



Grammar Schools Bill 2016

Report No. 19, 55th Parliament

Education, Tourism, Innovation and Small Business Committee
September 2016

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Chair	Mr Scott Stewart MP, Member for Townsville
Deputy Chair	Miss Verity Barton MP, Member for Broadwater
Members	Mr Mark Boothman MP, Member for Albert Mr Steve Dickson MP, Member for Buderim Mr Bruce Saunders MP, Member for Maryborough Mr Rick Williams MP, Member for Pumicestone
Staff	Ms Sue Cawcutt, Research Director Ms Trudy Struber, Inquiry Secretary Ms Joanne Walther, Committee Support Officer
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Lorraine Bowden, Committee Support Officer
Contact details	Education, Tourism, Innovation and Small Business Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3553 6657
Fax	+61 7 3553 6699
Email	etisbc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/etisbc

Contents

Abbreviations	v
Chair’s foreword	vi
1 Introduction	1
1.1 Role of the committee	1
1.2 Referral and committee’s process	1
1.3 Outcome of committee consideration	1
2 Background to the Bill	2
2.1 History of grammar schools	2
2.2 Regulation of grammar schools	2
2.2.1 <i>Regulation as a school</i>	2
2.2.2 <i>Regulation as a statutory body</i>	2
3 Examination of the Bill	4
3.1 Purpose of the Bill	4
3.2 Grammar school boards	4
3.2.1 <i>Membership</i>	4
3.2.2 <i>Governance and financial accountability</i>	5
3.2.3 <i>Restraining the establishment of new grammar schools</i>	5
3.3 Consultation on the Bill	6
4 Compliance with the Legislative Standards Act 1992	7
4.1 Fundamental legislative principles	7
4.1.1 <i>Rights and liberties of individuals</i>	7
4.1.2 <i>Institution of parliament</i>	9
4.2 Explanatory notes	9
Appendix B - Witnesses at the public briefing	10

Abbreviations

the Bill	Grammar Schools Bill 2016
the committee	Education, Tourism, Innovation and Small Business Committee
the department	Department of Education and Training
the GS Act	<i>Grammar Schools Act 1975</i>
the GS Regulation	<i>Grammar Schools Regulation 2004</i>
the EANSS Act	<i>Education (Accreditation of Non-State Schools) Act 2001</i>
the FA Act	<i>Financial Accountability Act 2009</i>
the SBF Act	<i>Statutory Bodies Financial Arrangements Act 1982</i>

Chair's foreword

On behalf of the Education, Tourism, Innovation and Small Business Committee of the 55th Parliament of Queensland, I present this report on the committee's inquiry into the Grammar School Bill 2016.

The Bill was introduced into the Legislative Assembly by the Minister for Education and Minister for Tourism on 16 August 2016. The committee was required to report to the Legislative Assembly by 4 October 2016.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those who made written submissions on this Bill, and the officials from the Department of Education and Training who briefed the committee.

I commend the report to the House.



Scott Stewart MP
Chair

Recommendations

Recommendation 1 **1**

The committee recommends that the Grammar Schools Bill 2016 be passed.

Recommendation 2 **8**

The committee recommends that the Grammar Schools Bill 2016 be amended to provide safeguards to protect information regarding a board member's conviction for an indictable offence.

1 Introduction

1.1 Role of the committee

The Education, Tourism, Innovation and Small Business Committee was established as a portfolio committee by resolution of the Legislative Assembly on 27 March 2015. The committee consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- education
- tourism and major events
- innovation
- science, and
- the digital economy and small business.¹

The committee is responsible for examining each Bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of the fundamental legislative principles (FLPs).²

Further information about the work of the committee can be found on its website.

1.2 Referral and committee's process

On 16 August 2016, the Minister for Education and Minister for Tourism and Major Events introduced the Grammar School Bill 2016 into the Legislative Assembly. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the committee for detailed consideration. The committee was required to report to the Legislative Assembly by 4 October 2016.

During its examination of the Bill, the committee:

- invited submissions from stakeholders and the public. A list of the two submissions received by the committee is at **Appendix A**, and
- held a public briefing on 31 August 2016 attended by officers from the Department of Education and Training. A list of the officers who appeared at the briefing is at **Appendix B**.

Copies of the material published in relation to this inquiry, including transcripts of the public briefing and submissions, are available on the committee's website.

1.3 Outcome of committee consideration

Standing Order 132(1) requires the committee to recommend whether the Bill should be passed.

The committee considered the Bill, information provided by the department and the information and views expressed in submissions. The committee considers that the Bill should be passed.

Recommendation 1

The committee recommends that the Grammar Schools Bill 2016 be passed.

¹ *Parliament of Queensland Act 2001*, s 88 and *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004, Standing Order 194 and sch 6.

² *Parliament of Queensland Act 2001*, s 93.

2 Background to the Bill

2.1 History of grammar schools

Grammar schools were historically established as a partnership between the Queensland Government and the community. This arrangement was a cost effective way for the government to support secondary school education in Queensland without assuming the full cost of establishing high schools.³

Legislation allowing for and regulating the establishment of grammar schools, the *Grammar Schools Act 1860*, was passed by Queensland's first Parliament and the first grammar school opened in 1863.⁴ However, a Royal Commission on Education in 1891, which advised that a 'system of secondary schools more directly controlled ... by the State would be less expensive and quite as effective...' as grammar schools, led to the establishment of a state secondary school system and the end of new grammar schools being established. Ten grammar schools were established between 1863 and 1892.⁵

Since 1892, no new grammar schools have been established.

2.2 Regulation of grammar schools

2.2.1 Regulation as a school

The establishment, governance and regulation of grammar schools is currently provided for by the *Grammar Schools Act 1975* (GS Act) and the *Grammar Schools Regulation 2004* (GS Regulation). There are eight grammar schools operating under this legislation:

- Ipswich Grammar School
- Ipswich Girls' Grammar School
- Brisbane Grammar School
- Brisbane Girls' Grammar School
- Toowoomba Grammar School
- Townsville Grammar School
- Rockhampton Grammar School, and
- Rockhampton Girls' Grammar School.

Grammar schools, consistent with all non-State schools, are governed by the *Education (Accreditation of Non-State Schools) Act 2001* (EANSS Act), which regulates the establishment and operation of non-State schools to ensure high standards of education and the maintenance of public confidence.⁶

2.2.2 Regulation as a statutory body

Grammar school boards, as statutory bodies are also required to comply with the requirements of the *Statutory Bodies Financial Arrangements Act 1982* (SBFA Act) and the *Financial Accountability Act 2009* (FA Act).

The SBFA Act aims to provide for the efficient and effective management of statutory bodies' power to enter into financial arrangements by regulating the:

- guarantees the Treasurer may give for statutory bodies' financial arrangements
- general banking, borrowing and investment powers of statutory bodies, and
- way statutory bodies may enter into financial arrangements (with the Treasurer's approval).⁷

³ Hon Kate Jones MP, Minister for Minister for Education and Minister for Tourism and Major, Queensland Parliament, Record of Proceedings, 16 August 2016, p 2,758.

⁴ Queensland Government, Queensland State Archives, *Number 18 - Grammar School Act of 1860*, <www.archives.qld.gov.au/Researchers/Exhibitions/Top150/001-025/Pages/018>.

⁵ Queensland Government, Library Services, *The grammar schools era 1860-1912*, <www.education.qld.gov.au/library/edhistory/state/brief/secondary-1860>.

⁶ *Education (Accreditation of Non-State Schools) Act 2001* s 3.

⁷ *Statutory Bodies Financial Arrangements Act 1982* s 2.

The FA Act imposes obligations on statutory bodies to:

- achieve reasonable value for money by operating efficiently, effectively and economically
- establish and maintain appropriate systems of internal control and risk management
- undertake appropriate planning and budgeting
- establish and keep funds and accounts in compliance with the prescribed requirements⁸
- prepare annual financial statements, and have the statements audited,⁹ and
- prepare, certify and table annual reports in the Legislative Assembly.¹⁰

The FA Act also provides that a statutory body may divest itself of a gifted or bequeathed investment only with the Treasurer's approval, unless exempted by the Treasurer.¹¹

⁸ *Financial Accountability Act 2009* s 61.

⁹ *Financial Accountability Act 2009* s 62.

¹⁰ *Financial Accountability Act 2009* s 63.

¹¹ *Financial Accountability Act 2009* s 64.

3 Examination of the Bill

3.1 Purpose of the Bill

The purpose of the Bill is to replace the existing GS Act with modern legislation to:

- meet the contemporary needs of grammar schools
- reduce red tape on grammar schools
- remove prescriptive requirements regarding financial accountability, and rely on other financial accountability legislation, and
- remove the ability to establish additional grammar schools.

Clause 6 defines the meaning of ‘grammar school’ by listing the eight grammar schools to which the current Act and the Bill apply.

3.2 Grammar school boards

3.2.1 Membership

Grammar school boards are currently fixed at seven members, three of whom are elected by the school community and four are nominated by the Minister. Clause 14 of the Bill also provides for board membership of three elected members and four members nominated by the Minister. However, the Bill proposes to reform the membership of the boards by providing that, at the request of the board, an additional two board members may be nominated by the Minister. Board members appointed by Ministerial nomination may be appointed for a term shorter than four years at the board’s request.

The explanatory notes state these reforms are considered necessary to ‘meet the contemporary needs of grammar schools and support succession planning’, with the reforms supporting ‘boards to maintain an appropriate skills mix and corporate knowledge, especially during times of board rejuvenation’.¹²

To be eligible for election as a board member, clause 14(4) provides that a person is required to have donated the set ‘electoral eligibility amount’. Clause 14(5) provides that, before nominating a person for appointment, the Minister must be satisfied they have sufficient understanding (or the ability to acquire understanding) of the legislation that applies to grammar schools. Board members are appointed by Governor in Council under clause 14(3) for a fixed period of four years, unless under clause 16 a member nominated by the Minister is appointed for a shorter term.

The Bill also enables the Minister to request a criminal history report under clause 21, before deciding if a person is disqualified from becoming or continuing as a board member. Clause 22 provides that a criminal history report must not be disclosed except to the extent necessary under the Bill, or with consent. A board member who is convicted of an indictable offence must give notice of the conviction to the Minister under clause 23. These clauses are discussed in detail in chapter 4 of this report.

Stakeholder views

The Association of Independent Schools of Queensland Inc. supported the ability for the Minister to nominate an additional two board members noting that it ‘will support greater flexibility in terms of Board composition including seeking out persons with specific skills and knowledge that may be required at a particular time by a Board’.¹³

One submitter expressed concerns regarding the governance structure of the boards, suggesting:

- the electoral eligibility amount and maximum number of terms for which a person may be elected be consistent across all grammar schools and mandated in the Act
- the eligibility criteria for election to the board should be that the person is a parent of a current or past student at the school and they have paid the relevant tuition fees, and
- one board member should be an employee of the school.¹⁴

¹² Explanatory notes, p 3.

¹³ Submission 2, p 1.

¹⁴ Michael Moores, submission 1, p 2.

3.2.2 Governance and financial accountability

The current Act contains prescriptive financial accountability requirements and meeting procedures. The Minister explained:

For example, the act mandates the types of accounts the board must maintain and includes prescriptive procedures that must be undertaken before borrowing state funds. The bill does not replicate these prescriptive requirements. This bill reduces red tape on grammar school boards, without reducing the oversight of grammar school viability.¹⁵

Consistent with all statutory bodies, grammar schools are governed by the financial management arrangements prescribed by the FA Act and the SBFA Act. Consequently the Bill proposes to remove the prescriptive additional requirements regarding:

- procedures before borrowing
- establishing and maintaining a general fund, a trust fund and a loan fund, and
- auditing accounts.

The Bill retains the requirement for a grammar school board to immediately advise the Minister if there are any significant concerns regarding the financial viability of the school.¹⁶ The Bill also regains the authority for the Minister to give the board directions if necessary in the interests of the school's financial viability,¹⁷ and to appoint an administrator if the Minister believes the school is not financially viable or is in danger of becoming non-viable.¹⁸

The explanatory notes state 'the framework established by the [FA Act] and the [SBFA Act] adequately regulates the financial management of grammar school boards' and the additional prescriptive requirements contained in the GS Act are not needed. Further, the explanatory notes state that the requirements retained in the Bill ensure the 'Minister is able to exercise their responsibilities for the oversight of these statutory bodies'.¹⁹

3.2.3 Restraining the establishment of new grammar schools

In line with the contemporary approach for the State to provide secondary education in Queensland, the Bill does not provide for any new grammar schools to be established. This would not preclude the establishment of new private schools under the EANSS Act, however any new schools will not be established as grammar schools.

The explanatory notes state:

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.²⁰

Clause 51 prohibits the establishment or operation of a non-grammar school with a name that includes the word 'grammar', however, clause 69 enables two non-grammar schools - Anglican Church Grammar School and the Sunshine Coast Grammar School - to continue using their names. A grammar school must continue to operate under the name in clause 6 of the Bill.

Stakeholder views

The restriction on the creation of more grammar schools was supported by The Association of Independent Schools of Queensland Inc.²¹ However, one submitter noted that while the proposal was understandable it was also 'disappointing', given the 'dearth of opportunity and choice for parents ... of high quality secular education'.²²

¹⁵ Queensland Parliament, Record of Proceedings, 16 August 2016, p 2758.

¹⁶ Grammar Schools Bill 2016 cl 34.

¹⁷ Grammar Schools Bill 2016 cl 36.

¹⁸ Grammar Schools Bill 2016 cl 38.

¹⁹ Explanatory notes, p 3.

²⁰ Explanatory notes, p 3.

²¹ Submission 2, p 1.

²² Michael Moores, submission 1, p 3.

3.3 Consultation on the Bill

The explanatory notes state the eight grammar schools boards were all consulted during the review of the legislation and development of the Bill. This included consultation on the reforms to the governance of the boards. The notes state that the eight boards generally support the Bill.²³

During the committee's inquiry no concerns were raised regarding the consultation process for the Bill.

²³ Explanatory notes, p 5.

4 Compliance with the Legislative Standards Act 1992

4.1 Fundamental legislative principles

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

The principles include that legislation has sufficient regard to:

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

The committee has examined the application of the fundamental legislative principles (FLPs) to the Bill and brings the following potential FLP issues to the attention of the Legislative Assembly.

4.1.1 Rights and liberties of individuals

Power to obtain criminal history reports

Clause 21 of the Bill provides that the Minister may obtain a written report about a prospective or existing board member’s criminal history, including a summary of the circumstances of any conviction mentioned in the report.

Three proposed caveats on the Minister’s power to obtain a criminal history report act as safeguards against potential abuse of the power. Firstly, the prospective or existing board member must give their written consent for the report to be obtained.²⁴ While a person will be disqualified from becoming, or remaining, a board member if they do not consent, they could refuse to provide consent and recuse themselves from the board if they were strongly opposed to a report being obtained.

Secondly, the Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for deciding whether a person is disqualified from becoming or continuing as a board member.²⁵ Finally, a new offence, punishable by a maximum penalty of 100 penalty units, for the unauthorised disclosure of a report or information contained in a report. Disclosure is authorised where necessary to perform a function under the GS Act, authorised under another Act or otherwise required or permitted by law, the person to whom the information relates has consented to the disclosure, or it is in a form that does not identify the person to whom the information relates.²⁶

Providing the Minister with the power to obtain a criminal history report for a prospective or existing board member potentially breaches the FLP regarding the person’s right to privacy with respect to their personal information.

The explanatory notes acknowledge the potential FLP breach and provide the following justification:

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.²⁷

Committee comment

The committee notes that the following safeguards would be put into place with respect to information obtained about a prospective or existing board member’s criminal history:

- the report may only be obtained with the person’s written consent
- the report must be destroyed when no longer required for the purpose it was obtained, and
- there are strict limits on disclosure of the information.

²⁴ Grammar Schools Bill 2016 cl 21(2).

²⁵ Grammar Schools Bill 2016 cl 21(5).

²⁶ Grammar Schools Bill 2016 cl 22(3).

²⁷ Explanatory Notes, p 4.

The committee also notes that if a person does not wish for their criminal history report to be obtained by the Minister, they can simply not give their consent and disqualify themselves from becoming, or continuing as, a board member.

The committee considers that, with the above safeguards, there appears to be sufficient protections for the privacy of prospective or existing board members.

Required disclosure of convictions

Clause 23 of the Bill introduces a requirement for a board member who is convicted of an indictable offence during their term of appointment to immediately disclose the conviction to the Minister. Failing to disclose a conviction, without reasonable excuse, would carry a maximum penalty of 100 penalty units.

Safeguards equivalent to those to protect a person's privacy regarding their criminal history report, are not proposed in the Bill to protect information disclosed regarding a conviction during the term of a board member's appointment. There is no requirement that the information be destroyed as soon as practicable after it is no longer needed, nor is there an offence for the unauthorised disclosure of information regarding conviction for an indictable offence.

Requiring an existing board member to disclose a conviction during their appointment to the board also potentially breaches the FLP regarding the person's right to privacy with respect to their personal information, particularly in the absence of safeguards to protect the information.

The explanatory notes did not address this issue. The committee sought advice regarding the absence of safeguards from the department, which advised:

The criminal history information the Minister may obtain in relation to a current or prospective member under clause 21 is potentially more expansive than information about an indictable offence under clause 23.

While not exactly the same as the protections under clause 21, disclosure of information in relation to clause 23 is afforded the safeguards available under the Information Privacy Act 2009. Also, public sector employees handling sensitive and confidential information do so in accordance with their obligations under the Public Service code of conduct.

Committee comment

The committee notes that the Bill does not propose safeguards to protect information disclosed by a board member regarding conviction for an indictable offence during their appointment to the board. While the committee acknowledges the advice from the department the committee also notes that other legislation, such as the *Plumbing and Drainage Act 2002*, provides safeguards for criminal history information required to be disclosed by a council member during their term of appointment.

The committee recommends unanimously that the Bill be amended to specifically provide for the protection of information disclosed by a board member regarding a conviction. An amendment should provide that notice of the conviction must be destroyed after it is no longer needed, and the information cannot be disclosed unless necessary to perform a function under the GS Act, authorised under another Act or otherwise required or permitted by law, the person consents to the disclosure, or it is disclosed in a form that does not identify the person.

Recommendation 2

The committee recommends that the Grammar Schools Bill 2016 be amended to provide safeguards to protect information regarding a board member's conviction for an indictable offence.

4.1.2 Institution of parliament

Prescribing matters by regulation

Three provisions of the Bill provide that certain matters may be prescribed by regulation.

Clause 54 provides that a board must keep a register of donors for the board's school, with the particulars that must be included in the register to be prescribed by regulation.

Clause 58 provides that if a grammar school is discontinued, the property held by the board is to be disposed of or held in the way prescribed by regulation, or in the absence or a regulation in the way directed by the Minister. A regulation may provide for the varying of trustees or the terms of a trust. However, a regulation will not override a trust instrument that relates to property held by the board, was created before the discontinuance of the school and provides for the variation of the trust on the discontinuance of the school.

Clause 60 provides that a regulation may prescribe the requirements for board elections including:

- a minimum or maximum amount that a by-law may provide as the electoral eligibility amount
- a board's electoral eligibility amount
- when an election is to be held, and
- a maximum number of terms a person may be elected as a member of a board.

It may be argued that allowing these matters to be dealt with by regulation potentially breaches the FLP regarding the institution of parliament and would be better placed in the primary act.

Committee comment

The committee notes that the Bill provides for the matters outlined above to be prescribed by regulation. Given the nature of the matters to be prescribed by regulation, and the fact they are subject to disallowance, the committee considers the use of regulations is justified in these instances.

4.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required, and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. The notes identified potential FLP issues, and outlined the consultation that had been carried out in relation to the Bill.

Appendix A - List of submissions

Sub No.	Submitter
1	Michael Moores
2	The Association of Independent Schools of Queensland Inc.

Appendix B - Witnesses at the public briefing

Public briefing - 31 August 2016
<p>Department of Education and Training</p> <ul style="list-style-type: none">• Lesley Robinson, Assistant Director-General, Strategy and Performance• Stuart Busby, Director, Legislative Services• Christine Rutledge, Manager, Office of Non-State Education

