

POLICE AMENDMENT (MEDICAL RETIREMENT) BILL 2019

Committee

The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: Can the minister inform us what the criteria for medical retirement will be?

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

Hon NICK GOIRAN: Can this criteria of “medically fit for the foreseeable future” be found in one of the clauses in the bill?

Hon STEPHEN DAWSON: No. I am advised it is determined by the medical board.

Hon NICK GOIRAN: The minister mentioned the medical board. When I cast my eye ahead to clause 6, under proposed part IIC, “Medical retirement”, there is mention of a medical board. Is that the medical board the minister is referring to?

Hon STEPHEN DAWSON: Yes, it is. If I can add that the appointment of that board is done by the director general of Health independent of the Commissioner of Police.

Hon NICK GOIRAN: Where do we find that information in the bill?

Hon STEPHEN DAWSON: I am advised that it is under the Health Act, honourable member.

Hon NICK GOIRAN: Can the minister have a close look at page 5 of the bill, in particular proposed section 33ZC. Proposed section 33ZC does not currently exist in Western Australia; it will be inserted as a new section in Western Australian law. We can see that proposed section 33ZC(2) states —

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

“Medical board” is not defined under “Terms used”. We can see on the previous page, page 4, that under proposed section 33ZB, there is no definition of “medical board”; nor is the term capitalised. How does one find out whether the non-capitalised “medical board” that is referred to in proposed section 33ZC is referred to in the Health Act?

Hon STEPHEN DAWSON: I am advised that it is not just established by this legislation or the provisions in this legislation, but that it is a board established by the Health Act and is a board that is currently in place.

Hon NICK GOIRAN: That is not acceptable.

Hon Stephen Dawson: That’s the answer, however.

Hon NICK GOIRAN: I know that is the answer, but it is not an acceptable answer. As a matter of construction of law, that is not right. I draw the minister’s attention to page 5 of the bill and proposed section 33ZC(2), which states, and I reiterate —

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

At face value, without any reference to any other statute in Western Australia, that clearly empowers the Commissioner of Police to direct a member to submit to an examination by a medical board consisting of three medical practitioners. If it is the intention of the government for that medical board to be one and the same as some other medical board, it is incumbent upon the government to make reference to that in this legislation. The advice the minister gave us earlier was that that is not found in this bill, and I think that is a problem, not least because—I remind the minister—my original question was: what are the criteria for medical retirement? The explanation the minister provided to us was that it is medical retirement as currently interpreted by the medical board that exists under the Health Act. I seek the minister’s confirmation that the government has no reservations or concerns whatsoever about the drafting of proposed section 33ZC in these circumstances, taken as a whole, with regard to all of part IIC, and that it has obtained legal advice that confirms that there is no need for part IIC to refer to any other statute in Western Australia in order for this medical board to be one and the same medical board as the one the minister referred to. If that is the case, and the government has received legal advice on that, I ask the minister to provide the date on which that advice was obtained.

Hon STEPHEN DAWSON: I can say, honourable member, that this provision substantially replicates regulation 1402 of the Police Force Regulations 1979. Regulation 1402 is titled “Examination by medical board”. Regulation 1402(2) states —

The medical board referred to in subregulation (1) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of CEO (Health).

There is no legal advice, to my knowledge, but certainly under part IIB of the act, the practice has been established and has been in existence since August 2003.

Hon NICK GOIRAN: Thanks, minister. I think we are making progress here. The regulation referred to by the minister is regulation 1402 of the Police Force Regulations 1979 —

Hon Stephen Dawson: By way of interjection, yes it is.

Hon NICK GOIRAN: Would the minister have a copy of that regulation at his disposal, and could he make it available to members?

Hon STEPHEN DAWSON: I do have one at my disposal. I can make one available; I believe there is probably an adviser here who can provide a copy to the honourable member without me needing to stop proceedings to give mine over to be photocopied.

The DEPUTY CHAIR (Hon Martin Aldridge): Minister, just to confirm: you are providing that document to Hon Nick Goiran, you are not tabling that document?

Hon Stephen Dawson: I'm not tabling it unless there's a need to table it. At this stage I'm just providing it to Hon Nick Goiran.

Hon NICK GOIRAN: I might come back to this issue, but at this stage I flag that, without having specifically considered what the minister has just referred to, I still suspect there needs to be a link between the two, but I will hold onto that and we can come back to that issue later.

It appears from what the minister has just said that this medical board has force and effect by virtue of the Police Force Regulations 1979, which are currently in effect. If that is the case—I will have a look at that in due course—that would be the medical board that the police commissioner would refer the officer to. I think that would make sense. I just wanted to be satisfied that there is the necessary link and that we are not now creating some other medical board. Be that as it may, can I ask another question of the minister? We discussed the criteria for medical retirement, and the minister indicated that that was whether they were medically fit for the foreseeable future. Is it the board that will make the decision as to whether the person meets that criteria? Who makes the decision?

Hon STEPHEN DAWSON: I am advised that the board informs the commissioner's final decision.

Hon NICK GOIRAN: Can the police commissioner make the decision in the absence of the board?

Hon STEPHEN DAWSON: Yes, he can.

Hon NICK GOIRAN: So it is discretionary as to whether the police commissioner utilises the services of the medical board that has been established under the auspices of the Police Force Regulations 1979. I note that regulation 1402, "Examination by medical board", states —

- (1) Where the Commissioner is of the opinion that a member is not fit for further service, the Commissioner may direct the member to submit himself or herself to be examined by a medical board.
- (2) The medical board referred to in subregulation (1) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of CEO (Health).
- (3) A member shall not fail to carry out a direction given pursuant to subregulation (1).
- (4) Subject to the Act, where the medical board referred to in this regulation reports to the Commissioner that the member in question is unfit for further active service the Commissioner shall advise the member of the date the member will cease duty.

Why is it that this provision, regulation 1402, cannot currently be used in these circumstances, making it necessary for us to insert proposed section 33ZC?

Hon STEPHEN DAWSON: The intention is to bring it into the legislation rather than rely on regulations.

Hon NICK GOIRAN: Therefore, we do not actually need this bill. Is that what we are saying?

Hon STEPHEN DAWSON: This is the decision: obviously, if it were left in the regulations, this bill could be passed and the regulations could be changed subsequent to the legislation being passed. The decision has been made to put this provision into the bill so that we know what we are dealing with moving forward.

Hon NICK GOIRAN: Is the bill doing other things? Is this bill necessary for reasons other than simply uplifting the "examination by a medical board" provisions from the regulations and putting them into the act?

Hon STEPHEN DAWSON: Member, can you ask that again?

Hon NICK GOIRAN: There must be a purpose behind this bill and a reason that it is necessary for the chamber to pass it. Are there reasons other than simply to uplift regulation 1402 and put it into the act? That is one of the things that this bill does, but is there any other reason that we need this bill?

Hon STEPHEN DAWSON: There is stigma attached to the current legislation. It does not acknowledge the medical retirement of police officers. Many officers over the years have expressed great concern that they were being lumped in with another category of officers who might have undertaken certain actions. After consulting with the medically retired officers and the WA Police Union, we have separated medical retirement from section 8 and part IIB of the Police Act. Many of the sections in part IIB of the act have been replicated. Proposed Part IIC of the bill is solely focused on medical retirements, so those officers can be cleared and will not have a stigma attached to them in their departure from the force.

Hon NICK GOIRAN: Is the government's intention to repeal regulation 1402 of the Police Force Regulations 1979 with the inclusion of proposed section 33ZC in the event that this bill passes?

Hon STEPHEN DAWSON: It is not the government's intention to repeal it in its entirety. Sections of it may become obsolete as a result of the passage of the bill. Once the bill passes, the department will look at those regulations and change them as needed.

Hon NICK GOIRAN: I realise that the regulations consist of a number of regulations, but, looking at regulation 1402—forget about all the other ones—I am curious to know whether it is intended that it be repealed or it will be retained after the passage of this bill.

Hon STEPHEN DAWSON: Due process will be followed upon the passage of this bill. At this stage, nothing has been landed on in relation to amending these regulations. Due consideration will be given following the passage of the bill, and there is a potential for changes to be made.

Hon NICK GOIRAN: Once upon a time when regulation 1402 was drafted and approved for the Police Force Regulations 1979, someone decided that it would be extremely important that subregulation (2) be included. It states —

The medical board referred to in subregulation (1) shall consist of 3 legally qualified medical practitioners nominated by the person who holds or acts in the office of CEO (Health).

Why is that very important provision in subregulation 1402(2) not replicated in proposed section 33ZC?

Hon STEPHEN DAWSON: I am advised that if it is in the regulations, there is a flexibility to change that; whereas if it is in the act, there would not be that flexibility to change the CEO of health.

Hon NICK GOIRAN: Can I ask the minister to look at proposed section 33ZC(7) on page 5 of the bill. It states —

Regulations under section 138A may (without limitation) make provision about medical boards ...

It goes on. Is regulation 1402 of the Police Force Regulations 1979, which we have been discussing, a regulation that has been made under section 138A of the Police Act?

Hon STEPHEN DAWSON: I am advised the answer is yes. To my knowledge, that is correct.

Hon NICK GOIRAN: Then is the minister's advice to the chamber that the medical board referred to in proposed section 33ZC is the same medical board that exists by virtue of regulation 1402 of the Police Force Regulations 1979, which, at this stage, is not intended to be repealed; therefore, that medical board will continue to be one and the same?

Hon STEPHEN DAWSON: The intention is that yes, it will be one and the same medical board. But as I have previously indicated, following the passage of the bill, there may well be changes to that provision.

Hon NICK GOIRAN: I understand that at this stage no decision to make any changes has been made. Therefore, for the purposes of the chamber and the passage of the bill, we will continue to understand that it is intended to be one and the same, unless the government advises us otherwise.

Hon Stephen Dawson: There is no intention to change the status quo.

Hon NICK GOIRAN: Does the medical board that is already in existence and will be the medical board that makes the recommendations to the Commissioner of Police, should the police commissioner choose to enliven its service, have a definition or criteria for "medical retirement" documented somewhere?

Hon STEPHEN DAWSON: No. Its sole purpose is to examine the medical fitness of the individual and give advice based on its decision or assessment.

Hon NICK GOIRAN: If this current medical board's criteria for "medical retirement" and that definition the minister gave us earlier are not documented anywhere, how can we be certain that a person is medically fit for the foreseeable future? Where does that information come from?

Hon STEPHEN DAWSON: While I get some further advice, I draw the member's attention to proposed section 33ZC(7), which 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 —

- (a) the appointment of medical practitioners, or of other persons in addition to medical practitioners, to them (including how, when or by whom appointments are to be made);
- (b) their governance and procedures;
- (c) their examinations of members;
- (d) their reports to the Police Commissioner;
- (e) the payment of their costs or costs otherwise associated with them (including remuneration and expenses of persons appointed to them).

I am told that the qualified medical advice given to the medical board needs to be independent and the Commissioner of Police has the sole power to make decisions to medically retire.

Hon NICK GOIRAN: At the outset, my first question was: what is the criteria for medical retirement? I was informed that it is whether the person is medically fit for the foreseeable future. That explanation must have come from somewhere. I then spent some time asking where it came from and then went on to the medical board and we got somewhat sidetracked about the medical board and whether it is a new board or the existing one, the regulations and so forth. Where we have landed as a result of all that is that it is now clear that the government's intention is that the commissioner, at his discretion, send an officer to the medical board. I understood from the earlier advice that the existing medical board already makes decisions in its recommendation about whether somebody is to be medically retired. There must be some information, some document, some guideline or some basis upon which the answer to the original question was whether the person is medically fit for the foreseeable future. I am trying to identify the source of that information.

Hon STEPHEN DAWSON: Proposed section 33ZB lists the terms used and there is a definition of "medically unfit", which says —

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;

The board's work is to determine the fitness level of the officer and then, obviously, to make recommendations to the commissioner for a decision to be made.

Hon RICK MAZZA: I have just a couple of general questions about this. Proposed section 33ZC(1) refers to the commissioner reasonably suspecting that a member is medically unfit. What are the procedures within the Commissioner of Police's scope to identify, under the defined terms, that a member is medically unfit? What flags the commissioner to suspect that somebody is medically unfit?

Hon STEPHEN DAWSON: The commissioner may reasonably suspect on the basis of the advice of internal police doctors, for example. It would depend on the individual concerned. Certainly, as I mentioned in my response yesterday, probably in answer to Hon Alison Xamon's question, the new health and welfare division of the department has an ongoing role in the support and counselling of officers. The fitness of an officer may well become apparent based on that. 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. The dedicated welfare unit provides support for officers and their immediate family members for work-related or personal issues. The unit also provides welfare checks, chaplaincy services, a peer support program and general support to officers subject to potentially stressful processes. There are a number of ways that it may become apparent to the commissioner that somebody is mentally unwell or should be medically retired, including medical reports, behavioural matters escalating to superiors and/or self-reporting by officers.

Hon RICK MAZZA: I take it from that that there are fairly regular reviews of officers.

Hon STEPHEN DAWSON: No, not formally, but obviously officers interact with their superiors on a daily basis or frequently. I am advised that the health and safety unit also conducts follow-ups based on advice from superiors or other officers in the agency or in response to incidents as they take place.

Hon RICK MAZZA: So that I get this clear, obviously we have concerns about members who become medically unfit. We have had a couple of tragic circumstances in the past four or five years whereby officers have gone under the radar, if you like, and people have not realised the level of their injury. To be quite frank, it seems to me that it is a little bit of hit and miss. I am concerned that there is not some more structured way of identifying officers who may come to the police commissioner's attention who might need assistance and go through the process. The idea of self-reporting is a good thing. Another question I had was: what options are there for members to put up their hand, if you like, in certain circumstances? I would be interested to know whether there is a more formal structure. It does not sound as though there is currently a formal structure whereby people can be identified as having problems.

Hon STEPHEN DAWSON: Perhaps I can answer it in this way: Commissioner Dawson has been working extremely hard on changing the culture of the organisation. He established this new health, welfare and safety division so that officers' mental health needs are better recognised and addressed at work. This includes training, awareness programs, peer support and extra resources. To ensure that the mental health and wellbeing of officers is supported and given the highest priority, the commissioner has this focus on creating positive change in the culture of the WA Police Force. The WA Police Force seeks to encourage officers to recognise the importance of mental health services and the need for officers to look after themselves and their colleagues in respect of their mental health and wellbeing. This new division is focused on that. It is an outward-looking division to help officers and give them confidence. In the past, although we did not have a medical retirement provision, some officers potentially kept under the radar.

If this bill passes through Parliament, this new division will give officers the confidence to come forward. It will probably give confidence to other officers or workmates to have the conversation and suggest that if officers are struggling in their job through either fitness issues or mental illness, they take advantage of the new provisions in the act. Further improvements and enhancements are planned through the Western Australia Police Force's wellbeing strategy that will positively influence agency culture through a more holistic approach to wellbeing. The commissioner has been driving this new *modus operandi* or new way of operating for the police force in Western Australia. That new unit together with the passing of this bill before us will allow processes to fall into place so that others can help people to access medical retirement if need be.

Hon COLIN TINCKNELL: The minister partly answered some of my questions. This process still seems a little lengthy and complicated. This could lead to additional stress for officers, so I have some concerns there. Once the officers know that they have been medically retired, they cannot access workers compensation. How do we work through those stages? The minister partly answered that question in his last answer to Hon Rick Mazza. Can the minister give me some further information on that?

Hon STEPHEN DAWSON: Firstly, in relation to the workers compensation issue, we are committed to fulfilling our election commitment to provide compensation to police officers who need to be medically retired due to a work-related illness or injury. The minister and Commissioner Dawson are working on a scheme to provide meaningful compensation and support for these officers. The 2019–20 budget included an allocation of \$30 million over the forward estimates to go towards the implementation of the scheme. We have already delivered on a commitment to provide medically retired officers 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 so that ill or injured officers can be medically retired with dignity. It is the minister's intention to address the issue of compensation in this term of government. It is being actively considered at the moment. A number of commitments were made by the minister and she is ticking them off one by one. The compensation issue is next on the list. It is being considered at the moment. The money is there for it but the process and the procedures around it are being landed on.

Hon COLIN TINCKNELL: Would the minister still concede that the process is fairly lengthy and slightly complicated, or has that been streamlined? I am mainly concerned about the stress levels of the officers.

Hon STEPHEN DAWSON: This is a process that takes time to work through. A number of steps are in place that need to be followed. During the process, officers are able to access any needed services through the employees assistance program or counselling, for example, that the department provides through the health, welfare and safety division. Officers can also access internal psychology services and up to 168 days per annum of sick leave, which can be extended. That is all in place and can be accessed at the moment. The medical retirement process under this bill is about streamlining the process and making it easier for officers to access medical retirement. It also moves it away from existing part IIB of the Police Act that has a great deal of stigma attached to it. Many of the officers previously dismissed under that provision were dismissed for a variety of reasons other than medical retirement. The government, the WA Police Union and medically retired officers recognise that we need to move away from the existing framework. We need to acknowledge that officers are medically unfit for work and that a process is in place whereby they can access medical retirement as quickly and easily as possible while also providing the services that those officers will need to access to move them along their journey. The final point is that the process must also include procedural fairness.

Hon MARTIN ALDRIDGE: During the minister's reply to the second reading yesterday, he responded to a couple of questions that I raised about the use of the word "may" in a couple of proposed sections. He confirmed on both occasions that it is a discretionary rather than compulsory requirement. One of those was proposed section 33ZC(2) that states —

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

The minister anticipated in his reply that because this is discretionary, the circumstance could arise whereby the commissioner will not seek the advice of the medical board because other medical evidence is available to the commissioner. Can the minister explain to me what medical evidence the commissioner would rely upon if he does not direct a member to submit to an examination by a medical board?

Hon STEPHEN DAWSON: It may already be clear that the officer in question is medically unwell, whether that is through their own medical reports or the police medical reports. In that case, it would not be fair to get them to jump through an extra hoop and send them to the medical board when it is already abundantly clear that they are medically unwell. It could potentially put additional stress on the officer in question.

Hon MARTIN ALDRIDGE: Clearly I am anticipating two pathways here. One in which the Commissioner of Police is satisfied that he does not have to submit an officer to an examination by a medical board. This is something that he needs to consider and decide upon. In the other circumstance, he submits a member of the police force to an examination by a medical board. Proposed section 33ZE is about the power to retire a member on medical grounds. I am trying to work out the flow and interaction between these proposed sections. Proposed section 33ZE(1) states —

After the period referred to in section 33ZD(4) has ended, the Police Commissioner must —

- (a) decide whether the member should be retired on medical grounds; and
- (b) give the member written notice of the decision.

Proposed section 33ZD(1) states —

This section applies if —

- (a) the Police Commissioner receives a report from a medical board under section 33ZC(6); and
- (b) having taken into account the report, the Police Commissioner is of the opinion that the member is medically unfit.

That suggests to me that proposed section 33ZD(4) does not apply unless the police commissioner receives a report from the medical board, therefore giving him a power under proposed section 33ZE. If the commissioner has a discretionary power under which he does not need to subject a member to examination by the medical board, how does proposed section 33ZD(4) and, indeed, proposed section 33ZE come into effect?

Hon STEPHEN DAWSON: If the commissioner suspects medical unfitness and then gives notice of the suspicion, he may require them to be examined but he does not have to. Proposed section 33ZD applies only after the commissioner has read the medical report. The power to retire arises under proposed section 33ZE. Under proposed section 33ZE, the commissioner must give notice of the decision that he makes.

I want to make the point that none of these are new provisions; they actually mirror existing sections of the act. We have simply taken them across into this new —

Hon Martin Aldridge: It doesn't mean they are right, though.

Hon STEPHEN DAWSON: I just wanted to make the point that we have not commenced a whole new process. We are not starting new processes; we are simply mirroring existing provisions. Another point is that this is the process that the union and, indeed, the medically retired officers want, because it does actually mirror the existing process.

Hon MARTIN ALDRIDGE: I am trying to understand this. Proposed section 33ZD(3) appears to provide an opportunity for a member to make a submission to the police commissioner, and proposed subsection (4) limits that time period to 28 days. Therefore, the commissioner cannot make a decision under proposed section 33ZE until that period of time has elapsed. The problem is that, on my reading of it, proposed section 33ZD(1) applies only when the police commissioner has received a report from the medical board under proposed section 33ZC(6). My question is: if the commissioner does not request a report of the medical board and makes his decision based on some other information, does proposed section 33ZD apply at all?

Hon STEPHEN DAWSON: I am advised that, in practice, we always seek a report from the medical board, but the member is not always required to be examined.

The CHAIR: Just before I return to the question that clause 1 do stand as printed, members might like to consider whether some of these questions are perhaps in such detail and so specific that they could be reserved for the relevant clause in due course. We return to the question that clause 1 do stand as printed.

Hon NICK GOIRAN: I return to where we left off on the issue of the criteria for medical retirement. In terms of how that is defined, the minister referred me to proposed section 33ZB and the definition of “medically unfit”. The definition of “medically unfit” never uses the phrase “for the foreseeable future”, yet the minister earlier

indicated that that was the criteria or definition used by the medical board. Where does the term “for the foreseeable future” come from?

The CHAIR: Minister, I will ask you if you want to respond to that question, but I again remind members that this is the short title debate, which provides us with an opportunity to range over clauses of the bill to foreshadow amendments and indicate, consistent with the policy of the bill, how its form or content might be improved. Clauses will be coming up for debate later, and it is perhaps more appropriate to deal with items of definition, for example, in detail at that point. I just remind members that that might be one way in which we could facilitate this part of the government’s legislative program.

Hon STEPHEN DAWSON: Thank you, Mr Chair; I appreciate your guidance. A number of these issues are interrelated. For the time being, I am happy to answer these questions at clause 1 because of the interrelated nature of them. However, I will at some stage potentially seek your guidance and assistance should I believe that we are getting bogged down and there is a more appropriate place to deal with the questions that are being asked.

In relation to the question by Hon Nick Goiran, the definition in the act assists the commissioner to make his determination as to fitness. The medical board must assess the individual’s fitness to inform the Commissioner of Police as to how to make a determination of unfitness.

Hon NICK GOIRAN: When they make this determination of unfitness, do they need to determine whether the person is medically unfit for the foreseeable future?

Hon STEPHEN DAWSON: It is necessary to determine whether the officer can be reinstated. In certain circumstances it will be very obvious that the officer is not able to be reinstated. They will be medically unfit for the foreseeable future and, therefore, will likely be made medically unfit.

Hon NICK GOIRAN: I am very keen to move on from at this point. I really want to know whether the medical board that will examine this officer needs to make a determination about whether that officer is medically fit for the foreseeable future. The reason I keep harping on about the phrase “for the foreseeable future” is that it was introduced by the minister earlier as a new concept in response to my very first question. I had not previously heard or seen in the bill or the explanatory memorandum anything like the concept of “for the foreseeable future”. If it is just some small “I” liberal advice that was provided to the minister at some point in time today, and because we need to move on, that is fine; the minister can just clarify that for the house. But if the term “for the foreseeable future” is something that is consciously considered by the medical board as a term or a criterion that must be determined by it before it will be prepared to send a report to the Commissioner of Police, I would like to know that, and I would like to know where that information came from.

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Environment).