

**Queensland Training Assets
Management Authority Repeal Bill
2015**

Report No. 5, 55th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

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Abbreviations

ACPET	Australian Council for Private Education and Training
Attorney-General	The Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills
Bill	Queensland Training Assets Management Authority Repeal Bill 2015
CCIQ	Chamber of Commerce and Industry Queensland
CEO	Chief Executive Officer
COAG	Council of Australian Governments
Commission	previous Queensland government’s Independent Commission of Audit
committee	Legal Affairs and Community Safety Committee
department	Department of Education and Training
FLP	fundamental legislative principle
IEUA	Independent Education Union of Australia
LNP	Liberal National Party
MIC	Ministerial Industry Commission
NCVER	National Centre for Vocational Education Research
PPP	public-private partnership
QTAMA	Queensland Training Assets Management Authority
QTAMA Act	<i>Queensland Training Assets Management Authority Act 2014</i>
QTAMA Bill 2014	Queensland Training Assets Management Authority Bill 2014
QTU	Queensland Teachers’ Union
RTO	registered training organisation
Taskforce	2012 Skills and Training Taskforce
TDA	TAFE Directors Australia
THLGC	Transport, Housing and Local Government Committee
VET	vocational education and training

Chair's foreword

This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Queensland Training Assets Management Authority Repeal Bill 2015.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee has been unable to reach a majority decision as to whether the Bill be passed. What this report does is to present and examine the evidence considered by the committee in its deliberations: the evidence provided by some 60 individuals and organisations who made submissions to the committee.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on this Bill. I also thank the Department of Education and Training for the advice it has provided the committee during its inquiry.

I commend this Report to the House.



Mark Furner MP

Chair

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service;
- Fire and Emergency Services; and
- Training and Skills.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

On 21 May 2015, the Attorney-General and Minister for Justice and Minister for Training and Skills, the Hon Yvette D'Ath MP (Attorney-General), introduced the Queensland Training Assets Management Authority Repeal Bill 2015 (Bill) into the House and referred it to the committee. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 7 July 2015.

1.2 Inquiry process

On 28 May 2015, the committee wrote to the Department of Education and Training (department) inviting representatives to attend at a public briefing which was held on 3 June 2015. See **Appendix A** for a list of the representatives who attended at the public briefing.

The committee also invited written submissions from all Queenslanders on the legislative proposal to be received by 4.00pm on 17 June 2015. The committee received 60 submissions (see **Appendix B**). On 19 June 2015, the committee received written advice from the department in response to matters raised in submissions.

The committee then held a public hearing on the Bill on Monday, 22 June 2015. The committee invited witnesses to give evidence and respond to questions on the Bill. See **Appendix C** for a list of the representatives who attended at the public hearing.

1.3 Policy objectives of the Queensland Training Assets Management Authority Repeal Bill 2015

Objective of the Bill

The objective of the Bill, as explained in the Explanatory Notes, is to repeal the Queensland Training Assets Management Authority Act 2014 (QTAMA Act) and return control of Queensland's training assets to the relevant government department. This gives effect to an election commitment made by the government as part of its 'Rescuing TAFE' package.

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

The Bill proposes to achieve its objectives by providing that upon commencement:

- the Queensland Training Assets Management Authority (QTAMA) and its board are dissolved;
- the chief executive officer (CEO) and the board members go out of office;
- the State is the successor in law of QTAMA;
- the assets and liabilities of QTAMA immediately before commencement are to become the assets and liabilities of the State held in the department;
- the State will become a party to contracts (or other instruments) to which QTAMA was a party immediately before commencement, including all employment contracts and goods and services contracts; and
- the records and other documents held by QTAMA immediately before commencement become the records and other documents of the State held in the department.²

Additionally, the Bill provides transitional and savings arrangements for legal proceedings, legal relationships and the annual report.³

Reasons for the Bill

The government aims to ensure that TAFE Queensland will have priority access to State-owned training assets as “[t]his will support TAFE Queensland in its planning and delivery of quality training to the community and reinforce TAFE Queensland’s leading role in the VET market”.⁴

Government policy position on QTAMA

The government, when in opposition, opposed establishing QTAMA in 2014 claiming that it added an unnecessary layer of bureaucracy which had the sole objective of commercially exploiting TAFE Queensland campuses and ‘sell(ing) them off’. It queried whether TAFE Queensland assets were really underutilised, or whether any underutilisation was a by-product of funding cuts to TAFE Queensland, suggesting those funding cuts were made with a view to ‘prioritising the private for-profit sector over the public sector’.⁵

Prior to being elected, the government made a commitment to repeal the QTAMA Act, returning control of publicly owned VET assets to the department responsible for VET (now, the Department of Education and Training) and invest funding ‘to restore TAFE Queensland as the State’s premier provider of VET’.⁶

1.4 Context

According to the Attorney-General, the Bill represents the government’s first step in its ‘Rescuing TAFE’ commitment:

This government has committed \$34 million over the next three years through our Rescuing TAFE policy to regain TAFE Queensland’s reputation as the premier provider of VET in this state as well as internationally. Our Rescuing TAFE package includes many significant commitments over the

² Explanatory Notes, Queensland Training Assets Management Authority Repeal Bill 2015, p 2.

³ Explanatory Notes, Queensland Training Assets Management Authority Repeal Bill 2015, p 2.

⁴ Explanatory Notes, Queensland Training Assets Management Authority Repeal Bill 2015, p 1.

⁵ Hansard Transcript, QTAMA Bill 2014, Second reading debate, 8 May 2015, p 1439:

http://www.parliament.qld.gov.au/documents/hansard/2014/2014_05_08_WEEKLY.PDF.

⁶ Explanatory Notes, Queensland Training Assets Management Authority Repeal Bill 2015, p 1.

*next three years including creating 100 new full-time equivalent teaching and support staff positions; investing \$5 million to establish a fully independent training ombudsman; providing \$4 million for training in emerging innovative industries as designated by Jobs Queensland; and the repeal of the QTAMA Act 2014.*⁷

The 'Rescuing TAFE' commitment includes the development of a 10-year strategic asset plan to explore options for future use of training assets:

*The plan will be developed and implemented in consultation with key stakeholders. An audit of all training assets will also be undertaken to support the development of the plan. The plan is expected to be implemented from July 2016...*⁸

Objectives of QTAMA

QTAMA was established in 2014 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. QTAMA was established 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.⁹

The former Minister for Public Works and Housing explained to the Parliament during debate on the bill establishing QTAMA in 2014 (QTAMA Bill 2014) that the objective of QTAMA was to provide equal access to VET facilities by all VET providers in the context of significant asset under-utilisation. TAFE Queensland would have priority access to those government facilities, including TAFE Queensland buildings, for a period of two years. It was seen that this would expand the availability of VET, particularly in regional areas where TAFE Queensland asset under-utilisation was most pronounced.¹⁰

QTAMA was one of a suite of reforms to the VET sector implemented during 2013 and 2014, all aimed at creating a 'contestable' VET market. They stemmed from recommendations of a 2012 Skills and Training Taskforce (Taskforce) established by the previous government and led by industry, which identified that:

*Problems within the current system are widely acknowledged to include its fragmented structure and nature, high cost public provision, below average participation rates, inability to resolve skills shortages, lack of industry engagement and limited client focus.*¹¹

⁷ Hansard Transcript, 21 May 2015, p 806.

⁸ Media Release issued on 21 May 2015 by The Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills, p 1.

⁹ QTAMA Bill 2014, Explanatory notes, p 3.

¹⁰ Hansard Transcript, QTAMA Bill 2014, Second Reading Debate, 8 May 2014, p 1437.

¹¹ Queensland Skills and Training Taskforce Final Report, November 2012, p 18.

The Taskforce considered previous TAFE reviews which had found that:

- utilisation of TAFE assets is low;
- the asset base is relatively small (in comparison with other jurisdictions) and at significant risk of degradation;
- a major asset review is required;
- there is a shortfall in ongoing capital funding without the ability to invest in new infrastructure (as a consequence of low earnings margins and overall surpluses).

In its response to the Taskforce Final Report, the previous government stated that:

Despite recent government investment, the state's training infrastructure base is increasingly not fit for purpose. Successive reviews of training infrastructure have highlighted the need for continued modernisation and improved sustainability in response to changes in geographical demand and training delivery methods. The challenge now is to rationalise assets that are no longer required and reinvest in modern, attractive and welcoming learning and training environments for students.¹²

Also during 2012-13, the previous government's Independent Commission of Audit (the Commission) was underway. The Commission had been established in March 2012 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."¹³

The Commission's final report, tabled in the Queensland Parliament on 20 April 2013, 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.¹⁴

National Partnership Agreement on Skills Reform

The VET reforms which occurred from 2012-13 also arise from nationally agreed reforms. The *National Partnership Agreement on Skills Reform* outlines a range of interconnected actions aimed at achieving agreed reform directions:

- improving training accessibility, affordability and depth of skills, including through the introduction of a national training entitlement and increased availability of income contingent loans;
- improving training participation and qualification completions, including at higher levels and by those who may be experiencing disengagement or disadvantage;

¹² Government response to Queensland Skills and Training Taskforce Final Report, November 2012, p 15.

¹³ QTAMA Bill 2014 Explanatory Notes, p 2.

¹⁴ Queensland Commission of Audit Final Report, February 2013, pp 3-166.

- encouraging responsiveness in training arrangements by facilitating the operation of a more open and competitive training market.

The National Partnership Agreement on Skills Reform was agreed to by the Council of Australian Governments (COAG) and funding is provided by the Australian government to the states under the National Partnership to progress reforms.

Non-government members of the committee are concerned that this Bill, in taking state-owned training assets out of the hands of an independent board (QTAMA) and placing them into departmental hands that are also responsible for the supervision of TAFE Queensland, is a step away from an open and competitive training market and the aim of the National Partnership.

In this context of change, as well as establishing QTAMA, other reforms to VET impacting on TAFE Queensland included:

- a move to a fully contestable model of service provision to increase efficiency;
- establishing TAFE Queensland as a statutory body (rather than the previous 13 separate TAFE institutes, 2 of which were statutory bodies and 11 part of the department) to place it on a strong footing to operate in a contestable market;
- establishing a Ministerial Industry Commission (MIC) to provide industry advice to government on skills demand and long-term workforce planning (this was dissolved from 14 June 2015, with its functions to be delivered by Jobs Queensland). The MIC developed an annual skills priority report, which informed the government's annual VET Investment Plan for 2014-15. This articulates the funding to be provided by the government for the range of VET qualifications.

Queensland's VET system

Queensland's VET system includes an extensive network of public and privately owned training providers.

These include:

- TAFE Queensland, the government-owned public VET provider with a network of six regions delivering training from Thursday Island to the Gold Coast, from Bundaberg to Roma and across the South-East. Training is delivered from more than 50 locations (down from 95 campuses in 2013-14);
- the Australian Agricultural College Corporation delivering agricultural education across five campuses;
- more than 900 RTOs, including privately owned colleges;
- local governments, schools, community bodies and industry enterprises.

VET investment plans

A VET annual investment plan was first prepared for the 2014-15 year, as a fully contestable VET market commenced. It articulated which courses and qualifications would receive government subsidies, and of how much (based on advice from industry about industry needs); and provided for funding targeted to supporting disadvantaged people including disengaged youth, Aboriginal and Torres Strait Islander people, people with a disability, migrants and people with no post-school qualifications. Services to these groups would be provided through the Community Learning program, delivered in community based settings. Eligibility criteria included that participants not be on income support payments or accessing Australian government services or assistance.

The 2015-16 annual investment plan notes that the plan is informed by achieving the outcomes of the National Partnership Agreement on Skills Reform, a continued engagement with industry and other evidence about training pathways that support employment outcomes. It continues demand-driven funding arrangements and the publishing of subsidy levels which reflect the level of government contribution toward the cost of training, influenced by priority and relative cost to deliver. The plan explains the government's move to reintroduce the Skilling Queenslanders for Work initiative to support disadvantaged groups, and to cease the Community Learning program.

The 2015-16 VET investment plan advises that:

The Palaszczuk Government does not support one hundred percent contestability for funding in the VET market because there is an important role for a public provider in the training and skills arena. We will be seeking advice from Jobs Queensland and other stakeholders to develop a sustainable balance of investment in public and private training providers.

We will ensure that investment in VET leads to tangible employment outcomes now and into the future as well as providing opportunities for disadvantaged learners to participate in skills and training.¹⁵

The investment plans outline the level of government subsidy which will be provided for all subsidised qualifications or skill sets, influenced by priority and relative cost to deliver. A co-contribution, which reflects the difference between the cost of the course and the government's subsidy, is to be met by individuals, employers and/or industry. This determines the fee students actually pay.

1.5 Background

QTAMA Act and establishment of QTAMA

The previous government introduced the QTAMA Bill 2014 in March 2014. The QTAMA Act was subsequently passed and came into effect from 1 July 2014.

The QTAMA Act established QTAMA as a statutory body under the then Minister for Housing and Public Works. QTAMA commenced operations on 1 July 2014. The QTAMA Act transferred all of Queensland's VET assets (buildings, land, and other infrastructure) from the then Department of Education, Training and Employment and from TAFE Queensland to QTAMA.

Operations of QTAMA

QTAMA operates from 40 locations across Queensland and manages the transferred assets according to commercial objectives. QTAMA advertises VET facilities as being 'open to public, private and not-for-profit organisations'.¹⁶

The budget figures for 2014-15 for QTAMA are:

- total budget income for 2014-15 is \$90,467,000;
- total budget expenses for 2014-15 is \$69,731,000;

¹⁵ 2015-16 Annual VET Investment Plan, p 1.

¹⁶ <http://www.hpw.qld.gov.au/FacilitiesManagement/QTAMA/Pages/default.aspx>

- total budget operating surplus for 2014-15 is \$20,736,000; and
- total budget for employee expenses for 2014-15 is \$4,044,000.¹⁷

Corporate Governance of QTAMA

Board. The QTAMA Act provides for the QTAMA board to be established as the governing body of QTAMA.¹⁸ The QTAMA board must consist of at least 4 but not more than 7 members.¹⁹ The QTAMA board, which ceased on 30 June 2015, consisted of 6 members (as advised by the department).

CEO. The QTAMA board must appoint a CEO, with the Minister's prior written approval.²⁰ The CEO's term of appointment must not be more than 3 years and is set out in the instrument of appointment. The QTAMA Act also provides that the QTAMA board may remove a person appointed as CEO, with the Minister's prior written approval, at any time. However, the removal does not affect any rights to compensation to which the person is entitled under the person's contract of employment.²¹

The annual wages total for QTAMA's board and CEO in 2014-15 was \$430,000.²²

Objectives of QTAMA

Asset rationalisation. The former Minister for Public Works and Housing explained that the objective of QTAMA was to provide equal access to VET facilities by all VET providers in the context of significant asset under-utilisation. TAFE Queensland would have priority access to those government facilities, including TAFE Queensland buildings, for a period of two years. It was seen that enabling access to these government-owned facilities by private providers would expand the availability of VET, particularly in regional areas where TAFE Queensland asset under-utilisation was most pronounced.

QTAMA operates '*in accordance with sound commercial principles*'.²³ It is to '*commercially exploit training assets*'.²⁴ However, as pointed out by Mr Peter Gallagher, former CEO of QTAMA, the main purpose of QTAMA is to provide for the effective and efficient management of State-owned training assets primarily for the provision of VET.²⁵

Payment of returns to the state. The Transport, Housing and Local Government Committee (THLGC) considered the original QTAMA Bill in 2014.²⁶ The THLGC recommended that the proceeds of all TAFE Queensland asset sales be reinvested in the VET sector for the first two years of QTAMA's operation. In response, the previous government considered that '*a legislative requirement about the use of the proceeds of any asset sales would be overly prescriptive and may result in a loss of flexibility in decision making about the appropriate use of those proceeds*'.²⁷

¹⁷ 2014-15 Queensland State Budget – Service Delivery Statements – Minister for Housing and Public Works, pp 104-110.

¹⁸ Section 12 of the QTAMA Act 2014.

¹⁹ Section 14(1) of the QTAMA Act 2014.

²⁰ Section 25 of the QTAMA Act 2014.

²¹ Section 27(3) of the QTAMA Act 2014.

²² *Hansard Transcript*, 21 May 2015, p 807.

²³ QTAMA Act 2014, s 9(1).

²⁴ QTAMA Act 2014, s 8(1)(b)(ii).

²⁵ Mr Peter Gallagher, Submission No. 60, p 4.

²⁶ See Report No. 43 of the Transport, Housing and Local Government Committee, Queensland Training Assets Management Authority Bill 2014, April 2014.

²⁷ Government response to Transport, Housing and Local Government Committee report no. 43: <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2014/5414T5050.pdf>.

Financial position of QTAMA

The THLGC in its report sought clarification from the then Minister for Housing and Public Works about the treatment of an unfunded public-private partnership (PPP) liability of \$1.2 billion from 2016-17 to 2039, relating to the former Southbank Institute of TAFE. The query was whether the liability would be transferred to QTAMA and, if so, how that liability might impact on strategic asset management and the payment of returns. The previous government advised it was investigating options and that no decision had been made on that matter as at May 2014.

1.6 Consultation on the Bill

The Explanatory Notes state that no consultation external to Government has occurred in relation to the Bill.²⁸

1.7 Outcome of committee considerations

Standing Order 132(1)(a) requires that the committee after examining the Bill determine whether to recommend that the Bill be passed. In this instance, government members considered the Bill should pass, whereas non-government members opposed the Bill.

The committee was not able to reach a majority decision on whether the Bill be passed and, therefore, in accordance with section 91C (7) of the *Parliament of Queensland Act 2001*, the question on the motion failed. The committee is not able to make a recommendation that the Bill be passed.

²⁸ *Explanatory Notes*, Queensland Training Assets Management Authority Repeal Bill 2015, p 3.

2. Examination of the Queensland Training Assets Management Authority Repeal Bill

This section discusses issues considered during the committee's examination of the Bill. Many of the relevant issues were identified through the committee's consideration of submissions from witnesses, stakeholders, the department and TAFE Queensland.

During its inquiry, the committee received a mixture of support for, and opposition to, the Bill. In summary, the Bill received support from various unions, individual submitters, TAFE Directors Australia and TAFE Queensland. However, the Australian Council for Private Education and Training (ACPET) did not support the Bill, arguing that QTAMA has not benefitted from enough time or cooperation. ACPET contended that a decision on the future of QTAMA should be delayed until the government has articulated the priorities for public training facilities and an independent strategic asset review has been undertaken. Similarly, the Chamber of Commerce and Industry Queensland (CCIQ) opposed the Bill, favouring the QTAMA model and a contestable market. Mr Peter Gallagher, former CEO of QTAMA, made a submission in his individual capacity, which sought to address many assertions and assumptions made about QTAMA throughout the inquiry; and which provided examples of the lack of co-operation identified by ACPET.

2.1 Outcomes attributed to QTAMA

The context of such extensive reform to the VET sector over the period 2012- 2015 is highly relevant to the evidence presented to the committee. Some outcomes of reform, such as reduced course offerings on a reduced number of campuses and reduced student numbers, including a very significant reduction in the number of students with a disability, are being attributed to QTAMA when they are the result of other reforms. The introduction of an explicit subsidy model based on government priorities for training has resulted in higher co-contribution requirements in some instances (and lower co-contributions in some others). Decisions made by TAFE Queensland as it restructured 13 separate institutions operating from 95 campuses into one entity operating from around 50 locations have impacted on numbers of staff (including teaching, library and disability support) and availability of courses. The contestability model, which requires greater efficiencies in the operation of VET, is part of a national reform agenda implemented by COAG. It is easy to see how cause and effect may be blurred in such a context of change.

General views on QTAMA

The Queensland Teachers' Union (QTU) submission on the Bill summarised the thrust of the arguments made by others in support of the Bill, arguing:

...the effect of QTAMA was to strip TAFE institutes of their assets, and to open up TAFE campuses for use by private for-profit providers. Additionally, some Queensland TAFE campuses were sold in part or in total. The abandonment or significant downsizing by TAFE of provision in certain courses and in certain geographical areas was significant.²⁹

The committee notes that, despite some campuses having been sold/leased by the previous state government, whilst QTAMA existed no campuses were sold, though some were earmarked for sale.

Campus closures were not a direct result of QTAMA, but were a result of decisions made by the department prior to the establishment of QTAMA.³⁰

²⁹ Queensland Teachers' Union, Submission No. 35, p 2.

³⁰ Letter from Department of Education and Training, Attachment, 19 June 2015, p 1.

Access to and funding of TAFE programs

The Independent Education Union of Australia (IEUA) advised that consultation with its members indicated there had been a withdrawal of government-supported TAFE programmes, and of the VET Revenue General funding in particular, resulting in a reduction in the number of school-based students accessing VET programs, particularly in rural and regional areas and urban areas where local TAFE Queensland facilities have been closed:

Opening the VET market up to private providers via the QTAMA legislation was not sufficient to address this because increased reliance on unsubsidised private courses increased costs for students and limited diversity of training programmes.

Return of the training assets to the Department of Education and Training and prioritising the interests of TAFE over private providers is, therefore, an important mechanism for ensuring that school-based students are able to attend courses that match their needs and interests, rather than being forced to enrol in sub-optimal courses, or being dependent on private providers, who are economically compelled to limit their offerings to high-demand subjects.³¹

In response, the department advised:

The QTAMA Repeal Bill 2015 is about training asset management arrangements. It is a separate matter unrelated to purchasing decisions about publicly funded training in Queensland.

The Annual VET Investment Plans published by DET outline the investment framework for publicly funded training in Queensland through a range of skills programs and student support initiatives.³²

In addressing suggestions QTAMA obstructed or opposed school-based access to TAFE Queensland sites in regions, Mr Gallagher advised that QTAMA has striven to accommodate school groups in remote areas.³³

Relocation of training classes and priority access

In the view of some submitters, QTAMA is inhibiting TAFE Queensland from accessing State training assets.

According to QTU, the formation of QTAMA has resulted in TAFE Queensland industry specific classes being forced out of purpose built facilities. QTU provided various examples, claiming that TAFE Queensland students studying at Maryborough in trade workshops were forced to move to a retrofitted art facility.³⁴ Further, it reported plans in Toowoomba ‘...involving the relocation of automotive students from a custom six year old state of the art facility (sic) classes are to be moved to a retrofitted shed at the cost of \$150,000’.³⁵

³¹ Independent Education Union of Australia, Submission No. 36, p 2.

³² Letter from Department of Education and Training, Attachment, 19 June 2015, p 2.

³³ Mr Peter Gallagher, Submission No. 60, p 12.

³⁴ Queensland Teachers’ Union, Submission No. 35, p 3.

³⁵ Queensland Teachers’ Union, Submission No. 35, p 3.

The department clarified that QTAMA did not require TAFE Queensland to leave facilities: *'QTAMA is required to manage the state's training assets on a commercial basis, and is not required by legislation to prioritise the interests of TAFE Queensland'*.³⁶

At the committee's public hearing, Mr Jon Krause MP questioned Ms Vicki Neuman, Together member and TAFE Queensland employee who works as a librarian at the Southbank and Mt Gravatt campuses, in relation to the reduction in opening hours at some libraries:

Mr KRAUSE: *I have a quick question for Ms Neuman. Do you know who made the decision to close the library?*

Ms Neuman: *I believe it was the person that runs Brisbane TAFE.*

Mr KRAUSE: *It was not QTAMA?*

Ms Neuman: *No, not that I am aware of. But I am not 100 per cent sure. It could have come from higher up.*³⁷

On the other hand, Mr Matthew Traynor, Queensland State Executive Officer, ACPET, provided evidence to the committee of a situation where another VET provider wanted to move in to unutilised facilities located on a TAFE Queensland campus (and Mr Traynor indicated on the day he gave evidence that they were still not being utilised).³⁸ The other VET provider was willing to enter into rental arrangements to offer training on that campus, presumably to offer courses that were sought after in the local area but were not being offered by the TAFE Queensland. Mr Traynor indicated that the other VET provider was unable to access the campus which was managed by TAFE Queensland.³⁹

Mr Gallagher confirmed that *'TAFE has not been forced off any campus, either directly or indirectly, by QTAMA'* and that *'QTAMA has encouraged TAFE to use space more efficiently'*.⁴⁰

Mr Gallagher pointed out that, rather than being compelled to vacate State training facilities, TAFE Queensland is the beneficiary of a transitional priority access arrangement:

*Under the transition arrangements, however, there was an agreement between QTAMA, TAFE Queensland, the Department of Housing and Public Works and the former Department of Education, Training and Employment that TAFE Queensland would have priority access to facilities for a two year transition period in recognition of TAFE Queensland's existing tenure and commitments to enrolled students.*⁴¹

Mr Gallagher confirmed that TAFE Queensland has had priority access to all QTAMA's sites since QTAMA was established: *'This has been done under a July 2014 agreement with TAFE Queensland for a two year transitional period recommended by the Commission of Audit'*.⁴²

In light of concerns about the time expended by TAFE Queensland on rent negotiations, Mr Jon Krause MP identified a potential resolution at the public hearing, suggesting *'...the department or minister*

³⁶ Letter from Department of Education and Training, Attachment, 19 June 2015, p 1.

³⁷ *Transcript of Public Hearing*, 22 June 2015, p 12.

³⁸ *Transcript of Public Hearing*, 22 June 2015, p 2.

³⁹ *Transcript of Public Hearing*, 22 June 2015, p 2.

⁴⁰ Mr Peter Gallagher, Submission No. 60, p 6.

⁴¹ Letter from Department of Education and Training, Attachment, 19 June 2015, p 1.

⁴² Mr Peter Gallagher, Submission No. 60, pp 5-6.

*directing QTAMA to simply give TAFE Queensland some sort of priority access... without abolishing QTAMA altogether first up, especially pending the 10-year review of how we will use these assets...'*⁴³

Ms Schmidt, TAFE Queensland CEO, responded:

*I think the question leads to the complexity and the difficulty of the model itself and almost suggests that that is where the problem lies. From as early as May 2014, TAFE Queensland put forward models around agreeing priority access to full utilisation or full use of this space, to no usage of that space or campus, to shared usage models as a potential solution. I have to say that we are nowhere closer, having engaged all levels of government throughout that process.*⁴⁴

Mr Gallagher commented:

- *The Government's wish to extend the priority access right can be achieved (i) by agreement between TAFE Queensland and QTAMA, or (ii) by a Ministerial direction to QTAMA under the QTAMA Act.*
- *The granting of priority access rights to TAFE Queensland does not require a change to the QTAMA Act.*⁴⁵

Financial concerns - commercial rent

QTU claimed: *'Punishing rent regimes substantially undermined TAFE's ability to remain financially viable and constituted a serious attack on the capacity of TAFE Queensland to service the community'*.⁴⁶

TAFE Queensland identified a number of key issues relating to the QTAMA model, including: *'There are medium and long term implications for regional, rural and remote training delivery with the model not reflecting the additional costs and challenges of providing training in these localities with QTAMA seeking full commercial rates for regional facilities from 1 July 2016'*.⁴⁷

In response to concerns raised about TAFE Queensland being charged commercial rates for rent, the department advised that under the new asset management arrangements to be given effect by the Bill *'...TAFE Queensland will receive priority access to state training assets at a subsidised rate'*.⁴⁸

Additionally, the department stated that the 10-year asset management plan will establish a long term framework including funding requirements:

Pending the finalisation of the asset plan, TAFE Queensland rental payments will continue to be subsidised by DET in line with the forward estimates of the 2014-15 state budget.

⁴³ *Transcript of Public Hearing, 22 June 2015, p 23.*

⁴⁴ *Transcript of Public Hearing, 22 June 2015, p 23.*

⁴⁵ Mr Peter Gallagher, Submission No. 60, p 6.

⁴⁶ Queensland Teachers' Union, Submission No. 35, p 3.

⁴⁷ TAFE Queensland, Submission No. 37, p 2.

⁴⁸ Letter from Department of Education and Training, Attachment, 19 June 2015, p 3.

*In recognition of TAFE Queensland's higher cost base, and to support continued training delivery across the state, TAFE Queensland was provided with significant grants in 2014-15 for corporate, rental and operating costs, in addition to subsidies available for training delivery.*⁴⁹

At the committee's public hearing, Ms Jodi Schmidt, TAFE Queensland CEO, observed there has always been an expense line in TAFE Queensland around assets and maintenance for the transition period: 'As agreed in an MOU between parties, there was agreement for full subsidisation of rent for the first year and that that would be a sliding scale over the second year down to full rental being paid in the third year'.⁵⁰

The exchange ended as follows:

Mr KRAUSE: *But to this date there has been no increased expense of a rental nature incurred by TAFE Queensland?*

Ms J Schmidt: *Not of a rental nature.*⁵¹

Mr Gallagher noted that, because of its entitlement to rent subsidies since 1 July 2014, '...TAFE has not been out of pocket by even one dollar on account of QTAMA rent'.⁵² He categorised these transitional subsidies as:

*...an administrative arrangement that is outside, and not affected by, the QTAMA Act. If the Government wishes, the arrangement can continue in perpetuity without any involvement by QTAMA.*⁵³

Further, Mr Gallagher commented:

- *From a whole-of-Government perspective, the payment of rent by TAFE to QTAMA has no net budget effect. It just makes it clear how much space TAFE is paying to use and carries out the State's contestability obligations regarding contestability under the National Agreement for Skills and Workforce Development.*
- *...This rental subsidy is now to continue indefinitely.*
- *...TAFE has a higher cost structure than most of its competitors, to a large extent due to matters that it cannot immediately remedy. Government does and can continue to subsidise TAFE while TAFE continues to work on its cost structure.*⁵⁴

In short, TAFE Queensland has not paid any rent to use state training assets.

⁴⁹ Letter from Department of Education and Training, Attachment, 19 June 2015, pp 3-4.

⁵⁰ *Transcript of Public Hearing*, 22 June 2015, p 22.

⁵¹ *Transcript of Public Hearing*, 22 June 2015, pp 22-23.

⁵² Mr Peter Gallagher, Submission No. 60, p 4.

⁵³ Mr Peter Gallagher, Submission No. 60, p 6.

⁵⁴ Mr Peter Gallagher, Submission No. 60, p 6.

Under-utilisation of training assets

In QTU's submission, TAFE Queensland was '*...wilfully handicapped and placed at a commercial disadvantage by the QTAMA legislation*'.⁵⁵ QTU offered the following examples:

*At both Toowoomba and Southbank campuses, TAFE Queensland was forced to make space available for private providers in spite of a preparedness and ability to pay rent on the facilities. Further, subsequent renovations were wasted when the private Registered Training Organisation did not proceed with rental arrangements.*⁵⁶

During the committee's public hearing, Mr Tony Perrett MP queried Ms Jodi Schmidt, TAFE Queensland CEO, as to why '*...TAFE utilises only about 40 per cent of the assets that were built for them...*', suggesting it may be better to '*...first conduct a review of the utilisation of the assets and then develop a 10-year strategic plan before the government changes the bill...*'.⁵⁷ Ms Schmidt responded as follows:

The 40 per cent is a largely misunderstood figure. The 40 per cent was one graph shown to provide an example of the current utilisation—I think it was in semester 1 of 2012—of the South Bank campus, which demonstrated the difficulty of the sector to have high utilisation... at that time...

The 40 per cent utilisation... I can gladly report, is much higher today because, of course, we have moved our footprint in that time frame. It has been three years and we were facilitated in that process through the reform process of the VET sector. Our utilisation rates are more like in the mid 60s to 70s today and we are operating on just over 50 sites.

*We contend that we occupy 70 per cent of the footprint and that 70 per cent of the footprint is what is needed.*⁵⁸

The lack of data about utilisation has been identified by the department as an area to be addressed when assets are returned to it, along with the development of a 10 year strategic asset management plan.

Mr Gallagher questioned the assertion that TAFE Queensland's current utilisation rate is in the range of mid-60% to 70%:

*These assertions are well out of line with observed utilisation. The Committee should visit a representative selection of campuses to see this for themselves.*⁵⁹

In relation to data on utilisation rates, he stated:

- *The "data" that TAFE gave QTAMA in later 2014 (i.e. the space that TAFE states that it wants) is not evidence of what it needs to use if it operates efficiently, even allowing a margin of space for the normal year by year fluctuation in student numbers. TAFE's opening position with QTAMA in early 2014 was that it wanted 30 year leases of the whole of every site.*

⁵⁵ Queensland Teachers' Union, Submission No. 35, p 3.

⁵⁶ Queensland Teachers' Union, Submission No. 35, p 3.

⁵⁷ *Transcript of Public Hearing*, 22 June 2015, p 20.

⁵⁸ *Transcript of Public Hearing*, 22 June 2015, p 20.

⁵⁹ Mr Peter Gallagher, Submission No. 60, p 9.

- *If TAFE's occupancy is 70%, then it is leasing that space for almost half the commercial rate as a 40% occupancy has been assumed in setting the rents for 2014-15 and 2015-16.*⁶⁰

Mr Gallagher asserted under-utilisation of TAFE Queensland assets existed at the time of their transfer to QTAMA:

*Reflecting their under-utilisation, upon their transfer to QTAMA the \$1 billion plus training assets portfolio had to be substantially written down to around a third of the original amount. This is value that the State did not have to lose, but that can substantially be recovered with appropriate management.*⁶¹

Further, Mr Gallagher claimed that:

*TAFE's holding back information on its training space requirements until late 2014 prevented QTAMA marketing the spare space before the 2015 election was called. QTAMA has not been free to market excess space since then.*⁶²

Mr Gallagher noted that QTAMA had already developed an asset management plan, as required under the QTAMA Act. While it is an annual plan it of necessity identifies short, medium and long term actions.⁶³

Closure of sites

QTU stated that a number of regional TAFE Queensland campuses were closed as a result of the formation of QTAMA, which had adverse effects in regional communities: *'For example, TAFE campuses at Maryborough and Noosa/Tewantin were shut down altogether'*.⁶⁴

Mr Gallagher argued that QTAMA is not responsible for the closure of TAFE Queensland sites: *'Rather it is tenants, such as TAFE Queensland, that would decide that the site was no longer needed as part of their training program'*.⁶⁵ He confirmed that QTAMA has not forced TAFE Queensland off any site.

This was confirmed by the department (in its response to submissions) and TAFE Queensland, who noted as an achievement of the new TAFE Queensland body, that it had reduced the TAFE infrastructure footprint.

Planned disposal of assets

Some submitters have noted that since 2013-14 campuses occupied by TAFE Queensland have been sold wholly or in part, with some regional campuses having been closed.

In QTU's view, the planned disposal of state owned assets without full community and stakeholder consultation has been a significant issue:

A significant issue around TAFE assets was the planned disposal of assets without full community and stakeholder consultation. This was clearly evidenced by the proposed sale of

⁶⁰ Mr Peter Gallagher, Submission No. 60, p 9.

⁶¹ Mr Peter Gallagher, Submission No. 60, p 2.

⁶² Mr Peter Gallagher, Submission No. 60, p 4.

⁶³ QTAMA Act, s 8(1)(a).

⁶⁴ Queensland Teachers' Union, Submission No. 35, p 3.

⁶⁵ Mr Peter Gallagher, Submission No. 60, p 8.

*the Maryborough campus to a private trainer or a school and a planned subdivision of the Townsville/Pimlico campus.*⁶⁶

According to QTU, ‘...across the State, there has been a reduction in delivery sites by one third’.⁶⁷

In its response to submissions, the department clarified the matter: ‘Campuses that have been closed were not a direct result of QTAMA, but were decisions made by the Department prior to the establishment of QTAMA, or by TAFE Queensland in response to local training needs and demand, and whether the assets were fit for purpose.’⁶⁸

In his submission, Mr Peter Gallagher addresses the assertion that QTAMA is a disguised vehicle for the sale of State assets, making the following points:

- *QTAMA has not listed any of its sites for sale.*
- *QTAMA cannot itself decide on the sale of real estate assets. The asset sale process under the QTAMA Act requires the approval of QTAMA’s Minister, who must consult with (i) the Minister administering the Further Education and Training Act 2014 and (ii) the State Treasurer – see section 46 of the QTAMA Act.*
- *QTAMA would only consider the sale of a site if there were no other options and that site was clearly no longer needed by any party for training purposes.*⁶⁹

In relation to the Townsville/Pimlico campus, Mr Gallagher advised:

*Subject to formal documentation from the Minister, QTAMA proposes to sell a one hectare portion of unused vacant land on its Pimlico (Townsville) site to the Department of Housing and Public Works for the purpose of constructing a Commonwealth and State funded accommodation facility for remote Indigenous youth. This has been endorsed by TAFE Queensland. When QTAMA originated this plan, TAFE Queensland was invited to, and attended, the meetings during which details of the proposal were developed. The funds from this sale will be available to spend on VET projects.*⁷⁰

Charging for the use of plant and equipment

At the committee’s public hearing, Mr Jon Krause MP queried Ms Munro, Assistant Secretary of Together, about assertions TAFE Queensland is being charged for the use of state owned assets, suggesting that TAFE Queensland would be in a privileged position against other non-government training providers if it were not to be charged.⁷¹ Ms Munro replied:

I think it goes even further than whether they were charged for their own assets. We heard stories in Maryborough where local businesses had provided tables, chairs and equipment to

⁶⁶ Queensland Teachers’ Union, Submission No. 35, p 3.

⁶⁷ Queensland Teachers’ Union, Submission No. 35, p 3.

⁶⁸ Letter from Department of Education and Training, Attachment, 19 June 2015, p 1.

⁶⁹ Mr Peter Gallagher, Submission No. 60, p 5.

⁷⁰ Mr Peter Gallagher, Submission No. 60, p 5.

⁷¹ *Transcript of Public Hearing*, 22 June 2015, p 13.

that particular TAFE. Not long after, QTAMA came and brought out the tape measure, measured out those bits of equipment and charged the facility back for that equipment.⁷²

In his submission, Mr Gallagher made the following comment on plant and equipment:

QTAMA does not wish to retain plant and equipment other than fixed items that will attract new tenants to vacant space. Other plant and equipment was in the process of being identified for transfer to TAFE when the process was halted due the 2015 State election being called.⁷³

Student participation numbers

In his opening statement at the committee's public hearing on 22 June 2015, Mr Rod Camm, ACPET CEO, spoke positively about the growth of private providers in Queensland's VET market and the related student participation rates:

In Queensland the last public data that was available by the National Centre for Vocational Education Research shows that private sectors are winning about 13.6 per cent of funding in Queensland and with that they are delivering 35 per cent of the student numbers. You would estimate over the last year or so that has probably grown a little bit, that is for sure. In Queensland the student numbers are growing compared to the fact that they are reducing nationally, so that is a good sign that the reform agenda of which QTAMA has been a component is largely going well.⁷⁴

In response to a query from Mrs Tarnya Smith MP, Member for Mount Ommaney, about Queensland's performance nationally, Mr Camm advised:

Certainly satisfaction rates are higher and student numbers are growing in Queensland by 4.9 per cent compared to a 3½ per cent reduction nationally. If you have read the media about some of the poorer behaviour of some providers down south, that has not happened in Queensland. The market has been managed better.⁷⁵

By contrast, in her opening statement, Ms Irene Monro, Assistant Secretary of Together, identified the '*...shrinking enrolment base in a number of TAFEs in Brisbane...*'⁷⁶

Mrs Tarnya Smith MP asked the following question of Ms Monro:

In your opening statement, you made claims about declining student numbers and higher costs. That is actually in contradiction to the Australian Council for Private Education and Training, which quotes increasing student numbers to 4.9 per cent here in Queensland and on higher costs the Department of Education made the statement that not one student paid an extra cent in higher costs or fees. Can you provide evidence to support those claims of declining student numbers and the higher costs?⁷⁷

⁷² Transcript of Public Hearing, 22 June 2015, p 13.

⁷³ Mr Peter Gallagher, Submission No. 60, p 9.

⁷⁴ Transcript of Public Hearing, 22 June 2015, p 1.

⁷⁵ Transcript of Public Hearing, 22 June 2015, p 2.

⁷⁶ Transcript of Public Hearing, 22 June 2015, p 7.

⁷⁷ Transcript of Public Hearing, 22 June 2015, p 9.

decline in enrolments from a high of 304,300 in 2011 and ought to be viewed from this perspective (see attachment "B").⁸⁰

In its response to questions taken on notice at the committee's public briefing on 3 June 2015, the department furnished details on publicly funded student participation numbers:

As at 31 March 2015, publicly funded student participation had increased 5.3% compared to the previous year. Over the same period, each of the DET regions experienced an increase in student participation ranging from 13.2% in the South East to 0.1% in the North Coast.⁸¹

The department's response included the following table, setting out statistics on publicly funded VET participation by Queensland students from 2013-2015:

Publicly funded VET participation (students)

This table answers the request "Provide the VET participation numbers the [sic] support the 6% increase".

	Full Year	Year to date (as at 31 March)			
	2013-14	2013-14	2014-15	Variance	% Variance
Queensland	246,671	192,801	202,928	10,127	5.3%
Central Queensland	21,769	17,720	18,015	295	1.7%
Darling Downs South West	20,135	16,639	17,142	503	3.0%
Far North Queensland	15,009	12,331	12,500	169	1.4%
Metropolitan	61,972	48,590	50,363	1,773	3.6%
North Coast	44,832	35,635	35,653	18	0.1%
North Queensland	16,968	13,712	14,243	531	3.9%
South East	54,078	41,527	46,994	5,467	13.2%

Notes:

- "Publicly funded VET" includes all vocational education and training (VET) undertaken at TAFE, agricultural colleges and universities (including fee-for-service) plus government-funded-only training at private providers, community based organisations and Adult and Community Education providers.
- Students may attend at more than one provider. Due to this regional sub-totals may not add to overall Queensland figure.⁸²

Acknowledging the context set out by the QTU, the committee notes that overall VET training placements have increased in the past 12 months. Further, while the concerns of some submitters around the decrease in students utilising TAFE Queensland is acknowledged, this concern can be balanced against the overall increased access to training provided by private training providers. That being said, the committee makes no comment about the quality of the training courses offered by those private training providers.

⁸⁰ Response from Queensland Teachers' Union, 23 June 2015, p 3.

⁸¹ Response from the Department of Education and Training, Attachment, 4 June 2015, p 1.

⁸² Response from the Department of Education and Training, Attachment, 4 June 2015, Attachment 4.

Impact on students and courses

Some submitters have expressed concerns that the QTAMA model has impacted detrimentally on students, through increased course costs and reduced availability of course offerings.

In its submission, Together claimed (presumably in respect of VET in schools): *'The impact on students has also been significant with no ability for parents or students to have certainty over the course costs or whether those courses enrolled in would even exist the following term'*.⁸³

It listed data showing increased (VET in schools) course costs between 2012 and 2014 which Together argued was *'...attributable in part with the increased costs that QTAMA were going to inflict on TAFE'*.⁸⁴ Further, it listed courses currently carried out at various TAFE Queensland campuses in Queensland, stating:

*Not only has the number of available courses... been reduced but also the range of available AQTF Certificate levels has also been eroded. At [sic] a lot of smaller campuses are only delivering English language courses. This list is exhaustive but demonstrates what has occurred.*⁸⁵

Both QTU and Together submitted further data about increasing course costs in their responses to questions taken on notice at the public hearing (again this related to VET in schools). Whilst acknowledging the existence of additional factors which have impacted TAFE Queensland under the former government's term, Together believed:

*...that the rental increases that were being demanded by QTAMA were an important factor in the increase of the cost of courses in order to pay rent on facilities previously owned by TAFE. For example at the Toowoomba LCC in November 2014 we were advised that they were going to make another 13 positions redundant and this would mean that they would have to cut courses. The rationale given was the rent that QTAMA was going to charge from 1 July 2015 was to be in the vicinity of \$4.1 million per annum for the Toowoomba Campus and they had to find the money somewhere.*⁸⁶

In response to issues raised by Together in its submission, the department advised:

While the establishment of QTAMA was concurrent with the new VET funding arrangements, it was a separate matter – unrelated to purchasing decisions provided through the 2014–15 Annual VET Investment Plan. The VET Investment Plan outlines the investment framework for publicly funded training in Queensland through a range of skilling programs and student support initiatives.

*As a statutory authority, TAFE Queensland sets its own prices, consistent with all other registered training organisations approved to access government subsidies.*⁸⁷

In response to assertions that QTAMA making TAFE Queensland pay commercial rates increases the cost students have to pay for TAFE Queensland courses, Mr Gallagher advised that *'[n]o student has*

⁸³ Together, Submission No. 40, p 3.

⁸⁴ Together, Submission No. 40, p 6.

⁸⁵ Together, Submission No. 40, p 7.

⁸⁶ Response from Together, 26 June 2015, p 2.

⁸⁷ Letter from Department of Education and Training, Attachment, 19 June 2015, p 6.

had to pay an extra cent because of QTAMA' and '[n]or has any student's choice of courses or venues been affected by QTAMA'.

He explained:

This is because (i) the rent that TAFE pays to QTAMA rent has been fully subsidised by the department, (ii) TAFE has had a priority right of access to all QTAMA sites and (iii) the choice of sites for delivery of training is in TAFE's hands. The Government can decide to continue both the rent subsidy and priority access arrangements without abolishing QTAMA.⁸⁸

Disabled students

Responding to a query from Mr Jim Madden MP on the potential impact that the QTAMA model had on the ability of TAFE Queensland to provide support for students with disabilities, Ms Schmidt stated:

In the first instance, I would say that it did not have an impact on the ability to do that directly. The impact would come from indirect ramifications of the model potentially.⁸⁹

However, in terms of disadvantaged students specifically, Ms Schmidt conceded there were many changes in the last financial year to the investment framework for vocational education and training, making this a complex issue: *'There is a potential—I guess, it could be argued—that the increased cost of rental over time as a result of the commercial approach of QTAMA would lead to increased costs if they were not subsidised at an increased level by government'.⁹⁰*

Despite this concession, Ms Schmidt considered it *'...would be difficult to show any direct correlation...'* between any decrease in the number of students with a disability and *'...the issue at hand'.⁹¹*

In accordance with a question taken on notice at the public hearing, TAFE Queensland supplied the following data on the number of TAFE Queensland students who self-identify as having a disability over the period 2011-12 to 2014-15:⁹²

Financial Year	Students with a disability - TAFE Queensland
2011/12	8,183
2012/13	8,062
2013/14	6,764
2014/ May15 (Year to Date)	4,644

TAFE Queensland advised that the (43 per cent) reduction in the number of TAFE Queensland students identifying as having a disability in 2013-14 and 2014-15 is proportionate to overall TAFE Queensland enrolment trends (ie. downwards, as noted by Together) and should be considered in the context of:

⁸⁸ Mr Peter Gallagher, Submission No. 60, p 6.

⁸⁹ *Transcript of Public Hearing*, 22 June 2015, p 20.

⁹⁰ *Transcript of Public Hearing*, 22 June 2015, p 20.

⁹¹ *Transcript of Public Hearing*, 22 June 2015, p 20.

⁹² Response from TAFE Queensland, 23 June 2015, p 1.

- The table below which shows an overall reduction in total TAFE Queensland student numbers of 3.2 per cent (or 40,200) between 2011 and 2014;
- The revised VET Investment Framework (as articulated in the annual VET investment plans) implemented from 1 July 2013 changed the number of training programs subsidised by the government and the level of funding for some programs; and
- Full contestability for government funded training programs commenced from 1 July 2014 meaning that students with a disability could choose to study with TAFE Queensland or another provider.⁹³

Table: Number of Government Funded VET Students - Queensland (Source: NCVET Government Funded Students and Courses [preliminary] 2014 data):

	2011	2012	2013	2014
	'000	'000	'000	'000
Number of Students (Qld)	304.3	290.7	251.9	264.1
Change from Previous Year		-4.5%	-13.4%	4.9%

TAFE Queensland concluded that the overall change (decrease) in Government funded students from 2011 to 2014 was -13.2 per cent.⁹⁴

In his submission, Mr Gallagher identified assertions made by other submitters that:

- *Under QTAMA, the state's training assets cannot be used for community service obligations or for the provision of services to disabled and disadvantaged groups.*
- *QTAMA is the cause of the loss of disability support officers in TAFE.*⁹⁵

His response to these assertions was that:

- *QTAMA has entered into many short term tenancies to community bodies and is attempting to arrange a longer term sub-commercial tenancy over a currently unused facility at Ashmore (Gold Coast) that is devoted to training of disabled persons.*
- *The main difficulty in the continuation of such disability training relates to changes in the funding of teaching services, not QTAMA or any rent payable to QTAMA.*⁹⁶

TAFE Queensland job losses

Some submitters have argued that the formation of QTAMA has resulted in, or threatened, TAFE Queensland staff voluntary redundancies. Together submitted: *'With the advent of QTAMA our members reported a culture of fear as job security became a thing of the past'*.⁹⁷

⁹³ Response from TAFE Queensland, 23 June 2015, p 1.

⁹⁴ Response from TAFE Queensland, 23 June 2015, p 1.

⁹⁵ Mr Peter Gallagher, Submission No. 60, p 8.

⁹⁶ Mr Peter Gallagher, Submission No. 60, p 8.

⁹⁷ Together, Submission No. 40, p 3.

Mr Peter Gallagher advised that: *'Any job losses at TAFE due to its reducing its footprint have been the result of TAFE's own restructuring initiative, totally separate from the QTAMA initiative'*.⁹⁸ Further, he commented:

*QTAMA was, since early 2014, keen to engage with TAFE's 300 or so facilities management personnel, but TAFE would not provide any names or permit contact by QTAMA. This has led to unnecessary stress on these people over a period of 18 months. During that time some facilities management personnel had approached QTAMA to flag interest in joining QTAMA.*⁹⁹

Conclusion

In this context of multiple change processes coinciding during a relatively short period of time, there have been job losses, campus closures and a reduction in the courses offered at some campuses in some subjects. This has clearly caused some distress to those affected. It is not surprising that cause and effect became blurred.

When there is an ideological opposition to the concept of 'contestability' in the VET sector, as expressed by some of the submitters to the inquiry, any one reform area can be seen as part of the problem.

However, both the department and TAFE Queensland, as well as Mr Gallagher (the QTAMA CEO at the time of writing) have been very clear in their advice to the committee that any increase in costs payable by students, and any reduction in course offerings or student numbers at some campuses or in some courses, are not related to QTAMA. They relate to decisions made by the department, and by TAFE Queensland in the process of that body establishing itself from 13 separate institutes, to operate in a contestable market. The evidence supports the finding that this is the case.

TAFE Queensland decisions about assets, course costs to students and course offerings are not a result of cutting costs to pay rent to QTAMA, because no rent has been paid. Yet there is a perception among those affected by the changes that QTAMA has caused or contributed to these problems. It appears that this message is being conveyed at several levels including management level at individual campuses, throughout TAFE Queensland. This may suggest the need for improved communication by TAFE Queensland about the reform process and its elements, and reasons for changes to its staff and students.

2.2 Effectiveness of QTAMA

Having determined the limited cause and effect in respect of the above matters, the fundamental question remaining is whether the QTAMA model offers an efficient and cost effective way of managing public assets to support the objective of the provision of VET in accordance with sound commercial principles.

Distinct from questioning whether QTAMA has adequately performed its role in accordance with its stated objectives, submitters and stakeholders have criticised the QTAMA model itself.

QTU submitted that *'...the high cost of the QTAMA board itself is a significant issue given the poor return on investment in terms of the management of facilities at the detriment to TAFE students and to the broader community at large'*.

⁹⁸ Mr Peter Gallagher, Submission No. 60, p 7.

⁹⁹ Mr Peter Gallagher, Submission No. 60, p 7.

TAFE Directors Australia (TDA) raised the following concerns about QTAMA's approach to managing training assets:

*In our view, QTAMA's purely commercial approach is not cognisant of the broader economic and social benefits generated by public training infrastructure. TDA is not aware of any evidence based review or research that has recommended this approach to public training asset management, even though many reviews of VET have been undertaken by states and territories to inform Governments' policy approach to improving students' learning experiences and the outcomes of VET, including asset maintenance and utilisation.*¹⁰⁰

Conversely, it considered:

*...there are many examples across Australia where TAFE and other training providers are utilising public infrastructure to build industry and community partnerships that significantly contribute to raising the qualifications profile of Australia's population and providing the skills needed by Australian Industry.*¹⁰¹

TAFE Queensland identified nearly 80 such partnerships that were in place in Queensland, most of them having commenced prior to the establishment of QTAMA.¹⁰²

TDA identified two further concerns relating to the QTAMA model:

- 1. QTAMA's lack of flexibility in responding to industry needs; and*
- 2. QTAMA's overall potential to impact on the business of TAFE in Queensland.*¹⁰³

On the other hand, CCIQ supported the QTAMA model, claiming QTAMA:

*...is a responsible vehicle established by the previous Government for the transfer of the State's TAFE assets that are underutilised and would be efficiently managed or accessed by the private sector. It ensures the most effective use of state-owned training assets by keeping them in the hands of the State Government, while managing them under more commercial leasing arrangements so that training providers across Queensland can maximise their usage. This benefits those in training, as it gives them access to public funded facilities irrespective of whether they are enrolled with a public or private training provider. It also improves transparency, giving the Queensland business community confidence that the State Government is taking steps to ensure the efficient use of State owned assets.*¹⁰⁴

It concluded: *'Repealing the Act would simply undo the efficiencies that a commercial approach to asset management has achieved'*.¹⁰⁵

TAFE Queensland noted *'...that establishment of a property manager to achieve commercial returns on education or training assets has not been successful anywhere in Australia or the world'* and *'...that Queensland's training asset base continues to be hampered by historical low investment, inability to*

¹⁰⁰ TAFE Directors Australia, Submission No. 39, p 1.

¹⁰¹ TAFE Directors Australia, Submission No. 39, p 2.

¹⁰² TAFE Qld, Submission no. 37, p6.

¹⁰³ TAFE Directors Australia, Submission No. 39, p 2.

¹⁰⁴ Chamber of Commerce and Industry Queensland, Submission No. 41, p 2.

¹⁰⁵ Chamber of Commerce and Industry Queensland, Submission No. 41, p 2.

renew and relocate assets to account for geographic and demographic shifts and the lack of a long term strategic asset plan'.¹⁰⁶

It recommended '*...the asset base be transferred to TAFE Queensland but separated from TAFE Queensland's training delivery*' and:

*...that future strategies for improved open access to TAFE and training sites be based on the Government's training policy that seeks to increase demand for training and fosters educational partnerships that support achievement of the Government's employment, economic and social reform priorities.*¹⁰⁷

Additionally, TAFE Queensland identified the following key issues with the QTAMA model:

- *The model restricts industry training partnerships which are pivotal to the operations of the VET sector to encourage industry investment and collaboration.*
- *There are medium and long term implications for regional, rural and remote training delivery with the model not reflecting the additional costs and challenges of providing training in these localities with QTAMA seeking full commercial rates for regional facilities from 1 July 2016.*
- *There are identified workplace health and safety risks of a shared user model for specialised assets, the use of which must meet strict legislative and regulatory requirements to ensure their safe operation for training delivery.*
- *The model creates a disincentive for training providers to invest in training infrastructure due to the lack of long term ownership or tenure.*
- *The model has not met its intended purposes with only a limited number of additional leases secured with private operators.*
- *There is ongoing ambiguity for the circa 300 staff that manage and maintain the State's training asset portfolio who, although currently engaged by TAFE Queensland, perform these duties on behalf of QTAMA and its clients including equipment repairs and security.*¹⁰⁸

The public hearing included discussion on the Queensland training asset base and on whether the QTAMA model restricts pivotal industry training partnerships.

In her opening statement to the committee, Ms Schmidt referred to TAFE Queensland's written submission:

*The many reviews noted in our submission conclude that there are long-term persistent issues with the assets base that require retention [attention]. Despite significant work and effort on TAFE Queensland's behalf that has gone into sustaining QTAMA's establishment, it is difficult to see how this model can work effectively to support the ongoing development of vocational education and training in Queensland.*¹⁰⁹

¹⁰⁶ TAFE Queensland, Submission No 37, p 2.

¹⁰⁷ TAFE Queensland, Submission No 37, p 2.

¹⁰⁸ TAFE Queensland, Submission No 37, p 2.

¹⁰⁹ *Transcript of Public Hearing*, 22 June 2015, p 18.

She continued, identifying: ‘...restrictions of the QTAMA model that TAFE Queensland believes have curtailed our ability and the ability of others to establish meaningful and productive partnerships with industry and other providers’.¹¹⁰

Mr Mark Furner MP sought further comment from Ms Schmidt about restrictions to industry training partnerships. Ms Schmidt responded as follows:

...the further development of our business is absolutely dependent on our ability to have sustainable partnerships into the future, whether that be with other private training providers, other public training providers or, in fact, the industry itself. The complexity of the arrangement with QTAMA made it very difficult to continue some of those partnerships, and I saw some evidence of that in some of the other submissions. Also, our experience was that tri-party arrangements where the landowner was involved sometimes diluted the ability and the potency of that...¹¹¹

Later in the public hearing, the following exchange occurred:

CHAIR: *As a supplementary to Mr Ryan’s earlier question, Ms Schmidt, with regard to the partnerships, in your submissions you refer to the CSG industry with Santos, Komatsu and also the Queensland Gas Company. No doubt you have dealt with partnerships prior to the inception of QTAMA as well. I take it that that has been successful. What has been the risk as a result of QTAMA with respect to those partnerships you have indicated in your submissions?*

Ms J Schmidt: *I think all of those partnerships have been put at risk. Some of them we may have lost...¹¹²*

In his submission, Mr Gallagher identifies the elements of the ‘Rescuing TAFE’ policy which relate to the State’s training assets, concluding that the only element:

‘...not currently being performed by QTAMA relates to the asset owing/managing vehicle itself. So everything that QTAMA currently does is in line with the Rescuing TAFE policy. It is the type of entity that QTAMA is that is out of line with the policy. It is not clear from the policy why the type of vehicle is offensive.’¹¹³

Whilst noting that the ‘Rescuing TAFE’ policy requires the assets to be controlled by the department, in Mr Gallagher’s view, experience indicates that while the nature of the asset ownership vehicle is important, it is not as important as:

(i) the skillset of the asset management personnel (particularly in terms of asset and facilities management, property and commercial law, property letting, and finance)

(ii) the need for the asset ownership/management vehicle to be free from conflicts of interest and able to preserve legal professional privilege

(iii) the experience and effectiveness of those who govern the vehicle’s operation and set its strategic direction in consultation with the Minister (i.e. its board or the equivalent).¹¹⁴

¹¹⁰ *Transcript of Public Hearing*, 22 June 2015, p 18.

¹¹¹ *Transcript of Public Hearing*, 22 June 2015, p 19.

¹¹² *Transcript of Public Hearing*, 22 June 2015, p 21.

¹¹³ Mr Peter Gallagher, Submission No. 60, p 2.

¹¹⁴ Mr Peter Gallagher, Submission No. 60, p 2.

Mr Gallagher concluded that:

*...the asset ownership and management function could, theoretically, be carried out by an independent business unit in a department provided that (i) it has the necessary skilled personnel, resources and governance, and (ii) confidential and legally privileged information held by that business unit could be effectively ringfenced. However the practical difficulty in achieving these objectives within a departmental business unit has historically driven the use of agencies with greater independence, e.g. statutory bodies. It is worth noting that statutory bodies can report directly to a minister, without a board.*¹¹⁵

He identified ‘...the poor physical and financial state of the assets transferred to QTAMA in July 2014, and the poor state of their management...’ as evidence that neither the department nor TAFE Queensland possesses ‘...the necessary skillset’. Mr Gallagher continued, providing evidence on under-utilisation of assets:

*Reflecting their under-utilisation, upon their transfer to QTAMA the \$1 billion plus training assets portfolio had to be substantially written down to around a third of the original amount. This is value that the State did not have to lose, but that can substantially be recovered with appropriate management.*¹¹⁶

Mr Gallagher asserted that, because of TAFE Queensland’s inherent conflict of interest, it is not the appropriate vehicle to manage third party access to the State’s unused training assets:

*Ringfencing the access function in TAFE would not work if the TAFE board oversees the function, not least because third parties would be unsure that their confidential applications for access would not leak to TAFE operational personnel. Further, if TAFE is not already subject to competition law (specifically Part IV of the Competition and Consumer Act 2010 (Cth)) by virtue of its carrying on a business, it is expected to become subject to that law under a proposed change that recommends the inclusion of State departments’ and authorities’ commercial transactions.*¹¹⁷

¹¹⁵ Mr Peter Gallagher, Submission No. 60, p 2.

¹¹⁶ Mr Peter Gallagher, Submission No. 60, p 2.

¹¹⁷ Mr Peter Gallagher, Submission No. 60, p 3.

3. Compliance with the Legislative Standards Act 1992

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) 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 has examined the application of FLPs to the Bill and given particular attention to clause 4.

3.1.1 *Rights and liberties of individuals*

Section 4(2)(a) of the LSA provides the principles of FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals. Sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice, or provides for the compulsory acquisition of property only with fair compensation.¹¹⁸

Clause 4, proposed new section 225 would dissolve the QTAMA and its board. The QTAMA chief executive officer and each member of its board will go out of office. No compensation is payable to a person as a result of this provision.

The proposed section 225 will dissolve QTAMA and the QTAMA board members and chief executive officer are not to be compensated beyond what is permitted under the terms and conditions of their appointment.

The Explanatory Notes state that:

Parliamentary committees have raised these types of provisions as a potential breach of fundamental legislative principles. However, the government’s position is that officers appointed to statutory bodies do not have a right to expect to remain in office, nor to expect compensation beyond those in their terms and conditions of employment for termination of their position.

The Explanatory Notes put forward the following in justification of this potential breach:

In this instance, the terms and conditions of appointment of the board members do not allow for compensation on termination of office. The current chief executive officer’s term of appointment will cease on 30 June 2015, prior to the abolition of QTAMA. In addition, the QTAMA board and the current chief executive officer have been given notice of the Government’s intention to repeal QTAMA. Therefore, it is not considered that the Bill breaches fundamental legislative principles.

¹¹⁸ *Legislative Standards Act 1992*, ss 4(3)(b) & 4(3)(i).

Clause 4, proposed section 231 will apply to a proceeding that, immediately before the commencement, had not ended and to which QTAMA was a party. On commencement the State becomes a party to the proceeding in place of QTAMA.

Proposed section 231 potentially affects an individual's 'right to sue' as the Bill would remove QTAMA from proceedings that have not ended immediately before commencement of the provision. However, section 231 replaces QTAMA with the state in relation to each of the relevant proceedings. If a party's rights are altered as a result of the State replacing QTAMA (e.g. if in a particular situation the state is deemed not to be liable where the QTAMA would have been) then there is potential for breach of this fundamental legislative principle.

Clause 4, proposed section 235(2) provides that *"if, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under this division, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally."* Section 235(3) provides that *"If giving notice to a person would be necessary to do something under this division, the notice is taken to have been given."*

The proposed section 235(2) and (3) provides for effects on legal relationships and in particular declares that, advice, consent or approval in certain circumstances, is taken to have been given unconditionally, and/or a notice to have been given, without this necessarily being the case. This too, has potential to affect the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

Committee comment

The committee considers that clause 4, section 225 is justified given the terms and conditions of the original appointments, the timing of the expiration of their appointments prior to the commencement of the relevant provisions, as well as the notice given of the Government's intention to repeal the QTAMA.

It is understood that QTAMA is not party to any legal proceedings at this time. In any case, the committee considers that the replacement of QTAMA with the "state" in relation to any current legal proceedings (section 231), provides security to parties to legal proceedings and accordingly is not likely to affect the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

The committee also considers that proposed section 235 has sufficient regard to FLPs. In reaching this view, it was considered that any adverse impacts on the rights and liberties of parties would be limited.

3.2 Explanatory notes

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

Explanatory notes were tabled with the introduction of the Bill.

The Explanatory Notes state that consultation was not conducted on the Bill. It would be appropriate if the Explanatory Notes, when stating this, also provide a reason as to why consultation was not conducted.

The notes are otherwise fairly detailed and generally contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

It would however be helpful if the Notes identified the specific clause being discussed, when identifying the fundamental legislative principles.

Appendix A – List of Representatives at the Public Briefing

Department of Education and Training:

- Dr Jim Watterston, Director-General
- Mr Geoff Favell, Deputy Director-General, Training and Skills
- Mr David O’Hagan, Deputy Director-General, Corporate Services
- Mr Stuart Busby, Director, Legislative Services

TAFE Queensland

- Ms Jodi Schmidt, Chief Executive Officer

Appendix B – List of Submissions

Sub #	Submitter
001	Partec (Qld) Pty. Ltd
002	Terrence Manthey
003	Lorraine Buchanan
004	Greg Uridge
005	Leanne Peters
006	Clinton Robertson
007	Caterina Ferlito
008	Christine Lockington
009	Donna McPherson
010	Glen Muirhead
011	Sandy Lackie
012	Grace Nott
013	Catherine Piroli
014	Ra'chel Sihto
015	Aaron Boyd
016	Brett Scott
017	Gordon French
018	Elizabeth Allen
019	Tracey Castle
020	John Fenech
021	Chris Martyr
022	Andrew Tunnah
023	Rob Jones
024	Grace Blengini
025	Geoffrey Scott
026	Mark Smith
027	Paul Hughes
028	Barbara Cox
029	Renee Kuiper
030	Richard Bale
031	Ronald Birch
032	Don Robertson

033	Peter Devey
034	Shaomin Zhong
035	Queensland Teachers Union
036	Independent Education Union of Australia
037	TAFE Queensland
038	Australian Council for Private Education and Training
039	TAFE Directors Australia
040	ASU Together
041	CCIQ
042	Margaret Crowther
043	Debra Moller
044	Tina Murray
045	Brian Marshall
046	Stella Deguara
047	Julie Papp
048	Cristey Gudgeon
049	Wade Mayes
050	Ken Reid
051	Gota Bahanibanje
052	Ross Kerr
053	Catherine Weigel
054	Brett Scott
055	Julia Wang
056	Roslyn Daly
057	Jeff Gehrmann
058	Helmut Plauschin
059	Sally King
060	Peter Gallagher

Appendix C – List of Witnesses at the Public Hearing

Australian Council for Private Education and Training (ACPET)

- Mr Rod Camm, Chief Executive officer
- Mr Matthew Traynor, Queensland State Executive Officer

Together

- Ms Irene Monro, Assistant Secretary
- Ms Vicki Neuman, Together Delegate

Queensland Teachers' Union (QTU)

- Mr David Terauds, TAFE Organiser
- Ms Thalia Edmonds, Industrial Advocate

Independent Education Union of Australia (IEUA)

- Ms Adele Schmidt, Research Officer

TAFE Queensland

- Ms Jodi Schmidt, Chief Executive Officer
- Mr Robert Petherbridge, Executive Director Strategic Policy
- Mr Michael Thomas, Chief Operating Officer