

**Education (Queensland
Curriculum and Assessment
Authority) Bill 2013**

Report No. 28

Education and Innovation Committee

December 2013

Education and Innovation Committee

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Abbreviations and definitions

ACARA	Australian Curriculum Assessment and Reporting Authority
authority, the	Queensland Curriculum and Assessment Authority
Bill, the	Education (Queensland Curriculum and Assessment Authority) Bill 2013
committee, the	Education and Innovation Committee
department, the	Department of Education, Training and Employment
<i>LSA</i>	Legislative Standards Act 1992
Minister, the	Minister for Education, Employment and Training
NSSAB	Non-State Schools Accreditation Board
QCAA	Queensland Curriculum and Assessment Authority
QIEU	The Independent Education Union of Australia – Queensland and Northern Territory Branch
QSA	Queensland Studies Authority
<i>QSA Act</i>	Education (Queensland Studies Authority) Act 2002
QTU	Queensland Teachers’ Union
Together	Together Queensland, Industrial Union of Employees

Chair's foreword

This report presents a summary of the committee's examination of the Education (Queensland Curriculum and Assessment Authority) Bill 2013.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament. A number of potential issues were identified and examined during the course of our inquiry.

The public examination process allows the Parliament to hear from the public and other stakeholders they may not have otherwise heard from, which should make for better policy and legislation in Queensland. It is pleasing to note the general support provided in submissions for this Bill.

The committee has recommended unanimously (with one member abstaining) that the Bill be passed, and has made three other recommendations. Three points for clarification have also been identified.

On behalf of the committee I thank those individuals and organisations who lodged written submissions, and others who have informed the committee's deliberations, including the committee's secretariat, officials from the Department of Education, Training and Employment and the Technical Scrutiny of Legislation secretariat.

I commend the report to the House.



Rosemary Menkens MP

Chair

December 2013

Recommendations

Recommendation 1 **2**

The committee recommends that the Education (Queensland Curriculum and Assessment Authority) Bill 2013 be passed.

Recommendation 2 **12**

The committee recommends that the Education (Queensland Curriculum and Assessment Authority) Bill 2013 be amended to clarify that in addition to the Minister being able to direct the QCAA to sell intellectual property, as is provided in clause 73(2)(a), the Minister may also direct the QCAA to grant a licence to use QCAA material to bodies other than the State.

Recommendation 3 **16**

The committee recommends that the Bill be amended to clarify which chief executive is to be appointed to the Queensland Curriculum and Assessment Authority.

Recommendation 4 **18**

The committee recommends that the Bill be amended to specify that clause 41 applies to staff employed to carry out the statutory functions of the Queensland Curriculum and Assessment Authority as specified in Division 2 of the Bill.

Points for clarification

Point for clarification 1**10**

The committee requests that the Minister clarifies the impact of the commercialisation function with respect to costs to schools of the various QCAA materials and support services, and advise whether Queensland schools will be affected by this change.

Point for clarification 2**11**

The committee requests that the Minister advise the House in respect of the following:

- How might the QCAA ensure that support is provided to all schools in an accessible manner?
- How will the government know that the QCAA is providing quality support materials and services to all schools?
- Whose responsibility is it to ensure that schools are able – and resourced – to access support materials and services?

Point for clarification 3**14**

The committee requests that the Minister expand upon why powers of investigation are not considered necessary for the QCAA.

1. Introduction

1.1 Role of the committee

The Education and Innovation Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

The Education (Queensland Curriculum and Assessment Authority) Bill 2013 (the Bill) was referred to the committee on 29 October 2013, and the committee is required to report to the Legislative Assembly by 30 January 2014.

Section 93 of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Inquiry process

An initial briefing on the Bill was provided by the Department of Education, Training and Employment (the department) on 30 October 2013. Written submissions were invited, and the committee accepted nine submissions from stakeholders (see Appendix A). The committee held a public hearing on 20 November 2013, hearing from four witnesses from three organisations (see Appendix B). Additional information was then sought from and provided by the department. Transcripts of briefings and hearings, submissions received and accepted by the committee, and additional information requested from the department, are published on the committee's webpage at www.parliament.qld.gov.au/committees.

1.3 Policy objectives of the Bill

The *Education (Queensland Studies Authority) Act 2002 (the QSA Act)* was reviewed by the department during 2012-13 at the direction of the Minister, in the context of significant changes occurring within the education sector – in particular, the introduction of the Australian Curriculum.

In response to this review, the government decided there is an ongoing need for a statutory body to oversee school curriculum and assessment frameworks. While the Australian curriculum sets content and standards for key subjects, it will not cover all subjects. States and territories continue to be responsible for determining senior assessment processes.

The Bill articulates the government's position that it is important for Queensland, as in other states, that an entity with an arms-length relationship from executive government and the schooling sectors be responsible for administering high stakes assessment processes such as senior certification and tertiary entrance ranking, and developing syllabuses.

The Bill establishes the Queensland Curriculum and Assessment Authority (QCAA or authority) as the new statutory body responsible for:

- syllabus development for all senior subjects (years 11 and 12)
- syllabus development for preparatory year to year 10 (P-10), where there is no Australian curriculum
- guideline development for kindergarten.

The QCAA will also be responsible for supporting the implementation of syllabuses and the Australian curriculum, testing, moderation, certification, tertiary entrance ranking and administration of student accounts. The authority would replace the Queensland Studies Authority (QSA).

1.4 Should the Bill be passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

After examination of the Bill, consideration of submissions and the further information provided from the department, the committee is satisfied the Bill should be passed. The committee has made further comments and recommendations in relation to the Bill throughout this report.

Recommendation 1

The committee recommends that the Education (Queensland Curriculum and Assessment Authority) Bill 2013 be passed.

2. Examination of the Education (Queensland Curriculum and Assessment Authority) Bill 2013

The Bill establishes the QCAA, which would replace the QSA and have essentially the same functions as the QSA.

There are some key differences between the *QSA Act*, which the Bill would repeal, and the Bill. These are:

- The QCAA's syllabus development function would be limited to senior (Years 11 and 12) subjects, while the QSA develops syllabuses for subjects from preparatory year through to Year 12 (P–12)
- The QCAA would not have an accreditation function for P–12 syllabuses developed by other entities, but would retain the QSA's function of accrediting kindergarten guidelines developed by other entities (for example, Montessori, C&K, other kindergarten providers)
- The QCAA would have an explicit function to commercially exploit its products and services
- The QCAA governing body would consist of seven members, including a nominee of both the state and the non-state schooling sectors. The QSA governing body has representation from a large number of stakeholder groups and twenty members.

2.1 Policy issues

The *QSA Act* established the QSA and specifies its governance model, functions and responsibilities. Key differences between that Act and this Bill (and consequently, between the QSA and a new QCAA), and areas identified as being of interest during the committee's inquiry, are discussed in this section.

Functions

The functions defined by the Bill reflect the existence of the Australian curriculum.

Syllabuses (clause 8)

The Bill differentiates between P–10 and senior syllabuses. There would no longer be a syllabus development function for P–10 unless no Australian curriculum exists for that subject. In that case, the authority would have to give notice to the Minister and all non-government schools of an intent to develop a syllabus. The QCAA would retain the function of syllabus development and revision for senior subjects.

A syllabus is more detailed than a curriculum. A syllabus includes curriculum content, standards of achievement, and assessment processes for the subject. As senior assessment is the responsibility of each individual Australian state and territory, the state authorities retain responsibility for syllabus development. These syllabuses will incorporate the Australian curriculum developed by the Australian Curriculum Assessment and Reporting Authority (ACARA), which is jointly funded by the Federal, state and territory governments.

Currently ACARA has developed 15 senior subject curriculums. Where there is an Australian curriculum for a senior subject, the syllabus developed by the QCAA for that subject would have to reflect the content and standards of the Australian curriculum. This applies to 15 senior subjects at present.

These are:

- Ancient history
- Biology
- Chemistry
- Earth and Environmental Science
- English
- English as an additional language or dialect
- Essential English
- Essential mathematics
- General mathematics
- Geography
- Literature
- Mathematical methods
- Modern history
- Physics
- Specialist mathematics.

The ACARA Australian curriculum website advises that:

...senior secondary Australian Curriculum for each subject should not, therefore, be read as a course of study. Rather, it is presented as content and achievement standards for integration into state and territory courses.¹

The QCAA would also develop curriculum for subjects outside of the 15 Australian curriculum senior subjects if required and approved by the Minister (for example, accounting is not in the list above).

The QCAA would continue to develop, purchase, revise and approve kindergarten guidelines for use in education and care (ECS) services (that is, child care services), giving notice to the Minister and ECS providers of its intention to do so. The requirement to give such notice is a feature of many of the QCAA's functions, as it is with the QSA.

Under the Bill, the QCAA would support providers in the implementation of the Queensland syllabus, Australian curriculum and kindergarten guidelines by:

- giving information about the content and purpose of same
- providing resources to support implementation
- developing resources and providing services to support professional development of staff.²

This is not significantly different from the corresponding QSA functions.

The Queensland Teachers' Union (QTU) and the Independent Education Union of Australia – Queensland and Northern Territory Branch (QIEU) would like to see the QCAA retain a role in syllabus development for national curriculum subjects in P–10. These school employee unions say that C2C (Curriculum into the Classroom) - which is developed by Education Queensland to support state schools in implementing the Australian curriculum - does not compensate for a lack of a quality syllabus and C2C resources are not available to non-state schools in any case.

¹ ACARA, <http://www.australiancurriculum.edu.au/SeniorSecondary/Mathematics/Specialist-Mathematics/Overview-of-senior-secondary-Australian-Curriculum>, accessed on 3 December 2013

² Bill, clause 12

The department points out that the proposed approach to curriculum and syllabus development, as outlined above, has been supported in consultation with the three Queensland schooling sectors, and that the QCAA would *'have a specific function to support schools in the implementation of the Australian Curriculum. This includes the implementation of P–10 Australian Curriculum subjects'*.³

This would seem to make it clear that support materials and services relating to implementation of the P–10 curriculum (the Australian curriculum) would continue to be made available to schools who wish to utilise them.

Further the department points out that P–10 assessment is now, and will remain, a matter for determination by individual schools and school authorities.⁴

Committee comment

The committee is satisfied that the proposed approach to syllabus and curriculum development reflects the agreed changes that have occurred at a national level with respect to the Australian curriculum. It notes that the QCAA would continue to have a statutory function to support schools in the implementation of Australian curriculum subjects, for example through the provision of professional development or other resource materials.

The committee became aware, during its inquiry into the assessment methods used for senior mathematics, chemistry and physics, that the Australian curriculum could provide some economies of scale through enabling the development of support materials for school curriculums in collaboration with industry and other sectors, across the country. It seems probable that the state and territory authorities and ACARA would collaborate to develop these where appropriate.

Approval of syllabuses

The QCAA would not have the function of approving any P–12 syllabuses developed by other entities. That is a current function of the QSA but it is understood that it has not been used widely, with only one externally developed syllabus approved to date.⁵

Both Independent Schools Queensland and the Non-State Schools Accreditation Board (NSSAB) suggest the Bill should be amended to provide that the QCAA should be able to give approval to syllabuses developed by non-state schools who might want to offer subjects that are not included in the Australian curriculum or the Queensland syllabus offerings.⁶ ACARA has a provision to allow it to assess the comparability of such courses, and so give them recognition. These bodies suggest Queensland should do the same, to cover situations where non-state schools wish to offer a subject that is not included in the Australian curriculum or covered by a QCAA syllabus.

This is important because to be accredited as a non-state school, section 7 of the [Education \(Accreditation of Non-State Schools\) Regulation 2001](#) currently provides that an accredited school must have an educational program that enables students to at least achieve the Queensland standards of learning. Queensland standards of learning are defined as the standards of learning stated in an 'approved syllabus' under the *QSA Act*.

As noted by the NSSAB, the ACARA alternative curriculum recognition process will recognise alternative curriculum frameworks that will allow students to meet educational outcomes that are comparable to the Australian Curriculum.

³ Department response to submissions, p7

⁴ Department response to submissions, p18

⁵ Department response to submissions, p14

⁶ Submissions 3 and 7

Departmental advice is that:

ACARA has stated that the Australian Curriculum will cover all key learning areas outlined in the Melbourne Declaration on Educational Goals for Young Australians from the Foundation Year (equivalent to Queensland Preparatory Year) to Year 12.

Given the broad intended coverage of the Australian Curriculum, the Department does not consider that a further State syllabus accreditation process is also required.

A wide range of private developers of educational [programs] have sought recognition for their programs to be included as part of the QCE. The QCAA, like the QSA, will be responsible for determining whether an educational program is eligible to be recognised as part of the QCE. This process does not require the syllabus to be accredited.⁷

The department advises that the QSA only has this approval function at present because under the [Education \(General Provisions\) Act 2006 \(EGPA\)](#), state schools could only implement syllabuses that were approved by the QSA. Under the Bill, government policy rather than the EGPA would determine what curriculums state schools will use. That is, the Australian curriculum, and for some senior subjects, QCAA syllabuses.

The department considers that as this applies only to non-state schools, the appropriate place for providing for approval of syllabuses other than Australian curriculum and QCAA syllabuses is the Education (Accreditation of Non-State Schools) Regulation 2001, and advises that this will be progressed in consultation with non-state schools.

Committee comment

The committee accepts the department's advice that the Education (Accreditation of Non-State Schools) Regulation is the appropriate mechanism for ensuring that non-state schools can continue to offer subjects not developed by ACARA or the state authority (the QCAA); and notes that the department has committed to addressing this in consultation with the non-state school sector.

Tertiary entrance

In the QCAA Bill, tertiary entrance functions are less specific than they are under the QSA Act. Removed are the functions of making recommendations to the Minister about tertiary entrance procedures and requirements, and informing the public about these. The Bill is less specific about how the QCAA might work on developing tertiary entrance processes, save that it is to be done in consultation with the Minister. The requirement to consult with specified stakeholders has been removed (see QSA Act, s. 15).

The University of Queensland raised concerns that consultation with the university sector and with the Queensland Tertiary Admissions Centre (QTAC) would not specifically be required of the QCAA. Department advice is:

Consistent with other functional responsibilities administered by the QCAA, stakeholder engagement in tertiary entrance processes will be accommodated through the establishment of committees by the governing body.

Clause 13 of the Bill requires that processes for use in the ranking of students as a basis for tertiary entrance are to be developed in consultation with the Minister. It would generally be expected that the Minister would require assurance that the development of these processes has involved an appropriate level of stakeholder consultation.⁸

⁷ Department response to submissions, p15

⁸ Ibid, p18

The QTU and QIEU are concerned that providing Overall Position (OP) rankings for overseas students will reduce the number of domestic students offered places at university by increasing the competition for places as more overseas students qualify for an OP.

Department advice is that:

The Bill will enable the QCAA to exercise its testing and tertiary entrance functions in relation to recognised schools – international schools that are authorised to use Queensland senior syllabuses.

The policy intent is that the QCAA may, in appropriate circumstances, allow international students attending recognised schools to sit the Queensland Core Skills Test and gain an Overall Position (OP) Equivalent ranking.

The OP Equivalent is currently available to international students studying in Queensland secondary schools on an overseas visa, if they meet the educational requirements for an OP, including completing the required subjects and sitting the Queensland Core Skills Test.

The OP Equivalent provides an estimate of the international student's achievement against Queensland students who receive an OP. However, international students receiving an OP Equivalent are not included in the number of Queensland students allocated to each of the OP bands. They do not compete with Queensland students for an OP ranking.

The Queensland Government does not determine the number of Queensland university places that are offered to domestic and international students. This is a matter for determination by individual tertiary institutions.⁹

Griffith University expressed confidence the QCAA would consult with it about tertiary entrance.¹⁰

Committee comment

The committee shares the confidence of Griffith University that that the QCAA would consult with the tertiary education sector in developing tertiary entrance processes. It is difficult to see how the QCAA could fulfil its statutory responsibilities without doing so.

The committee notes the department's advice about the OP equivalent ranking and that those to whom it is awarded are not competing with Queensland students for an OP ranking. The committee supports universities continuing to attract the 'best and brightest' students, from wherever they may originate, to Queensland.

Commercial exploitation

The QCAA would have an additional function of commercial exploitation of its products or services, a function not currently held by the QSA under the *QSA Act*. This element of the Bill has probably received the most attention from those making submissions. There are concerns that the Bill is paving the way for privatisation of the QSA's functions.

The QTU, QIEU and Together express strong concerns about the new function of commercial exploitation, which the QCAA could do in respect of any of its other functions. These submitters say that this would increase costs for schools and teachers, and is commercialising the intellectual property that belongs to the teachers who develop the support materials. They suggest the committee might seek an undertaking from the Minister that the new body would not charge schools and students for access to such materials.

⁹ Department response to submissions, p11

¹⁰ Submission 1

Similarly, they believe that professional development relating to new syllabuses and curriculum should continue to be provided to teachers by the authority, rather than by for-profit providers. There appears to be a perception that the intent is to privatise the QCAA's functions in the context of the government's contestability agenda.

The QTU, QIEU and Together are concerned that there will be negative budget implications for schools resulting from the QCAA having a commercialisation function. The claim is that costs associated with having to purchase QCAA support for teachers and schools would impact on schools differentially, with some more able to fund these costs than others. This would have flow on effects for teacher quality and thus, student outcomes.

In response to these concerns, the department advised:

This provision is intended to clarify the commercialisation powers of the QCAA, and does not carry any expectation regarding the level of user charges that will apply to schools.

Section 18 of the QSA Act already enables the QSA to fix charges for services it provides, and a similar power is included in the Bill. The nature and extent of these charges will continue to be a matter for determination by the QCAA.¹¹

And further:

The Bill provides QCAA with a clear function to support schools in implementing syllabuses, kindergarten guidelines and the Australian Curriculum, and provides that this function may be performed by the QCAA developing resources and services for the professional development of teachers.

The nature and extent of professional development services provided will be a matter for determination by the QCAA, taking account of individual school authority requirements, available resources and priorities outlined in the Ministerial statement of expectations.¹²

Together expressed concern with statements made by the Minister for Education, Training and Employment in his speech introducing this Bill, to the effect that he expected ongoing support could be provided on a user-pays basis, saying that:

Together members cannot support a system that charges schools and students for access to core syllabus and curriculum materials.¹³

These concerns refer to the Minister's statement, in introducing the Bill to the Parliament:

The provision of these services and products will be a matter for consideration by the authority in light of school authority requirements and priorities outlined in the ministerial statement of expectations. In this context, I would generally expect that the implementation of new syllabuses and Australian Curriculum subjects would be funded by the authority while ongoing support would be provided on a user-pays basis.¹⁴

In response to Together's concern, the department advised:

This commercialisation function is to facilitate a broad range of activities, including the licenced use of QCAA material in third-party publications, and the provision of QCAA products and services to overseas recognised schools.

The QSA currently provides a range of full day and half day syllabus implementation workshops on a fee for service basis. It does not charge for core syllabus and curriculum

¹¹ Department response to submissions, pp8 and 13

¹² Ibid, p9

¹³ Submission 6

¹⁴ Hansard, 29 October 2013, p3589

*materials and there is no expectation that the QCAA would change this practice by charging for these.*¹⁵

This was confirmed by the QTU and QIEU response to a question from the committee at its public hearing on 20 November 2013. Mrs Menkens MP, committee chair, asked for advice about the proportion of professional development funds that currently comes from a school's budget, and the response was:

*All of it.... Schools have a budget – I think it is 10 per cent... generally 10 per cent of a school's budget is dedicated to professional development (PD) for teachers and the school leader...There is a range of PD opportunities available through QSA. The Queensland College of Teachers provides excellent PD as well. The education department themselves provide some opportunities in the Learning Place, particularly online.*¹⁶

Committee comment

The committee notes that professional development is currently provided by the QSA, and other providers, at a cost to schools, and that the Bill would not change that. We note that in addition to the Minister's reference in his introductory speech to ongoing support services and products (post syllabus implementation) being provided on a user pays basis, he also stated that:

*The bill clarifies the new authority's capacity to commercially develop its own intellectual property by providing a specific commercialisation power. The government strongly supports emerging opportunities to market and promote high-quality educational products and services to international schools and students. However, supporting the commercialisation of the authority's products and services does not reflect an intention to charge Queensland schools and school students for the provision of core syllabus and curriculum products.*¹⁷

We understand that a key concern of Together, QTU and QIEU was that, with a range of providers able to provide curriculum or pedagogical frameworks, a competitive marketplace for quality professional development would be created. In a context like that, unless the QCAA is sufficiently resourced to develop quality professional development materials, it could create an environment in which costs would be increased and passed on to the consumer – schools and teachers. The new function of the QCAA, not currently held by the QSA, to commercially exploit professional development and other products is giving rise to that concern.

The committee sees another possibility to be equally likely. That a more competitive market could drive the price of professional development down, and increase the level of choice available to consumers of professional development. It also becomes essential in such an environment for the quality of such material and services to be maintained at a high level. It is in the government's interests that it resources the QCAA to do this, given its focus on teacher quality as articulated in *Great teachers = Great results*; and the role of professional development in supporting teacher quality.

In relation to the intellectual property of teachers being exploited commercially, the committee understands that intellectual property produced by employees of an organisation like the QSA or the proposed QCAA, or a government agency more broadly, would normally be owned by the employing authority under the terms of an employment contract. Again, the Bill does not propose a change to arrangements about intellectual property. Any changes to such arrangements would presumably be a matter for the new authority. The committee would hope that quality support material produced

¹⁵ Department response to submissions, p13

¹⁶ Hansard, 20 November 2013, p5

¹⁷ Hansard, 29 October 2013, p3590

by teachers employed by the QCAA is made widely available to support best practice in curriculum and syllabus implementation.

The Minister's statements and the department's advice to us indicate that the commercialisation function is not likely to result in changes in the cost to schools of the QCAA's support to schools in the implementation of syllabuses, and ongoing professional development. However more definitive advice is requested.

Point for clarification 1

The committee requests that the Minister clarifies the impact of the commercialisation function with respect to costs to schools of the various QCAA materials and support services, and advise whether Queensland schools will be affected by this change.

Another consideration in respect of the authority's provision of support materials and services, raised by Griffith University, is that making products available does not equate to ensuring equity of access.¹⁸ Schools in remote, rural and/or low socio-economic environments may not have equal access to products or services to support the implementation of syllabuses, kindergarten guidelines or the Australian Curriculum.

Department advice is that:

*The QCAA has a statutory function to support schools in implementing syllabuses, kindergarten guidelines and the Australian Curriculum (clause 15). This will require the QCAA to take account of whether support is being provided to rural, remote and low socio-economic schools in an accessible manner.*¹⁹

Committee comment

There must be equity of access to support materials and services by all schools. Although the QCAA has a statutory function to support schools in implementing QCAA syllabuses and the Australian curriculum, the department's advice that the QCAA would have to '*take account of whether support is provided to all schools in an accessible manner*' raises some questions for the committee.

These are:

- a) How will the QCAA ensure that support is provided to all schools in an accessible manner?
- b) How will the government know that the QCAA is providing quality support materials and services to all schools?
- c) Whose responsibility is it to ensure that schools are able – and resourced – to access support materials and services?

Clearly, the quality of teaching is determined by more than professional development. A recent report from the Auditor-General on the supply of specialist subject teachers in Queensland secondary schools highlighted that a significant proportion of teachers are teaching outside of the subjects in which they held tertiary degrees.²⁰ The committee's own inquiry into the assessment of senior mathematics, chemistry and physics in Queensland schools found a significant number of teachers were not understanding the syllabus documentation designed to support them in

¹⁸ Submission 4

¹⁹ Department response to submissions, p6

²⁰ Queensland Audit Office, 2013. *Report to Parliament 2 : 2013 – 14. Supply of specialist subject teachers in secondary schools*

implementing that syllabus. This went beyond those teaching ‘out of field’ and included those teachers who were teaching subjects in which they did hold tertiary qualifications. The availability of quality support for syllabus and Australian curriculum implementation is paramount in this context.

An earlier Auditor-General report from 2010 on the use of student data to inform teaching and learning was followed up by the Auditor-General in 2012.²¹ The committee was pleased to see that the Auditor-General found that DETE had implemented a system of teaching and learning audits in 2011, which aimed to identify and improve inconsistencies between how schools interpreted and used NAPLAN and other data to inform teaching and learning.

The committee suggests that data from the teaching and learning audits will be used to inform what support schools and teachers might need in terms of professional development, and whether they are able to access what is available, as a central part of informing teaching and learning.

Point for clarification 2

The committee requests that the Minister advise the House in respect of the following:

- How might the QCAA ensure that support is provided to all schools in an accessible manner?
- How will the government know that the QCAA is providing quality support materials and services to all schools?
- Whose responsibility is it to ensure that schools are able – and resourced – to access support materials and services?

Licence to use intellectual property

Clause 73 of the Bill would allow the Minister to direct the QCAA to grant licences in relation to the use of QCAA intellectual property. This might occur where, for example, a school wanted to deliver a QCAA syllabus outside of Queensland, including overseas. Independent Schools Queensland and NSSAB suggest consideration be given to allowing a non-government school who wanted to operate a school overseas using the authority’s curriculum and resources, to be granted a licence.

The department advised the committee that clause 73 does not prevent the Minister from directing the QCAA to grant a licence to use its intellectual property to entities other than the State. It merely clarifies that the ministerial direction may be that a licence be granted to the State and not to any other entity. It is discretionary. Any given ministerial direction would determine to whom a licence can or cannot be granted.

Committee comment

The committee understands that the Bill at sub-clause 73(2)(d) is providing an example of the type of direction that the Minister might give, and that the Minister does have the ability to provide that only the State may use the materials should he or she determine to do that. It is accepted that this is not a given. However, in the context of the surrounding sub-clauses (73(2)(b), (c) and (e)) it is understandable that this has given rise to a query.

The committee accepts the department’s advice that the government’s policy is to strongly support emerging opportunities to market and promote high-quality educational products and services to international schools and students. In the context of a competitive international market place, it may be appropriate in some instances for the ministerial directive to limit the licensing of those

²¹ Queensland Audit Office, 2012. *Report to Parliament 2 : 2012 – 13. Follow up of 2010 audit recommendations*

materials to the State. However, if the Bill does not intend to preclude the possibility of licences being granted to bodies other than the State, the Bill could be clarified to provide this. If the intent is in fact to limit the granting of licences to the State, then the Minister may wish to clarify this.

Recommendation 2

The committee recommends that the Education (Queensland Curriculum and Assessment Authority) Bill 2013 be amended to clarify that in addition to the Minister being able to direct the QCAA to sell intellectual property, as is provided in clause 73(2)(a), the Minister may also direct the QCAA to grant a licence to use QCAA material to bodies other than the State.

Testing, moderation, certification, student accounts, research

The QTU, QIEU and Together expressed concern that the Bill provides for senior assessment to be by way of an exam when a decision has not been made in that regard.

However it emerged during the committee's inquiry that, this concern was based on a consultation draft of the Bill that had been provided to the unions, by the department, as part of the Bill development process. The Bill, as introduced, does not in fact pre-empt any government decisions that could result in changes to senior assessment processes.

QCAA functions would be largely unchanged from the current QSA and in the case of research, broadened. However, the Bill would allow the QCAA to '*purchase and revise tests developed by another entity and prescribed under a regulation*'.²² At present, 'tests prescribed under a regulation' include the external senior exams for authority subjects (largely used by mature age students and in Year 12 colleges such as Hubbard's School), and the Queensland Core Skills Test, as well as the Year 2 diagnostic test.²³ The development or revision of common national tests, such as the NAPLAN, is prescribed in the *QSA Act*. The *QSA Act* does not use the term 'purchase' in respect of tests, though it does in respect of syllabuses and guidelines.²⁴

Outsourcing

Concerns have been raised by Together, QTU and QIEU about the Bill providing that the QCAA can purchase tests developed by other bodies.²⁵ At present, the tests and exams required under the QSA regulation are developed by the QSA itself (other than common national tests like NAPLAN), as outlined above. However, the department points out:

[a] similar power to purchase syllabuses, preparatory guidelines or kindergarten guidelines developed by another entity is included in section 9 of the QSA Act.

The inclusion of a power to purchase syllabuses and tests developed by other entities would enable the QCAA to utilise syllabus or testing products developed by curriculum authorities in other Australian jurisdictions, as well [as] private providers. This is considered to be appropriate in an environment where all jurisdictions are committed to the implementation of a common Australian Curriculum.

*The QCAA would continue to be accountable for the effective operation of any syllabus or testing products, whether developed by the QCAA or purchased from another entity.*²⁶

²² Education (Queensland Curriculum and Assessment Authority) Bill, clause 13(1)(b)

²³ Education (Queensland Studies Authority) Regulation 2002, Parts 2 and 3

²⁴ *Education (Queensland Studies Authority) Act 2002*, sections 8 and 10

²⁵ Clause 13(1)(b)

²⁶ Department response to submissions, p12

Another risk associated with a move towards delegating, or outsourcing, was identified by Mrs Marilyn Carter, who is completing a PhD in education. Mrs Carter submitted to the committee that the valuable information currently provided by the QSA in respect of NAPLAN data must be maintained; and noted that *'there may be an intention to privatise the NAPLAN reporting and analysis functions of the QSA, as has occurred in other states and territories'*.²⁷ Mrs Carter's concern is that, where this has happened, access to the valuable raw data is not available to researchers or schools as it is in Queensland now; and that it is important the detailed analysis of NAPLAN currently provided by the QSA each year continue. Without it, schools will conduct their own testing, which is an inefficient use of funding and testing resources.

The department advised that clause 13 of the Bill provides that a function of the QCAA is to provide individual test results of each student undertaking common national tests to the principal of the school at which the student is enrolled and analysing systemic information about the performance of persons who undertake the tests. The department also stated that *'it is expected that the QCAA will continue to provide a similar level of data and resource to Queensland schools as the QSA does now, in this regard'* and *'if the QCAA delegated the exercise of its functions to an appropriately qualified entity, the QCAA would still be ultimately responsible for the exercise of these functions'*.²⁸

Committee comment

The committee agrees that the QCAA should have the ability to purchase and revise tests developed by other entities. In the context of a national curriculum, the ability of schools, education sectors and jurisdictions to share best practice in terms of assessment tools will be enhanced by assessment authorities having the ability to purchase and revise each other's syllabus support and testing materials.

In fact, with other authorities having similar ability, there is an additional motivation and opportunity for Queensland to be at the forefront of best practice in this regard.

We note the concerns raised by Mrs Carter in respect of the information provided by the QSA about NAPLAN results and the need to ensure this continues to be provided. We concur that this is valuable information to inform teaching and learning, and in the context of the education reforms occurring under initiatives such as *Great teachers = Great results* would expect that this would continue to be seen as important by the government and the QCAA.

Relationship with the Minister

The relationship between the Minister and the QCAA in terms of processes is largely unchanged from the *QSA Act*, under which the Minister has a general power to direct the authority if that is in the public interest. Beyond that, the QSA has a clear independence in respect of performance of its functions. Under the Bill, the Minister would be able to issue a written statement of expectations to the QCAA, to which the authority must have regard in performing its functions or exercising its powers.²⁹ The statement would outline broad deliverables and priorities for the QCAA.³⁰

The QIEU and QTU expressed concern that the statement of expectations needs to be adequately resourced.³¹ The department's view was that the statement of expectations includes priorities for the QCAA, which would need to consider the resources of the body.³²

²⁷ Submission 2, p2

²⁸ Department response to submissions, pp1, 2

²⁹ Clause 74

³⁰ Hansard, 30 October 2013, p5

³¹ Submission 5, p3

³² Department response to submissions, p11

The University of Queensland cautions of the need to balance the level of ministerial influence and the independence of the QCAA.

Committee comment

The committee is satisfied that the ministerial statement of directions is appropriate, and that the QCAA will retain its independent statutory functions. It also notes that this proposal received broad support in the consultation phase of developing the Bill.³³

Investigative powers

The NSSAB suggests that the investigative powers to be given to the QCAA should be strengthened.

The QCAA would, like the QSA currently, have to investigate matters referred by the Minister that relate to its functions, and to provide a written report to the Minister as required by the Minister.³⁴ NSSAB believes that the QCAA should be given specific powers in relation to conducting such investigations, including the ability to appoint suitably qualified people as agents with the powers of right of entry, right to inspect and copy documents, and require a school's governing body to provide information or documents.

Clause 71 of the Bill enables the Minister to refer a matter relevant to the authority's functions to the authority for investigation. This provision is intended to cover the full range of functional responsibilities of the QCAA and is not specifically intended to cover the administration of QSA processes within schools.

There are some instances in which the QSA may refer potential issues with the administration of testing or assessment processes to school authorities for further investigation, e.g. investigation of anomalies revealed as part of sample-based statistical verification process associated with senior assessment results. It is intended that a similar approach will be adopted by the QCAA. The Bill does not need to be amended to enable this to occur.³⁵

Committee comment

The committee understands that school authorities and the QCAA have very different responsibilities. However it would like some advice about the role of the QCAA in investigating matters relating to its direct functional responsibilities, for example test anomalies, compared with the role of school authorities. The [Child Care Act 2002](#), for example, provides specific powers to the department to investigate potential breaches of that Act and its regulations. No similar powers are provided to the QCAA, and the committee would like to ensure it understands the differences in responsibility.

Point for clarification 3

The committee requests that the Minister expand upon why powers of investigation are not considered necessary for the QCAA.

³³ Hansard, 30 October 2013, p5

³⁴ Bill, clause 71

³⁵ Department response to submissions, p17

Definitions

Griffith University suggests the term ‘work programs’ should be defined in the Bill, and makes some suggestions about the objects and functions stated in the Bill. Griffith University also wanted the objects of the Bill to include a number of functions of the authority. The department advised:

*The key aspects of work programs are included in clause 15 (1) (c) of the Bill ... the term is well understood in Queensland schools....as such a further statutory definition is not considered necessary.*³⁶

Committee comment

The committee appreciates suggestions such as these which could improve the clarity of the Bill. However, it accepts the department’s advice in respect of the term ‘work programs’ and also notes that the objects of the Bill would not ordinarily or necessarily include the functions of the authority which is to be established by the Bill.

Governance

The QCAA would consist of seven members, appointed by the Governor-in-Council on recommendation from the Minister, on the basis of their knowledge, experience and standing relevant to the authority. These would be the chief executive of the Department of Education, Training and Employment (the state schooling sector), a nominee from each of the Queensland Catholic Education Commission and Independent Schools Queensland, a ministerial nominee with corporate governance/finance qualifications and experience, and three other nominees of the Minister.

The government’s position is that a streamlined seven member governing body, with members selected on the basis of relevant expertise, will support effective corporate governance and clear strategic direction.³⁷

The QSA consists of a 20 member board with representation from the State, catholic and independent school sectors, principals, teachers, parents, tertiary institutions, the vocational education and training sector and industry.

The QCAA would have no representation from: parent organisations (there are two at present), principals (two at present), teachers (two), QTU, QIEU, DETE (VETE), special education, Aboriginal and Torres Strait Islander education, or industry (see *QSA Act*, s. 25).

A Chief Executive Officer (the director) would still be appointed by the Governor-in-Council on recommendation from the Minister and would oversee an office that executes the decisions made by the authority.

The QTU and QIEU are concerned that losing the representative nature of the current governing body would undermine public and professional confidence in the QSA. They believe there should be direct representation of teachers, principals, teacher unions and parents to ensure familiarity with the day to day operations of teaching, assessment, moderation and reporting. They also believe that the current committee structure of the QSA should be maintained by the QCAA.

While committees of the authority are referenced in the Bill, the department advice in respect of the committee structure is that *‘the establishment and composition of committees will be a matter for determination by the QCAA’*.³⁸

³⁶ Department response to submissions, p6

³⁷ Hansard, 30 October 2013, p3

³⁸ Department response to submissions, p9

The University of Queensland raises concern about the ability of the higher education sector to contribute to policy and practice. The Bill removes the requirement for universities and QTAC to be consulted regarding tertiary entrance matters and the sector is no longer mandated to be represented on the QCAA.

Committee comment

The committee supports the government's policy position that the authority would be directed by a body established to govern, rather than a body established to be representative of the many stakeholders of the authority. Direct representation is not a necessary component of a strong decision making body.

To participate effectively in the current educational arena, Queensland needs a body to provide strong governance and decision making.

Having said that, the committee sees that effective fulfilment of the functions of the QCAA would not be possible without it having a strong consultative mechanism. The committee is confident the QCAA would consult with, and be informed by, relevant sectors as required and would use its committee system to support this practice.

In respect of membership of the authority, the committee has identified that the Bill is not clear which chief executive is referred to in clause 22(a). It is assumed this is the chief executive of the state schooling sector, that is, the Director-General, Department of Education, Training and Employment given the department's advice that each schooling sector will be represented on the governing body.³⁹ However, the committee believes this should be explicit and not assumed. The department's chief executive does not have any other direct relationship with the QCAA. One would ordinarily assume the chief executive was the chief executive of the QCAA, as the subject of the Bill. However the QCAA chief executive officer is excluded from being a board member under clause 23(c) of the Bill. We believe the Bill should be clarified in this respect.

Recommendation 3

The committee recommends that the Bill be amended to clarify which chief executive is to be appointed to the Queensland Curriculum and Assessment Authority.

³⁹ Hansard, 30 October 2013, p3

3. Fundamental legislative principles

As well as considering the policy to be given effect by the legislation, portfolio committees are required to review Bills in respect of their lawfulness, and advise the Legislative Assembly on whether fundamental legislative principles have been given appropriate regard.

Section 4 of the *Legislative Standards Act 1992 (LSA)* specifies the standards required for Queensland legislation. It provides that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals (section 4.2) and
- the institution of parliament.

The committee has examined the application of fundamental legislative principles to the Bill and wishes to raise potential issues of fundamental legislative principle in respect of clauses 41 and 113.

Other matters of fundamental legislative principle identified by the government in the explanatory notes are considered to be sufficiently justified.

The committee also raises an issue in respect of the explanatory notes.

3.1 Rights and liberties of individuals

Clause 41: Potential abrogation of existing statutory rights under an industrial instrument

Section 4(2)(a) LSA, Does the bill have sufficient regard to the rights and liberties of individuals?

Clause 41 of the Bill provides that the authority may employ staff on a casual basis. These staff are not subject to any industrial instrument or any determination or rule of an industrial tribunal. They are entitled to be paid the remuneration and allowances decided by the Governor-in-Council.

Clause 41 potentially abrogates rights and liberties contained in an industrial instrument, a determination or rule of an industrial tribunal. For example, the general Retail Industry Award 2010 sets out minimum entitlements of casual staff to loading, minimum wages, penalty rates and a minimum 3 hour shift entitlement. It is possible that casual staff could be employed under clause 41 without similar minimum entitlements.

The *QSA Act* currently provides that the QSA may employ staff on a casual basis to help the authority perform its testing, testing for common national tests, moderation and certification functions.⁴⁰ Those staff also are not subject to an industrial instrument or a determination or rule of an industrial tribunal, but the purpose of employment of those staff is specified. The Bill would allow the QCAA to employ any casual staff without reference to an industrial instrument or determination.

In effect, clause 41 allows the authority to employ further casual staff in various capacities who are not given common minimum entitlements afforded to casual staff in other workplaces doing similar work where minimum award protections apply (eg. cleaning).

As a matter of fundamental legislative principle, justification is required for abrogation of statutory rights and liberties.⁴¹ The explanatory notes do not identify this matter of fundamental legislative principle nor offer any justification for this potential abrogation of rights and liberties.

⁴⁰ Section 69A

⁴¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, 2008, p106

The question for the committee to consider is whether this clause is justified. Subsequent to the public briefing provided by the department, the committee requested that the department:

- articulate the justification for this clause, and
- advise whether the remuneration and allowances decided by the Governor-in-Council will be published, for example, in the gazette or on the department's website.

The department provided a detailed response explaining the history of employment of casual staff by the QSA, and the rationale for their employment conditions and remuneration to be determined by the Governor-in-Council.⁴² The department also advised that it is not anticipated those conditions would be published, and people employed were advised of the rates prior to being engaged.

Committee comment

Despite the department's response, the committee is still uncertain as to the rationale for not specifying that it is staff engaged to perform the QSAA's statutory functions who will be subject to this clause, as is the case under the *QSA Act*. We understand that the clause has been drafted broadly so that it can apply to staff who are employed to fulfil any of the QCAA's functions. However, the issue seems to remain that it could in fact be applied to staff employed by the QCAA to undertake any role – for example, cleaning staff – whether or not the intent is that this could occur.

The committee is of the view that to remove all doubt about the potential broader application of this clause to all casual staff who may be employed by the QCAA, the Bill should be amended to be consistent with the current *QSA Act* in that the clause should clearly apply to staff employed to fulfil the authority's statutory functions.

Recommendation 4

The committee recommends that the Bill be amended to specify that clause 41 applies to staff employed to carry out the statutory functions of the Queensland Curriculum and Assessment Authority as specified in Division 2 of the Bill.

Clause 113: Head of power for retrospective transitional regulation

Section 4(3)(g) LSA, Does the bill adversely affect rights and liberties, or impose obligations, retrospectively?

Clause 113 inserts a head of power to make a transitional regulation that may have retrospective operation. A regulation made under clause 113 may be backdated to the commencement of clause 113.

As a matter of fundamental legislative principle, *'strong argument is required to justify a retrospective adverse effect on rights and liberties, or imposition of obligations'*.⁴³ However, the explanatory notes do not identify this matter of fundamental legislative principle or offer any justification for this potential retrospectivity.

The [Statutory Instruments Act 1992](#), section 34, provides:

Beneficial retrospective commencement

⁴² Department correspondence 4 December 2013

⁴³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, 2008, p55

- (1) *A beneficial provision of a statutory instrument may be given retrospective operation if the statutory instrument expressly provides for that operation.*
- (2) *In this section—*
- beneficial provision means a provision that does not operate to the disadvantage of a person (other than the State, a State authority or a local government) by—*
- (a) *decreasing the person’s rights, or*
- (b) *imposing liabilities on the person.*

However, any regulation that might be made under clause 113 of the Bill could have retrospective operation, to the day this section of the Bill commences, and so may disadvantage a person by decreasing their rights or by imposing liabilities.

The committee considered whether this provision which authorises making a retrospective regulation is justified, and asked the department to clarify the rationale for this. The advice received was that it is not envisaged this provision would be used to adversely affect any person, and was intended to provide for situations not envisaged at the time of drafting the Bill.

3.2 The institution of Parliament

Clause 113: delegation of legislative power

Section 4(4)(a) LSA, Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

The Bill’s clause 113(1) inserts a transitional regulation-making power for a regulation to make provision of a saving or transitional nature for which:

- (a) *it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition of provisions of the repealed Act, and*
- (b) *this Act does not make provision or sufficient provision.*

Transitional provisions like this can demonstrate insufficient regard for the institution of Parliament because the regulations may amend any other provisions of the Act of Parliament.⁴⁴ In that sense, they are potential ‘Henry VIII’ provisions.

This potential issue of fundamental legislative principle is raised in the explanatory notes (at p4). The explanatory notes offer the following justification for the insertion of clause 113:

The inclusion of such a power is justified on the basis that any transitional issues in relation to abolishing the QSA and establishing the authority that have not been identified during the drafting of the provisions can be quickly addressed.

Some safeguards are incorporated in clause 113:

- a regulation must declare it is a transitional regulation, and
- clause 113 and any regulation made under it expire after 1 year.

Committee comment

The committee’s general position is that it is preferable for all relevant matters to be thoroughly considered and included in the principal Act, not the regulation.

Similarly, the committee has previously noted the desirability of sunset clauses and clarity about the

⁴⁴ *Alert Digest* No. 3 of 1996, p10

transitional nature of aspects of legislation that are intended to support implementation of a transition from one policy position to another.

In respect of this transitional clause (113), the committee accepts the rationale provided in the explanatory notes and is satisfied that sufficient safeguards, including a sunset clause, exist to limit any potential breaches of fundamental legislative principle.

3.3 Proposed new or amended offence provisions

The committee has reviewed the proposed offence provisions contained in the Bill, and considers they are appropriate, being commensurate with those for similar offences.

3.4 Explanatory notes

The *LSA* requires that explanatory notes are to be circulated when bills are introduced, and specifies what they should contain. The explanatory notes provided with this Bill meet the broad requirements of explanatory notes, providing a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. However the explanatory notes do not provide any assessment of the costs and benefits associated with implementing this legislation, as is required under section 23(1)(e) of the *LSA*.

Committee comment

The committee shares the expectations of the Department of the Premier and Cabinet as outlined in its Legislation Handbook, that this aspect of explanatory notes *'should present more than a simple assertion as even if there are no costs to government, an analysis should be provided'*.⁴⁵

The committee requests that future explanatory notes provide an assessment of costs and benefits as is required by the *LSA*, to support the Parliament to fulfil its function of legislative scrutiny, to inform Parliamentary and public debate, and to make legislation more accessible.

Identification of clauses raising matters of fundamental legislative principle

The explanatory notes tabled with this Bill address potential breaches of fundamental legislative principles. However the relevant clauses creating these issues are not identified. It is useful for explanatory notes to specifically identify the relevant clauses.

In other respects, the notes are fairly detailed and contain the information required by Part 4 of the *LSA* and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Committee comment

The committee requests that future explanatory notes contain reference to the specific clauses of the Bill which give rise to issues of fundamental legislative principle, to support the Parliament in its function of legislative scrutiny, to inform Parliamentary and public debate, and to make legislation more accessible.

⁴⁵ Department of Premier and Cabinet, Guidelines for the preparation of explanatory notes, accessed online at: <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/drafting-process/assets/guidelines-preparation-of-explanatory-notes.pdf> on 3 December 2013

Appendix A – List of submissions

Sub #	Submitter
1	Australian Skills Quality Authority
2	Merilyn (Lyn) Carter
3	Independent Schools Queensland
4	Griffith University
5	Queensland Teachers Union and The Independent Education Union of Australia – Queensland and Northern Territory Branch
6	Together Queensland, Industrial Union of Employees
7	Non-State Schools Accreditation Board
8	Australian Family Association (Qld Branch)
9	The University of Queensland

Appendix B – Witnesses at public hearing – 20 November 2013

Witnesses
Independent Schools Queensland Mr David Robertson, Chief Executive Dr Janelle Wills, Director, Teaching and Learning
Queensland Teachers Union Ms Leah Mertens, Research Officer
Independent Education Union of Australia, Queensland and Northern Territory Branch Ms Adele Schmidt, Research Officer

Statement of reservation

DESLEY SCOTT MP

SHADOW MINISTER FOR COMMUNITIES, CHILD SAFETY, DISABILITY SERVICES AND MENTAL HEALTH

MEMBER FOR WOODRIDGE

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6 December 2013

Mrs Rosemary Menkens MP
Member for Burdekin
Chairperson
Education and Innovation Committee
Parliament House
George Street BRISBANE QLD 4000

Dear Mrs Menkens

Statement of Reservation – *Education (Queensland Curriculum and Assessment Authority) Bill 2013*

I wish to notify the committee that the opposition has reservations about aspects of the Report of the Education and Innovation Committee into the *Education (Queensland Curriculum and Assessment Authority) Bill 2013*.

The Opposition will detail the reasons for its concern during the parliamentary debate on the Bill.

Yours sincerely

A handwritten signature in black ink that reads "Desley C. Scott".

Desley Scott MP
Deputy Chairperson
Education and Innovation Committee
Member for Woodridge