

POLICE AMENDMENT (MEDICAL RETIREMENT) BILL 2019

Committee

Resumed from 7 August. The Deputy Chair of Committees (Hon Robin Chapple) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon NICK GOIRAN: Where we pick up after yesterday evening is this issue of the criteria for medical retirement. When we left off yesterday, I was seeking the source of the information. I am looking at the uncorrected proof of *Hansard* from yesterday and the very first question I asked was —

Can the minister inform us what the criteria for medical retirement will be?

The response, according to the uncorrected proof, was —

The definition is “not medically fit for active service in the foreseeable future”. That could include physical fitness or mental health–related fitness.

I seek confirmation on the source of that information.

Hon STEPHEN DAWSON: I answer the question in this way. Although there are no explicit criteria for determining whether a member is medically unfit, the medical retirement process ensures that this assessment is procedurally fair and comprehensive. “Medical fitness” as defined in proposed section 33ZB of the bill means that the member is unfit on medical grounds, whether physical or mental or both, to perform the functions of the office to which the member is appointed under this act. The commissioner may only determine the fitness of the member after the member has been examined by the medical board and the commissioner has considered the report prepared by the medical board.

The role of the medical board is to provide a report to the Commissioner of Police on the medical condition of the member. This is inferred by the following proposed requirements in the process: the requirements for the medical board to report on the examination as per proposed section 33ZC(6) and requirements for the commissioner to consider the report of the medical board as per proposed section 33ZD(1). These requirements ensure that the commissioner is given an expert medical opinion about the medical condition and prognosis of the officer so that the commissioner can make an informed decision about whether to proceed with medical retirement.

Information about the medical condition and the officer’s prognosis into the foreseeable future is necessarily included in the report to assist the commissioner; however, “foreseeable future” is not an explicit criterion of the bill to be applied. It describes the assessment necessarily undertaken by the medical board.

Hon NICK GOIRAN: The definition that the minister has referred us to is “medically unfit on medical grounds to perform the functions of the office to which the member is appointed”. In the event that the commissioner considers a person medically unfit, is there any scope to transfer that person to another position within the police force?

Hon STEPHEN DAWSON: That is always the priority. The commissioner and the health, safety and welfare division work with the officers. It is always the priority to find an appropriate job in the police service for the officer first and foremost. Medical retirement is a very last resort. It happens after all other avenues have been exhausted. In some cases, a family member might ring up the police and ask what can be done and whether their family member can be retired. The first action the police always take is to find suitable employment elsewhere in the agency, and medical retirement is a last resort.

Hon NICK GOIRAN: I support the practice that the minister has just outlined, but my query, and my desire, is to provide certainty to the police officers that that practice is required. It strikes me that at the moment the legislation does not require that. Basically, if the police commissioner reasonably suspects that a member is medically unfit to perform the functions of the office to which the member was appointed, yes, he has a process he has to go through, but that is basically the end of the matter. Might it be fairer to provide certainty to the police officers and amend the definition of “medically unfit” so it refers not only to performing the functions of the office to which the member is appointed, but also any other office that might be available?

Hon STEPHEN DAWSON: If a decision is controversial, for any reason, appeal rights exist for harsh, oppressive or unfair action. The point has been previously made that the provisions in the bill before us have in many respects been copied across from the existing part IIB of the act. It has been common practice for decades that this process is undertaken in the police force, and there is no intention to change that. The police officers, the union and the Medically Retired Western Australian Police Officers Association all understand the procedures followed currently, and those procedures will continue to be followed into the future.

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Hon NICK GOIRAN: I add my concurrence to that of the minister and the various stakeholders that we want to see that process continue. The part that I am adding is that I would like to see the process improved. I accept that the government here is lifting up, mirroring and copying from one section and putting it into this new part. I accept that that is what the government is doing, but while we are effectively copying and pasting another provision, why can we not take the opportunity to improve it? There are 36 members in this chamber, and maybe once a decade we would get an opportunity to look at a piece of legislation involving police officers, so why do we not take a few moments to see whether we can improve the existing scheme, rather than saying that we are just going to continue it? That is great, but what if there are ways in which the existing scheme could be improved?

The minister has referred to the possibility of appeal rights, but it strikes me that if an officer appeals, he or she is not going to be able to be successful in an appeal against the Commissioner of Police, by saying, “You’ve found me to be medically unfit for the office to which I was appointed, but I could go and do this other job.” Maybe other members, such as Hon Charles Smith, can provide better examples than I can in this situation, but I can imagine for a moment that if a member is not able to fulfil a particular role or function in the police force that requires an extra level of physical activity, they could then do something more administrative, and they might be quite capable of doing that. They have years of training and experience in the other role that required a lot of physical activity, but we could transfer them to that administrative function. That would be a good and fair thing to do. I hear from the minister that that is actually the current practice. The practice is good, so why do we not enshrine that practice in legislation, rather than allowing a future police commissioner to be able to dispense with a long-serving officer simply on the technical grounds that the person is unable to perform the current functions of the office?

I am fully committed to seeing this bill pass today, and I accept that the government will not accept amendments on the fly, and that we are not going to be able to do all these things. This is precisely why I have placed an amendment on the supplementary notice paper suggesting that there be a statutory review in due course. We are not getting the time today, because there is a desire to expedite this bill, to see whether we can improve the existing process. This is one of a number of examples. Hon Martin Aldridge picked up yesterday that there may be some technical flaw in the power of the police commissioner to do certain things, and no doubt that will be explored when we get to clause 6. I raise these matters now under clause 1, I guess, to foreshadow for members why I am suggesting that we give serious consideration—I am asking the government to work with me on this—of why we might agree to a statutory review clause. This is so that in five years’ time, whoever is in government—obviously, I would prefer that it was us, but whoever it is at the time—would then be required to report to Parliament on ways in which we can improve the existing scheme. In which ways could we maybe enshrine in the legislation some of the good practices that are happening at the moment, and in what way might the practices be improved? That is the context in which I raise these issues. I just ask whether there is any appetite for the government to consider the proposal to look at a statutory review clause, as is foreshadowed on the supplementary notice paper. I appreciate that the minister is the minister representing in this instance, and would need to consult with his colleague in the other place, but I wonder whether, in the context of my remarks, there might be an appetite for the government to consider that.

Hon STEPHEN DAWSON: There was quite a lot in the contribution that the member just made. There is not an appetite to make the changes that the member has suggested. In regard to the changes around medical unfitness, it is a case of, “Where it ain’t broke, don’t fix it.” Neither the WA Police Union nor the Medically Retired Western Australian Police Officers Association are seeking further changes or enhancements to the bill. As the member quite rightly pointed out, we are not in a position to make changes on the fly this afternoon. This has been properly consulted on over time. There was, I am told, a review of part IIB in 2006, and it did not recommend any changes. The conclusion at that time was that nothing had been put up in the review to show that part IIB of the act should not be retained. Obviously, we are not talking today about part IIB, but about the new part IIC that is before us, but I am certainly not in a position to make the changes that the member has asked for.

Hon ALISON XAMON: I want to pick up on the issue that is currently under discussion. I appreciate that these matters could be more fully canvassed as part of the consideration of the amendments later on in the course of the debate, but I think it is helpful to try to flesh out some of this now, to determine whether it is necessary to proceed with putting forward those amendments. I am really in two minds on the issue of whether any review clause, as proposed in the supplementary notice paper, will be useful. I appreciate that we are not doing any amendments to this legislation on the fly; that is good practice, and I appreciate that it is not being contemplated here. Ordinarily, I would not support a review clause like the one that is being contemplated—members would know that I am usually a fan of review clauses—because this is simply transferring an already existing scheme into another legislative framework. As I understand, the issues being canvassed have not been brought to the attention of the government by, in particular, the WA Police Union or the retired police officers organisation, which have been at the forefront of expressing concerns about this issue. However, I am also concerned that some legitimate issues are being raised on the floor about the way the current scheme is operating. As such, I am sympathetic to the idea of some sort of formalised mechanism by which these measures can be canvassed at a future date, to decide whether it would be useful to address these issues. It may be that there is no problem and that business can proceed as usual. I hope that

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the minister, who has been fulsome in his response, for which I am grateful, can give some sort of indication of how an internal review might occur, and whether its scope would be able to incorporate any undertakings, and whether, through the already existing course of reviewing and assessing new regimes, it might be picked up anyway. That would help me to make a decision on whether we should be looking to enshrine that in a statutory form.

Hon STEPHEN DAWSON: There is no appetite to do a formal review at this stage. I hope the bill is passed in this place today, but one can never be too confident. Certainly in the future, the opportunity will be available for us as members of Parliament to ask questions about the operation of new part IIC. Obviously there will be an opportunity for the Medically Retired Western Australian Police Officers Association or, indeed, the WA Police Union to call for a review if they do not believe the act is working for them. It is my understanding that after the significant consultation that has occurred over the past months, and, indeed, probably years now, that they are happy with where we have landed and are not seeking a review. We generally know how many people are in the system. We know that four people currently in the system could avail themselves of medical retirement upon the passage of this bill. Potentially 12 people a year may be affected by the new medical retirement provision. We are not talking about large numbers. There will be opportunities, whether it is through questions in this place or estimates questions, to prosecute the case and ask questions and to delve into the issues.

In all honesty, over time the potential exists for an internal review of this and it would be monitored on an ongoing basis. One of the roles of the new health, welfare and safety division will be to monitor this and to be aware of the implications of the bill before us. It would be in a position to ask the commissioner to review the act if it thinks it is not living up to its promise.

Hon NICK GOIRAN: I propose that this be my last line of inquiry before we move off clause 1. I give the minister some time to contemplate this: perhaps the best process might be to defer consideration of clause 2 until after clause 6, in case there is a changed appetite by the government for my other amendment. My foreshadowed amendment on clause 2 is really consequential to the new clause 6. I flag that for the minister's consideration.

How many officers have been medically retired in each of the past five years?

Hon STEPHEN DAWSON: I have been able to access the figures for only the past four years. There were seven cases in 2016, five cases in 2017 and one case in 2018. In 2019, four cases are pending the passage of this legislation.

Hon NICK GOIRAN: Is the minister able to break down that information so that we can determine the number of those who were retired because of injuries they suffered during service compared with a medical condition suffered during service? Is that information available?

Hon STEPHEN DAWSON: I do not have that information to hand and it may be difficult to get. For each of those years, I can give the member a sense of the reasons people were medically retired through section 8 removal; obviously, we are changing that. Of the seven cases in 2016, one officer was retired with major depression and post-traumatic stress disorder. A second officer had lifetime anticoagulation medication and also had a bipolar disorder. Another officer had PTSD and depression. The fourth officer had neurofibrosarcoma in the left knee, leading to functional amputation, and another had encephalitis. The sixth officer had physical disorders leading to persistent back and knee pain. The seventh officer had Hodgkin's disease, which led to myocardial damage, and it was proposed that he would have a heart and lung transplant.

For the five cases in 2017, the first officer had multiple chronic medical conditions that were likely to deteriorate over time. The second had PTSD and depression. The third had organic brain disorder with features of dementia and changed mood. The fourth officer had PTSD and depression. The fifth had chronic right-sided orthopaedic disease with significant reduction in capacity and ability to concentrate due to pain and also had symptomatic degenerative conditions, including in his or her elbow and knee.

The case in 2018 had extensive chemotherapy, leading to cognitive difficulties with concentration, memory and balance, sensory and motor polyneuropathy. We can extrapolate from what I have said that some of the four cases that are pending would be by virtue of duty and some may have been natural health conditions.

I am advised that it is anticipated that there would be between 12 and 20 medical retirements in the future. That is based on the fact that we are removing the stigma associated with the existing section 8. For the past four years, there have been seven, five, one and four cases, but it is anticipated that that number could grow.

Hon NICK GOIRAN: I thank the minister for that comprehensive response; I appreciate it. The minister's final comment is that the numbers are expected to increase in the years ahead because of the removal of the stigma. Does that imply that there are officers who would otherwise be medically retired who remain in the Western Australia Police Force in some other capacity? What has happened to those people who would otherwise have gone down this path?

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Hon STEPHEN DAWSON: Many officers have chosen to resign or retire based on the stigma attached to existing section 8.

Hon NICK GOIRAN: What is the financial difference for the officer to make a decision to resign or retire compared with having access to this scheme, which is a medical retirement?

Hon STEPHEN DAWSON: I am told that the 28-day maintenance period is essentially the difference. When they resign, they would get all of their entitlements anyway. I guess the main difference associated with the legislation before us is that issue of stigma.

Clause put and passed.

Clause 2 postponed until after consideration of new clause 6A, on motion by Hon Stephen Dawson (Minister for Environment).

[See page 5205.]

Clauses 3 and 4 put and passed.

Clause 5: Section 33K amended —

Hon NICK GOIRAN: What effect has the identified anomaly that is referred to in the explanatory memorandum had in practice?

Hon STEPHEN DAWSON: It has had no effect in practice because those officers are in the definition of “removal from office”.

Hon NICK GOIRAN: If it has had no effect in practice, do we still need clause 5?

Hon STEPHEN DAWSON: We believe we do because it corrects an anomaly in the current removal of members provisions in part IIB of the Police Act. We believe it is warranted to include it, but it has had no practical effect because it is mentioned elsewhere in that removal from office definition.

Hon NICK GOIRAN: The explanatory memorandum mentions ambiguity about a police auxiliary officer’s right to appeal. How many appeals have been impacted by this ambiguity?

Hon STEPHEN DAWSON: None has been impacted.

Clause put and passed.

Sitting suspended from 1.00 to 2.00 pm

Clause 6: Part IIC inserted —

Hon MARTIN ALDRIDGE: I have a couple of questions that I commenced asking in clause 1 that I want to pick up now in clause 6. I want to understand the circumstances that might occur at the very start of the process when an officer is going to be considered for medical retirement. Two options were put to me yesterday afternoon or last night. One option was for the Commissioner of Police to seek a report directly from the medical board; the other option was for the commissioner to send an officer to the medical board, which would then report. Both of those options would result in a report being provided to the commissioner before the process continued.

Hon STEPHEN DAWSON: Yes, that is accurate. That is the case.

Hon MARTIN ALDRIDGE: I was also asked yesterday—I hope the minister has not answered this question—whether an officer can refer themselves to the medical board for assessment and therefore commence the process of inquiry.

Hon STEPHEN DAWSON: They cannot declare themselves to the medical board, but they can declare themselves to the agency. If the commissioner forms the opinion that it is warranted, he would then refer the officer to the medical board.

Hon MICHAEL MISCHIN: Just to pursue that, I see from proposed section 33ZC that the initiation of the formal process appears to be with the commissioner reasonably suspecting that a member is medically unfit. I take it that is correct. How does that come about? In the experience of the Western Australia Police Force, is it as a result of a referral to the commissioner—and by whom?—that the commissioner would start to form that reasonable suspicion and initiate the process? Is it a matter of a member being injured in the course of duty and the commissioner being notified and making an assessment? Is it a case of a protracted period of absence on sick leave, personal leave or things of that character that could be brought to the commissioner’s attention? Is the member able to self-initiate by writing to the commissioner and saying, “I’m not up to the job anymore because of these psychological or physical medical problems that I have encountered”? Can the minister give us some idea of how it comes about, and which is the most prevalent means of initiating the process?

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Hon STEPHEN DAWSON: The member has actually already answered his questions. All of those ways that the member has suggested can be ways that the process is initiated. I am not being rude, but I raised this yesterday in the debate. There are a number of ways to flag medical problems, including medical reports, behaviours or manners that are escalated to superiors and self-reporting. A referral could come through the health, safety and welfare committee. In some cases, family members of serving officers may raise issues with the agency and that they would like medical retirement looked at. Any of those things could happen and the process would begin.

Hon MARTIN ALDRIDGE: From my reading of the bill, I cannot see a clause that compels the commissioner to seek a report of the medical board. Is it assumed in the way that the bill is structured that the commissioner cannot proceed and therefore use the powers without such a report?

Hon STEPHEN DAWSON: It is inferred that a report is required to be provided to the commissioner.

Hon MARTIN ALDRIDGE: Proposed subsection 33ZC(7) states —

Regulations under section 138A may (without limitation) make provision about medical boards, including (without limitation) provision about 1 or more of the following matters — ...

Five matters are listed. It was not until Hon Nick Goiran asked questions yesterday that I learnt that the medical board was established under the Health Act, not this bill. From my understanding when I read this bill, I believed that the medical board was established for this purpose, but it was established under the Health Act. Therefore, am I right in thinking that if this bill is passed, it will create limitations and directions for a board that is created under another act?

Hon STEPHEN DAWSON: The power to establish a medical board for the purpose of proposed part IIC is in proposed section 33ZC(2). To date, this has been under regulation 1402(2) of the Police Force Regulations 1979. The regulations ensure the appointment of the members of the board, and then the medical board is to consist of at least three medical practitioners who are to be nominated by the person who holds or acts in the office of CEO of the health department.

Hon MARTIN ALDRIDGE: Does the medical board to which we are referring, which was established under the Health Act—that may be the wrong act, but I think that was what was mentioned yesterday—perform functions other than reporting to the police commissioner?

Hon Stephen Dawson: It is not established under the Health Act; it is established under proposed section 33ZC(2). Therefore, it is established under this bill, rather than the Health Act, but the CEO of the health department appoints the members of the board.

Hon NICK GOIRAN: I can assist here. Hon Martin Aldridge is asking these questions because yesterday—I refer to the uncorrected proof of *Hansard*—I asked the minister, “Where do we find that information in the bill?” The minister replied —

I am advised that it is under the Health Act, honourable member.

Therefore, yesterday, we were proceeding for a period of time under the understanding, which was based on the information provided by the minister, that this board was established under the Health Act. It became apparent later that it was not actually the Health Act at all; it was the police regulations. The minister kindly provided me with his adviser’s copy of the Police Force Regulations 1979, which, I might add, I still have in my possession.

Hon Stephen Dawson: If they come after you, member, you may have to give it back.

Hon NICK GOIRAN: They know where I live!

The board is established under the Police Force Regulations 1979. I think the information provided yesterday about the Health Act was unfortunate.

The DEPUTY CHAIR (Hon Dr Steve Thomas): I am sure the honourable member was simply reminding us rather than quoting from the uncorrected *Hansard*.

Hon STEPHEN DAWSON: I think the honourable member was drawing to our attention that the issue was raised last night and that we were able to clarify it in the end.

Hon MARTIN ALDRIDGE: I refer to proposed section 33ZD, which states —

- (2) The Police Commissioner may give written notice to the member stating that the Police Commissioner —
 - (a) is of the opinion that the member is medically unfit; and
 - (b) is in the process of deciding whether the member should be retired on medical grounds.
- (3) If notice is given, the member may, during the period referred to in subsection (4) —
 - (a) make written submissions to the Police Commissioner; and

(b) give the Police Commissioner any written report or other document.

In my second reading debate contribution, I asked whether “may” indicated a discretionary power of the Commissioner of Police rather than a mandatory one, and the minister confirmed that it is discretionary. Is it procedurally fair to an officer subject to these provisions to consider a circumstance when the police commissioner does not give notice to an officer and therefore does not give an officer the right to make a submission under proposed subsection (3) in the time frame anticipated in subsection (4)?

Hon STEPHEN DAWSON: It is only after taking into account the medical report, and if the commissioner forms an opinion that the member is unfit to perform the functions of their office, that medical retirement will proceed further—that is, proposed section 33ZE(2). After receiving the report, the commissioner may give the member notice that he is of the opinion the member is medically unfit and is considering medical retirement under section 33ZD(2). The use of the word “may” in this context recognises that the medical retirement process may cease at this time, the commissioner may not have formed an opinion that the member is unfit to perform their functions. The language does not indicate that there is discretion on whether to give notice to the officer. If medical retirement does proceed, the Commissioner of Police will give the member notice of that opinion and advise that he is in the process of considering medical retirement. The bill then ensures that the member is given procedural fairness, allowing a period of 28 days to respond and/or provide reports or documents to the commissioner. Of course, the time to respond may be extended with approval of the commissioner.

Hon MICHAEL MISCHIN: I have a couple of questions about the terms used in proposed section 33ZB and I apologise if I was absent on urgent parliamentary business if the minister has already covered this. Proposed section 33ZB states —

medically unfit, in relation to a member, means the member is unfit, on medical grounds (whether physical or mental or both), to perform the functions of the office to which the member is appointed under this Act;

...

retire, in relation to a member, means retire from the office to which the member is appointed under this Act;

Can the minister clarify for me what is meant by “the office to which the member is appointed”? We are talking about members being a variety of characters, including commissioned officers, non-commissioned officers, constables, Aboriginal police liaison officers and police auxiliary officers, so why is it not simply to perform the functions of a member rather than functions of “the office to which the member is appointed”? Is there some term of art that can clarify what is meant by that and how it interacts with the substantive act?

Hon STEPHEN DAWSON: It is because police officers are not an employee; they are appointed to an office. I am not sure whether the member was here when we talked about the issue of members being medically unfit and losing their office, but I will make the point again that the Western Australia Police Force does everything to keep the officer in the system. If it is by virtue of a medical reason the officer is moved from frontline duty to desk duty or otherwise, medical retirement is considered only as a last resort after all other avenues to find the member work to undertake in the police force have been exhausted. All of that is done first. I explained that the health, safety and welfare division of the agency works with the officers to try to get them to navigate the system. It is only if all those measures fail and there is no other option available that medical retirement would be looked at. It is very much the last course of action.

Hon MICHAEL MISCHIN: I accept that, but is there a particular definition of “office to which the member is appointed”? Are we talking about them being commissioned officers, non-commissioned officers and so forth or does it mean the duties assigned to them at a particular time? The word “office” is used throughout the Police Act, and not necessarily in a consistent way. For example, section 10 of the Police Act states —

No person shall be capable of holding any office, or appointment in the Police Force ...

Section 9 of the Police Act refers to “members of the Police Force”. Here we are looking at a member meaning a variety of ranks and capacities of officers and the definition of “medically unfit” focuses on the ability to perform functions not as a member, or at a particular rank, but at an “office to which the member is appointed”. Is that the same as the list of positions in paragraphs (a) through to (e) of the definition of “member” or is the terminology fairly loose and liberal without any particular definition, leaving some flexibility of which we need to be made aware?

Hon STEPHEN DAWSON: I am told that the retirement process aligns with the manner of the member’s appointment depending on the category of member. The minister, Governor or commissioner will formally cancel the appointment or office. The office relates to the office of constable for all officers. In relation to the appointment, that refers to the commissioner’s powers to appoint a police auxiliary officer or an Aboriginal police liaison officer.

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Hon NICK GOIRAN: Further to this important line of questioning, I draw the minister's attention to the explanation of this particular section provided in the second paragraph of the explanatory memorandum.

Hon Stephen Dawson: Is that proposed section 33ZB?

Hon NICK GOIRAN: It is actually proposed section 33ZA. The second paragraph of the explanatory memorandum reads —

This Bill makes amendments to the Police Act to provide a stand-alone legislative scheme to medically retire an officer if, in the opinion of the Commissioner of Police, the member is unfit on medical grounds to perform —

These are the key words —

the functions of the office or role to which the member is appointed ...

This is further to the shadow Attorney General's line of questioning. I am keen to know from the government why the word "role" has been omitted from the legislation when it was deemed sufficiently important to put it in the explanatory memorandum. Will medical retirement be for the performance of the functions of the office or the performance of the functions of the role or either, because the legislation refers only to the office and not to the role?

Hon STEPHEN DAWSON: The word "office" refers to the office of constable. A constable of police is very different from a police auxiliary officer or an Aboriginal police liaison officer. "Role" refers to PAOs and APLOs, whereas "office" refers to sworn officers of the police, and they are constables.

Hon NICK GOIRAN: In which case, PAOs will not be covered by this legislation. I say that because the definition of "medically unfit" in proposed section 33ZB—which we have spent some time on previously, but it is now in a different context—specifically refers to the performance of the functions of an office to which the member is appointed. There is no mention of "role". My concern is that if the explanation that has just been provided is correct, PAOs are not captured by "office"; they are captured by "role", as explained in the explanatory memorandum. Perhaps we need to add the words "or role" into the definition of "medically unfit".

Hon STEPHEN DAWSON: In proposed section 33ZB, "Terms used", the definition of "medically unfit" states —

medically unfit, in relation to a member, means the member is unfit, on medical grounds (whether physical or mental or both), to perform the functions of the office to which the member is appointed under this Act;

member means —

- (a) a commissioned officer;
- (b) a non-commissioned officer;
- (c) a constable;
- (d) an Aboriginal police liaison officer;
- (e) a police auxiliary officer;

...

retire, in relation to a member, means retire from the office to which the member is appointed under this Act;

My advisers tell me that PAOs will, indeed, be covered by the legislation before us and there is no need to amend that or to insert other words.

Hon NICK GOIRAN: The problem is that the minister earlier indicated that a police auxiliary officer is not an office; it is a role. They do not get appointed to an office; they get appointed to a role. That was the advice given to the chamber. Even though they might be captured by the definition of "member", the problem is that they had never been appointed to an office in the first place; they had only ever been appointed to a role. That is captured in the explanatory memorandum, but it is not covered in the legislation. We need the two to mirror each other; we cannot have the legislation saying one thing and the explanatory memorandum saying another. I stress at this point that I do not really mind what it says. I just think that it needs to be consistent. There is no point in having the explanatory memorandum go out of its way to refer to "office" or "role" and the legislation to not do likewise.

Hon RICK MAZZA: Proposed section 33ZF(2) mentions a maintenance payment for 28 days after the retirement day. Proposed subsection (3) mentions exceptional circumstances in which the minister can direct that the maintenance payment be extended for up to six months after the period referred to in proposed subsection (2). What would be the nature of those exceptional circumstances that may require the minister to extend the maintenance payment?

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Hon STEPHEN DAWSON: We are not aware of any at this stage, but it is something that could be needed in the future. At this stage we are not aware of issues that could require an extension. We are giving the minister the power, should an issue arise in the future, whether it is because of an illness or other things, to extend it if he or she thinks it is warranted.

Hon RICK MAZZA: Nothing is foreseen at this moment, but this clause has obviously been included in the bill for something that may arise in the future.

Hon Stephen Dawson: This replicates section 33M of the existing act and was brought from the existing act into this bill.

Hon RICK MAZZA: Has section 33M been used in the past?

Hon STEPHEN DAWSON: Not to our knowledge.

Hon NICK GOIRAN: I return to the issue of functions of the office or role and the explanation provided. As a minimum, there must be a concession from the government that the explanatory memorandum is inconsistent with the bill. That is just from a plain reading. It is inconsistent, but is that inconsistency a problem? If it is not a problem, can we have an explanation of why it is not a problem, or would it be prudent for us to now insert the words “or role” after “office” at line 18 on page 4?

Hon STEPHEN DAWSON: I am advised that it is not a problem. To give effect to retirement on medical grounds, the commissioner must follow the statutory process described by proposed subsections 33ZE(6), (7) or (8), which align with the manner of the member’s appointment, depending on the category of the member. The minister, Governor or commissioner will formally cancel the appointment or office. A member who disputes the decision may appeal to the Western Australian Industrial Relations Commission on the grounds that the decision was harsh, oppressive or unfair. Perhaps if I put it this way: the advisers were trying to be exceptionally helpful in the explanatory memorandum by spelling out what things mean. They sought to do it in plain language so we could all understand the practicalities of the legislation. But I am told that it will not be a problem and it does not warrant the insertion of the words that the member has suggested.

Hon NICK GOIRAN: To round this out, if the words “or role” were to be deleted from the second paragraph of the explanation of section 33ZA in the explanatory memorandum, that would not create a problem for what is intended by the government; in other words, the words “or role” are superfluous to our requirements.

Hon STEPHEN DAWSON: I am told that “office” or “role” are effectively interchangeable, but, no, it would not cause a problem.

Hon MARTIN ALDRIDGE: I am sorry to labour the point, but I want to make sure that we do not find ourselves in a situation in which we are faced with a case in which a commissioner could deny procedural fairness to an officer. We have learnt that in proposed section 33ZC, “Examination of member by medical board”, the power is discretionary on the commissioner in that the commissioner may decide that he has enough evidence to refer to the medical board without the examination. Technically, the commissioner may have a file from the medical safety and welfare branch that is six inches thick and has enough evidence to refer it to the medical board. That could happen without the police officer’s knowledge. We could find ourselves in a situation in which, under proposed section 33ZD, the commissioner receives a report from the medical board. Proposed subsection (1)(b) states —

having taken into account the report, the Police Commissioner is of the opinion that member is medically unfit.

At that time, the police officer still does not know anything. Proposed subsection (2) states —

The Police Commissioner may give written notice ...

Hon Stephen Dawson: I am told that in practice they are told of the decision and are invited to make a submission to the medical board.

Hon MARTIN ALDRIDGE: I know that that is the minister’s explanation, and the practice may be the historical practice, but will it be the practice of the future? We may have a change of commissioner and a change of practice. The only thing the police officers can rely on is what is written in the law and in this proposed law. We could find ourselves in a situation in which the commissioner has referred the medical board to some evidence, the medical board has found that the officer is medically unfit, the police commissioner has formed an opinion that the officer is medically unfit and then proposed subsection (2) does not require the police commissioner to convey to that officer that he has formed that view, nor give him or her a right of reply to the formation of that opinion prior to exercising powers under proposed section 33ZE. That is my concern. I hope the minister can tell me that it can be abated by some other provision, other than practice, but my concern is that that situation could arise under the current drafting of this bill.

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Hon STEPHEN DAWSON: I am advised that proposed subsection (2)(b) has been in place since 2003. We have had multiple commissioners over those 16 years and the policy has remained static. If procedural fairness was not afforded to an officer, there would potentially be appeal grounds to the Western Australian Industrial Relations Commission. There is that course of action. If that procedural fairness was not afforded, there is grounds to appeal to the Western Australian Industrial Relations Commission if they are not happy with the practice.

Hon MARTIN ALDRIDGE: Can I take some comfort in proposed section 33ZE, which is the power to retire? Proposed subsection (1) states, “After the period referred to in section 33ZD(4)”, and proposed section 33ZD(4) is the 28 days after the day on which notice is given, which is referring to the notice given in proposed section 33ZD(2). Would it give me some comfort to work back from that point to say that the commissioner cannot exercise the power in proposed section 33ZE until the period in proposed section 33ZD(4) expires, and that can expire only if notice is given to an officer, therefore it would be unlawful for the commissioner to exercise powers under proposed section 33ZE without giving notice to an officer?

Hon STEPHEN DAWSON: The member can take comfort in what he has just said.

Hon NICK GOIRAN: Proposed section 33ZB inserts a definition of “medical practitioner”. Is the medical practitioner registered under the “Health Practitioner Regulation National Law (Western Australia)”, as outlined in the bill, or the Health Practitioner Regulation National Law (WA) Act 2010?

Hon STEPHEN DAWSON: I am advised that it is the Health Practitioner Regulation National Law (WA) Act. That is an error. It is definitely the act.

Hon NICK GOIRAN: We will come back to that, I think, minister. He will understand I am not excited to leave that as, “It’s an error.”

I move then to the issue of the medical board and in particular proposed section 33ZC(6), which states —

The medical board must give a report on the examination to the Police Commissioner.

I think that is in line with Hon Martin Aldridge’s discussions. In what time frame must the medical board provide that report to the police commissioner?

Hon STEPHEN DAWSON: I am advised that that will be determined by regulations, honourable member.

Hon NICK GOIRAN: The minister mentioned that we are basically continuing the existing practice. Do the current regulations prescribe the time frame within which a medical board report must be provided to the commissioner?

Hon STEPHEN DAWSON: It does not presently have a date, but it is as soon as is practical, and in practice it is normally about a week, I am told.

Hon NICK GOIRAN: Have there been any complaints from police officers about the time it has taken for a medical report to be provided by the board to the police commissioner?

Hon STEPHEN DAWSON: No, there has not.

Hon NICK GOIRAN: Proposed section 33ZD(4)(a) mentions a period of 28 days. How was the period of 28 days determined?

Hon STEPHEN DAWSON: I am told that there was no science behind it and 28 days was landed on. It was previously 21 days under part IIB; however, a decision was made to extend it to 28 days to allow extra time for officers to avail of it, but there is no science behind it.

Hon NICK GOIRAN: There is no science behind it, but was there some consultation, advocacy or lobbying that has resulted in the extra time? We have been told on a number of occasions that all that is happening here is an uplifting of part IIB.

Hon Stephen Dawson: Member, that is not what we said. We have substantially replicated part IIB, but other enhancements have been made.

Hon NICK GOIRAN: Other enhancements have been made, so this is an example of an enhancement?

Hon Stephen Dawson: Yes.

Hon NICK GOIRAN: On what basis has the enhancement been made? Has it been because of some advocacy or special consultation?

Hon STEPHEN DAWSON: There has been no strong advocacy on this; it is really just about procedural fairness. Again, I reiterate that the Western Australian Police Union and indeed the Western Australian Medically Retired Police Officers Association are happy with the existing bill and are not seeking further changes or enhancements on top of what is in the bill before us.

Hon NICK GOIRAN: Proposed section 33ZE(5) mentions “any other materials”. It states —

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Except to the extent that regulations otherwise provide, the Police Commissioner must, within 7 days of giving the notice under subsection(1)(b), give the member a copy of any documents, —

I pause there to indicate that “a copy of any documents” is pretty self-explanatory, but it goes on to say —

and make available to the member for inspection any other materials, that were examined and taken into account by the Police Commissioner in making the decision.

I am keen to know what “any other materials” are. A copy of any documents is fairly self-explanatory, because one can imagine, for example, it would be a medical report that is being provided, but what would be the “any other materials” that is referred to?

Hon STEPHEN DAWSON: Member, it is a catch-all phrase. It could include things such as medical images, medical scans and X-ray documents. It could include myriad other things that are not actual documents. That is the reason.

Hon NICK GOIRAN: It says at the start of that subsection, “Except to the extent that regulations otherwise provide”. What is intended to be exempted from being provided to the police officer via the regulations?

Hon STEPHEN DAWSON: I am told that we are replicating existing regulation 6A01, which preserves legal professional privilege, public interest immunity and statutory limitations restricting production.

Hon NICK GOIRAN: Proposed section 33ZE(12) states —

Regulations under section 138A may (without limitation) make provision for determining when a member is taken to receive a notice for the purposes of subsection (10)(b).

Is that another example of a regulation that is in place that the government intends to continue; and, if so, for what period?

Hon STEPHEN DAWSON: I am told that there is an equivalent provision in section 33L of part IIB of the Police Act. It is our intention to replicate existing regulation 6A05, “Notice for purpose of Act s. 33L(1)”, in the regulations for the bill before us, as applicable for medically retirement purposes, obviously.

Hon NICK GOIRAN: Is it necessary to do that or can the government use the existing regulation? Do we have to make a new regulation?

Hon STEPHEN DAWSON: We have to make a new regulation because section 8 and part II now deal with loss-of-confidence issues and the issue before us in the chamber is the medical retirement of police officers, so there is need for a new regulation, based on the old one, to be attached to the act.

Hon NICK GOIRAN: Does that same line of logic also apply to the medical board that we were discussing yesterday? Until such time that a new regulation is put in place, the medical board will not exist for the purposes of this new scheme. I understand it is the government’s intention for it to be one and the same board—we established that yesterday—but in order to use this board under this scheme, a new regulation will have to be put in place. Is that right?

Hon STEPHEN DAWSON: Yes, it quite probably will.

Hon MICHAEL MISCHIN: I go back to the question of the terminology used. It may be that the government is not concerned about it, and so be it. Ultimately, the government takes responsibility for the legislation. But I want to understand whether there is a problem with the manner in which members of the police force are referred to in the Police Act and in what is being proposed under the bill. Perhaps if I approach it this way. Part I of the act deals with the appointment of officers and constables to the police force. Section 6 refers to the Governor appointing such officers of police, as may be found necessary, holding commissions and, although it is not defined, presumably other commissioned officers. Section 7, “Non-commissioned officers, appointment and functions of”, provides that the Commissioner of Police may appoint so many non-commissioned officers and constables of different grades. Presumably, those are constables and non-commissioned officers, although there is no definition in the 1892 act. Section 8 refers to the removal of any commissioned officer and the removal of any non-commissioned officer or constable and the appointment of people to fill the vacancies. Section 8(3) provides another variation on the theme and states —

... a person is removed from a commissioned office to be appointed to another commissioned office so long as that appointment —

(a) is to an office at a level not less than the level of the office from which the person was removed ...

Section 10 states that no person shall be capable of holding any office or appointment. There is a distinction between offices and appointments in the police force. Section 11 states that every person on subscribing to the terms of engagement set out in section 10 shall be thereby bound to serve Her Majesty as a member of the police

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force. Section 12 states that non-commissioned officers and constables cannot resign their office, as opposed to “an appointment” presumably. Part IIB deals with the current regime and the removal of members. Admittedly, the terms used in part IIB refine what is going on in the current regime and defines a member as being a commissioned officer, a non-commissioned officer, a constable, an Aboriginal police liaison officer or an auxiliary police officer, and it refers to the removal from office as a defined term being a removal under section 8, or cancellation of an appointment of an Aboriginal police liaison officer, or cancellation of the appointment of a police auxiliary officer. It then goes more specifically into the regime, which is the loss of confidence in a member’s suitability to continue as not an “office” or “appointment” under the act, but as a “member”, the broader term, which embraces all those different categories of service personnel. Section 33M goes to the removal from office as a result of a removal action.

What we have in the bill is some other terminology—it may appear somewhere in the Police Act 1892, but I have not been able to find it—that refers to a member, reflecting the membership definition under part IIB, but it also refers to retirement in relation to a member as meaning to retire from the office to which the member is appointed. Is that the same as “office” or “appointment” or is it combining two concepts that may not cover the scheme such as it is under the Police Act, which seems a little bit confused anyway? Likewise, “medically unfit” is defined as the member being unfit “to perform the functions of the office to which the member is appointed”. Are we talking about a person’s particular job description or the distinction between a commissioned officer, a non-commissioned officer, a constable, an APLO and an APO? Is “office to which the member is appointed” meant to be their role or their job description for the duties that they are currently directed by the commissioner to perform, or is it something else? Is there a need to rationalise the terminology, particularly given that retirement taking effect results in the member ceasing to hold the office to which the member is appointed? Does that go so far as to say that they are no longer a member of the police force or that they simply do not hold that particular rank, or does it mean that particular job description? As I say, the ultimate responsibility is with the government, but I point this out as a potential source of confusion, because it does not quite pick up what is being done in part IIB. There are variations in the terminology that is being used, and I am not quite clear on what is meant by “office to which the member is appointed”.

Hon STEPHEN DAWSON: I am told that it is not a job-specific role—for example, the tactical response group. It is the office to which the person is appointed—so police officer, commissioned officer, police auxiliary officer, police liaison officer or Aboriginal police liaison officer. It certainly does not mean a specific job role. My advisers tell me that there is no issue, as proposed part IIC defines “member” for the purpose of that part, and retirement is required to follow the appointment cancellation process set out in the act because proposed subsections 33ZE(6) to (8) explicitly set out how that is to occur.

Hon NICK GOIRAN: I would like to deal with the issue of the maintenance payment. I refer to proposed section 33ZF, entitled “Maintenance payment”. What is the formula for calculating a maintenance payment?

Hon STEPHEN DAWSON: Proposed section 33ZF(5) states —

A maintenance payment must be calculated on the basis of the member’s salary on the retirement day.

Hon NICK GOIRAN: I understand it is calculated on the basis of salary, but is it one and the same? Is the maintenance payment equal to the member’s salary on the retirement day?

Hon Stephen Dawson: Yes, it is.

Hon NICK GOIRAN: So, in effect, the maintenance payment is four weeks’ salary.

Hon Stephen Dawson: Yes.

Hon NICK GOIRAN: I refer to the explanatory memorandum and the explanation of proposed section 33ZG on this point, which is on page 5 of the 10 pages that I have. The very final paragraph states —

If medical retirement by the Commissioner of Police is revoked by notice in the Government Gazette, it is deemed that the medical retirement is of no effect. Accordingly, a member who has a medical retirement decision revoked, is entitled to be back-paid salary (minus any maintenance payment received under 33ZF) as if the officer had never been medically retired.

How is there an entitlement to back-paid salary if the salary is the same as the maintenance payment?

Hon STEPHEN DAWSON: The point is that they are entitled to be paid back paid salary minus any maintenance payment received if they had received that maintenance payment.

Hon Nick Goiran: So they are entitled to nothing then.

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Hon STEPHEN DAWSON: They are entitled to the payment for that period. If it was paid as maintenance, it should now be paid as regular salary, which is the same.

Hon Nick Goiran: So they are entitled to nothing.

Hon STEPHEN DAWSON: They would have received a maintenance payment for 28 days, but they may well have been off work for three months. If the medical retirement was revoked, they would be back paid for the three months less that 28 days' maintenance payment, and obviously that maintenance payment is the same as the salary, so it happens in that instance. If it was longer than 28 days, they would get that amount on top of the 28 days' maintenance payment.

Hon NICK GOIRAN: I thank the minister. That is helpful; it makes sense. If the minister is able, can we go back to the earlier question about the Health Practitioner Regulation National Law? That is referred to in proposed section 33ZB where the definition of "medical practitioner" is inserted. When we left that, there was an indication that there is an error. Can we clarify what is happening there and whether there is a need for any amendment?

Hon STEPHEN DAWSON: I am told that there is no error in proposed section 33ZB. "Health Practitioner Regulation National Law (Western Australia)" means the local application of the Health Practitioner Regulation National Law (WA) Act 2010 as it applies in WA.

Hon NICK GOIRAN: The latter that I referred to, which was the Health Practitioner Regulation National Law (WA) Act 2010, includes provisions specific to our jurisdiction. That is, if you like, a larger piece than what the minister just referred to, which is the Health Practitioner Regulation National Law (Western Australia). Would it not be prudent to refer to the Health Practitioner Regulation National Law (WA) Act 2010, given that it includes provisions specific to our jurisdictions, rather than the piece of the national law that is being applied to Western Australia?

Hon STEPHEN DAWSON: Part 2 of the Health Practitioner Regulation National Law (WA) Act 2010, which is titled "Application of Health Practitioner Regulation National Law", states —

- (1) The Health Practitioner Regulation National Law set out in the Schedule —
 - (a) applies as a law of this jurisdiction; and
 - (b) as so applying, may be referred to as the Health Practitioner Regulation National Law (Western Australia); and
 - (c) as so applying, is a part of this Act.

Hon NICK GOIRAN: I agree that is what that says, but all that does is apply that aspect of the national law to Western Australia. The actual 2010 act applies other jurisdiction-specific things to Western Australia. If you like, we deviate from the national law; we do not mirror entirely the national law when it comes to the health practitioner regulation. The extent that we deviate from the law is captured by the Health Practitioner Regulation National Law (WA) Act 2010. The whole act incorporates everything for Western Australia, whereas the part that the minister has referred to is just the uplift from the national law. That is why I am asking whether it is not then more prudent for us to refer to the latter rather than the former.

Hon STEPHEN DAWSON: I am told that this provision was considered by the drafter and we are happy with where the drafter landed.

Clause put and passed.

The DEPUTY CHAIR (Hon Dr Steve Thomas): That brings us to new clause 6A, which members have indicated we are not proceeding with, so we will move on.

Clauses 7 to 9 put and passed.

Postponed clause 2: Commencement —

The clause was postponed at an earlier stage of the sitting.

Hon NICK GOIRAN: Why is it necessary for the commencement of clause 3 to be left to proclamation?

Hon STEPHEN DAWSON: I am told that a number of actions need to take place before proclamation. They include regulations to be made by the Governor on certain matters in proposed section 33ZC(7), under section 138A. These include provisions about medical boards, the appointment of medical practitioners, the appointment of additional experts, governance procedures, the examination of members, reports to the Commissioner of Police and the payment of costs. The Commissioner of Police has to create regulations with the approval of the minister under section 9, about internal procedure matters and the preservation of privilege. There will also be updates to

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templates and internal documents to facilitate the medical retirement procedure. Also, the Industrial Relations Commission of Western Australia needs to create rules and procedural directions as required, and the WA Police Industrial Agreement 2018 and other industrial awards may need to be updated, so that time is needed.

Hon NICK GOIRAN: My question was: why is it necessary for the commencement of clause 3—not to be confused with clause 2 or any other clause in the bill—to be left to proclamation, as per clause 2?

Hon STEPHEN DAWSON: I am advised that it is of no substantive effect.

Hon NICK GOIRAN: The minister whom the minister represents said on 18 June that there was a need to make regulations for service and notice periods. What is the status of those regulations at the moment?

Hon STEPHEN DAWSON: I am told that they are still being drafted, and the process will happen upon the passage of this bill.

Hon NICK GOIRAN: Has the drafting commenced; and, if it has, has a consultation process commenced; and, if so, with whom?

Hon STEPHEN DAWSON: No, it has not. Although some preparatory work may have commenced, it would have been imprudent of us to draft regulations based on a bill that has not yet passed the Legislative Council, or indeed the Parliament of Western Australia.

Hon NICK GOIRAN: On that same day, 18 June, the minister said that some administrative documents need updating to support the new process. What are those administrative documents?

Hon STEPHEN DAWSON: I have referred to those in a previous answer. They are templates, letters and procedural policy guidelines. Although some initial work may have been commenced, again that work is not substantial because we were awaiting the passage of the legislation before that work was done in earnest.

Hon NICK GOIRAN: My last question on clause 2 is: what are the transitional arrangements that the minister said, on 18 June, that she hoped WA police were already working on?

Hon STEPHEN DAWSON: I am told that there are transitional provisions in the bill before us that, if passed, will mean that anybody currently in the process of medical retirement for whom a decision has not yet been made can be captured by the legislation before us.

Hon NICK GOIRAN: Further to that, the minister in the other place said that she hoped WA police were already working on those transitional arrangements. Have they been?

Hon STEPHEN DAWSON: I am told that they have been, certainly in relation to the four members we believe could benefit from the bill, who are in the system already. We have paused the existing process and, hopefully, on the passage of this bill, the process will continue, but they will be beneficiaries of the bill before us.

Postponed clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [3.07 pm]: I move —

That the bill be now read a third time.

HON NICK GOIRAN (South Metropolitan) [3.08 pm]: I rise to support the third reading of the Police Amendment (Medical Retirement) Bill 2019. I note that the bill is in the same form as it was when it was second read. As I indicated during my second reading contribution, I support the passage of this bill; however, I will make this point about the bill in its current form, as it is about to be third read. Examination of the bill during the Committee of the Whole House has identified areas in which the scheme can be further enhanced. The matters that have been pursued, particularly by Hon Martin Aldridge and me, warrant further consideration. I am disappointed that the government has elected not to support a statutory review, but I am heartened by at least the indicators that there will be some form of consideration and review. My view is that important stakeholders who will no doubt have had a keen interest in today's debate will look closely at the matters that have been identified by me and Hon Martin Aldridge and give consideration to whether they should take up and further pursue those matters with the government, for the benefit of the police officers.

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The aspect of this regime that has disappointed me is the attitude, if you like, that we are simply continuing with the existing scheme. In my view, we have been given a rare opportunity for 36 members of Parliament to consider this legislation in detail. I believe we should take that opportunity, because it may be another 10 years before we have an amendment that further enhances the prospects for police officers who regrettably need to be medically retired on order of the Commissioner of Police.

I think all members would agree that we thank police officers for their service. We are thankful that the police service that is available in Western Australia includes a comprehensive selection process and comprehensive training. I am heartened by the indication given by the Minister for Environment representing the Minister for Police during Committee of the Whole House that under this new regime, the primary intention of this government and the current police commissioner will continue to be that, wherever possible, police officers who are deemed to be medically unfit for their current role will be transferred to another role within the Western Australia Police Force. With those words, I indicate my support for the third reading of the Police Amendment (Medical Retirement) Bill 2019.

Question put and passed.

Bill read a third time and passed.