

Hon Graham Giffard;; Hon Derrick Tomlinson;; Hon Graham Giffard; Hon Derrick Tomlinson; Hon Peter Foss;
Chairman; Hon Barbara Scott; Hon Dr Chrissy Sharp; Hon Barbara Scott;; Hon Alan Cadby;; The Chairman;;
Deputy Chairman; Hon Alan Cadby

WESTERN AUSTRALIAN COLLEGE OF TEACHING BILL 2003

Committee

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

Clause 71: Representation at inquiry -

Debate was interrupted after the clause had been amended.

Hon GRAHAM GIFFARD: I am advised that, as the honourable member indicated, a person who is not a certified practitioner is the type of person referred to. I do not recall the relevant provisions of the Bill, but the answer is those people who are enabled by those provisions to represent a party. The specific question was about disqualified persons. The answer is that this would not enable such a person to represent a party. I am advised that because the Bill talks about disqualified persons, a specific reference would probably need to be included to enable such a person to overcome that prohibition.

Hon Peter Foss: We don't want them to.

Hon GRAHAM GIFFARD: We do not want them to. I am not proposing an amendment. I am advised that this clause would not allow such a person to represent a party.

Clause, as amended, put and passed.

Clauses 72 to 77 put and passed.

Clause 78: Suspension -

Hon DERRICK TOMLINSON: To the best of my knowledge, the only place that suspension is referred to, other than under this clause, is under the disciplinary action outlined in clause 64(b), which states -

the suspension of the person's membership of the College for a period not exceeding 2 years;

If I am wrong, the parliamentary secretary might point out where else in this Bill suspension is referred to. Suspension is one of four actions that may be taken against a registered teacher for unprofessional conduct, which is defined in clause 63 as including a person who has been convicted of an offence, has engaged in serious misconduct, has been seriously incompetent, has contravened the Act or has contravened a condition relating to the way in which the teacher teaches, whatever that means. The college decides on the disciplinary action that is taken under clause 64. If the college establishes a committee to hold an inquiry, the committee is required to report its findings to the college. Under clause 73(2), the college must have regard to any findings of a committee. I read that to mean that although the college must take those findings into account when determining whether disciplinary action is warranted, it is not bound by any recommendations of the committee. In other words, it must have regard to them. I assume that means that it is not bound by them. The decision to take the disciplinary action of suspension is made by the college. At clause 78(2), the college is to cancel a suspension if satisfied that a person is no longer affected by the matter that gave rise to the imposition of the suspension. What are the matters that may give rise to a suspension? One such matter is unprofessional conduct, as defined in clause 63. I cannot see that a person is no longer affected by a matter of which the person has been convicted, unless, of course, the suspension was imposed before an appeal, which I think is unlikely. Paragraph (b) of clause 63(1) refers to a person who has engaged in serious misconduct of a nature that renders the person unfit to be a teacher. When this was discussed at an earlier stage in the Committee, the reference was to sexual misconduct. I assume that misconduct involving personal violence would also be an appropriate inclusion. Having made a decision that a person has engaged in serious misconduct, I cannot see how the college could come to the conclusion that that person is no longer affected by that. Paragraph (c) states that a person has been seriously incompetent as a teacher. We have already had a long discussion about what seriously incompetent means. It is not just a little incompetent; it is a big bit of incompetence. If a person is suspended for a big bit of incompetence, how can a suspension then be imposed? Paragraph (d) states that a person has contravened this Act. Contravening the Act is absolute, so how can a person be no longer affected by that? Paragraph (e) states that a person has contravened a condition of the way in which he or she practises teaching.

Of all those provisions, it is only paragraph (c), which refers to a person who has been seriously incompetent, and paragraph (e) to which clause 78(2) might apply; in other words, there is a demonstration of improvement of competence, or a demonstration that the way in which the person practises teaching has been remedied. I cannot see how either of those can be demonstrated if a teacher is suspended for up to two years and cannot perform in a classroom as a suspended registered teacher. Will the parliamentary secretary explain to me how the college can

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cancel a suspension because it is satisfied that the person is no longer affected by the matter that gave rise to that penalty?

Hon GRAHAM GIFFARD: During the conduct of one of its inquiries, the college may decide to suspend a teacher. At the conclusion of that inquiry, so long as the college is satisfied that the person is no longer affected by the circumstances that gave rise to the imposition of the suspension, the college can cancel that suspension. I am advised that that is the intention behind the ability of the college to impose a suspension and to then lift that suspension. On my advice, that is the intention of clause 78(2).

Hon DERRICK TOMLINSON: That would be an eminently acceptable explanation if there were in the Bill the capacity of the college to suspend a teacher pending inquiry. Will the parliamentary secretary tell me where in the Bill is a provision that states that a teacher who is under inquiry or under investigation may be suspended? A teacher may be sacked from a previous school, but it is only when the sacking is for serious incompetence that the college is advised. The college may then inquire into it. There is nothing in the provision, as I read it, to say that the college may suspend the teacher's membership of the college while the inquiry or investigation is going on. Is the college assuming an authority to suspend that it does not otherwise have? I might say that the only provision I can find is clause 64(b), which deals with disciplinary action that follows from a decision after inquiry by either a committee or the college itself.

Hon GRAHAM GIFFARD: The point needs to be made that it is not anticipated that there will be procedural difficulties with the Act. We are talking about unusual circumstances when these provisions may come into force. I will share with members the example that has just been cited to me. In the event of, for example, a teacher refusing to consent to a police clearance, it might be regarded as a contravention of the Act. The college then might take appropriate action under clause 64(b) to suspend the person's registration until such time that he has satisfied the college that the police clearance has been approved.

Hon Derrick Tomlinson: Other than on application or renewal, when else is a police clearance required?

Hon GRAHAM GIFFARD: That is all; application and renewal.

Hon Derrick Tomlinson: If it is on application and renewal, there is no such thing as suspension. You cannot suspend that which has not been granted. A renewal can simply be refused.

Hon GRAHAM GIFFARD: I am advised that clause 78(2) allows the college to deal with the question of the suspension in the event that it might proceed further to the cancellation of registration. Under the circumstances, when a person may be convicted of an offence, the college might take the view that the nature of the offence renders the person unfit to be a teacher. The college may not be sure whether the provisions of clause 63(1)(a) are clearly established and so established that it needs to take action under clause 64(d). It can take action under clause 64(b). A person might have been convicted of an offence but has lodged an appeal. The college might take the view that, in the interim, it will suspend the teacher until the matter is resolved. Clause 78(2) is intended to allow the college to act prudently and also give it the breathing space to more fully investigate or properly satisfy itself whether a teacher's registration needs to be cancelled.

Hon DERRICK TOMLINSON: I challenge the authority of the college to do that. Certainly, a person can be convicted of an offence the nature of which renders the person unfit to be a teacher. Schedule 2 refers to sections 186, 191, 192, 203, 204 and 320 to 330 of the Criminal Code, all of which relate to sexual offences, particularly chapter XXXI, which deals with sexual offences against children.

Hon Graham Giffard: I think there are other provisions -

Hon DERRICK TOMLINSON: Yes, I am aware; they are of a serious nature. In those circumstances, I would deem it wise for an employer to suspend the person. The Department of Education and Training is an employer. If a teacher were charged with one of those offences, it would be well advised and well justified in suspending the teacher. Suspension could occur then or after conviction. A conviction must also take account of the possibility of an appeal. After an appeal against a conviction, dismissal is warranted. That relates to the employment of a teacher. This Bill deals with the registration of teachers; that is, that the person is approved to teach anywhere. In spite of the example given, there is no provision in the Bill for the college to exercise that authority. It may suspend a teacher's registration for up to two years after an inquiry and as a penalty following from satisfying the inquiry that there has been an offence. It is only as a penalty, not as an interim measure while an inquiry is under way. I do not think we should confuse suspension by an employer in that case with suspension by the college. There is no provision, unless it can be demonstrated otherwise, for suspension from the college other than as a disciplinary action under clause 64(b).

Hon PETER FOSS: I do not think it is appropriate for the college to have a hearing - nor could it do so - and impose an interim penalty before waiting for the results of something else and then impose a later penalty. Once

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a person has been convicted it does not matter whether he appeals because he has been convicted. At that stage, a hearing would be held and a penalty imposed. If there were an appeal and the conviction was set aside, the basis of it would also be set aside under appeal. I do not think there is any provision for the college to have a second bite at the cherry after an appeal has confirmed what has happened in the first instance. It would be only if there were some other finding that it would be able to do so. I do not think it can apply interim penalties or suspension; it can have only a finding and impose what is appropriate.

Hon DERRICK TOMLINSON: I crave the indulgence of the committee. I am of a mind to delete the lines. Should I move to delete them or simply vote against them as a deletion?

The CHAIRMAN: If the member proposes to delete all the lines comprising clause 78, he should vote against the clause rather than put a separate question that the lines be deleted.

Hon Graham Giffard interjected.

The CHAIRMAN: Hon Derrick Tomlinson asked me what the procedure was to remove the lines, and I said that the procedure to remove all of the lines is to vote against the clause.

Hon GRAHAM GIFFARD: He is only proposing to remove clause 78(2).

The CHAIRMAN: I understood it was the whole clause 78. Am I mistaken?

Hon Derrick Tomlinson interjected.

The CHAIRMAN: If Hon Derrick Tomlinson wishes to remove only clause 78(2), the answer is for him to move to delete lines 6, 7 and 8.

Hon DERRICK TOMLINSON: In that case, I move -

Page 47, lines 6 to 8 - To delete the lines.

Hon GRAHAM GIFFARD: I oppose this amendment. I understand the point the member is making, but I am advised that this is intended, as I have previously indicated, to give the college the ability to deal with someone's registration, but to require it to act prudently in the meantime. The member is effectively saying that, if his interpretation of clauses 63 and 64 is correct, clause 78(2) would not be invoked. The member said that he could not imagine a scenario in which circumstances for the revocation of a suspension would arise under clause 63(1) that would enable the college to act under clause 64(b). If the member is convinced of his view of the clause, this clause would not be invoked, according to that interpretation.

Hon DERRICK TOMLINSON: In response to the parliamentary secretary, I can certainly imagine circumstances in which it would be desirable to suspend a person while investigations proceed. I made the point that suspension from employment would not only be justified but absolutely necessary, according to the severity of the matter. I also make the point that, while I can understand and imagine circumstances where suspension from employment is warranted, there is nothing in the Bill before the committee that authorises suspension during an inquiry. Suspension is only authorised as a penalty after the inquiry. Therefore, clause 78(2) is redundant.

The CHAIRMAN: If the committee deletes the lines according to the amendment, I think the member will find that it is also necessary to delete clause 78(3), which is contingent on clause 78(2).

Hon DERRICK TOMLINSON: In the light of what you are saying, Mr Chairman, I do not want to be amending amendments on the run. It is unwise to amend legislation on the run in this way. I seek the permission of the committee to withdraw my amendment, but I strongly recommend that, given the invalidity of the power to suspend that is anticipated in this clause, the clause should be defeated. It is not simply a matter of having a clause that will not be invoked; it is not supported by the law in the Bill itself.

Amendment, by leave, withdrawn.

Clause put and passed.

Clause 79 put and passed.

Clause 80: Review -

Hon BARBARA SCOTT: I move -

Page 49, line 3 - To delete the em rule.

Page 49, lines 4 to 10 - To delete the lines and insert instead -

a decision of the College may apply to the District Court for a review of the decision.

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- (a) If the plaintiff has partial or full success, all costs including plaintiff's legal costs are to be met by the College.

Clause 80, if amended, would then read -

A person who is aggrieved by a decision of the College may apply to the District Court for a review of the decision.

- (a) If the plaintiff has partial or full success, all costs including plaintiff's legal costs are to be met by the College.

We are referring here to a statutory body with very considerable powers. It has the ability to destroy a person's livelihood. Its decisions must be subject to full judicial review. The subclause about costs will ensure that the college is extremely careful and conservative in making decisions. Previously, in the debate on this Bill, I have said that the Chief Justice has difficulty handling the powers that this body will be granted. I have little faith in a board with no judicial experience being up to the task. In addition, if there is to be a review process, should there not be a defined review panel that presumably should be different from the group that heard the complaint in the first place? That is a matter of justice.

Hon CHRISTINE SHARP: I first of all thank the honourable member for teaching me what an em rule is. I did not know that before; I have been puzzling about it. I will ask some questions about the thrust of this amendment. My first question is to the parliamentary secretary. Noting that this review clause gives an appeal right to the District Court, is it the intention of the Government in the longer term to bring this review provision under the auspices of the proposed State Administrative Tribunal? If that body is established, it would appear to be the appropriate body to deal with this type of decision. Secondly, I ask Hon Barbara Scott about the purpose of her amendment. The construction of the amendment would remove the prescription of the different aspects of the Bill that may be reviewed. With regard to the list that is currently in the Bill, is there something additional that the member thinks ought to be reviewed, which is not reviewable? If so, I do not understand why she wants to remove the list of clauses that would be reviewable. I would like the member to explain the purpose of that deletion. I would also like her to explain why she thinks the wording of her amendment that deals with legal costs is better than the standard construction of courts. Courts usually use their discretion with regard to allocating the costs that are appropriate to a particular case. Why does the member think the construction of her amendment is superior to that?

Hon BARBARA SCOTT: I thank the honourable member for her questions. These clauses are fairly specific. A person who was aggrieved by a decision of the college might want to apply to the District Court to appeal the decision. It is my view that the legislation could be too prescriptive at this stage, and that new things might come into being. That is the reasoning behind it. It is my view that the plaintiff's costs should be met by the college. I do not have a more legalistic explanation for it.

Hon GRAHAM GIFFARD: The Government does not support the amendment. The Bill allows applicants for registration upon registration - if the college is of a mind to refuse an application or to grant an application with conditions on it - to be provided with written notice of the college's intention to act in that way. That applicant would then be entitled to show cause why the college should accept the application and not reject it or impose conditions on it. In our view, provisions in the Bill allow applicants sufficient opportunity to plead their case to the college if necessary. The effect of the member's amendment would be to impose the burden of costs of the District Court action on both parties if the plaintiff had only partial success. That success might be only very partial; it might be something quite minor. The amendment would then place the burden of both parties' legal costs on the college. The Government does not accept that. The Government thinks the Bill has adequate provisions for persons to get a good hearing on their application for registration.

With regard to the question Hon Christine Sharp raised about whether in these situations it is intended that the applicant could appeal to the State Administrative Tribunal rather than to the District Court, the Government believes that it would be more appropriate to do that. In the event that the State Administrative Tribunal is established, the Government considers appeals would be more appropriately dealt with by the tribunal.

Hon CHRISTINE SHARP: In view of those discussions, I have decided that the Greens (WA) will not support the amendment.

Amendments put and negated.

Clause put and passed.

Clauses 81 and 82 put and passed.

Postponed clause 2: Commencement -

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The clause was postponed on 6 April after it had been partly considered.

Hon GRAHAM GIFFARD: I move -

Page 2, lines 8 and 9 - To delete the lines.

Members discussed this issue in considerable detail. Hon Derrick Tomlinson raised a number of issues regarding the effect of clauses 30, 31 and 82 applying after 18 months and being fixed at 18 months. In response to those concerns, the Government has taken advice to close that loophole to which the honourable member referred. The intention is to delete the references to the deferred operation of clauses 30, 31 and 82 and to deal later with those provisions in schedule 4 within the transitional provisions, but not in the same way as clause 2 currently deals with them.

The CHAIRMAN: Before I put the amendment moved by the parliamentary secretary, I indicate that if his amendment is carried, in subclause (1) as it is now printed, the number (1) for the subclause and the words “subject to subsection (2),” would become redundant and it would start at “this”. It seems to me that the parliamentary secretary should also move to delete those words. A Clerk’s amendment could be made. The deletion of a subsection would result in a significant change to the legislation. I suggest that the parliamentary secretary also delete the “(1)” and the words “subject to subsection (2),”.

Hon GRAHAM GIFFARD: Am I able to do that in one amendment?

The CHAIRMAN: Yes.

Hon GRAHAM GIFFARD: I move -

Page 2, line 6 - To delete “Subject to subsection (2); and,”

Amendments put and passed.

Postponed clause, as amended, put and passed.

Clauses 83 and 84 put and passed.

Clause 85: Regulations -

Hon BARBARA SCOTT: I move -

Page 54, line 21 - To delete “\$5 000” and insert instead “\$1 000”.

My reason for moving the amendment is the same as I have argued previously: it is an excessive amount of money to be fined for this matter.

Hon GRAHAM GIFFARD: The Government does not support the amendment. As the honourable member mentioned in support of the amendment, it is a familiar argument that members have heard before. The honourable member, true to her convictions on this matter, has moved an amendment that the Government does not support for the same reasons I have indicated in previous debates on similar proposals.

Amendment put and negatived.

Clause put and passed.

Clauses 86 to 89 put and passed.

Postponed clause 12: Meetings and minutes of meetings -

The clause was postponed on 5 May after it had been partly considered.

Hon DERRICK TOMLINSON: There is no need for me to explain this amendment, as it was explained at an earlier stage of the debate. I therefore move -

Page 9, line 8 - To delete the words “the maintenance of professional standards” and insert instead “is in the public interest”.

Hon GRAHAM GIFFARD: When we were previously debating this matter, I indicated to the honourable member my inclination to support an appropriate amendment. I am happy with the amendment moved in the honourable member’s name. The Government will support the amendment.

Amendment put and passed.

Hon ALAN CADBY: Subclause (4) refers to the minutes to be available for inspection at the principal place of business. That would mean the minutes would be available only to metropolitan teachers. I am sure that this College of Teaching will have a web page; therefore, why not post the minutes of the meeting on the web page

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so that they are accessible to all teachers? Then subclause (5) could be deleted so that the teachers who live in the country would not have to pay for a copy of the minutes.

Hon GRAHAM GIFFARD: I am inclined to think that the college's web site would be its address. People could visit that web site. The college would not be precluded from having its web site as its address.

Hon Derrick Tomlinson: Because the web site is its place of employment.

Hon GRAHAM GIFFARD: That is right, or its place of business.

Postponed clause, as amended, put and passed.

Postponed clause 29: Annual report and other reports -

The clause was postponed on 5 May.

Hon DERRICK TOMLINSON: I move -

Page 19, after line 26 - To insert the following new paragraph -

- (g) all advice given by the Minister, in relation to the exercise of powers and performance of functions of the College.

We have discussed this issue at length previously and my argument stands.

Hon GRAHAM GIFFARD: Members are probably unaware that when the amendment was drafted we had already dealt with clause 14, which is probably an alternative to clause 29. Clause 14 is probably a more desirable way of dealing with the issue.

The CHAIRMAN: We are recommitting another clause and it is an option for the parliamentary secretary to recommit clause 14.

Hon DERRICK TOMLINSON: I would be willing to accept that. I seek the leave of the committee to withdraw my amendment.

Amendment, by leave, withdrawn.

Postponed clause put and passed.

Postponed clause 56: Membership may be cancelled where certain registration requirements not complied with -

The clause was postponed on 7 May.

The CHAIRMAN: Clause 56 was postponed during earlier discussion until after consideration of clause 89; however, matters may have been resolved.

Hon DERRICK TOMLINSON: We have discussed so many things that I am trying to recall clause 56. My recollection is that we were asking questions about bogus qualifications.

The CHAIRMAN: I do not know. However, given the time, I do not want to put the question if it is unclear whether members want to raise an issue on clause 56.

Sitting suspended from 6.00 to 7.30 pm

The DEPUTY CHAIRMAN (Hon Simon O'Brien): I welcome the visitors to the President's Gallery. It is a pleasure to have them join us to watch the proceedings of the House.

Hon GRAHAM GIFFARD: The committee has discussed this matter previously and we agreed to come back to it. Members expressed concern that there was no provision to cancel a membership if a qualification that had been submitted to obtain membership had been fraudulently obtained or forged. Hon Peter Foss initially proposed a form of words that I indicated we would be prepared to look at. I have an amendment to clause 56. I move -

Page 37, line 21, delete the full stop and insert “; or”, and the following new paragraph -

- (c) if a qualification of the person that enabled the person to gain membership has been found to be forged or fraudulently obtained.

Hon PETER FOSS: This is a very good amendment for meeting one of the concerns - I think that raised by Hon Derrick Tomlinson - which relates to a qualification “fraudulently obtained”, but it does not meet the other

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concern, which relates to a university that turns out to be of a type that should not be recognised. Clause 35 states -

- (a) holds a qualification in teaching approved by the College for registration;

It could relate to a qualification in teaching where the approval has been withdrawn. The college may later on decide that that sort of qualification should not be approved.

Hon Graham Giffard: Where is that provision?

Hon PETER FOSS: It is originally in clause 35(a). It is a real qualification, but it should not have been recognised. It is a bit difficult because it is qualitative. In some ways it could be said to have been fraudulently obtained, but it has not been fraudulently obtained; it may be disingenuously submitted. The mere fact that the College of Teaching got it wrong is to some extent a problem of the college. It is up to the college to get it right. It should not be sufficient simply to withdraw an approval. The job should be done correctly in the first place.

Hon Alan Cadby: It also applies to those currently employed, not just new employees. That is the other issue.

Hon PETER FOSS: Yes. Hon Alan Cadby has kindly submitted a lot of useful points. The question is what happens if somebody has a qualification that has been accepted, which is not of the type that would be approved. We have the grandfather clause, but what if somebody has a degree that would not be accepted even now if people were to check his qualifications.

Hon Graham Giffard: If he were teaching now?

Hon PETER FOSS: Yes, he is employed on the basis of a qualification that has been accepted and that turns out to be from a dubious university. He would probably continue to be employed under the grandfather clause, but he probably should not be, because if it were found to be the case now, he would be sacked and not be teaching. That is the problem. Two kinds of people are teaching: those who have what would now be regarded as an inadequate qualification - say, a two-year qualification instead of a three or four-year qualification - and people who do not even have a two-year qualification but one which, if the current employers found out about it, would mean that they would not be employed. Let us not deal with that situation but with the current situation of somebody who has a qualification that has been approved and who has been accepted, and it turns out that his qualification is not from a recognised university but one from further down the list. I do not know whether we should worry about it, because it is up to the college to get it right. If it makes a mistake, it is probably its problem and it is stuck with the person for another four to five years.

Hon Graham Giffard: I think that is the answer.

Hon DERRICK TOMLINSON: I commend the Government on its amendment. It does answer the question that I raised. I referred to it as a bogus qualification. Hon Peter Foss has expressed the concern that there are institutions - they are "proper" business institutions - which sell university degrees. I think one is called the University of West California. I hope I am not maligning somebody, but I believe it has that name and it sells degrees. In some respects it is a legitimate business and people are buying legitimate degrees. However, what they are buying are legitimate degrees that do not have any standing in academia. I do not know that we can resolve that problem in this Bill. It could have been resolved some years ago, for example when the House considered a universities registration Bill and rejected it. However, it can be resolved administratively because there is a national process for accrediting or recognising qualifications earned overseas. I would suggest that this is a matter that cannot be satisfactorily resolved in the Bill before us but is something that the College of Teaching will have to bend its mind to as an administrative solution to an identified problem.

Hon GRAHAM GIFFARD: I think Hon Derrick Tomlinson is quite right. As Hon Peter Foss said also, it will be up to the college to show due or proper diligence in dealing with the applications that come before it. It will need to satisfy itself that the qualifications being put to it are satisfactory and adequate. That is the other side of the discussion that we had previously. I believe the solution lies in the college acting properly and diligently. I believe that the amendment deals adequately with the other issue that was raised, and I commend the amendment to the Chamber.

Hon ALAN CADBY: I agree with Hon Derrick Tomlinson. Currently, is there a list of qualifications that the Department of Education and Training accepts or does not accept? Is it published anywhere? When I applied to the Department of Education and Training to be a teacher, it vetted my qualifications and accepted them. If there is a list of qualifications that it accepts, are they available for independent schools to consider as well?

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Hon GRAHAM GIFFARD: I am advised that there is the National Office of Overseas Skills Recognition, to which I believe Hon Derrick Tomlinson alluded, that recognises skills. It is accessible electronically, so people in private schools could access that information.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 67: Inquiry open to public -

The clause was postponed on 7 May after it had been partly considered.

Hon GRAHAM GIFFARD: I move -

Page 42, line 13 - To insert after “affected person” -

, or a person required to appear before the inquiry as a witness

This amendment arose out of a discussion about clause 67(2). Hon Peter Foss wanted to ensure that a complainant to an inquiry could also ask that a matter be closed to the public. On consideration of that, we thought it might be a bit limiting.

Hon Peter Foss: The applicant might not be the original complainant.

Hon GRAHAM GIFFARD: That is right; it might be broader than that. This is certainly a more generous provision, which would cover the complainant and any other persons who have a relevant interest in legitimately asking for the matter to be held in private. I commend the amendment.

Amendment put and passed.

Postponed clause, as amended, put and passed.

New clause 75 -

Hon PETER FOSS: I will not proceed with my new clause, because I invited the parliamentary secretary to come up with better drafting than I had scribbled out. I will not move my new clause; I will yield to the parliamentary secretary moving his new clause.

Hon GRAHAM GIFFARD: I move -

Page 45, after line 28 - To insert the following new clause -

75. Publication of adverse findings

- (1) If the College orders that disciplinary action be taken against a member of the College then the College is to cause to be published, in accordance with the regulations -
 - (a) the name of the person;
 - (b) the nature of the finding;
 - (c) the disciplinary action taken, if any; and
 - (d) a summary of its reasons for its finding.
- (2) The summary referred to in subsection (1)(d) is to include such details of the evidence as the College considers helpful in understanding the nature of the case, but the College may withhold such details as it considers -
 - (a) in the interests of any complainant or witness before the inquiry should be withheld; or
 - (b) would prejudice the interests of any person other than the affected person.
- (3) Despite subsection (1), the College is not required to comply with that subsection if it is of the opinion that the circumstances are of such a minor nature that publication is not warranted.

As Hon Peter Foss has indicated, I am advised that this is more appropriate wording for the Bill. It deals with the publication of adverse findings. I commend the amendment to members.

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Hon PETER FOSS: I support the amendment moved by the parliamentary secretary. The original wording of my amendment came from the provision in the Legal Practice Act. I moved it in 1992. It concerned me that, in the legal profession, people often would be continually before a disciplinary tribunal which showed a degree of leniency. However, in the end, quite a public case was mounted against those people. The concern, especially if there is a provision that proceedings can possibly be held in private, is that the public may never learn that a teacher has had disciplinary action against him or her. I think it is very important that that be open to public scrutiny. The only exception to that is in subclause (3), which provides that the college does not have to publish those details if the circumstances are of such a minor nature that publication is not warranted. However, it is not of a minor nature; it is important that the public know that some sort of adverse finding has been made. It is important that that be made public. It is more important than the proceedings being public. The new clause is very similar in terms to the provision in the Legal Practice Act, and provides that the name, the nature of the findings, the disciplinary action taken and the summary of the reasons be published. There is a power to withhold details so that the name of the complainant or witness is not published. Quite often a child or a parent may be involved and it is not important for their names to be published. What the public needs to know is what has been found against that teacher. That has been happening in the legal profession for some 12 years now. It has been very effective. It is also very salutary for the legal profession. I got the idea originally from the New South Wales provision, because in that State what people had done and the findings made against them were published. It was the most read part of the law society news. It was a very good lesson, because people would read it and say that it was worth knowing that so that they did not repeat it. It is quite useful for professional feedback as well.

New clause put and passed.

Schedule 1: Constitution and proceedings of Board -

Hon GRAHAM GIFFARD: I move -

Page 57, lines 4 to 7 - To delete the lines and insert instead -

- (b) is an insolvent under administration, within the meaning given to that term by the *Corporations Act 2001* of the Commonwealth; or

I am advised that this amendment is intended to cover a person who is an insolvent under administration under the Corporations Act 2001. This is the preferred wording to the provision currently contained in the Bill.

Amendment put and passed.

Hon DERRICK TOMLINSON: The amendment standing in my name was consequential upon an amendment to clause 9, which was defeated. Therefore, I will not proceed with the amendment.

Hon BARBARA SCOTT: I move -

Page 57, line 23 and 24 - To delete "a chairperson and a deputy chairperson from among its members" and insert instead -

- (a) a chairperson from among its members who is a registered teacher and currently teaching;
- (b) a deputy chairperson from among its members.

The reason for this amendment is that the College of Teaching is meant to be a college of teachers for teachers. A large number of board members are not teachers but are from other organisations. This amendment seeks to reflect the spirit of the Bill as I see it, and provides that the chairman is to be elected from the members and is to be a registered teacher who is currently teaching.

Hon GRAHAM GIFFARD: The Government does not support the amendment. We had a similar debate about the appointment of the chairperson and similar issues - not the same issues - were raised about the board or the minister appointing the chair. The point I made then is the point I make now; that is, we think the best construction for the board to operate as best it can is to allow the board to elect its own chairperson and deputy chairperson. We think it is important that, for the best functioning of the board, it have confidence in its chairperson and deputy chairperson. In order to do that, those people will need the popular support of the board. That is why the Bill is structured in the way it is.

Hon DERRICK TOMLINSON: This is really a point of elucidation. The term of office is three years, and a person is eligible for re-election with no limit to the number of terms. The question is: does the Government

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anticipate that the chairperson will be a full-time position? I anticipate that it would be only a part-time position. However, I have observed a tendency for the chairmen of the secondary and primary principals associations, for example, to be relieved of their substantive position and become full-time, even though some might not have envisaged their position to be a full-time position. I do not anticipate that the position of chairperson of this College of Teaching will be full time. However, if a teacher were the chairperson, administrative necessity would dictate that that person be in some way seconded to the position of chairperson and be full time. If that person were chairperson for two terms, at the end of five years - the member has anticipated my remarks - and be seconded from a teaching person, he would be no longer qualified to be a member of the college. Does that mean teachers will be disqualified from being chairpersons for more than a single term?

Hon GRAHAM GIFFARD: The Government does not anticipate that it will be a full-time position. I am advised that, based on the way it is functioning now, it is very much a part-time position.

Hon DERRICK TOMLINSON: I challenge that. I know that the interim Chairman of the Western Australian College of Teaching is a dedicated person and might be overzealous. I do not know whether he regards it as a part-time position. A person who is the chairperson of this College of Teaching is different from a member of the college. Given the very nature of the role, the chairperson will be much more involved in administrivia and will be preoccupied with those sorts of matters. I anticipate, just as in the primary and secondary principals associations, it will be deemed necessary to relieve that person of his substantive status. It might not be anticipated as a full-time job. However, by administrative necessity, the teacher or the administrator will be taken out of the classroom or substantive status of the school and, to all intents and purpose, occupy a full-time position even though, in real terms, it is a part-time position as chairperson of a board. I think that is a very real proposition given the demands of teaching, particularly in the Western Australian government system. Would the member preclude a teacher from becoming chairperson of the college for more than a single term? I take it that the parliamentary secretary's answer is that he does not accept the problem.

Hon GRAHAM GIFFARD: We do not anticipate that this will be as onerous as the member has made out. For that reason we do not agree with the member's proposition.

Hon Derrick Tomlinson: It is something that can be reconsidered when the Act is reviewed.

Hon GRAHAM GIFFARD: Yes. Never say never! If things change, it will most certainly be a matter for review. I am advised that it is functioning as a part-time position. However, I am sure that if the college finds things are not functioning as anticipated, it will raise that matter with the Government and it will be given consideration. Guidance from the college is that it is not anticipated to be a full-time position.

Amendment put and negatived.

Hon BARBARA SCOTT: I move -

Page 57, line 26 - To insert after "re-election" the words "for no more than 2 further terms".

The appointment is for one year. Nobody should hold that position for more than three years to ensure that the board takes on fresh, new ideas. A further two terms would make the appointment a little too long.

Hon GRAHAM GIFFARD: The Government does not agree with the amendment for reasons similar to those for which we did not agree with the previous amendment. If the board believes that it is functioning as well as it can under the guidance of a particular chairperson and there is no good reason not to continue with that person, the board needs to be able to have that person continue for more than one or two years. It will be a matter for the board to determine how it most efficiently functions. We prefer to leave this function to the board; therefore, we oppose the amendment.

Amendment put and negatived.

Schedule 1, as amended, put and passed.

Schedules 2 and 3 put and passed.

Schedule 4: Transitional provisions -

Hon GRAHAM GIFFARD: I move -

Page 66, after clause 7 - To insert the following new clause -

8. Sections 30, 31 and 82 not to apply to current teachers for a period of time

Sections 30, 31 and 82 do not apply in respect of a teacher to whom clause 2 or 3 of this Schedule applies, until -

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- (a) an application made by the teacher under clause 2 or 3 has been granted, or refused, by the College under this Schedule; or
- (b) 18 months after the commencement day,
whichever happens first.

We spoke at some length on clause 2, during which time Hon Derrick Tomlinson identified a gap in the legislation. The intention of these amendments is, essentially, to apply them to the deemed transitional teachers - those presently in the system. That is why reference to them has been taken out of clause 2 and included in schedule 4.

Amendment put and passed.

Schedule 4, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

Recommittal

On motion by Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training), resolved -

That the Bill be recommitted for the further consideration of clause 14.

Committee

The Deputy Chairman of Committees (Hon Simon O'Brien) in the Chair; Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training) in charge of the Bill.

Clause 14: College to give regard to advice of Minister -

Hon GRAHAM GIFFARD: As I have indicated, during the debate on clause 14, Hon Derrick Tomlinson agreed not to proceed with his proposed amendment, because we thought that clause 29 would be the best place for that amendment. However, I have been advised by wiser counsel that this clause is the best and most appropriate place for an amendment of that nature. I have a form of words that will give effect to the amendment that Hon Derrick Tomlinson had previously proposed. I move -

Page 11, after line 5 - To insert -

- (2) The text of any written advice given under subsection (1) is to be included in the annual report of the College under section 29.

The Government has agreed to the proposition put by Hon Derrick Tomlinson. We commend the amendment to the House.

Hon DERRICK TOMLINSON: When the committee was considering clause 14 and the question of reporting the advice of the minister was raised, the parliamentary secretary suggested that the amendment should be included in clause 29, which related to the annual report of the college. He now advises that he has received advice from wiser counsel. I have always listened to the wise advice of the parliamentary secretary, so I defer to not only his wise advice but also the wise advice of the wise adviser.

Amendment put and passed.

Clause, as amended, put and passed.

Bill again reported, with a further amendment.