



Queensland University of Technology Amendment Bill 2021

Report No. 11, 57th Parliament
Education, Employment and Training Committee
October 2021

Education, Employment and Training Committee

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***Note:** The Member for Stretton, Mr James Martin MP, attended the committee's meetings on 30 September 2021 for its inquiry into the Bill as a substitute for the Member for Rockhampton.

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All web address references are current at the time of publishing.

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Abbreviations

Bill	Queensland University of Technology Amendment Bill 2021
committee	Education, Employment and Training Committee
department	Department of Education
HRA	<i>Human Rights Act 2019</i>
LSA	<i>Legislative Standards Act 1992</i>
NTEU Queensland	National Tertiary Education Union (Queensland Division)
QUT	Queensland University of Technology
QUT Act	<i>Queensland University of Technology Act 1998</i>
QUT Chancellery Division	Queensland University of Technology, Chancellery Division
UN	United Nations

Chair's foreword

This report presents a summary of the Education, Employment and Training Committee's examination of the Queensland University of Technology Amendment Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank the organisations who made written submissions to the inquiry into the Bill. I also thank our Parliamentary Service staff and the Department of Education.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Kim Richards', with a long, sweeping underline that extends to the right.

Kim Richards MP
Chair

Recommendations

Recommendation 1

2

The committee recommends the Queensland University of Technology Amendment Bill 2021 be passed with amendment.

Recommendation 2

10

The committee recommends that the Minister amends the Bill to clarify that an elected academic staff member or an elected professional staff member of the QUT Council who ceases to be a member under new sections 77 and 78 of the Bill continues to be eligible to fill a casual vacancy under section 20A of the *Queensland University of Technology Act 1998*, during the current QUT Council term.

1 Introduction

1.1 Role of the committee

The Education, Employment and Training Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Education, Industrial Relations and Racing
- Employment, Small Business, Training and Skills Development.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.²

The Queensland University of Technology Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly by the Hon Grace Grace MP, Minister for Education, Minister for Industrial Relations, and Minister for Racing (Minister) and referred to the committee on 1 September 2021. The committee was required to report to the Legislative Assembly by 15 October 2021.

1.2 Inquiry process

On 3 September 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill.

The committee received a public briefing about the Bill from the Department of Education (department) on 13 September 2021 (see Appendix B for a list of officials). The committee also received a written briefing on the Bill from the department.

Three submissions to the inquiry into the Bill were received (see Appendix A for a list of submitters). Written advice was provided by the department in response to matters raised in submissions.

The committee held a public hearing and a second public briefing on 30 September 2021 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefings and hearing are published on the committee's webpage.³

1.3 Policy objectives of the Bill

The explanatory notes state that the objectives of the Bill are to:

- implement governance reforms for the Queensland University of Technology (QUT), and
- enable an appropriate balance between the number of members and a mix of necessary skills and expertise required for effective governance on the QUT Council.⁴

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

³ <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=166&id=4109>

⁴ Explanatory notes, p 1.

1.4 Government consultation on the Bill

In introducing the Bill, the Minister informed the Legislative Assembly that the reform of the QUT Council began in 2017 with the passage of the *University Legislation Amendment Act 2017*, which made changes to the Queensland public university Acts and to the governance structure of the James Cook University Council. At that time the Queensland Government invited other public universities to consider their governance arrangements and whether they would like to pursue similar reforms to those implemented at James Cook University.⁵

The explanatory notes state that the department consulted ‘with QUT, and all other Queensland public universities, and the National Tertiary Education Union (Queensland Branch)’⁶ on an exposure draft of the Bill. No changes were made to the Bill as a result of consultation on the exposure draft.⁷

According to the explanatory notes QUT also consulted with the university community, ‘including academic and professional staff, students, Council members, Alumni Board, Student Guild, NTEU and Together Queensland’⁸ on an exposure draft of the Bill. This followed 2 rounds of consultation with the university community conducted by QUT during 2019 and 2020 on proposals to reduce the size of the QUT Council.⁹

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill and its policy objectives and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed with amendment.

Recommendation 1

The committee recommends the Queensland University of Technology Amendment Bill 2021 be passed with amendment.

⁵ Queensland Parliament, Record of Proceedings, 1 September 2021, p 2344.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 4.

⁸ Explanatory notes, p 3.

⁹ Ms Kateena Ryan, Acting Executive Director, Registration Services (International, Non-State and Home Education) and Office of Racing, Department of Education, public briefing transcript, Brisbane, 13 September 2021, p 2; see also explanatory notes, p 3.

2 Examination of the Bill

2.1 Changes to the size and composition of the QUT Council

The QUT Council is established under the *Queensland University of Technology Act 1998* (QUT Act) to function as QUT's governing body. The QUT Council has powers to do anything necessary in connection with its functions as the governing body, including to appoint the university's staff, to manage and control the university's affairs and property, and to manage and control the university's finances.¹⁰

The QUT Act provides for the QUT Council to have 22 members, comprising:

- 3 official members – the chancellor, the vice-chancellor, and the chairperson of the academic committee
- 8 appointed members, appointed by the Governor in Council for a term of not more than 4 years
- 9 elected members, elected at a council election, and consisting of –
 - 3 members of the full-time and part-time academic staff, for a term of 4 years
 - 2 members of the full-time and part-time professional staff, for a term of 4 years
 - 2 students, for a term of 2 years
 - 2 members of QUT Alumni, for a term of 4 years
- 2 additional members, who must not be a student or a member of the university's academic staff or professional staff, appointed by the QUT Council for a term of not more than 4 years.¹¹

The Bill proposes to reduce the size of the QUT Council from 22 to 15 members and to change its composition to:

- 3 official members – the chancellor, the vice-chancellor, and the chairperson of the academic committee¹²
- 3 appointed members, appointed by the Governor in Council
- 5 elected members, consisting of
 - 2 members of the full-time and part-time academic staff
 - 1 member of the full-time and part-time professional staff
 - 1 undergraduate student
 - 1 postgraduate student
- 4 additional members - at least 2 of whom must be alumni of QUT.

The Bill does not change the terms of office of members of any category. While the Bill replaces the category of 'student' elected members with 'undergraduate student' and 'postgraduate student', the term of office for the new student member categories remains the same as previously applied to student members, ie 2 years.¹³ Likewise, the Bill removes from the elected member category the 2 QUT alumni members who, under the QUT Act, are elected for a term of 4 years, and prescribes that 2 of the 4 additional members must be QUT alumni, to be appointed by the QUT Council for a term of not more than 4 years.¹⁴

¹⁰ *Queensland University of Technology Act 1998*, ss 7-10.

¹¹ *Queensland University of Technology Act 1998*, ss 12-16, 18-20.

¹² The Bill would not change the number of official members of the QUT Council.

¹³ See *Queensland University of Technology Act 1998*, s 19; Bill, cls 4, 7.

¹⁴ Bill, cls 4, 6.

According to the explanatory notes, the amendments to the QUT Council's size and composition are drawn from a model requested by QUT.¹⁵ Ms Kateena Ryan, Acting Executive Director, Registration Services (International, Non-State and Home Education) and Office of Racing, Department of Education told the committee:

It is the council's [QUT Council's] view that this change in composition will achieve a well-balanced membership in terms of skills, experience, gender and diversity. It will facilitate efficient and effective governance, it will enable faster decision-making and it will improve the effectiveness of council at meetings and in its operations while maintaining QUT's key public sector responsibilities.¹⁶

The Bill includes consequential amendments which are required as a result of the reduced size of the QUT Council. These amendments reduce the number of members needed for the QUT Council to be properly constituted and for the removal of a member from office.¹⁷ Additional consequential amendments update a reference to 'student'¹⁸ and remove references to alumni as elected members.¹⁹

2.2 Size and composition of university governing bodies

2.2.1 Comparison with other Queensland universities

The governing bodies of the Queensland public universities range in size from 14 to 22 members.²⁰ The composition of each governing body by membership category is shown in Table 1 below.

Table 1 Composition of Queensland public university governing bodies, by membership category

University	Internal			External			TOTAL
	Official	Elected	Total Internal	Appointed	Additional	Total External	
University of Queensland	3	8	11	8	3	11	22
Queensland University of Technology (current)	3	9	12	8	2	10	22
Griffith University	2	5	7	7	4	11	18
University of Sunshine Coast	3	5	8	6	4	10	18
Central Queensland University	3	3	6	5	4	9	15
James Cook University (determined by Council resolution)	3	4	7	3	5	8	15
Queensland University of Technology (proposed model)	3	5	8	3	4	7	15
University of Southern Queensland	3	3	6	5	3	8	14

Source: Based on Department of Education, correspondence dated 7 September 2021.

2.2.2 Voluntary Code of Best Practice for the Governance of Australian Universities

The explanatory notes state that the proposed reduction in the number of QUT Council members 'is in line with Universities Australia's *Voluntary Code of Best Practice for the Governance of Australian*

¹⁵ Explanatory notes, p 2.

¹⁶ Public briefing transcript, Brisbane, 13 September 2021, p 2.

¹⁷ Bill, cls 6, 10, 11

¹⁸ Bill, cl 9.

¹⁹ Bill, cls 7, 8.

²⁰ Department of Education, correspondence dated 7 September 2021, Attachment 2, pp 3-4.

*Universities*²¹ (Voluntary Code). The Voluntary Code recommends, in relation to the composition of university governing bodies, that:

The size of the governing body should not exceed 22, and desirably be no more than 15 members, and include members with strong expertise in and knowledge of higher education and/or other education sectors. There should be at least two members having financial expertise ... and at least one member with commercial expertise ... There should be a majority of external independent members who are neither enrolled as a student nor employed by the university. There should not be current members of any State or Commonwealth parliament or legislative assembly other than where specifically selected by the governing body itself.²²

The data in Table 1 show that unlike other Queensland public universities, the QUT Council currently does not have a majority of external independent members, as is recommended by the Voluntary Code.²³

The analysis of the proposed changes in size and composition of the QUT Council provided to the committee by the department noted that the amendments proposed by the Bill would not result in there being a majority of external members. The department observed however, that the proposed composition of 8 internal members (3 official members and 5 elected members) and 7 external members (3 appointed members and 4 additional members) would result in an increase in the ratio of external members from 45% to 47%.²⁴

In contrast, the QUT Chancellery Division stated in its submission that the proposed composition complies with the recommendation of the Voluntary Code because, 'of the 15 members proposed, eight (Chancellor, three Governor in Council appointed, and four additional members) would be external'.²⁵ Professor Margaret Sheil, Vice Chancellor and President of QUT, explained:

Chancellors are always considered external members in my experience, because typically they are not drawn from the employed staff or students of the university. They are appointed, as the other Governor in Council and additional members are, and considered external.²⁶

²¹ Explanatory notes, p 2; Universities Australia and University Chancellors Council, *Voluntary Code of Best Practice for the Governance of Australian Universities*, 2018, <https://static1.squarespace.com/static/5b984f4e5ffd2046651aea73/t/6115b47df447a47878fb93d2/1628812414348/Voluntary-Code-of-Best-Practice-for-the-Governance-of-Australian-Universities-May-2018.pdf>.

Universities Australia developed the *Voluntary Code of Best Practice for the Governance of Australian Public Universities* in 2010, which was endorsed by the University Chancellors Council in 2010, and by the Ministerial Council for Tertiary Education and Employment in 2011. The Voluntary Code was most recently amended at a Universities Australia and University Chancellors Council joint meeting in May 2018. See also University Chancellors Council, *University Governance in Australia*, <https://ucc.edu.au/university-governance-in-australia>.

²² Universities Australia and University Chancellors Council, *Voluntary Code of Best Practice for the Governance of Australian Universities*, 2018, recommendation 7.

²³ The Voluntary Code recommends that a university should disclose in its Annual Report its compliance with the Voluntary Code and provide reasons for any areas of non-compliance (recommendation 14). In this regard, the QUT Annual Report 2020 does not specifically address the number of external members on its governing body, instead stating that 'in 2020 an annual review by QUT Council of compliance with the voluntary code confirmed that QUT fully complies with almost all aspects of the code'. See Queensland University of Technology, *QUT Annual Report 2020*, https://cms.qut.edu.au/__data/assets/pdf_file/0009/1039347/2020-qut-annual-report.pdf, p 10.

²⁴ Department of Education, correspondence dated 7 September 2021, Attachment 2, p 4.

²⁵ Submission 3, p 1.

²⁶ Public hearing transcript, Brisbane, 30 September 2021, p 3.

The National Tertiary Education Union (Queensland Branch) (NTEU Queensland) rejected reference to the recommendations of the Voluntary Code in relation to the Bill altogether. NTEU Queensland stated that:

... the use of Universities Australia's *Voluntary Code of Best Practice for the Governance of Australian Universities* in the Explanatory Notes, written briefing from the department of Education and the Explanatory Speech as justification for the proposed changes is misguided as the Code was developed by university managements, based on similar flawed reasoning about the appropriateness and benefits of 'corporate governance'.²⁷

NTEU Queensland submitted that it 'does not believe a single model or membership can be applicable to all universities', and that instead, the composition of each university council 'should reflect the size, complexity and uniqueness of that organisation'.²⁸

2.2.3 Representation and capability

The QUT Chancellery Division submitted that the QUT Council should be representative of the diversity of the Queensland community and needs to have enough members to fulfil its responsibilities and serve the interests of the university as a whole. It asserted that a smaller governing body:

- will 'ensure appropriate representation for the entire university community, importantly including students'
- 'will improve the effectiveness, participation, and agility in Council meetings and operations, enabling it to continue to fulfil its public sector responsibilities without major disruption', and
- reflects reforms in corporate governance in other sectors.²⁹

Similarly, Griffith University submitted that the Bill would 'bring QUT more into line with the standard and requirements of modern university' and suggested that reducing the size of the QUT Council 'will enable discussion and debate at the QUT Council to be of higher quality thereby allowing decisions to be reached with greater efficiency'.³⁰

The NTEU Queensland disputed the assertion that reducing the size of the QUT Council would improve governance, stating that there is 'no scholarly evidence' which demonstrates that 'smaller university councils contribute to institutional effectiveness' and yet 'legislative trends across the country in the last decade have focused on increasing external members and reducing council size as 'best practice corporate governance'.³¹

The NTEU Queensland submitted that 'the proposed governance model is fundamentally flawed and inappropriate for public institutions of this size and complexity'.³² Further, NTEU Queensland stated:

The NTEU strongly rejects the ideological "modernised" governance approach and calls for an ethical governance approach, which prioritises ethical conduct, public accountability, and recognition of the specific and distinctive attributes of universities as institutions created for public purposes.

To this end, ethical university governance must be committed to open, transparent and inclusive governance cultures, where representation of the diversity of constituent interests is guaranteed, and in which elected staff and students play a substantial role.³³

²⁷ Submission 2, p 2.

²⁸ Submission 2, p 6.

²⁹ Submission 3, p 2.

³⁰ Submission 1, p 1.

³¹ Submission 2, p 2.

³² Submission 2, p 4.

³³ Submission 2, p 3.

In response to the issues raised by the NTEU Queensland, the department advised that the membership categories of official, appointed, elected and additional members will continue to be represented on the QUT Council and be able to participate in governance and decision making.³⁴ The department also noted that:

... individual members of the QUT Council are required to act in the best interests of the university and do not represent a constituency or the government, irrespective of whether the member is nominated by the Minister and appointed by Governor-in-Council, appointed by the QUT Council, or elected via QUT Council elections.³⁵

In addition, the department advised that as a statutory body, QUT is subject to public reporting, audit and accountability requirements, including:

- under the *Financial Accountability Act 2009*, *Auditor-General Act 2009*, *Right to Information Act 2009*, *Information Privacy Act 2009*, *Public Records Act 2002*, *Public Sector Ethics Act 1994*, *Human Rights Act 2019* and the *Integrity Act 2009*
- to the Queensland Ombudsman under the *Ombudsman Act 2001*, and the Crime and Corruption Commission under the *Crime and Corruption Act 2001*
- regulation by the national independent statutory authority, the Tertiary Education Quality and Standards Agency.³⁶

2.2.3.1 *Skills of QUT Council members*

One of the objectives of the Bill is to enable an appropriate balance between the number of members and the skills mix on the QUT Council.³⁷ As stated in the explanatory notes, ‘the changes to Council membership are aimed at increasing efficiency while still providing for an appropriate mix of skills and experience for effective governance’.³⁸

In regard to how the Bill would assist in providing a better mix of skills and expertise among members of the QUT Council, the department advised that ‘the mix of skills and expertise goes to a better limitation of the breadth of skills and more concentration on those particular skills that are required in the act for members to have in making fast decisions and agile decisions of the council’.³⁹

Similarly, Professor Margaret Sheil, Vice Chancellor and President of QUT told the committee that through the combination of appointed members, additional members and elected members, ‘we have the opportunity to engage our staff and our students and, with the additional flexibility around the additional members, have the opportunity to bring in the kind of expertise that we may not have achieved through the elected representatives’.⁴⁰

The NTEU Queensland disagreed that changes to QUT Council membership are required, contending that the current QUT Council continues to serve the university community well, and suggesting the performance of the QUT Council during the COVID-19 pandemic illustrated its capacity to fulfil its role.⁴¹ The NTEU Queensland stated that ‘there is no compelling evidence to justify the proposed

³⁴ Department of Education, correspondence dated 29 September 2021, p 4.

³⁵ Department of Education, correspondence dated 29 September 2021, p 4.

³⁶ Department of Education, correspondence dated 29 September 2021, pp 4–5.

³⁷ Explanatory notes, p 1.

³⁸ Explanatory notes, p 2.

³⁹ Ms Kateena Ryan, Acting Executive Director, Registration Services (international, Non-State and Home Education) and Office of Racing, Department of Education, public briefing transcript, Brisbane, 13 September 2021, p 3.

⁴⁰ Public hearing transcript, Brisbane, 30 September 2021, p 3.

⁴¹ Submission 2, p 4.

changes, there is no shortage of skills within the current Council and it is not cumbersome' and that the NTEU Queensland believes the current composition of the QUT Council 'allows a plurality of views to be expressed and heard and is collegial, while a smaller Council would be limited and singular in its perspective'.⁴²

2.3 Consultation

The NTEU Queensland raised concerns about the nature and extent of the consultation about the proposed changes to the QUT Council.

The NTEU Queensland informed the committee that although a small number of meetings were advertised to staff during the first two rounds of consultation, the university's efforts did not involve 'meetings in organisational units, encouraging staff to come and undertaking consultation in that sort of meaningful and direct way'.⁴³ The NTEU Queensland acknowledged, however, that the university had responded to feedback on the initial proposal for a 13 member council, which included a petition of 400 signatories opposing the proposal, by amending the proposal to a 15 member council.⁴⁴

In regard to the consultation on the draft Bill, Mr Michael McNally, Secretary of the NTEU Queensland stated:

...sending an email to 65,000 people—and the staff of universities are incredibly busy and get hundreds of emails from their employer over the course of a year—is not genuine consultation. My view is that if they wanted to have genuine consultation they needed to do it organisational unit by organisational unit, which is how they would consult on other matters. I would say that the vast majority of staff probably still do not know that this bill is proceeding.⁴⁵

The NTEU Queensland also noted that the statement in the explanatory notes, that no changes had been made to the Bill as a result of the consultation on the exposure draft of the Bill, 'means that the Bill as proposed essentially represents the views and preferences of QUT management and does not represent broad community support for the proposal'.⁴⁶

In response to these concerns, the department noted that 'the broader QUT community was engaged on three occasions by QUT on the changes to the QUT Council composition over two years',⁴⁷ and that:

- initial consultation (in 2019) with the QUT community invited feedback on a proposal for a 13 member council - 33 staff (academic and professional) and 18 students attended a forum and/or provided feedback on the initial proposal
- a second round (in 2020) consulted with the QUT community on a proposal for a 15 member council
- a third consultation with stakeholders on the exposure draft of Bill occurred in 2021 - 11 responses in total were received⁴⁸ which included 2 from staff and 4 from students.⁴⁹

⁴² Submission 2, p 5.

⁴³ Public hearing transcript, Brisbane, 30 September 2021, p 7.

⁴⁴ Public hearing transcript, Brisbane, 30 September 2021, pp 4, 7.

⁴⁵ Public hearing transcript, Brisbane, 30 September 2021, p 5.

⁴⁶ Submission 2, p 1.

⁴⁷ Department of Education, correspondence dated 29 September 2021, p 1.

⁴⁸ The explanatory notes (p 3) state that QUT received 10 responses to its consultation on the exposure draft of the Bill. In its submission (submission 3, p 2) the QUT Chancellery Division stated that it received 11 responses.

⁴⁹ Department of Education, correspondence dated 29 September 2021, pp 1–2.

In regard to consultation, Professor Margaret Sheil, Vice Chancellor and President of QUT, stated:

I have had extensive staff forums. There are plenty of opportunities for students, staff or other members of the community. If there were a groundswell of opposition, we would know about it.⁵⁰

2.4 Transitional arrangements

The Bill includes provisions to provide for the transition from the current composition to the new QUT Council membership.⁵¹ These provisions provide mechanisms to:

- reduce the number of appointed members to 3, by notice given by the Minister to each existing appointed member being removed⁵²

The Bill provides that in deciding to remove an existing appointed member from office, the Minister may have regard to the desirability of appointed members having a range of knowledge, experience or skills relevant to the functions of the QUT Council. This provision is discussed further in section 3 of this report.

- reduce the numbers of elected members who are academic staff to 2, and who are professional staff to one⁵³

An aspect of these provisions are discussed further below.

- change the requirement for elected student members to include one undergraduate and one postgraduate student⁵⁴

- end the terms of office of the two elected members who are QUT alumni.⁵⁵

The proposed transitional provisions also provide that no compensation is payable to a person whose term of office ends as a result.⁵⁶

The explanatory notes state that the provisions are intended 'to enable an ordered transition to the new Council membership with as little process and disruption to the Council as possible'.⁵⁷

The department advised that the terms of office of the members who will remain as QUT Council members will continue as per their current term.⁵⁸

2.4.1 Possible unintended outcomes of proposed new sections 77 and 78

NTEU Queensland requested that a matter in the transitional provisions in the Bill be addressed.⁵⁹ The proposed new ss 77 and 78,⁶⁰ which prescribe the transitional arrangements for the end of the terms of office of particular academic and professional staff members of the QUT Council, would result in these members being ineligible to be appointed under s 20A of the QUT Act in the event of a casual vacancy arising in the office of an elected member.

⁵⁰ Public hearing transcript, Brisbane, 30 September 2021, p 2.

⁵¹ Bill, cl 12.

⁵² Bill, cl 12, proposed new s 76.

⁵³ Bill, cl 12, proposed new ss 77, 78.

⁵⁴ Bill, cl 12, proposed new s 79.

⁵⁵ Bill, cl 12, proposed new s 80.

⁵⁶ Bill, cl 12, proposed new s 81.

⁵⁷ Explanatory notes, p 2.

⁵⁸ Department of Education, correspondence dated 7 September 2021, p 3.

⁵⁹ Public hearing transcript, Brisbane, 30 September 2021, p 5.

⁶⁰ Bill, cl 12. Sections 77 and 78 provide that the term of office of the elected academic staff member and the elected professional staff member who received the least number of votes in the most recent election will end.

Sub-section 20A(2) of the QUT Act requires, that the QUT Council must appoint to the vacant office the one person who:

- a) was a candidate for the office in the council election; and
- b) was not elected; and
- c) received the highest number of votes of all the candidates who were not elected; and
- d) is eligible, under the Act, to be a member; and
- e) is willing to be, and available to perform the functions of, a member.

The requirements that the person *was not elected* (s 20A(2)(b)) and have received the highest number of votes of all the candidates who were *not elected* (s 20A(2)(c)) would therefore make elected academic and professional staff members who were removed from office under the transitional provisions ineligible to be appointed.

The department advised:

It is not the intention to preclude persons who cease to be an elected member under the new sections 77 and 78 of the bill from being eligible to be appointed should a subsequent casual vacancy arise. The department would support the committee recommending to the minister that a clarifying amendment be made to address this matter.⁶¹

Committee comment

The committee recommends unanimously that the Bill be amended to clarify the eligibility of elected academic and professional staff members, whose terms end under the transitional provisions, to be appointed in the event of a casual vacancy. The committee notes the advice of the department that it supports a clarifying amendment.

Recommendation 2

The committee recommends that the Minister amends the Bill to clarify that an elected academic staff member or an elected professional staff member of the QUT Council who ceases to be a member under new sections 77 and 78 of the Bill continues to be eligible to fill a casual vacancy under section 20A of the *Queensland University of Technology Act 1998*, during the current QUT Council term.

⁶¹ Public briefing transcript, Brisbane, 30 September 2021, pp 1, 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992 (LSA)* states 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
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 *Administrative power*

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.⁶²

As outlined in section 2.1 of this report, the QUT Act currently provides for 8 appointed members on the QUT Council.⁶³ The Bill proposes that this number be reduced to 3.⁶⁴

To reduce the number of appointed members, the Bill proposes to give the Minister power to remove an existing appointed member from office by notice.⁶⁵ Any existing appointed member who is removed is not entitled to receive any compensation.⁶⁶

In deciding whether to remove an appointed member from office, the Minister *may* have regard to the desirability of appointed members having a range of knowledge, experience or skills relevant to the functions of the QUT Council.⁶⁷ The Bill does not, however, provide criteria to which Minister *must* have regard in making a decision about removing an existing appointed member, nor does it provide a review process for an existing appointed member who is removed from office. It also does not require the Minister to provide reasons for the decision.

3.1.1.2 *Natural justice*

Legislation should be consistent with principles of natural justice, including that it should provide for procedural fairness.⁶⁸ A key element of procedural fairness is transparency.⁶⁹

The power of the Minister to remove an existing appointed member from office without having to provide reasons for selecting that member, or those members, for removal suggests that the process will not be transparent.

⁶² *Legislative Standards Act 1992*, s 4(3)(a).

⁶³ *Queensland University of Technology Act 1998*, s 14(1).

⁶⁴ Bill, cl 3.

⁶⁵ Bill, cl 12, proposed new s 76.

⁶⁶ Bill, cl 12, proposed new s 81.

⁶⁷ Bill, cl 12, proposed new s 76(2).

⁶⁸ *Legislative Standards Act 1992*, s 4(3)(b).

⁶⁹ See Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, p 27.

3.1.1.3 Reasonableness and fairness of treatment of individuals

The reasonableness and fairness of treatment of individuals is relevant to determining whether legislation has sufficient regard to the rights and liberties of individuals.⁷⁰

In instances in which the Minister removes an existing appointed member from office, or a staff member's or an alumna's term of office ends under new ss 77, 78 or 80, that person will potentially lose benefits associated with the office.⁷¹ In addition, the member who is removed is not entitled to receive any compensation.⁷² In addition, as noted above, there are not clear criteria for the Minister to select appointed members to be removed.

The explanatory notes state that QUT consulted with the university community on changes to the QUT Council composition over the past 2 years,⁷³ so it is likely that members would have been aware of possible changes to their appointment. The explanatory notes also advise that, because external members are not remunerated for being a member of the QUT Council, there is no need to pay compensation if they are removed from office because of legislative change.⁷⁴ Nonetheless, this potential loss of benefits and lack of clear criteria mean that the removal process in the Bill could be regarded as not treating individuals reasonably and fairly.

3.1.1.4 Advice from the department

As the explanatory notes do not specifically address the issues described above⁷⁵ the committee sought further information from the department to determine whether the Bill has sufficient regard for the rights and liberties of individuals.

Mr Craig Allen, Acting Director-General, Department of Education, advised that the proposed approach to remove existing appointed members is considered 'the most practical way' of implementing the changes to the QUT Council and that 'it is also considered that there is no fairer or more effective way to achieve the Bill's purpose'.⁷⁶ The Director-General provided the following additional information:

Under the *Queensland University of Technology Act 1998* (Act), there are no criteria for the appointment of any class of members to the QUT Council. The Bill's provision for Criteria to which the Minister may have regard in determining which existing appointed members to retain or remove from office under the Bill will in fact be more prescriptive than current arrangements for appointment of members.

The Minister may inform themselves in any way they consider appropriate in having regard to the criteria in determining which existing appointed members to retain or remove from office. This may include liaising with QUT about the overall mix of skills and experience necessary for the efficient operation of the Council. The Minister may also take into consideration factors including equity, gender representation and representation from diverse groups including Aboriginal and Torres Strait Islander peoples, people from culturally and linguistically diverse backgrounds and people with disability. These factors are typically considered as part of any appointment, but are not prescribed in the university legislation.

⁷⁰ See Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, p 133.

⁷¹ The statement of compatibility advises that external members of the QUT Council 'were not remunerated from 2017, 2018 and 2019. In 2020, with the exception of the Chancellor, external members of the Council were also not remunerated' (p 3). See also explanatory notes, p 3.

⁷² Bill, cl 12, proposed new s 81.

⁷³ Explanatory notes, p 3.

⁷⁴ Explanatory notes, p 3.

⁷⁵ The explanatory notes consider a potential inconsistency with fundamental legislative principles, ie compulsory acquisition of property without fair compensation (see *Legislative Standards Act 1992*, s 4(3)(i)), but conclude that there is no breach of fundamental legislative principles; explanatory notes, p 3.

⁷⁶ Department of Education, correspondence dated 29 September 2021, p 2.

It is not usual to provide a review process for appointment or removal of appointed members. Like all university establishing legislation, the Act does not provide for a review process for appointments to the Council. A number of provisions of the Act allow for removal of members, but none have a prescribed review process. It would be neither appropriate nor feasible to create a specific avenue of review in the transitional provisions for a one-off event, particularly as there is no clear review entity, and this may involve amendments to other legislation. To do so would be inconsistent with current appointment and removal processes under the Act, and disproportionate to any perception of detriment to a member.

The appointment of appointed members is a confidential government process. The proposed process to remove appointed members from office is no less transparent than the way in which the appointed members were appointed.

The terms of appointment of the current appointed members are due to expire on 30 September 2021. As the outcome of Parliament's consideration of the Bill must not be preempted, a reconstitution process is currently underway. Because the Bill provides for some members to cease as a result of the implementation of a reduced Council composition, QUT has advised that it is in discussions with all current and prospective members about the term of their appointment in the event Parliament passes the reforms.

It is unlikely that persons appointed to statutory bodies have a right to expect to remain in office or be entitled to compensation for early termination, should their term cease due to legislative changes. To remove doubt, the Bill provides that no compensation is payable to a member whose appointment will cease upon commencement of the amendments.

Appointed members to the Council are appointed on a part-time basis and usually attend six meetings per year. This is unlikely to preclude them from undertaking other roles. As far as DoE is aware, Council members external to QUT are not remunerated, so loss of benefits associated with the role, if any, would be minimal. ...⁷⁷

Committee comment

The committee notes the additional information provided by the department in regard to the transitional provisions in the Bill to remove an existing appointed member from office. The committee is satisfied that the provisions are appropriate in the circumstances.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's objectives.

⁷⁷ Department of Education, correspondence dated 29 September 2021, pp 1-2.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.⁷⁸

A Bill is compatible with human rights if the Bill:

- (a) does not limit a human right, or
- (b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA.⁷⁹

The HRA protects fundamental human rights drawn from international human rights law.⁸⁰ Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility.

The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Right to participate in the conduct of public affairs⁸¹

Section 23 of the Human Rights Act 2019 provides that:

- (1) Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.
- (2) Every eligible person has the right, and is to have the opportunity, without discrimination –
 - (a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
 - (b) to have access, on general terms of equality, to the public service and public office.

The UN Human Rights Committee has given the concept of participation in public affairs a broad meaning, stating that:

The conduct of public affairs...covers all aspects of public administration, and the formulation and implication of policy at international, national, regional and local levels.⁸²

⁷⁸ HRA, s 39.

⁷⁹ HRA, s 8.

⁸⁰ The human rights protected by the HRA are set out in ss 15 to 37 of the Act. A right or freedom not included in the HRA that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in the HRA or is only partly included; HRA, s 12.

⁸¹ In addition to the right to participate in public affairs, the committee also considered whether the right to property would be impacted by the changes proposed in the Bill. However, the explanatory notes (p 3) state that external members are not remunerated for being a member of the QUT Council, therefore there does not appear to be any property interests impacted by the Bill.

⁸² UN Human Rights Committee, General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh session, 1996), UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para 5.

In terms of the nature of this right, it is not absolute and can be limited in certain circumstances. The UN Human Rights Committee has commented that any limitations placed on the right to take part in public life must be based on 'objective and reasonable criteria'.⁸³

Participation of persons in decisions of a university council would come within the ambit of this right. The changes to the number of QUT Council members and the cessation of the terms of office of certain members of the QUT Council have the effect of limiting the right to participate in public affairs.

4.1.1.1 Purpose of the limitation

The stated purpose of the limitation is to increase efficiency while providing for effective governance. Such a purpose is consistent with a free and democratic society. Efficiency and good governance are well-recognised principles of public law in Australia.⁸⁴

4.1.1.2 Relationship between the limitation and its purpose

The amendments differentiate between different types of members, which is not necessarily an efficiency matter as the amendments would change the composition of the QUT Council rather than simply overall numbers.

The committee considered whether there is any discrimination element in the way in which the composition of the QUT Council will be changed, including whether there will be any indirect discrimination on the basis of gender, age, or other arbitrary elements arising from the changes (including due process protections). The committee does not believe there are any human rights concerns of this nature arising from the Bill.

For instance, there are no changes to the number of elected student members (2 members in total). Rather, of the 2 elected student members, one is to be an undergraduate student and one a postgraduate student. There may be an age element to this change (in that a postgraduate will tend to be older) but this is a justifiable and proportionate amendment given that it is designed to ensure representation of different student cohorts.

Furthermore, there is a reduction in elected members and an increase in 'additional' members (the latter are appointed rather than elected). However this has been justified on the basis that the Bill will enable a mix of necessary skills and expertise required for effective governance.

4.1.1.3 Are there less restrictive and reasonably available ways to achieve the purpose

It is possible that some efficiency objectives could be achieved by streamlining aspects of meeting procedures and taking other similar measures. However, as the size of the QUT Council has been identified as an efficiency issue, there does not appear to be a less restrictive way to achieve the efficiency purposes of the proposed amendments.

4.1.1.1 The importance of the purpose of the limitation

The purpose of the limitation – to achieve efficiency and effective governance by a university council – relates to a central public interest matter in ensuring that public decision-making is not only fair and transparent, but also carried out in a timely and efficient manner. Such a limitation is consistent with a free and democratic society based on human dignity, equality and freedom as provided for in the HRA.

⁸³ UN Human Rights Committee, General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), (Fifty-seventh session, 1996), UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para 4.

⁸⁴ For instance, one of the most important governmental reports on public law in Australia - The Kerr Committee Report (1971) - identified the central elements of administrative justice in Australia to be efficiency and justice to the individual.

4.1.1.2 Balance between the importance of the purpose of the limitation and the importance of preserving the human right

As noted above, the human right to participate in public affairs is an important right, but it is not absolute. The Bill is seeking to amend the size and composition of the QUT Council and whilst this is very important, it is somewhat different to other cases which have arisen under the right to participate in public affairs, which involve democratic rights such as the right to stand for political office and the right to vote

In terms of balance between the right and the purpose of the limitation, the Bill has set out transitional arrangements and notice provisions relating to the changes in membership.

Committee comment

The committee considers that the limitation on the right to participate in the conduct of public affairs arising from the Bill is reasonable and demonstrably justified, and that the Bill is compatible with the HRA.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
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001	Griffith University
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002	National Tertiary Education Union, Queensland Division
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003	Queensland University of Technology, Chancellery Division
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Appendix B – Officials at public briefing

13 September 2021 – Public briefing

Department of Education

- Ms Kateena Ryan, A/Executive Director, Registration Services (International, Non-State and Home Education) and Office of Racing
- Mr Charlie Palupe, Principal Advisor, Legislative Services

Appendix C – Witnesses at public hearing and public briefing

30 September 2021 – Public hearing

Queensland University of Technology, Chancellery Division

- Professor Margaret Sheil AO, Vice-Chancellor and President
- Leanne Harvey, Vice-President (Administration) and University Registrar

National Tertiary Education Union, Queensland Division

- Michael McNally, Secretary
- David Nielsen, QUT Branch President and QUT Councillor
- Graham Dawson, QUT Branch Committee Member and QUT Councillor-elect

30 September 2021 – Public briefing

Department of Education

- Kateena Ryan, Director, External Relations and Services
- Mr Charlie Palupe, Principal Advisor, Legislative Services