

EDUCATION AND INNOVATION COMMITTEE
REPORT No. 28 ON THE
EDUCATION (QUEENSLAND CURRICULUM AND ASSESSMENT AUTHORITY)
BILL 2013
QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 18 December 2013, the Education and Innovation Committee tabled Report No. 28 in relation to the Education (Queensland Curriculum and Assessment Authority) Bill 2013 (the Bill).

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 Education (Queensland Curriculum and Assessment Authority) 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 Bill be amended to clarify that in addition to the Minister being able to direct the Queensland Curriculum and Assessment Authority (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.

Government Response

The Government does not support this recommendation as the provision does not prevent the QCAA licencing its products to bodies other than the State.

Clause 18 of the Bill clarifies that the QCAA has the power to commercially exploit its products or services. This would include granting a license to QCAA materials. The purpose of the power of direction in clause 73 is to enable the Minister to issue a written direction about: a product containing intellectual property held by, or licenced to, the QCAA; or a service about such a product. Clause 73(2) provides a non-exhaustive list of examples of the types of directions that may be given including that a licence is given to the State to use QCAA materials. This provision is modelled on section 23A of the *Education (Queensland Studies Authority) Act 2002* (QSA Act).

As such clause 73 does not prevent the QCAA granting a licence to use QCAA materials to bodies other than the State. Therefore, the Government considers that the Bill does not need to be amended.

Recommendation 3

The Committee recommends that the Bill be amended to clarify which chief executive is to be appointed to the QCAA.

Government Response

The Government does not support this recommendation.

Clause 22(a) of the Bill refers to the *chief executive* and is not a reference to the *chief executive officer* of the QCAA. The term *chief executive officer* is defined in the dictionary to the Bill to mean ‘the chief executive officer of the authority holding office under section 32’.

Section 33 of the *Acts Interpretation Act 1954* provides for the interpretation in Queensland legislation of references to Ministers, departments and chief executives. Section 33(11)(b) of the *Acts Interpretation Act 1954* provides that in a provision of an Act, a reference to *chief executive* without specifying a particular public sector unit by name is a reference ‘to the chief executive of the public sector unit that deals with the matters to which the provision relates and is administered by the Minister for the time being administering the provision’.

As the Minister for Education, Training and Employment will administer the Act, the reference to chief executive in clause 22(a) is a reference to the chief executive of the Department of Education, Training and Employment.

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 QCAA as specified in Division 2 of the Bill.

Government Response

The Government supports this recommendation.

Clause 41 enables the QCAA to employ casual staff under this section rather than the *Public Service Act 2008* and ensures that industrial instruments under the *Industrial Relations Act 1999* or any determination or rule of an industrial tribunal do not apply to these casual staff. Clause 41 provides that terms and conditions of employment for casual staff employed under the section will be set by the Governor in Council.

This clause is similar to section 69A of the current QSA Act. However, section 69A is restricted to employment of casual staff to assist in carrying out testing, moderation and certification functions. The section is primarily used by the QSA to engage and remunerate teachers engaged in moderation, assessment and testing.

Clause 41 expands on section 69A to enable casual staff to be employed by the QCAA to assist with any of its functions. This enables flexibility regarding which functions casual staff can be employed to undertake.

The Committee is concerned the provision could be used to enable the QCAA to employ staff on a casual basis to undertake activities unrelated to its statutory functions, for example, cleaning staff, without regard to industrial relations arrangements setting minimum conditions. This was not the intention. Accordingly, it is proposed to move an amendment be made to clause 41 during consideration in detail to clarify the policy intention that casual staff may only be employed for the purpose of carrying out the statutory functions of the QCAA.

POINTS FOR CLARIFICATION

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.

Government response

Clause 18 of the Bill provides that the QCAA has the function of commercially exploiting a product or service developed by it in the course of performing its functions, or licensed to it. This function is intended to clarify QCAA's ability to deal with intellectual property it has created, or licensed to it.

There is no corresponding provision in the current QSA Act. Instead, intellectual property held by the QSA is commercialised by the Department of Education, Training and Employment (DETE) on behalf of the QSA.

Currently, this arrangement operates under section 23A of the QSA Act, by which the Minister may issue a written direction to the QSA about material containing intellectual property held by the QSA, which may include direction about the granting of a licence to the State. Under this provision, the QSA has provided an exclusive licence to the State, as represented by DETE, to use and exploit intellectual property on behalf of the QSA. This has included, for example, arrangements where recognised schools overseas have entered agreements for the use of QSA syllabus documents and the receipt of the Queensland Certificate of Education.

The new Bill has been developed on the basis that there may be some circumstances in which it would be appropriate and administratively efficient for QCAA to directly enter arrangements for the commercial use of intellectual property, rather than requiring all such arrangements to be administered by DETE on QCAA's behalf. This may include, for example, consideration of requests from publishers to include extracts from QSA syllabus materials as part of their texts.

While the inclusion of a commercialisation function will clarify the QCAA's ability to deal with intellectual property, it does not mean that the QCAA will seek a commercial rate of return in relation to the provision of curriculum products and services to Queensland schools. As noted in the Government response to submissions on the Bill, the QSA does not charge Queensland schools for access to its syllabus documents or for core curriculum resources that are provided to support their implementation. It is expected that the QCAA will follow a similar approach.

Section 18 of the QSA Act currently enables the QSA to fix charges for services and other facilities it provides. Under this provision, the QSA currently provides a range of full day and half day syllabus implementation workshops on a fee for service basis. A similar provision is included in the Bill. As outlined in the Minister's introductory speech, it is generally expected that professional development to support the initial implementation of new syllabuses and Australian Curriculum subjects would be funded by the QCAA, while ongoing support would be provided on a user pays basis.

The QCAA's commercialisation function will be subject to Ministerial oversight, for example:

- clause 73 - Minister may give direction about intellectual property - this specifically includes a power to issue directions in relation to the commercial exploitation of QCAA products or services; and
- clause 74 - Ministerial statement of expectations.

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?

Government response

How might the QCAA ensure that support is provided to all schools in an accessible manner?

It is expected that QCAA will continue to work closely with schooling authorities, school leaders and practitioners to ensure a clear understanding of the type of support that is required and the most appropriate means by which support can be provided. The QCAA will employ a range of consultation mechanisms to ensure that stakeholder feedback informs the development, delivery and evaluation of its products and services.

The QCAA is also expected to build on the existing range of on-line resources that have been developed by the QSA to support curriculum development and assessment in schools across the three school sectors and all phases of schooling. This includes online hubs of curriculum and assessment materials for particular phases of schooling, video and webinar resources, and face-to-face training and professional development activities. This approach recognises that a mix of communication and delivery modes is most likely to result in successful implementation of products and services in schools.

As is currently the case with the QSA, schools will be able to contact QCAA officers directly if they require advice and support. This includes the existing network of district offices which support the implementation of Queensland's moderation system and other QCAA initiatives. Non-metropolitan offices are located in Ipswich, Cairns, Townsville, Mackay, Rockhampton, Wide Bay, Toowoomba, the Sunshine Coast and the Gold Coast.

How will the government know that the QCAA is providing quality support materials and services to all schools?

The QCAA's consultative approach will ensure that client feedback contributes to the development of quality products and services. A wide range of educational stakeholders, including classroom teachers, will continue to be involved in the development of core products and services. These will be routinely evaluated to ensure they meet the needs of educational communities across the state. The results of evaluation activities will continue to be made publicly available and considered by stakeholder committees as part of the QCAA's continuous quality improvement agenda.

A range of DETE officers will be represented on QCAA's committees, and ultimately, the chief executive of DETE, or their nominee, will have direct involvement in the approval of curriculum resources and professional development services as a member of the QCAA governing body. Representatives of the two non-state schooling sectors will also sit on the governing body, so the influence of the QCAA's clients in its governance will be very strong.

In addition, the Queensland Government Performance Management Framework requires all departments and statutory bodies to maintain relevant and appropriate performance indicators that measure whether agency objectives are being delivered effectively, efficiently and economically. For the QCAA, this will include measures relating to the provision of quality curriculum resources and services to schools.

In a similar manner, the QSA currently publishes achievement against relevant performance indicators in its Annual Report and Service Delivery Statement. This includes:

- the percentage of stakeholders surveyed who consider the syllabuses and support materials developed by the QSA to be satisfactory; and
- satisfaction with QSA professional development activities.

Whose responsibility is it to ensure that schools are able – and resourced – to access support materials and services?

Queensland teachers have an individual responsibility to complete compulsory professional development as part of their teacher registration requirements. Beyond this, school authorities – school systems or school boards – are primarily responsible for ensuring their schools and teachers are provided with appropriate levels of support and professional development. The chief executive of DETE is the school authority for state schools, while the school authority of a non-state school is the school's governing body.

This approach is reflected in the curriculum implementation functions in clause 12 of the Bill. Clause 12(1) provides the QCAA with a general function of supporting schools and approved providers of education and care services in implementing QCAA syllabuses, the Australian Curriculum and kindergarten guidelines. Clause 12(2) further provides that this function will primarily involve the QCAA providing school authorities and approved providers with information about the content and purpose of these documents. This reflects the principle that school authorities are best placed to decide the curriculum support and professional development requirements of their workforce.

The QCAA will work in partnership with school authorities to enable them to meet these responsibilities. Under clause 12(2)(b), this will include the provision of resources and professional development to support the implementation of QCAA syllabuses, Australian Curriculum subjects and kindergarten guidelines.

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Point for clarification 3

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

Government response

The QCAA will exercise some specific investigative powers in relation to its delegated responsibility for the registration and auditing of schools as Registered Training Organisations (RTOs). The Australian Skills Quality Authority (ASQA) is responsible for the registration of RTOs. However, since 2012, ASQA has delegated responsibility for registering and auditing school-based training providers to the QSA.

The new QCAA will assume a similar function to exercise delegated responsibility for school based training providers in Queensland (see clause 19(d) of the Bill). This is expected to include a continuation of existing practice whereby officers of the QSA conduct school audits to assess whether school RTOs are complying with the Vocation Education and Training Quality Framework, which includes the *Standards for NVR Registered Training Organisations*.

The remainder of QCAA's functions will not require the exercise of specific investigative powers. The Committee, at page 14 of its Report, noted that the *Child Care Act 2002* provides specific powers to the department to investigate the potential breaches of that Act. The Committee commented that no similar powers are provided to the QCAA, and the committee would like to ensure it understands the differences in responsibilities.

The objects of the *Child Care Act 2002* are to establish a licensing system for child care services; regulate the way child care services are conducted; and to set standards for persons who provide child care. DETE is responsible for licensing and monitoring early childhood education and care services in Queensland. DETE may take action to ensure the health, safety and wellbeing of children attending an early childhood education and care services where services are not compliant with the Act, including prosecuting service providers for breaches of the Act. Given DETE's role in licensing, monitoring and compliance, the Act contains powers to appoint authorised officers to undertake investigations.

The QCAA will not license, monitor or regulate schools. The objects of the QCAA Bill are to help schools and providers of education and care services to achieve quality learning outcomes; and to provide accurate and informative records of student achievement; and to maintain public confidence in certificates of achievement and statements of results developed and administered by the QCAA.

The QCAA will work in collaboration and partnership with schools and school authorities through the provision of high quality curriculum resources and senior assessment processes. This does not involve a broader regulatory focus with a need for specific compliance and investigative powers.

As acknowledged in the Government response to submissions on the Bill, there are some instances in which the QSA may currently refer potential issues with the administration of testing or assessment process to school authorities for further investigation. An example is the investigation of anomalies that are revealed as part of sample-based statistical verification processes associated with senior assessment results. The QSA itself does not investigate these anomalies; the school does. It is expected that a similar approach will be adopted by the QCAA.