

EDUCATION AND INNOVATION COMMITTEE
REPORT No. 2 ON THE
QUEENSLAND ART GALLERY AMENDMENT BILL 2012
QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 8 June 2012 the Education and Innovation Committee tabled Report No. 2 in relation to the Queensland Art Gallery Amendment Bill 2012.

The Queensland Government response to recommendations made and clarification on points raised by the Committee are provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1 – The Committee recommends that the Queensland Art Gallery Amendment Bill 2012 be passed.

Government response:

- The Government thanks the Committee for its consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

Recommendation 2 – The Committee recommends that the terms of appointment to the Foundation Committee reflect the terms of appointment of Board members.

Government response:

- The Government supports this recommendation.
- Currently, *section 10(1)* of the *Queensland Art Gallery Act 1987* provides that a Board member is appointed for the term (not more than 3 years) stated in the member's instrument of appointment.
- At present, the current terms of appointment of all Board members are aligned.
- However, it is possible, under the Act, for the terms of appointment to be staggered.
- *Section 40C* of the Bill provides the Board with power to establish the Foundation Committee and to appoint members of the Foundation Committee.
- Under *section 40C(6)* the Board may decide matters about the Foundation Committee, including the constitution for the Foundation Committee.
- The Bill is silent as to the term of appointment for a member of the Foundation Committee.

- The Foundation Committee's governance arrangements are set in the Bill (for example, through legislative provisions around proceedings and disclosure of interests) and also through decisions made, and documents endorsed by, the Board (for example, through endorsement of the Constitution).
- Accordingly, the Board can determine the proposed term of appointment for any proposed member of the Foundation Committee and align the term of appointment with the existing term of appointment of a Board member or members.
- Given *section 40C(3)* of the Bill provides that at least 2 members of the Foundation Committee must be members of the Board, the term of appointment of these Foundation Committee members (i.e. Board members) must be aligned to their existing terms of appointment as Board members.
- This recommendation can be dealt with administratively through the Constitution and provides flexibility to the Board in aligning the terms of appointment for any proposed members of the Foundation Committee to reflect the terms of appointment of current Board members, particularly in circumstances where the terms of appointment of current Board members are staggered.

Recommendation 3 – the Committee recommends that the Board be required to decide the name and membership conditions, and endorse the constitution for, the Foundation Committee.

Government response:

- The Government supports this recommendation.
- *Section 40C(6)* of the Bill currently provides that the Board **may** decide matters about the foundation committee that are not provided for under the Act, including, for example –
 - (a) the name of the foundation committee; and
 - (b) conditions of membership; and
 - (c) the constitution for the foundation committee.
- Section 40F provides that the Board may determine how the foundation committee conducts its business and proceedings at meetings (and if the Board does not decide these matters, the foundation committee may determine them, or in the absence of decisions from both, *sections 32 to 37* of the *Queensland Art Gallery Act 1987* apply).
- An amendment will be moved during consideration in detail of the Bill to place a mandatory requirement on the Board to decide the name and membership conditions, and endorse the constitution for, the Foundation Committee.

- Section 40C(6) provides that the Board can determine matters outside the current legislative provisions and it is proposed that this general power remains to ensure that the Board retains control and flexibility to determine any specific governance arrangements for the Foundation Committee, noting that the Constitution would generally provide for such matters.

Recommendation 4 – the Committee recommends that consideration be given to ensuring there is capacity to terminate the appointment of a member of the Foundation Committee if that member was found to have breached section 40G or 40H of the *Queensland Art Gallery Act 1987* in respect of conflicts of interest.

Government response:

- The Government supports this recommendation and advises that *section 25* of the *Acts Interpretation Act 1954* provides the power for the Board to remove or suspend, at any time, a person appointed to the office.
- The power to terminate a Foundation Committee member is consistent with the power of the Governor in Council to end the appointment of all or any Board member at any time and for any reason or none.
- The prescribed penalty units for breach of *sections 40G and 40H of the Bill* are also consistent with the provisions in the *Queensland Art Gallery Act 1987* in respect of Board members and breaches for conflicts of interest.
- It should be noted that *section 22* of the *Queensland Art Gallery Act 1987* also provides that the Board is subject to written directions of the Minister in exercising its powers.

Recommendation 5 – the Committee recommends that the Minister clarifies what reporting obligations would be placed on the Foundation Committee, including and in addition to annual reporting requirements.

Government response:

- The Committee notes in its report that it is keen to ensure that regular reporting by the Foundation Committee on financial and other activity is provided for in the amended legislation.
- As the Queensland Art Gallery Board of Trustees is a “statutory body” under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*, and as the Foundation Committee is proposed to be a committee of the Board, the Foundation Committee would also be subject to that legislation and prescribed reporting requirements, thereby ensuring regular reporting on activity.
- The functions and requirements of the relevant sections of the *Financial Accountability Act 2009* (*sections 61-63*) in relation to, inter alia, ensuring the operations of the statutory body are carried out efficiently, effectively and economically; preparing financial

statements and annual reports, as well as establishing and maintaining appropriate systems of internal control and risk management apply to the Board and to its committees.

- Given that the Foundation Committee will be part of the Board, financial information relating to the Foundation Committee is required to be included in the Board's financial statements – as the Foundation is controlled by the Board, the financial statements are consolidated into the Board's financial reports.
- Additional reporting requirements are contained within the current provisions of the *Queensland Art Gallery Act 1987* and as a result these will apply to the Foundation Committee (as a committee of the Board).
- Section 43 of the *Queensland Art Gallery Act 1987* currently provides that the Board must prepare and submit to the Minister for the Minister's agreement, draft strategic and operational plans for the Board. These plans must include a statement of resource implications and any major policy changes along with any budget documents.
- Section 49 provides that the Board's operational plans must include, inter alia, an outline of investments and borrowings the Board intends to make, together with an outline of the nature and scope of activities, including commercial and fundraising activities, the Board proposes to undertake.
- Section 51 provides that the Board must keep the Minister reasonably informed of the Board's operations including its financial and operational performance of the achievement of its goals.
- In addition, section 51 provides that the Board must give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessment of the abovementioned matters.
- Section 53 requires the Board to include in its annual report under the *Financial Accountability Act 2009* a summary of the operational plan for the relevant financial year.
- It should be noted that the current Constitution of the Queensland Art Gallery Foundation requires the current Council to prepare an Annual Report of the Foundation, minutes of all resolutions and proceedings of general matters of the Foundation; and proper accounts.
- Under the Bill, the Board will have power to determine the Foundation Committee's constitution and procedures, including for example, keeping of minutes. Currently, separate monthly financial statements are prepared for the Foundation and presented at subsequently scheduled Board meetings. The Board proposes to maintain current reporting practices.