

GRAMMAR SCHOOLS AND OTHER LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

FOR

AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE ANNA BLIGH MP

Title of the Bill

Grammar Schools and Other Legislation Amendment Bill 2003

Objectives of the Amendment

The objective of the amendment is to provide a more flexible mechanism by which to protect from prosecution under section 46R, an existing school that uses the word “grammar” in its name. This greater flexibility is required to ensure that the objective of allowing this school to continue to operate using the grammar school name is achieved.

The amendment will allow protection from prosecution to apply to all operators of the existing school within the year after commencement of the provision, and provide ongoing protection to the operator in place one year after commencement.

Clause 23 of the Bill includes section 57, which protects two schools from prosecution under the section 46R offences—Anglican Church Grammar School and Sunshine Coast Grammar School. The section provides that in order for this protection to continue to apply to these schools, they must continue to be operated under their names, as identified, and under their current operators, which are defined.

In the case of Sunshine Coast Grammar School the school’s current operator is defined as “Sunshine Coast Grammar School Pty Ltd ACN 064 506 814”. If the current operator of the school changed, for example through a sale, merger or transfer of assets, protection for the school to use

the word “grammar” in its name would lapse. The school’s operator would then be liable to prosecution under section 46R.

The Department has recently become aware that there is the potential for the current operator of the school, as currently defined by section 57, to change in the months after passage of the Bill. It was the intention of the Bill’s transitional provisions that the school be allowed to continue to use the name under which it was currently operating. If such a change, as foreshadowed above, were to occur, it would mean the transitional provisions were of no effect and the objective of protecting the school’s use of the grammar name would not be achieved.

Achievement of the Objectives

To address this issue, the amendment in committee amends clause 23 to redefine “current operator” for Sunshine Coast Grammar School to include any entity operating the school during the year after commencement of the provision and after that time, the entity operating the school one year after commencement.

The amendment allows an unlimited number of changes of operating entity during the year after commencement of the provision. Such changes of entity are most likely to occur during the process of a sale of the school and may include transfer of assets to a holding company or other entity to affect the sale.

Consistency with Fundamental Legislative Principles

The clause does not infringe on any fundamental legislative principles.

Consultation

N/A

NOTES ON PROVISIONS

Clause 23 is amended in two respects: to redefine “current operator” in relation to Sunshine Coast Grammar School; and to definitively identify “Sunshine Coast Grammar School”.

Clause 1 of the amendment in committee replaces the definition of “current operator” in relation to Sunshine Coast Grammar School. The amendment redefines the current operator in relation to two time periods: in the year immediately after the commencement day, which is defined by section 52 of the Bill; and for the period immediately after that initial year.

These periods are chosen to enable a number of changes of operating entity to occur, if necessary, to affect a sale of the school, within the year after the commencement day. One year is considered to be sufficient to enable any such processes to occur.

The second limb of the definition provides that the entity operating the school on the day one year after commencement continues to have ongoing protection from prosecution under section 46R. This protection would lapse, as was intended by the provisions amended by this amendment in committee, on any change of the name of the school or the name of its current operator.

Clause 2 redefines “Sunshine Coast Grammar School” as the school that, before the commencement day, was operated by Sunshine Coast Grammar School Pty Ltd ACN 064 506 814. This redefining is required to ensure that the school subject to these provisions is sufficiently defined. Clause 1 of the amendment in committee replaces the provisions that had defined current operator.