Table 5 outlines the composition of each governing body by internal and external members. The proposed QUT Council model provides for seven external members (47%) and eight internal members (53%). While all other universities have a majority of external members, the proposed QUT model is an increase in external member ratio representation when compared to the current membership of 10 external members (45%) and 12 internal members (55%).

Table 5: Composition of each public university governing body, by internal and external members

| University | Internal (Official and Elected) | External (Appointed and Additional) | Total |
|---|------------------------------------|--|----------------|
| Central Queensland University | 6 (40%) | 9 (60%) | 15 |
| Griffith University | 7 (39%) | 11 (61%) | 18 |
| James Cook University (with adopted resolution) | 7 (47%) | 8 (53%) | 15 |
| Queensland University of Technology (proposed model) | 8 (53%) | 7 (47%) | 15 |
| University of Queensland | 11 (50%) | 11 (50%) | 22 |
| University of Southern Queensland | 6 (42%) | 8 (58%) | 14 |
| University of Sunshine Coast | 8 (45%) | 10 (55%) | 18 |
| Total number range | 6 – 11 | 7 – 11 | 14 – 22 |

Table 6 demonstrates that in comparison to all other Queensland public universities, QUT's proposed model has the second highest percentage of elected members at 33% of the total Council membership. UQ's elected members make up 36.5% of the total Senate.

QUT would be comparable to other Queensland public universities on the below parameters:

- *Academic staff* – QUT has two members, which is the same as four universities. The other two universities only have one member;
- *Professional/General staff* – QUT has one member, which is the same as all other universities. No university has more than one professional/general staff member on the governing body; and
- *Students* – QUT has two members, the highest number in this category and equivalent to three of the other universities. The remaining three universities have one student member.

Table 6: Elected representation at Queensland public universities

| University | Academic Board member | Academic Staff | Professional /General Staff | Students | Alumni | Total Elected members | Total membership |
|---|-----------------------|----------------|-----------------------------|----------|---------|-----------------------|------------------|
| Central Queensland University | | 1 (6.6%) | 1 (6.6%) | 1 (6.6%) | - | 3 (20%) | 15 |
| Griffith University | | 2 (11%) | 1 (6%) | 2 (11%) | - | 5 (28%) | 18 |
| James Cook University (with adopted resolution) | | 2 (13%) | 1 (7%) | 1 (7%) | - | 4 (27%) | 15 |
| Queensland University of Technology (proposed model) | | 2 (13%) | 1 (7%) | 2 (13%) | - | 5 (33%) | 15 |
| University of Queensland | 1 (4.5%) | 1 (4.5%) | 1 (4.5%) | 2 (9%) | 3 (14%) | 8 (36.5%) | 22 |
| University of Southern Queensland | | 1 (7%) | 1 (7%) | 1 (7%) | - | 3 (21%) | 14 |
| University of Sunshine Coast | | 2 (11%) | 1 (6%) | 2 (11%) | - | 5 (28%) | 18 |