

WESTERN AUSTRALIAN COLLEGE OF TEACHING BILL 2003

Committee

Resumed from 5 May. The Deputy Chairman of Committees (Hon Barry House) in the Chair; Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training) in charge of the Bill.

Clause 30: Persons who may teach in schools -

Progress was reported after Hon Barbara Scott had moved the following amendment -

Page 21, line 10 - To delete "\$10 000" and insert instead "\$2 000".

Hon GRAHAM GIFFARD: I do not think I indicated the Government's position. The Government does not agree with the amendment, so we will not be supporting the amendment for reasons similar to those I outlined when stating the Government's position on amendment 3/30.

Hon BARBARA SCOTT: When we reported progress yesterday I asked the parliamentary secretary if he would consult with the minister and ask for this huge fine to be imposed only in extraordinary circumstances. I was told that the minister would be approached and that his response would be reported to me. It is extreme that the board can impose this huge \$5 000 fine on somebody who may be a very highly qualified scientist, pianist or other person who has not got a diploma for education. For the parliamentary secretary to come back and say that the answer is the same as the response that we were given for the reasons that non-teaching personnel who are highly qualified were not able to be members of the board is an inadequate answer.

Hon GRAHAM GIFFARD: I will clarify the position for Hon Barbara Scott. I am not talking about the same reasons that people were not allowed to be members of the board. I indicated that for the same reasons we oppose amendment 3/30, which we have already dealt with, we oppose amendment 4/30. Both those amendments deal with the question of fines. I was not returning to the debate that we had about membership of the board. I indicated when I opposed amendment 3/30 that the fines were the maximum that would be awarded against persons who were found to have breached those clauses. I want to clarify for the member that we oppose those amendments for that reason, not for the reason of eligibility of members of the board. They are entirely different arguments.

Hon BARBARA SCOTT: I thank the parliamentary secretary for the explanation and I accept it. However, he said that my request that the fine be applied only in extraordinary circumstances would be answered in the Chamber. Will the parliamentary secretary clarify whether the \$5 000 fine will be applied only in extraordinary circumstances? A person with a double science degree might be living in a town and might be teaching when there has been difficulty in filling a position. It seems an extreme fine.

Hon DERRICK TOMLINSON: While the parliamentary secretary is considering that, could I ask him to advise whether the standard interpretation of penalties is that this is not a mandatory penalty of \$5 000 but a discretionary penalty, because I think that has some impact on the meaning of the penalty?

Hon GRAHAM GIFFARD: I thank Hon Derrick Tomlinson for that question because I think it guides us to the answer. As I am advised, these are maximum fines. When Hon Barbara Scott talks about extraordinary circumstances rather than innocent transgressions, these fines would be imposed for the upper end of the scale. If the member wishes to characterise something at the lower end of the scale, obviously the maximum penalty would not be imposed. That standard interpretation applies to this clause.

Amendment put and negated.

Clause put and passed.

Clause 31: Persons who may be employed, engaged or given permission to teach in schools -

Hon BARBARA SCOTT: For those same reasons I argue that the penalty of \$5 000 for a first offence and up to \$10 000 for a second offence is inordinately large for an employee in a small country school. If the parliamentary secretary is assuring us that the board can use its discretion, the board will be able to do that. As I have said, judges in the courts make decisions on penalties such as this. Very large penalties will be imposed. I ask that the parliamentary secretary enable and ensure that the board can use its discretion. I move -

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

Page 21, line 22 - To delete "\$10 000" and insert instead "\$2 000".

Hon GRAHAM GIFFARD: Not surprisingly, I indicate that the Government does not support these amendments, essentially for the same reasons that it did not agree to the previous amendments. I can give the member the assurance that these are the maximum fines. For the same reasons that I have indicated previously,

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the Government thinks that the fines have been set at the appropriate level, so it does not support either amendment.

Amendments put and negatived.

Clause put and passed.

Clause 32 put and passed.

Clause 33: Requirements for provisional registration as a teacher -

Hon BARBARA SCOTT: I seek clarification from the parliamentary secretary. I understand that teachers from interstate and New Zealand will be granted full registration when the regulations are complete. Can the parliamentary secretary confirm whether that is correct? Will teachers from Singapore, with which we recently signed a free trade agreement on the mutual recognition of qualifications, be similarly favoured? Will the parliamentary secretary guarantee that overseas teachers with bona fide qualifications will be granted at least provisional registration?

Hon GRAHAM GIFFARD: I am advised that a Bill has been introduced in the Parliament dealing with trans-Tasman agreements, under which it is proposed that teachers from New Zealand will be able to be given registration under this Bill. I understand that that Bill has not been passed yet. When it is, it will enable that to happen. However, until that Bill is passed, teachers from New Zealand will not be entitled to that membership. I have indicated in this debate that the mutual recognition agreement will allow teachers transferring interstate to be registered. On the question of whether overseas teachers will be granted registration, I do not think I can guarantee that everybody who seeks registration will be given it, but certainly those who are suitably qualified will be able to apply for either provisional or full registration and will be dealt with by the college.

Hon BARBARA SCOTT: I thank the parliamentary secretary for that explanation. Will the parliamentary secretary inform the Parliament of the title of the Bill to which he has referred that will bring about this change, when progress of that Bill is expected, and how long teachers who are to be given the right to teach under the free trade agreement will have to wait?

Hon GRAHAM GIFFARD: I am advised that it is the Trans-Tasman Mutual Recognition (Western Australia) Bill. I believe it is on the notice paper. However, I do not know the timetable within which it is to be dealt.

Clause put and passed.

Clause 34: Registration as a teacher -

Hon PETER FOSS: I am concerned about the way this clause will function for the registration of a teacher, and I will give members an explanation of why. I am sorry to keep referring to the time when I was the Minister for Health, but it illustrates a particular point. In Western Australia there is a significant shortage of psychiatrists. One of the places from which it is possible to recruit psychiatrists is the United Kingdom. The problem is that the qualification for being a psychiatrist in the United Kingdom is seen as lower than the qualification for being a psychiatrist in Western Australia, so psychiatrists who came to Western Australia from the United Kingdom were incapable of being registered as specialist psychiatrists and therefore had to be just medical practitioners and were incapable of carrying out the functions of a psychiatrist under the Mental Health Act. In view of the fact that the principal shortage of psychiatrists was in the public health sector, in which the Mental Health Act is particularly important and which needs people who can perform the functions of a psychiatrist under that Act, it was a bit of a problem. The reality of the matter was that many of the psychiatrists who were being recruited from the United Kingdom had between 12 and 20 years experience, and very relevant experience in the area. Their skills, competencies and abilities far outweighed those of a new graduate in Western Australia, but they could not be recognised as psychiatrists in Western Australia because they did not have the qualifications that local psychiatrists had. People who were straight out of medical school and who were doing their letters could be psychiatrists for the purposes of the Mental Health Act, while highly experienced and skilled and far more capable people could not be.

It makes the distinction between qualifications and skills and competencies. I am very concerned that this Bill does not appear to deal with the issue of skills and competencies; it deals only with qualifications. As far as I can see, the Bill does not define a qualification, although I think everyone knows what it means to have a qualification. It means a person has passed certain examinations and satisfied examination procedures. Surely, the relevant requirements are people's skills and competencies. If it is to be considered at any stage, this is the time to do so. A person who does not have qualifications - we will deal with that later - is given limited teaching authority for up to two years. What are the qualifications for limited authority? Clause 37 states -

- (1) The requirements for a limited authority to teach are that the applicant -

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- (a) has specialist knowledge, training, skills or qualifications;

Clause 37 describes the requirements for limited authority for the first time, but nobody is interested in the requirements for full registration. That is the scheme of the legislation and I suppose I cannot criticise it at this stage. However, it seems a very strange way of raising professional standards and the quality of teaching in Western Australia when, under this clause, headed "Registration as a teacher", there is no requirement for any knowledge, training or skills; only qualifications are required. The most useless teacher imaginable could be given full registration while an excellent teacher with specialist knowledge and skills could be given only a limited authority to teach. I do not think we can do anything about that, but a comparison of clause 34 with clause 37 highlights the absurdity of this legislation. It is not about professional standards or better teaching; it is about qualifications. Universities already exist to provide qualifications. What does the clause do? It confirms that a university got it right. That is wonderful. Acts of Parliament create universities that grant the qualifications and another body is established to say that the qualifications are all right. That one further step seems absurd.

Another requirement for registration is that a person has not been convicted of an offence. That can be determined. Who employs these people? Principals and education departments. Is not a principal of a private institution capable of determining the requirements for professional registration as a teacher? I think so. I hope that every principal of an independent school finds out those matters before hiring people. Is the Department of Education and Training not capable of finding out that information? I hope it is. What else does it do when hiring teachers if it does not bother to find out those things? I also hope that principals of independent schools and the Department of Education and Training try to find out the knowledge, skills and experience of teachers. The principal of the school with which I am associated does that. What value is this clause giving to "registration as a teacher"? As far as I can see, the value adding is absolutely nil. This clause, probably more than any other clause, shows what a total waste of time this legislation is.

Hon GRAHAM GIFFARD: The Government disagrees with Hon Peter Foss's comments. Although I understand his concerns about people holding qualifications and whether they necessarily translate to professional standards of teachers, as he indicated, the requirements for the registration of teachers are set out in clause 35. They include that a person -

- (a) holds a qualification . . .
- (b) has not been convicted of an offence . . .
- (c) has achieved the standards of professional practice

As poor a teacher as that characterised by Hon Peter Foss would have difficulty being registered as a teacher under the requirements of clause 35(c). This legislation is about maintaining professional standards in teaching.

Hon DERRICK TOMLINSON: I wanted to restrain myself because I did not want to speak this morning, but I am forced to have my 10 minutes of glory again! The parliamentary secretary referred to clause 35(c) in response to a question asked by Hon Peter Foss. The critical words are standards "approved by the College". A person seeking registration must have taught in a school for one year under a limited authority to teach or with provisional registration. The person must then achieve the standards of professional practice approved by the college. If a person must demonstrate to the satisfaction of a college that he has achieved a standard, logically, there must be an evaluation or assessment of that person's professional practice. I suppose professional practice is all of those things attendant upon being a teacher, such as classroom performance, lesson preparation, relationship with children etc. The college has an approved standard; it must be demonstrated that those standards have been achieved. The logical consequence of that is that an evaluation or assessment must be undertaken. By whom is the evaluation or assessment to be done for a teacher making application to be a registered teacher?

Hon GRAHAM GIFFARD: I am advised that a national framework setting out those standards is being developed by the college in consultation with other teaching registration boards. It is expected that the assessment or evaluation will be part of the school's duty as part of the performance management of its teachers.

Hon Peter Foss: They will have to provide the information to determine whether they can employ them.

Hon GRAHAM GIFFARD: Essentially, it will be up to the schools to determine their own performance management.

Hon PETER FOSS: What a wonderful answer. Who better than the principals can determine that very important point of whether the person is qualified, can teach and meets the right standards? Presumably the principals are doing that already as part of their management of teachers. If the schools are doing that anyway, why make it a statutory requirement? Why add another layer of compliance when in the end we will be relying

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on the schools anyway? Who, other than the school, can tell us whether a person is a proper teacher? If the schools are doing that anyway, why do we need to add the extra cost of a college, fees, licences and registration? Sure as eggs is eggs it will go wrong somewhere. The first thing it will do is keep out the really good teachers who do not have qualifications, because it will stop a school from employing people who can teach but who do not have the qualifications that are specified in the Bill. What a mockery that is! What are the professional standards that will be written in the regulations? How will we measure quality? It truly will end up being a qualitative judgment by a qualified person, who will say that he thinks the person can teach, and the college will then say that the school is allowed to employ that person. It seems to be a very strange process. The Government is proposing to add a layer of expensive bureaucracy that will add nothing to the qualitative process, because in the end it will be left up to the same people who are making the decision now - the principals and the department. They make the decision because they have to make the decision. That is their job. We are not dealing with people who have no capacity to make these types of judgments. We are dealing with professionals who do that as part of their job. If these professionals are already doing that as part of their job, why do we need to add a register that confirms that it is being done? If these professionals are not doing that as part of their job, why not kick them out and get the right people? If the principal of a private school is not doing that, I am sure the board would do something about it. That is why private schools have boards. That is their job. If the principal does not do the right thing by the teachers, the board of the school will hear about it very quickly and very loudly, and it will say to the principal, "You appear to be having some problem in getting good staff. What are you doing about it?" It seems to me that all the Government has done in this Bill is put in more red tape. Red tape does not equal professionalism. Red tape is often the enemy of professionalism, because it means that people need to tick boxes, in the same way that a person who wants to get a job in the education system now has to tick boxes.

Hon Alan Cadby: It is nationalisation of the teaching profession.

Hon PETER FOSS: Yes, it is; and, once we do that, it ceases to be a profession. That is part of the problem. If we tie up people in red tape, they will spend all of their time ticking boxes and jumping through hoops just so that someone else can have the job of reading all of the ticked boxes and checking that they have jumped through the hoops properly.

Hon Paddy Embry: A highly-paid job, too.

Hon PETER FOSS: Yes, and that will be an extra cost to those underpaid professionals. Teachers already think they are underpaid, and they probably are. They will now have to put a bit more money into paying their registration fees, just so that all these people can tick the boxes and watch them jump through hoops. The net result is that it will end up being monitored by the very people by whom it has always been monitored; that is, the people who are best qualified to do that job and who, one would hope, are already doing that job. If those people are not already doing that job, it will be no better when we add this extra layer of bureaucracy. All it will do is give those people one more task to get on with instead of getting on with the professional job of running the school. I think the parliamentary secretary's answer was mind-boggling in its simplicity.

Hon DERRICK TOMLINSON: I wish to raise another concern about the answer given by the parliamentary secretary. I hope I have not misinterpreted the parliamentary secretary, but I think he said that the evaluation of a teacher's competence will be done by the school; that is, peer assessment. If I have misinterpreted the parliamentary secretary, he should by all means tell me, because I can see his advisers shaking their heads.

Hon PADDY EMBRY: I could not help but be reminded, when I heard Hon Peter Foss's last remark, about the song *Little Boxes, Little Boxes*.

Hon Peter Foss: Ticky-tacky.

Hon PADDY EMBRY: Yes, very ticky-tacky. If there is a problem that the Government is trying to solve, it all comes back to the change that was made to have the assessment done mainly by the principal. That was a bad move. Years ago, an inspector used to go to schools and assess the performance of teachers in the first three years or so of their teaching life. That person was independent and in no way involved in the internal politics of the school. The situation may be different in very large schools, but I can assure the parliamentary secretary that internal politics in small schools is rife. Therefore, it is most unlikely that there will be a sound and independent assessment of a teacher in such a situation. The assessment was much more open and fair when it was done by people who specialised in that area. Of course, some teachers would pass with glowing colours in their first year out of teachers college, and they would not be looked at again by the assessor. However, if a teacher was having some difficulty, the process could take up to three years. The teacher would be advised that an inspector would be visiting the classroom, and I suspect the children would be told that they should all be nice and quiet and behave themselves, and the children would, of course, be nice and quiet, thinking that they were being assessed, whereas in practice it was the teacher who was being assessed. However, when the system changed some years

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ago, it was a recipe for the disaster that exists now. I am obviously talking about government schools, not private schools. The internal politics in small schools means also that promotion by merit, which has a wonderful ring to it, is sometimes also a disaster, because the principals of schools, if they have ambition and are seeking promotion, naturally do not want anything to rock the boat and jeopardise that. If the Government does introduce another level of bureaucracy, it will be a disaster, because once the bureaucracy starts to get involved in the mechanics of how things are done in a school, those things will be done by people who, almost without exception, do not understand what they are doing. It will also, as Hon Peter Foss has said, act as a disincentive for people who have a bit of initiative and put their life into whatever their job is. I urge the Government to look closely at this matter. Every dollar that is spent on bureaucracy is one dollar less that can be spent in the classroom. Education is about the absorption of knowledge by students. The Government should not get sidetracked by what I call a "sideshow". Members may remember a fantastic *Yes Minister* episode from years ago in which office and nursing staff were being interviewed by the media about a new hospital that had been built. They remarked how everything was running smoothly. Of course it was - they did not have any patients. The point is that the purpose of the hospital was to make sick people better and more comfortable. We seem to be moving away from the purpose of schools.

Hon PETER FOSS: Clause 34, which is described in clause 35, also refers to clause 35. We keep having to talk about clause 35 in the debate on clause 34. My attitude to clause 34 will be determined by the content of clause 35. I move that clause 34 be postponed until after clause 35.

Clause 34 postponed until after consideration of clause 35, on motion by Hon Peter Foss.

Clause 35: Requirements for registration as a teacher -

Hon DERRICK TOMLINSON: I invite the parliamentary secretary to answer my question of whether I had misinterpreted the question about the assessment or evaluation of a person's professional practice by a school. Was I correct?

Hon GRAHAM GIFFARD: I am advised that the way it works now is that principals accept responsibility for making assessments about teachers. They may well be advised by senior teachers for their own internal procedures. However, the principals make that decision.

Hon Peter Foss: How is that communicated to the college?

Hon GRAHAM GIFFARD: In the event that there is a suspension -

Hon Peter Foss: No, when they go for registration.

Hon GRAHAM GIFFARD: Teachers will provide evidence to the college for registration. However, in terms of the assessment, which seems to be the issue that Hon Derrick Tomlinson is focusing on, that is done at the school level, as Hon Peter Foss indicated. In that sense, there will not be a great deviation from what happens now.

Hon Peter Foss: How will the college find out?

Hon GRAHAM GIFFARD: If a school makes an assessment and determines that a teacher is not fit or not good enough -

Hon Peter Foss: How will it find out?

Hon GRAHAM GIFFARD: The school makes the decision. A principal will ultimately decide whether a teacher is good enough. A teacher may have been admitted and employed, but it may be determined after a semester that that teacher is not good enough and the school may decide to let him or her go. The school is required to advise the college of that decision. The college will then determine whether that teacher is allowed to keep his or her registration. A teacher will provide evidence of his or her teaching experience to the college. Once that is accepted, he or she will try to get a job. After a teacher gets a job and starts teaching at a particular school, the school may decide that that teacher is not good enough and let him or her go. The school is then required to advise the college -

Hon Peter Foss: What section is that?

Hon GRAHAM GIFFARD: It comes under clause 50.

The college will then determine whether that teacher should be allowed to teach in another school.

Hon Peter Foss: What if it doesn't suspend or dismiss that person?

Hon GRAHAM GIFFARD: If a school makes an assessment that a teacher is acceptable, that teacher will be allowed -

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Hon Peter Foss: What if a teacher is a relief teacher?

The CHAIRMAN: Members should ask questions one at a time. Other members may also wish to raise issues.

Hon GRAHAM GIFFARD: I will have to take advice on what happens in the case of relief teachers. I was dealing with assessments and how a school could let a teacher go if it determined that that teacher did not meet the required professional standards.

Hon Peter Foss: Would that apply to a casual teacher?

Hon GRAHAM GIFFARD: I will take advice on that in a moment. I am dealing with the question that Hon Derrick Tomlinson has asked on a number occasions.

The school would be required to advise the college, which would hold an inquiry and determine whether that teacher, who had been relieved of his or her duties from the school, was entitled to maintain his or her registration. In the first instance, as Hon Peter Foss indicated, the schools will determine whether a teacher satisfies the standards. The college would then be advised by the school and it would ultimately determine whether that teacher could maintain his or her college membership.

Hon DERRICK TOMLINSON: I thank Hon Graham Giffard for his answer; that is exactly what he said earlier. The assessment will be made by the school and the principal will report it. However, any wise principal would consult his or her staff. It comes down to a question of assessment by peers. However, the principal is the person who has the authority to report and who is required to report on a teacher. We have been told that a national framework is being established. I assume that that national framework, when established, will apply to not only the College of Teaching but also all aspects of the competence of teachers in our schools, whether or not it applies to the College of Teaching. Principals will be skilled and schooled in making assessments according to those frameworks. Let us consider clause 35(e), which reads -

within the 5 years preceding the application -

The applicant -

has been teaching, whether or not on a full-time basis, for at least one year . . .

I read that to mean that during the previous five years, an applicant must have either taught for one year, or, over the five years, the applicant has taught for the equivalent of one year; that is, the equivalent of eight weeks teaching a year on average. A 40-week year over five years is an average of eight weeks a year. That is 40 days teaching a year, which might be relief teaching and might be relief teaching in 10, 20 or 40 schools. Who then will make the assessment? The principal and peers will see the performance of that person filling in for the classroom teacher who is absent for whatever time. A difficulty arises in that regard.

I turn now to the question of qualifications raised by Hon Peter Foss. He made the valid and important point that universities award their degrees, diplomas or postgraduate qualifications under their own authority established by statute. Therefore, we have five universities in Western Australia awarding degrees in teaching, whether they be a Bachelor of Arts in teaching, a Bachelor of Education or a Diploma of Education. Five universities are authorised by statute to award degrees according to their own judgments and standards. I realise all sorts of matters are involved with the collegiate functions of universities etc, but universities are authorised in legal terms to provide their degrees and set their own standards. A requirement is that in the course of teacher education, students must complete the equivalent of 16 weeks practicum. If they do not complete that practicum, first, they will not be employable in government schools, and, second, their qualifications will not be portable. In fact, graduates must demonstrate 20 weeks practicum, or the equivalent thereof, to teach in United Kingdom schools. Part of that requirement is that to graduate and qualify as a teacher, it is obligatory that a student have a satisfactory report of performance on practicum. Without that satisfactory report on practicum, he or she will fail to qualify. That is an essential qualification for entry into the profession because the university degree is qualification for entry. A student graduates after completing a four-year BEd, or perhaps a BSc Dip Ed, and is appointed to a school. After 12 months, he or she may apply to the college for registration. The principal will make the assessment of whether the teacher meets the standards of professional performance the college requires in the framework. If the national framework is to be applied to registration - in other words, in the standards of professional practice approved by the college - does that mean also that the same standards will be imposed on universities? Must universities ensure that students meet the minimum requirements of a teacher for registration in the standards of professional practice approved by the college? I wonder what this means in terms of the autonomy of the universities. I have two problems about this matter. First, if one is to have the school-based assessment of professional practice according to the national framework, who does the assessment for the eight weeks or 40 days of teaching over five years? Second, what does it mean regarding standards expected by the universities as authorised by them to judge on their own volition?

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Hon GRAHAM GIFFARD: Regarding the student teacher who teaches for a year and then seeks full registration into the college, I am not sure whether it is as complicated as the honourable member suggests. It is a matter for the board to set those standards for administrative registration. It is easily a matter for the board to say that this is the criteria for that teacher to establish to his or her employer, the principal, that he or she is of professional standard. That is then signed off. It is not as complicated as it might be.

Hon Derrick Tomlinson: That's not the problem.

Hon GRAHAM GIFFARD: It is a matter for schools in their performance management to continue to monitor the performance of teachers.

Hon Derrick Tomlinson: I think we should take it as a given.

Hon GRAHAM GIFFARD: It is up to them to make appropriate decisions and judgments. Regarding short-term or relief teachers, no requirement exists in the Bill for the principal to advise the college if he or she does not think a teacher is very good and does not meet standards. There is a requirement that if the principal takes action to suspend or terminate employment, the college must be advised. Of course, at the same time, if the principal is concerned about the performance of a casual or relief teacher or a teacher on a short-term contract that the principal has chosen not to renew, the principal is at liberty to advise the college, which could inquire into and determine the membership of the college of that teacher. There is a distinction between relief and casual and a person employed and terminated.

Hon PETER FOSS: Hon Derrick Tomlinson raised some very good points, because the question of professional skills and competency is based on the person's standards in the profession. It is acknowledged by the Bill. It states that before registration is given, a person must have taught for a year. The skills and competency of a fresh graduate are different from those expected of a person who has been teaching for some years. A person fresh out of university, despite 16 weeks practicum, may have difficulty controlling classes and communicating ideas. Those difficulties will disappear with practice. That gets back to the point I was making about psychiatrists. There is a world of difference between qualifications and experience and ability. The obsession with qualifications is wrong. For a college of psychiatrists, it would be nonsense to compare a fresh graduate in psychiatry from the University of Western Australia, just because he has a fellowship, with a psychiatrist who has 20 years experience, and say that one is superior to the other. Yet, there is a very real question of what this clause is measuring. It is said that it is measuring at a point in time not only the qualifications of teachers but also their competencies; but it does not. I will give some examples that indicate why it is not doing so. First, I defy anyone to write these standards other than by reference to someone else's judgment. The standards may be written down but no-one will be able to judge them. They are all qualitative standards that can be made only by someone who has teaching experience and who has seen an applicant work. It is therefore merely a statement of what other people will take into account. It will be a guessing game as to what those people will put down in writing their judgment. Secondly, in the example given by Hon Derrick Tomlinson, none of these people will be in a position to make a proper judgment. The principal of a school would not know how to judge people who had taught at the school for a week, as they were probably not teaching as much as they were babysitting. I suppose that might mean that someone with one year's experience of relief teaching over five years would not qualify for membership of the college. We need to know if that is the consequence of this clause. Another problem with this clause is not only the gap that does not include people in casual employment who do not have their employment renewed but also another gap. The clause deals only with the question of a teacher's serious incompetence. What happens when teachers are dismissed or their employment is not renewed, not because of serious incompetence, but purely because the principal does not believe they have shown the standards of professional practice required by the principal of the school? They might not be regarded as seriously incompetent, but just not good enough teachers to be teaching. If four or five schools believe that a teacher does not meet the appropriate standards, how will we ever raise the standards of the teaching profession? This clause should not start with the lowest possible standard if it is intended to raise professional standards. It is a very low standard if the only people who come to the college's attention are those who are seriously incompetent. For instance in my profession, the legal profession, there is a world of difference between a brilliant lawyer at the top, a competent lawyer in the middle and a seriously incompetent lawyer at the bottom. If members of the public were asked whether they would be satisfied that their lawyer was not seriously incompetent, they would say no, they would want to know he was a good lawyer. People do not want teachers who are defined as not seriously incompetent only by the absence of a particularly bad characteristic; they want to know that the standards are being raised. Nothing in this clause raises those standards. All a teacher must do is meet a sort of base level. Again, my criticism of this Bill is that it does nothing to raise standards. It does nothing but put in a base level of standards, which one would hope is already being observed. I hope that the principals of schools and the Department of Education are not hiring seriously incompetent teachers. They should not be hiring them in the first place. However, if something happens that renders a teacher seriously incompetent, they must have

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the capacity to dismiss that teacher, and it would not be a bad idea to tell the college about the dismissal. However, that would not raise professional standards; it would be a very low hurdle to jump.

I presume that when clause 35(c) is applied to teachers who apply for registration five years on, that their professional competence will be assessed on the basis of the required achievements of a teacher of five years experience. Similarly 10 years on, it would apply on the basis of the required achievements of a teacher of 10 years experience. If, after 15 years experience, a teacher is meeting the professional standards - depending on how well the professional standards are defined - but has burnout and is not inspiring people because the teacher is marking time, will that teacher be refused registration? Will that teacher's professional standards be determined on the basis of the professional standards that he or she should have with that range of experience? I would be very disturbed if a teacher of 15 years experience was required to meet only the standards of a teacher of one year's experience - in other words, the same standards. That teacher must surely be achieving considerably more after 15 years than a teacher with one year's experience. Will these standards take into account the standards that could reasonably be expected of a teacher after a reasonable amount of experience?

Hon DERRICK TOMLINSON: Hon Peter Foss has aroused painful memories. I recall a practicum in my final year of teacher education. The principal of the senior high school where I did my prac gave me a credit pass. However, his words to me were, "Derrick, you are a rough diamond; you will improve over time." At the end of two years in my first school, the principal of the school said, "Derrick, when you came to us, you weren't a teacher's bootlace." I therefore had that range of assessment. I think it was true that I was not a teacher's bootlace!

I do not believe the question I asked was answered by the parliamentary secretary. It related to the standards approved by the college and the standards of entry to the profession. We have been told that there will be a national framework for professional standards, which will be the standard approved by the college, and the college will describe the criteria on which principals will report for a teacher making application for membership of the college. I then asked whether that same framework would be imposed on teacher education institutions - our five universities. Currently those universities have unfettered authority under their own Acts to make their own judgments about their own standards for the awarding of their own degrees. If there is to be a national standard, it would make sense for each of those universities to take into account that national framework in making the assessment so that the national framework, whether imposed or adopted, will be operational at the level of university pre-service teacher education. That will enable graduates from any of our universities, whether they be diploma or degree graduates, to have met the minimum standards of competence or professional practice as described by the framework, which will be the standards of competence approved by the college. If that is the case, given the argument that Hon Peter Foss most eloquently put that we become better the longer we practise whatever our profession, trade or skill, I am sure that after 20 years a farmer is better than he was in his first year and that after three years a carpenter is better than when he was when he started, and that it is not simply restricted to brain surgeons and gynaecologists. If the minimum entry qualification for the profession is that standard, why is reassessment necessary for registration? To get a job people must reach that standard, to enter the profession they must reach that standard, so why would it be necessary after one year to make the assessment again? If they are qualified to be a member of the profession, why after one year should they be assessed again? Given that the requirement is the equivalent of one year over five years and could be reduced to 40 days of teaching a year in 40 different schools, who will make the assessment in that circumstance?

Hon GRAHAM GIFFARD: I am advised that the standard framework has a number of criteria, one of which relates to a person's classroom skills. As the honourable member has indicated, one would not necessarily expect someone who has gone to university and had a very limited time of exposure in the classroom to be an accomplished teacher, because such a teacher would have very limited control and authority over a classroom. It is intended that after a year or two, depending on how much work such teachers had done in that time, they would be able to meet the standard. For that reason they would be fully registered as a teacher and move from provisional registration. The point the member has made is, I am advised, understood by the profession and the college. That is why teachers will be given that time to hone those skills. To that extent experience will be a factor, which is the observation made by Hon Peter Foss.

I am advised that standards will not be set against a 10-year or 15-year teacher; it will be a matter of being a competent teacher and continuing to need to meet the standards of a competent teacher. It will also be a requirement of the renewal of their membership that they continue to meet those standards. As we have discussed previously in debate on this Bill, they will also need to be able to provide evidence of their ongoing professional development.

I think that in part answers the question on the consequences for universities that are teacher training. Of course, they will have two representatives on the board. One of the functions of the board is to consult and collaborate

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with those institutions. I think we are risking over-complicating a matter that we anticipate will be a lot simpler and easier. Universities will be part of the process of assisting in the development of those standards and not having them imposed on them.

Hon ALAN CADBY: Before I move my amendment, I want to make some general comments about the clause. The dialogue that Hon Peter Foss and Hon Derrick Tomlinson have had on this clause is very important because the clause is the real crux of the Bill. I do not see how the college can set standards for teachers. Each school has a particular set of standards specifically for that school. The best body to judge the ability of a teacher is the school. I think some schools have moved to both summation and formative appraisals every two or three years. I have looked at the standards of the Australian Association of Mathematics Teachers. Whatever standard is set must be the bare minimum. I do not think that this encourages teachers to be better teachers.

I had a phone call from a principal of a government high school who said to me that we should get the Bill through as quickly as we can because he could then use the Bill to encourage teachers to become better teachers. I do not think that is what it would do. Nowhere does the Bill say that teachers will have to improve. Hon Derrick Tomlinson made a comment about practise. Just because someone practises being a teacher does not mean that he becomes a better teacher. When I did a course in education, it was hammered into us that practise makes permanent. If someone practises being a bad teacher, he will always be a bad teacher. That is what worries me. Unfortunately, there are some bad teachers in our education system. If they get automatic registration, we are saying to them that there is no need for them to improve their skills because they have reached the minimum standards. That really worries me.

I have taught in eight schools in two countries and three States over 33 years. I am afraid that I have met teachers in those schools who have made no effort whatsoever to improve their skills from the first day when they qualified as a teacher, but they may have permanent status and there is nothing we can do. I am now getting on my hobbyhorse. In the maths, science and information technology areas, where there is a shortage of teachers, too many teachers who are currently teaching should not be teaching at all. However, because they are bodies that can be put in front of a class, they will be registered as teachers. Nowhere in this Bill is there a provision to force those teachers to improve their skills or even to motivate them to do so. I believe that is a weakness in the Bill. I do not want to prolong the dialogue on that difficulty I have with the Bill. I now want to move my amendment, but, before I do so, I will modify it. I want to delete the word “character” and insert the word “criminal”.

Hon Graham Giffard: I think the words “criminal record” would be best. I am advised that “criminal record” has the meaning the member is looking for. I think it is referred to as a criminal record check.

Hon ALAN CADBY: I accept the words of Hon Graham Giffard.

Hon Graham Giffard: It has meaning because it is referred to in clause 53 as a criminal record check.

Hon ALAN CADBY: I now formally move -

Page 23, after line 11 - To insert -

(c) has successfully completed a prescribed police criminal record check;

In the second reading debate, concern was raised by both the Greens (WA) and the Liberal Party that there is a need to protect our children. Speaking from experience again, which is something that we all draw on occasionally, in the eight schools at which I have taught, three teachers have had inappropriate relationships with children. I do not think it is a really big issue in that there are not more paedophiles in teaching than there are in accountancy. However, it is a big problem for a student who has been affected by a teacher who should not be teaching, and that is what I want to try to avoid. We know that Alan Carpenter, the Minister for Education and Training, stated in a press release on 3 December 2003 that the State Government would spend \$1.7 million to police screen all government school staff and TAFEWA lecturers over the next two years under a project to improve the safety of public school students. Although he can do that in the government school sector, there is not one authority in the non-government school sector. Certainly there is the Catholic education system, but there is not an independent school system as such; it is a sector. There are some systems within the independent school sector, but there is no independent school system. I want to ensure that all teachers go through a criminal record check. The only way to ensure that this will occur in all schools, whether they be independent schools with 10 students or large government schools with 1 600 students, is to make it part of the registration process. I know that it will not be a perfect system. It will not catch everybody. However, it is worthwhile if it catches one person or makes one person think about whether he or she should apply for registration, because that one teacher could affect 150 students in one year. Over 10 years, that teacher could affect 1 500 students. Even though there is no guarantee, this provision does have the capacity to protect large numbers of students. As I said before, I do not think there are any more paedophiles in the teaching profession than there are in other professions or

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workplaces. However, teachers have daily contact with children, and I think we should do all we possibly can to ensure their safety.

Hon CHRISTINE SHARP: The Greens (WA) will support the amendment of Hon Alan Cadby. We believe this amendment will rectify something that is long overdue. Western Australia is the only State in Australia that does not have mandatory police checking for schoolteachers. It has been argued that this Bill contains various safeguards, as indeed it does, and I will go through some of them. However, none of them is a substitute for the requirement to retrospectively check all teachers. It has been stated that this already happens and that no teachers are being enrolled in this State today without being required to demonstrate their police clearance. In fact, only a few weeks ago, in the last sitting week when we dealt with this Bill, I spoke to a teacher about this matter. He told me that he had just begun teaching at a new independent private school and he had not been asked for his police clearance. There is a very strong argument that this amendment is necessary. We will not deal with large numbers of people, but, as Hon Alan Cadby has pointed out, the effect can nevertheless have some very serious ramifications on a lot of children in a school or schools.

I am told that this amendment is unnecessary because, for example, clause 33 of the Bill requires that the applicant must not have been convicted of an offence. However, the Bill does not provide a way for this to be checked. Clause 49 of the Bill requires the Director of Public Prosecutions or the Commissioner of Police to notify the college about the committal or conviction of a teacher. These provisions are not foolproof, because, for example, they do not apply interstate and apply only to new offences. Clause 53 of the Bill also contains some safeguards, and permits the college to request an applicant or member to provide consent for the college to undertake a criminal record check. However, it does not actually require it, so it is still not mandatory. Clause 2 in schedule 4 provides for the college to register a teacher who is currently teaching, provided, *inter alia*, that the teacher satisfies the college that he or she has not been convicted of an offence that renders the person unfit to be a teacher. Again, this Bill does not require the teacher to prove that to the college before registration. I understand that a new registration standards document is now being prepared and that it includes a section asking whether police clearance has been received. Again, the teacher is not required to fill in that information in the document. Even though the registration standards document suggests that that is desirable, it is still not enforceable.

I feel quite passionate about this issue because it has been raised in other matters that I have dealt with in the House over time. There have been various missed opportunities on this issue. I believe that, in 1988, the chairman of the Standing Committee on Legislation, Hon Bruce Donaldson, tabled a report on the Child Welfare Amendment Act (No. 2). That standing committee rejected the argument that mandatory police checking was unnecessary. However, it was not implemented. The introduction of the School Education Bill was an opportunity for the Government to move on mandatory police checks. That did not happen while the Bill was being debated in committee or in the subsequent regulations. Now there is a further opportunity before us. I am grateful that Hon Alan Cadby has moved this amendment. All members should support it. We do not want to miss this opportunity again.

I understand that the Government has other plans to deal with this matter. I am told, for example, that the Department for Community Development is considering umbrella legislation that might contain such provisions to cover dealings with children. However, that Bill is still within the realms of possibility. No such Bill is before the House. I am not comfortable with letting this opportunity here and now slip past.

As I said, I spoke to a teacher very recently who has begun a new job at an independent private school and who was not asked for a police clearance. I acknowledge that the Association of Independent Schools of Western Australia policy is that police clearances should be provided by all teachers to their employers. It is a policy that the association actively advocates. However, it does not require it of its members. For whatever philosophical reason, certain schools have been reluctant to require police clearances. Although I am talking about only a handful of schools, they deal with thousands of children. One school in the northern suburbs, for example, is among that handful of schools. It has consistently ignored this problem, even though three cases of paedophilia have been discovered there since 2000. That independent private Christian school has refused to follow the advice of the Association of Independent Schools. I also acknowledge that in December last year the Minister for Education and Training introduced mandatory retrospective police checks in all state schools and allocated \$1.7 million for that task. We are very pleased that that is now under way.

The honourable member's amendment will simply close that loop. Rather than it being 90 per cent covered, it will be 100 per cent covered. I agree with Hon Alan Cadby that it is not foolproof, but it is much better than the present situation.

It would be unacceptably irresponsible if we do not proceed with this amendment now. I hope that the parliamentary secretary will agree that we have everything to gain and nothing to lose by accepting this

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amendment and using the Western Australian College of Teaching Bill as a wonderful opportunity to introduce into the State of Western Australia the practice followed in all other areas of Australia.

Hon BARBARA SCOTT: I very strongly support this amendment. I thank the Greens (WA) for their support. I am sure I can say that, unequivocally, every person wants teachers and people dealing with children to have a police clearance so that we can at least ensure some protection for children. I endorse Hon Christine Sharp's sentiments that we cannot wait for a community development Bill. Moves are being made throughout Australia to protect children in the first instance, by at least requiring all people who work with children, as volunteers and paid workers, to obtain a police clearance.

From my experience and dealings with the Queensland Children's Commission, I am aware that that body has been given the responsibility and a budgetary component by the Queensland Government to require that all volunteers or paid employees who work with children obtain a police clearance. In that State a child card is issued, and that is something I have been seeking for a number of years.

I have a legal question on which I have sought clarification. The definition of "criminal record check" reads -

means information provided by the Australian Federal Police, the Police Force of a State or Territory, or another body or agency prescribed by the regulations, regarding the criminal convictions of a person for offences under the law of the Commonwealth or a State or Territory;

I understand that the requirement in Queensland is even broader and seeks information on whether an applicant has a criminal history. People who have been charged with paedophilia but have not been convicted are not included on a conviction list. Parents are concerned that some people may have offended, but the victim has not wanted to suffer a court experience so has not pressed charges or the offender has an extremely good lawyer who has helped him escape the charges. Although this touches on the essence of our justice system that a person is innocent until proved guilty, it is an area of concern I have raised with a number of people in this State. I support wholeheartedly this amendment, and I seek clarification from the parliamentary secretary of a "criminal record check". Does it specifically refer to criminal convictions and must it remain that way? Can parents be guaranteed that they will not be sending their children to a school with a known paedophile who has not been convicted?

Hon GRAHAM GIFFARD: The effect of the amendment moved by Hon Alan Cadby is to require teachers to have criminal checks. As members can see, it refers to convictions. In addition, clause 49(1)(a) provides that the college is to be notified if "a teacher is charged with, or committed for trial or sentence before any court for, an offence described in Schedule 2". A list of sexual offences are contained in schedule 2. I think that answers the question. Yes, the college is to be notified if a person has been charged with a sexual offence.

The Government will not object to Hon Alan Cadby's amendment to require criminal record checks, and will vote in favour of it. As the Government indicated previously in the debate and in fairly extensive discussions and negotiations on the Bill, the Government was not inclined to immediately compel all teachers in the system to comply with the effects of this amendment. Schools and teachers are aware that that was not the Government's intention when it introduced the Bill. Notwithstanding that, given the numbers in the House and the fact that we will all be supporting it, the amendment will be carried. However, it will have cost implications for the non-government schools that will be affected by it, and also, more likely, for the teachers who seek registration. I am not objecting to the amendment, but I am obliged to advise members that, in supporting the amendment, they will be imposing a cost on a group of persons who did not know that that cost was to be imposed on them. We are motivated by the fact that we do not want to turn a debate about the College of Teaching into a debate about paedophiles in our schools, because that would be a complete distraction from the purpose of the Bill. I note that members who have spoken in the debate previously have indicated that that should not be the focus of the debate on this Bill, and I concur with the speakers who have made that point, in some cases with some passion. The Government will be supporting the amendment.

Hon BARBARA SCOTT: Although I accept the comments of the parliamentary secretary, I find it astounding that he would say that the Government will not be putting this in place and it will be making no commitment to it because of the cost.

Hon Graham Giffard: I did not say that at all.

Hon BARBARA SCOTT: I must have misheard the parliamentary secretary. I thought the parliamentary secretary said that although he would be accepting the amendment, he would not be enforcing it.

Hon Graham Giffard: Of course I did not say that.

Hon BARBARA SCOTT: In that case, I ask the parliamentary secretary: once this Bill is enacted, will the Government feel obliged to implement this clause?

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Hon GRAHAM GIFFARD: Once a Bill is enacted, it becomes law. The answer is self-evident. It is an outrageous and ridiculous proposition that the member is putting.

Hon DERRICK TOMLINSON: I support the amendment, and I support all of the intentions that have been expressed by members. I do, however, add a caution. It is appropriate to require a criminal clearance, particularly for sexual offences and physical violence. However, the Criminal Code also includes things such as unlawful assembly, rioting and being riotously assembled. That would mean that if those persons at the University of Western Australia who had occupied the senate and damaged the building were to be charged with unlawful or riotous assembly, and with riotously damaging a building, they would, if found guilty, be liable to imprisonment for seven years and would have a criminal conviction. I do not want to make light of this. I simply want to add the caution that although it is appropriate to check whether people have been convicted of a criminal offence that would render them an improper person to teach, they might have been convicted of a criminal offence that would not render them an improper person to teach. The requirement is that the person must successfully complete a criminal check. That will include not just sexual offences or physical violence but any criminal offence. Any criminal offence may disqualify a person.

Hon Graham Giffard: No. The college will be made aware of that, and it will take it into account.

Hon DERRICK TOMLINSON: If the college will be given discretion to decide whether a person is a proper person to teach, then I withdraw my comments, but I still raise that word of caution.

Hon Graham Giffard: Fair enough.

Hon CHRISTINE SHARP: I reiterate the point made by Hon Barbara Scott about how the Queensland system actually includes a criminal history as opposed to simply a criminal conviction. We know that sometimes a conviction can be difficult to achieve. Therefore, given the work that the Government is already doing in this area, would it not be a good idea to consider whether the Queensland model might be a superior way of conducting these police checks?

Hon GRAHAM GIFFARD: As I understand it, the only check that the police do is a criminal record check. There are no variations of that. I am not familiar with how the Queensland model works and whether it also takes into account any charges that have been laid against a person. The Bill contains a specific provision that the college must be notified if a person has been charged with any of the sexual offences listed in schedule 2. Perhaps the legislation in Queensland contains specific provisions to deal with charges for other types of offences. I am not aware of the mechanism that is used in Queensland. Perhaps the way to achieve what the member is seeking can be found by making amendments to schedule 2. If a person is charged with any of the sexual offences that are listed in schedule 2, then the appropriate authorities are required to notify the college. Bearing in mind the words of caution of Hon Derrick Tomlinson, which I agree with, we are talking about charges that go to the heart of whether a person is a proper person to teach. Given that the Bill already includes sexual offences, we need to be very careful in considering just how far we want to go in knowing whether someone has been charged with any other offences, bearing in mind the principles of presumption of innocence and due process. My view - although I am not advocating that we do this - is that the answer would lie in moving amendments to schedule 2.

Hon CHRISTINE SHARP: I agree with the parliamentary secretary. I do not think anyone is entertaining the idea that we move further amendments at this stage. However, a very practical suggestion has been made, and the Government might like to do some investigation of how the Queensland model works to see whether there is anything in that model that we can put to good use in this State. Consideration should be given to the underlying purpose of mandatory police checking. It is a good suggestion. Given that some money has been allocated, it is important to ensure it works as effectively as possible.

I also touch on the concern raised by the parliamentary secretary that this amendment will impose a cost on some schools that have not been alerted to that additional cost. The costs will be very modest, and should not prevent us from acting. The costs of not acting in this way can be enormous. When I last spoke, I mentioned a school from which 82 families had pulled their children at the end of last year from a total of 350 or 400 families with children at the school. I do not want to name that school. Many members will know the school to which I refer. Ultimately, that school failed in its accountability to the parent body, and it is paying a huge financial cost as a result of that action. Any small cost we impose on the private sector through this requirement is absolutely marginal when compared with the costs borne in that example.

I did not earlier acknowledge that the Catholic Education Office is very strong on this point. It has mirrored the state sector, or led the way, with retrospective checking - I am not sure who moved first. The Catholic sector has an excellent system in place. A handful of schools pose a problem.

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Hon BARBARA SCOTT: The Chamber is addressing the amendment moved by Hon Alan Cadby and the need for teachers to successfully complete a prescribed police criminal record check. When I visited the Children's Commission in Queensland early last year, it outlined that the cost involved for a child card there was \$40 for each person. That cost is not imposed on schools. People seeking employment with children pay that cost. There is no cost to volunteers in Queensland. The cost is not prohibitive when talking about protecting our children. This amendment relates to protecting our children from people who may have a criminal history of sexual offences.

Amendment put and passed.

Hon CHRISTINE SHARP: I add another couple of comments. I acknowledge a gentleman called Dalton D'Sylva, who is a community advocate for greater surveillance of paedophilia. I have had quite a lot of instruction in this matter from Dalton. He has been an amazingly effective community advocate of great integrity, and I place on record in this place my respect for the work he has undertaken on this matter over the past few years.

I would also like to give the upper House a pat on the back. This kind of review work gives us an important function in Parliament. I am very pleased that the Minister for Education has changed his position on this point. When I had opportunity in the corridor to mention my support for this amendment, he burst out that he thought that this Legislative Council was a joke and that we should be abolished. He obviously was having a bad morning. Over the passage of time, he has reconsidered the merits of this amendment. It is great that this House can do such work to improve legislation.

Clause, as amended, put and passed.

Postponed clause 34 put and passed.

Clause 36 put and passed.

Clause 37: Requirements for limited authority to teach -

Hon BARBARA SCOTT: Clause 37(1)(c)(i) refers to a teacher applicant as follows -

for which position, or positions, a suitable registered teacher is, or teachers are, not available;

I pose this question to the parliamentary secretary: does "suitable" enable religious organisations involved in education to continue to exercise the exemptions granted under the Equal Opportunity Act that has allowed consideration of religious beliefs? I give the Chamber an example. I have an Islamic school in my electorate. Let us say that the local Islamic school advertises for an English teacher and the school receives two applications, one from a Muslim called Mr Mustafa who has an honours degree in English from the University of Western Australia, but has no specialised teaching qualification, and the other from a Mr Smith who has completed a Bachelor of Education majoring in English at Edith Cowan University. Mr Mustafa is married with one child and attends the local mosque. Mr Smith has no religious affiliation and does not believe in marriage. It is clear who the school and parents would want teaching the children at that school. Does "suitable" in this provision enable religious organisations involved in education to continue to exercise the exemption granted under the Equal Opportunity Act? Can the parliamentary secretary guarantee that this concession will not be removed in the regulations?

Hon GRAHAM GIFFARD: I thank the honourable member for that example. I am advised that the wording in this clause is not intended to interfere with a school's right to choose a suitable person. I undertake to investigate that matter further; however, it was certainly not intended in the drafting of it. It is our view that the board will not be able to diminish the rights that people might have under equal opportunity legislation. That is most certainly not what was intended by this clause. I assure the member that I will follow-up that matter and advise her in due course.

Clause put and passed.

Clauses 38 to 48 put and passed.

Clause 49: DPP or Commissioner of Police to notify College about committal, conviction etc. of teachers -

Hon DERRICK TOMLINSON: Why is it deemed necessary in subclause (2) for the college to be advised of those matters relating to a person who was at any time a member of the college?

Hon GRAHAM GIFFARD: People who resigned from the college or let their membership lapse and later seek to rejoin the college might have in the meantime picked up a criminal record. We have talked about criminal convictions. This clause refers to charges laid against people in certain circumstances. The clause is intended to

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close a loophole that people might try to manipulate. People who have had charges laid against them when they were not members of the college might seek to rejoin the college. We want to know whether charges for the offences set out in the schedule in that interim period had been laid against those people.

Hon DERRICK TOMLINSON: Under clause 35(b) a requirement for registration as a teacher is that the person “has not been convicted of an offence the nature of which renders the person unfit to be a teacher”. However, on the parliamentary secretary’s explanation, a previous member of the college who applies for re-entry - in other words, wants to become a teacher again - but has been charged and committed for trial may be disqualified on the ground that the person was charged or committed for trial.

Hon Graham Giffard: Yes.

Hon DERRICK TOMLINSON: Therefore, for entry to the college, the person must not be convicted of an offence, but for re-entry the person must not be charged with an offence.

Hon GRAHAM GIFFARD: No. Members of the college who are charged during their membership is an issue for the college to deal with, and the college would become aware of that. If, however, someone is not a member, bearing in mind that this clause refers to more particular offences, not the offences referred to in broader clause 35(c), and these specific offences are narrowly defined and go to the heart of the person’s fitness for teaching, we would want to know about that fitness when a teacher wants to rejoin the college.

Hon BARBARA SCOTT: Clauses 49 to 55 refer to criminal acts and focus particularly on sexual offences. There is no indication of offences on the use of the Internet. Should this not be made more explicit in schedule 2?

Hon GRAHAM GIFFARD: The delineation in clause 49 is the requirement to advise the college. Internet offences would depend on the nature of the offence.

Hon Derrick Tomlinson: Getting your jollies off on pornographic pictures of little boys that you have downloaded from the net!

Hon GRAHAM GIFFARD: The delineation is whether someone is charged with a sexual offence, as set out in schedule 2, or convicted of an indictable offence. An indictable offence committed on the Internet is covered by clause 49. The provisions of the Bill that apply to charges but not convictions are sexual offences.

Clause put and passed.

Clause 50: Employer to notify College about suspension or dismissal of teacher from school -

Hon BARBARA SCOTT: I move -

Page 32, line 22 - To delete “7” and insert instead “21”.

I move this amendment because some country regions of Western Australia are lucky to receive letters within a week of posting. I am asking for an extension of the clause to 21 days. Anyone in remote Western Australia who is unable to send a letter to the college within seven days will be open to a penalty of \$5 000, which seems very harsh. That is the explanation for my amendment. The postal service in Western Australia has proved to not always be prompt. This is just an issue of justice and I seek support for my amendment to delete seven days and insert 21 days.

Hon GRAHAM GIFFARD: The Government does not support this amendment. The clause refers to people who have been suspended or dismissed from a school for being seriously incompetent as a teacher or engaged in serious misconduct. It is certainly our view and that of the interim board that the college would want to know about that situation immediately - that is, sooner rather than later. We think that seven days is an adequate time in which the school should notify the college. We do not think that the situation should go on for three weeks. We think that is too long for a simple notification. We will therefore not be supporting the amendment.

Hon BARBARA SCOTT: The clause clearly states that it is “after taking action to dismiss or suspend the teacher”. We are not talking about having a teacher in place who should not be there. We are talking about a \$5 000 fine if the letter from the employer does not reach the college to instruct it or inform it by written notice. That is a pretty stiff penalty for a school in isolated Western Australia.

Hon CHRISTINE SHARP: From my experience of the postal services in the south west, if I post a letter from my home town it takes two days to get to Perth. That is in the south west, not the north west or wherever.

Hon Murray Criddle interjected.

Hon CHRISTINE SHARP: Hon Murray Criddle says that it can take two days for some people to get to the post office. One can envisage a school with a part-time secretary. A dismissal may not occur on the secretary’s

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working day. This may not be a functional time frame in certain circumstances. I know that in most situations it would work, but I can envisage situations in which it would not work. I can understand that the parliamentary secretary says that he believes that the college wants to know about these things as a matter of urgency. I believe that we would all concur with the view that it is quite proper. Part of the dismissal process should involve informing the college so that the college is the custodian of that body of knowledge. What about a compromise of 14 days?

Hon Barbara Scott: That would be acceptable.

Hon CHRISTINE SHARP: Would it be possible for me to suggest a modification? How would you like me to go about that, Madam Deputy Chairman?

The DEPUTY CHAIRMAN (Hon Kate Doust): If Hon Barbara Scott wants to further amend what she has already moved, she can seek leave to withdraw her first amendment and substitute a new one.

Hon BARBARA SCOTT: Thank you, Madam Deputy Chairman. I have written a new amendment. I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Hon BARBARA SCOTT: I move -

Page 32, line 22 - To delete “7” and insert instead “14”.

I make it very clear to the Chamber that we are talking about 14 days after the dismissal or suspension of a teacher, so children are not in danger. It is a matter of the mail service.

Hon GRAHAM GIFFARD: We do not support the amendment. If several members disagree, they are at liberty to support the amendment. We think that seven days is adequate and it is not necessary to go to 14 days. It is a simple matter.

Hon CHRISTINE SHARP: Is it 14 working days or 14 days?

Hon Barbara Scott: It is 14 days, but under the Interpretation Act it is 14 working days.

Amendment put and passed.

Hon DERRICK TOMLINSON: Clause 50 reads that if an employer of a registered teacher takes action of the kind described, because in the opinion of the employer the person has been seriously incompetent, which can be read to mean that if the action has been taken because in the opinion of the employer the person has been incompetent as opposed to seriously incompetent, there is no requirement on the employer to advise the college. The qualifier “seriously” imposes not only a qualification on the competence but also a direction on the employer. It is capable of being read that way although I do not think that is the intention.

However, I wonder what “seriously” really means. The requirement for registration as a teacher is simply that the applicant has achieved the standard of professional practice approved by the college. For the employer to notify the suspension and dismissal of a teacher from a school, the teacher must seriously not perform at the standards of professional practice required by the college. The teacher is not required to seriously achieve the standards of professional practice; the teacher is simply required to achieve the standards of professional practice. I think the qualifier “seriously” is meaningless. The person is either competent - in other words, meets the standards approved by the college - or the person is not competent. There is no requirement for serious competence; there is merely a requirement for competence. If there is merely a requirement for competence, the adjective “seriously” is meaningless and obfuscates the intention of the subclause; that is, at any time a person is dismissed for incompetence, the college is required to be advised. I would like the parliamentary secretary to try to persuade me that the word “seriously” in paragraph (a) is needed. Likewise, what does misconduct mean? If a misconduct is being untruthful or telling a lie, it means that if a teacher tells a little lie, that is misconduct but if a teacher tells a big lie, that is serious misconduct. If a teacher tells a big lie, it is necessary for the employer, having made a decision to dismiss the teacher, to advise the college. However, if a teacher tells a little lie and the employer makes a decision to dismiss that teacher, he or she does not have to tell the college. I do not think that is the intention of the Bill, but it is capable of being read that way. I believe that the word “seriously” is meaningless -

Hon Graham Giffard: Do you seriously believe that?

Hon DERRICK TOMLINSON: I seriously believe that it is seriously unnecessary to have that word in the clause when referring to a standard that is prescribed in clause 35(c).

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Hon GRAHAM GIFFARD: Clause 35(c) goes to the requirements for registration as a teacher. It deals with the question of membership of the college. This issue has been raised in debate, so members might recall this explanation. The board understands the issue and this is how the board expressed it to the Government, and we have accepted that and it is part of the Bill. The issue even arose earlier today. A school may decide that a schoolteacher is not adequate or competent to teach at that school. The teacher might not be of a standard required by that school or might not be suitable for the school. The principal or the notifying person also may have the view that although the teacher might not be good enough for that school, the teacher is not necessarily so bad that he or she should be drummed out of the profession. The intention of the word “seriously” is that the college does not want to be notified every time a school decides to dismiss a teacher for misconduct, because that can be for a range of reasons. It may apply to that person’s teaching or to other behaviour. However, if the misconduct is so serious that it brings into question the person’s fitness to teach and his or her registration, the employer is required to notify the college. Schools will need to exercise that judgment about whether a teacher falls through on one matter but not on another. I know that Hon Derrick Tomlinson wants to be satisfied. I am not sure that I can satisfy him, but I can tell him that the intention of the Bill and this clause is to make that distinction, and that is why that word has been used.

Hon DERRICK TOMLINSON: I thank the parliamentary secretary. That is quite a satisfactory explanation of the difference between serious incompetence and incompetence and serious misconduct and misconduct. I accept what he has said. However, now he is saying that instead of the college making a judgment about the person’s aptness to teach, it is the school employer -

Hon Graham Giffard: In the school, yes.

Hon DERRICK TOMLINSON: No. The school employer will make the judgment about that person’s aptness to teach, because it is a question of seriousness. According to the parliamentary secretary’s explanation, the seriousness of the incompetence is a matter for that employer to decide. To use the parliamentary secretary’s example, a teacher in a particular school may be performing in a way that is not appropriate to the values and ethos or to the teaching style and educational philosophy of that school. That is not a question of competence; that is a question of the appropriateness of the person to that employment. The question of competence is of a different kind. If it is a question of competence - that is, the person is not fit to teach at all as opposed to not appropriate to teach in that school - a decision on competence will not be made by the college, even though it should be because it is the college that determines the standards required for performance by teachers in schools. That decision will be made by the school employer. According to the parliamentary secretary’s words, the school employer must determine whether it is sufficiently serious incompetence to disqualify that person from teaching. That, I argue, shifts the responsibility from where it should lie, because the body that will make judgments about who should be allowed to teach in our schools is the College of Teaching. The parliamentary secretary is now saying that when competence is a reason for dismissal, it is the principal or the employer who will make the judgment about that person’s aptness to teach anywhere, because the judgment must be made that it is serious. According to the parliamentary secretary’s explanation, the judgment must be made only at the school level, and not by the college.

Hon GRAHAM GIFFARD: The college will have as a registered teacher someone who may be teaching in a school, and, depending on the dynamics of the school, the employing authority may well make the decision that that person is not competent to teach in the school and it no longer wants that person to teach in the school. The concern that was raised by Hon Alan Cadby during the second reading debate was whether control of that would be taken away from schools. The answer is no, they will make the decision in the best interests of their schools and their students, as they see it. Employers will not have the right to determine that a schoolteacher cannot teach at all. That will not be their right. They will have an obligation to say to the college that, in their view, that person is not competent to teach in the school, and ask the college whether it regards that teacher as competent to teach in any school. The college will then make a determination on the basis that the employer has referred the matter to the college and has advised it that, for the purposes of that school and the standards set at that school, the employer does not want that person teaching at that school. We are saying that there is an obligation for the school to raise the issue with the college, which will then make a final determination on whether that person continues in the profession at all. The employer, in making the decision whether to have that person teach in the school, might already have formed the view - that is why there is a distinction in the clause - that the person is unfit to teach in any school, but the employer might have higher standards for one particular discipline or for all disciplines. Whatever view principals might have about the teaching standards in their schools, they might argue that they have higher standards than do other schools. In that event, because it will be a question of their judgment, they might say that this person is fit to teach but they believe that they have above average teachers and do not want that teacher in their school. That is the distinction, so that every time a

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teacher is dismissed from a school, it is not referred to the college. If the employer says that the person should not be teaching in the system at all, the employer must notify the college.

Hon BARBARA SCOTT: I move -

Page 32, line 25 - To delete "\$5 000" and insert "\$500".

We are talking about an employer failing to notify the college within 14 days of a person who has been dismissed or suspended under the two categories we have mentioned. A fine on an employer of \$5 000 is a very large impost. I guess it is important that the employer notify the college. However, I would like that penalty to be reduced to \$500.

Hon GRAHAM GIFFARD: We have just discussed the seriousness of these matters in debate with Hon Derrick Tomlinson. I hope I have been clear. The Government makes the distinction that it is a serious matter that goes to the question of whether someone should continue to teach in the school system. We want the schools to take these matters seriously. A moment ago, this Chamber determined that 14 days grace is a generous provision. We accept that without question. However, we do not think these provisions should be relaxed to the point at which people do not take them seriously. They are maximums. We discussed the notion of maximum penalties earlier today in light of the board being cognisant of extenuating circumstances. It will impose the maximum penalty only in extreme circumstances. I am sure that if the notification is a day late or the school did not advise within 14 days for a legitimate reason, the college will be open to accepting reasonable explanations. If the maximum penalty is diluted to \$500, it will reduce it to a token sanction and undermine the seriousness of determining whether people should be allowed to teach in other schools.

Hon Derrick Tomlinson: It sounds as though you have seriously considered this one.

Hon GRAHAM GIFFARD: We have seriously, seriously considered it. The Government does not support the amendment.

Hon BARBARA SCOTT: I take issue with the parliamentary secretary's comments; I do not agree with them. We are not talking about whether a school should dismiss a seriously incompetent person to protect children. We are talking about a fine being imposed on an employer if a notification has not reached the college within 14 days. They are two different issues. The amount of \$5 000 is a huge amount of money. It would be a serious matter if a school continued to employ a seriously incompetent teacher. However, failing to notify the college within 14 days should not attract a fine of up to \$5 000. That is why I have moved this amendment.

Amendment put and negatived.

Clause, as amended, put and passed.

Clause 51: Member to notify College about certain legal actions -

Hon BARBARA SCOTT: I move -

Page 33, lines 9 to 16 - To delete the lines.

This clause is about some very basic human rights such as the right to privacy and the right to a fair trial after being second-guessed by another authority. I acknowledge a child's right to be protected from unsuitable teachers. However, as parliamentarians, we must balance these rights. The Government is suggesting with this Bill that the college should know practically everything about teachers. I do not think that the college should know everything about them. Although there might be some disagreement about where the line should be drawn in criminal cases, civil cases are well and truly on the other side of the line, even cases involving schools. People should not have to give up their basic human rights.

The teacher to whom I referred earlier was quoted in the newspaper on an issue he felt very strongly about and the college of teaching in Canada condemned him, excluded him from teaching and charged him. The issue is one of basic human rights and I seek support for that amendment.

Progress reported and leave granted to sit again.

Sitting suspended from 1.00 to 2.00 pm