

Vocational Education, Training and Employment and Other Legislation Amendment Bill 2007

Explanatory Notes

General Outline

Short Title

The short title of the Bill is the Vocational Education, Training and Employment and Other Legislation Amendment Bill 2007.

Policy Objectives of the Legislation

The primary objective of the Vocational Education, Training and Employment and Other Legislation Amendment Bill 2007 (the Bill) is to amend the *Vocational Education, Training and Employment Act 2000* (the VETE Act) to create a legislative framework for the establishment and operation of TAFE institutes as statutory authorities.

A further objective of the Bill is to amend the *Libraries Act 1988*, the *Queensland Art Gallery Act 1987*, the *Queensland Museum Act 1970*, the *Queensland Performing Arts Trust Act 1977* and the *Queensland Theatre Company Act 1970* (the Arts Acts) to provide that the terms and conditions of appointment of the chief executive officers of the relevant statutory authorities are to be decided by the Governor in Council.

Reasons for the Bill

Amendments to the *Vocational Education, Training and Employment Act 2000*

The *Queensland Skills Plan* outlined major reforms to Queensland's vocational education and training system, including the need to revitalise the TAFE system to enable more flexibility and greater responsiveness to industry and business needs.

Overview of the current operating model for TAFE institutes

Under Chapter 6 of the VETE Act, the chief executive of the Department of Education, Training and the Arts (DETA) is responsible for ensuring the provision of vocational education and training services in Queensland and administers TAFE institutes, which are known collectively as TAFE Queensland. TAFE Queensland forms part of DETA and comprises 13 TAFE institutes in metropolitan and regional centres. Consequently, TAFE institutes currently have no legal capacity independent of the State. Each TAFE institute has an advisory council whose membership is representative in nature.

TAFE Queensland is the largest provider of vocational education and training services in the State, delivering approximately 860 programs and courses to around 244,000 students each year.

TAFE institutes deliver government funded training priorities through a purchasing arrangement with DETA. Additionally, institutes actively pursue commercial revenue to support their operations. In the 2006-2007 financial year, 22% of the \$639M TAFE Queensland revenue was derived from user charges which include the domestic fee-for-service market, the international market, commonwealth contracts and other commercial ventures. TAFE institutes compete with each other and private providers in these markets.

Why change the current operating model?

The *Queensland Skills Plan* acknowledged that the rapidly changing training market posed real challenges for the responsiveness of the current TAFE operating model. It noted that under the current operating model, TAFE institutes compete against private training providers using vastly different governance structures. Consequently, under action 2 of the *Queensland Skills Plan*, the Government committed to developing a commercial governance model for TAFE institutes. The *Queensland Skills Plan* contemplated that more commercially structured TAFE institutes would better handle business contracts with employers and improve the management of funding from multiple sources. Specifically, the Government committed that under this model:

- TAFE institutes would remain public service entities under an Act administered by the Minister responsible for the training portfolio. TAFE institutes would not become Government Owned Corporations;
- institute boards would be appointed and have a more commercial focus;

- each institute would ultimately be accountable to the Minister through the Department and stringent performance targets and performance monitoring arrangements would be established; and
- the governance change would occur through a phased transition.

The Bill amends the VETE Act to provide a general framework for TAFE institutes to be established as statutory authorities, with the objective of establishing more flexible, cost effective and autonomous governance arrangements to enhance TAFE institutes' capacity to grow the commercial component of their business in a competitive vocational education and training market.

A secondary objective of the proposed statutory authority model is to position TAFE institutes to enable eligible students to access Commonwealth FEE-HELP assistance by obtaining provider approval under the *Higher Education Support Act 2003* (Cth) (HESA). FEE-HELP is a loan scheme administered under HESA to assist full fee paying students at public universities, private universities and other eligible higher education providers. FEE-HELP is paid by the Commonwealth directly to the provider on the student's behalf. Students repay their loan through the taxation system once their income is above the minimum threshold for compulsory repayment. The Federal Parliament recently passed amendments to HESA to extend FEE-HELP to full fee paying vocational education and training (VET) students undertaking certain vocational courses with articulation to a higher education award. These amendments are expected to take effect from 1 January 2008. The higher level VET fee-for-service market is expected to grow substantially as a direct result of the expansion of FEE-HELP to the VET sector. The statutory authority model implemented by this Bill will establish TAFE institutes as bodies corporate, which is a fundamental eligibility criterion for provider approval under the FEE-HELP scheme.

These objectives are consistent with the overarching goal of the *Queensland Skills Plan* to enhance the VET system's training capacity while better meeting industry demands for more flexibility and timeliness. The Government is committed to building both the public and private training sectors to ensure Queensland is positioned with the skills it needs for continued economic growth. One key objective is to increase the level of qualifications within the Queensland workforce, particularly at the paraprofessional end of the qualifications scale. Currently, full qualifications are predominately offered through publicly funded arrangements. The statutory authority model positions TAFE institutes to

deliver more training places, particularly at the higher qualifications level. Additionally they will be positioned to improve their flexibility and responsiveness to increase commercial revenue to support the *Queensland Skills Plan* objectives. The statutory authority model is intended to enable TAFE institutes to develop more collaborative partnerships with the private training sector, as well as position them to compete with private training providers in the fee-for-service market to drive better outcomes for students, employers and industry. The *Queensland Skills Plan* outcomes are dependent on growth by both public and private training sectors to ensure capacity in the training system for future skills development.

Amendments to the Arts Acts

Collectively, the Arts Acts establish five statutory authorities – the Library Board of Queensland; the Queensland Art Gallery Board of Trustees; the Board of the Queensland Museum; the Queensland Performing Arts Trust and the Queensland Theatre Company.

The legislative provisions governing the appointment of each of the chief executive officers (CEOs) of these statutory authorities require that they be appointed by the Governor in Council. However, the terms and conditions of their appointments are decided by the relevant statutory authority. This process is not consistent with more recent legislation for the appointment of CEOs of statutory authorities, which generally requires that the terms and conditions of appointment (including remuneration) are decided by the Governor in Council.

Achieving the Objectives

Amendments to the Vocational Education, Training and Employment Act 2000

The Bill achieves the *Queensland Skills Plan* commitment to move TAFE Queensland to a more commercial governance model by providing a general legislative framework for the establishment and operation of TAFE institutes as statutory authorities (to be known as ‘statutory TAFE institutes’). In summary, the framework:

- (a) provides a mechanism for one or more TAFE institutes to be established, by regulation, as a body corporate that represents the State. This mechanism enables the governance changes to occur through a phased transition, as outlined in the *Queensland Skills Plan*;
- (b) requires each statutory TAFE institute to have a governing board, comprising up to 12 members, nominated by the Minister and

appointed by the Governor in Council on the basis of their corporate governance expertise, commercial experience, knowledge of local business or industry, understanding of public accountability or other expertise relevant to the institute's functions and the role of the board as the institute's governing body. The board will be accountable to the Minister and the DETA chief executive for the institute's performance. The governance arrangements under the statutory authority model represent the key change from the current operating model and will deliver a significant degree of autonomy and flexibility for decision-making by institutes at the local level. This is consistent with the *Queensland Skills Plan* objective to give institute boards a commercial focus;

- (c) requires each statutory TAFE institute to employ an executive officer who will be responsible for the day to day management of the institute. The executive officer will be employed by the institute, with the prior approval of the Minister;
- (d) ensures that TAFE institute employees remain DETA employees, under a work performance arrangement between the DETA chief executive and the institute. A statutory TAFE institute will have capacity using its general powers to employ staff directly. Although the Bill does not limit the number of staff who may be employed directly, the policy intention is that statutory TAFE institutes will only employ a very small number of senior management and commercial personnel in this way;
- (e) requires each statutory TAFE institute's operational plan under the *Financial Administration and Audit Act 1977* to address specific matters (including the institute's staffing arrangements) and be agreed to by the Minister, who may direct the institute in relation to its operational plan. The Minister's agreement may be subject to conditions;
- (f) requires each statutory TAFE institute to enter into an agreement with the DETA chief executive that deals with matters including arrangements for monitoring the institute's performance, the institute's obligations to deliver government funded training priorities and the institute's continued participation in core departmental operating, information and data management systems. Negotiation of this agreement will be subject to Ministerial direction if not progressed in a timely manner. While DETA already has purchasing agreements with TAFE institutes for government funded training

- priorities, the arrangements with statutory TAFE institutes will move to contractual agreements for the delivery of training. Incentives to drive performance and efficiencies under these agreements will include a new pricing model costed on qualification bands and the withdrawal of funds for under delivery;
- (g) subject statutory TAFE institutes to a degree of Ministerial oversight, for example, by requiring them to notify the Minister of activities that could adversely affect the institute's performance or transactions that exceed a prescribed threshold value. The elements summarised in paragraphs (e)-(g) give effect to the commitment articulated in the *Queensland Skills Plan* that each institute will ultimately be accountable to the Minister through the Department and stringent performance targets and performance monitoring arrangements will be established;
 - (h) establish triggers for the removal of a non-performing or non-compliant board;
 - (i) require the Minister to review the operation of a statutory TAFE institute after the third anniversary of its establishment; and
 - (j) provide a mechanism for amalgamating or dissolving statutory TAFE institutes.

Amendments to the Arts Acts

The Bill achieves the objective of ensuring consistency with the contemporary approach to appointment processes for CEOs of statutory authorities by amending the Arts Acts to provide that the CEOs' terms and conditions of appointment are to be decided by the Governor in Council. The Bill will also insert transitional provisions in these Acts to ensure that the current CEOs can complete their terms of office under the conditions of their current appointment.

Estimated Cost for Government Implementation

The establishment of a number of statutory TAFE institutes is expected to result in new costs for establishing and maintaining governing boards and increased monitoring and reporting activities in relation to these new entities. DETA will meet the costs associated with implementation of the statutory authority model at individual institutes within existing resources. Given the transition of TAFE institutes over a period of time, there will be a dual operating system which may mean some duplication of effort during

this transition period. However, in the longer term, it is considered there will be more efficient use of resources within DETA and institutes.

Implementation of the Arts Acts amendments is not expected to result in any additional administrative costs to Government.

Fundamental Legislative Principles

The following provisions of the Bill raise fundamental legislative principle issues:

Amendments to the Vocational Education, Training and Employment Act 2000

Prescribed thresholds for certain 'proposed significant actions'

New section 218U requires statutory TAFE institutes to notify the Minister prior to entering into a transaction to sell or purchase property, to supply vocational education and training or to generate revenue or commit expenditure with a value exceeding a prescribed threshold amount. The proposal to prescribe the threshold amount for each of these activities, rather than specify it in the Act, may be considered to have insufficient regard to the institution of Parliament by enabling the threshold to be adjusted by regulation. The potential breach of fundamental legislative principles is justifiable on the basis that flexibility is required to enable adjustments of the threshold as institutes settle into the new operating model. For example, it may be necessary to adjust the general threshold amount (i.e. applicable to all statutory TAFE institutes) to accommodate general business growth achieved under the new operating model over time or alternatively to allocate specific thresholds to individual institutes that reflect their performance under the new operating model.

Criminal history screening of statutory TAFE institute board members and nominees

New section 219L enables the Minister to obtain a criminal history report about a member or a nominee for membership of a statutory TAFE institute board.

New section 219K will operate to disqualify a person from membership of the board if they have a conviction for an indictable offence. For this reason, new section 219L enables the Minister to obtain a criminal history report in order to assess a person's suitability for appointment.

It is arguable that this proposal could adversely affect the rights and liberties of a person who is, or may become, a member of the board. This

potential breach of fundamental legislative principles is justified on the grounds that board members will be accountable for an entity that is not only publicly-funded but will also undertake significant commercial activities. In this context, the criminal history screening will facilitate a necessary ‘integrity check’.

There will be a number of protections in place, namely:

- the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* will not be overridden. Only convictions for indictable offences that are not spent will be able to be requested or disclosed. Charges and investigative information will not be able to be requested or disclosed – refer to new section 219K(1)(a) and the definition of ‘spent conviction’;
- the Minister will have discretion to allow the person to be or continue as a member, despite the conviction for an indictable offence – refer to new section 219K(3)&(4); and
- a request by the Minister for a criminal history of a nominee for membership requires the consent of the person. Therefore, a person who does not wish to be checked can opt out of the process – refer to new section 219L(4).

Immunity from civil liability

New section 220S provides protection from civil liability for the Minister, the chief executive, a member of a statutory TAFE institute’s board and a member of a statutory committee or other committee of the board, for an act or omission made honestly and without negligence under the VETE Act. It is not considered appropriate for an individual to be made personally liable in these circumstances, as a consequence of carrying out his or her responsibilities under the VETE Act. This could be considered to have insufficient regard to individual rights and liberties by restricting an individual’s ability seek legal redress. The potential breach of fundamental legislative principles is justifiable on the basis that the provision operates to attach the civil liability to the State instead.

Termination of existing TAFE council appointments

New section 220ZB operates to dissolve an existing TAFE institute council once the institute is established as a statutory TAFE institute, in order for a governing board to be appointed for the institute. No compensation will be payable to council members for this termination of appointment. It is arguable that this proposal could adversely affect the rights and liberties of a council member whose term of appointment is brought to an end

prematurely. This potential breach of fundamental legislative principles is justified on the basis that TAFE council members are not currently remunerated and have been consulted about the transition to the new statutory authority model.

Amendments to the Arts Acts

No compensation payable for current arts chief executive officers

The transitional provisions inserted in each of the Arts Acts will state that no compensation is payable to a chief executive officer because of the operation of the transitional arrangements. It may be argued that this is a breach of the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals, because the option of being re-appointed by the relevant statutory authority without reference back to the Governor in Council (including any re-negotiation of terms and conditions) will be removed and replaced by a process in which the terms and conditions of appointment (including re-appointment) must be decided by the Governor in Council, rather than by the relevant statutory authority.

However, it is not considered that any of the current chief executive officers will be disadvantaged by this proposed procedural change to the process of re-appointment. The effect of this procedural change will not prevent the chief executive officers from being re-appointed, and they will continue to be eligible for re-appointment as they are currently. The change is merely a procedural change to the appointment process and it will not affect any of the chief executive officers' expectations for re-appointment.

In addition, the employment contract will continue to be between the chief executive officer and the relevant statutory authority. Consequently, the terms and conditions will continue to be negotiated between these two parties. When recommending an appointment to the Governor in Council, the Minister will be required to ensure that the recommendation has been approved by the statutory authority, and this will include the recommendation about the terms and conditions of the appointment. For these reasons, the potential breach of the fundamental legislative principle is considered to be justified.

Consultation

Amendments to the Vocational Education, Training and Employment Act 2000

The following stakeholders were consulted on an exposure draft of proposed amendments:

- relevant Government Departments – Department of the Premier & Cabinet, Queensland Treasury, Department of Employment and Industrial Relations, Office of the Public Service Commissioner, Department of State Development, Department of Justice and Attorney-General and Queensland Education and Training International
- all TAFE Institute Councils and TAFE Institute Directors
- Australian Council of Private Education and Training Providers
- Queensland Teachers Union, Liquor, Hospitality and Miscellaneous Workers Union, Queensland Public Sector Union and Queensland Council of Unions

Amendments to the Arts Acts

The following stakeholders were consulted on an exposure draft of proposed amendments:

- relevant Government Departments – Department of the Premier & Cabinet, Queensland Treasury, Department of Justice and Attorney-General
- Library Board of Queensland and the State Librarian
- Queensland Art Gallery Board of Trustees and its director
- Board of the Queensland Museum and its director
- Queensland Performing Arts Trust and its director
- Queensland Theatre Company and its director.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states the short title of the Act.

Part 2 Amendment of Vocational Education, Training and Employment Act 2000

Act amended in pt 2

Clause 2 states that Part 2 amends the *Vocational Education, Training and Employment Act 2000* ('the VETE Act').

Insertion of new ch 6A

Clause 3 inserts a new Chapter 6A in the VETE Act. The purpose of this chapter is stated in new section 218 as providing a framework for the establishment and operation of TAFE institutes as statutory authorities. Under Chapter 6 of the VETE Act, the chief executive of the Department of Education, Training and the Arts is responsible for the provision of vocational education and training services and administers TAFE institutes, which are established by the Minister under s.192 of the VETE Act. The VETE Act will refer to a TAFE institute that is established as a statutory authority under new Chapter 6A, as a 'statutory TAFE institute'.

Part 2 of new Chapter 6A provides for the establishment of statutory TAFE institutes. A statutory TAFE institute is established by a regulation made under new section 218A. This section is intended to operate with sufficient flexibility to enable one or more whole existing TAFE institutes, parts of existing TAFE institutes or a combination of whole and part existing TAFE institutes to be established as a single statutory TAFE institute.

It is intended that, prior to transitioning to the statutory authority model, a TAFE institute will undergo an administrative assessment of its compliance with certain operational pre-conditions. These pre-conditions address matters including sound governance practices and competitive business performance attributes expected in the education and VET sectors. The pre-condition validation process will involve a small team of external and internal assessors who will undertake a desk-top and on-site assessment of the institute against the pre-conditions. A key element of the validation process will involve Queensland Treasury Corporation reviewing the institute's financial viability. The validation process will be overseen by a committee chaired by the DETA chief executive, which will make a recommendation to the Minister about the institute's readiness and suitability to transition to the statutory authority model. The Government will consider institutes' transition to the statutory authority model on a case-by-case basis, prior to a regulation being made under new section 218A. The statutory TAFE institute comes into existence once it is prescribed by a regulation made under new section 218A.

It should be noted that Part 8 of new Chapter 6A sets out the legislative mechanism for dealing with the transition of an existing TAFE institute from the current operating model to the statutory authority model. As discussed below, Part 8 enables a regulation to make provision for specific transitional issues on a case-by-case basis.

New section 218B provides that a statutory TAFE institute is established as a body corporate, has a seal and may sue and be sued in its corporate name. A statutory TAFE institute's corporate name will be prescribed in the regulation that establishes it under new section 218A.

New section 218C states that a statutory TAFE institute represents the State and has all of the State's privileges and immunities.

New section 218D makes it clear that, once established as a statutory TAFE institute, the institute is no longer a TAFE institute or part of a TAFE institute to which Chapter 6 of the VETE Act applies. Chapter 6 of the VETE Act has no application to a statutory TAFE institute.

The functions and powers of a statutory TAFE institute are set out in Part 2, division 2 of new Chapter 6A.

New section 218E sets out the functions of a statutory TAFE institute, which are intended to be consistent with those of existing TAFE institutes to ensure the continued provision of vocational education and training services in accordance with Government priorities. This is why

subsections 218E(1) & (2) essentially restate the functions set out in s.217 of the VETE Act.

It should be noted that the equivalent of the DETA chief executive's functions in respect of existing TAFE institutes currently stated under s.217(1)(f)-(h) of the VETE Act are replicated in new s.220V. The statement of these functions under s.217 of the VETE Act were inserted under the *Training Reform Act 2003* as special provisions to complement the implementation of the compulsory participation phase under the *Youth Participation in Education and Training Act 2003* (which has since been repealed and relevant provisions relocated within the *Education (General Provisions) Act 2006*). These functions reflect the DETA chief executive's broader functions in relation to the *Education and Training for the Future* reforms, which have the overarching objective of retaining young people in education, VET or employment. New section 220V makes it clear that the DETA chief executive also has those specific functions in relation to statutory TAFE institutes. In practice, the performance of these functions will occur through the agreement between the chief executive and the statutory TAFE institute under new section 218S, for example, through the purchase of government funded training priorities or other operational requirements.

Subsections 218E(3) & (4) reflect the key difference between TAFE institutes under the current operating model and statutory TAFE institutes, namely that statutory TAFE institutes will be established with greater autonomy and flexibility to drive commercial outcomes at the local level. Consequently, the key objectives of a statutory TAFE institute, in performing its functions under section 218E, are to be commercially successful and to be efficient and effective in the provision of vocational education and training services, including those purchased by the State from the institute under its agreement with the DETA chief executive under new section 218S or those provided as community service obligations. A statutory TAFE institute's success, efficiency and effectiveness in achieving these objectives will be measured against the performance targets outlined in the institute's operational plan under new section 218M.

New section 218F is a standard provision for a statutory authority. It provides that as a body corporate, a statutory TAFE institute has all the powers of an individual, as well as the powers conferred on it by the VETE Act or another Act. A statutory TAFE institute may exercise its powers inside and outside the State and outside Australia. It should be noted that the broad definition of 'property' under the *Acts Interpretation Act 1954* is to be relied on for the purpose of this provision.

It should be noted that under new section 218J, statutory TAFE institutes will be subject to the requirements of the *Statutory Bodies Financial Arrangements Act 1982*, which impose specific controls on the ability of statutory bodies to undertake a range of financial activities. Also, the exercise of a statutory TAFE institute's powers to enter into a property transaction, an arrangement for the supply of vocational education and training or any other arrangement to generate revenue or commit expenditure for a value exceeding a prescribed threshold will be subject to Ministerial oversight under new section 218U.

New section 218G gives effect to the policy intention that existing and new institute staff will remain as (existing) or be (new) employees of the Department of Education Training and the Arts (DETA), when an institute transitions to the statutory authority model. It is intended that this arrangement will be implemented through a work performance arrangement between the statutory TAFE institute and the DETA chief executive under new section 218G.

Subsection 218G(1) enables a statutory TAFE institute to enter into and give effect to a work performance arrangement with either the chief executive of a department or the appropriate authority of another government entity (which is defined in schedule 3 of the *VETE Act*, by reference to s.21 of the *Public Service Act 1996*). Subsection 218G(2) gives very wide scope for the terms of the work performance arrangement, which may include the matters identified under subsection 218G(3) as examples. It is intended that one of the matters the work performance arrangement will address will be the ability of the institute's executive officer to deal with departmental employees on a day-to-day basis. Subsection 218G(4) makes it clear that a person who performs work for the institute under a work performance arrangement is not an employee of the institute and at all times remains an employee of the entity which is the other party to the arrangement. This subsection also operates to make it clear that the institute has no power to employ any person while they are performing work for the institute under a work performance arrangement.

This provision is modeled on a template provision under the *Statutory Bodies Legislation Amendment Act 2007*, which amended a range of Acts with the intention to returning employees of certain statutory bodies affected by the federal Work Choices legislation to the State industrial system.

It should be noted that a statutory TAFE institute will have capacity using its general powers under new section 218F to employ staff directly.

Although the Bill does not limit the number of staff an institute may employ directly, the policy intention is that statutory TAFE institutes will employ only a very small number of staff in this way. It is expected that this may include senior management and some commercial positions such as business development, sales and marketing personnel. It is intended that the Minister will monitor an institute's use of these direct employment arrangements through a requirement under new section 218M (discussed below) for the institute to provide an outline in its operational plan of its overall staffing arrangements. It should also be noted that new sections 220W and 220X make provision for the preservation of rights of any public service officer who is employed by, or seconded to, a statutory TAFE institute (discussed below).

New section 218H enables a statutory TAFE institute to delegate its powers to a member of the institute's governing board, the institute's executive officer, an appropriately qualified employee who is performing work for the institute under a work performance arrangement under new section 218G or an appropriately qualified employee of the institute. It should be noted that the institute's powers are not delegable to a statutory committee or another committee established by the board, as these committees' functions are advisory only.

A statutory TAFE institute's corporate name can be changed by a regulation made under new section 218I. Subsection 218I(2) clarifies that a name change effected by regulation under this provision does not affect the institute's legal personality. Subsection 218I(3) deals with the transitional issue of references to the institute's former corporate name in an Act or document, which unless a contrary intention appears, are taken to be references to the institute by its new corporate name.

Section 218J provides that a statutory TAFE institute is a statutory body under both the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*. As noted under the discussion of new section 218J above, a statutory TAFE institute's ability to undertake a range of financial activities is limited by the *Statutory Bodies Financial Arrangements Act 1982*, Part 2B.

The *Queensland Skills Plan* articulated a commitment that under the new governance arrangements, each institute would ultimately be accountable to the Minister through the Department and stringent performance targets and performance monitoring arrangements would be established. The Bill gives effect to this commitment by requiring each statutory TAFE institute to operate within a prescribed accountability framework, which has five

key elements. The accountability framework is intended to facilitate proactive monitoring of an institute's performance under the statutory authority model.

Firstly, each institute will have a governing board that is accountable to the Minister and the DETA chief executive for the institute's performance. The constitution, function and operation of the governing board are dealt with in Part 4 of new Chapter 6A, which is discussed below.

Secondly, as discussed under new section 218J above, each institute is to be a statutory body for the purpose of the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Part 3 of new Chapter 6A sets out the third, fourth and fifth elements of the accountability framework under which statutory TAFE institutes will operate.

The third element is dealt with under Part 3, division 1. By virtue of the operation of new section 218J above, each statutory TAFE institute will be required to develop an operational plan during each financial year. New section 218K sets out the purpose of Part 3, division 1 in relation to this operational plan and the institute's compliance with it. This section makes it clear that the requirements under Part 3, division 1 are additional to those for the institute's operational plan under the *Financial Administration and Audit Act 1977* and, to the extent of any inconsistency, prevail over those requirements to the extent of the inconsistency.

The operational plan is the means through which a statutory TAFE institute is directly accountable to the Minister. New section 218L requires a statutory TAFE institute to comply with its operational plan. It should be noted that this obligation is supplemented by the functions statement for an institute's governing board under new section 219D below, which requires the board to ensure that the institute operates in accordance with its operational plan and as far as possible achieves its performance targets and objectives stated in the plan.

New section 218M sets out matters that must be addressed in a statutory TAFE institute's operational plan, which include the institute's objectives, its financial and non-financial performance targets, the nature and scope of its proposed activities (including commercial activities and any off-shore activities), its community service obligations, major financial undertakings and an outline of its staffing arrangements. It should be noted that this is not an exhaustive list. Consistent with the objectives of the new governance arrangements, the operational plan is intended to facilitate a

commercial focus on the institute's operations. The operational plan is also intended to enable the Minister to monitor an institute's staffing arrangements i.e. its use of departmental employees under a work performance arrangement under new section 218G and its use of direct employment arrangements exercising its powers under new section 218F.

Clause 5 amends the dictionary in Schedule 3 of the VETE Act to insert a definition of 'community service obligation' for the purpose of Chapter 6A. These are obligations on the institute to perform an activity or provide a service that is not in the institute's commercial interests to perform or provide and is purchased by the State. Examples might include the availability of fee waivers and concessions for students or the maintenance of an institute presence in a regional area where the training market is thin.

A statutory TAFE institute's operational plan must be agreed to by the Minister. New section 218N sets out the process and deadlines by which:

- (a) an institute must prepare and submit a draft operational plan to the Minister, for the Minister's consideration; and
- (b) the institute and the Minister must try to reach agreement on the draft operational plan.

The provision specifies different timeframes for the preparation, submission and agreement of the institute's initial draft operational plan and draft operational plans for subsequent financial years.

A statutory TAFE institute will be subject to Ministerial direction in relation to its draft operational plan, if necessary. New section 218O sets out the procedures for the Minister to request or direct modifications to the institute's draft operational plan. The institute is required to comply with the Minister's request or direction. Failure to comply with a direction given under this provision could trigger the removal of the institute's board under new section 220C (discussed below). The Minister's ability to direct an institute to take specified steps or make specified modifications to its draft operational plan is triggered in circumstances where the draft operational plan has not been agreed to by the Minister by the deadlines specified in subsection 218O(3).

The Minister's powers in relation to the institute are balanced by a requirement to publicly report on directions given under this provision. The reporting requirement, which applies to all Ministerial notifications or directions given to the institute under Chapter 6A, is set out in new section 220R (discussed below).

New section 218P provides that once a draft operational plan has been agreed to by the Minister, it becomes the institute's operational plan for the relevant financial year. It should be noted that the Minister's agreement may be subject to conditions. This provides a mechanism by which the Minister can reinforce Government's expectation that institutes are required to observe any administrative processes that might apply from time to time in relation to various aspects of their operational plan, for example, to obtain contract or expenditure approvals or approvals from Queensland Education and Training International for the institute's travel plans. Failure to comply with the processes notified to the institute under this mechanism could trigger the removal of the institute's board under new section 220C (discussed below).

New section 218Q operates to ensure there isn't a void in which a statutory TAFE institute has no operational plan. Its operation is triggered in circumstances where the draft operational plan has not been agreed to by the Minister by the deadlines specified in subsection 218Q(1). It provides for the last draft of the institute's draft operational plan submitted to the Minister to be the institute's operational plan until the draft operational plan is agreed to by the Minister (at which time it becomes the institute's operational plan under new section 218P). Subsection 218Q(2) operates to ensure that any modifications made to the draft operational plan at the Minister's direction under new section 218O, whether before or after the deadlines specified in subsection 218Q(2), have effect under this provision.

New section 218R sets out the process by which an institute's operational plan can be amended, namely only with the Minister's written agreement or at the Minister's direction. It should be noted that the Minister's agreement to an amendment may be subject to conditions. As noted in relation to new section 218P above, this provides a mechanism by which the Minister can reinforce Government's expectation that institutes are required to observe any administrative processes that might apply from time to time in relation to various aspects of their operational plan, for example, to obtain contract or expenditure approvals or approvals from Queensland Education and Training International for the institute's travel plans. Failure to comply with the processes notified to the institute under this mechanism could trigger the removal of the institute's board under new section 220C (discussed below).

It should be noted that the obligations under Part 3, division 1 lie with the institute, which operates through its governing board. This is consistent with the accountability relationship existing between the institute and the Minister. However, an institute will have discretion under new section

218H to delegate its responsibilities under this division to its executive officer. This would be consistent with the executive officer's duty to assist the institute in the performance of its functions.

The fourth element of the accountability framework is dealt with in Part 3, division 2. This division requires a statutory TAFE institute to enter into an agreement with the DETA chief executive, for each financial year, to give effect to matters including the following:

- (a) arrangements to enable the chief executive to monitor and assess the institute's performance against the performance targets specified in its operational plan;
- (b) the institute's obligations to deliver government funded training priorities purchased by the State. This part of the agreement is intended to replace and strengthen current purchasing arrangements by incorporating incentives to drive performance and efficiencies, including the withdrawal of funds for under-delivery. It is also intended to articulate the institute's lead accountabilities in particular industry sectors for product development and quality assurance;
- (c) arrangements for the performance of the institute's community service obligations. Whilst the institute's operational plan will identify the institute's community service obligations, this part of the agreement will articulate in greater detail how those obligations will be performed, including, for example, the ways in which and the extent to which the State will compensate the institute for performing these obligations;
- (d) arrangements for the institute's participation in core operating, information and data management systems and compliance with public sector policies. It is intended that this part of the agreement will require the institute to use certain existing departmental systems as a transitional measure. It is also intended to require the institute to adhere to departmental policies such as those applying to use of the TAFE Queensland logo;
- (e) financial and non-financial reporting arrangements with the DETA chief executive.

In practice, this agreement will be the instrument through which a statutory TAFE institute delivers its commitments under its operational plan.

New section 218S requires this agreement and the institute's operational plan to be consistent. In practice, this will be achieved through the timing of the Department's purchasing negotiations with statutory TAFE

institutes, which will in turn inform the development of the institute's operational plan. For example, the purchasing component of the agreement under subsection 218S(3)(b) will inform the setting of the institute's performance targets to be specified in its operational plan.

Although a statutory TAFE institute will be required to enter into an agreement with the DETA chief executive under new section 218S for each financial year, there is capacity for agreement to cover a period of up to three years in relation to the purchasing and operational matters specified in subsection 218S(3)(b) and (d). The reason that the remaining matters specified under subsection 218S(3) are limited to a financial year, is that they relate specifically to matters required to be addressed in the institute's operational plan under new section 218M, which only covers a financial year.

New section 218T sets out the process and deadlines by which:

- (a) a statutory TAFE institute and the DETA chief executive must enter into negotiations for an agreement under new section 218S; and
- (b) the institute and the DETA chief executive must try to reach agreement.

The provision specifies different timeframes for the institute's first agreement and agreements for subsequent financial years.

Negotiation of this agreement will be subject to Ministerial direction, if negotiations are not completed by the deadlines specified in subsection 218T(3). The DETA chief executive will be required to inform the Minister that agreement has not been reached, at which point, the Minister will be able to direct the institute or the chief executive to take specified steps for reaching agreement. The Minister's direction may relate to the terms of the agreement. The institute and chief executive must comply with a direction given under this section. Failure by the institute to comply with a direction given under this provision could trigger the removal of the institute's board under new section 220C (discussed below). The Minister's powers in relation to the institute are balanced by a requirement to publicly report on directions given under this provision. The reporting requirement, which applies to all Ministerial notifications or directions given to the institute under Chapter 6A, is set out in new section 220R (discussed below).

It should be noted that subsection 218S(3)(f) requires the mechanism for varying an agreement under new section 218S to be specified in the agreement.

It should be noted that the obligations under Part 3, division 2 lie with the institute, which operates through its governing board. However, an institute will have discretion under new section 218H to delegate its responsibilities under this division to its executive officer. This would be consistent with the executive officer's duty to assist the institute in the performance of its functions.

The fifth element of the accountability framework is dealt with under Part 3, division 3, which operates to ensure that the activities of a statutory TAFE institute are subject to an appropriate degree of Ministerial oversight.

Given the Minister's accountability for statutory TAFE institutes and that the State will ultimately assume responsibility for an institute that becomes insolvent, new section 218U operates to ensure there is Ministerial oversight of institute activities that have the potential to compromise the institute's business performance. New section 218U does this by requiring a statutory TAFE institute to notify the Minister of its intention to undertake any of the activities specified in subsection 218U(1), before undertaking the activity, unless details of the proposed activity have already been included in the institute's operational plan (which is approved by the Minister under Part 3, division 1).

The range of proposed activities that trigger this reporting requirement comprise:

- (a) anything that may prevent the institute performing its functions;
or
- (b) anything that may have a significant adverse effect on the institute performing its functions, its ability to meet its obligations under its operational plan or something in or done under its agreement with the DETA chief executive; or
- (c) buy or sell property for more than a prescribed threshold value;
or
- (d) enter into an arrangement for the supply of vocational education or training services for more than a prescribed threshold amount;
or
- (e) enter into any other arrangement to generate revenue or that commits expenditure exceeding a prescribed threshold amount.

It should be noted that the broad definition of ‘property’ under the *Acts Interpretation Act 1954* is to be relied upon for the purpose of subsection 218U(1)(c).

It is intended that the regulation prescribing the amounts for the purpose of this provision could either prescribe general thresholds applicable to all statutory TAFE institutes or alternatively, allocate specific thresholds to individual statutory TAFE institutes that reflect their performance under the new operating model.

As a converse to the reporting requirement under new section 218U, new section 218V enables the Minister to require a statutory TAFE institute to give the Minister information about the performance of its functions under the VETE Act. This includes a requirement to produce a document for inspection by the Minister. The institute must comply with the requirement within the timeframe specified in the Minister’s notice. The Minister’s powers in relation to the institute are balanced by a requirement to publicly report on notices given under this provision. The reporting requirement, which applies to all Ministerial notifications or directions given to the institute under Chapter 6A, is set out in new section 220R (discussed below).

Part 3, division 4 sets out arrangements for the payment of dividends by statutory TAFE institutes. These arrangements assist in giving effect to the application of competitive neutrality principles to statutory TAFE institutes.

New section 218W requires a statutory TAFE institute to advise the Minister whether it is likely to recommend the payment of a dividend to the State for each financial year, and if so, the amount of the dividend to be paid. The institute is required to consult with the Minister before making its recommendation. Subsections 218W(2) & (3) set out the timeframes within which the institute must make its recommendation to the Minister. Subsection 218W(5) requires the Minister, within 1 month after receiving the institute’s recommendation to either approve the recommendation or direct the payment of a specified dividend. The dividend must be paid to the State within the applicable timeframe specified in subsection 218W(7). Subsection 218W(6) provides that the dividend must not exceed the institute’s after tax profits. Although this provision requires the institute to make a recommendation for each financial year, there is nothing to prevent the institute and the Minister from negotiating dividend targets over the longer period, to assist with the institute’s longer term financial and operational planning.

New section 218X sets out the process and requirements for the payment by a statutory TAFE institute of an interim dividend to the State. It should be noted that unlike new section 218W above, the requirement for a statutory TAFE institute to make a recommendation under this provision is triggered only by the exercise of the Minister's discretion.

New section 218Y operates in respect of the financial year in which the statutory TAFE institute is established. It gives the Minister discretion to stipulate whether the dividend payable under new section 218W is payable for the whole financial year or only the part of the financial year for which the institute was a statutory TAFE institute.

New section 218Z operates in respect of the financial year in which the statutory TAFE institute is established. If the Minister exercises the discretion under new section 218X, the Minister is required to notify the institute of the period for which the interim dividend is payable. In this regard, the Minister has discretion to stipulate whether the period is the first six months of the financial year or only the part of the six months for which the institute was a statutory TAFE institute.

Failure to comply with a direction given under this division could trigger the removal of the institute's board under new section 220C (discussed below).

The Minister's powers in relation to the institute are balanced by a requirement to publicly report on directions given under this division. The reporting requirement, which applies to all Ministerial notifications or directions given to the institute under Chapter 6A, is set out in new section 220R (discussed below).

The Minister's reserve powers in relation to statutory TAFE institutes are set out in Part 3, division 5.

New section 219 gives the Minister discretion to notify a statutory TAFE institute of a public sector policy that is to apply to the institute. The Minister's discretion can only be exercised if the Minister is satisfied it is necessary for the notice to be given in the public interest. For example, the Minister could use this provision to notify a statutory TAFE institute of the application to it of the Queensland Public Sector Intellectual Property Guidelines and the Queensland Public Sector Intellectual Property Principles. A statutory TAFE institute is required to comply with a public sector policy notified to it under this provision. However, it should be noted that the Minister can not give a notice under this provision unless the Minister has first consulted the institute and asked it to advise whether the

institute considered that it would not be in the institute's financial interest to comply with the policy.

New section 219A gives the Minister discretion to issue a written direction to a statutory TAFE institute. The Minister's discretion can only be exercised if the Minister is satisfied it is necessary for the direction to be given in the public interest. A statutory TAFE institute is required to comply with the direction. However, it should be noted that the Minister can not give a direction under this provision unless the Minister has first consulted the institute and asked it to advise whether the institute considered that it would not be in the institute's financial interest to comply with the direction.

New section 219B operates to provide a statutory TAFE institute an opportunity to negotiate with the Minister, in limited circumstances, about a notice or direction issued to it under this division. New section 219B is triggered in circumstances where the institute considers that compliance with the notice or direction will cause or substantially cause the institute to become insolvent. The institute is required to notify the Minister immediately of its suspicion and the reasons for its opinion. The effect of the institute's notification to the Minister is to suspend the Minister's notice or direction until such time as the Minister either:

- (a) provides the institute with written advice that the Minister is not satisfied that the institute's suspicion about its potential insolvency is well-founded or the institute's opinion as to the cause or substantial cause of the suspected insolvency is justified; or
- (b) revokes the notice or direction.

In the event that the Minister is satisfied that the institute's suspicion about its potential insolvency is well-founded and that its opinion as to the cause or substantial cause of the suspected insolvency is justified, the Minister must immediately revoke the notice or direction.

Even if the Minister is not satisfied that the institute's opinion as to the cause or substantial cause of its suspected insolvency is justified, the Minister must immediately give the institute any written directions the Minister considers necessary or desirable, including for example, directions to ensure the institute does not incur further debts, to ensure the institute will be able to pay all its debts as and when they become due or to require the institute to stop or limit particular activities. The institute is required to comply with a direction given under this provision.

Failure to comply with a direction given under this division or a public sector policy notified under this division could trigger the removal of the institute's board under new section 220C (discussed below).

The Minister's powers in relation to the institute are balanced by a requirement to publicly report on notices and directions given under this division. The reporting requirement, which applies to all Ministerial notifications or directions given to the institute under Chapter 6A, is set out in new section 220R (discussed below).

As noted above, one of the key components of the accountability framework under which statutory TAFE institutes will operate is the requirement for each statutory TAFE institute to have a governing board that is accountable to the Minister and the DETA chief executive for the institute's performance. The constitution, function and operation of the governing board are dealt with in Part 4 of new Chapter 6A.

New section 219C requires each statutory TAFE institute to have a board.

New section 219D provides that the board is the institute's governing body. This is reflected in the statement of the board's functions under subsection 219D(2), which make it clear that the board is accountable to the Minister and the DETA chief executive for the institute's performance and is responsible for ensuring that the institute meets its obligation under new section 218L to comply with its operational plan, operates in accordance with its agreement with the DETA chief executive under Part 3, division 2, and otherwise performs its functions and exercises its powers in a proper, effective and efficient way. Subsection 219D(3) clarifies that a statutory TAFE institute operates through its board.

Part 4, division 2 sets out how a statutory TAFE institute's board is constituted.

New section 219E provides that a statutory TAFE institute's board comprises up to 12 members nominated by the Minister and appointed by the Governor in Council. The policy intention underpinning the broad statement of the eligibility criteria for nomination for membership under subsection 219E(2), is that members will be chosen on the basis of their corporate governance expertise, commercial experience, knowledge of local business or industry, understanding of public accountability or other expertise relevant to the institute's functions and the role of the board as the institute's governing body. In practice, it is intended that the board will generally comprise between 5-7 members, consistent with the principles of good governance. The maximum of 12 members is intended to provide

flexibility around the appointment of boards for regional statutory TAFE institutes, where a larger membership with broader local representation may be desirable. The institute's executive officer is ineligible for board membership because the executive officer is an employee of the board (refer to the discussion of Part 5, below).

New section 219F provides that the conditions of a board member's appointment, (including remuneration and allowances), that are not otherwise provided for by the VETE Act, are decided by the Governor in Council.

New section 219G specifies that the maximum term of office for which a member can be appointed, is four years. There is nothing to prevent the appointment of a member for a period of less than four years, which provides flexibility for membership terms to be staggered. If a person is appointed to fill a casual vacancy on the board then the person is only appointed for the remainder of the vacating member's term of office. To ensure continuity of board membership, the Minister can extend a member's term of appointment for up to one year or until their successor is appointed, whichever first occurs. This ensures that there is no disruption to the institute's operation. There is no restriction on the number of terms a person can serve as a member of the board.

New section 219H enables the Minister to appoint the chief executive to administer a statutory TAFE institute until the authority's first board is appointed. In circumstances where the board members have been removed from office under new section 220C (discussed below) or if for another reason, there is no board, the Minister can appoint either the chief executive or another suitably qualified and experienced person to administer the institute until a new board is appointed.

New section 219I requires the Governor in Council to appoint a member of the board to be the board chairperson. This provision enables a person to be appointed as both a member and chairperson of the board under the same instrument of appointment; specifies the chairperson's term of office; describes how the office becomes vacant and makes it clear that a person resigning the office of chairperson may still continue to be a member of the board.

New section 219J requires the board to appoint a board member, other than the chairperson, to be the deputy chairperson. This provision specifies the deputy chairperson's term of office; describes how the office becomes vacant; makes it clear that a person resigning the office of deputy chairperson may still continue to be a member of the board and provides

for the deputy chairperson to act as chairperson in the circumstances specified in subsection 219J(5).

New section 219K sets out the circumstances which render a person ineligible to be appointed, or to continue, as a member of the board. These include:

- (a) conviction for an indictable offence. It should be noted that by virtue of the definition of ‘spent conviction’ inserted in the dictionary in Schedule 3 of the VETE Act, this provision does not override the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- (b) being an insolvent under administration within the meaning of section 9 of the Corporations Act;
- (c) being disqualified from managing a corporation under the Corporations Act ; or
- (d) the person refuses to consent to a criminal history check under new section 219L.

Subsections 219K(3)-(6) operate to enable the Minister to decide that a person be appointed or have their appointment to the board restored, notwithstanding their conviction for an indictable offence or being an insolvent under administration. The Minister’s discretion in this regard is exercisable in circumstances where it would be reasonable for the person to be appointed or reappointed, having regards to the circumstances of the person’s conviction or insolvency.

New section 219L supports the operation of new section 219K by enabling the Minister to make investigations about a person’s suitability for appointment to the board of a statutory TAFE institute. This includes the Minister’s ability to request and obtain from the Commissioner for Police a report about the person’s criminal history and if a conviction is mentioned in the person’s criminal history, a brief description of the circumstances of the conviction. By virtue of the definition of ‘criminal history’ inserted in the dictionary in Schedule 3 of the VETE Act, this provision does not override the operation of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and limits the criminal history report to indictable offences, consistent with the scope of the ground for disqualification under new section 219K(1)(a). The Minister can only request a criminal history report about a nominee for membership, with the person’s consent. The Minister does not need to obtain a board member’s consent before requesting a criminal history report about them under this provision. The Minister is required to ensure that a report obtained under this provision is destroyed

as soon as practicable after it has served the purpose for which it was obtained.

New section 219M makes it an offence to disclose a report or information obtained under new section 219L, unless the disclosure is permitted in the circumstances specified under subsection 219M(3). The offence is punishable by a maximum penalty of 100 penalty units.

New section 219N supports the operation of new section 219K by requiring a board member to disclose a change in their criminal history. Subsection 219N(3) sets out the information a member is required to provide to the Minister in order to comply with this requirement. Failure to comply with the obligation imposed by this provision is an offence punishable by a maximum penalty of 100 penalty units.

New section 219O specifies the circumstances in which a board member is taken to have vacated office, namely when a member:

- (a) resigns (by signed notice to the Minister);
- (b) ceases to be eligible for membership under new section 219K (discussed above);
- (c) is absent without the board's permission from 3 consecutive board meetings of which proper notice has been given; or
- (d) is removed from office by the Governor in Council in circumstances where the Minister is satisfied that the person is incapable of properly discharging their functions as a board member or is performing the member's duties carelessly, incompetently or inefficiently.

New section 219P sets out the process for 'fast-tracking' the appointment of a person to act in the office of a board member who is absent on leave. For this to occur, the member ('the approved absent member') must first obtain the Minister's approval for a leave of absence. The Minister may then appoint another person to act as an interim replacement for the approved absent member. It should be noted that if the approved absent member is the deputy chairperson, section 25 of the *Acts Interpretation Act 1954* operates to enable the board to appoint another member to act in the deputy chairperson's office while the deputy chairperson is absent. If the approved absent member is the chairperson, then the arrangements specified under subsection 219J(5) apply (discussed above). The Minister's power under this provision does not limit the Governor in Council's power under section 25 of the *Acts Interpretation Act 1954* to appoint a person to act in the office of an absent board member.

New section 219Q places an obligation on board members to disclose any personal or pecuniary interest where such interests relate directly or indirectly to matters under consideration, or to be considered, by the board and which could conflict with the proper performance of the member's duties when considering the matter. Failure to comply with this obligation is an offence punishable by a maximum penalty of 100 penalty units. When a disclosure is made under this provision, the member must absent himself or herself from deliberations and decisions about the matter (unless the board decides otherwise). Any other board member who also has a direct or indirect personal or pecuniary interest in the matter must also absent themselves from the board's deliberations and decisions about the matter. Failure to comply with these obligations is an offence punishable by a maximum penalty of 100 penalty units. The disclosure must be minuted.

New section 219R requires a board member to act honestly and in the institute's best interests, and in doing so, exercise care, skill and diligence.

Part 4, division 3 deals with the conduct of board business.

New section 219S enables the board to administratively determine procedural matters associated with the conduct of its business, subject to the requirements of this division.

New section 219T requires the board to hold at least four meetings a year. The board is to determine its meeting times and places. The chairperson or the Minister may call a meeting at any time. The chairperson must convene a meeting when requested to do so by a quorum of members.

New section 219U specifies who is to preside at meetings of the board, namely the chairperson; or in the absence of the chairperson, the deputy chairperson; or in the absence of both the chairperson and the deputy chairperson, a member chosen by the members present.

New section 219V specifies how many members constitute a quorum for the board. Having regard to the generally understood meaning of the term, a 'quorum' is the number of members required to be present at a board meeting in order for the board to transact its business legally.

As noted above, new section 219E provides the institute's executive officer is not a member of the board. However, new section 219W enables the executive officer to attend board meetings, at the board's discretion. The executive officer has no voting rights at a board meeting. The board's discretion to preclude the executive officer's attendance at a board meeting is exercisable in circumstances where the board is satisfied that the

executive officer's attendance would be inappropriate. Although the chairperson has an obligation to give the executive officer reasonable notice of the board meeting time and place, a board meeting is not invalid merely because of the chairperson's failure to comply with this obligation.

New section 219X sets out various procedural requirements for the conduct of board meetings. Subsections 219X(1)-(3) specify voting procedures—questions are to be determined by a majority of votes; each member present has a deliberative vote, and in the event of a tied vote, the presiding member also has a casting vote; a member who abstains from voting is taken to have voted for the negative. Subsections 219X(4)-(6) provide for board meetings to be held by methods of distance communication and for board decisions to be made by flying minutes.

New section 219Y requires the board to keep minutes of its meetings.

Part 4, division 4 deals with the establishment, function and conduct of business by committees of the board.

New section 219Z requires the board of a statutory TAFE institute to establish three specific advisory committees:

- (a) the audit, finance and risk management committee is functioned to advise and make recommendations to the board about the management of financial and other operating risks for the institute. It is intended that this committee will support the board to ensure that financial and other general risks are managed in a strategic and systematic way. The committee will assist the board to ensure adequate systems and internal control structures, financial management, monitoring and control of business risk, credibility and objectivity in systems and compliance processes;
- (b) the student, staff and community voice committee is functioned to advise and make recommendations to the board about the welfare of the institute's students and staff and the development and maintenance of the institute's relationships with students, staff, the vocational education and training sector and the general community. This committee is intended to provide a mechanism through which the institute will involve staff in its financial and operational planning;
- (c) the remuneration and nominations committee is functioned to advise and make recommendations to the board about the recruitment, appointment and management of staff employed directly by the institute.

It should be noted that the board will also be able to refer other matters relevant to the board's functions to these committees for their consideration and advice.

New section 220 enables the board to determine the size and composition of a committee established under new section 219Z ('a statutory committee'). This determination is to be made having regard to the statutory committee's function. A statutory committee must include at least one person who is a board member. This member chairs the committee. There is otherwise no restriction on the membership of a statutory committee. The board is to decide a statutory committee's procedures. A statutory committee must hold a meeting if the board requires it to. Subsection 220(5) reflects the advisory function of these committees by making it clear that the board must have regard to, but is not bound by, the advice or recommendations of a statutory committee.

New section 220A enables the board to establish other committees to assist in the performance of its functions. Subsection 220A(2) makes it clear that a committee established under this provision has an advisory function in relation to matters that are relevant to the board's functions, other than those for which a statutory committee is established under new section 219Z. There is no restriction on the membership of a committee established under this section. The board is to decide a committee's procedures. A committee must hold a meeting if the board requires it to. Subsection 220A(6) reflects the advisory function of these committees by making it clear that the board must have regard to, but is not bound by, the advice or recommendations of a committee established under this section.

It should be noted that clause 4 amends section 282 of the VETE Act to extend the disclosure of conflict of interest provision to members of committees established under this division.

It should also be noted that because the function of the committees established under this division is advisory in nature, new section 218H does not enable the board to delegate its powers to these committees.

New section 220B stipulates the entitlement of members of a committee established under this division to be paid fees and allowances decided by the Governor-in-Council.

Part 4, division 5 sets out the circumstances in which the board of a statutory TAFE institute can be dismissed.

New s.220C prescribes triggers which may result in the dismissal of a statutory TAFE institute's board, namely if the Minister is satisfied that:

- (a) the institute has failed to comply with a direction, notified public sector policy, statutory requirement, the institute's operational plan (including the conditions on which the Minister agreed to the plan) or the institute's agreement with the DETA chief executive; or
- (b) the board is no longer functioning effectively or is acting in a way that is prejudicial to the best interests of the institute. This could include, for example, unacceptable board or organisational behaviour, financial distress, significant breach of contractual obligations, poor performance that impacts adversely on the reputation of the institute, DETA or the Government, non-compliance with the operational pre-conditions for transition to the statutory authority model or 'force majeure' events that render it impractical for the institute to continue to operate under the statutory authority model.

In the event that board members are removed from office, s.219H gives the Minister power to appoint either the DETA chief executive or another person the Minister considers has the necessary qualifications and experience to administer the institute, until a new board is appointed.

Part 5 of new Chapter 6A deals with the executive officer of a statutory TAFE institute.

New section 220D requires each statutory TAFE institute to have an executive officer, who is appointed by the institute's board, with the written approval of the Minister. The executive officer is an employee of the institute and in this capacity holds office on terms and conditions, not provided for by the VETE Act, as decided by the institute's board.

New section 220E sets out the executive officer's duties. The executive officer is responsible for the day to day management of the institute and is to assist the institute in the performance of its functions. As an employee of the institute, the executive officer is subject to the institute's board in carrying out these duties. Subsection 220E gives the executive officer all the powers necessary for carrying out the duties of this office.

New section 220F provides that anything done in the name of, or for, a statutory TAFE institute by its executive officer, is taken to have been done by the institute.

New section 220G enables the executive officer to delegate his or her powers, including a power delegated to the executive officer under new section 218H, to an appropriately qualified employee who is performing work for the institute under a work performance arrangement under new section 218G or an appropriately qualified employee of the institute.

New section 220H enables the board of a statutory TAFE institute to appoint an acting executive officer in specified circumstances. It should be noted that the Minister's approval is not required for this temporary appointment.

New section 220I sets out how an executive officer can resign, namely by signed notice given to the chairperson of the institute's board.

New section 220J gives the board of a statutory TAFE institute power to terminate the appointment of the institute's executive officer, at any time. However, the exercise of this power does not affect a right to which the executive officer is entitled under the terms of his or her appointment.

Part 6 of new Chapter 6A sets out the process for amalgamating or dissolving statutory TAFE institutes.

New section 220K defines the terms 'changeover day', 'former statutory TAFE institute' and 'new entity' for the purpose of Part 6.

New section 220L provides the mechanism for amalgamating two or more statutory TAFE institutes. It should be noted that this provision does not operate to amalgamate a statutory TAFE institute with a whole or part of an existing TAFE institute, as this scenario is dealt with as the establishment of a new statutory TAFE institute under Part 2, division 1 of new Chapter 6A.

An amalgamation of statutory TAFE institutes is effected by a regulation made under new section 220L which is required to state the corporate name of the new statutory TAFE institute and dissolve the statutory TAFE institutes that are being amalgamated to form the new statutory TAFE institute. The regulation may also make provision for any other matter necessary or convenient to give effect to the amalgamation such as transitional issues not dealt with in Part 6, division 3.

New section 220M states the circumstances in which, and the mechanism by which a statutory TAFE institute may be dissolved. A statutory TAFE institute may be dissolved if the Minister is satisfied that the institute no longer serves the function for which it was established or is no longer functioning efficiently or effectively. Dissolution is effected by a regulation made under the new section 220M which may also make provision for any other matter necessary or convenient to give effect to the dissolution such as transitional issues not dealt with in Part 6, division 3.

Part 6, division 3 contains transitional provisions to give effect to an amalgamation or dissolution under this Part.

New section 220N provides that a reference in an Act or a document to a statutory TAFE institute that has been amalgamated or dissolved under this Part may, to the extent the context permits, be taken to be a reference to the new entity, which in the case of an amalgamation will be the resultant new statutory TAFE institute or, in the case of a dissolution, the State.

New section 220O makes provision for the transition of student enrolments. In the event of an amalgamation, students of the statutory TAFE institutes that have been amalgamated are enrolled as students of the resultant new statutory TAFE institute. In the event of dissolution, the dissolution regulation will specify the entity with which the students of the dissolved statutory TAFE institute are enrolled. Depending on the circumstances, the dissolved institute's courses could be redistributed among other statutory TAFE institutes or the institute could be 're-established' under Chapter 6 of the VETE Act under the current operating model. The dissolution regulation offers sufficient flexibility to cater for these or other situations.

New section 220P makes provision for the transition of assets, rights and liabilities. In the event of an amalgamation, the assets, rights and liabilities of the statutory TAFE institutes that have been amalgamated will vest in the resultant new statutory TAFE institute. In the event of dissolution, the assets, rights and liabilities of the dissolved statutory TAFE institute will vest in the State.

New section 220Q makes provision for the continuation of legal proceedings. In the event of an amalgamation, any unfinished legal proceedings by or against the statutory TAFE institutes that have been amalgamated may be continued and finished by or against the resultant new statutory TAFE institute. In the event of dissolution, any unfinished legal proceedings by or against the dissolved statutory TAFE institute may be continued and finished by or against the State.

Part 7 of new Chapter 6A contains miscellaneous provisions.

New section 220R requires a statutory TAFE institute's annual report for a financial year to include copies of all directions and notices given to the institute by the Minister under the VETE Act during the financial year to which the annual report relates.

New section 220S specifies that the persons specified in subsection 220S(1) who have a role in the administration of new Chapter 6A are not civilly liable for an act or omission, made honestly and without negligence, under the VETE Act. Instead, such liability attaches to the State.

Provided that the person seeking protection from liability under this provision was a person specified in subsection 220S(1) at the time the act or omission occurred and the act or omission was made honestly and without negligence, the provision will operate regardless of when an action in respect of the act or omission is commenced.

New section 220T requires the Minister to review the operation of a statutory TAFE institute as soon as practicable after the third anniversary of its establishment. The purpose of this review is to ensure the institute is operating efficiently and effectively under the statutory authority model. The Minister will be required to prepare and table in the Legislative Assembly, a report on the outcome of the review within four years after the institute was established. Depending on the institute's performance, an outcome of this review could be a decision to recommend that the board members be removed from office under new section 220C and a new board appointed, that the institute be dissolved under new section 220M or that it be amalgamated with another statutory TAFE institute under new section 220L.

New section 220U gives the Minister discretion to delegate his or her powers under new Chapter 6A to an appropriately qualified officer of the department. The term 'officer' is defined by the *Acts Interpretation Act 1954* by reference to the definition of 'public service officer' under section 8 of the *Public Service Act 1996*, which includes the chief executive.

It should be noted that the delegation of the chief executive's powers under the VETE Act is already dealt with under section 246 of the VETE Act.

As discussed in relation to new section 218E above, new section 220V replicates the DETA chief executive's functions in respect of existing TAFE institutes currently stated under s.217(1)(f)-(h) of the VETE Act. The statement of these functions under s.217 of the VETE Act was inserted under the *Training Reform Act 2003* as special provisions to complement the implementation of the compulsory participation phase under the *Youth Participation in Education and Training Act 2003* (which has since been repealed and relevant provisions relocated within the *Education (General Provisions) Act 2006*). These functions reflect the DETA chief executive's broader functions in relation to the Education and Training for the Future reforms, which have the overarching objective of retaining young people in education, VET or employment. New section 220V makes it clear that the DETA chief executive also has those specific functions in relation to statutory TAFE institutes. In practice, the performance of these functions will occur through the agreement between the chief executive and the

statutory TAFE institute under new section 218S, for example, through the purchase of government funded training priorities or other operational requirements.

New section 220W concerns a person who takes up an appointment as an employee of a statutory TAFE institute and who immediately before taking up that appointment was a public service employee. This provision operates to preserve the person's existing and accruing rights to which they were entitled as if service as an institute employee were a continuation of service as a public service employee. It also preserves the person's existing and accruing superannuation rights in respect of their membership of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*. In addition, new section 220W provides for people who are appointed as a public service employee, if immediately before taking up that appointment they were an employee of a statutory TAFE institute. This section mandates that their service as an institute employee be regarded as service as a public service employee.

New section 220X enables public service employees to be seconded to a statutory TAFE institute. It clarifies that for the duration of the secondment, the person is an institute employee and the *Public Service Act 1996* does not apply to them. Subsection 220X(3) operates to preserve the secondee's existing and accruing rights as if their employment on secondment to the institute were a continuation of employment as a public service employee. It also permits the secondee to apply for positions and be employed in the public service on the same basis as they would as a public service employee. Subsection 220X(4) makes provision for the secondee's rights at the end of their secondment. It operates to enable the person's employment on secondment to the institute to be taken to be service of the same nature as would service in the public service. Provided the person's secondment ended for reasons other than misconduct, the person is entitled to be employed as a public service employee.

Part 8 of new chapter 6A deals with transitional arrangements for an existing TAFE institute's transition to the statutory authority model.

New section 220Y defines the terms 'changeover day' and 'former TAFE institute' for the purpose of Part 8.

New section 220Z provides the mechanism for dealing with transitional issues specific to an existing TAFE institute's transition to a statutory TAFE institute. This section enables a regulation to make provision for the matters specified in subsection 220Z(2). This mechanism provides sufficient flexibility to tailor the legislative statement of transitional

arrangements to meet the specific circumstances of individual institutes. Depending on the institute, it may be that the regulation makes high level statements about some of the matters specified under subsection 220Z(2) and makes detailed provision for others of those matters.

New section 220ZA provides that a reference in an Act or a document to a former TAFE institute may, to the extent the context permits, be taken to be a reference to the statutory TAFE institute established in its place.

New section 220ZB applies in circumstances where the whole of a TAFE institute is established as a statutory TAFE institute. It operates to dissolve the former TAFE institute's council once the institute is established as a statutory TAFE institute, in order for a governing board to be established for the statutory TAFE institute. No compensation is payable to council members because of the termination of their appointment under this provision.

New section 220ZC provides for a former TAFE institute's application under the VETE Act, the *Education (Overseas Students) Act 1996* or the *Higher Education (General Provisions) Act 2003* to be taken to have been made by the statutory TAFE institute established in its place. This enables the application to continue to be considered under the relevant Act.

Amendment of s 282 (Disclosure of interests by member of disclosure body)

Clause 4 amends section 282 of the VETE Act to extend the disclosure of interest obligation to members of a statutory committee or another committee established under Part 4, division 4 of new Chapter 6A.

Amendment of sch 3 (Dictionary)

Clause 5 amends the dictionary in Schedule 3 of the VETE Act to insert new definitions for the purpose of new Chapter 6A.

Part 3 Amendment of Libraries Act 1988

Act amended in pt 3

Clause 6 provides that Part 3 amends the *Libraries Act 1988*.

Amendment of s 2 (Interpretation)

Clause 7 amends section 2 to include new definitions for terms used in new Part 10, division 3 (discussed in clause 9 below).

Replacement of s 13 (Appointment of State librarian)

Clause 8 replaces section 13 with new sections 13, 13A and 13B as follows:

New section 13 states that there is to be a State librarian, who is to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment. The term of appointment must not exceed 5 years. It should be noted that the only change to the current process, as a result of this new section, is to require that the Governor in Council must decide the term and the conditions of appointment. Previously, this was decided by the Library Board of Queensland (the Board). This new section is not intended to interfere with consideration of the specialist expertise and experience required for appointment to this office.

It will no longer be possible to appoint a person to the position of State librarian for terms greater than 5 years. However, this does not prevent a person from being re-appointed as State librarian, after the expiry of their term of office as stated in the instrument of appointment. The re-appointment must be treated as a fresh appointment for a new term, and be made by the Governor in Council under section 13. This will ensure a consistency of approach in relation to the appointment processes for chief executive officers under this portfolio.

New section 13A provides that the Minister must not recommend to the Governor in Council the appointment of a person as the State librarian (including the terms and conditions of the appointment), unless the recommendation has been approved by the Board. This makes it clear that the Board, as the State librarian's employer, continues to be responsible for

negotiating and settling the proposed terms and conditions of appointment. It should be noted, however, that this provision does not compel the Minister to make a recommendation to the Governor in Council.

New section 13B provides that the State librarian is an employee of the Board and not of the State. This section also states that, subject to the conditions of the State librarian's appointment, the Board may enter into a contract of employment with the State librarian. The effect of this section is to clarify that the employment relationship remains between the State librarian and the Board, and to put it beyond doubt that, even though the appointment is made by the Governor in Council, this does not prevent the employer (the Board) and the employee (the person appointed as State librarian) from entering into a formal contract of employment, as is currently the case.

Insertion of new pt 10, div 3

Clause 9 inserts a new division 3 in Part 10 of the Act, which contains the transitional provisions applying to the person who is currently appointed as the State librarian (the present librarian). New Part 10, division 3 contains the following provisions:

New section 95 sets out definitions for particular terms used in division 3.

New section 96 states the conditions upon which the present librarian continues to hold office as from the commencement of this section. The present librarian was appointed under section 13(1) of the current Act.

Subsection 96(1) makes it clear that the present librarian continues to hold office on the conditions applying under the pre-amended Act immediately before the commencement. These conditions (the *current conditions*) are the conditions that were decided by the Board under section 13(2) of the current Act.

However, subsection 96(2) stipulates that the present librarian's current appointment to the office ends, and the librarian ceases holding the office –

- (a) if paragraph (b) does not apply, at the end of 15 October 2009 (this is the end date of the present librarian's term of office under the current conditions, as decided by the Board); or
- (b) if the librarian's term of office is extended past that date under the current conditions, at the end of 14 October 2011. This date is calculated as the end date of the librarian's current term of office, if it

is extended by the Board under the optional extension clause in the librarian's contract of employment.

The intention is to allow the present librarian's current contract of employment to operate so that the librarian can complete the current term of office, and any optional extension to that term under the current conditions (should the Board exercise that option). If the present librarian is to remain in office after that time, then this must be treated as a re-appointment by the Governor in Council under section 13 of the Act, as amended by clause 8 above.

Subsection 96(3) provides that the present librarian may cease to hold office under the current conditions, at an earlier time than the time stated in subsection 96(2). This could occur if, for instance, the present librarian decided to resign prior to the time when the appointment would have otherwise ended under subsection 96(2).

Subsection 96(4) provides that if the present librarian ceases to hold office under subsection (3), the librarian's current appointment also ends at this time.

New section 97 provides that the current conditions may be amended by the Board, with the approval of the Governor in Council. However, the Board can not amend the current conditions in a way that would interfere with the operation of subsection 96(2), which stipulates when the current appointment ends.

New section 98 provides that compensation may not be claimed by, and is not payable to, the present librarian because of the operation of section 96(2). Section 96(2) will not operate to prevent the present librarian from being re-appointed. Its effect is merely a change to the process of appointment and it is not considered that the present librarian will be disadvantaged by this procedural change. For this reason, it is not considered that the present librarian would be entitled to any compensation because of the operation of the transitional arrangements expressed in section 96(2).

Part 4 Amendment of Queensland Art Gallery Act 1987

Act amended in pt 4

Clause 10 provides that Part 4 amends the *Queensland Art Gallery Act 1987*.

Amendment of s 2 (Definitions)

Clause 11 amends section 2 to include new definitions for terms used in new Part 7, division 3 (discussed in clause 13 below). It also includes a definition of the term ‘director’ which is missing from the current Act.

Replacement of s 12 (Appointment of director)

Clause 12 replaces section 12 with new sections 12, 12A and 12B as follows:

New section 12 states that there is to be a director of the art gallery, who is to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment. The term of appointment must not exceed 5 years. It should be noted that the only change to the current process, as a result of this new section, is to require that the Governor in Council must decide the term and the conditions of appointment. Previously, this was decided by the Queensland Art Gallery Board of Trustees (the Board). This new section is not intended to interfere with consideration of the specialist expertise and experience required for appointment to this office.

It will no longer be possible to appoint a person to the position of director for terms greater than 5 years. However, this does not prevent a person from being re-appointed as director, after the expiry of their term of office as stated in the instrument of appointment. The re-appointment must be treated as a fresh appointment for a new term, and be made by the Governor in Council under section 12. This will ensure a consistency of approach in relation to the appointment processes for chief executive officers under this portfolio.

New section 12A provides that the Minister must not recommend to the Governor in Council the appointment of a person as the director (including the terms and conditions of the appointment), unless the recommendation

has been approved by the Board. This makes it clear that the Board, as the director's employer, continues to be responsible for negotiating and settling the proposed terms and conditions of appointment. It should be noted, however, that this provision does not compel the Minister to make a recommendation to the Governor-in-Council.

New section 12B provides that the director is an employee of the Board and not of the State. This section also states that, subject to the conditions of the director's appointment, the Board may enter into a contract of employment with the director. The effect of this section is to clarify that the employment relationship remains between the director and the Board, and to put it beyond doubt that, even though the appointment is made by the Governor in Council, this does not prevent the employer (the Board) and the employee (the person appointed as director) from entering into a formal contract of employment, as is currently the case.

Insertion of new pt 7, div 3

Clause 13 inserts a new division 3 in Part 7 of the Act, which contains the transitional provisions applying to the person who is currently appointed as the director (the present director). New Part 7, division 3, contains the following provisions:

New section 76 sets out definitions for particular terms used in division 3.

New section 77 states the conditions upon which the present director continues to hold office as from the commencement of this section. The present director was appointed under section 12(1) of the current Act.

Subsection 77(1) makes it clear that the present director continues to hold office on the conditions applying under the pre-amended Act, immediately before the commencement. These conditions (the *current conditions*) are the conditions that were decided by the Board under section 12(2) of the current Act.

However, subsection 77(2) stipulates that the present director's current appointment ends, and the director ceases holding the office at the end of 16 May 2012. This is the end date of the present director's term of office under the current conditions, as decided by the Board.

The intention is to allow the present director's current contract of employment to operate so that the director can complete the current term of office. If the present director is to remain in office after that time, then this must be treated as a re-appointment by the Governor in Council under section 12 of the Act, as amended by clause 12 above.

Subsection 77(3) provides that the present director may cease to hold office under the current conditions, at an earlier time than the time stated in subsection 77(2). This could occur if, for instance, the present director decided to resign prior to the time when the appointment would have otherwise ended under subsection 77(2).

Subsection 77(4) provides that if the present director ceases to hold office under subsection (3), the director's current appointment also ends at this time.

New section 78 provides that the current conditions may be amended by the Board, with the approval of the Governor in Council. However, the Board can not amend the current conditions in a way that would interfere with the operation of subsection 77(2), which stipulates when the current appointment ends.

New section 79 provides that compensation may not be claimed by, and is not payable to, the present director because of the operation of section 77(2). Section 77(2) will not operate to prevent the present director from being re-appointed. Its effect is merely a change to the process of appointment and it is not considered that the present director will be disadvantaged by this procedural change. For this reason, it is not considered that the present director would be entitled to any compensation because of the operation of the transitional arrangements expressed in section 77(2).

Part 5 Amendment of Queensland Museum Act 1970

Act amended in pt 5

Clause 14 provides that part 5 amends the *Queensland Museum Act 1970*.

Amendment of s 2 (Definitions)

Clause 15 amends section 2 to include new definitions for terms used in new Part 7, division 3 (discussed in clause 17 below).

Replacement of s 35 (Appointment of director)

Clause 16 replaces section 35 with new sections 35, 35A and 35B as follows:

New section 35 states that there is to be a director of the museum, who is appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment. The term of appointment must not exceed 5 years. It should be noted that the only change to the current process, as a result of this new section, is to require that the Governor in Council must decide the term and the conditions of appointment. Previously, this was decided by the Board of the Queensland Museum (the Board). This new section is not intended to interfere with consideration of the specialist expertise and experience required for appointment to this office.

It will no longer be possible to appoint a person to the position of director for terms greater than 5 years. However, this does not prevent a person from being re-appointed as director, after the expiry of their term of office as stated in the instrument of appointment. The re-appointment must be treated as a fresh appointment for a new term, and be made by the Governor in Council under section 35. This will ensure a consistency of approach in relation to the appointment processes for chief executive officers under this portfolio.

New section 35A provides that the Minister must not recommend to the Governor in Council the appointment of a person as the director (including the terms and conditions of the appointment), unless the recommendation has been approved by the Board. This makes it clear that the Board, as the director's employer, continues to be responsible for negotiating and settling the proposed terms and conditions of appointment. It should be noted, however, that this provision does not compel the Minister to make a recommendation to the Governor in Council.

New section 35B provides that the director is an employee of the Board and not of the State. This section also states that, subject to the conditions of the director's appointment, the Board may enter into a contract of employment with the director. The effect of this section is to clarify that the employment relationship remains between the director and the Board, and to put it beyond doubt that, even though the appointment is made by the Governor in Council, this does not prevent the employer (the Board) and the employee (the person appointed as director) from entering into a formal contract of employment, as is currently the case.

Insertion of new pt 7, div 3

Clause 17 inserts a new division 3 in Part 7 of the Act, which contains the transitional provisions applying to the person who is currently appointed as the director (the present director). New Part 7, division 3 contains the following provisions:

New section 77 sets out definitions for particular terms used in division 3.

New section 78 states the conditions upon which the present director continues to hold office as from the commencement of this section. The present director was appointed under section 35(1) of the current Act.

New section 78(1) makes it clear that the present director continues to hold office on the conditions applying under the pre-amended Act, immediately before the commencement. These conditions (the *current conditions*) are the conditions that were decided by the Board under section 35(2) of the current Act.

However, subsection 78(2) stipulates that the present director's current appointment ends, and the director ceases holding the office, at the end of 9 May 2010. This is the end date of the present director's term of office under the current conditions, as decided by the Board.

The intention is to allow the present director's current contract of employment to operate so that the director can complete the current term of office. If the present director is to remain in office after that time, then this must be treated as a re-appointment by the Governor in Council under section 35 of the Act, as amended by clause 16 above.

Subsection 78(3) provides that the present director may cease to hold office under the current conditions, at an earlier time than the time stated in subsection 78(2). This could occur if, for instance, the present director decided to resign prior to the time when the appointment would have otherwise ended under subsection 78(2).

Subsection 78(4) provides that if the present director ceases to hold office under subsection (3), the director's current appointment also ends at this time.

New section 79 provides that the current conditions may be amended by the Board, with the approval of the Governor in Council. However, the Board can not amend the current conditions in a way that would interfere with the operation of subsection 78(2), which stipulates when the current appointment ends.

New section 80 provides that compensation may not be claimed by, and is not payable to, the present director because of the operation of section 78(2). Section 78(2) will not operate to prevent the present director from being re-appointed. Its effect is merely a change to the process of appointment and it is not considered that the present director will be disadvantaged by this procedural change. For this reason, it is not considered that the present director would be entitled to any compensation because of the operation of the transitional arrangements expressed in section 78(2).

Part 6 Amendment of Queensland Performing Arts Trust Act 1977

Act amended in pt 6

Clause 18 provides that part 6 amends the *Queensland Performing Arts Trust Act 1977*.

Amendment of s 2 (Definitions)

Clause 19 amends section 2 to include new definitions for terms used in new Part 8, division 2 (discussed in clause 23 below).

Replacement of s 32 (Director)

Clause 20 replaces section 32 with new sections 32, 32A and 32B as follows:

New section 32 states that there is to be a director of the trust, who is to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment. The term of appointment must not exceed 5 years. It should be noted that the only change to the current process, as a result of this new section, is to require that the Governor in Council must decide the term and the conditions of appointment. Previously, this was decided by the Queensland Performing Arts Trust (the Trust). This new section is not intended to interfere with consideration of the specialist expertise and experience required for appointment to this office.

It will no longer be possible to appoint a person to the position of director for terms greater than 5 years. However, this does not prevent a person from being re-appointed as director, after the expiry of their term of office as stated in the instrument of appointment. The re-appointment must be treated as a fresh appointment for a new term, and be made by the Governor in Council under section 32. This will ensure a consistency of approach in relation to the appointment processes for chief executive officers under this portfolio.

New section 32A provides that the Minister must not recommend to the Governor in Council the appointment of a person as the director (including the terms and conditions of the appointment), unless the recommendation has been approved by the Trust. This makes it clear that the Trust, as the director's employer, continues to be responsible for negotiating and settling the proposed terms and conditions of appointment. It should be noted, however, that this provision does not compel the Minister to make a recommendation to the Governor in Council.

New section 32B provides that the director is an employee of the Trust and not of the State. This section also states that, subject to the conditions of the director's appointment, the Trust may enter into a contract of employment with the director. The effect of this section is to clarify that the employment relationship remains between the director and the Trust, and to put it beyond doubt that, even though the appointment is made by the Governor in Council, this does not prevent the employer (the Trust) and the employee (the person appointed as director) from entering into a formal contract of employment, as is currently the case.

Insertion of new pt 8, div 1 hdg

Clause 21 inserts a new heading before section 67 to create Division 1 – Transitional provisions for *Arts Legislation Amendment Act 2003*.

Amendment of s 67 (Definition for pt 8)

Clause 22 makes consequential amendments to section 67 as a result of the creation of division 1.

Insertion of new pt 8, div 2

Clause 23 inserts a new Division 2 in Part 8 of the Act, which contains the transitional provisions applying to the person who is currently appointed as

the director (the present director). New Part 8, division 2 contains the following provisions:

New section 69 sets out definitions for particular terms used in division 2.

New section 70 states the conditions upon which the present director continues to hold office as from the commencement of this section. The present director was appointed under section 32(1) of the current Act.

Subsection 70(1) makes it clear that the present director continues to hold office on the conditions applying under the pre-amended Act, immediately before the commencement. These conditions (the *current conditions*) are the conditions that were decided by the Trust under section 32(2) of the current Act.

However, subsection 70(2) stipulates that the present director's current appointment ends, and the director ceases holding the office on 3 March 2008. This is the end date of the present director's term of office under the current conditions, as decided by the Trust.

The intention is to allow the present director's current contract of employment to operate so that the director can complete the current term of office. If the present director is to remain in office after that time, then this must be treated as a re-appointment by the Governor in Council under section 32 of the Act, as amended by clause 20 above.

Subsection 70(3) provides that the present director may cease to hold office under the current conditions, at an earlier time than the time stated in subsection 70(2). This could occur if, for instance, the present director decided to resign prior to the time when the appointment would have otherwise ended under subsection 70(2).

Subsection 70(4) provides that if the present director ceases to hold office under subsection (3), the director's current appointment also ends at this time.

New section 71 provides that the current conditions may be amended by the Trust, with the approval of the Governor in Council. However, the Trust can not amend the current conditions in a way that would interfere with the operation of subsection 70(2), which stipulates when the current appointment ends.

New section 72 provides that compensation may not be claimed by, and is not payable to, the present director because of the operation of section 70(2). Section 70(2) will not operate to prevent the present director from being re-appointed. Its effect is merely a change to the process of

appointment and it is not considered that the present director will be disadvantaged by this procedural change. For this reason, it is not considered that the present director would be entitled to any compensation because of the operation of the transitional arrangements expressed in section 70(2).

Part 7 Amendment of Queensland Theatre Company Act 1970

Act amended in pt 7

Clause 24 provides that part 7 amends the *Queensland Theatre Company Act 1970*.

Amendment of s 2 (Definitions)

Clause 25 amends section 2 to include new definitions for terms used in new Part 8, division 2 (discussed in clause 29 below).

Replacement of s 31 (Director)

Clause 26 replaces section 31 with new sections 31, 31A and 31B as follows:

New section 31 states that there is to be a director of the theatre company, who is to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment. The term of appointment must not exceed 5 years. It should be noted that the only change to the current process, as a result of this new section, is to require that the Governor in Council must decide the term and the conditions of appointment. Previously, this was decided by the Queensland Theatre Company (the Theatre Company). This new section is not intended to interfere with consideration of the specialist expertise and experience required for appointment to this office.

It will no longer be possible to appoint a person to the position of director for terms greater than 5 years. However, this does not prevent a person from being re-appointed as director, after the expiry of their term of office as stated in the instrument of appointment. The re-appointment must be treated as a fresh appointment for a new term, and be made by the

Governor in Council under section 31. This will ensure a consistency of approach in relation to the appointment processes for chief executive officers under this portfolio.

New section 31A provides that the Minister must not recommend to the Governor in Council the appointment of a person as the director (including the terms and conditions of the appointment), unless the recommendation has been approved by the Theatre Company. This makes it clear that the Theatre Company, as the director's employer, continues to be responsible for negotiating and settling the proposed terms and conditions of appointment. It should be noted, however, that this provision does not compel the Minister to make a recommendation to the Governor in Council.

New section 31B provides that the director is an employee of the Theatre Company and not of the State. This section also states that, subject to the conditions of the director's appointment, the Theatre Company may enter into a contract of employment with the director. The effect of this section is to clarify that the employment relationship remains between the director and the Theatre Company, and to put it beyond doubt that, even though the appointment is made by the Governor in Council, this does not prevent the employer (the Theatre Company) and the employee (the person appointed as director) from entering into a formal contract of employment, as is currently the case.

Insertion of new pt 8, div 1 hdg

Clause 27 inserts a new heading before section 68 to create Division 1 – Transitional provisions for *Arts Legislation Amendment Act 2003*.

Amendment of s 68 (Definition for pt 8)

Clause 28 makes consequential amendments to section 68 as a result of the creation of division 1.

Insertion of new pt 8, div 2

Clause 29 inserts a new division 2 in Part 8 of the Act, which contains the transitional provisions applying to the person who is currently appointed as the director (the present director). New Part 8, division 2 contains the following provisions:

New section 71 sets out definitions for particular terms used in division 2.

New section 72 states the conditions upon which the present director continues to hold office as from the commencement of this section. The present director was appointed under section 31(1) of the current Act.

New section 72(1) makes it clear that the present director continues to hold office on the conditions applying under the pre-amended Act, immediately before the commencement. These conditions (the *current conditions*) are the conditions that were decided by the Theatre Company under section 31(2) of the current Act.

However, subsection 72(2) stipulates that the present director's current appointment ends, and the director ceases holding the office, on 20 August 2010. This is the end date of the present director's term of office under the current conditions, as decided by the Theatre Company.

The intention is to allow the present director's current contract of employment to operate so that the director can complete the current term of office. If the present director is to remain in office after that time, then this must be treated as a re-appointment by the Governor in Council under section 31 of the Act, as amended by clause 26 above.

Subsection 72(3) provides that the present director may cease to hold office under the current conditions, at an earlier time than the time stated in subsection 72(2). This could occur if, for instance, the present director decided to resign prior to the time when the appointment would have otherwise ended under subsection 72(2).

Subsection 72(4) provides that if the present director ceases to hold office under subsection (3), the director's current appointment also ends at this time.

New section 73 provides that the current conditions may be amended by the Theatre Company, with the approval of the Governor in Council. However, the Theatre Company can not amend the current conditions in a way that would interfere with the operation of subsection 72(2), which stipulates when the current appointment ends.

New section 74 provides that compensation may not be claimed by, and is not payable to, the present director because of the operation of section 72(2). Section 72(2) will not operate to prevent the present director from being re-appointed. Its effect is merely a change to the process of appointment and it is not considered that the present director will be disadvantaged by this procedural change. For this reason, it is not considered that the present director would be entitled to any compensation

because of the operation of the transitional arrangements expressed in section 72(2).

Part 8 Amendment of Other Acts

Acts amended in schedule

Clause 30 provides that the schedule amends the Acts mentioned in it. These amendments are consequential to the amendment of the VETE Act under Part 2 of the Bill and give recognition to statutory TAFE institutes.