

GRAMMAR SCHOOLS Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Grammar Schools Bill 2016 (the Bill).

Policy objectives and the reasons for them

The *Grammar Schools Act 1975* (GSA) and the *Grammar Schools Regulation 2004* provide a framework for the establishment and regulation of eight Queensland grammar schools. The eight grammar schools are:

- Brisbane Girls Grammar School;
- Brisbane Grammar School;
- Ipswich Girls' Grammar School including Ipswich Junior Grammar School;
- Ipswich Grammar School;
- Rockhampton Girls Grammar School;
- The Rockhampton Grammar School;
- Toowoomba Grammar School; and
- Townsville Grammar School.

Each grammar school is governed by a seven member board of trustees appointed by the Governor in Council. The GSA provides that the board of trustees for each grammar school is a statutory body. The GSA regulates the business of the grammar school boards, the keeping and auditing of accounts and making of budgets.

The eight Queensland grammar schools were established between 1863 and 1892. Historically, the establishment of a grammar school was a form of community-government partnership that provided a cost-effective way for the State Government to support secondary school education before the newly independent State was in a position to establish state secondary schools. The contemporary approach is for the State to provide secondary education through the establishment of a state school under the *Education (General Provisions) Act 2006*. The State Government also supports the provision of education through the regulation and funding of non-government schools.

The GSA has been reviewed to ensure that the provisions continue to meet the contemporary needs of grammar schools and to consider opportunities to modernise the legislation to

accord with current drafting practices and to reduce red tape.

Achievement of policy objectives

The Bill replaces the existing GSA with modern legislation that: meets the contemporary needs of grammar schools; reduces red tape on the schools; removes prescriptive requirements regarding the financial accountability of grammar schools, instead, relying on other Queensland legislation regulating financial accountability of statutory bodies; and removes the ability to establish additional grammar schools in the future.

Governance of grammar school boards

Currently the size of each grammar school board is fixed at seven members – four members nominated by the Minister and three members elected by the school community through an election process. To meet the contemporary needs of grammar schools and support succession planning, the Bill provides that a grammar school board may request that the Minister nominate up to an additional two members. The board will be able to choose the persons they wish to be nominated by the Minister.

For all Ministerial nominees, including the additional members requested by a board, the Minister must be satisfied that the person has, or can acquire, sufficient understanding of legislation applying to grammar schools; and the skills, experience or expertise in commerce, corporate governance, economics, finance, law, management, education or other area the Minister considers to be relevant to support the board in performing its functions.

Consistent with the current requirements in the GSA, the Bill requires that for the nomination of members, other than additional members requested by the board, the Minister must consult with the board prior to nominating a person for appointment. The Bill strengthens the consultation process by requiring the Minister to consider the board's views about the proposed nomination including, for example, the effect the nomination may have on the composition of the Board.

Under the current GSA, board members are appointed for a set period for four years. To allow for the staggering of appointments to a board and assist with board renewal, the Bill provides that the terms of appointment of members nominated by the Minister, including any additional members requested by a board, will be four years, unless a shorter term is requested by the Board. However, the term of appointment for members appointed through an election process will remain fixed at four years to ensure that potential nominees are aware of the term of the appointment prior to participation in the election process.

It is anticipated that these reforms will support grammar school boards to maintain an appropriate skills mix and corporate knowledge, especially during times of board rejuvenation.

Financial accountability of grammar school boards

Grammar school boards are statutory bodies for the purpose of the *Financial Accountability Act 2009* (FAA) and the *Statutory Bodies Financial Arrangements Act 1992* (SBFAA). These Acts govern the financial management arrangements and set the borrowing and investment powers for government departments and most statutory bodies. In addition to the requirements under the FAA and SBFAA, grammar school boards must comply with the

prescriptive requirements relating to the financial management of grammar schools contained in the current GSA.

It is considered that the framework established by the FAA and SBFAA adequately regulates the financial management of grammar school boards. Therefore the Bill does not include provisions that reflect the current GSA sections relating to:

- the procedure before borrowing outlined in section 21 of the GSA;
- the requirement outlined in section 33 of the GSA to establish and maintain a general fund, a trust fund and a loan fund and keep these funds separate and distinct in separate accounts at a financial institution; and
- the requirements regarding the auditing of accounts outlined in the section 34 of the GSA.

The Bill retains the current provisions in the GSA that allow the Minister to appoint an administrator in circumstances where the school is experiencing financial difficulties and an external person is required to assist in, or take over, the running of the school. This power supports the Minister in overseeing grammar schools and allows the Minister to act to ensure that if the school experiences financial difficulties the education of the students at the school is not detrimentally affected.

The Bill maintains: the obligation on grammar school boards to inform the Minister of any issues that raise significant concerns about a school's financial viability; the power for the Minister to ask for information or a document; and the power for the Minister to give a board directions about a matter relevant to the board functions if the Minister considers the direction is necessary to ensure a school's financial viability. This ensures that the Minister is able to exercise their responsibilities for the oversight of these statutory bodies.

Establishment of new grammar schools

To reflect the contemporary approach for the State to provide secondary education, the Bill does not provide for the establishment of new grammar schools. No grammar schools have been established since 1892 and it is no longer considered necessary for the State to retain the power to establish new grammar schools in the future. The Bill also clarifies that grammar schools do not represent the State.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives to continue the regulation of grammar schools as statutory bodies.

Estimated cost for government implementation

The Bill is not expected to have any detrimental cost implications for government or grammar schools.

Consistency with fundamental legislative principles

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992, sections 4(2)(a)*

Power to obtain criminal history information

Clause 21 of the Bill provides the Minister with the power to obtain criminal history information about prospective and current board members. This aligns with the Minister's power under other legislation establishing statutory bodies in the education portfolio.

The power to obtain a person's criminal history potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992, section 4(2)(a)*). However, the power for the Minister to obtain criminal history information is considered necessary to ensure the suitability of individuals appointed to statutory bodies established under legislation within the education portfolio. Also, the Bill includes safeguards to protect the interests of individuals whose criminal history is obtained under this section.

The Bill provides that the criminal history may only be obtained with the written consent of the individual (clause 21(2)) and must be destroyed as soon as practicable after it is no longer needed (clause 21(5)). In addition, the Bill includes safeguards at clause 22 to protect the criminal history information from further disclosure and limit the purposes for which the criminal history information may be used (i.e. to consider a person's suitability for board membership).

Offences

Clause 22 of the Bill includes a new offence for a person who is or was an officer, employee or agent of the Department of Education and Training to directly or indirectly disclose another person's criminal history information that has been obtained for the purposes of determining a person's suitability to be a member of a board. This offence is included in the Bill to provide one of the safeguards to protect the criminal history information obtained by the Minister and to deter unlawful disclosure of a person's criminal history. The proposed offence aims to protect the rights of the person about whom the criminal history relates. On this basis, the inclusion of the offence in the Bill is considered appropriate and reasonable.

Clause 51 of the Bill includes the two offences relating to the protection of the grammar school name that are contained in the current GSA. Fundamental legislative principles require that an offence be appropriate and reasonable in light of the conduct that constitutes the offence. The maintenance of these offences in the new Bill is justified and not considered to be a breach of fundamental legislative principles because the term 'grammar' school in the Queensland context denotes a school that has been established as a statutory body; is subject to public reporting and compliance with the regulatory framework that applies to other Queensland statutory bodies; and, for most schools, has been granted land from the State. Schools not regulated in the same way as grammar schools should not hold themselves out to be one. A penalty of 200 penalty units is considered an appropriate deterrent.

Consultation

The eight Queensland grammar schools boards were consulted during the review of the GSA and the development of this Bill. The grammar school boards generally support the Bill. Reforms to the governance of grammar school boards were developed in consultation with the boards.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and does not introduce uniform or complementary legislation.

Notes on provisions

Part 1 Preliminary

Division 1 Introduction

Clause 1 provides that the short title of the Act is the Grammar Schools Act 2016.

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

Clause 3 provides that the main purpose of the Act is to maintain public confidence in grammar schools and this is achieved by regulating the governance and administration of grammar schools.

Clause 4 provides that the Act binds all persons, including the State and clarifies that nothing in the Act makes the State liable to be prosecuted for an offence.

Division 2 Interpretation

Clause 5 provides that the dictionary in schedule 1 defines particular words for the purposes of the Act.

Clause 6 prescribes the names of the eight Queensland grammar schools regulated by the Act.

Part 2 Boards of trustees

Division 1 Establishment

Clause 7 provides that there is a board of trustees (board) for each grammar school.

Clause 8 provides for the legal status of the grammar school boards.

Clause 9 provides that grammar school boards do not represent the State.

Clause 10 provides for the application of the FAA and SBFAA in relation to the grammar school boards.

Division 2 Functions

Clause 11 provides for the functions of a grammar school board.

Division 3 Powers

Clause 12 provides for the powers of a grammar school board.

Clause 13 provides that a grammar school board may make by-laws about board elections and the conduct of the board's business. In accordance with this clause, by-laws are not subordinate legislation and have effect only to the extent they are consistent with the Act.

Division 4 Membership

Clause 14 provides for the membership of the grammar school boards. This clause states that the board of a grammar school consists of at least seven but no more than nine members appointed by the Governor in Council. The membership comprises four members nominated by the Minister, up to two additional members chosen by the board and nominated by the Minister and three elected members.

Clause 14(5)(a) provides that before nominating a person for appointment to a board the Minister must be satisfied that the person has:

- a sufficient understanding, or the ability to rapidly acquire a sufficient understanding, of the legislation applying to grammar schools; and
- the skills, experience or expertise in commerce, corporate governance, economics, finance, law, management, education or other area the Minister considers relevant or necessary to support the board in performing its functions.

Clause 14(5)(b) provides that before the Minister nominates a member to a board, other than a member appointed under subsection 14(2) (i.e. an additional member chosen by the board), the Minister must: consult with the board about the proposed nomination; and consider the board's submissions about the proposed nomination, including, for example the board's views about the effect of the nomination on the composition of the board.

Clause 14(4) provides that a person is eligible for election to a board only if they have donated the electoral eligibility amount for the board and have not already served the maximum number of terms as a member under the board's by-laws. It is a matter for a board to determine whether it will set a maximum number of terms under its by-laws. The electoral eligibility amount is prescribed in a regulation or the board's by-laws and is distinct and separate to other amounts that may be paid to the school such as tuition or boarding fees.

The additional members, nominated by the Minister at the request of a board, can be appointed at any time. They do not need to be appointed at the same time as the other Minister's nominees or elected persons.

Clause 15 deals with elections of members of a grammar school board and specifies what is to occur should insufficient members be elected. The clause provides a person may not vote in an election for a board member unless they have donated the electoral eligibility amount for the school. The school's electoral eligibility amount is the amount provided for in a by-law, if the Board has made one, or otherwise the amount prescribed under a regulation.

Clause 16 provides that a member is appointed for a term of four years. Under clause 16(1)(b) the Board may ask that a Ministerial nominee be appointed for a shorter period. The clause also provides that if a successor has not been appointed before the member's term ends, the member continues to hold office until a successor is appointed.

Clause 17 provides for the election of the chairperson and deputy chairperson, when the office of chairperson becomes vacant and when the deputy is to act as the chairperson.

Clause 18 provides for the circumstances where a person is disqualified from becoming or continuing as a member.

Clause 19 provides for when the office of a member becomes vacant and allows the Minister to appoint another person to fill the vacancy for the remaining part of the term. The clause ensures that, before appointing a person, the Minister consults the board about the proposed appointment.

Clause 20 allows the Minister to approve a leave of absence for a member and appoint another person to act in the office of the member during the period of leave.

Division 5 Criminal history

Clause 21 provides the Minister with the power to ask the commissioner of the police service for a written report about the criminal history of a person and a brief description of the circumstances of a conviction mentioned in the criminal history, to decide whether the person is disqualified from becoming or continuing as a member of a board. The use of this power is limited to circumstances where the person has given the Minister written consent for the request. The clause includes the protection that the Minister must ensure the report is destroyed as soon as practicable after it is no longer needed.

Clause 22 provides that the criminal history information is confidential. Disclosure, except as permitted under clause 22(3), is an offence with a maximum penalty of 100 penalty units.

Clause 23 requires that a member of a grammar school board must immediately give notice to the Minister if they are convicted of an indictable offence during their term of appointment. Failure to give notice is an offence with a maximum penalty of 100 penalty units.

Division 6 Financial matters

Clause 24 provides for grammar school boards to develop and approve a budget for the school each year.

Clause 25 gives a grammar school board the power to establish and administer trust funds relating to the performance and exercise of the board's functions and powers.

Clause 26 enables a grammar school board to establish one or more investment common funds for the collective investment of school funds including trust funds. The clause provides that a board may add or withdraw from an investment common fund without incurring any liability for breach of trust.

Clause 27 requires a grammar school board to periodically distribute the income of an investment common fund.

Part 3 Staff and business of boards

Division 1 Staff

Clause 28 provides that a grammar school board must employ a secretary and may employ other staff as it considers appropriate to perform its functions and exercise its powers, including administrative officers, teachers and clerks. The clause clarifies that staff:

- are entitled to be paid the remuneration and allowances determined by the board; and
- are employed under this Act and not the *Public Service Act 2008*.

Division 2 Business and meetings

Clause 29 provides that subject to this division, a grammar school board may conduct its business in the way it considers appropriate and in accordance with any by-laws made by the board.

Clause 30 prescribes the quorum for meetings of a grammar school board.

Clause 31 provides the procedure for deciding questions at meetings of a grammar school board and out of session. The provision also allows members to participate in board meetings using modern communication technology, such as teleconferencing.

Clause 32 provides that a vacancy in the membership of a grammar school board or a defect or irregularity in the appointment of a member of a board does not make a decision of the board invalid.

Clause 33 provides for the authentication of the documents of a grammar school board.

Division 3 Interaction between Minister and boards

Clause 34 imposes an obligation on a grammar school board to immediately notify the Minister of a matter that raises a significant concern about the school's financial viability.

Clause 35 provides the Minister with the power to request information or documents from a grammar school board.

Clause 36 provides that the Minister may give a grammar school board a written direction about a matter relevant to the board's functions if the Minister is satisfied the direction is necessary to ensure the school's financial viability. Unless there are exceptional circumstances the Minister must consult with the board about the matters to be dealt with in the direction prior to giving it. The board must comply with the direction and include details of each direction given during a financial year in the relevant annual report.

Part 4 Administrators

Division 1 Appointment

Clause 37 provides for the Minister to appoint a person as administrator of a grammar school board.

Clause 38 prescribes that the Minister may only appoint an administrator if:

- a grammar school board asks the Minister to make the appointment;
- a grammar school board is given a show cause notice under the *Education (Accreditation of Non-State Schools) Act 2001*; or
- the Minister reasonably believes a school is no longer financially viable or is in danger of becoming financially non-viable.

Clause 39 prescribes the process for notifying a grammar school board about the Minister's decision to appoint an administrator.

Clause 40 ensures the Minister only appoints a person as an administrator if the Minister is satisfied the appointee is appropriately qualified and suitable to be an administrator. The clause also provides that the proposed administrator must, before the appointment, advise the Minister about any conflict of interest that may arise while the person is the administrator. The clause also ensures the administrator has been screened to work with children (i.e. they have a blue card).

Clause 41 outlines the requirements for the gazette notice appointing an administrator.

Clause 42 provides that the Minister must take reasonable steps to notify the parents of students at the school about the proposed appointment before publishing the gazette notice.

Clause 43 allows the Minister, by gazette notice, to vary the terms or conditions of appointment. Before varying the appointment the Minister must give the grammar school board a written notice about the proposed variation and take reasonable steps to notify interested parents about the proposed variation.

Clause 44 provides when the term of appointment of the administrator ends earlier than anticipated in a gazette notice.

Clause 45 provides that if the appointment of an administrator ends under section 44 of the Act then the Minister may appoint someone else as administrator.

Division 2 Conduct of administration

Clause 46 provides that this division applies during the appointment of an administrator.

Clause 47 provides for the powers and functions of the administrator and the application of Acts, applicable to grammar schools, to the administrator.

Clause 48 provides that the administrator is subject to the Minister's direction. If the Minister gives a direction under this section, the administrator must give a copy to the grammar school board and the board must ensure that details of each direction are included in the board's annual report for the year.

Clause 49 provides that a grammar school board continues in existence, subject to this Act, despite the appointment of an administrator, but that the board cannot exercise its powers and functions other than to support the administrator.

Clause 50 provides that the administrator must give reports about the administration to the Minister as soon as practicable after the end of the appointment or at any time required by the Minister.

Part 5 Miscellaneous

Division 1 Offences and liability

Clause 51 creates two offences relating to establishing or operating a non-grammar school under a name that includes the word 'grammar' and holding out a non-grammar school to be a grammar school. The maximum penalty prescribed for each offence is 200 penalty units.

New section 69 provides that these offences do not apply to the Anglican Church Grammar School or the Sunshine Coast Grammar School.

Clause 52 ensures that proceedings for an offence against the Act are taken in a summary way under the *Justices Act 1886*.

Clause 53 applies if a grammar school board borrows money it is not lawfully authorised to borrow under the SBFAA. The provision makes all members of the board who consented to the borrowing of the money jointly and severally liable to repay the money and any interest. The provision also provides that the money and interest may be recovered from the members by the Minister as a debt and prescribes how the money recovered by the Minister should be distributed.

Division 2 Funding and donations

Clause 54 requires a grammar school board to keep a register of donors for the school that is available for inspection by the public and the details about the donors to be included on the register. *Clause 54(4)* allows the board to remove a person's details from the register at the person's request. *Clause 54(5)* allows the board to remove from the register a particular person required to be included on the register if the board, after making reasonable attempts, cannot contact the donor.

Clause 55 provides that if a person donates property to a grammar school, the person is taken to have donated money in an amount equal to the value of the property on the day the property was donated.

Division 3 Other matters

Clause 56 provides that a grammar school must not be operated under a name other than its name stated in section 6 of the Act.

Clause 57 provides that a grammar school must be operated independently of a church or other religious body and not operated for students of a particular religion.

Clause 58 prescribes how the assets of a discontinued grammar school are to be dealt with.

Clause 59 provides for the delegation of functions of a grammar school board.

Clause 60 provides the regulation making power for regulations made under the Act.

Part 6 Repeal and transitional provisions

Division 1 Repeal provision

Clause 61 repeals the *Grammar Schools Act 1975*.

Division 2 Transitional provisions

Clause 62 defines 'repealed Act' for the purposes of the part.

Clause 63 continues in existence the grammar school boards established under the repealed Act and provides that a thing done by, or in relation to, a board established under the repealed Act is taken to be a thing done by, or in relation to, the board continued under the section.

Clause 64 maintains the status of donors by providing that an amount donated or subscribed under the repealed Act is taken to be an amount donated under this Act.

Clause 65 maintains the status of donors who have donated the electoral eligibility amount by providing that if the person has donated or subscribed to a grammar school at least the electoral eligibility amount for the school under the repealed Act they are taken to have donated the electoral eligibility amount under this Act.

Clause 66 continues in existence, for a maximum of 12 months, by-laws made by a grammar school board under the repealed Act.

Clause 67 provides that a written approval or notice given to a person by the Minister that allows an otherwise disqualified person to serve on a grammar school board is taken to be a written approval or notice under this Act.

Clause 68 states that section 29 of the repealed Act continues to apply in relation to money borrowed or appropriated by a grammar school board before commencement.

Clause 69 modifies the application of section 51 of the Act so that the offence provision does not apply to the Anglican Church Grammar School or the Sunshine Coast Grammar School while the schools continue to be operated by their current operator under the name it had immediately before commencement of the Act.

Part 7 Amendment of this Act and other Acts

Division 1 Amendment of this Act

Clause 70 provides that this division amends the Grammar Schools Act 2016.

Clause 71 amends the long title of this Act.

Division 2 Amendment of Education (Accreditation of Non-State Schools) Act 2001

Clause 72 provides that this division amends the *Education (Accreditation of Non-State Schools) Act 2001*.

Clause 73 amends section 70B(3) to replace a reference to the repealed *Grammar Schools Act 1975* with a reference to this Act.

Division 3 Amendment of Fair Work (Commonwealth Powers) and Other Provisions Act 2009

Clause 74 provides that this division amends the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

Clause 75 amends schedule 1, item 1 to replace a reference to the repealed *Grammar Schools Act 1975* with a reference to this Act.

Division 4 Amendment of Information Privacy Act 2009

Clause 76 provides that this division amends the *Information Privacy Act 2009*.

Clause 77 amends schedule 2, part 1, item 5 to replace a reference to the repealed *Grammar Schools Act 1975* with a reference to this Act.

Division 5 Amendment of Right to Information Act 2009

Clause 78 provides that this division amends the *Right to Information Act 2009*.

Clause 79 amends schedule 2, item 8 to replace a reference to the repealed *Grammar Schools Act 1975* with a reference to this Act.

Schedule 1 Dictionary

Schedule 1 defines the terms used in this Act.