

Queensland Training Assets Management Authority Bill 2014

Explanatory Notes

Short Title

The short title of the Bill is the *Queensland Training Assets Management Authority Bill 2014*.

Policy objectives and the reasons for them

The objective of the Bill is to establish an independent statutory body, the Queensland Training Assets Management Authority (QTAMA), to provide for the efficient and effective management of State-owned training assets, primarily for the provision of vocational education and training (VET), in accordance with sound commercial principles.

Queensland's VET sector has been subject to a number of reviews over the past decade including the consolidation of Technical and Further Education (TAFE) institutes from 32 to the current structure of 13 TAFE institutes. Consistent themes of previous reviews of TAFE have highlighted the need for strategies to improve the efficiency of Queensland Government VET investment. In October 2005, the Efficiency and Effectiveness Review of the TAFE sector by the Boston Consulting Group considered the separation of asset ownership from service provision would enable the TAFE institutes to reduce their operating expenses through lower rents, achieved either by exiting non-required but commercially saleable buildings or by subleasing underutilised building to third parties. This would create the necessary financial incentives for more effective asset utilisation.

The Queensland Skills Plan was released in 2006 which saw a significant investment in trade training facilities across Queensland. The comprehensive capital works program refurbished existing buildings, constructed new facilities, acquired land for future development and implemented a property disposal program. In 2010 the Queensland Post-secondary Education and Training Review was undertaken and identified the need for significant reform and flexible asset management arrangements for the TAFE institutes.

In 2012, the Queensland Government commissioned a Skills and Training Taskforce (the Taskforce) which identified impediments to the competitiveness of the current VET system including the high cost of the public provision of training delivered by the existing network of TAFE institutes. The VET sector has been traditionally characterised by high levels of public funding. However, the sector has become increasingly competitive and public providers of training need to reform and innovate if they are to successfully compete in the modern VET market.

The Taskforce delivered its final report to the Minister for Education, Training and Employment on 5 November 2012. The report included a number of recommendations in relation to the reform of the public provision of training in Queensland, which included significant changes to asset management. The Taskforce recommended that a strategic asset management plan be immediately set in train under a central point of Government to address issues such as value-added solutions in the management of existing assets, examination of leased and/or shared facilities, increasing and optimising utilisation rates and accompanying incentives and capital charges. The Taskforce recommended a range of strategies for the ownership, management and maintenance of the future stock of public training assets including consideration of a separate public or private entity with specialist skills and expertise in infrastructure management being charged with the efficient management of the assets.

The proposed central coordination approach recommended by the Taskforce reflected the fact that because the assets belong to the State, TAFE institutes would not be able to afford or recruit asset management specialists of the calibre required. The Taskforce also considered that there was a lack of consistent overall vision and framework for state-wide training asset management. The Government supported the recommendations and committed to finalising a strategic asset management plan for training infrastructure before the end of 2013.

In 2012 the Queensland Government established the Independent Commission of Audit (the Commission) to review the State's financial position and to make recommendations on strengthening the Queensland economy, improving the State's financial position and ensuring value for money in the delivery of frontline services.

The Commission's final report was tabled in the Queensland Parliament by the Treasurer and Minister for Trade on 30 April 2013. The Commission recommended that training asset ownership should be separated from TAFE Queensland and transferred to a specialist commercial entity with skills and expertise in owning and managing such assets. This would have the benefit of rationalising the asset base and facilitating third party access to these assets, thereby improving asset utilisation. Under this model, TAFE Queensland would need to reassess its need to use assets, as it would pay commercial rents or leasing charges to the owner for use of required assets.

Achievement of policy objectives

The Bill provides for the establishment of QTAMA as a statutory body with an experienced board. A statutory body was chosen as the most appropriate vehicle for QTAMA because it is an independent body under the government umbrella that can be directed by an experienced commercial board, while having strong governance controls. Legislation is the only way to create such a statutory body.

The Bill achieves the policy objectives by establishing the Queensland Training Assets Management Authority to:

- be the specialist owner and manager of the State's training assets;
- enhance competition by providing access to public training facilities on a commercial basis for all registered training organisations (RTOs) in Queensland, thereby removing a significant barrier to market entry;
- address any public perception that TAFE Queensland has an effective monopoly within the Queensland VET system through exclusive access to public infrastructure; and
- improve utilisation rates by managing the public infrastructure on a commercial basis, including implementing disposal processes for obsolete or underutilised assets.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than legislation which establishes a statutory body.

Estimated costs for government implementation

The costs for establishing QTAMA will be met from existing resources.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Part 4 of the Bill provides for numerous matters to be dealt with by way of a regulation, including the transfer of assets, liabilities and employees. This proposal may be considered to have insufficient regard to rights and liberties of individuals and the institution of Parliament.

The proposal to deal with these matters by a regulation can be justified on the basis that the exact details of what is to be transferred will not be known until QTAMA has commenced or is about to commence its operations. Therefore, transfer by a regulation is considered to be the most efficient and effective way of ensuring that QTAMA can meet its objectives. Additionally, any transfer of employees will preserve employees' existing entitlements.

Clause 46 of the Bill requires QTAMA to notify the Minister for Housing and Public Works prior to entering into a transaction to sell or purchase property exceeding a threshold amount. The proposal to prescribe by regulation the threshold amount for each of these activities, rather than specify it in the Bill, may be considered to have insufficient regard to the institution of Parliament by enabling the threshold to be adjusted by regulation. The provision is justifiable on the basis that flexibility is required to enable adjustments of the threshold. This is consistent with the approach taken in Chapter 6A of the *Vocational Education, Training and Employment Act 2000* when statutory TAFE institutes were established in 2007.

Clause 68 of the Bill allows QTAMA to delegate its functions to a defined range of appropriately qualified persons or to an appropriately qualified entity. Clause 69 allows the chief executive officer (CEO) of QTAMA similarly to delegate functions, including a function already delegated to the CEO by QTAMA, to an appropriately qualified person or entity. Under the *Legislative Standards Act 1992*, section 4(3)(c), legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. The delegations and sub-delegation powers are justified on the basis that they will allow QTAMA to perform its functions with administrative efficiency and, in all cases, the delegations can only be made to appropriately qualified persons. The delegator will still remain responsible for all delegated decisions.

Clauses 74 to 76 of the Bill provide for criminal history screening of members proposed to be appointed to QTAMA's board as well as the CEO and staff members. 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, the CEO or a staff member. The criminal history screening provision for board members can be justified on the basis that board members will have responsibility for the oversight of a publicly funded entity engaging in significant commercial activities. The criminal history check therefore acts as an integrity check for proposed members. In relation to the CEO and staff members, the criminal history check power is consistent with powers of chief executives under the *Public Service Act 2008* to ensure the suitability of persons to perform duties in a department. As QTAMA is not a department it is necessary to provide for a criminal history check for staff members. The Bill includes safeguards about the use of the criminal history check, such as requiring the consent of a person before conducting the check and ensuring that the criminal history report is destroyed once it is no longer required.

The Bill disqualifies a person who has a conviction for an indictable offence which has not been spent from becoming, or continuing as, a member of QTAMA's Board or the CEO. The definition of criminal history permits the requesting authority under the Act to request details of all offences, not just indictable offences. It would then be necessary to review the criminal history to determine which offences meet the criteria of being an indictable offence. It is not considered reasonable to require the Queensland Police Service to determine which offences meet the criteria of the legislation. To do so would place unreasonable administrative demands on the Queensland Police Service.

Consultation

The Queensland Skills and Training Taskforce conducted a comprehensive public consultation process from July 2012 to October 2012 to inform its advice to the Minister for Education, Training and Employment on reform of the VET system. The Taskforce Chair wrote to 21 peak body organisations inviting a submission against the terms of reference. Targeted face-to-face consultations also took place. One of the topics considered was the need to make better use of public training infrastructure.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and it is not uniform with or complimentary to any legislation of the Commonwealth or another State.

Notes on provisions

Part 1 - Preliminary

Clause 1 provides that the short title of the Act is the *Queensland Training Assets Management Authority Act 2014*.

Clause 2 provides that the Act commences on a day to be fixed by proclamation.

Clause 3 sets out the main purpose of the Act and how the purpose is to be achieved.

Clause 4 provides that the dictionary in Schedule 1 defines particular words used in the Act.

Part 2 - Queensland Training Assets Management Authority

Clause 5 provides that QTAMA is established and is a body corporate, has a common seal and may sue and be sued in its corporate name.

Clause 6 provides that QTAMA represents the State and has the status, privileges and immunities of the State.

Clause 7 provides for the application to QTAMA of the *Financial Accountability Act 2009*, *Statutory Bodies Financial Arrangements Act 1982* and the *Crime and Misconduct Act 2001*.

Clause 8 sets out QTAMA's functions.

Clause 9 provides that the key objective of QTAMA is to effectively and efficiently manage training assets, primarily for the provision of vocational education and training, in accordance with sound commercial principles.

Clause 10 provides that QTAMA has all the powers of an individual, including the powers given to it under the Act or another Act.

Clause 11 provides for QTAMA to perform its functions inside and outside Queensland, including outside Australia.

Clause 12 establishes the QTAMA Board as the governing body of QTAMA.

Clause 13 provides for the functions of the Board.

Clause 14 provides that the Board consists of at least four, but not more than seven, members appointed by the Governor in Council. In appointing a person as a member, the Governor in Council must have regard to the person's ability to make a contribution to the effective and efficient performance of QTAMA's functions. Members appointed to the Board are appointed under this Act and not the *Public Service Act 2008*.

Clause 15 provides for the conditions of appointment of the members of the QTAMA Board.

Clause 16 provides for the term of appointment of members and provides for an extension of a member's term of appointment by the Minister.

Clause 17 provides for the appointment of a chairperson of the Board.

Clause 18 provides for the appointment of a deputy chairperson of the Board.

Clause 19 provides for the disqualification of persons from becoming or continuing as a member of the Board.

Sub-section 1 provides that a person cannot become, or continue as, a member of the Board if the person:

- (a) has a conviction for an indictable offence and the conviction is not a spent conviction;
- (b) is an insolvent under administration; or
- (c) is not able to manage a corporation because of the *Corporations Act Part 2D.6*;
- (d) is a staff member or contractor of QTAMA;
- (e) is a member of the Legislative Assembly; or
- (f) is a councillor of a local government.

Sub-section 2 provides that a person cannot become, or continue as a member of the Board if the person does not consent to the Minister requesting a report about the person's criminal history under section 74.

Clause 20 provides for the vacation of office of a member of the Board.

Clause 21 provides for the Minister to approve a leave of absence for a member of the Board and for the Minister to appoint someone else to act in the member's position while the member is absent on leave.

Clause 22 provides that, subject to subdivision 4, the Board conducts its business, including its meetings, in the way it considers appropriate.

Clause 23 provides that the chairperson may, and if requested by at least three members must, convene a meeting of the Board. At a meeting of the Board three members constitute a quorum. The Board must keep minutes of its meetings.

Clause 24 provides for the disclosure of interests by Board members and the management of those disclosures by the Board.

Clause 25 provides for the appointment of the chief executive officer by the QTAMA Board with the Minister's prior written approval. The chief executive officer is employed under this Act and not under *Public Service Act 2008*.

Clause 26 provides for the conditions of appointment of the chief executive officer.

Clause 27 provides for the term of appointment of the chief executive officer, including that the chief executive officer is appointed for a term of not more than three years as stated in the instrument of appointment.

Clause 28 provides that a person is disqualified from becoming, or continuing as, the chief executive officer if the person:

- (a) has a conviction for an indictable offence and the conviction is not a spent conviction;
- (b) is an insolvent under administration; or
- (c) is not able to manage a corporation because of the *Corporations Act*, Part 2D.6; or
- (d) is a member or contractor of QTAMA.

Additionally, a person cannot become the chief executive officer if that person does not consent to QTAMA requesting a report about the person's criminal history under section 74.

Clause 29 provides for the resignation of the chief executive officer.

Clause 30 provides for the appointment of an acting chief executive officer.

Clause 31 provides for the responsibilities of the chief executive officer.

Clause 32 provides for the disclosure and management of conflicts of interest by the chief executive officer.

Clause 33 provides for QTAMA to employ other staff it considers appropriate to perform its functions. The other staff are appointed under this Act and not the *Public Service Act 2008*.

Clause 34 allows the chief executive officer to enter into work performance arrangements under which an employee of QTAMA performs work for a government department or another entity or a person employed by or within a department or another entity performs work for QTAMA.

Clause 35 allows the chief executive officer to enter into interchange arrangements under which an employee of QTAMA performs functions in

another entity or a person employed by or within another entity, such as a government department, performs functions in QTAMA.

Clause 36 provides for the preservation of rights of a public service employee who is subsequently appointed to QTAMA.

Clause 37 provides for the preservation of rights of a QTAMA employee who is subsequently appointed as a public service employee.

Part 3 – Planning and Accountability

Clause 38 requires QTAMA to prepare and implement an asset management plan. The clause also sets out what the asset management plan must include.

Clause 39 sets out the process for preparing the draft asset management plan, including that QTAMA and the Minister must endeavour to reach agreement on the draft plan at least one month before the start of a financial year.

Clause 40 provides that a draft asset management plan has effect when it is agreed to by the Minister.

Clause 41 provides for a draft asset management plan, including any changes directed by the Minister, to be taken to be QTAMA's asset management plan if the draft plan has not been agreed to by the Minister by the start of the financial year to which it relates.

Clause 42 provides for amendment to the asset management plan.

Clause 43 provides that the asset management plan is in addition to other plans or systems which QTAMA is required or permitted to keep under an Act.

Clause 44 provides the Minister with the power to request information or the production of documents by QTAMA about the performance of its functions under this Act.

Clause 45 provides the Minister with the power to give a direction to QTAMA if satisfied that the direction is necessary in the public interest.

Clause 46 requires QTAMA to give the Minister notice of all proposed significant actions. After receiving such a notice, the Minister must consult with the Treasurer and the Minister administering the *Further Education and Training Act 2014* about the proposed significant action. QTAMA must not take the significant action until agreed to by the Minister

Clause 47 provides for the payment of returns by QTAMA to the State.

Clause 48 provides for the payment of interim returns by QTAMA to the State.

Part 4 – Transfer of particular State-owned training assets to QTAMA

Clause 49 determines the term “relevant entity” for a transfer regulation under section 50.

Clause 50 provides for the transfer of assets, liabilities, other matters and employees from one relevant entity to another relevant entity.

Clause 51 requires that a registering authority is to register or record a transfer or other dealing.

Clause 52 provides for rights of transferred employees not to be prejudiced when they are transferred from one relevant entity to another relevant entity.

Clause 53 provides that a thing may be done under Part 4 of the Act despite any other law or instrument.

Clause 54 provides that a thing done under Part 4 does not affect other legal relationships.

Part 5 – Control of traffic on training assets land

Clause 55 provides for definitions for Part 5.

Clause 56 provides that the chief executive officer may, by instrument in writing, appoint a person as an authorised person if the chief executive officer is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

Clause 57 provides for appointment conditions and limit of powers of authorised persons.

Clause 58 provides for the ending of the office of a person as an authorised person.

Clause 59 provides for the resignation of an authorised person.

Clause 60 provides that the chief executive officer must issue an identity card to each authorised person.

Clause 61(1) requires the production or display of an identity card by an authorised person when exercising a power in relation to a person in the person's presence.

Clause 61(2) provides that, if it is not practicable to comply with subsection (1), the identity card must be produced for inspection at the first reasonable opportunity.

Clause 62 provides for the return of identity cards to the chief executive officer.

Clause 63 provides authorised persons may control traffic on training assets land.

Clause 64 provides that the chief executive officer may erect near any vehicular entrance to training assets land a regulatory notice regulating the driving, parking or standing of vehicles on the land.

Clause 65 provides for the removal and the taking of other action with respect to illegally parked or abandoned vehicles.

Clause 66 provides for the disposal of unclaimed vehicles.

Clause 67 provides for the application of the proceeds of sale of unclaimed vehicles.

Part 6 – Miscellaneous provisions

Clause 68 provides for QTAMA to delegate its functions to an appropriately qualified member of the Board, an appropriately qualified staff member or an appropriately qualified person performing work for QTAMA.

Clause 69 provides for the chief executive officer to delegate functions to an appropriately qualified staff member or an appropriately qualified person performing work for QTAMA. However the chief executive officer cannot sub-delegate functions which have been delegated to the chief executive officer if the delegation provides it cannot be sub-delegated.

Clause 70 provides that proceedings for offences against the Act are to be taken in a summary way under the *Justices Act 1886*.

Clause 71 sets out the limitation of time for starting proceedings for offences against the Act.

Clause 72 provides that a certificate purporting to be signed by QTAMA stating any of the following matters is evidence of the matter:

- (a) on a stated day or during a stated period a stated person was an authorised person;
- (b) on a stated day, a stated person was given a direction under Part 5 of the Act.

Clause 73 provides that the annual report of QTAMA under the *Financial Accountability Act 2009* must include copies of all directions given to QTAMA in the financial year to which the report relates.

Clause 74 provides for the requesting of a person's criminal history report from the Commissioner for the Police Service in relation to a person who has been considered for appointment as either a member or a staff member.

Clause 75 provides for the disclosure of changes to the criminal history of a Board member or a staff member. The provision requires that if there is a change to the criminal history of a person they must, unless they have a reasonable excuse, immediately disclose the change to the requesting authority.

Clause 76 provides that the criminal history of a person is a confidential document.

Clause 77 provides that the Minister gives a notice or direction to QTAMA by giving it to the chairperson and a notice to be given by QTAMA is to be signed by the chairperson.

Clause 78 provides for the Governor in Council to make regulations under this Act.

Part 7 – Transitional provisions

Clause 79 provides for the appointment of QTAMA's first chief executive officer by the Minister. Subsequent appointments of the chief executive officer will be made by the Board under section 25 with the Minister's prior written approval.

Clause 80 provides that QTAMA's first draft asset management plan must be submitted within four months of the commencement of this section.

Schedule 1 – Dictionary

Schedule 1 defines the terms used in the Act.