



# ***EDUCATION AND INNOVATION COMMITTEE***

## **Members present:**

Mrs RN Menkens MP (Chair)  
Mr SA Bennett MP  
Mr MA Boothman MP  
Mr MR Latter MP  
Mr TS Mulherin MP  
Mr MJ Pucci MP  
Mr NA Symes MP  
Ms J Trad MP

## **Staff present:**

Ms B Watson (Research Director)  
Ms E Booth (Principal Research Officer)

## **PUBLIC BRIEFING ON THE QUEENSLAND ART GALLERY AMENDMENT BILL 2012**

### **TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY, 30 MAY 2012**

**Brisbane**

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Committee met at 9.50 am

**CLARK, Mr Andrew, Deputy-Director (Programming and Corporate Services), Queensland Art Gallery**

**REED, Mr Philip, Director-General, Department of Science, Information Technology, Innovation and the Arts**

**TANZER, Ms Deb, Principal Legal and Governance Officer, Arts Queensland**

**CHAIR:** I welcome officials from the Department of Science, Information Technology, Innovation and the Arts who are joining us today to provide a briefing on the Queensland Art Gallery Amendment Bill: Mr Philip Reed, Ms Deb Tanzer and Mr Andrew Clark.

I would like to introduce the members of the Education and Innovation Committee. I am Rosemary Menkens, the member for Burdekin and the chair of this committee. May I introduce the deputy chair, Mr Tim Mulherin, the member for Mackay; Mr Michael Pucci, the member for Logan; Mr Neil Symes, the member for Lytton; Mr Steve Bennett, the member for Burnett; Mr Michael Latter, the member for Waterford; and Mr Mark Boothman, the member for Albert. Also, here as a visitor at this committee this morning is Ms Jackie Trad, the member for South Brisbane.

Again, I welcome Mr Philip Reed, the director-general of the department, and his colleagues Ms Deb Tanzer and Mr Andrew Clark. We appreciate your assistance in increasing our understanding of the Queensland Art Gallery Amendment Bill 2012. The briefing is being recorded this morning and will be transcribed by Hansard reporters, and the intent is to publish the transcript of this briefing on the committee's web page when it is available.

I would ask members of the media who might be recording any proceedings that they adhere to the committee's endorsed media guidelines. Committee staff have a copy of the guidelines available for you if you require them. I would ask everybody present to turn off their mobile phones or set them to silent.

Parliamentary privilege applies to all committee operations, including this briefing. On the other hand, to mislead the parliament including this committee proceedings is a serious offence. If you are unable or unwilling to provide an answer to any question the committee might put to you, you should advise me accordingly giving your reasons. We will consider the reasons and provide ample opportunity for you to seek any advice or assistance you need. You might also wish to take questions on notice if you do not have information at hand. As well, you may request that any material you provide be kept private and, again, the committee will consider that request. All of this is detailed in schedule 8 of the parliament's standing orders, which I believe have been made available to you.

As members of parliament and portfolio committee members, we are not the experts on the contents of the bill. We are here as representatives of the Queensland people and as legislators and we do our job of scrutinising legislation in that capacity. Committees aim to give parliament the benefit of greater information on proposed legislation than might otherwise be the case when it makes law. Because we are not experts in the field, we seek advice and information from experts—in this case the departmental officials who have been involved in the development of the bill and the implementation of government policy in respect of the content of this bill. This briefing today is an important part of that process.

I ask departmental officers to please state your name the first time you speak for the benefit of the Hansard recorders. Thank you for your attendance this morning. I will now hand over to you to give us an overview of the Queensland Art Gallery Amendment Bill 2012.

**Mr Reed:** Thank you, Madam Chair. I would like to start by making a statement about the bill to give you some background details and then I am happy to answer questions. Thank you for the opportunity to present to you today.

The Queensland Art Gallery Amendment Bill 2012 enables the Queensland Art Gallery Board of Trustees to regularise the legal status of the existing Queensland Art Gallery Foundation. Its history is that the foundation is currently governed by a council. The foundation was originally formed in 1979 for the purpose of assisting the board to maintain, improve and develop the state collection of works of art and the facilities and operations of the Queensland Art Gallery. The foundation was specifically established to attract and encourage donations, gifts, bequests and other forms of assistance for the benefit of the gallery.

The foundation has been highly successful in achieving its objectives, with over 1,400 members and \$75 million in donations and other moneys being raised since its inception. Each year the foundation receives donations, bequests and gifts of artworks from private and corporate donors, and over \$2 million

was received in 2010-11. The foundation provides funds to the board for the acquisition of artworks and to support educational and public programs, including children's and regional programs in association with major exhibitions. The level of support is dependent on donations received by the foundation, returns on investment, the needs of the gallery and artwork available for purchase.

Artworks acquired through the foundation represent more than one-third of the gallery's collection. They include works by major artists such as Ian Fairweather, William Robinson, Margaret Olley, Fred Williams, Lloyd Rees and Norah Heysen. The foundation also conducts fundraising activities at the Queensland Art Gallery. The foundation conducts an annual appeal which seeks donations towards the purchase of a particular artwork or artworks. The 2011 appeal resulted in the purchase of the important 1937 work *Lucile* by Peter Purves Smith.

If we move to the way forward, the board has considered various options for regularising the status of the foundation and has determined that the most suitable solution would be to subsume the foundation into the board. However, the current Queensland Art Gallery Act 1987 only allows the board to delegate its power to a committee consisting of board members only. Accordingly, the bill enables the board to establish a committee, which we now refer to as the foundation committee, with broader membership consisting of both board and non-board members to carry on the crucial activities of the foundation for the benefit of the community. The bill regularises the status of the foundation and its ability to receive and deal with donations and bequests. This approach allows the board to retain control over the management and operations of the foundation given the large amount of funds under management and avoids the need to create a new government body for the foundation.

The bill will include within the board's functions the development of the gallery's collection. The foundation committee will deal with any funds agreed by the board to be managed and invested by the foundation committee for its fundraising purposes. The bill ensures that the board will have control and flexibility over the governance arrangements for the foundation committee, including its composition, criteria for membership, responsibilities and meeting procedures. The foundation's funding and administrative arrangements will remain the same. There will be no financial impact on the board from the new structure. The foundation committee will include at least two board members. It may also include non-board members, allowing foundation members with the capacity to assist the foundation achieve its objectives also to be represented if the board considers that appropriate.

The board will have the power to delegate its powers to foundation committee members for the purpose of performing the functions of the foundation committee—that is, to raise funds to assist in the fulfilment of the board's functions. The foundation committee will have the powers necessary to encourage gifts, donations, bequests and legacies of property for the benefit of the board but, importantly, must not incur a debt. The bill provides that the board is a charitable institution and deems gifts to the foundation to be gifts to the board. Private ancillary funds are the major source of donations to the foundation. However, many of these private ancillary funds are restricted to donating to charitable organisations. Accordingly, the bill specifies that the board is a charitable organisation to ensure that private ancillary funds are able to make donations to the foundation.

In terms of protection to foundation committee members, the bill will extend the protection from civil liability currently afforded to board members to committee members. The bill will also extend liability for illegal borrowing by board members to committee members. In addition, the bill will extend provisions regarding board members who have an interest in matters being considered by the board to committee members who have an interest in matters being considered by the committee.

The establishment of a committee of the board to undertake the activities of the foundation is a reasonable and appropriate way to regularise the status of the foundation and to limit any restrictions on the foundation's ability to receive and deal with donations and bequests. It also meets the preference expressed by existing donors and benefactors for the work of the foundation to be transparent and distinct from the daily running of the gallery.

The 2012 bill is substantially similar to the previous bill presented to the House in November 2011 in that only minor technical amendments were made. During the development of the 2011 bill, consultation took place with the foundation council at regular foundation council meetings and with major donors. This took the form of briefings by Queensland Art Gallery executive management at foundation council meetings and meetings between individual donors and the executive management. The council and major donors agree with the action being taken.

As you would be aware, the 2011 bill was referred to the former Finance and Administration Committee of this parliament. That committee called for written submissions on the bill by writing to stakeholder groups and individuals and through advertisements in the *Courier-Mail*. I understand no written submissions were received prior to the dissolving of the previous parliament. We are happy to answer questions on the bill.

**CHAIR:** Thank you, Mr Reed, for that briefing. I would invite committee members to ask any questions that they may have of the departmental officials.

**Mr LATTER:** Thank you for the briefing. What does it mean to regularise the status of the foundation? This normally means to achieve uniformity. What is it that the bill would bring the foundation into line with in that regard?

**Mr Reed:** I may at some point refer to either Deb Tanzer or Andrew Clark for clarification on some of these matters. At the moment the foundation is an unincorporated association and there is a question about its legal status. For instance, in 2007-08 the Auditor-General looked at the foundation and raised the question of its legal status and suggested or recommended that consideration be given to changing that status.

**Mr MULHERIN:** What year was that?

**Mr Reed:** From memory, 2007-08. So it gives the foundation clearer legal status by making this amendment. As I have described in my opening comments, beyond that it gives a structure in terms of reporting and linkage which is clearer. The foundation has a constitution from 1979 but there have been questions about its status in the legal sense as well, and it also refers to redundant entities. In this regard, this is a modernising feature without taking away from the good work of the foundation in terms of its ability to raise funds. Clearly, the Queensland Art Gallery is substantially dependent on the work of the foundation for its collection.

**Ms TRAD:** In terms of the board itself, is that an incorporated association?

**Mr Reed:** The foundation is an unincorporated association.

**Ms TRAD:** So the board—

**Mr Reed:** The board is a statutory entity under the current Queensland Art Gallery Act 1987.

**Ms TRAD:** And the foundation is to become a committee of the board?

**Mr Reed:** That is right, under this amendment.

**CHAIR:** That certainly explains why there is a need for regularising the status, which does seem to be important.

**Mr MULHERIN:** Are the current members of the foundation the same members of the Queensland Art Gallery board?

**Mr Reed:** The current council members—

**Mr MULHERIN:** The question is: are the current Queensland Art Gallery board members the same members of the foundation?

**Mr Reed:** There is an overlap. There are two members of the board who are on the foundation—Tim Fairfax and John Hay—but as you are aware—

**Mr MULHERIN:** I am not really interested in names.

**Mr Reed:** Two out of four are current members of the board.

**Mr MULHERIN:** And what power does the board currently have in directing the foundation?

**Mr Clark:** That is what is unclear at the moment. The Auditor-General's point was that, to establish control by the board of the foundation, we needed to look at this. That is why we looked at a number of different structures and ways to do this. After exhausting all the processes looking at that, it was established that a committee of the board of trustees—which actually follows the model of the National Gallery of Victoria, which is the most successful fundraising body for a state gallery—was the model to be followed.

The other thing, as touched on by Philip Reed, is that the old constitution of 1979 refers to things that no longer exist. For example, it says that the committee should have as one of its members the chair or the president of the Queensland Art Gallery Society but we no longer have the Queensland Art Gallery Society so it is quite an antiquated document in what it is referring to. We hope by doing this we can add a lot of clarification to that.

**Mr PUCCI:** You said you are proposing a committee, as the constitution refers to things that are not there anymore. Right now you are being run by a council. So what is the difference between the council and a committee? Why do you need a committee? Why can you not use the council?

**Mr Clark:** In practical terms, we are not convinced of the legal status of what we have at the moment. What is it doing? How does it function? I suppose the aim of the gallery and the department has been clarification—to have a definite legislative status and be defined as a committee of the board of trustees, because that is really the key issue. The governance of it is not clear at the moment and it was the express wish of everybody involved to clear that up.

**Mr MULHERIN:** Mr Clark, could you have a situation as it exists now where the foundation may have different objectives from the board's objectives so there could be a conflict?

**Mr Clark:** I think you raise a good point. Under the current circumstances I guess that is the clarity we are looking for. It needs to be clearly defined that the board is controlling the foundation.

**Mr MULHERIN:** Because the foundation was really established by the board in the first instance.

**Mr Reed:** If we look at that constitution—which has just been provided to me—it says, 'The objects of the foundation shall be generally to assist the trustees to maintain, improve and develop the state collection.' So the works of art and the facilities and operations of the Queensland Art Gallery. Its own constitution provides at least a reference to how that relationship is expected to work, and common membership is obviously of great importance to that.

**Mr MULHERIN:** So the trustees, in reference to the constitution, are the members of the Queensland Art Gallery board?

**Mr Reed:** That is right, and that is the antiquated language of the constitution.

**Mr SYMES:** Is there any risk in not legislating that board members must form part of any quorum for the foundation committee or that board members have a casting vote or must be part of the majority vote?

**Mr Reed:** That is a technical question that I might need to confer with my colleagues about. Just to clarify, under the bill the board must appoint at least two members of the board to the foundation committee. If there are only two board members appointed to the foundation committee, then both must be present to constitute a quorum.

**Ms TRAD:** Mr Reed, in relation to the capacity of the foundation committee to include non-board members, how does the department see that being enacted? How would they recruit non-board members for particular purposes? Is it for the term of the foundation committee?

**Mr Reed:** I will just confer with Andrew. The board is currently considering potential nominees. They would then need to come up to government for consideration and endorsement and then be appointed. At the moment it is the board itself that is actually considering names, but clearly the government is in a position to be able to determine ultimately who is appointed to the board or the committee.

**Ms TRAD:** So they are not obliged to accept the recommendation of the board?

**Mr Reed:** I think with all of these things there are always recommendations made. Names are recommended and consultation occurs. It is usually a two-way street.

**Mr MULHERIN:** Section 40D states—

The function of the foundation committee is to raise funds to assist in the fulfilment of the board's functions by ... managing and investing property made available to the foundation committee by the board.

What safeguards will be put in place around that function of this subcommittee?

**Mr Reed:** They will operate under delegation from the board. Currently the foundation funds are invested in the financial assets through term deposits or managed funds. The board then needs to seek the Treasurer's approval for the necessary approvals to provide the requisite authority to the board to enable the foundation committee to continue with its current investment arrangements. Those approvals will be done after assent so there is a link back to the centre of government in that regard. This will then align the investment powers of the board and the foundation committee.

**Mr MULHERIN:** Thank you.

**Mr PUCCI:** I have a question. Section 40E(2) states—

In exercising the powers, the foundation committee is subject to the written directions of the board.

Does that mean the board is telling the committee what is going to happen?

**Mr MULHERIN:** That has been the issue with the Auditor-General. I imagine this is a response to the Auditor-General's report?

**Mr Reed:** Yes, it is. What will end up happening is that it will be a committee of the board and therefore the board will have that capacity to interact with the foundation. But clearly the intention of this is to formalise in a legal sense the status of the foundation, enabling it still to operate and do its good works. There would be no value, I would think, to the art gallery board to try to fetter the abilities of this foundation to operate, given the interdependency between the two of them.

Clearly there is a delegated capacity and therefore that does involve controls, but I think the controls which are transparently identified in the legislation here are about trying to ensure transparency to everyone about both the legal status and also how the two interlink. So I am not sure that there is anything in that. They have their function to assist the board in performing its statutory function. So in that sense it is directed to assist the board through the legislation.

**Ms TRAD:** Is the delegation of immunity a recommendation from the Auditor-General or what is the purpose for delegating immunity?

**Mr Reed:** As I understand it, it is a standard drafting principle that is followed through the Queensland Parliamentary Counsel for these sorts of entities. Therefore, there is nothing untoward about it beyond it just being a standard provision that would be put into a statute.

**Ms TRAD:** I have one final question. So, Mr Reed, are there any differences between this legislation as it was presented in November 2011 and the legislation as has been presented in this parliament, the 54th Parliament?

**Mr Reed:** As I said in my introductory speech, there were minor technical amendments made to it. Clearly there are things like changes to the date—2012 rather than 2011. I will just confer. There was a minor change to section 40C(2) where it said, 'A person may be appointed to the foundation committee whether or not the person is a member of the board.' It has now been changed to: 'A person may be appointed as a member of the foundation committee whether or not the person is a member of the board.' So it is that sort of level of technical difference.

**Ms TRAD:** That is a change of one word.

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**Mr Reed:** No. It has removed one word and added four.

**Mr MULHERIN:** Can we get a copy of those changes?

**Mr Reed:** I am happy to provide the committee with a comparison.

**Mr MULHERIN:** Thanks.

**CHAIR:** Thank you very much. I would particularly like to thank Mr Reed and the other officers of the department for their assistance.

**Committee adjourned at 10.19 am**