

**POLICE AMENDMENT (MEDICAL RETIREMENT) BILL 2019**

*Second Reading*

Resumed from 27 June.

**HON RICK MAZZA (Agricultural)** [8.17 pm]: I rise to make some comment on the Police Amendment (Medical Retirement) Bill 2019. The purpose of the bill is to amend the Police Act 1892 and the Industrial Relations Act 1979 to establish a new standalone scheme. As we know, police do a magnificent job in the community. Unfortunately, police officers have to put up with all sorts of things like being punched, scratched, bitten and kicked, or even worse. I was told a story about Harry Arnott, a police sergeant in Harvey. I am sure he will not mind me telling members. Some years ago, when he was off duty, he simply went to buy a bottle of wine and ended up —

**Hon Alison Xamon:** This is a terrible story.

**Hon RICK MAZZA:** Yes, it ended up a pretty terrible story. He was trying to protect a 14-year-old boy who had been beaten almost to a pulp. He was off duty at the time.

Police officers are pretty much on duty all the time. They do a magnificent job. Of course that job comes with a lot of risk, whether that be physical or stress-related risk over time. When I first came to this place, police had raised with me their concerns about the fact that if an officer had to be medically retired, they could do so only under section 8 of the act, which is basically a dishonourable discharge. That section of the act is mainly for loss of confidence in police officers. That is for police officers who may have committed acts of misconduct. Having to leave under those conditions—that is being retired—left them not feeling particularly appreciated. This bill will change that. It will provide a separate system whereby officers who are medically unfit can be discharged from their duties or retired and go out with their integrity intact, which I think is a very good thing. As was mentioned to me this morning, there is quite a process involved with an officer who may be medically retired in that the commissioner can make some orders to a police officer who may present as being medically unfit. There is a process that is gone through, but I will not go through all of it in my speech. I am sure others will cover the technical details of it, but it provides for a police officer to appeal against it. If at the end of the process they are medically retired, they have 28 days to apply to the Industrial Relations Commission and object to the medical retirement. Unfortunately, if they do not appeal to the Industrial Relations Commission within 28 days, they simply get a maintenance payment for 28 days and payments then cease. As I understand it, if they do appeal to the Industrial Relations Commission, they can continue to be paid for up to 12 months or as extended by the commission, if that was the case. I would imagine anyone who is medically retired would automatically make an appeal to make sure they were financially looked after for a longer time. In my briefing this morning, I was told that work was being done on a compensation scheme for police officers who are medically retired so they are able to be adequately compensated. There are currently 168 days of sick leave entitlement per year for police officers. Unfortunately, that is not cumulative, so they have only those 168 days in the year, and that does not roll over each year, although I am told that the commissioner can extend, and has extended, that number of days if someone has been seriously injured or has issues.

I think this is a very positive move towards providing a system in which police officers are able to be medically retired with their integrity intact. It has been a long time coming. I am very pleased we are now here going through this bill to make sure we have the system in place. We have some 6 800 police officers, who, as I say, do a magnificent job in the state protecting its citizens. Even though police officers have to put up with incredible issues in the community, they have a real passion about serving the community, and I think at the very least if they are going to be medically retired, it should be done with some integrity and compassion for the job they have done. With those few words, I support the bill.

**HON MARTIN ALDRIDGE (Agricultural)** [8.22 pm]: I rise on behalf of the Nationals WA to indicate my party's support for the Police Amendment (Medical Retirement) Bill 2019. In doing so, I recognise that this bill passed in the other place earlier this year, in May, before coming to the Council. As I understand it, the policy to which this bill gives effect was the subject of a commitment of both the Liberal and Labor Parties ahead of the 2017 state election. It creates an alternative scheme to that currently utilised in section 8 of the Police Act 1892, which, as we heard from Hon Rick Mazza, refers to loss-of-confidence provisions.

I want to recognise Mr David Bentley of the WA Medically Retired Police Officers Association and Mr Harry Arnott, and before him George Tilbury, of the WA Police Union for the way they have advocated and engaged me, and I am sure other members of Parliament, about this reform.

The new scheme provides dignity to officers who are required to retire from the police force on medical grounds. Medical retirement is typically initiated by the Commissioner of Police, and the commissioner may direct an officer to undergo medical assessment, which is something I want to come back to when I turn to the specifics of the bill shortly. The medical assessment is required to be undertaken by a duly appointed medical board of at least three medical practitioners, with regulatory power to appoint further experts. The explanatory memorandum, or maybe even the second reading speech, gives examples of some that may be contemplated. The commissioner then

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reviews the report, makes a decision and gives notice to the affected member. The process then allows 28 days for the member to respond to the notice and provide further information to the commissioner. One of the questions I have about this bill is whether there is a positive obligation on the commissioner at that time to provide to the member, the police officer in question, a copy of the medical report or other information. I think that is the case, but I would like to get it confirmed during the second reading debate. The commissioner is then required to give written notice of decisions. I think the question I have just put about a copy of documents relates to proposed section 33ZE(5) of the bill. There is a provision in the bill that requires for a 28-day maintenance payment and there is obviously ministerial discretion to provide a further period of up to six months in addition to the 28 days. There is a right of appeal by the member to the WA Industrial Relations Commission on the grounds that the decision of the commissioner is harsh, oppressive or unfair, and the remedies available to the Industrial Relations Commission would be reappointment of the affected member and some compensation not exceeding 12 months' salary, which I understand is twice the Industrial Relations Commission's ordinary ability to rule on in such disputes.

I want to draw to the attention of members some work done in the other place by the Community Development and Justice Standing Committee in its twelfth report of March 2016 titled "How Do They Manage? An Investigation of the Measures WA Police Has in Place to Evaluate Management of Personnel". On page 73 of that report there is some interesting, although slightly dated, statistical data on section 8 removals. The table on that page breaks down that data across a period of five years into section 8 removals on loss-of-confidence grounds versus section 8 removals as medical discharges. I turn to that table now and quote some of those numbers. In 2010–11, there were nine section 8 removals due to loss of confidence and there were two section 8 medical discharges. In 2011–12, there were eight section 8 removals due to loss of confidence and four section 8 medical discharges. In 2012–13, there were 15 section 8 removals due to loss of confidence and there were two section 8 medical discharges. In 2013–14, there were six section 8 removals due to loss of confidence and one section 8 medical discharge. In 2014–15, the most recent year of data in this report, there were five section 8 removals due to loss of confidence and one section 8 medical discharge. That gives a good analysis. I am sure members may have more recent data from questions they have asked in this place or through briefings.

I now turn to page 80 of the committee's report where there is just one section I want to quote from. I think it is particularly relevant to the bill before us. There is also a second piece of work that the government is doing, which is an appropriate compensation scheme for officers who are ultimately medically discharged. In section 5.2, titled "Employment-related medical issues affecting police", of chapter 5 on page 80 of this report, the committee said —

While police are afflicted by physical injuries, it is psychological ailments—and in particular post-traumatic stress disorder (PTSD)—which seem to have taken the greatest toll on WA Police officers. Officers suffering from PTSD are the main focus of Project Recompense, and also lead the Medically Retired Western Australian Police Officers Association (MRWAPOA).

More police officers are medically retired due to psychological illness than for physical ailments or injuries, as shown in Table 5.1. The reverse is true when it comes to currently serving officers. At present, there are five serving officers with a PTSD diagnosis out of 121 case files being managed by either the Vocational Rehabilitation Unit or the Psychology Unit.

Members should keep in mind that this is a March 2016 report, so it was not all that long ago. Table 5.1 is titled "Number of officers medically retired for physical and/or psychological illness, 2012–2015." The table covers three years and breaks down the causes of the medical retirement as being either physical or psychological or both. In 2012–13, there was one retirement on physical grounds, six retirements on psychological grounds, and two retirements on both physical and psychological grounds, for a total of nine officers. In 2013–14, there was one medical retirement on physical grounds, 14 retirements on psychological grounds, and four retirements on both physical and psychological grounds, for a total of 19 medically retired officers. In 2014–15, there were zero physical medical retirements, eight psychological medical retirements, and two physical and psychological retirements, which accumulated to 10 officers medically retired for that year—the most recent year of data in this report. The report continues —

This indicates that officers with injuries or illnesses other than PTSD are more likely to return to work. The MRWAPOA has calculated that 70 per cent of the 291 officers medically retired between 2001 and 2012 suffered from a mental impairment, depression, PTSD or some other psychological impairment.

Nevertheless, it is physical injuries that attract more attention, according to WAPU and the MRWAPOA.

There follows a quoted section in the report —

*if you can see an illness or injury, then it is more likely to be accepted, but what you cannot see is the real killer... the statistical quote is that 45 per cent of police officers throughout their career will at one stage suffer some form of psychological ailment. Of those, around about one per cent will get full-blown PTSD.*

The committee went on to report —

Exposure to danger comes with the territory for police. As part of their requirement to ensure public safety and enforce the law, police must respond to many different and difficult situations which often require quick decisions. In addition to being exposed to the possibility of being injured or killed themselves, police officers are often exposed to people who have been injured or killed.

Obviously, the committee report goes on at much greater length to explore this and many other matters, and I recommend that members of the house review it during their consideration of this bill or, indeed, in consideration of further bills brought by the government in respect of an appropriate compensation scheme for police officers. I note that that is not without its challenges, particularly when we are talking about mental injury as well as physical injury. How do we effectively compensate someone who can no longer do their job and who potentially could not do another job post-medical retirement, and whose skills may be so specialised that they may not be that transferable to other areas of employment? It is a complex issue that the government needs to contemplate, but it is not one that police officers face in isolation. There are a number of other first responders in Western Australia, including firefighters and ambulance officers amongst others, who I am sure would be faced with similar circumstances—perhaps not exactly the same circumstances—to those faced by members of the police force.

I turn now to the Police Amendment (Medical Retirement) Bill 2019. There are some things that I would like the minister to consider in his reply to the second reading debate. One is the way in which certain language has lately been creeping into the drafting of legislation—specifically, the use of the word “may”. When we see “may” in an act, we could assume that whatever followed “may” might be some kind of discretionary action or responsibility on one’s part. It seems to me that “may” has also been used in other acts. I recall recently making an amendment to a provision in the Infrastructure Western Australia Bill 2019 in which “may” was used instead of “must” when it was intended that a public servant “must” do something. I draw the minister’s attention to proposed section 33ZC(2), which states —

The Police Commissioner may direct the member to submit to an examination by a medical board consisting of at least 3 medical practitioners.

That says to me that it is a discretionary requirement of the commissioner, rather than a mandatory one. I am not sure whether that is indeed the intent; certainly, that is not the impression I got from my briefing, but I cannot help but draw a parallel with the minister’s second reading speech, in which he said —

To assist the commissioner to determine the member’s fitness, the commissioner can direct the member to attend an examination by a duly appointed medical board.

The second reading speech has “can” and the bill has “may”. I just want to know whether it is a requirement that, prior to a medical discharge or consideration of a medical discharge, a member of the police force must submit to an examination by a medical board, consistent with the bill. The reason I want to know is that if we look further along in the bill, we see there are other relevant provisions that arise. For example, proposed section 33ZD(2) states —

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.

Again, I am not quite sure whether this is meant to be a matter for the discretion of the police commissioner, but I would have thought that it would be a requirement, not a discretionary decision, of the commissioner to give written notice. It is important for us to make those decisions, because as we read through the bill, it deals with matters in a kind of chronological sense from start to finish, including, at the end of the bill, the appeal rights that are available to members who are subject to an action under these proposed changes. Obviously, it is important to know which parts of the process must be followed versus those that may be followed. I would like the minister to consider those provisions in particular.

Proposed section 33ZM(5) relates to decisions by the Western Australian Industrial Relations Commission in considering an appeal. It states —

In deciding the amount of compensation for the purpose of making an order under subsection (3), the WAIRC must have regard to ...

I understand that one of the matters that falls under paragraph (d)—“any other matter that the WAIRC considers relevant”—would be compensation received by a police officer through the criminal injuries compensation scheme. Although I had some advice from the minister earlier today on that matter, I would like confirmation of that, as well as what matters the minister perceives the Western Australian Industrial Relations Commission may consider relevant in making a decision.

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**Hon Stephen Dawson:** Can you just clarify the first bit that you are seeking clarification on?

**Hon MARTIN ALDRIDGE:** On the section that I just talked about? It is proposed section 33ZM(5).

**Hon Stephen Dawson:** What exactly are you looking for?

**Hon MARTIN ALDRIDGE:** I am interested in the intersection of the Criminal Injuries Compensation Act and this proposed amendment to the Police Act 1892. I would like confirmation that if a police officer were to receive a payment under the criminal injuries compensation scheme, it would be taken into consideration in a decision of the WAIRC. This is something that I have contemplated since receiving the correspondence from the minister this morning. I assume that if the WAIRC must take that into consideration, the payment under the CIC act must be in connection to the matter that is subject to the medical discharge—if that makes sense—and is not an unrelated matter whereby a police officer may have been subject to some other injury.

With those few comments and questions, I reiterate my support for the bill. I certainly appreciate the sentiments expressed to me by individual police officers, as well as by the WA Police Union and the Medically Retired Western Australian Police Officers Association, about the way in which many members have been dealt with in the past under the current provisions that are available to the Commissioner of Police for medical discharge. I reiterate the comment I made earlier: I acknowledge that it is a particularly complex area and it will take some time for the government to consider, but, ultimately, some real progress needs to be made on that more longer term issue of compensation upon retirement. Obviously, the ministerial discretion to extend the maintenance payment for a further six months is something, but certainly if an officer is incapacitated in such a way that they can no longer participate fully in employment or at the same level as they did as a member of the police force, their employment and earning capacity, amongst other things, are limited into the future. With those few words, I indicate my support for the bill and look forward to the minister's response.

**HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition)** [8.42 pm]: I rise as the lead speaker on behalf of the Liberal opposition to indicate our support for the Police Amendment (Medical Retirement) Bill 2019 and to comment on its content and the merits of the policy behind it. Essentially, I do not need to repeat what has been said up until now, but suffice it to say that the bill will correct what has been perceived to be an unjust means of treating police officers who are, by reason of physical or mental disability, which is frequently acquired in the course of their employment as police officers, obliged to be removed from the police force because they can no longer fulfil their functions as required under the legislation. The genesis of all this is in the Police Act 1892. The means of removal that is available under the act is primarily contained in section 8(1). It is worth repeating what the section says at present to indicate where the problem lies. It is also a quaint piece of ancient drafting. Although it has been broken up into a number of subsections since 1892, it still has the habit that was inherent in the Police Act when it was originally drafted of having sentences that are a paragraph or so long. It states —

The Governor may, from time to time as he shall see fit, remove any commissioned officer of police, and upon any vacancy for a commissioned officer, by death, removal, disability, or otherwise, the Governor may appoint some other fit person to fill the same; and the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in case of any vacancy in the Police Force by reason of the death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.

There are a couple of things to observe there. One is the use of the word “he” as the assumption that the Governor and Commissioner of Police will always be male. The other thing is that it bumps into the one provision for the removal of a police officer from the police service, giving the commissioner a considerable amount of latitude, but also the removal on various grounds, whether it be because of death, disability or unfitness for the task. Currently, under part IIB of the Police Act, there is a procedure for the removal of officers, and that has been applied for the removal of police officers for both loss-of-confidence and medical reasons. What is being sought is to introduce a part IIC into the act that deals specifically with the question of the medical retirement of police officers. It reflects to a very large extent the current provisions of part IIB of the act, but is geared specifically to medical retirement. In that respect, the government is to be commended for putting in place not only one of its election commitments, but also a commitment that had been made and worked on for quite some time by the former Minister for Police, Hon Liza Harvey, MLA. Finally, this element of addressing the problem of a single process for the removal of police officers and its discrimination into medical retirement provisions as opposed to general loss of confidence-type provisions is to be commended. It has been seen for quite some time by police officers that a stigma was attached. However much it might be expressed by the Commissioner of Police or however much the records might show that it was for no loss of confidence in any merit of the officer concerned, the removal under part IIB imposed a stigma on an officer and the suggestion that their inability through legitimate medical reasons to fulfil their task was akin to misconduct or other failure to live up to the standards required of a police

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officer. Indeed, the new provisions include a specific section headed “Summary of Part” that specifically indicates that it deals with retirement on medical grounds. It sets out a scheme under which members who are medically unfit can be retired specifically on medical grounds rather than being removed under part IIB. It is a rather curious provision, one would have thought, but I think that, in the circumstances, it is intended to reinforce the fact that a removal under that provision is for things other than a police officer being unsuitable for their function on strictly medical grounds. It sets up a separate process.

There is a requirement for the Commissioner of Police, if he or she reasonably suspects that a member is medically unfit, to direct the member to submit to an examination by a medical board consisting of at least three medical practitioners. We were told during the briefing that practitioners from a variety of fields would be suitable, including a psychiatrist if necessary. The member would be required to undergo a medical examination. A penalty would be imposed in the event that the member refused to do so. It would be an offence against the discipline of the police force if the member, without good and sufficient cause, fails to comply with the direction. That is in proposed section 33ZC(5). If the Commissioner of Police is of the opinion, after the medical examination, that the officer is medically unfit, the police commissioner can give notice to the member setting out that in his opinion the member of the police force is medically unfit, and the member is given 28 days to respond. The Commissioner of Police must also provide any material that is supplied to the commissioner upon which he makes his decision. Likewise, the power to retire the member on medical grounds is set out in detail. Some of this is a translation of material that is in the regulations that govern this legislation but will be incorporated into the act in order to ensure clarity of the processes and that a single document can be referred to as part of the processes involving medically retiring a police officer.

There is a provision in the legislation relating to maintenance payments and the entitlement of a member of the force to receive payments for a period, and an opportunity to extend that from six months to 12 months. Finally, if a decision is made by the Commissioner of Police to retire the member, an avenue of appeal is available to the member. The commissioner can change his or her mind about the retirement of a member at any time until a decision of the Western Australian Industrial Relations Commission is made. The process is very much a reflection of what is currently in place and should come as no surprise or any great change to the manner in which members are being dealt with.

A further amendment that goes beyond this is to part IIB of the act, which clarifies an anomaly or an ambiguity that currently exists relating to police auxiliary officers. That is corrected by way of an amendment to section 33K of the act, set out in clause 5 of the bill. Otherwise, there is a consequential amendment to the Industrial Relations Act 1979 to accommodate the changes made by the bill.

We are told that four members of the force are currently before the Medical Board of Western Australia. Their process for retirement has been delayed in order to allow them to take advantage of the procedures that are proposed under this legislation so that they can be the first to take advantage of these new provisions and not be retired under the section 8, part IIB process that has caused angst for police officers in the past. It is estimated that there may be a slight increase in the number of police officers seeking to be retired on medical grounds to start with, but otherwise it will stabilise. I was informed that we are looking at about a dozen, say, per annum who might have to avail themselves of these provisions—a small number of the something like 6 500 members of the police force in various capacities but still too large a number of people who, through circumstances beyond their control, may end up losing the career that they have dedicated themselves to.

Everyone will have a story from a constituent telling them about a particular police officer who has suffered hardship in the course of their duties or simply because of the stresses of the job that they have undertaken and the function that they have undertaken on our behalf in society, finding that they cannot cope with the stresses of what is a very arduous set of responsibilities and getting more arduous by the day. Once upon a time police officers may very well have been on street corners and simply nodded to passers-by and gone out to arrest people. Now the demands on a police officer are manifold; they are required to be not only familiar with the law and able to act in response to unexpected and stressful circumstances, but also social workers, pop psychologists, psychiatrists, comforters, counsellors and the like. One thing I have noticed from going to police graduations over the years is the number of more mature people entering the police force. In fact, on one occasion a gentleman and his daughter graduated in the same class. The breadth of experience of those who are graduating from the police academy is quite admirable. Rather than simply coming up through the police cadet ranks and knowing nothing else and hoping for this particular career in life, we now have a breadth of experience going through our police force. That can only stand people in good stead when having to deal with the stresses of protecting us in the community as the front line of society against the forces of darkness, and in being able to cope with the everyday stresses of living and applying their wide skills to improving our society.

One case that comes to my mind from very early in my career at the Crown Law Department involved an appeal involving harm to a police officer by the name of Christopher Robin Smith, who was on a motorcycle when he was bailed up by two guys he had stopped near Lake Monger, I think. They were also on motorcycles. They bashed him

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up using motorcycle helmets and left him seriously injured. I had the melancholy duty as Attorney General some years ago to decline a further request by him for an ex gratia payment, he having already received one many years ago. With the value of money having changed, it seemed like an inadequate amount compared with today's dollars.

Of course, further work needs to be done in order to recognise the particular impositions and demands of being a member of the police force. Part of that will mean addressing the workers' compensation issue, which I understand is still a work in progress for this government. A considerable amount of work had been done under the previous government. It creates its own difficulties and conundrums. This is a very worthy first step in ensuring that police officers who are retired on medical grounds at least have the ability to quite plainly say it was nothing to do with their character or their suitability as officers but specifically because of medical reasons, otherwise they would continue to serve the public and continue to do the job that they had dedicated themselves to.

I understand that there may be some questions about the content of the bill and how it will operate. Otherwise, I reaffirm that the opposition supports the bill—both its policy and its terms. If any tweaks need to be made to enable it to operate better, they will be proposed in the spirit of ensuring that this legislation operates as intended.

**HON CHARLES SMITH (East Metropolitan)** [8.59 pm]: I rise to say a few words in support of the Police Amendment (Medical Retirement) Bill 2019. As we have heard, this bill is designed to remove the stigma of police officers having to be removed or dismissed from the Western Australia Police Force under the same section of the act that is used when the Commissioner of Police or the Governor has a loss of confidence in a member, usually due to criminal conduct, unethical behaviour and so on. In essence, it is a dishonourable discharge. The bill therefore has my support.

As members may be aware, I was a police officer for just under 10 years. Having been a police officer, I have seen the best and the absolute worst that the job has to offer. Believe me, the government agency of last resort can be a very challenging and dark place. One of my goals while I am in this Parliament is to improve the lives of not only police officers who are currently serving, but also those who have left and are living with trauma. As I always say when the issue of police comes up, the best thing that the government can do now is to recruit more police to ease current police officers' burden.

There is growing incidence in the police force of more officers taking sick leave, with stations struggling to put one unit on a shift. This is a significant sign that all is not well within the police service. The Minister for Police and the commissioner can say that there are enough police, but I and current serving officers of all ranks know that that is simply not the case; it is simply disingenuous to say that.

A few months ago, former West Coast Eagle Mark LeCras came to the rescue of two people moments before a third person died in a horrifying car crash. Afterwards he was reported to have said —

“I hope you understand it was a deeply traumatic incident and can respect the fact that there has been the loss of a life.

...

“It is something I am not comfortable talking about.

There are people in our community who are motivated by service, sacrifice and a desire to do good. These people are our emergency services workers—ambulance staff, Department of Fire and Emergency Services staff and our police officers to name a few.

A new study in the United Kingdom has found that police officers are suffering post-traumatic stress disorder on an alarming scale. Researchers at the University of Cambridge have discovered that post-traumatic stress disorder among police officers is reaching crisis levels, with almost one in five suffering from the medical condition. The researchers have warned of a “clinical and public sector crisis” after a survey of about 17 000 serving officers and operational staff indicated rates of PTSD were nearly five times higher than in the wider population.

Mr LeCras was undoubtedly brave and on his own admission found attending the incident “traumatic”. With respect to him, he has been psychologically affected after attending a scene like this once. Police officers attend these scenes if not day in, day out, week in, week out. Police officers are repeatedly traumatised as part of their job, as are other emergency workers. The fact is that for police there is no real time for stress to escape. Officers are on shift, on duty, they do their job and witness events, and then they go home to their families. There is no escape. I urge the police minister in the very strongest terms to introduce a new policy within the Western Australia Police Force that makes it compulsory for at least all frontline staff, if not the entire service, to see a psychologist two or three times a year while they are serving in the job to see how they are travelling and to diagnose any early warning signs of PTSD so they can enter a treatment program. That service is not available now and that is why the medically retired guys are suffering.

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On 31 August 2018, I wrote to the Commissioner of Police requesting he immediately suspend the use of section 8 of the Police Act. As usual, I received a letter referring me to the police minister. I then wrote to the police minister and she referred me to the police commissioner. This kind of orbital communication has happened a few times and I wanted to let the house know about it.

Section 8 as it currently stands is intended to dismiss those officers who have committed gross violations in the line of duty. Its wording is very broad. It is a very old piece of legislation. I will read it out —

... the Commissioner of Police may, from time to time, as he shall think fit, suspend and, subject to the approval of the Minister, remove any non-commissioned officer or constable; and in case of any vacancy in the Police Force by reason of the death, removal, disability or otherwise of any non-commissioned officer or constable, the Commissioner of Police may appoint another person to fill such vacancy.

That is really horrible and archaic language. It is not clear what section 8 is actually getting to. The wording of the second half implies that a disability, or perhaps another medical reason, may be grounds to remove an officer. In practice, this means that officers who are suffering from PTSD or some other medical condition preventing them from doing their job may be retired under this section with no compensation. They are dealt with in the same section as those who behave unethically. Thankfully, that is what we are addressing with this legislation. The proposed amendment to section 8 will remove this implication. I offer my congratulations to the government for finally addressing section 8 of the Police Act; however, I berate it for taking two years to strike out the word “disability”. Thank you.

**HON ALISON XAMON (North Metropolitan)** [9.07 pm]: I rise as the lead speaker on behalf of the Greens to indicate that we are also very happily supporting the Police Amendment (Medical Retirement) Bill 2019. I agree with the previous speakers who have indicated that it is not before time that we are finally looking at this amendment.

There is no doubt at all that police work is dangerous. It has its own unique risks in terms of officers’ physical health and the mental toll that far too often the work takes on officers. We know that officers are forced to deal with members of the public who are either deeply distressed or who are just straight-out violent and choose to be not particularly good people. Officers are also exposed to situations that many of us do not experience in our whole lives. It means that mentally our police officers are repeatedly exposed to very high stress and deeply traumatic situations. We are talking, of course, about the aftermath of murders; suicides; sudden deaths, including the sudden deaths of children; fatal traffic accidents; sexual assaults, including on children; and some of the worst possible things that one would ever have to bear witness to. That is in addition to facing emotional demands and ongoing physical threats.

I note that in the other place in March 2016, the Community Development and Justice Standing Committee released a report around these issues entitled “How Do They Manage? An Investigation of the Measures WA Police Has in Place to Evaluate Management of Personnel”. That report states that more police officers are medically retired from the Western Australia Police Force because of psychological illness than physical ailments or injuries. As has been talked about in this place, the most common psychological illness is post-traumatic stress disorder. Police officers are also repeatedly exposed to the risk of physical injury through being assaulted directly, having vehicles driven at them, being exposed to bodily fluids from a range of sources, and attending hazardous places such as fires and clandestine drug labs. The Western Australian Police Union’s 2017 pre-election submission set out a graph of the number of medically retired police officers between 2001 and 2015. The total figure was 317 officers. On 2 August 2018, *The West Australian* reported that the Medically Retired Western Australian Police Officers Association stated that the total estimated number of medically retired police officers is around 500.

During debate in the other place, the Minister for Police indicated that the number of medical requirements due to work-related injury is approximately three per cent of total separations, with an average of 13 officers retiring each year between 2000 and 2014. It is important to note that those figures do not include police officers who chose to resign or retire rather than going through the current medical retirement process, which has been reported as being less than optimal. The current process is contained in section 8, as has been spoken about already, and part IIB of the Police Act 1892. A precondition to that process is that the police commissioner has lost confidence in an officer’s suitability to continue as an officer, having regard to the officer’s integrity, honesty, competence, performance or conduct. I absolutely agree that it is grossly unfair to lump police officers of integrity who have been unfortunate enough to suffer injury because of the extensive occupational hazards they face in the line of duty in with police officers who are dishonest, criminal, corrupt or incompetent. Members know that I have a pretty dim view of corrupt police officers—people who choose to use the extraordinary power that has been entrusted to them to engage in behaviours to further their own interests, deny justice to people, or subject innocent individuals to appalling conduct. I am very strongly of the view that our Corruption and Crime Commission could and should be doing more to weed out these individuals. These people should be subject to the strongest of penalties available in our laws. It is a very serious matter for them to abuse the trust that has been given to them. It is all the more

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appalling that good police officers—those who deserve our full credit and recognition—find themselves inadvertently lumped in with these corrupt coppers because they have done the right thing, have been brave and have risked their lives and wellbeing for the benefit of us all.

The stigma has caused medically retired police officers unnecessary extra suffering and for that I am sorry. I am glad that this bill will finally go some way to addressing that. In recognition of this, in 2018 the minister introduced a redress scheme for medically retired police officers. Applications closed in April of this year, and my understanding is that they are currently being assessed. Western Australia Police Redress is a \$16 million scheme that provides for ex gratia—like payments of up to \$150 000 for medically retired police officers to acknowledge the hurt and indignity caused by their removal under the section 8 process. I applaud the government for implementing that scheme. I ask the minister to provide an update on the progress of that redress process.

Given the stigma and indignity of the current process, it is understandable that police officers have advocated for a very long time for the process for retirement on medical grounds to be separated from the current process prescribed in section 8. I return to the report I mentioned before that was tabled in the other place by the Community Development and Justice Standing Committee. It stated that the Western Australian Police Union called for the removal of police officers on medical grounds to be independent of the section 8 process. The police commissioner also agreed that the section 8 process was inappropriate for sick or injured officers, given its association with removing police officers who had committed offences. Finding 30 of that report was that police officers who have been removed from duty for medical reasons often reported feeling abandoned by the police service and that the years of service they had given were not valued. Recommendation 11 was that the Western Australian Police Force should implement a formal mode of recognition for officers who had been dismissed on medical grounds and acknowledge that their illness or injury was sustained in the line of duty.

This bill will deliver the long-awaited change to the current section 8 process. It will create instead a standalone process via insertion into the act of a proposed part IIC, which is for medical retirement of police officers. I note that it will also cover recruits, auxiliary officers, cadets and Aboriginal police liaison officers. In all other respects, the new process is similar to the existing process. There is a similar requirement for the police commissioner to give written notice that medical retirement is being considered and there is a similar right for the police officer to respond and have the police commissioner take into account that response before a decision is made. I note that the bill provides for one extra week for the officer to respond, increasing the time from 21 days to 28 days. That is an improvement. There is a similar right to a maintenance payment, the right to resign instead of being medically retired, and the right of appeal to the Western Australian Industrial Relations Commission. Transitional provisions will provide that after the commencement date, removal proceedings that are on foot but on which the police commissioner has not made a decision about whether to take removal action are to be continued and completed pursuant to the new process in this bill, rather than the current section 8. The commencement of the substantive part of the bill will be upon proclamation. This is to allow time for preparation of forms to support the new process and for the drafting of regulations on the service of notice. I understand this is expected to take about two months. I want to confirm whether that is, indeed, the expected time frame.

Unsurprisingly, the bill has very strong support from both the police union and the Medically Retired Western Australian Police Officers Association. I note that the police union is also advocating for the next step after this bill to be a police-specific compensation scheme for police officers who can no longer work on the front line. It has been advocating on this matter for a very long time. I remember first meeting with the police union in 2009 when it was talking about wanting changes to this, so it has been around for a very long time. Members will know that police are not currently eligible for workers' compensation in Western Australia because they are not technically employees. However, loss of a police officer's income because of medical retirement is a huge financial burden for the officer and any children or family members who had been supported by the income. It is a problematic situation that needs to be corrected. Again, to correct it would be consistent with that March 2016 report from the other place, because finding 31 states —

Forms of compensation currently available to medically retired officers are inadequate and unfairly bestowed.

That has certainly been my observation as well. I have also been very concerned that the large ex gratia payouts that tend to be given to police officers when they suffer particularly catastrophic injuries can often depend on how much media they managed to drum up rather than on the merits being looked at dispassionately. If they happen to not be successful in that, they may not get fair compensation. Recommendation 12 states —

That the Minister for Police works with the Police Commissioner, in concert with the WA Police Union, to institute a compensation scheme for medically retired officers and so bring Western Australia in line with the other States.



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I note that the minister has committed to workers' compensation for police as the next step after this bill, as well as the redress scheme. I have seen the proposal put forward by the WA Police Union for compensation. It is proposing quite a detailed model. I understand that the government is considering that model, amongst others, and that it will consult with the police union with the aim of having an agreed workers' compensation scheme in place no later than the end of this term of government. I would like to confirm with the minister for the record that this is actually the case.

I also understand—and I suppose I again ask that the minister please confirm—that the police commissioner is proactively working hard on changing police culture so that officers' mental health needs are better recognised and addressed at work. I understand that this includes training, awareness programs, peer support and extra resources. I would appreciate getting extra advice to this place on the record about what that entails, and not before time. We know that all our emergency services operators have quite appalling rates of post-traumatic stress disorder, and a devastating number of people have gone on to take their own lives. It is a very, very serious matter that has needed attention for a very long time. It has been a culture of people wanting to struggle on and not express any form of distress because they erroneously think that it is a sign of weakness; it is not. If a person is experiencing mental distress and they reach out and say that they need some help, as far as I am concerned, they have the greatest courage of all and that is amazing, but we need to change the culture. These are people who are used to being the ones that other people rely on and are not used to crying out for help. We need to make sure that we are doing that; it is important. If we ensure that we provide as much support as we can for people to cope with incredibly stressful jobs, it also means that when they have got to the point at which they are not able to continue on the job anymore because of it, we will be able to ensure that people can retire with dignity, respect and appropriate compensation. This bill goes part of the way towards helping to facilitate that.

With those words I want to again indicate my strong support for this long overdue reform. It is a simple one. I would have thought it would have been done a long time ago, but I am just glad it is here now, and I look forward to hearing more about the next tranche of reform.

**HON NICK GOIRAN (South Metropolitan)** [9.24 pm]: I rise to add my support to the passage of the Police Amendment (Medical Retirement) Bill 2019. This bill makes amendments to the Police Act 1892 and makes consequential amendments to the Industrial Relations Act 1979. The key amendment in this bill is encapsulated in clause 6, which is intended to provide a standalone statutory scheme giving the Commissioner of Police the power to medically retire an officer. At a time when the safety of the public is paramount and the role of police officers never more vital, I think it is important for us to give careful consideration to their retirement on medical grounds. Some injuries and medical conditions may well speak for themselves and be so significant that there is no alternative but medical retirement. However, I think there is a case to be made for the knowledge and experience of an officer, that this should be appropriately valued and where possible, they should be retained in an alternative capacity.

I have spent a bit of time considering the level of training required to be a police officer. That, coupled with the knowledge and experience acquired while serving, forms a formidable loss to the Western Australia Police Force when medical retirement occurs. I draw to members' attention the selection process, which is set out on the [stepforward.wa.gov.au](http://stepforward.wa.gov.au) website. There is a comprehensive selection process undertaken by the WA Police Force before an officer is accepted. Indeed, I note that, as I understand it, the selection process involves three assessment stages. The first stage involves an integrity check, which is followed by a police entrance evaluation, which includes tests for verbal reasoning, abstract reasoning and audio and audiovisual skills. I note in particular that, as part of that stage 1 selection assessment process, there is an initial psychological evaluation. I note from the website that it states —

The psychological tests are assessments and evaluations of you—everything from your personality, psychological state and background risks. It is very important that you respond to the psychological tests honestly. The tests are designed to identify applicants who impression manage and this will result in an invalid assessment result.

Applicants who do not meet the initial psychological requirements are eligible to reapply 12 months from the date of the evaluation.

That is merely dealing with the initial psychological evaluation. In addition, there is a physical performance evaluation. The criteria are —

To join the WA Police, you are required to have a reasonable level of fitness. During this evaluation, you will be required to perform:

- A Shuttle run test ...
- An agility test

- An abdominal strength rating ...
- Upper body strength and endurance tests ...
- A grip strength test

There is some further information for people who are interested in finding out more about that.

In addition to the initial psychological evaluation and the physical performance evaluation, there are also vision requirements and there we are told —

You are required to have a minimum uncorrected visual acuity of 6/30 in each eye. Outside this range, an assessment of your circumstances will be conducted on a case-by-case basis. However, as a minimum you must be able to meet the corrected visual acuity standard of 6/6 binocularly or 6/6 in one eye and 6/9 in the other when wearing soft contact lenses.

A report from a qualified person will be required detailing your vision history, current treatment and future prognosis. This must include your history of duration of wear and tolerance of soft contact lenses over a 10 hour period and expected future tolerance to wearing soft contact lenses on an ongoing basis. You must bring this report with you when you are invited to attend the Police Entrance Evaluation ... WA Police will send you a form that you need for this report.

This is just with respect to stage 1. The stage 2 process involves an interview before a review panel. Stage 3 is a further assessment that includes a final health and medical assessment. A person only reaches stage 3 if they have successfully navigated stages 1 and 2. The website states that once they get to stage 3 and undertake this final health and medical assessment, following the completion of those earlier assessments —

... you will be required to undertake a Final Health/Medical Assessment. This examination is designed to ensure your fitness and health are of a high standard and that there is no reason why you would be unable to carry out all the duties required as a Police Officer.

Applicants with prior medical history may be required to provide additional contemporary information to support their Final Health/Medical Assessment.

In addition, the final stage 3 assessment includes other identifying particulars such as fingerprints and DNA, a bankruptcy check, and a full background and integrity check.

We can see how rigorous the selection process is for someone to be recruited into the WA Police Force. Having done all those things and met the various medical requirements and jumped over the various hurdles and the like, the WA Police Force then quite rightly invests heavily in the training of the recruits who have navigated that previous process. After all that has been done, there is a period of probation.

I say all that to underscore the rightfully substantial amount of investment that is made by the state into these police officers. It further consolidates my view that their knowledge and experience as officers, having done all those various things and having all that experience, should be appropriately valued and, where possible, they should be retained in an alternative capacity.

In Western Australia, we have a Police (Medical and Other Benefits for Former Officers) insurance scheme. I understand that that is managed by the Insurance Commission of Western Australia and uses the prescribed amount that has been set out by WorkCover WA. To be eligible to claim that, a police officer has to have left the police force on or after 1 July 2007. I believe it is not available to serving officers. More recently, the WA medically retired police redress scheme was introduced. I am told that scheme offers will shortly be made to those officers who are eligible, and that \$16.1 million is available for that purpose. Offers will be allocated and distributed to those medically retired officers who qualify. I think it is fair to say that the very existence and the very need for such a scheme highlights the problem.

I have in fairly recent times received some correspondence from the Western Australian Police Union regarding the issue of the need for a compensation scheme for police officers with an injury and/or medical condition. I note that WA is the only state without a scheme to cover police officers. We all know that the government is continuing its review of the Workers' Compensation and Injury Management Act 1981. It seems to me that this is precisely the opportunity for the government to include police officers. It is widely acknowledged that the processes associated with the medical retirement of police officers have been poor and that these, coupled with the absence of any adequate compensation scheme for serving officers, only serve to effectively penalise those officers who are injured during service or medically retired. I think our police officers deserve better than that.

I conclude by saying that I support the passage of the bill. I have to say that in light of the government's track record with error-riddled legislation and its desire to have this bill passed in the month of August, as articulated by the minister in the other place in June, I have proposed and given notice of a statutory review clause, and I tend

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to discuss that and other areas I think need some clarification in the event that we get into the Committee of the Whole House.

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [9.35 pm] — in reply: I begin by thanking all members who have made a contribution to this very important debate on the Police Amendment (Medical Retirement) Bill 2019: Hon Rick Mazza, Hon Martin Aldridge, Hon Michael Mischin, Hon Charles Smith, Hon Alison Xamon and Hon Nick Goiran. I thank them all for their support of this legislation and I appreciate the comments they have made and the questions they have asked. I intend to answer them in my reply to the second reading debate, noting, of course, that Hon Nick Goiran and others have indicated their intention to go into the Committee of the Whole House, whether it is this evening or tomorrow.

In Hon Rick Mazza's earlier contribution he acknowledged, as did others, the work of the Medically Retired Western Australia Police Officers Association and the WA Police Union—their contributions and their dialogue with government on the journey to getting to where we are tonight. It has been a very important dialogue and I thank them for their contributions. I also appreciate his support for the bill and his support for the women and men who serve in the Western Australia Police Force to keep us safe in our community.

Hon Martin Aldridge pointed out that both sides of politics promised action on this bill before the election. He asked a question about the use of the word “may” in proposed section 33ZC(2) relating to the power to compel an officer to attend for a medical board. The word “may” in this context permits the Commissioner of Police to exercise discretion in requiring an officer to be assessed by a medical board. It is not mandatory for an officer to submit to medical examination. In practice, when medical evidence is already enough, there may be no need to require medical examination. I am advised that this language replicates existing regulation 1402 of the Police Force Regulations 1979. I refer to the use of the word “may” in proposed sections 33ZD(2)(a) and (b). I am advised that proposed section 33ZD(2) gives the Commissioner of Police discretion to notify a member of his opinion that they are to be medically retired. Proposed subsection (2) follows proposed subsection (1). It does not always follow that the Commissioner of Police will proceed with medical retirement. In some circumstances, after reading the report of the medical board, medical retirement will not proceed. I am told that the language adopted replicates existing notice requirements in section 33L(1) of the Police Act 1892 for loss of confidence removal action.

I thank Hon Michael Mischin for his contribution and how he set up what is in the bill.

Sorry, I have one other thing for Hon Martin Aldridge. He had a question about whether the Commissioner of Police was obliged to provide members with a copy of medical examination reports. The answer is yes; proposed section 33ZE(5) requires the Commissioner of Police to give the affected officer access to inspect documents or materials that were relevant to the Commissioner of Police's decision to retire the officer. Only documents subject to privilege may be excluded from those available to members for inspection, so that may be legal advice, for example, but certainly any medical records or advice would be provided. Access to documents must be given within seven days of the decision of a notice given to the officer of medical retirement.

I thank Hon Charles Smith for his contribution and his suggestion that there should be a new police policy to release frontline staff to see a psychologist during the year. I am not in a position to make any commitment on that tonight, other than to say that I will bring the member's comments and suggestions to the attention of the Minister for Police.

I thank Hon Alison Xamon for her contribution. She also acknowledges the mental toll on serving officers simply doing their job. I think we all agree in this place that the women and men in Western Australia serving in our police force do a fantastic job. She asked a question about how long the drafting of regulations might take. I am advised that the regulations to be drafted are not particularly complex, but will repeal unnecessary regulations and address procedure and notice provisions or requirements. It may take a short period, although hopefully not as long as two months, but it will depend on the assessment of the complexity of the drafting exercise. She asked for an update on the redress process. The government is working on delivering on its commitment to provide former officers who were medically retired with a police redress scheme and to introduce amendments to the Police Act to reform the legislative framework under which police officers are medically retired to ensure that our ill or injured officers can be retired with dignity. The work continues and, as the member has highlighted, it is a priority of both the Minister for Police and the Commissioner of Police, Chris Dawson. They are working on the scheme, and the intention is to achieve that in this term of government.

I need to address two other things. Hon Alison Xamon asked about work on the Commissioner of Police's undertaking to change police culture, so that officers' mental health needs are better recognised and addressed at work. In order to ensure that the mental health and wellbeing of officers is supported and given the highest priority, the Commissioner of Police is leading the way in addressing the challenge of creating positive change in the culture of the police force. The WA Police Force seeks to encourage officers to recognise the importance of mental health

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services, and the need for officers to look after themselves and their colleagues in mental health and wellbeing. The commissioner has overseen the recent restructure of the health, welfare and safety division, which is now headed by a divisional superintendent. There has been an increase in the number of senior uniformed police officers, at superintendent, inspector and senior sergeant rank, providing support to this division. The new health, welfare and safety division coordinates and provides a number of services and programs in support of psychological wellbeing, such as confidential access to an in-house psychology unit, providing treatment and referral, wellbeing reviews and psychological testing and screening; and a dedicated welfare unit to provide support for officers and their immediate family members for work-related and personal issues. The unit also provides welfare checks; chaplaincy services; a peer support program and general support to officers subjected to potentially stressful processes; critical incident management, including the coordinated divisional response to critical incidents to involve the attendance of the welfare team, chaplains and/or the psychology unit, when required; the monitoring and ongoing support of officers attending critical incidents; and escalation and referral after multiple critical incidents. The division also coordinates fitness for duty assessments; management of work-related and non-work-related medical claims, including travel and accommodation for regional and remote offices when required; corporate health initiatives and education through the Fit For Life branding; and general education and information, including the mid-2018 release of the Equipped mobile app, supported by the WA Police Union, and tailored to first responder workforce needs. Further improvements and enhancements are planned through the WA Police Force wellbeing strategy, which I understand will positively influence agency culture towards a more holistic approach to wellbeing. It can be seen that this commissioner has had a focus on this issue.

Hon Martin Aldridge also asked a question about the Criminal Injuries Compensation Act. I think the question was around how compensation ordered to be paid to a member who is medically retired under the Police Amendment (Medical Retirement) Bill 2019 relates to any compensation paid to the member under the Criminal Injuries Compensation Act 2003. The bill does not affect the operation of the existing criminal injuries compensation scheme under the Criminal Injuries Compensation Act 2003, or affect a member's right to apply for criminal injuries compensation. As is currently the case, an award of criminal injuries compensation may be affected by any compensation required to be paid or likely to be paid by the Western Australia Police Force as a result of a successful appeal to the Western Australian Industrial Relations Commission.

Consistent with current provisions, the bill provides that if the Commissioner of Police medically retires a member, under proposed section 33ZM(1) they can appeal the decision to the WAIRC on the grounds that it was harsh, oppressive or unfair. If the appeal succeeds, the WAIRC may make an order requiring the Commissioner of Police to pay compensation for loss or injury caused by retirement only if it is impracticable to reinstate the member. Hopefully that answers the member's question, and that concludes my remarks.

Question put and passed.

Bill read a second time.