

WESTERN AUSTRALIAN COLLEGE OF TEACHING BILL 2003

Committee

Resumed from 7 May. The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training) in charge of the Bill.

Clause 68: Procedure and evidence -

Progress was reported after the clause had been partly considered.

Clause put and passed.

Clause 69: Rights of affected person as to evidence and witnesses -

Hon DERRICK TOMLINSON: When we considered clause 68 I referred to this clause. I drew attention to the fact that an affected person has a right to be represented by counsel. I asked the parliamentary secretary whether the college, likewise, will be represented by counsel. I would like an answer to the question before we proceed.

Hon GRAHAM GIFFARD: The college would conduct the inquiry and it would have the right to seek the assistance of counsel. I do not know whether that extends to it being represented by counsel. Nevertheless, it will have the benefit of counsel. It is not intended that, when conducting an inquiry, the college would also be represented by counsel.

Hon DERRICK TOMLINSON: I will take up this point further when we reach clause 71.

Clause put and passed.

Clause 70 put and passed.

Clause 71: Representation at inquiry -

Hon DERRICK TOMLINSON: This clause is probably more appropriate for me to ask my question about representation. This clause allows the party to the inquiry to be represented by counsel, who may call and give evidence, examine and cross-examine and make submissions. I previously made the point that a college inquiry may function like a court. I listened to what the parliamentary secretary said about the college establishing an inquiry. We have already dealt with clause 65, which was passed. That clause states that the college "may hold an inquiry itself or establish a committee to do so." Clause 65(4) states that a committee established to hold an inquiry will consist of at least three people and will include a registered teacher and a member of the board. Obviously, another person is required. If an inquiry is to be established, I accept that some inquiries can be of a less important type which, to use a computer term, may be user-friendly, as well as informal and not bound by strict rules of procedure. However, some inquiries could be much more formal and involve legal counsel, cross-examination, points of law and, possibly, appeals on points of law at a subsequent stage. Nothing in clauses 65 to 71 gives the committee appointed by the college or the college itself the right to have legal representation. It seems to me that if this juridical process is to be established and provide for counsel for a defendant, why not go the whole hog and recognise that the college, which is a college of teachers, may need legal counsel?

Hon GRAHAM GIFFARD: I take the point of the honourable member. The college will have the ability to have counsel as part of its inquiries. It may establish a committee to hold an inquiry, which will consist of at least three people, as stated by the member. Legal persons may be engaged in the inquiry. I refer to clause 13(8), which states -

A person with special knowledge or experience may be invited to act in an advisory capacity to a committee if the committee is of the opinion that the person will assist the committee in the performance of its functions . . .

That provision gives the college the ability to use counsel and take advice as it conducts an inquiry. Clause 13 refers to the establishment of committees to conduct an inquiry under part 7 in division 3. I move -

Page 44, lines 2 to 4 - To delete the lines and insert instead -

- (2) A person who is not a certificated legal practitioner (within the meaning of the *Legal Practice Act 2003*) is authorised -

I am advised that that wording is more up to date and is preferred to that currently in the Bill.

Hon PETER FOSS: This is a necessary amendment by reason of the enactment of the *Legal Practice Act 2003*. I am trying to find the provision in that Act that deals with people who have been prohibited from practising, and are exempted by the provisions of section 123, which reads, in part -

- (1) A person must not engage in legal practice unless the person is a certificated practitioner.

. . .

- (3) Nothing in subsection (1) is to be construed as preventing a person from -
 - (a) appearing or defending in person in a court;
 - ...
 - (c) appearing for a person before a court, or providing advice or other services, if that appearance or the provision of that advice or service, is authorised by a written law.

During consideration of the Legal Practice Bill 2003, a clause was inserted to stop people from being executors or taking advantage of that exemption, if they were prohibited persons under section 132. I am trying to find which section it is. I am interested in this because I want to ensure that, by the amendment before the committee, we do not repeal or imply the partial repeal of that section of the Legal Practice Act. I know the clause inserted in the Legal Practice Bill was out of place, and arose from the way in which the Bill was put together. It may even have come up under the definition of “multidisciplinary” or some other strange place. I am sure members will remember inserting that clause, which was to do with trustees, executors and the use of section 123. My question is, what is the effect of the amendment before the committee on the alteration that was made to the Legal Practice Bill, which prohibited persons engaging in unqualified practice from appearing before the college?

Hon Graham Giffard: Are you asking if it would prohibit such people at large, and not just in relation to the college?

Hon PETER FOSS: The reason people are allowed to appear before the college, even though they are not legal practitioners, is the exception granted in section 123(3)(c) of the Legal Practice Act, which allows such people to appear before the college, having been authorised by written law. However, in the legal practice legislation, we also went ahead and said that, notwithstanding that exemption, it did not apply to people who have been prohibited under section 132, which reads, in part -

- (1) This section applies to a person who -
 - (a) is not a legal practitioner and is or was an employee of a legal practitioner; or
 - (b) has engaged in unqualified practice.
- (2) The Supreme Court may, on the application of the Board, make an order prohibiting (without approval of the Board under section 133) any legal practitioner from employing or paying in connection with his or her practice, a specified person to whom this section applies if -

Somewhere else in the legislation it states that those people, without the leave of the Supreme Court, cannot be executors or trustees of wills, nor can they take advantage of section 123(3), without the leave of the court. The Chair may put the amendment, and then I can find the relevant section of the Act later. I just want to make sure that, with this amendment, we do not end up defeating that exception.

The CHAIRMAN: Is the member referring to section 87 of the Legal Practice Act?

Hon PETER FOSS: No, that is another one in a similar fashion. That is where the problems come from. The same provision is included three times - once each for partnerships, multidisciplinary practices and corporations. However, a general provision was added by amendment to prohibit such a person from acting as executor or trustee.

Amendment put and passed.

Hon PETER FOSS: What is the effect of this clause, as amended, on section 203 of the Legal Practice Act 2003?

Debate interrupted, pursuant to sessional orders.

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