



# BRISBANE GRAMMAR SCHOOL

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*From the Board of Trustees*

To: Manager  
Philanthropy and Exemptions Unit  
Indirect Philanthropy and Resource Tax Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [charities@treasury.gov.au](mailto:charities@treasury.gov.au)

Dear Sir/Madam

## **Submission in response to Exposure Draft of the Charities Bill 2013**

I refer to the Exposure Draft of the Charities Bill 2013 which, if enacted, will introduce a statutory definition of what constitutes a charity.

The School is advised that the enactment of the Exposure Draft, as drafted, will not alter the status of Brisbane Grammar School as a charity. I **attach** a copy of an advice received from the School's lawyers, Corrs Chambers Westgarth, dated 2 May 2013 marked "A".

Brisbane Grammar School was founded in 1868 under the *Grammar Schools Act (1860)* to provide (the first) secondary school in the (now) State of Queensland. The history is conveniently set out in a discussion paper attached to an email from the Acting Deputy Director-General of the Department of Education, Training and Employment dated 23 November 2012, a Queensland Government review of the Grammar School Act. A copy of that email and discussion paper is attached marked 'B'.

The conclusion is that the Grammar School operates as all other independent schools and there is no reason for them to remain regulated under a State Act of Parliament, however we do not envisage any change to this long standing governance structure in the short or medium term, if at all.

We draw this to your attention because of the definition in clause 4(1)(b) of the Exposure Draft. Clearly, Brisbane Grammar School is established under a State law, but will remain as a charity provided any legislative instrument the Minister sees fit to issue pursuant to section 4(2) Exposure Draft does not accidentally catch the grammar schools.

There would obviously be no logic in that as we are, like all independent schools, a charity as defined in sections 6 and 7 of the Exposure Draft.

The School is of course concerned to ensure that, like other independent schools, it continues to maintain its charitable status.

Because of our concern in this matter we would appreciate confirmation of receipt, and the opportunity to discuss any issues further, if you have any questions arising out of our interpretation of the Exposure Draft, and what we expect will be the intent of any legislative instrument that may issue pursuant to section 4(2).

Dated: 3 May 2013



Howard Stack

Chairman of the Board of Trustees of Brisbane Grammar School

### Memorandum of Advice

**To** Howard James, Commercial Manager - Brisbane Grammar School  
**From** David Abernethy  
**Date** 2 May 2013  
**Subject** Charities Bill 2013

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You have requested advice on whether Brisbane Grammar School will continue to hold its charitable status in the event the *Charities Bill 2013* (Cth) is enacted (as currently drafted).

The position is as follows:

- 1 Treasury has recently released for consultation an Exposure Draft of the *Charities Bill 2013 (Exposure Draft)*. That Exposure Draft, if enacted as proposed, will introduce a statutory definition of what constitutes a charity, applicable across all Commonwealth laws.
- 2 Paragraph 5 of the Exposure Draft sets out the definition of “charity”. Relevantly, the definition excludes an entity that is “an individual, a political party or a government entity”. The issue that has been raised is whether Brisbane Grammar School (and other grammar schools in Queensland) would be government entities (i.e. because they are established under the *Grammar Schools Act 1975* (Qld) (**Grammar Schools Act**)) and therefore excluded from the definition of “charity”.
- 3 Paragraph 4 of the Exposure Draft sets out the definition of “government entity” as follows:
  - “(1) In this Act:  
**government entity** means:
    - (a) a government entity (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*); or
    - (b) an entity:
      - (i) established under a law by a State or a Territory; and
      - (ii) of a kind prescribed under subsection (2); or
    - (c) a foreign government agency (within the meaning of the *Income Tax Assessment Act 1997*).
  - (2) For the purposes of paragraph (b) of the definition of **government entity** in subsection (1), the Minister may, by legislative instrument, prescribe a kind of entity.”
- 4 With respect to sub-paragraph (a) of the above definition, the *A New Tax System (Australian Business Number) Act 1999 (ABN Act)* relevantly defines “government entity” as:

- “(e) an organisation that:
- (i) is **not an entity**; and
  - (ii) is either established by the Commonwealth, a State or a Territory (whether under a law or not) to carry on an \*enterprise or established for a public purpose by an \*Australian law; and
  - (iii) can be separately identified by reference to the nature of the activities carried on through the organisation or the location of the organisation;

whether or not the organisation is part of a Department or branch described in paragraph (a), (b), (c) or (d) or of another organisation of the kind described in this paragraph.” [emphasis added]

The emphasised words make it clear that an organisation will only be a government entity within the meaning of the paragraph if that organisation is not an entity. The ABN Act defines “entity” by reference to *the A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*.

The GST Act defines “entity” to mean any of the following:

- An individual;
- A body corporate;
- A corporation sole;
- A body politic;
- A partnership;
- Any other unincorporated association or body of persons;
- A trust;
- A superannuation fund.

We note the Australian Business Register listing for Brisbane Grammar School provides that it is the Board of Trustees of Brisbane Grammar School that is endorsed as a charitable institution. Pursuant to section 7(2) of the Grammar Schools Act, the Board of Trustees is a body corporate with perpetual succession. Accordingly, the Board of Trustees will be an entity within the meaning prescribed by the GST Act and would therefore not be a government entity within the meaning given in the ABN Act. It follows that the Board of Trustees would not be a government entity within the meaning given in paragraph (a) of the definition in the Exposure Draft.

- 5 With respect to sub-paragraph (b) of the definition in the Exposure Draft, it seems that sub-paragraph (i) would be satisfied as the Board of Trustees of Brisbane Grammar School is established under the Grammar Schools Act. However, that alone will not result in an entity being a government entity under sub-paragraph (b) of the definition. The entity must also be of a kind prescribed by the Minister by legislative instrument for the purposes of the definition. To date, the legislative definition of what constitutes a charity is only in Exposure Draft form and is subject to consultation. We are not aware of any draft legislative instruments.

We also doubt that the Minister would prescribe the grammar schools as being of a kind of government entity where the impact would be to deny them charitable status, especially where the advancing of education is specifically included in the list of charitable purposes (see paragraph 11(1)(b) of the Exposure Draft) and also in the list of purposes presumed to be of public benefit (refer to paragraph 7(c) of the Exposure Draft).

Please let me know if you wish to discuss this further.

**Corrs Chambers Westgarth**

  
**David Abernethy**

Partner

(07) 3228 9456

david.abernethy@corrs.com.au

"B"

**From:** SINCLAIR, Gabrielle [<mailto:Gabrielle.SINCLAIR@dete.qld.gov.au>]  
**Sent:** Friday, 23 November 2012 11:36 AM  
**To:** Howard James  
**Cc:** RYAN, Kateena  
**Subject:** Review of the Grammar School Act - Correspondence on behalf of the DG DETE

Dear Mr Stack and Mr James

As you will be aware, the Department of Education, Training and Employment is undertaking a review of the *Grammar Schools Act 1975* (Act), in line with the *Queensland Government Six month action plan: July-December 2012*.

You may also be aware that a meeting was held between the Honourable John Paul Langbroek, Minister for Education, Training and Employment and the Grammar Schools Association on 22 June 2012 to discuss issues relating to the request for exemption for grammar schools from compliance with Government legislation and policies relating to financial reporting, records keeping and procurement.

Initial advice from the responsible Ministers is that it is not possible to exempt grammar schools from compliance with Government legislation and policy requirements, due to their status as statutory bodies. An alternative is to repeal the Act so that grammar schools are no longer constituted as statutory bodies, and are subject to the same regulatory regime and associated costs as any non-state school.

A brief discussion paper is attached for your consideration. Also attached are questions for feedback, including the legislative and operational implications of repealing the Act so that grammar schools are not statutory bodies.

Please return your submission to me by **close of business 7 December 2012**.

If, prior to making a written submission, you would like to meet to discuss issues relating to the review, or have any further questions about this matter, I invite you to contact Ms Kateena Ryan, Director, External Relations and Services, by email at [kateena.ryan@dete.qld.gov.au](mailto:kateena.ryan@dete.qld.gov.au) or on telephone 3237 0212.

I look forward to receiving your input.

Yours sincerely

Gabrielle

Gabrielle Sinclair  
Acting Deputy Director-General  
Department of Education, Training and Employment  
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## **Review of the *Grammar Schools Act (1975)* – Discussion Paper**

### **Purpose**

1. The Review of the *Grammar Schools Act 1975 (Act)* is a commitment under the Premier's *Six month Action Plan July-December 2012*.
2. An option for the outcome of the Review is to repeal the Act so that grammar schools are not established as statutory bodies.
3. The purpose of this paper and the accompanying questions is to inform and obtain the views of key stakeholders about the implications of an option to repeal the Act.

### **Background**

#### *Establishment and Governance*

4. Historically, grammar schools were established by legislation – the original *Grammar Schools Act 1860 (1860 Act)* - to enable the provision of non-denominational secondary school education in the new state of Queensland. A public grammar school could be established in any town where at least 1000 pounds could be raised locally by donation or subscription, provided ten per cent of subscriptions were used for scholarships. The intention was to enable the provision of secondary education to all who might want it.
5. Ten grammar schools, including the eight still in existence, were established under the 1860 Act. Two grammar schools in Maryborough were discontinued as grammar schools in 1936 and transferred to become government high schools (now Maryborough State High School). Over time, the legislation was repealed and amended a number of times to bring grammar schools within the education system of the colony and under Government control; and provide for the general financial powers and procedures of a board.
6. The current Act was enacted to consolidate the five Acts of Parliament that existed at the time relating to grammar schools, and to modernise the provisions. The Act provides for the establishment of grammar schools as statutory bodies, governed by a Board of Trustees. The provisions of the Act are directed at membership, governance and powers of grammar schools, and also protection of the grammar school name.
7. Grammar schools must also be accredited as non-state schools under the *Education (Accreditation of Non-State Schools) Act 2001 (EANSS Act)*.
8. There are eight grammar schools established under the Act:
  - Brisbane Grammar School
  - Brisbane Girls Grammar School
  - Ipswich Grammar School
  - Ipswich Girls' Grammar School
  - Toowoomba Grammar School
  - Rockhampton Grammar School
  - Rockhampton Girls Grammar School
  - Townsville Grammar School.

9. Two schools adopted the title of grammar school prior to the 2003 legislative protection of the use of the grammar school name, but are not established under the Act as statutory bodies, and are not within the scope of the review:
  - Anglican Church Grammar School
  - Sunshine Coast Grammar School
10. Government legislation and policies relating to financial reporting, procurement and records keeping apply to grammar schools by virtue of their status as statutory bodies. These requirements do not apply generally to non-state schools.

#### *History of reviews*

11. The Act and the associated operations of grammar schools have been subject to a number of reviews over the last two decades.
12. In 1993-1996, a working party set up by the grammar schools examined the feasibility of repealing the Act, to overcome the restrictions on grammar schools because of their status as statutory bodies, compared to the independence of other non-state schools. No legislative changes were made, in part because of the difficulties of dealing with land tenure issues relating to Deed of Grant in Trust (DOGIT) land on which some grammar schools are situated.
13. In 1997, a review was conducted pursuant to an agreement under the National Competition Policy (NCP review). Amendments to the Act were included in the scope of a further review of the Act in 2002, and progressed in 2003. The amendments arising from the NCP review were made in 2003 to address anti-competitive aspects and maintain the confidence of the public in grammar schools, but the status quo was maintained in relation to the establishment of grammar schools as statutory bodies.
14. Most recently, the 2009 Independent Review of Government Boards, Committees and Statutory Authorities report, *Brokering Balance: A Public Interest Map for Queensland Government Bodies* (the 2009 review), recommended that "the *Grammar Schools Act 1975* should be repealed and the Grammar Schools (formerly under that Act) should be brought within the EANSS Act" (Recommendation 180).
15. The Government response was that the recommendation was not supported at that time, and that the cost of unwinding tenure and other arrangements would need to be evaluated to establish net public benefit of change.
16. Overall, previous reviews have found that the historical basis for which grammar schools are established as statutory bodies under the Act is no longer relevant in a contemporary schooling environment, but the perceived and actual complexity and cost of unwinding the associated administrative arrangements could be a barrier to change.

#### *Compliance and costs*

17. Grammar schools are accredited as non-state schools under the EANSS Act. Because they are also statutory bodies, grammar schools are required to comply with legislation and Government policy that does not apply to other non-state schools, including:
  - *Public Records Act 2002*
  - *Information Standard 40: Recordkeeping and Information Standard 31: Retention and Disposal of Public Records*



- *Financial Accountability Act 2009*
  - *Statutory Bodies Financial Arrangements Act 1982*
  - *Financial and Performance Management Standard 2009*
  - *Financial Reporting Requirements for Queensland Government Agencies*
  - *State Procurement Policy.*
18. The Grammar Schools Association (GSA) recently wrote to and met with the Minister to request exemptions for grammar schools from compliance with Government legislation and policies relating to financial reporting, record keeping, and procurement.
  19. The GSA contends that the status of grammar schools as statutory bodies under the Act means that grammar schools carry an unnecessary regulatory and reporting burden that is not placed on other non-state schools; duplicates reporting under the regulatory regimes that apply to all non-state schools; imposes significant costs on grammar schools; and consequently puts grammar schools at a competitive disadvantage.
  20. The GSA has previously indicated to Government that while grammar schools seek to be relieved of the legislative and policy obligations imposed, they wish to retain the benefits that relate to their status as statutory bodies, for example, access to government contracts and favourable loan arrangements through the Queensland Treasury Corporation, for which the Queensland Government is guarantor.
  21. The Minister sought and obtained advice from the Ministers responsible for administering the legislation and policies relating to financial reporting, public records keeping, and procurement. In summary, the advice was that because grammar schools are statutory bodies, there is no mechanism for granting exemption on a selective case-by-case basis.
  22. The basis for this advice included that exemption would have significant implications for compliance; may have unintended consequences for other reporting regimes; would have implications for consistent and equitable application of whole-of-Government policies; may set an unwanted precedent for other statutory bodies; and may reduce accountability, transparency and good governance, which is inconsistent with the Queensland Government's commitment to restore accountability in Government.

*Current schooling policy environment*

23. The Queensland Government is committed to reducing regulatory burden, including streamlining Government requirements and reducing duplication.
24. In this context, the Government is examining the extent to which Government should be regulating schools, both state and non-state, underpinned by principles of independence, self-determination, and freedom from unnecessary Government interference.
25. Also, a Parliamentary Inquiry by the State Development, Infrastructure and Planning Committee is currently considering the future and continued relevance of Government land tenure across Queensland, including the arrangements for DOGIT and Crown land. The inquiry focussed on the pastoral and tourism industries, but the findings are likely to be relevant to all DOGIT and Crown leases, and to the land tenure issues previously raised in relation to grammar schools.
26. Queensland is the only jurisdiction that retains grammar schools established by legislation, still occupying trust or leasehold lands. In other jurisdictions where grammar

schools exist, historical governance and land ownership arrangements were addressed along with the development of legislative arrangements for accrediting non-state schools.

### **Issues**

27. The Government is committed to and actively engaged in reducing regulatory burden, streamlining Government requirements and reducing duplication. The Government supports principles of independence, self-determination and equity for Queensland schools.
28. It is timely to re-examine the potential for streamlining and reducing duplication, costs and administrative burden for the grammar schools and for Government.
29. The review includes consideration of: the appropriateness of the role of Government in grammar school governance; equity – putting grammar schools on an even playing field with other non-state schools; and the potential for efficiencies and cost savings over the medium to long term.
30. The advice and research to date indicates that reduction of regulatory burden imposed on grammar schools, but not applicable to other non-state schools, can only feasibly be achieved by repealing the Act so that grammar schools are no longer statutory bodies.
31. Through the various previous reviews, grammar schools are aware of, and have expressed their views about the implications of repealing the Act so that grammar schools are no longer statutory bodies. The matters to be addressed appear to remain relatively unchanged, and include:
  - equity and competitiveness between all non-state schools
  - the appropriate structure for grammar school establishment and governance
  - transition of the existing non-state school accreditation to new governing entities
  - arrangements in relation to land tenure, particularly DOGIT and Crown leasehold lands
  - transition of financial arrangements, including existing loans through Queensland Treasury Corporation, government guarantees, and endowments, to which grammar schools have access because they are statutory bodies
  - discontinuation of legislative protection of the use of the grammar school name
  - impact on school operations.

### **Consultation**

32. To assist stakeholders to inform the review, questions have been developed to accompany this paper seeking initial input from stakeholders about the legislative and operational implications of an option to remove the status of grammar schools as statutory bodies.
33. This initial consultation with stakeholders will inform the current stage of the review. Further consultation will be undertaken about implementation arising from the outcomes of the review to ensure that sufficient opportunity is provided for consideration of any complex issues and arrangements.

## **Review of the Grammar Schools Act (1975) – Discussion Questions**

### **Name of Organisation:**

*Please provide your views, and any relevant information, in relation to the following:*

1. What are the implications of repealing the status of grammar schools as statutory bodies under the *Grammar Schools Act 1975*, including benefits and disadvantages or risks?  
For example:

1.1 Regulation

1.2 Accreditation

1.3 Governance

1.4 Financial arrangements

1.5 Land tenure

1.6 School operations

1.7 Other

2. If the Act is repealed, how might the matters raised best be addressed?

*To enable your input to be considered, please return your submission by email to [kateena.ryan@det.qld.gov.au](mailto:kateena.ryan@det.qld.gov.au) by cob 7 December 2012.*

*Please note that the purpose of this consultation is an initial identification of benefits, risks and issues and to obtain the views of stakeholders about the option to repeal the Act.*

*It is not intended to address the detail and complexity anticipated in relation to any possible implementation. Further consultation will occur for this purpose, depending upon the outcomes of the Review.*

*If you have any queries about responding to these matters, please contact Kateena Ryan, Director, External Relations and Services, Department of Education, Training and Employment, on telephone (07) 3237 0212, or by email [kateena.ryan@det.qld.gov.au](mailto:kateena.ryan@det.qld.gov.au)*