

035-13

EDUCATION AND INNOVATION COMMITTEE

REPORT No.15 ON THE

TAFE QUEENSLAND BILL 2013

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 16 May 2013 the Education and Innovation Committee tabled Report No.15 in relation to the TAFE Queensland Bill 2013.

The Queensland Government response to recommendations made by the Committee and points for clarification sought by the Committee is provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1 –

The Committee recommends that the TAFE Queensland Bill 2013 be passed.

Government Response

The Government thanks the Committee for this recommendation and for its prompt consideration of the Bill.

Recommendation 2 -

The Committee recommends that the Minister amend the headings of Part 4 and clause 50 to ensure clarity and reduce the likelihood of misinterpretation.

Government Response

The Government does not support this recommendation.

The Government considers that the headings of Part 4 and clause 50 accurately reflect the intent of the provision and does not agree with the position proposed by the Committee that section 50 allows for changes to be progressed that are unrelated to the restructure of TAFE. Part 4 is about restructuring TAFE and is not necessarily transitional in nature. Similarly, clause 50 is about the transfer of assets, liabilities and other matters to a relevant TAFE entity.

The Queensland Government advises that Part 4 of the Bill will be used for restructuring TAFE and that a regulation may only be made, and action taken under the Bill, as part of the restructuring of TAFE. The restructuring of TAFE will be guided by the Government's response to the final report of the Skills and Training Taskforce and the Government's response to the final report of the Commission of Audit. Restructuring TAFE will be a complex exercise and it is necessary that the Bill

provides sufficient flexibility to achieve an efficient and effective restructuring of TAFE Queensland. In addition, the restructuring of TAFE Queensland will require the Government to deal with a wide range of matters and the regulation making power is intended to provide for all matters which could be reasonably foreseen to arise during a restructure.

The current governance arrangements for TAFE in Queensland are complex with eleven institutes established administratively within the Department of Education, Training and Employment (DETE) as TAFE institutes under Chapter 6 *Vocational Education, Training and Employment Act 2000* (VETE Act) and two statutory TAFE institutes (STIs) established under Chapter 6A VETE Act. The 11 TAFE institutes are operated by the chief executive of DETE. The two STIs are statutory bodies managed by boards and are directly accountable to the Minister. The Final Report of the Skills and Training Taskforce recommended a different structure for the delivery of TAFE in Queensland of six or seven institutes managed by a single parent entity.

Part 4 is not considered transitional in nature and does not have a sunset clause because it is anticipated that there will be a number of stages in the restructure of TAFE. The regulation making power will be used to move from the current structure of 13 institutes to six or seven institutes operated by TAFE Queensland as the parent entity. The first stage of restructuring will see the two STIs established under Chapter 6A *Vocational Education, Training and Employment Act 2000* dissolved and absorbed into DETE. After all institutes are within DETE, DETE will undertake a process of amalgamating institutes. These institutes will then be transferred to TAFE Queensland. It is anticipated that institutes may be transferred from DETE to TAFE Queensland in a number of stages to ensure a smooth transition. Currently, it is anticipated that this work will be completed by 30 June 2014.

In addition, the Government's response to the Commission of Audit Report accepted that asset ownership be separated from the public provision of VET in order to improve asset utilisation. The Queensland Government is currently considering how this recommendation would be implemented. The regulation making power in the Bill may be used to assist with the transfer of assets to a third party to manage if this was being done as part of restructure..

It is necessary that Part 4 provides sufficient flexibility for the Government to achieve its objective of establishing TAFE Queensland as a commercially focused body delivering VET as the public provider. A regulation made under Clause 50 can only be made as part of restructuring TAFE and is limited to issues necessary to facilitate transfers between relevant TAFE entities. Clause 50 does provide for a wide range of matters which may be required to be dealt with as part of a transfer regulation. As indicated above, the restructuring of TAFE is a complex exercise and the regulation must therefore provide for all matters necessary to ensure that the restructuring is effective.

Recommendation 3 –

The Committee recommends that the Minister amend clause 69(b) to delete the words “as soon as possible” and replace them with “as soon as practicable”.

Government Response

The provision as drafted achieves the policy intent and the Government does not support this recommendation.

The Queensland Government advises that the words used in clause 69(b) reflect the policy intent that the Minister and TAFE Queensland should reach agreement on TAFE Queensland's first operational plan as soon as possible. This provision was drafted in accordance with Queensland legislative drafting practice and relevant case law. The words "as soon as possible" are more onerous and require the plan to be prepared sooner than the words "as soon as practicable." It is the Government's intention that this plan be developed as early as possible to ensure that TAFE Queensland has a plan in place for its first year of operation.

Recommendation 4 –

The Committee recommends that the Minister amend clause 12 to ensure that the Minister's nominee is intended to be a member for the purposes of Part 2, Division 3, Subdivisions 2 and 3.

Government Response

The provision as drafted achieves the policy intent and the Government does not support this recommendation.

The Queensland Government advises that the nominee is a member of the Board. Clause 12(2) of the Bill provides

"The board consists of the following persons appointed by the Governor in Council –

- (a) 1 nominee of the Minister;
- (b) At least 6 but no more than 8 persons who are eligible for appointment as a member under section 14."

The persons listed in clause 12(2) are the members of the Board.

The Ministerial nominee for the TAFE Queensland will not be subject to the eligibility requirements set out in clause 14. The nominee is otherwise subject to all other provisions that apply to board members.

The nominee will represent the Minister's interests on the board and is therefore not required to have the qualifications or experience set out in clause 14. This is consistent with other legislation establishing boards for statutory bodies which provides for appointment of persons such as the chief executive of an agency as an ex officio member of the board in addition to persons who have particular qualifications or experience, see for example section 20 *Tourism and Events Queensland Act 2012*.

The Government therefore does not support this recommendation.

POINTS FOR CLARIFICATION

Point for clarification 1

The Committee seeks clarification regarding the rationale for the breadth and lack of specificity of the powers in the Bill to support the restructuring of TAFE Queensland. Specifically it seeks clarification about whether:

- a transfer direction can be made to implement a transfer regulation;
- a transfer direction can override a transfer regulation, in any way circumvent or avoid a transfer regulation or affect matters otherwise subject to a transfer regulation, but in a different way to the way specified in the transfer regulation;
- it is intended that clause 51 be interpreted more narrowly than clause 50, given the former clause's specific reference to the process of restructure; and
- what the word "convenient" in clause 51 might mean in practice.

The Government response to recommendation 2 provides the rationale for the Bill's approach to restructuring of TAFE Queensland and the regulation making power. In relation to the specific matters raised by the Committee the following response is offered.

A transfer regulation may only be made by the Governor in Council under the regulation making power in clause 50.

A transfer direction could be made to facilitate the implementation of a transfer regulation. It allows the Minister to direct an entity about how to deal with a transfer matter, such as signing documents or when particular events should occur. A transfer direction cannot override a transfer regulation and is intended to supplement a transfer regulation where necessary. Clause 51 would be limited to restructuring as a direction can only be given to ensure the effective restructuring of an entity under Part 4. The word convenient in clause 51 would have its ordinary meaning and reflects the policy that transfer directions may be given if it would assist with a restructuring activity being carried out under Part 4. An example may be that the board of TAFE Queensland could be directed to sign a document by a particular date to ensure that a transfer of a particular matter can occur.

Point for clarification 2

The Committee seeks clarification from the Minister as to:

- the proposed treatment of any unfunded PPP liabilities; and
- the anticipated effect the CQU/local TAFE institute merger will have on CQU's existing debts and whether it will result in detrimental financial impact on that TAFE institute.

Any unfunded Public Private Partnership (PPP) liabilities will be managed in accordance with Queensland Government financial management requirements.

The TAFE Queensland Bill does not provide for the merger of Central Queensland University (CQU) and Central Queensland Institute of TAFE. The issue of the financial impact of the merger is currently being considered and will be dealt with as part of the agreement between the Government and CQU. The progress of the merger is subject to finalisation of Queensland's Implementation Plan for the National Partnership Agreement on Skills Reform.

Point for clarification 3

The Committee seeks clarification from the Minister regarding the following aspects of clause 55:

- the lawfulness, or otherwise, of clause 55(3); and
- the appropriateness of the extent of included employee protections.

Clause 55(3) provides for a transfer of employees to have effect despite any other contract, law or instrument. If for example a person's contract prevented transfer of employment to another entity this provision will ensure the transfer can occur. As outlined above, there are a large number of restructuring activities that will take place including the movement of approximately 6000 staff. This clause will ensure that movements can occur.

The Bill protects the key terms and conditions of employment in clause 55(2) such as total remuneration, leave entitlements and superannuation. It is possible that other terms and conditions could be changed by a transfer regulation. It is proposed that any change in terms and conditions would be limited to those necessary to facilitate the transfer of employees. The Government's policy is to negotiate a new enterprise bargaining agreement with staff and to provide for the terms and conditions of employment in that agreement.

Point for clarification 4

The Committee seeks clarification from the Minister regarding the breadth of Ministerial powers included in the Bill, with specific reference to the relationship this Bill has with other laws or instruments.

The Minister is given certain powers in the bill to give transfer directions and to give directions to TAFE Queensland about its operations. These powers are consistent with Queensland drafting practice and are considered appropriate powers for the Minister to hold. The ability to give transfer directions appears in other legislation, see for example section 65 *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The powers of the Minister to give directions to TAFE Queensland are similar to the powers the Minister currently has under Chapter 6A VETE Act in relation to STIs.

Point for clarification 5

The Committee seeks clarification from the Minister regarding the following aspects of clause 50(2)(c):

- the type and nature of documents envisaged to be incorporated by a transfer regulation;
- anticipated accessibility to incorporated documents;
- expectations of the extent, and frequency, of amendments to incorporated documents;
- anticipated accessibility to amended incorporated documents or the amendments to incorporated documents; and
- expectations of the extent to which government will prepare or amend incorporated documents, and to which non-government entities will assume this role.

Clause 50(2)(c) allows for a transfer regulation to provide for a matter by reference to a document held by an entity. It is likely that this power will be used to provide for instruments held by entities to be transferred to another entity. For example, the two STIs that are being dissolved may have agreements in place with third parties to provide and receive services. The business of the STIs will continue so it is necessary that these agreements are taken to be with DETE rather than the STI to ensure that delivery of training can continue. Attempting to individually renegotiate all of these agreements would place an unreasonable burden on government and the third party providers.

A regulation may provide for this and refer to a schedule of instruments held by DETE as being the list of instruments that are affected by the regulation. This is consistent with other restructuring regulations made, see for example section 7 *South-East Queensland Water (Restructuring) Regulation 2011* and the definition of WCRW instrument schedule set out in the schedule to the regulation. Parties affected by this type of regulation would be notified and would be able to inspect the schedule of instruments upon request. To preserve the confidentiality of entities which have agreements with a TAFE entity the list would not be published online or made available generally.

If a regulation was made that referred to this type of document the regulation would refer to the document as being a document held by a particular entity as at a particular time, for example a schedule of instruments held by the chief executive immediately before the commencement. Because the regulation would be substituting the party to a contract it would not be possible to for a regulation to refer to a document that could be amended.

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	Member: Hon Langbroek	
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