GRAMMAR SCHOOLS AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

SHORT TITLE OF THE BILL

The short title of the Bill is the Grammar Schools and Other Legislation Amendment Bill 2003.

POLICY OBJECTIVES OF THE BILL

The Bill has three primary policy objectives aimed at updating the legislative regime around grammar schools, namely:

- to act on recommendations from the Department of Education's 2002 Public Benefits Test Report that found section 6 of the *Grammar Schools Act 1975* (the Act) to be anti-competitive;
- to provide for the protection of the grammar school name; and
- to provide greater clarity in relation to the Minister's powers in the event that a grammar school experiences serious financial difficulty.

The Bill also proposes amendments to the *Education (General Provisions) Act 1989* for the provision of transport assistance to students with disability, as part of the *Grammar Schools and Other Legislation Amendment Bill 2003.*

MEANS OF ACHIEVING OBJECTIVES

The policy objectives of the legislation are primarily achieved in the following ways:

- amending the criteria for establishment of new grammar schools to reflect community participation and Government policy considerations, rather than merely monetary contributions;

- protecting the word "grammar" from future use by entities establishing or operating schools that do not have a legitimate claim on the use of that name;
- updating corporate governance requirements for boards of trustees by placing on boards a duty to disclose to the Minister matters that raise a significant concern about the school's financial viability;
- improving election and nomination requirements to ensure only eligible persons are proposed as candidates;
- improving Ministerial options for control in circumstances of school financial difficulty by providing for an administrator to be appointed to operate a school;
- clarifying the relationship between grammar schools and the *Education (Accreditation of Non-State Schools) Act 2001*; and
- providing boards of trustees with the power to create by-laws in respect of electoral matters.

The policy objectives have been arrived at through a multi-stage consultation and review process, which involved:

- the Department of Education conducting a Public Benefits Test review of portfolio legislation, including the Act. The recommendations of this report, which were endorsed by the Treasurer in 2002, required the removal of anti-competitive provisions from the Act.
- a steering committee, comprising representatives of grammar schools and their peak body, The Grammar Schools of Queensland Association Inc, being formed in August 2002 to review the Act. The steering committee produced a discussion paper that was distributed to stakeholders in December 2002;
- the steering committee's draft report and recommendations being distributed to stakeholders in February 2003, with their comments incorporated into the final report submitted to the Minister;
- a draft Bill being distributed to all stakeholders for comment in May 2003. Stakeholders were invited to participate in a focus group in consideration of the draft Bill and for conducting the Public Benefit Test in June 2003.

National Competition Policy

The Department of Education's 2002 Public Benefits Test Report, endorsed by the Treasurer on 18 April 2002, established that section 6 of the Act was anti-competitive. Section 6 provides that a community must raise a minimum of $100,000 (or property to that amount) towards establishment of a grammar school to enable the Governor in Council to make a determination as to whether a grammar school should be established in that location. If successful in having the Governor in Council establish a grammar school, the community would also be eligible to receive from the Government not more than two times the amount they had raised towards the establishment of the school. The sum paid by the Government may take the form of money or property to that amount.

The Bill removes this barrier to entering the grammar school market by replacing the requirement to raise or acquire $100,000 with community participation requirements. Establishment of a new grammar school will no longer solely require the raising of funds. The Bill provides for the following two mechanisms for the establishment of new grammar schools:

- on application from interested persons; or
- on the Minister for Education's own initiative.

Upon receiving an application from interested persons, the Minister must be satisfied that:

- there is a demonstrated need for a grammar school in the proposed location;
- there is sufficient community support for a grammar school in the proposed location;
- the persons proposing the establishment of the school fully understand the governance requirements of grammar schools;
- the likely financial implications for the State; and
- the compatibility with announced government education policies.

If satisfied that a new grammar school meets the criteria the Minister may give approval for the school to be established. A regulation must then be made naming the new school as a grammar school.

The second mechanism for establishment of a new grammar school is on the Minister's own initiative, without the requirement for there to be an application from interested persons. The criteria for establishment of a

new grammar school in this way are substantially the same as if the school were the subject of a written application from an establishing entity. The only criterion not to be considered is subsection 6A(4)(f), relating to the applicant fully understanding the governance requirements of grammar schools. A regulation must then be made naming the new school as a grammar school.

Name protection

The Bill prevents the use of the word "grammar" by entities establishing or operating schools that do not have a legitimate claim on the use of that name. Currently, there are eight grammar schools established under the Act or its predecessor; two schools not established under these Acts but which use the "grammar" name; and two registered businesses using the "grammar" name, but which are not operating as schools.

The grammar school name, in the Queensland context, is considered by many in the education sector to be a valuable "brand name" on which the grammar schools have long traded. The name is associated with producing excellent academic outcomes, as well as values and attitudes that have enabled former students to make useful contributions as leaders in the community. Additionally, grammar schools have a reputation for stability and sound governance that has inspired confidence among the community. To date there has been no protection of the grammar school name against use by others in the education sector.

Legal remedies for protection of the grammar school name were explored in the process of the steering committee's review of the Act. Remedies under the *Trade Practices Act 1974* and *Fair Trading Act 1989*, the tort of "passing off" and actions under copyright and brand name legislation were considered to offer grammar schools little chance of success in redressing any "misuse" of the grammar school name.

Given the limited chance of success of protecting the grammar school name under currently available legal remedies and the accepted additional compliance costs associated with being a statute grammar school, it was considered that the anti-competitive nature of a specific protection provision protecting the grammar school name was balanced by the overall compliance burden placed on grammar schools.

Clause 18 (section 46R) of the Bill creates two offences in protection of the "grammar" name:

- for persons establishing or operating a school that includes the word "grammar" if that school is not a grammar school under this Act; and
- for persons who hold out that a school that is not a grammar school under this Act, to be a grammar school.

Each offence carries a maximum penalty of 200 penalty units.

The Bill also contains provisions, at clause 23 of the Bill, that protect the rights of persons already operating schools using the word "grammar". There are two non-State schools accredited under the *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act) that use the grammar school name - Anglican Church Grammar School and Sunshine Coast Grammar School. Non-State schools must not operate without accreditation under the Accreditation Act. No State schools use the grammar school name. The protection extends only to these two non-State schools, as they are currently named, and under the operation of their current operators. If the details of either the school or their operator changes the protection from prosecution no longer applies.

There are two currently registered business names using the grammar school name - Charters Towers Grammar School and Gold Coast Grammar School. These business names are not being used in connection with an accredited school. The Bill does not protect the proprietors of these business names in relation to use of these names in connection with a school. After commencement of the Bill these proprietors will commit an offence under the Act, if they establish or operate a school using the grammar school name unless the schools are accredited as non-State schools and are established by the Minister under the Act.

The Bill is drafted such that the existing eight statute grammar schools, the two currently accredited non-State schools, and any other grammar schools subsequently established under the Act are the only entities that may legitimately operate a school using the grammar school name.

Ministerial powers

Experience with Rockhampton Girls' Grammar School in 2000 and 2001 highlighted the lack of powers available to the Minister for Education when a grammar school experienced financial difficulties. The Minister was unable to require from the school's board of trustees financial records that would have enabled the Minister to determine the exact extent of the financial difficulties being experienced by the school. The Minister had,

and will continue to have, the power to recommend to the Governor in Council that the entire board of trustees be removed.

Additionally, the Minister had no power to enable the appointment of an external person to assist in, or take over, the running of the school to ensure that students of the school, employees of the school, the school's creditors and the State's investment in the school were not detrimentally affected by the financial difficulties.

The Bill provides four direct remedies for the difficulties experienced with respect to Rockhampton Girls' Grammar School's financial difficulties. The remedies may also be used in situations that do not specifically relate to financial matters.

Firstly, the Bill amends corporate governance requirements to place an onus on boards of trustees to inform the Minister of any issues that raise significant concerns about the school's financial viability. These provisions are specifically included to allow the Minister to more fully exercise her responsibilities for the financial responsibility of these statutory authorities within her portfolio. For example:

- a board must advise the Minister of proceedings started against the school that may result in the payment of significant damages or legal costs; and
- a board must advise the Minister of a significant decrease in enrolments at the school.

Secondly, the Bill provides, at clause 16 (section 46B), that the Minister may request from a board of trustees information and documents to enable the Minister to satisfy themselves that the school is being properly administered. The request must be reasonable, provide the board with a reasonable time to respond, and relate only to matters of which the board has knowledge. The board of trustees must comply with such a request. Unless exception circumstances surround the request the Minister must consult with the board about the proposed request.

This provision is included to provide the Minister with the powers to ensure the Minister fulfils her legislative responsibilities in relation to these statutory authorities. This provision meshes with the duties imposed on boards of trustees at clause 16 (section 46A) of the Bill to advise the Minister of matters that raise significant concern about the school's financial viability.

Thirdly, the Bill provides, at clause 16 (section 46C) of the Bill, that the Minister may give a board a written direction about a matter relevant to the

board's functions. Such a direction must be in the interests of the school to ensure the school's financial viability. The board must comply with such a direction. Unless exception circumstances surround the proposed direction the Minister must consult with the board about the proposed direction.

Each direction is to be recorded in the board's annual report compiled in accordance with the *Financial Administration and Audit Act 1977*.

Fourthly, the Bill provides at clause 17 (new Part 3A) of the Bill, the Minister for Education with the power to appoint an "administrator" to the board of trustees of a grammar school if certain criteria are satisfied. The Minister may make the appointment if the board requests the appointment, or if the board is given a show cause notice under the Accreditation Act. Additionally, the appointment may be made if the Minister reasonably believes that the school is no longer financially viable or is in danger of becoming financially non-viable.

The "administrator" will stand in the shoes of the board of trustees and will have the same functions and powers as the board of trustees. The "administrator" will be appointed in an attempt to trade the school out of financial difficulties, or, if the circumstances warrant, to advise the Minister as to the orderly discontinuance of the school.

At all times the "administrator" will be reporting to the Minister and will be subject to Ministerial direction.

In 2000 and 2001 when Rockhampton Girls' Grammar School experienced severe financial difficulties the Minister was unable to appoint an administrator. The Minister was required to rely on remedies available to the Treasurer under part 3, division 3 of the *Statutory Bodies Financial Administration Act 1982* (the SBFA Act) to facilitate an acceptable outcome. The outcome was the appointment of an appointee under the SBFA Act to take over the functions of the board in running the school.

The potential for conflict of these powers with those of the Treasurer under the SBFA Act is negated by clause 17 (subsection 46K(2)) of the Bill, that provides for the termination of an administrator's appointment on the appointment of a person under section 24 of the SBFA Act.

Secondary objectives

The Bill also has the following secondary policy objectives:

- to provide grammar schools with greater flexibility in relation to their electoral matters;

- to modernise corporate governance mechanisms in the Act; and
- to amend the *Education (General Provisions) Act 1989* to establish a head of power for the Minister for Education to provide transport assistance to students with disabilities.

Electoral matters

Of the seven members of boards of trustees for grammar schools three are elected by donors and subscribers. The requirements for the holding of these elections and the eligibility to vote in and stand for elections will be removed from the Act and placed in the regulation. The regulation will contain the standard electoral processes including:

- the setting of the dates for election;
- appointment of a returning officer;
- distribution of ballot papers;
- conduct of the poll; and
- minimum and maximum electoral eligibility amounts.

Grammar schools, through their boards of trustees will be able to make by-laws amending a number of these standard electoral requirements to suit the individual circumstances of their own schools. The boards will be able to establish their own electoral eligibility amounts (the amounts that must be donated or subscribed in order to vote in an election or to stand for election) within a minimum and maximum amount established by regulation.

Additionally, the boards of trustees will be able to establish a by-law for their school as to the maximum number of terms a person may serve as an elected member on a board. This is designed to minimise the potential for boards to be under the control of the same members for decades. Schools that consider this consistency to be an attribute may rely on standard electoral requirements which do not impose such limits.

Corporate governance

The Bill also updates the corporate governance requirements for boards of trustees to bring them into line with current regulatory practices.

Currently the board determines whether a conviction should warrant disqualification from holding office. This position is considered unsatisfactory given that the Minister must make the recommendations to Governor in Council for appointment of board members. The Bill provides

that board members convicted of an indictable offence, or who are affected by bankruptcy action, will be automatically disqualified from office, pending assessment by the Minister as to their suitability to continue. The Minister's determination that a person is suitable to continue as a member, despite a conviction or bankruptcy, in no way limits requirements placed on members under other Acts.

Transitional provisions are included at clause 23 (section 56) of the Bill, to allow current members who have been convicted of an indictable offence and allowed to continue as a member under the current section 9(b), to be excluded from a second examination of the same set of facts under the new section 9.

Transport Assistance

The Government's School Transport Assistance Program assists around 135,000 students annually, who are disadvantaged in some way in gaining access to school. The primary aim of school transport assistance is to facilitate access to schooling for certain eligible students.

As a result of the Government's Aligning Services and Priorities Project process the responsibility and decision-making for school transport assistance for students with disabilities was transferred from Queensland Transport to Education Queensland (the Department) on 1 June 2002. There are currently approximately 5,000 students with disabilities receiving assistance to attend schools.

Queensland Transport derives legislative power to provide transport assistance from section 144 of the *Transport Operations (Passenger Transport) Act 1994*. Queensland Transport will continue to provide transport assistance to all students other than students with disabilities, attending primary and secondary schools in Queensland.

As a consequence of the transfer of responsibility for the provision of transport assistance of students with disabilities, Part 4 of the Bill inserts a head of power in the *Education (General Provisions) Act 1989* to enable the Minister of Education to provide this assistance to students with disabilities.

REASON THAT THE PROPOSED LEGISLATION IS NECESSARY

The proposed legislation is necessary as it:

- meets the Government's National Competition Policy commitments in relation to the *Grammar Schools Act 1975*;

- addresses issues of concern to stakeholders in relation to protection of the grammar school name and corporate governance; and
- provides the Minister for Education with powers sufficient to enable intervention in the administration of grammar schools when it is necessary and reasonable to do so.

The Queensland Government's commitments to the Competition Principals Agreement require unjustified anti-competitive provisions in legislation to be removed. The Bill meets this commitment by removing section 6 of the Act and replacing the existing monetary criteria for establishment of a new grammar school with a range of community participation criteria and Government policy considerations to which the Minister for Education must have regard when considering establishment of a grammar school.

The community participation criteria are considered as the appropriate remedy to the anti-competitive provisions as they reflect the broad traditions of community participation inherent in the establishment and ongoing operation of grammar schools.

Protection of the grammar school name is required to ensure that the more than 100 year-old traditions of grammar schools are not unduly diluted by schools that have not been established under the two Grammar School Acts (the *Grammar Schools Act 1860* and *Grammar Schools Act 1975*) and whose establishment and operations are not moulded by compliance with those Acts and other relevant Acts.

The corporate governance mechanisms currently contained in the Act do not provide the boards of trustees with sufficient direction in relation to their roles and responsibilities. Additionally, the Act does not provide the Minister with the ability to effectively fulfil the Minister's responsibilities in relation to these statutory bodies in her portfolio.

ALTERNATIVE METHOD OF ACHIEVING THE POLICY OBJECTIVES

A number of alternative proposals were considered in relation to achieving the policy objectives. However, each of the policy objectives dealt with in the Bill is required to be affected by legislation.

The potential for success of legal actions, which would have to be undertaken by individual grammar schools against schools using the

grammar school name, was considered limited. The costs associated with such actions were considered to be prohibitive for grammar schools. Legislative protection of the grammar school name was considered to be the only viable alternative.

ESTIMATED COST FOR GOVERNMENT IMPLEMENTATION

The proposed arrangements will result in no additional costs to the Government. The removal of the requirement for a government contribution towards establishment of new grammar schools is likely to make the establishment of the school more cost-effective for the Government as the costs will be met, at least in part, by direct community contributions and student fees.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

Aspects of the Bill that raise fundamental legislative principles issues are outline below:

Protection of the "grammar" school name

Clause 18 (section 46R) of the Bill creates an offence for establishing or operating a non-grammar school using the word "grammar". This offence restricts use of the word "grammar" in connection with a school to those schools established under the Grammar School Acts or protected by the transitional provisions of the Bill.

Transitional provisions at clause 23 (sections 52 and 57) of the Bill, provide that two identified non-State schools that are currently accredited and operating will also be protected from prosecution in their use of the grammar school name.

Therefore, the Bill permits use of the grammar school name by only:

- the eight grammar schools established under the *Grammar Schools Act 1860* and which are accredited as non-State schools;
- the Corporation of the Synod of the Diocese of Brisbane operating the Anglican Church Grammar School;
- Sunshine Coast Grammar School Pty Ltd operating the Sunshine Coast Grammar School; and

- any other schools that may be established as grammar schools under the Act and for which a regulation is made naming the school.

The protection from prosecution deliberately does not extend to schools that may be established or operated by the proprietors of business names registered under the *Business Names Act 1962*. There are two such business names - Charters Towers Grammar School and Gold Coast Grammar School.

It may be argued that this approach breaches fundamental legislative principles in that it may adversely affect the rights and liberties of persons. Legal advice obtained on this matter establishes that the registration of a business name does not create or support any proprietary rights in use of that name. That registration does not create a separate legal entity nor does it operate to confer any ownership rights in that name.

On the basis of this advice the two business names mentioned above do not have any proprietary rights and as such no compensation would be payable for the way in which these matters are dealt with under the Bill. On the same basis it is also considered that no person's rights and liberties are adversely affected by these matters.

The protection from prosecution also deliberately does not extend to schools that may be established or operated by companies or incorporated associations that are currently, legitimately using the grammar school name in another jurisdiction. Such organisations would be committing an offence against section 46R of the amended Act if they established or operated a school in Queensland using the grammar school name, despite their having a company name or incorporated association name using that term. For example, Newcastle Grammar School Ltd which operates a school in New South Wales, would commit and offence by establishing or operating a school using that name in Queensland. The company would be entitled to establish or operate a school (subject to other legislative requirements) that did not use the grammar school name.

Therefore, it is considered that there is no breach of fundamental legislative principles in relation to this matter.

Transport assistance

The proposed amendments to the *Education (General Provisions) Act 1989* have a retrospective commencement date. The purpose of this amendment is to clarify the powers of the Minister for Education in relation to the provision of transport assistance to students with disabilities.

Students, their parents and transportation providers in receipt of this assistance will not have their rights adversely affected, as their entitlements to this assistance will remain unchanged. On this basis it is considered that the retrospective commencement of the amendments is not a breach of fundamental legislative principles as it does not adversely affect the rights and liberties, or impose obligations retrospectively.

CONSULTATION

Community

Consultation on the preparation of the Bill has been undertaken with the following key stakeholders:

- The Grammar Schools of Queensland Association Inc;
- Association of Independent Schools Queensland Inc;
- Queensland Catholic Education Commission;
- Brisbane Grammar School;
- Brisbane Girls' Grammar School;
- Ipswich Grammar School;
- Ipswich Girls' Grammar School;
- Rockhampton Grammar School;
- Rockhampton Girls' Grammar School;
- Toowoomba Grammar School;
- Townsville Grammar School;
- Anglican Church Grammar School;
- Sunshine Coast Grammar School Ltd;
- Blackheath and Thornburgh Colleges' Association (the registered proprietor of the business name, 'Charters Towers Grammar School'); and
- Dr Gregory Gass (the registered proprietor of the business name, 'Gold Coast Grammar School').

Government

Department of the Premier and Cabinet

Queensland Treasury

Department of State Development

Department of Justice and Attorney-General

Department of Primary Industries

Department of Transport

Department of Employment and Training

Crown Law

Office of the Queensland Parliamentary Counsel

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Act. Part 4 of the Bill is to commence on 1 June 2002. This retrospective commencement effectively validates the transport assistance provided by the Department of Education to students with disabilities and their parents for that period.

The remainder of the Bill will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF GRAMMAR SCHOOLS ACT 1975

Clause 3 provides that Part 2 and the schedule of the Bill amends the *Grammar Schools Act 1975*.

Clause 4 amends the long title of the Act to remove the reference to "public". The Act uses the terms "public grammar school" and "grammar school" interchangeably. For consistency, and to reflect the relative independence of grammar schools from Government, the term "public" is removed from the long title of the Act. Other references to "public" are removed as a consequence of amendments to the relevant sections and do not require individual removal.

Clause 5 replaces the "Interpretation" heading with a new heading in the Act for the provisions currently at section 5(2) that relate to donors and subscribers.

Sub-clause 2 omits the definition of "school" as it is redundant. The terms "grammar school" and "non-grammar school" are defined. References in the text to schools may refer to either of these types of schools, determined by the context of the provision.

Sub-clause 3 inserts a number of new definitions into the section:

- accreditation Act
- conviction" means found guilty, or having a plea of guilty accepted by a court, whether or not a conviction is recorded.
- electoral eligibility amount
- grammar school
- interested parents
- non-grammar school
- submission

Sub-clause 4 amends the definition of "chairperson" to replace "duties" with "functions". This amendment is made to align the amended Act with provisions of the *Acts Interpretation Act 1954* in relation to the standard definitions of these terms.

Sub-clause 5 is a direction provision providing that the definitions, currently at section 5(1) in the Act, and which have been amended by sub-

clause 3, are relocated to the schedule, which is inserted by clause 25 of the Bill. This merely updates the drafting practice in relation to the placement of definitions.

Sub-clause 6 omits the remainder of the words from the current section 5(1), other than the definitions that have already been amended and relocated to the schedule.

Sub-clause 7 inserts the amended (former) interpretation section, which now relates to the donation of property other than money, as the new section 46W in the new part 4.

Clause 6 inserts the new sections 2 - 5.

Section 2 is a direction provision that the dictionary to the Act is located in the schedule.

Section 3 provides that notes in the text of the Act form part of the Act. Notes in the text of the Act are inserted to aid interpretation.

Section 4 provides that the Act binds the State and the Commonwealth, but does not make either party liable to be prosecuted for an offence under the Act. This provision is included to ensure that, for example, a State school may not be established using the protected grammar school name, unless the requirements imposed by this Act for such an establishment are met.

Section 5 provides the purpose and explanation for the Act. Queensland's eight grammar schools have all been established for more than a century, building significant public confidence in the schools themselves, and arguably, in the type of institution itself. Much of this public confidence is a function of the form of entity and mechanisms by which grammar schools are established and governed. The Act has been amended to reflect the desire for the continuance of this public confidence.

Subsection 5(2) sets out that these purposes will be achieved by the Act regulating the establishment and governance of grammar schools.

Subsection 5(3) is included, primarily, as an information provision, advising that while these matters are dealt with under the *Grammar Schools Act 1975*, grammar schools also have responsibilities that are subject to other Acts, including the *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act). The note in the text makes it clear that grammar schools are non-State schools under the Accreditation Act.

For example, a grammar school may be established under the Act, but may not operate as a school until it receives accreditation under the Accreditation Act.

Clause 7 omits the current section 6, replacing the existing provisions around the establishment of new grammar schools with provisions that do not unjustifiably infringe competition principles. The provisions are included in a new part 1A. The provisions are also modernised to better inform proponents of new grammar schools of the criteria by which the Minister may establish a new grammar school in a particular location.

The new section 6 provides that a grammar school may only be established with the Minister's approval set out in section 6A, or on the Minister's initiative under section 6B.

The new subsection 6(2) ensures that an existing non-grammar school, as defined in the dictionary, or a non-grammar school that has previously been established, may be established as a grammar school. The provision allows for the eventuality that an existing non-grammar school that wishes to become a grammar school has the opportunity to do so through the process set out in part 1A. Such an example is probably most likely to occur where a non-State school experiences severe financial difficulties and the school community advocates for the school to continue but to be established as a grammar school. Alternatively, the provision permits a new grammar school to be established from what is an existing State school.

The new subsection 6(3) provides that a school established under the part does not become a grammar school until a regulation is made reflecting the name of the newly established school. Other provisions of the Bill, for example the new section 49 (clause 20), rely upon grammar schools being named in the regulation. All existing grammar schools will also be named in the regulation. The school's name may be altered from time to time, under that section, by the making of a regulation amendment to that effect.

The provision is necessary to ensure that grammar schools operate only under their appropriate name and thereby avoid the potential for breaching the name protection provisions contained at clause 18 of the Bill.

The new section 6A establishes the process and criteria for the Minister to give approval for the establishment of a new grammar school on application by an entity.

Subsection 6A(1) allows an entity to apply to the Minister for establishment of a grammar school.

Subsection 6A(2) provides that the application mentioned in subsection 6A(1) must include details of the proposed school. It follows, without being stated, that the application should also address the criteria on which the Minister must make their decision and which are set out in the new subsection 6A(4).

Subsection 6A(3) follows that the Minister may request further information or documents from the applicants as to the application for the proposed school.

The new subsection 6A(4) sets out the criteria on which the Minister must decide whether to give the approval to establish a new grammar school. The section only applies to the approval of an application under section 6A. The other mechanism by which a new grammar school may be established (the new section 6(1)(b)) is dealt with under the criteria established by the new section 6B.

Subsection 6A(4) limits the Minister's ability to give approval to establish a new grammar school to five (5) criteria. The Minister must be satisfied that each of these criteria are met in order to be permitted to give approval to establish a new grammar school. The criteria replace the existing criterion that a community raise $100,000 in money or property of that value.

The matters of which the Minister must be satisfied are:

Subsection 6A(4)(a) - The application must demonstrate the need for a grammar school in the proposed location. This demonstration of need is designed to set a higher standard than the mere necessity or need for another school. The note to the text draws to the proponent's attention the requirement to differentiate the need for a grammar school as opposed to a non-State school of another type.

Subsection 6A(4)(b) - There must be enough community support for a grammar school in the proposed location. This criterion is designed to be a flexible indicator of the strength of support within a community for the proposal. It is drafted in such a way as to ensure that rural and regional communities are not disadvantaged with the setting of a quantum of persons demonstrating their commitment. For example, 1000 supporters from a rural community of 2000 people would be a significantly greater indicator of support than support from 1000 people in a city of 100,000.

Again, the community support must be demonstrated for the establishment of a grammar school, rather than support for another type of non-State school.

Subsection 6A(4)(c) - The Minister must consider the financial implications the establishment and ongoing operation of a new grammar school would have for the State. For example non-State schools may be eligible to receive government capital assistance and per capita funding. The Minister must take these matters into account.

The impact of the establishment and ongoing operation of a new grammar school is not assumed to be either positive or negative. For example, the establishment of a new grammar school in a particular location may negate the need for the State to expend funds establishing a State school in that location. The new grammar school may not require any funding from the State other than the general per capita funding that is provided to all eligible non-State schools.

Alternatively, the proposal for establishment of a new grammar school may involve the State having to contribute significant funds and/or State land to establish the school. The school may also seek to borrow funds from the Queensland Treasury Corporation (QTC) at QTC's competitive rates of interest, for its ongoing operation. Additionally, the Treasurer may provide a guarantee for all legally incurred debts of the school and will be liable if the school defaults on these debts. The Minister must consider these likely financial implications when making their decision.

Subsection 6A(4)(d) – The Minister must consider the potential that exists for a proposed school to require financial support from the State that is in excess of that provided by the State to other grammar schools at comparable stages of their development. If the financial support required to establish the proposed school is in excess of the comparable support provided to other grammar schools than the Minister must not approve the establishment of the grammar school.

The provision is included to ensure the new grammar schools are not competitively advantaged in the marketplace by the receipt of funding for their establishment or ongoing operation that is not available or was not available to other grammar schools at their comparable stage of development.

Subsection 6A(4)(e) - The Minister must consider whether the establishment of a new grammar school is compatible with announced Government policy about education. The criterion provides that the

Minister must refuse an application if the Minister is not satisfied that establishment of a new grammar school is compatible with Government policy about education.

For example, announced Government policy may promote the type of public/private partnership arrangements that are the basis on which grammar schools have been established and operated for more than a century.

Alternatively, a Government may announce a policy promoting greater private sector involvement in the provision of education and the ability for corporations to operate schools on a commercial basis and still be eligible for Government funding. Establishment of a new grammar school, which is a statutory not-for-profit body, may not be compatible with such a policy.

Subsection 6A(4)(f) - Grammar schools are statutory bodies and are governed by the requirements under a number of State Acts including the *Financial Administration and Audit Act 1977*. These Acts impose regulatory requirements and governance standards on grammar schools that are significantly different to both State and non-State schools.

For example non-State schools are generally corporations with shareholders and directors. These directors operate the schools as, generally not-for-profit, businesses and may pay themselves fees for this purpose. Boards of trustees of grammar schools are appointed and dismissed by the Governor in Council. Three of the members of the board are subject to election by eligible persons with an interest in the school. Trustees are not remunerated for their efforts.

Applicants for establishment of a new grammar school satisfy the Minister that they are cognisant of these requirements.

The note to the text directs applicants that the Minister must be satisfied of the need and support for a grammar school as opposed to another type of non-State school.

The new section 6B establishes the basis on which the Minister may, on their own initiative, establish a new grammar school. For such an establishment the Minister does not have to be in receipt of an application, as set out in the new section 6A.

Subsection 6B(2) provides that if the Minister is considering establishment of a new grammar school then the Minister must undertake consultation with the public on the proposal. This consultation is to be undertaken by publishing a notice seeking submissions on the proposal, in

a newspaper that circulates in the area of which the school is proposed to be located, and in a newspaper with State circulation. The notice must provide details of the proposal and provide at least 28 days in which submissions may be on the matter. The definition of "submission", contained in the dictionary, provides that they must be in writing.

Subsection 6B(3) provides that grammar schools must be specifically notified of the Minister's proposal to establish a new grammar school. These notices to grammar schools must also provide details of the proposal, invite submissions and allow at least 28 days for submissions to be made on the matter.

Subsection 6B(4) and 6B(5) provide the matters of which the Minister must be satisfied about when considering the establishment of a new grammar school on the Minister's own initiative.

Subsection 6B(4) provides that the matters to be considered by the Minister are those set out in section 6A(4), with the exception of subsection 6A(4)(f). It should be noted that the standard on which the Minister considers these matters under this section is the same standard as that on which they are considered under section 6A. The Minister must not establish a school under this section unless the Minister is satisfied about the relevant matters.

Subsection 6A(4)(f) is not the subject of the Minister's consideration as the Minister is the person proposing the school, rather than a member of the community. Section 7(4C) is included to ensure that the persons chosen by the Minister to form the first board of a new grammar school and the Ministerial nominees to subsequent boards have a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of the way governance of grammar schools is regulated.

Subsection 6B(5) provides that the Minister, in making the decision, must consider any submissions received about the proposal (within the relevant time period) as far as they are relevant to the matters to which the Minister must have regard under subsection 6A(4)(a) to (e).

Clause 8 amends the constitutional matters contained in the Act.

Sub-clause 1 updates the terminology used in section 7. "Every school" is amended to "every grammar school". No alteration is intended to the effect of the subsection.

Sub-clause 2 removes a number of redundant words in relation to the three elected positions on each board of trustees. No alteration is intended to the effect of the subsection.

Sub-clause 3 replaces the current section 7(4A), which provided the prescribed amount and inserts new sections 7(4B) to 7(4D). The new section 7(4A) provides that subsection (4) applies subject to sections 8 and 11.

The new section 7(4B) provides that the Minister must consult with a board, if one is constituted, before nominating a person for appointment to a board under subsection (4)(a). Persons nominated under this subsection are Ministerial nominees, rather than elected representatives. The provision formalises the current informal practice of a Minister consulting with boards before making appointments to vacancies in these positions.

The new section 7(4B) provides that subsection (4) and (4A) apply subject to the operation of section 8. Section 8 provides for the first appointment of a board. Quite clearly the Minister is unable to consult with a board about the appointment of Ministerial nominees if the board has not yet been constituted.

The new section 7(4C) provides that the Minister must not nominate a person for appointment to a board of trustees as a Ministerial nominee unless the Minister is satisfied that the person has a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of the governance arrangements of grammar schools. This section mirrors the requirements in section 6A(4)(f) in relation to the persons proposing to establish a new grammar school.

The new section 7(4D) provides that a person is only eligible to vote in an election for the three elected positions on each board of trustees, or to stand for election for the three elected positions on each board of trustees, if that person has donated or subscribed at least the electoral eligibility amount. "Electoral eligibility amount" is defined in the dictionary as the amount set by a board's by-law or the amount prescribed by regulation.

The provision operates in the same manner as the omitted section 7(4A) in that it establishes who may stand for election or vote in elections.

Clause 9 replaces the current sections 8 and 9, which provide for the first appointment of a board of trustees and the disqualification of members.

The new section 8 applies to the establishment of new grammar schools under the new part 1A, whether the establishment was by application to the Minister or on the Minister's own initiative.

Subsection 8(2) provides that the initial constitution of a board of trustees is to be varied from the ongoing constitution of a board of trustees, as set out in the amended section 7.

Subsection 8(2)(a) provides that when a new grammar school is established the initial board of trustees is to be constituted by seven (7) members appointed on the nomination of the Minister.

The ongoing arrangements, under section 7, provide that three (3) of these seven (7) positions are to be elected from the ranks of eligible donors and subscribers. At the time of establishment of a new grammar school either no such donors or subscribers will exist, or, if they exist, the pool of potential candidates and eligible electors would be quite small.

Subsection 8(2)(b) provides that of the seven (7) members appointed by the Minister three (3) must be identified as positions to be filled once elections are able to take place. These three positions are termed as "deemed elected persons".

Subsection 8(2)(c) provides that when the notification of the appointment of the board of trustees is made, under section 7(4), the notification must state which of the seven (7) positions are "deemed elected persons".

Subsection 8(3) provides that the first election of a board of trustees is to be held in order to fill the three positions for deemed elected persons. This election is to be carried out in the same way as subsequent elections for the elected positions.

Subsection 8(4) provides that this first election must be carried out between six (6) and nine (9) months after the first appointment of the board of trustees. The first appointment of the board of trustees is the date on which the notice appears in the Government Gazette under section 7(4). This period is considered to be appropriate to enable the board of trustees to establish the mechanisms by which the school is to operate and to allow for the number of eligible donors and subscribers to reach a suitable level for an election to be held.

Subsection 8(5) provides that the persons who were considered to be deemed elected persons only hold their positions until the election has taken place and the appointments have been made under section 7.

Subsection 8(6) provides that the term of appointment for those persons elected at this first election is to be for the remainder of the four (4) year term that commenced on the first appointment of the board of trustees under the Government Gazette notice under section 7(4). For example, the deemed elected persons may hold office from the date of the Government Gazette notice on 1 January 2004 until an election is held and three elected

representatives are appointed by way of Government Gazette notice on 14 August 2004. The term of appointment for the elected representatives will end on 31 December 2007, four years after the initial appointment.

Subsection 8(7) provides that a person who was appointed as one of the deemed elected persons is not considered to be ineligible to be elected in the first election merely because of the fact that they are a deemed elected person.

Clause 9 also replaces the current section 9, which deals with the disqualification from office of members of boards of trustees, with a revised version dealing with the same matters.

The provision sets out the circumstances when a person can not become, or continue as, a member of a board of trustees. A person will be disqualified from membership if the person is an insolvent under administration, or is, or has been, convicted of an indictable offence. Subsection 9(6) defines "insolvent under administration" as having the same meaning as at section 9 of the *Corporations Act 2001*.

Subsection 9(2) provides that the Minister has discretion to disregard the fact that a person has been convicted of an indictable offence, or becomes an insolvent under administration. If the person was a member when convicted or became an insolvent under administration, the Minister may have regard to the circumstances of the offence or the insolvency, and if the Minister considers it reasonable, the Minister may give notice to the chairperson and the person that the person is to be restored as a member, and may later be reappointed.

If the person is not a member at the time of the conviction or becoming an insolvent under administration, the Minister may have regard to the circumstances, and, if the Minister considers it reasonable, the Minister may give written approval for the person to become a member despite the conviction or insolvency.

Subsection 9(3) provides that a person who is to be restored as a member by Ministerial discretion, is restored on the day when the chairperson receives a notice of the Minister's decision. If another person has been appointed to fill the vacancy, the other person's appointment ends on that day.

Subsection 9(4) provides that the receiving of a notice by the chairperson does not restore a person's appointment as a member if the person's term of office had already ended. For example, a member may have become an insolvent under administration one month before the end of their four year

term. The Minister's notice to the chairperson of the board may have only been received after the member's four year term had ended. The receipt of the notice in these circumstances does not restore the member's membership, which had already ended. Likewise, if the member's appointment was terminated for another reason the receipt of the notice would not restore the member's membership.

Subsection 9(5) makes it clear that if a person is restored as a member, the person's term of office ends when it would have ended, had the person not been convicted of the offence or become an insolvent under administration and disqualified and restored as a result.

Subsection 9(6) defines "insolvent under administration" for the section as having the same meaning as in section 9 of the *Corporations Act 2001*. "Indictable offence" is defined for the section as including an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence. The definition is designed to capture all offences that are of such gravity that they are considered indictable offences, regardless of how the matter may actually be dealt with in the courts. A definition of "conviction" is included in the Dictionary.

Clause 10 amends the current provisions in relation to the tenure of office of boards of trustees.

Sub-clause 1 renumbers the current sections 10(1A) to 10(4) as 10(4), (5), (6) and (8).

Sub-clause 2 inserts new subsections 10(2) and (3). Subsection 10(2) provides that if a person, appointed as a member under section 7(4)(b) (tagged "elected member") has served the prescribed maximum number of terms, which may be by regulation or board by-law, that the person is ineligible for appointment as a member.

Subsection 10(3) allows an elected member to continue beyond the prescribed maximum number of terms, as set out by 10(2), only until the member's successor is appointed.

For example, a board by-law may prescribe that the maximum number of terms for an elected member is four (4) terms. An elected member's fourth and final term may end on 31 December 2004, however, the member's successor may not be able to be appointed until 26 January 2005. The elected member whose term has expired may continue as a member until the successor is appointed, without being in breach of section 10(2).

Sub-clause 3 renumbers the current section 10(6)(f) as section 10(6)(g) to preserve the general ground as the last in the provision.

Sub-clause 4 inserts a new subsection 10(6)(f) to provide that the office of a member becomes vacant if that member is a person who, under the amended section 9, can not become or continue as a member. The ground relates to the member being convicted of an indictable offence or becoming an insolvent under administration.

Sub-clause 5 inserts a new subsection 10(7) to provide that when a member resigns their position, under subsection 10(6)(c), their resignation takes effect from the day the Minister receives the notice or the date provided for in their notice, if a later time is given. The Act is currently silent as to prospective resignation dates that may be included in a notice of resignation under section 10. This has created administrative complexities for both boards and the Department of Education in attempting to provide for a smooth transition between board members. The provision will allow a member to continue to hold office after their resignation notice has been received by the Minister while the Minister, board and Department undertake the necessary consultation to fill the vacancy. The result should be a reduction in the periods where boards operate with a reduced number of members pending the filling of these casual vacancies.

Clause 11 removes and replaces the current sections 11(1) and 11(1A) which are no longer relevant as to how casual vacancies are dealt with.

Sub-clause 1 inserts a new subsection 11(1) providing that the section applies to a casual vacancy in the office of a member of a board.

Sub-clause 2 amends section 11(1B) to provide that this subsection applies to the appointment process for casual vacancies, despite the appointment process set out in section 7(4)(b).

Sub-clause 3 amends section 11(1B) to provide that for a person to be eligible to fill a vacancy for an elected position the person must have at least met the electoral eligibility amount for the relevant board. The amendment merely updates the terminology used in the amended Act to include the term "electoral eligibility amount". The operation of the section remains unchanged.

Clause 12 updates section 12 to remove the now unnecessary reference to the appointment of a time in which elections are to be held. The "time prescribed" for elections may be prescribed by regulation and may be varied by board by-laws.

Clause 13 inserts a new section 15A providing the board with the power to make by-laws about elections under the Act. The power is additional to those mentioned in section 15.

Subsection 15A(1) provides that boards may make by-laws about elections under the Act and provides an inclusive list of the matters about which by-laws may be made in respect of these electoral matters. By-laws are only applicable to the boards and schools that make them.

Subsection 15A(1)(a) provides that a by-law may be made about the electoral eligibility amount for a board. Currently the "prescribed amount" for eligibility to vote in elections and to stand for election is prescribed by regulation. The amount stands at $50. This Act amends the terminology used to describe this amount to "electoral eligibility amount", but the concept remains unchanged. It is intended that the *Grammar Schools Regulation 1992* will be amended to prescribe a minimum and maximum amount for the electoral eligibility amount. A board may make a by-law to set the electoral eligibility amount for their particular school within the range prescribed in the regulation. If a by-law is not made in respect of this or any other matter the matter is dealt with in the manner prescribed by the regulation.

Subsection 15A(1)(b) provides that a board may make a by-law about when an election is to be held. Boards may wish to specify a date, for example the first Monday in November in the third year of a board's terms of office, as the date on which an election is to be held. The by-law making power allows this to occur.

Subsection 15A(1)(c) provides that a board may make a by-law setting a maximum number of terms for which a person may be elected. At present a person may serve as an elected member of a board for as long as they continue to be elected, barring disqualification or removal from office for other reasons. While the continuity in corporate governance this provides may be advantageous, some boards may consider that a maximum number of terms in a position provides the opportunity for fresh people and ideas to be injected into the board. The base position, which is that the terms of appointment are not limited, applies until a board makes a by-law about this matter.

Subsection 15A(2) provides that a by-law is only of effect if it is consistent with the Act and regulations in force under the Act. It is arguable that this provision is redundant in that any by-law purporting to exercise power other than in a way consistent with the Act and regulations would be invalid. The provision is included to put the matter beyond doubt.

Subsection 15A(3) provides that a by-law about the setting of an electoral eligibility amount is of no effect unless it complies with the

minimum and maximum amounts set for this purpose by the regulation. The minimum and maximum amounts are to be set to prevent boards from making by-laws which either dilute or restrict the franchise for election and voting rights to such an extent that the concept of community support for a grammar school becomes meaningless. For example, if a board made a by-law providing that the electoral eligibility amount for their school be set at $100,000 per annum the number of eligible persons would be so reduced that the elected members would have effectively purchased a position on the board. Such a position would also deny those persons with a valid interest in the operation of the board and school from participating in that operation.

Likewise, if a board made a by-law providing that the electoral eligibility amount for their school be set at $1.00 the number of eligible persons would be so increased that the underlying support for the school, as demonstrated through the donation or subscription, would become meaningless. Additionally, the administrative procedures for election would become complex and cumbersome.

Subsection 15A(4) provides that by-laws made under this power are not subordinate legislation. They, therefore, are not drafted by the Office of the Queensland Parliamentary Counsel, are not subject to disallowance in the Legislative Assembly and are not subject to the *Statutory Instruments Act 1992*, including the provisions concerning Regulatory Impact Statements.

Clause 14 amends the current section 44 to provide that the register of donors and subscribers may indicate which persons are eligible persons. "Eligible persons" are defined for the section, at the new subsection 44(6), as meaning a person who has donated or subscribed the electoral eligibility amount.

The new subsection 44(5) provides that if the register does not indicate whether a person is an eligible person the board must also keep a register of eligible persons. This additional register is to be considered, for the purposes of subsections 44(1) to (3), as being a reference to the register of donors and subscribers. Essentially, the amended section 44 requires the board to keep a register of donors and subscribers who are eligible persons. If more than one register is kept at least one of the registers must be a register of eligible persons.

Clause 15 removes the current section 46 that provides the rules applicable to election of members. The rules for election are to be prescribed by regulation and the current section 46 is now redundant. The

regulation-making power is updated to specifically provide for the making of rules applicable to elections.

Clause 16 inserts a new division 5 in part 3 providing for the interaction between boards and the Minister.

A new section 46A is inserted placing a duty on boards to immediately advise the Minister in writing when they become aware of certain matters. For the matter to be notifiable to the Minister it must raise a significant concern about the school's financial viability.

The duty to ensure the notice is provided falls to the chairperson as the board's executive member, under section 7(5A).

Two examples are provided as to the types of matters for which the board must notify the Minister. A board must inform the Minister immediately after becoming aware:

- a proceeding is started against the school that may result in payment by the school or a significant amount of damages or legal costs;
- enrolments at the school decrease to a level that, in the board's opinion, raises significant concerns about the schools viability.

A new section 46B(1) is inserted providing that the Minister may require a board to provide the Minister with relevant information or a relevant document about matters within the boards knowledge or control. The request must be in writing, must give the board a reasonable time in which to comply and must request the provision in a reasonable way. In the notice the Minister may require also require a document to be made available for inspection.

Subsection 46B(2) provides that the board must comply with the requirement.

Subsection 46B(3) provides that the Minister may copy any documents given to the Minister, but must return the documents to the board as soon as practicable after copying.

Subsection 46B(4) provides that the Minister may seek outside assistance in assessing the information or documents provided under a requirement. The documents or a copy of the documents may be provided to an entity to assist the Minister is assessing the board's financial viability; the way the board has dealt with funds provided by the State; and any other matters relevant to the way the board is carrying out its functions.

For example, the Minister may provide a copy of a document obtained under a request to a private accountancy firm and request that the firm carry out an assessment of the financial position of the board.

Similarly, the Minister may disclose the information provided under a requirement to the Crown Solicitor and request the Crown Solicitor to advise the Minister whether there has been any illegality in relation to the board's dealings in that particular matter.

Subsection 46B(5) provides that before requiring information or a document under a written notice the Minister must consult with a board about the information or document sought. In exceptional circumstances the Minister does not have to undertake this consultation with a board. The subsection is designed to respect the independence of the boards in their dealings with the Minister while allowing an expedited process in exceptional circumstances.

Subsection 46B(6) defines "relevant" for the section as relating to the board's powers or functions under the Act. The definition of "relevant" is designed to limit the requests to information about, or documents relating to, the boards powers or functions.

A new section 46C is inserted providing the Minister with the power to give a written direction to a board. The Minister is empowered to give the direction to a board if the Minister is satisfied that the giving of the direction is necessary in the interests of the school to ensure the school's financial viability. Such directions must be relevant to the board's functions.

An example is provided as to the type of matters to which a direction may relate:

- The Minister may direct a board to engage an external person with particular expertise to advise the board in relation to the school's financial viability. The example may relate to the engaging of persons including an accountant specialising in business recovery strategies or to an educator that has experience in the operation of schools.

Subsection 46C(2) provides that the board must comply with the direction.

Subsection 46C(3) provides that the board must include a copy of each direction given to the board during a financial year in the board's annual report for that year, compiled under the *Financial Administration and Audit Act 1977*.

Subsection 46C(4) provides that before giving a written direction to a board the Minister must consult with a board about the matters proposed to be dealt with in the direction. In exceptional circumstances the Minister does not have to undertake this consultation with a board. The subsection is designed to respect the independence of the boards in their dealings with the Minister while allowing an expedited process in exceptional circumstances.

Clause 17 inserts a new part 3A into the Act for the appointment of an administrator.

Section 46D provides that the appointment of a person as an administrator of a board is to be made by the Minister by way of a notice in the Government Gazette.

Section 46E establishes the criteria on which the Minister may appoint an administrator. There are three criteria that allow appointment:

- the board of trustees requests that the appointment be made;
- the Non-State Schools Accreditation Board gives the board of trustees (and the Minister by way of the amendments at clause 27 of the Bill) a show cause notice under the *Education (Accreditation of Non-State Schools) Act 2001*; or
- the Minister reasonably believes the school is no longer financially viable or is in danger of becoming financially non-viable.

The first criterion makes provision for a board to approach the Minister if they consider they are no longer able, for whatever reason, to achieve results that are in the best interests of the school. This may be caused by financial difficulties that the board has noted, or may be a result of disagreements within the board as to strategic direction that has stagnated decision-making within the school.

The second criterion recognises that grammar schools are also non-State schools and as such are subject to accreditation criteria and requirements imposed under the *Education (Accreditation of Non-State Schools) Act 2001*. In exercising its functions under that Act the Non-State Schools Accreditation Board may have cause to issue a show cause notice to a grammar school. This notice is an intention to cancel the school's accreditation. While it is acknowledged that a grammar school in receipt of a show cause notice may be able to make representations to the Non-State Schools Accreditation Board to prevent cancellation of accreditation the potential exists for cancellation to occur. Cancellation of a school's

accreditation effectively prevents the school from operating. The implications for any school, whether a grammar school or not, would be disastrous.

The third criterion relates specifically to the financial viability of a school. To enable appointment of an administrator the Minister must reasonably believe that the school is not financially viable or is in danger of becoming financially non-viable. The criterion is designed to allow the Minister to intervene in the operation of the school in circumstances where its current operating methods cannot be financially sustained. This criterion may be of specific relevance if a grammar school is issued with a show cause notice, under section 94 of the *Education (Accreditation of Non-State Schools) Act 2001*, in relation to the school's eligibility for government funding. Loss of this funding may bring into question a school's ongoing financial viability.

Any one of these criteria gives the Minister cause to exercise her discretion to make the appointment.

Section 46F makes provision for a consultation process to occur, in most instances, before the Minister may make the appointment under section 46D.

Subsection 46F(1) provides that before making an appointment the Minister must notify the relevant board in writing, advising of the proposal to appoint a person as administrator, the reasons for the proposed appointment and advising the board that they have a period in which to make a response on the matter. The written notice must provide a minimum period of 14 days in which the board's response may be made.

The Minister must consider any written response received from the board within the time period stated in the written notice.

Subsection 46F(2) provides three exceptions to the requirements set out in subsection (1). If the Minister is satisfied that exceptional circumstances exist; the board is in agreement that the period for responses should be reduced; or the board has asked that the appointment be made, then the time period of 14 days may be reduced. No minimum period is set and any period for consultation in these exceptional circumstances would be determined on a case by case basis.

Subsection 46F(3) provides that if the Minister decides not to make the appointment the Minister must notify the board of that decision. The notification must be in writing.

Subsection 46F(4) provides that if the Minister decides to proceed with the appointment the Minister must give the board written notice of the decision prior to publishing the appointment notice in the Government Gazette.

Section 46G provides that the Minister must be satisfied of the qualifications, experience and suitability of the person proposed to be appointed as administrator. The appointment of the proposed person may not be made unless the Minister is satisfied of these matters.

Subsection 46G(2) provides that if a person has agreed to become the administrator that person must advise the Minister, before the appointment is made, of any conflicts of interest that may arise in the course of the person acting as administrator.

Subsection 46G(3) provides that under subsection (2) a person proposed to be appointed as administrator must not knowingly state false or misleading information to the Minister in a material particular. A maximum penalty of 20 penalty units is provided for.

Subsection 46G(4) provides that only an adult may be appointed as administrator.

Subsection 46G(5) recognises that the administrator will be working in child-related employment. The provision establishes the relationship between the administrator's appointment and employment screening for child-related employment under the *Commission for Children and Young People Act 2000*. For the purposes of that employment screening the administrator is in the employment of the Minister. This enables the Minister to make application to the Commission for Children and Young People for the screening of the administrator prior to commencement of the person's appointment. This will minimise any potential harm to children as a result of the appointment.

Section 46H establishes the terms of appointment for the administrator to be published in the Government Gazette notice, required under section 46D. The notice must state a number of matters to inform interested parties as to the appointment:

- the appointee's name;
- the school for which the board is constituted;
- the day the appointment takes effect;
- the term of the appointment;
- any conditions of the appointment.

The Minister may include within the notice any other matters the Minister considers appropriate.

Section 46I provides that the Minister must take reasonable steps to notify the parents of students of a school that an appointment of an administrator is to be made. The Minister must take these steps after the board has received notice that an appointment is to be made, but before the notice of appointment appears in the Government Gazette. Parents of students at the relevant grammar school are termed the "interested parents" for use in the following section.

Section 46J provides that the Minister may vary the term of appointment of an administrator or the conditions under which an administrator is appointed by the publication of a notice in the Government Gazette. The appointment may be extended or shortened by the notice.

Subsection 46J(2) provides that before varying the appointment the Minister must give a written notice to the board advising of the proposed variation and take reasonable steps to notify the interested parents of the proposed variation.

Section 46K provides that an administrator's appointment may be ended before its intended expiry in one of three ways:

- by the Minister publishing a notice in the Government Gazette stating the day on which the appointment ends;
- by the administrator giving a signed notice to the Minister; and
- by subsection 46K(2), on appointment by the Treasurer of an appointee under section 24 of the *Statutory Bodies Financial Administration Act 1982* (the SBFA). The appointment under the SBFA automatically ends the appointment of the administrator under this Act.

Subsection 46K(3) provides that if the appointment ends by one of the mechanisms above then the Minister must immediately notify the board and take reasonable steps to notify the interested parents.

Section 46L provides that if the appointment of an administrator is ended under section 46K(1) (either by the Minister or the resignation of the administrator) then the Minister may appoint another person as administrator.

Subsection 46L(2) provides that the Minister does not have to go through the consultation process of section 46F(1) in relation to the appointment of this other person. The provision is included on the basis

that it would be unreasonable to delay the conducting of an administration because an administrator had resigned or effectively had their appointment terminated. It would be in the interests of the school to have the administration continue as seamlessly as possible and the 14 day period for consultation would not provide this transition.

Section 46M provides that division 2 applies during the appointment of an administrator.

Section 46N provides that the administrator has the board's powers and functions.

Subsection 46N(2) establishes that the Act and other Acts apply to the administrator as if the administrator were the board. Any changes that are necessary for this to occur are to be made.

Subsection 46N(3) puts it beyond doubt that the Accreditation Act applies to the administrator as if the administrator were the school's governing body. Any changes that are necessary for this to occur are to be made.

Section 46O provides that the administrator remains subject to the Minister's direction in exercising the administrator's powers and performing the administrator's functions under this part. The provision aligns with the Minister's power to direct a board under section 46C.

Subsection 46O(2) provides that the administrator must give to the board a copy of any direction received from the Minister.

Subsection 46O(3) provides that, like subsection 46C(3) in relation to boards, the board must ensure a copy of the directions are included in the board's annual report, compiled under the *Financial Administration and Audit Act 1977*. If the administrator is still appointed at the time of preparation of the annual report the administrator, exercising the functions of the board, must include a copy of the direction in the board's annual report.

Section 46P directs that during the appointment of an administrator the board continues in existence, subject to other provisions in the Act.

Subsection 46P(2) provides that during the appointment of an administrator the board may not exercise its powers and functions under the Act other than to provide the administrator with help on the request of the administrator.

Section 46Q requires the administrator to provide reports to the Minister about the administration. No times are prescribed for the provision of these

reports other than for a report to be made at the end of the administration. It is left to the Minister's discretion when and how often reports are required to be provided during the administration. The administrator must comply with the requests for reports.

Clause 18 inserts new sections 46R, 46S and 46T establishing two offences and providing for the way in which the offences are to be dealt with. The first offence, under subsection 46R(1) aims at preventing non-grammar schools - that is schools that have not been established under this Act - from being established or operating using the word "grammar" in their name. The provision seeks to prevent persons from gaining a commercial advantage from the use of the word "grammar" in the name of a school they operate. The grammar school name is said to have a certain value within the education sector and is protected for that reason.

When determining whether an offence has been committed under this section, regard should also be paid to the transitional provisions which allow two (2) other entities to use the name without an offence being committed.

The second offence is established under subsection 46R(2) and provides that persons who hold out a non-grammar school to be a grammar school commit an offence. Again, the provision aims to prevent unauthorised use, without necessarily using the word "grammar" in the name of the school, presumably for commercial benefit, of the grammar school name and any connection with the standards and traditions of grammar schools.

The maximum penalty for each offence is 200 penalty units.

Section 46S establishes that prosecutions for offences under section 46R will be heard in a summary way under the *Justices Act 1886*. In most instances this will see the matters dealt with in the relevant Magistrates Court.

Subsection 46S(2) protects the rights of individuals by limiting the time periods in which prosecutions must be made. Proceedings must start within either: one year of the commissioning of the offence; or within two years of the commissioning of the offence and within 6 months of the offence coming to the complainant's notice.

Section 46T establishes the evidentiary value of a statement by the complainant as to the day on which the complainant became aware of the matter. The provision is designed to remove doubt as to when the relevant matters came to the knowledge of the complainant and therefore enlivened

the time periods within which prosecution action must be taken under section 46S.

Clause 18 also inserts a new section 46U relating to a proceeding for an offence under section 46G(3). In such a proceeding the complaint does not have to specify whether the statement made by the person proposed to be appointed as an administrator was false or misleading.

Clause 18 also inserts a new section 46V that provides that a board of trustees of a grammar school must not allow the school to be operated by a church or other religious group and that the school must not be operated for students of a particular religion. This provision reflects both the ongoing tradition that grammar schools have no religious affiliations, provide non-sectarian education, and the fact that the schools are statutory bodies and that as such may not operate in a manner which is exclusive of any religion or religious group.

Clause 19 updates section 48(1) to amend a references to "school", instead referring to "grammar school". Amendments to the definition of "grammar school" make this amendment necessary. No alteration is intended to the way in which the provision operates.

Sub-clauses 2 and 3 update references in section 48(2) to the *Land Act 1962* to reference the current statute and the terminology used in that Act in relation to State land.

Clause 20 omits section 49 which provides the Governor in Council with the power to appoint inspectors of grammar schools. As grammar schools are also non-State schools under the *Education (Accreditation of Non-State Schools) Act 2001*, they are subject to the inspection regime established under chapter 5, part 3 of that Act. The inspection powers under section 134A of the *Education (General Provisions) Act 1989*, in relation to schools in receipt of a subsidy, also apply to grammar schools.

The clause also inserts a new section 49, which provides for the making of a regulation listing current grammar schools.

Subsection 49(1) requires the Governor in Council to make a regulation stating the name of each grammar school established under the Act as soon as practicable after commencement of the section. The purpose of the regulation is to restrict the use of names by these schools to only those named in the regulation, and to provide an additional mechanism by which notification of the establishment of new grammar schools may be made. This restriction is particularly relevant to the new section 49A.

Subsection 49(2) allows the Governor in Council to amend the regulation to include in the list of grammar schools in the regulation any other grammar schools established under section 6A or 6B. These sections provide the mechanisms by which new grammar schools may be established.

Subsection 49(3) allows an amendment regulation to be made by the Governor in Council to amend a grammar school's name, as prescribed in the regulation. Before such an amendment regulation is made the Minister must consult with the school's board as to the change of name.

Subsection 49(4) requires the Governor in Council to amend the regulation on advice from the Minister that a grammar school has been discontinued. The amendment regulation will remove the discontinued school's name.

The clause also inserts a new section 49A that requires grammar schools to only be operated under the name prescribed in the regulation under section 49. The requirement is put in place to prevent grammar schools establishing other schools or campuses using different names to those of the existing schools. While such new schools or campuses may well be under the control of the existing board of trustees there is the concern that the grammar school name could be diluted by this type of expansion. Such expansion is also not necessarily compatible with the concept that grammar schools are established for and by the community in a particular location.

However, such expansion is not totally prohibited, as subsection 49(3) allows a grammar school's name to be amended. Such amendments may take into account new campuses or locations of schools.

Clause 21 updates section 50 in relation to boards' powers of delegation. References to "powers, functions and duties" are omitted and replaced by the term "powers". The amendment is made in order to pick up the meaning of the words used in the *Acts Interpretation Act 1954* in respect of these terms.

Sub-clause 2 includes the making of by-laws within the matters that a board may not delegate.

Sub-clause 3 omits subsection (2) to (5) as it is considered preferable to rely on the provisions of the *Acts Interpretation Act 1954* in respect of how the power of delegation is exercised.

Clause 22 inserts more modern regulation-making powers and makes a number of amendments as to the specific matters that may be made by regulation.

The terminology used in relation to the regulation-making power is updated by providing that the "Governor in Council may make regulations under this Act". This terminology brings the Act into line with the wording of provisions of the *Statutory Instruments Act 1992* which permit regulations to be made for necessary and convenient purposes.

The maximum penalty able to be prescribed in the regulation is increased to 20 penalty units.

A new section 51(3) is inserted providing the power for a regulation to be made about the election of members to a board and dealing with property of a discontinued grammar school. An inclusive list about the electoral matters is provided.

The matters included in the list relate to:

- the minimum and maximum amounts able to be prescribed by a board for the electoral eligibility amount;
- a default electoral eligibility amount;
- the day when an election may be held; and
- the maximum number of terms that a person may serve as an elected member.

Essentially, it is intended that the "standard" requirements for election of board members will be detailed in the regulation. Boards are provided with a by-law-making power, at clause 13 (section 15A), which will allow the boards to amend a number of these "standard" requirements.

Depending on the complexity of any matters relating to the discontinuance of a school it may be more appropriate for a separate Act to be made for each discontinuance. Decisions on such matters will be made on a case by case basis. However, the flexibility of allowing such matters to be dealt with by regulation is desirable.

Clause 23 inserts a new part 5 containing the transitional provisions for the Bill.

A new section 52 is included to provide for the commencement days relevant to the new sections 53 to 57. The commencement days are relevant to the offences established under the Act and the entities that are protected from prosecution for those offences. The definition of "commencement day" allows separate commencement proclamations to be made for these matters.

A new section 53 is included to ensure that grammar schools which were continued in existence by section 4(2) of the *Grammar Schools Act 1975*, as originally enacted, are taken to be established under the Act. The provision is included to put beyond doubt the status of these schools by the omitting of the current definition of "school", which specifically refers to the repealed Acts.

A new section 54 is included to ensure that the amounts persons have donated or subscribed to a school before commencement of this section will still be considered when, after commencement, determinations are made about the amounts persons have donated or subscribed.

A new section 55 is included to protect the rights of person who, immediately before commencement of the section, had donated or subscribed to a school for at least the prescribed amount under the repealed section 7(4A).

The intention of the section is to ensure that a person who was an eligible donor or subscriber before commencement, and therefore was entitled to vote in elections and to stand as a candidate in elections, retains that status after commencement, regardless of how the requirements for electoral eligibility may be altered.

Subsection 55(2) provides that a person who has donated or subscribed at least the currently prescribed amount is taken to have donated or subscribed the electoral eligibility amount.

Subsection 55(3) provides that subsection 55(2) applies despite any amendments after the commencement day to the amounts that a person must donate or subscribe to a school to be meet the electoral eligibility amount.

A new section 56 is included to ensure that members of boards who have been convicted of an indictable offence and who have had a decision made by the board that the offence did not warrant their disqualification from office, under the current section 9(b), will not now be subject to the disqualification provisions contained at clause 9. These convictions are taken not to be a conviction for section 9.

The new section 57 provides transitional provisions in relation to the offences created by section 46R, at clause 18. The section applies to two schools:

- The Anglican Church Grammar School operated by The Corporation of the Synod of the Diocese of Brisbane; and

- Sunshine Coast Grammar School operated by the Sunshine Coast Grammar School Pty Ltd - ACN 064 506 814.

Subsection 57(2) provides that only the two specified schools are not subject to the offence established under the new section 46R(1).

Subsection 57(3) provides that only the two specified schools are not subject to the offence established under the new section 46R(2).

Subsection 57(4) provides that the exemption from the applicability of the offence provisions, under sections 46R(1) and (2), apply to the two specified schools only while they continue to be operated by their current operator and under the name the schools had immediately before the commencement day. The commencement day is determined by reference to the new section 52.

Subsection 57(5) provides definitions for the section. The two specified schools are identified by the name of the school as operated by their current operator. The current operator for each school is specified.

The intention in so specifically identifying the schools and their current operators is to limit the protection from prosecution under section 46R(1) and (2) to these two schools under their current name and under the operation of their current operator. Any alteration to the names of the schools or the names of the operators, no matter how minor, will remove the protection from prosecution.

For example, the protection from prosecution will be removed from the operator if the Sunshine Coast Grammar School Ltd ACN 064 506 814 amends its corporate name with the Australian Securities and Investments Commission to the "Sunshine Coast and Districts Grammar School Ltd ACN 064 506 814". Removal of the protection would occur, in this example, regardless of whether or not the school name was altered to reflect the new corporate name.

It is the intention that if the name of a governing body or school name is considered to still warrant protection, the Minister may seek to amend the Act to reflect the change in name and to extend the protection to that entity.

Clause 24 omits the rules for election of boards that are currently contained in the schedule to the Act. It is intended that these rules will be made by regulation.

Clause 25 inserts the heading and schedule for the creation of the dictionary. The items for inclusion in the dictionary are relocated there by sub-clause 5(5).

PART 3—AMENDMENT OF EDUCATION (ACCREDITATION OF NON-STATE SCHOOLS) ACT 2001

Clause 26 provides that Part 3 of the Bill amends the *Education (Accreditation of Non-State Schools) Act 2001* (the Accreditation Act).

Clause 27 inserts a new division in chapter 2, part 4 of the Act relating to the specific requirements surrounding grammar schools.

A new section 70B is included that places a requirement on the Non-State Schools Accreditation Board to notify the Minister of the issuing under the Accreditation Act of certain notices to grammar schools. The notices relate to the grammar school's ongoing compliance with the Accreditation Act and the potential for the grammar school's accreditation under that Act to be effected, or, in the case of compliance notices to effect the reputation of the school. The section is included to ensure that the Minister for Education has the requisite information available to her on grammar schools, as statutory bodies within her portfolio, to meet the Minister's responsibilities.

Subsection 70B(2) provides that the Non-State Schools Accreditation Board must give the Minister a copy of the notices.

Subsection 70B(3) provides that the requirement only applies to a "grammar school" as defined under the Act.

PART 4—AMENDMENT OF EDUCATION (GENERAL PROVISIONS) ACT 1989

Clause 28 states that Part 4 of the Bill amends the *Education (General Provisions) Act 1989.*

Clause 29 inserts a definition of "school in receipt of subsidy" in the interpretation section of the Act. The definition of "school in receipt of subsidy" refers to a definition in part 8A of the Act: Schools in Receipt of Subsidy. The definition is being inserted in the general interpretation section as the new s.142A (3) also refers to a "school in receipt of subsidy".

Clause 30 amends s.142 of the *Education (General Provisions) Act 1989* to omit words referring to the definition of "schools in receipt of subsidy" contained in s.134A of the Act. Clause 28 inserts a definition of "school in receipt of subsidy" in s.2 (1) for the purposes of the whole Act.

Clause 31 inserts a new section, s.142A, to enable the Minister to provide students with disabilities transport assistance to attend school.

Subsection 142A(1) states that the Minister may provide assistance to eligible students for their transportation to and from school. An eligible student means a "student with a disability who attends a school in receipt of subsidy". Assistance is provided to allow students to travel between their school and another place. The schools for which transport assistance is provided are those nominated by the Department of Education as providing the appropriate program for the student with a disability.

Subsection 142A(2) provides that the transport assistance may include the types of assistance listed in subsection (a) to (c).

Subsection 142A(2)(a) states that the Minister may pay all or part of the costs incurred in transporting the students with a disability in limited circumstances. The payments may be made to the students or their parents. For example, a family may receive an amount of money to subsidise the cost of driving a child with a disability to and from a nominated school.

Another example is where a taxi firm provides transport assistance to a student with a disability to and from school. If the cost of transportation exceeds the amount paid by the Department, the student or their parents may make an arrangement with the transport provider to pay the balance of the cost.

Subsection 142A(2)(b) states that the Minister may pay the transport provider directly. For example, the Department may make payments directly to a taxi firm for the transportation of a student.

Subsection 142A(2)(c) states that the Minister may help to organise transport assistance to enable students with disabilities to attend school. For example, the Department may authorise Queensland Transport to make arrangements with the transport provider in relation to a student with a disability.

Subsection 142(3) inserts a definition of an eligible student. An eligible student is a student with a disability (i.e. a "person with a disability" as defined in s. 3(1) of the Act) and who attends either a state school, or a non-state school which is eligible for Government funding under the *Education (Accreditation of Non-State Schools) Act 2001.*

SCHEDULE

MINOR AMENDMENTS OF GRAMMAR SCHOOLS ACT 1975

The schedule makes a number of minor amendments to the *Grammar Schools Act 1975* to update the terminology surrounding a board's powers, authorities, functions and duties in order to bring those terms in line with the *Acts Interpretation Act 1954*. The amendments are included to avoid any contrary intention in the new provisions that refer only to "powers" and "functions".