



Agricultural College Amendment Bill 2013

Report No. 34
**Agriculture, Resources and Environment
Committee**
February 2014

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Acknowledgements

The committee thanks the officers who briefed the committee on the Bill.

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Abbreviations and definitions

AACC	Australian Agricultural College Corporation
ACA	<i>Agricultural College Act 2005</i>
DAFF	Department of Agriculture, Fisheries and Forestry
PACE	Pathways to Agricultural Careers and Education
PEO	Principal Executive Officer
QATC	Queensland Agricultural Training Colleges
SLC	Scrutiny of Legislation Committee
VET	Vocational education and training

Chair's foreword

This report presents the findings from the committee's inquiry into the Agricultural College Amendment Bill 2013 which was introduced on 19 November 2013 by Hon John McVeigh MP, Minister for Agriculture, Forestry and Fisheries.

This Bill reflects the changing face of vocational education in the 21st century. Previous reforms to agricultural colleges in Queensland have not achieved their desired results, and it has been difficult for colleges to keep pace with evolving contemporary educational systems.

With increasing numbers of students completing certificate level qualifications whilst still at high school, there is a greater need for agricultural colleges to ensure they maintain relevance to industry and prospective students. If they do not, they will continue to struggle to remain viable in the current educational environment.

I commend the report to the House.



Ian Rickuss MP
Chair

February 2014

Recommendations

Recommendation 1

9

The committee recommends that the Agricultural College Amendment Bill 2013 be passed.

Recommendation 2

9

The committee recommends that the Minister for Agriculture, Fisheries and Forestry or his delegate ensure that Queensland Agricultural Training Colleges continues to meet key performance indicators that will be relevant to the quarterly reviews required by the legislation.

1. Introduction

Role of the committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by a resolution of the Legislative Assembly on 18 May 2012. The committee's primary areas of responsibility are agriculture, fisheries and forestry, environment and heritage protection, and natural resources and mines.¹

In its work on Bills referred to it by the Legislative Assembly, the committee is responsible for considering the policy to be given effect and the application of fundamental legislative principles.²

In relation to the policy aspects of Bills, the committee considers the policy intent, approaches taken by departments to consulting with stakeholders and the effectiveness of the consultation. The committee may also examine how departments propose to implement provisions in Bills that are enacted.

Fundamental legislative principles are defined in Section 4 of the [Legislative Standards Act 1992](#) as the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The referral

On 19 November 2013, Hon John McVeigh MP, Minister for Agriculture, Fisheries and Forestry, introduced the Agricultural College Amendment Bill 2013. The Legislative Assembly referred the Bill to the Agriculture, Resources and Environment Committee for examination. The committee was given until 3 February 2014 to table its report to the House, in accordance with SO 136(1).

The committee's processes

In its examination of the Bill, the committee:

- identified and consulted with likely stakeholders on the Bill
- sought advice from the Department of Agriculture, Fisheries and Forestry (DAFF) on the policy drivers for each amendment proposed, a summary of consultation undertaken, and details of the outcomes of that consultation
- invited public submissions on the Bill, however no submissions were received by the committee
- sought expert advice on possible fundamental legislative principle issues with the Bill and advice from DAFF on the issues raised, and
- convened a public briefing with departmental officers on 5 December 2013.

The briefing officers who assisted the committee are listed at **Appendix A**.

¹ Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

² Section 93 of the *Parliament of Queensland Act 2001*.

2. Examination of the Agricultural College Amendment Bill 2013

Policy objectives

The Bill's Explanatory Notes state that the policy objectives of the Bill are to:

1. restructure the Australian Agricultural College Corporation (AACC) and rename the entity as Queensland Agricultural Training Colleges (QATC), and
2. provide for governance arrangements which have a greater regard for the agricultural training needs of industry and students.³

These objectives will be facilitated by the restructuring of the AACC as a statutory body with a decision making board, and by addressing the problems identified by Ernst & Young in their 2012 report on the AACC.

At the committee's public briefing the department commented further on the purpose of the Bill and the powers of the new statutory body.

The department advised:

The purpose of this bill is to restructure the AACC. The overarching purpose of this restructure is to facilitate local and industry input into its strategic and operational plans. It is also to be renamed the Queensland Agricultural Training Colleges, or the QATC. As mentioned before, the AACC is a corporation sole and it will be restructured to be a statutory body with a governing board. The functions of the QATC will be prescribed in the legislation. Essentially, it will be tasked with promoting and creating employment opportunities by providing high-quality vocational education and training that meets the agricultural industry needs.

The QATC will have the powers of a statutory entity including the ability to enter into contracts, deal with property, employ staff, engage consultants, fix charges and delegate its functions to a person or body within the QATC as specified in the legislation. It will also be a statutory body for the purposes of the Financial Accountability Act 2009 and the Statutory Bodies Financial Arrangements Act 1982.⁴

Background

The Australian Agricultural College Corporation (AACC) is a registered training organisation which has delivered rural training to Queenslanders since 1967. The AACC is owned by the Queensland Government and has approximately 200 employees who provide training at residential colleges in Emerald and Longreach and at six training centres in Ayr, Bundaberg, Dalby, Gatton, Mackay and Mareeba.⁵ The AACC's emphasis is on practical training. The AACC also provides training off-site.

The AACC provides a range of nationally accredited and non-accredited courses which include introductory courses for new students and higher level diploma courses for experienced workers seeking a career in the agricultural industry.

³ Explanatory Notes, Agricultural College Amendment Bill 2013, p. 1.

⁴ Cummins, M. 2013, *Draft public briefing transcript*, 5 December, p. 1.

⁵ Information about the Australian Agricultural College Corporation, its colleges and training centres and the courses offered is available at <http://www.aacc.edu.au>.

The AACC provides training in the following areas: ⁶

- Beef & Cattle
- Butchery
- Conservation and Land Management
- Equine
- Horticulture
- Poultry
- Residential Training & Pathways to Agricultural Careers and Education (PACE) Program
- Rural Operations
- Sheep & Wool
- Sugar, and
- Veterinary nursing

In recent times the AACC has struggled to attract students to its residential colleges. This has resulted in the closure of colleges at Burdekin and Dalby. At the committee's public briefing the committee chair discussed the challenges facing agricultural colleges within the education system with the Executive Director of the AACC, Mr Brent Kinnane:

CHAIR: *From my brief understanding of the ag colleges, it seems that there has been a change. Once upon a time a lot of farm kids at 15 would go to the ag colleges.*

Mr Kinnane: *Yes.*

CHAIR: *And virtually do their senior at the colleges. It would not be classed as senior, but it would be their years 11 and 12 at the college. Now all children are staying in school until they are 17 or 18 and are doing a cert I and cert II in welding or whatever.*

Mr Kinnane: *Yes, a cert II in agriculture and rural operations.*

CHAIR: *That is right. That has taken away some of the need for the colleges, hasn't it? You are virtually chasing the same market, aren't you?*

Mr Kinnane: *Yes. There is a definite need for us to get those students out of grade 10. So we offer a product that enables that to occur, but there is also a strong market at the cert III and above levels for the people who have finished year 12. The current rules around the VET in schools policy at the department of education only has agricultural training up to a cert II level. The cert III and beyond level will be an open market for us to compete in, not with schools.⁷*

Committee comment:

The committee believes that agricultural colleges should play an important role in providing education and training for new and established persons in the agricultural sector, which the Government has identified as one of the four pillars of the Queensland economy.

⁶ Australian Agricultural College Corporation, *Careers and Courses*, <http://www.aacc.edu.au/colleges-training-centres/> accessed 18.12.13.

⁷ Rickuss, I. & Kinnane, B. 2013, *Draft public briefing transcript*, 5 December, p. 3. 'VET' – Vocational education and training.

Report by Ernst & Young

In 2012 the Australian Agricultural College Corporation (AACC) commissioned an independent review of Queensland's agricultural colleges by professional services firm Ernst & Young. Minister McVeigh tabled a summary of Ernst & Young's findings on 22 August 2012 in the Queensland Parliament.⁸ The review found that the AACC had not operated profitably since 2005 and highlighted inadequacies with the standard of reporting, record-keeping and audit of compliance with workplace health and safety requirements.

In their report, Ernst & Young advised that the AACC was not sustainable in its current form and that the options were to either close the business or undertake a major restructure. While the business was not sustainable it was noted that some parts of the AACC's operations, such as industrial training, could be run in a commercially viable way if restructure occurred.⁹

Ernst & Young commented:

*In its current form, AACC is not viable. In the absence of either the sale of long term assets (and AACC being able to retain the funds) or an injection of debt, AACC will fail. Even if funds are injected, it will not fix the underlying issues affecting the viability of AACC. In the absence of material changes it will only delay the failure.*¹⁰

Ernst & Young also found:

- The AACC had a forecast deficit of \$5.5 million for the financial year ending 30 June 2013
- The options identified by the management to return the AACC to viability would be costly to implement and sufficient funds were not held by the AACC to implement these options
- Sixty-six per cent of funding to the AACC was used to meet overhead costs which was not viable for such a large organisation
- Residential training occurring on campuses and at the AACC's production farms is capital-intensive and this form of training has experienced a decline in student demand in recent years, and
- The Emerald and Longreach campuses did not comply with Workplace Health and Safety (WH&S) standards and significant upgrades were required.¹¹

At the committee's public briefing the department advised that the findings contained in the Ernst & Young report showed a need for urgent reform:

*Importantly, and of key relevance to this particular bill, Ernst & Young found that the AACC was not viable in its structure as established under the legislation. It was considered by Ernst & Young that a new management structure was required to address the governance issues that are now integral to the AACC's financial sustainability. It was also apparent from that report that the AACC's service delivery, particularly at the residential colleges, was not meeting the requirements of industry and students.*¹²

The Executive Director of the AACC also advised the committee that steps have been taken to address the deficiencies in reporting and record keeping identified by Ernst & Young in their report:

We now have practices in place where we are regularly looking at what our financial position is in that financial reports now come out every month in a timely manner. It is being

⁸ Ernst & Young, 2012, *Summary of Findings*, August, (available from the Parliament of Queensland Online Tabled Papers Database at: <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2012/5412T789.pdf>).

⁹ Ernst & Young, p. 7.

¹⁰ Ernst & Young, p. 2.

¹¹ Ernst & Young, pp. 2-4.

¹² Cummins, M. 2013, *Draft public briefing transcript*, 5 December, p. 1.

*focused on at a senior leadership team discussion. We are regularly talking about what the revenue forecasts are going to be and move allocations of funding around if we have shortfalls somewhere else to try to make sure we pick it up in other parts of the business.*¹³

Committee comment:

The committee acknowledges the challenges faced by agricultural colleges, and supports the need to restructure the colleges as viable and efficient entities in order to provide important education and training to the agricultural sector in support of rural communities.

The committee notes the damning report by Ernst & Young which found that the AACC is not sustainable in its current form. The committee commends the Minister for acting on the report by introducing measures in the Bill to restructure Queensland's agricultural colleges in order to make them more efficient, cost effective and an attractive educational option for prospective students.

Consultation

In September 2012, following Ernst & Young's report, the Minister for Agriculture, Fisheries and Forestry consulted with AgForce and other industry groups and representatives of the Emerald Agricultural College and the Longreach Pastoral College.

In November and December 2012 the Minister consulted further with Longreach and Emerald college representatives and members from each of these communities.

In May 2013 both the Longreach Pastoral College and the Emerald Agricultural College formed advisory committees. These committees were consulted during the development of the new governance structure for QATC and the development of the terms of reference for the new local college boards.¹⁴

The department told the committee that other key industry and community stakeholders were consulted by the Minister on an ongoing basis during the development of the proposed governance structures for the AACC.¹⁵

Significant provisions of the Bill

Queensland Agricultural Training Colleges

Clauses 4 and 5 of the Bill amend the *Agricultural College Act 2005* (ACA) to change the name of the Australian Agricultural College Corporation (AACC) to the Queensland Agricultural Training Colleges (QATC).

At the committee's public briefing the Executive Director of the AACC advised that rebranding all aspects of the agricultural colleges was designed to established a new corporate identity focusing on the each separate arm of the business:

We are taking the approach of a house of brands. So QATC is an overarching organisation with three brands that sit underneath. So we have invigorated the Longreach Pastoral College brand and the rural agricultural college brand. We are in the process now of finalising the industry training arm of the business—what brand that will be. That will be launched shortly to say, 'That's the industry training arm.' The links to AACC will not be there—the history of using AACC as an acronym or anything like that. The name currently under consideration is Rural Training Queensland—approved by the minister as Rural Training Queensland—to demonstrate that it is right across Queensland that we deliver

¹³ Kinnane, B. 2013, *Draft public briefing transcript*, 5 December, p. 8.

¹⁴ Department of Agriculture, Forestry and Fisheries, 2013, *Correspondence*, 29 November.

¹⁵ Department of Agriculture, Forestry and Fisheries, 2013, *Correspondence*, 29 November.

those services. So a house of brands and we will actively be promoting those in the right areas¹⁶.

Restructure of the AACC

Clause 8 of the Bill restructures the AACC from a sole corporation with an advisory board to a statutory body with a governing board responsible for QATC's performance.

The functions of the governing board are specified in section 22 contained in clause 16 of the Bill as:

- deciding the strategies and the operational, administrative and financial policies to be followed by the corporation
- ensuring the corporation fulfils a statement of expectations given to the corporation by the Minister under section 14A
- ensuring the corporation performs its functions and exercises its powers in a proper, effective and efficient way
- ensuring the corporation acts in accordance with its strategic and operational plans
- accounting to the Minister for the corporation's performance, and
- annually reviewing the performance of the principal executive officer.

Clause 17 deals with the composition of the governing board. New section 23 provides that the new governing board will have a maximum of seven members, including a chairperson and deputy chairperson, appointed by the Governor in Council at the recommendation of the Minister for a term of no more than three years.¹⁷ When considering an appointment to the board, the Governor in Council must have regard to the person's ability to make a contribution to the effective and efficient performance of the corporation's functions.

Section 23A in clause 17 provides that a person is disqualified from becoming, or continuing as, a member of the board if the person -

- has a conviction, other than a spent conviction, for an indictable offence, or
- is an insolvent and under administration, or
- is not able to manage a corporation because of the Corporations Act, part 2D.6, or
- is an employee or officer of the corporation or employing office.

At the committee's public briefing the department provided further information as to the rationale for restructuring the board:

The adoption of the QATC board as a governing and decision-making group is aimed at ensuring that management accountability is reinstated in the organisation and that there is a focus on strategic and operational planning for the entire organisation. The QATC board will be responsible for identifying business opportunities for growth, for developing and approving the organisation's strategic plan, endorsing local residential college strategic and operational plans, approving vocational training and corporate business unit plans. They will also be tasked with approving risk management frameworks, ensuring compliance with legislative obligations including financial management and workplace health and safety, and approving an internal audit program.

The chairperson of the QATC board will also be required to report to the minister each quarter on the performance of the QATC. As currently provided for in the act, the minister will also have the power to make requests of the chairperson for particular information. The

¹⁶ Kinnane, B. 2013, *Draft public briefing transcript*, 5 December, p. 10.

¹⁷ Explanatory Notes, Agricultural College Amendment Bill 2013, p. 2.

*QATC board is to consist of up to seven members comprising a chairperson and a deputy chairperson, and the chairperson and deputy chairperson of local college boards at the discretion of the minister. It is proposed that the QATC board membership will not be for more than three years, with members able to be reappointed for consecutive terms.*¹⁸

As part of the restructuring of the corporation, clause 29 at part 4 also introduces provisions in relation to agricultural colleges, college boards and college directors. Section 36 allows the Minister to establish agricultural colleges to deliver education and training services to agricultural and rural industries. New section 37 gives the Minister the discretion to establish local college boards at different locations and also to open or close colleges depending on service demands. The college boards will be responsible for college business planning and performance as well as curriculum development, operational planning and providing quarterly reports on the college's performance. The college boards will also be responsible for ensuring the implementation of the strategic direction established by the governing board and will only have those powers delegated to it by the governing board (s37(5)).

Also under section 37, a college board will consist of a maximum of seven members including a chairperson and deputy chairperson appointed by the Minister. At section 38 a person is unable to be a member of the board if:

- they have a conviction other than a spent conviction for an indictable offence
- they are an insolvent under administration
- they are not able to manage a corporation under part 2D.6 of the Corporations Act, or
- they are a member of the board or an employee or a contractor of the corporation.

Section 39 sets out the conditions and term of appointment for a college board member. A college board member will hold the position on the terms of appointment decided by the Minister for a period of not more than three years unless the person is disqualified from the position pursuant to section 38.

Corporate structure

Clause 10 sets out the prescribed functions of the corporation to provide high quality agricultural and rural vocational education and training that meets the needs of the community and the agricultural, rural and related industries. Specifically they are:

- promote the creation of employment opportunities in the State by providing high quality agricultural and rural vocational education and training
- ensure that vocational education and training meets the immediate and future needs of the agricultural, rural and related industries and the community
- engage employees, employers, associations of employees or employers and the community to identify agricultural training needs, opportunities and priorities
- cooperate with government bodies, industry, commerce and community groups and other persons on training matters relating to the agricultural, rural and related industries
- provide facilities and services for study, research and training relevant to the agricultural, rural and related industries
- commercially exploit any property of the corporation, including research or knowledge developed by, or belonging to, the corporation

¹⁸ Cummins, M. 2013, *Draft public briefing transcript*, 5 December, p. 2.

- comply with national and state quality standards and audit requirements for registered training organisations
- support the continued development of high quality training within the agricultural industry, and
- perform other functions given to the corporation under an Act.

Committee comment:

The committee is satisfied that the amendments proposed in the Bill to restructure the AACC will be beneficial to agricultural colleges and rural training in Queensland and address the problems and inadequacies identified by Ernst & Young in their report.

Statement of Expectations

Clause 13 provides that the Minister may give the corporation a written statement (*a statement of expectations*) of the Minister's expectations in performing its functions and exercising its powers. The statement of expectations must set out a time period for the expectations to be achieved, and may include the strategic and operational activities to be carried out by the corporation and provisions about reporting to the Minister about the activities.

If the Minister gives a statement of expectations the corporation must give the Minister a written statement (*a statement of intent*) about how the corporation proposes to comply with the statement of expectations. A statement of intent must be given to the Minister within 30 days after the statement of expectations is given to the corporation.

Principal Executive Officer

On the recommendation of the corporation, the Minister may appoint a principal executive officer (PEO) for the corporation pursuant to clause 28. The PEO will report to the governing board and will be responsible for the day to day management of the corporation including the management of vocational training and corporate staff. Under new clause 35D the PEO holds office for a term of not more than three years as stated in their contract of employment, however a PEO's appointment will cease if the person becomes disqualified under the terms set out at section 35B.

The PEO must report regularly to the board in relation to the administration of the Act, and anything carried out by the PEO is taken to have been done by the corporation. Pursuant to new section 68 the person holding office as director under former section 37 of the *Agricultural College Act 2005* will be appointed as the first PEO of the AACC.

Should the Bill be Passed?

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed. After examining the form and policy intent of the Bill, the committee determined that the Bill should be passed.

Recommendation 1

The committee recommends that the Agricultural College Amendment Bill 2013 be passed.

Recommendation 2

The committee recommends that the Minister for Agriculture, Fisheries and Forestry or his delegate ensure that Queensland Agricultural Training Colleges continues to meet key performance indicators that will be relevant to the quarterly reviews required by the legislation.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The committee sought advice from DAFF in relation to two possible fundamental legislative principles issues and a potential drafting issue. The following sections discuss the issues raised by the committee and the advice provided by the department.¹⁹

Clause 42 – Insertion of new sections 73 & 74

Clause 42 inserts proposed section 73(1) into the *Agricultural College Act 2005* (ACA) to provide that, upon commencement of section 73, the Employing Office is dissolved and the Executive Officer of the Employing Office ceases to exist. Proposed section 73(2) of the ACA provides that no compensation is payable to the Executive Officer of the Employing Office because of subsection (1).

Potential FLP issues

The former Scrutiny of Legislation Committee (SLC) expressed concern where the winding up or abolition of a statutory body or board meant that its members or executive were out of office and received no compensation for their loss of position.

Unlike other employees of the Employing Office, the Executive Officer is not transferred to the employment of the QACT (see proposed section 74 of the ACA). Proposed section 73 may, therefore, adversely impact on the rights and liberties of the Executive Officer of the Employing Office.

The nature of the role of an executive officer is typically a full-time job and often the main (or only) income stream of that person. If a person assumed personal financial liabilities (e.g. home mortgage) commensurate with his or her level of remuneration, it is conceivable that they may encounter significant financial hardship following their removal from office without compensation.

The Explanatory Notes did not specifically mention that the Executive Officer of the Employing Office will be removed from office and not transferred to the QACT. The Explanatory Notes also did not identify the potential FLP issues raised by clause 42.

Request for advice:

The committee requested further information from the department as to the removal of the Executive Officer of the Employing Office and whether this person will be adversely affected by the changes proposed in the Bill.

DAFF’S response:

The role of the Executive Officer of the Employing Office is currently undertaken by the Director of the Australian Agricultural Colleges Corporation who has been appointed under section 37 of the Agricultural College Act 2005. The Director does not receive additional remuneration for the Executive Officer role. The current Director will be transitioned to the position of Principal Executive Officer of the Queensland Agricultural Training Colleges (QATC) under the amended legislation (under clause 31, the new section 68). The new section 68(2) provides that the remuneration and conditions of appointment continue to apply. The removal of duties as Executive Officer of the Employing Office will not in any way

¹⁹ Department of Agriculture, Fisheries and Forestry, 2014, *Correspondence*, 20 January.

disadvantage the individual concerned. As such it is considered that they will not be adversely affected by the changes to the Employing Office as proposed in the Bill.

Committee comment:

The committee notes and is satisfied by the department's advice.

Delegation of legislative power – Section 4(4)(a) *Legislative Standards Act 1992*

Does the bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

Amendment of an Act only by another Act – Section 4(4)(c) *Legislative Standards Act 1992*

Does the bill allow or authorise the amendment of an Act only by another Act?

Clause 42 inserts new section 74 into the ACA to provide that a regulation may make provision about the following matters to the extent that the matter is not provided for in section 74(1) or (2) of the ACA (i.e. the transfer of an employee of the Employing Office to the QATC):

- the transfer of an employee of the employing office to the QATC
- the terms and conditions of employment, rights and entitlements of employees who are transferred, and
- the application of a particular industrial instrument to the employees who are transferred.

New section 74(4) provides that a regulation, made under section 74, has effect despite any other law or instrument. Section 74(5) states that such a regulation applies despite the *Industrial Relations Act 1999* and any industrial instrument.

The Explanatory Notes do not identify these provisions as raising any potential FLP issues.

Potential FLP issues

Henry VIII clause

A Henry VIII clause is a clause in an Act of Parliament which enables an Act to be expressly or impliedly amended by subordinate legislation or executive action. The SLC routinely voiced its concern where an Act was purportedly amended by a statutory instrument (other than another Act) in circumstances that were not justified. The SLC did however consider that the use of such Henry VIII clauses might be justified where they were used to facilitate transitional arrangements.

Generally, the SLC found the use of Henry VIII clauses to be objectionable when the clause:

- was expressed to allow for a regulation that could override an Act
- was so general as to allow for a provision about any subject matter, or
- was not subject to any other control mechanism, for example, a sunset clause.

It is noted that proposed section 74 meets at least two of these criteria. Proposed section 74(4) provides that a transfer regulation has effect despite any other law or instrument, therefore potentially overriding an Act. The provisions also do not include a sunset clause (e.g. providing that the regulation making power is only in place for 12 months).

Section 74(4) and potential conflict with section 109

Proposed section 74(4) provides that a transfer regulation has effect despite any other law or instrument, therefore potentially overriding an Act. In this regard the committee notes that section 109 of the Commonwealth Constitution²⁰ provides that when a law of a State is inconsistent with a

²⁰ The Commonwealth of Australia Constitution Act 1900.

law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. Accordingly, an assertion by a State law that it prevails over any other law fails to acknowledge that any conflicting operation of a federal statute will render the state law invalid to the extent of its inconsistency with the federal law.

Appropriate delegation of legislative power

Clause 42 anticipates that the Bill may be inadequate in some regard and that a matter, which otherwise would have been of sufficient importance to be dealt with in the Act, will instead be dealt with by regulation.

The SLC expressed the view that provisions such as the new section 74 are not an appropriate delegation of legislative power. The SLC, and its predecessor the Subordinate Legislation Committee, consistently maintained that if a matter is of sufficient importance to be included in an Act of Parliament, then that is the only appropriate place for it to be dealt with (not in subordinate legislation).²¹

Request for advice:

The committee requested the department's advice as to the potential conflict between new section 74(4) and section 109 of the Constitution and whether in the department's view, section 74(4) will be rendered invalid due to this potential conflict.

The committee also sought the department's advice as to why the regulation making power was considered necessary and asked the department to provide examples of the provisions that may be made under the regulation and why such provisions could not be included in the Bill.

DAFF'S response:

Section 74(4) provides that a regulation made pursuant to new section 74(3) has effect despite any other law or instrument; giving rise to potential for inconsistency with Commonwealth legislation. The regulation-making power of section 74(3) is restricted to the transfer of an employee of the Employing Office to the corporation, the terms and conditions of employment, the rights and entitlements of transferred employees and the application of a particular instrument to the employees transferred from the Employing Office to the corporation.

The Employing Office was established to ensure employees of the corporation are employed under state industrial laws and not captured under the Commonwealth's Fair Work Act 2009 (the Commonwealth Act). However under section 14 of the Commonwealth Act an employer is not a national system employer if the body is established under a law of a State or Territory, the employer is specifically declared by or under a law of the State or Territory not to be a national system employer, and this is endorsed by the Commonwealth Minister for Employment.

It follows that the Queensland Attorney-General and Minister for Justice may declare under the Industrial Relations Regulation 2011 (Qld) that an employer is not a national system employer with the endorsement of the Commonwealth Minister for Employment. The Minister for Employment has given in-principle agreement for the Attorney-General and Minister for Justice to make such a declaration regarding the Queensland Agricultural Training Colleges (the restructured Australian Agricultural College Corporation).

Therefore it is proposed that the Queensland Agricultural Training Colleges Employing Office will be declared not to be a national system employer and the Employing Office will be dissolved. The dissolution of the Employing Office is to coincide with this declaration, thus ensuring that employees of the QATC remain subject to state industrial relations legislation.

²¹ Scrutiny of Legislation Committee, 1996, *Alert Digest No.3*, p. 9.

Since state industrial relations legislation has and will apply to the employees of the Employing Office the potential for any inconsistency with federal industrial relations legislation is avoided. As such, the department does not consider that section 74(4) will be rendered invalid due to any inconsistency with Commonwealth legislation.

The department acknowledges that this regulation-making power may have a potential Henry VIII effect. However, the inclusion of this power is considered necessary to ensure that the transfer of Employing Office employees to the QATC is done so in a manner that does not affect their entitlements or render them subject to additional industrial relations processes.

The department has attempted to identify all issues relating to dissolution of the Employing Office and the transfer of the employees, and provide for these in the Bill. However, issues may arise that trigger a need for another legislative basis to ensure that all employees are transferred with their correct entitlements smoothly and without unintended disruptions. Ultimately, the intention of any regulation would be to provide certainty to the employees when they are being transferred to the employment of the corporation.

Furthermore, the regulation-making power is restricted to the transfer of an employee of the Employing Office to the corporation, the terms and conditions of employment, the rights and entitlements of transferred employees and the application of a particular instrument to the employees transferred from the Employing Office to the corporation. As such, it can only be invoked if absolutely necessary for an efficient and effective transition of QATC employees.

The regulation-making power relates to transitory requirements that have not been identified at this time. As such, it is difficult to predict the specific nature of any regulation that may be made under new section 74(3). However, the AACC is currently undertaking work to harmonise two industrial awards after which there will be enterprise bargaining negotiations. Once this process is finalized, consideration of further legislative provisions may need to be conducted to effect a smooth transition of employees.

The department is aware that a similar regulation power has been provided for in other statutes involving the transfer of assets and employees. For example, the South East Queensland Water (Restructuring) Regulation 2011 deals with matters such as the transfer of assets and employees by virtue of a regulation-making power under the South-East Queensland Water (Restructuring) Act 2007. The Airport Assets (Restructuring and Disposal) Act 2008 also provides the Governor in Council a broad regulation making power.

It is important to also note that a regulation proposed under section 74 will be subject to disallowance of the House.

At times statutes provide for matters relating to the transfer of assets and staff to be dealt with by Ministerial gazettal notice which unlike legislation is not subject to disallowance. The South East Queensland Urban Water Arrangements Restructuring (Staff Support Network) Notice 2008 is an example of this mechanism.

Committee comment:

The committee notes and is satisfied by the department's advice.

Right and liberties of individuals - Section 4(2)(a) Legislative Standards Act 1992

Does the bill have sufficient regard to the rights and liberties of individuals?

Clause 29 omits and replaces Part 4 – Agricultural college, director and student advisory council. One of the effects of clause 29 is the removal of the requirement, at section 39 of the ACA, to establish a student advisory council for the agricultural college.

Currently, the student advisory council is to consist of one student and two members of staff from each campus of the agricultural college. Pursuant to section 40 of the ACA, the student advisory council's functions are to:

- advise the corporation or the director on matters referred to the student advisory council
- advise the corporation or the director on matters about the agricultural college or students the student advisory council considers should be referred to the corporation or the director, and
- any other functions conferred on it by the ACA.

Potential FLP issues

The removal of the requirement to establish a student advisory council may impact adversely on the rights of students and staff to provide input as to the way the college is operated. It is unclear from the Bill or the Explanatory Notes how students and staff members will be able to participate in the operation of the colleges.

Request for advice:

The committee sought further information from the department as to whether mechanisms will be implemented to ensure that students and staff can provide input into the operation of the colleges and, if not, how students and staff will be able to participate in operation of a college.

DAFF's response:

It is proposed to remove the provisions relating to the student advisory council because there is no current student advisory council nor has there been one for some time. There is a student body group in place but it does not provide advice to the corporation, as envisaged by the legislation. Instead it has a role in organizing social events and fundraising.

It is difficult to see that the removal of the statutory student advisory council would impact adversely on the rights of students and staff to provide input as to the way the college is operated. The establishment of the student advisory council and its functions did not create an enforceable right of students and staff to have that advice accord with their views. It follows that removal of the council does not remove an enforceable right of the students and staff other than a right to elect the members.

The removal of a statutory student council in effect expands the ability of students to establish student groups to reflect their needs. Furthermore, it is anticipated that student body groups will continue to operate at the residential colleges. The corporation also has corporate structures in place, such as a complaints policy, to enable all students to voice their concerns or provide their view.

It is also intended that students and staff will be able to provide input as members of the community. The function of the corporation is to ensure that the industry and community needs are met. For example, new section 10(b) provides that the corporation must ensure that vocational education and training meets the immediate and future needs of the agricultural, rural and related industries and the community and section 10(c) provides that the corporation is to engage employees, employers, associations of employees or employers and the community to identify agricultural training needs, opportunities and priorities.

Committee comment:

The committee notes and is satisfied by the department's advice.

Right and liberties of individuals - Clear and precise – Section 4(3)(k) *Legislative Standards Act 1992*

Is the bill unambiguous and drafted in a sufficiently clear and precise way?

Clause 31 inserts proposed section 67 into the ACA to make transitional arrangements for the commencement of the amendments in the Bill.

Proposed section 67(1) provides that on commencement of section 67, each member of the former board of the AACC holding office immediately before the commencement of the section becomes a member of the board of the QATC despite section 17.

It appears that the reference to section 17 in proposed section 67(1) is incorrect. Section 17 of the ACA makes provision about the Employing Office of the AACC and not the appointment of Board members. It would appear that the correct reference is to section 23 of the ACA which provides for the appointment of board members (and which is amended by clause 17 of the Bill).

Request for advice:

The committee sought the department's comment in relation to this potential error.

DAFF's response:

The department agrees with the committee that the reference to section 17 should instead be to section 23. The reference will be amended during the consideration in detail stage of the Bill.

Committee comment:

The committee notes and is satisfied by the department's advice.

Appendix A – Briefing officers

Briefing officers at a public briefing held on 5 December 2013

Mr Brent Kinnane, Executive Director, Australian Agricultural College Corporation

Ms Melissa Cummins, Acting Director, Legislation and Regulatory Reform, Department of Agriculture, Fisheries and Forestry

Ms Maarit Termonen, Principal Policy Officer, Legislation and Regulatory Reform, Department of Agriculture, Fisheries and Forestry