

QUEENSLAND UNIVERSITY OF TECHNOLOGY AMENDMENT Bill 2021

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing make this statement of compatibility with respect to the Queensland University of Technology Amendment Bill 2021 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act, and I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Queensland University of Technology (QUT) is an independent statutory body established under the *Queensland University of Technology Act 1998* (QUT Act), and the Queensland University of Technology Council (Council) is established as its governing body responsible for ensuring QUT's proper and effective management and operation (Part 2, Division 2 of the QUT Act).

The QUT Act (section 9) confers powers on the Council to:

- do anything necessary or convenient to be done for, or in connection with, its functions;
- appoint QUT's staff;
- manage and control QUT's affairs and property; and
- manage and control QUT's finances.

The Council is comprised of the following categories of members:

- *official members* are members of the Council due to their position at QUT. The Council's official members are QUT's chancellor, vice-chancellor, and chairperson of the academic committee;
- *appointed members* are appointed by the Governor in Council (GiC) for a term of not more than four years;
- *elected members* are elected pursuant to the QUT Act. Persons are eligible for election to the Council if they are members of QUT's academic or professional staff, or if they are QUT students or QUT Alumni. Academic staff, professional staff, and QUT Alumni elected to the Council hold office for four years. Students elected to the Council hold office for two years; and
- *additional members* are appointed by the Council for a term of not more than four years and must not be a QUT student or a member of QUT's academic or professional staff.

The Bill amends the QUT Act to streamline QUT's governance by reducing the size of the Council from 22 to 15 members. The Bill makes no changes to the numbers of elected student members (two) or official members (three) but provides for changed numbers in other member categories as follows:

- three GiC appointed members (reduced from eight);
- five elected members (reduced from nine) including:
 - two members of the academic staff of QUT (reduced from three);
 - one member of the professional staff of QUT (reduced from two);
 - no elected QUT alumni members (reduced from two); and
- four additional members (increased from two).

The Bill also introduces requirements to assist with the balance of representation on the Council:

- that at least two additional members are alumni of QUT; and
- of the two elected student members, one is to be an undergraduate student and one a postgraduate student.

The amendments to the QUT Act to change the composition of the Council will allow for a more flexible and streamlined governance model that will have an appropriate mix of skills and experience for effective governance.

As a result of reducing the size of the Council membership, the Bill makes minor and consequential amendments on matters relating to the proper constitution of the Council, removal of a member from the Council, and minor editorial amendments consistent with drafting best practice.

The Bill also includes transitional arrangements to enable an ordered and timely transition from the current to the proposed new Council membership, with as few additional processes and as little disruption to the Council as possible.

These arrangements include provisions for reducing appointed and elected members, increasing additional members, and changing the requirement in the elected students and additional member categories.

To facilitate the reduction in appointed members, the Bill provides that the Minister may notify the appointed member of the appointed member's removal from office by written notice. When making the decision to remove the member, the Minister is to have regard to the desirability of appointed members having a range of knowledge, experience or skills relevant to the functions of the Council.

To facilitate the reduction in the number of elected members (academic and professional staff), the Bill provides that the member who received the least number of votes in the same Council election will cease to be a member. In the event of a tie, the candidate to fill the position is determined by lot drawn by an appropriately qualified member of the university's staff (who is to be nominated in writing by the Council to draw the lot).

To facilitate the change in student elected members (that is, the two members who comprise of one person from an undergraduate student category and one person from a postgraduate student category), the Bill provides that this requirement will commence at the end of the respective term of office of the two student members who were elected immediately before commencement of the Bill. That is, each elected student member of the Council immediately before commencement of the Bill are to continue for the remainder of the member's respective term of office, as if the Bill had not commenced. The provisions relating to filling a casual vacancy for elected student members also continue to apply for the respective term of office (regardless of the undergraduate or postgraduate category of the student members).

To facilitate the removal of the two QUT Alumni members elected immediately before the commencement of the Bill, the Bill provides that they will cease to be elected members.

The terms of office of those members who will remain as Council members will continue to run as per their current appointment.

In considering whether to protect any accrued rights of those members whose terms will cease, it is noted that Council members external to QUT were not remunerated from 2017¹, 2018² and 2019³. In 2020⁴, with the exception of the Chancellor, external members of the Council were also not remunerated. Also, it is unlikely persons appointed by GiC to statutory bodies or boards have a right to expect to remain in office or be entitled to compensation for early termination, should their term be ceased by legislative changes. To remove doubt, a transitional provision provides that no compensation is payable to a person whose term of office ends as a result of reducing the composition of the Council from 22 to 15 (Clause 12, section 81).

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human right under the HR Act that is relevant to the Bill is the *right to taking part in public life* under section 23 of the Act.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Right to taking part in public life (section 23 of the HR Act)

The parts of the Bill that are relevant to this right include:

- Clause 3 amends section 14 (Appointed members);
- Clause 4 amends section 15 (Elected members);
- Clause 5 amends section 16 (Additional members); and

¹ [QUT Annual Report 2017](#), page 10.

² [QUT Annual Report 2018](#), page 10.

³ [QUT Annual Report 2019](#), page 10.

⁴ [QUT Annual Report 2020](#), page 10.

- Clause 12 insertion of new Part 10 – Transitional provisions for *Queensland University of Technology Act 2021*.

(a) *the nature of the right*

The nature of the *right to taking part in public life* affirms the right of all persons, without discrimination, to participate in the conduct of public affairs, including the right to vote and be elected at periodic State and Local government elections. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. This also extends to being part of community consultations with government, attending local council meetings, participating in public debate, and taking part in referendums or other electoral processes which are all important aspects of taking part in public life.

The *right* has been interpreted by the United Nations Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office⁵.

The *right* provides that the criteria and processes for appointment, promotion, suspension and dismissal within the public service must be objective and reasonable, and non-discriminatory. In relation to this right, it is of particular importance to ensure that persons do not face discrimination in the exercise of their rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or status.

This *right* is limited to ‘eligible persons’. This internal limitation provides for the prescribing of matters such as eligibility for membership to a body.

Reducing the membership of the Council results in the term of appointment of certain appointed and elected members ceasing upon commencement of the Bill. It could be considered that this will affect the rights of those persons to participate in public governance/life.

(b) *the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom*

The purpose of the Bill is to provide for a more appropriately sized governance body that will facilitate good governance of QUT, given that smaller boards are more likely to be more active, collaborative and make decisions faster.

The Bill will do this by reducing the number of Council members from 22 to 15. When the new provisions commence, it will mean that the current Council membership is to be reduced so the size of the Council corresponds with the new legislative provisions. While this indirectly limits the right of those persons who cease to be members to take part in the Council as a result of a reduction in member numbers, the size of the new Council is consistent with the Universities Australia’s *Voluntary Code of Best Practice for the Governance of Australian Universities*

⁵ United Nations Human Rights Committee, General Comment No.25

(Voluntary Code), which provides that the governing body of a university should not exceed 22, and desirably be no more than 15 members⁶.

The Bill provides for transitional arrangements (Clause 12) to manage the reduction in the size of the Council in an ordered and timely way to ensure as little disruption to the Council as possible. The transitional provisions will ensure there is dignified, equal, fair, and seamless transition from the current to new Council membership when amendments commence, including provisions for reducing appointed and elected members, increasing additional members, and changing the requirement in the elected students and additional member categories.

All current categories of members will continue to be represented on the Council and able to contribute to the governance and decision making of the Council.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The changes in the number of appointed members (Clause 3), elected members (Clause 4), and additional members (Clause 5), in conjunction with changes in the requirement in the elected students and additional member categories (Clauses 4 and 5), has the effect of enabling the Bill to achieve its purpose to reduce the composition of the Council from 22 to 15 members. A consequence of a reduction in the size of the Council will mean that certain members will cease to be Council members.

The purpose of the amendments is aimed at increasing efficiency while still providing for an appropriate mix of skills and experience for effective governance. The reduction in size to 15 members is consistent with best practice as provided for under the Voluntary Code.

The proposed new QUT Council model is comparable with other Queensland public universities, particularly in relation to staff representation. For example, the Council will have two academic staff members, which is the same as four other universities' governing bodies (Griffith University, James Cook University, University of the Sunshine Coast and University of Queensland). The other two public universities provide only one academic staff member (Central Queensland University and University of Southern Queensland). In relation to professional staff membership, the Council will have one member, which is the same as all other Queensland public universities. No university has more than one professional staff member on its governing body.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Implementing QUT's new Council model can only be achieved through legislative amendment. This will result in certain members ceasing their respective membership of the Council during their term. Each category of elected or appointed membership is reduced, thus operating in a fair and equitable manner.

⁶ Voluntary Code of Best Practice for the Governance of Australian Universities, section 7, Universities Chancellor's Council, 15 May 2018.

Each existing category of member will remain represented on the Council and able to participate in the Council business and decision making.

(e) *the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

The reduction of Council membership from 22 to 15 is reasonable and demonstrably justified given under a proportionality analysis, the indirect limitation is spread across all four categories of membership, official (20%), appointed (20%), elected (33%) and additional (27%). There is no arbitrary or indiscriminate process to reduce the size of membership.

The new Council composition of 15 members provides an appropriate balance and number of members, ensuring that all necessary skills and expertise can be represented on the Council. No one group of membership will be unduly or indiscriminately affected.

The Bill changes the requirement in the elected student members' category (Clause 4), from any student, to consist of one undergraduate student and one postgraduate student. This is considered by the Council as pertinent having regard for the university's objectives in research, and consistent with governance arrangements for other Queensland universities (for example, sections 15(2)(d) and (e) of the *University of Queensland Act 1998*).

The Bill also changes the requirement in the additional members' category (Clause 5), removing the two QUT Alumni class from elected members, and providing that two of four additional members must be alumni of the university. The practical effect is a change from an open Council election (elected members) to a closed process of appointment by the Council (additional member).

The changes imposed by the Bill on requirements of members (Clauses 4 and 5) is consistent with the scope and nature of the *right to taking part in public life* which provides for an internal limitation on 'eligible persons'. In the case of filling of additional member appointments, the prevailing criteria for recommendation by the Council is to fill any perceived gap in its expertise and skill base, or to meet the requirements of the Voluntary Code, which specifies the need for financial and commercial expertise.⁷

In addition, only a small percentage of Council members will cease to be members. It is also unlikely that persons appointed to statutory bodies have a right to expect to remain in office or be entitled to compensation for early termination, should their term be ceased by legislation changes.

In relation to appointed members, the Minister may, when deciding which appointed member is to cease being a member, have regard to the desirability of appointed members having a range of knowledge, experience or skills relevant to the functions of the Council.

On this basis it is considered the impact on the human right is negligible. The purpose or reason for the amendments therefore outweigh the limitation on the right, and the limitation can be demonstrably justified in accordance with section 13 of the HR Act.

⁷ QUT Council Procedure 6 – Procedures for nomination of prospective Council members, section 4.

(f) *any other relevant factors*

Nil.

Conclusion

In my opinion, the Queensland University of Technology Amendment Bill 2021 is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

GRACE GRACE MP
MINISTER FOR EDUCATION
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR RACING

© The State of Queensland 2021