

HIGHER EDUCATION BILL 2003

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary) in charge of the Bill.

The CHAIRMAN: I note that a supplementary notice paper has been issued for this Bill. Standing Order No 234A does not apply to this Bill. However, members will note that a number of recommendations of the Standing Committee on Uniform Legislation and General Purposes are on the supplementary notice paper, and either a member of the standing committee or a member of the House generally, including the parliamentary secretary, can move those amendments if he or she sees fit.

Hon GRAHAM GIFFARD: Will I move them as they arise, or can I move them now?

The CHAIRMAN: No, as they arise.

Clauses 1 and 2 put and passed.

Clause 3: Interpretation -

Hon GRAHAM GIFFARD: I move -

Page 3, line 2 - To insert after "Commonwealth," -
for a State,

The Government has accepted this recommendation from the committee, and it has accepted the reasoning that the committee has set out in its report. While I am on my feet, I indicate to members that the Government will accept all the committee recommendations, and I am happy to move them in each instance.

Hon DERRICK TOMLINSON: I indicate on behalf of the Opposition our endorsement of the committee recommendations. We too will support them.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4 to 10 put and passed.

Clause 11: Suspension or revocation of section 10 determination -

Hon GRAHAM GIFFARD: I move -

Page 8, after line 28 - To insert -

- (3) A suspension or revocation under subsection (1) is to be given to the education institution in writing signed by the Minister and is to state the grounds relied on in making the decision.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 12 to 14 put and passed.

Clause 15: Suspension or revocation of provider's authorisation -

Hon GRAHAM GIFFARD: I move -

Page 10, after line 15 - To insert -

- (3) A suspension or revocation under subsection (1) is to be given to the non-university institution in writing signed by the Minister and is to state the grounds relied on in making the decision.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 16 and 17 put and passed.

Clause 18: Ministerial accreditations -

Hon GRAHAM GIFFARD: I move -

Page 11, after line 31 - To insert -

- (5) A right of access under subsection (4) may be exercised -
 - (a) without notice during ordinary and actual business hours on any day; or
 - (b) after giving written notice of not less than 24 hours if access is to occur at any other time.
- (6) A requirement under subsection (4) -
 - (a) is to be in writing identifying the form and content of the information or described by reference to a class or type of information that corresponds to that in the requirement; and
 - (b) is to state the purpose of the requirement and require the information to an extent that is proportionate in scope and content to that purpose.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 19: Duration of accreditation -

Hon GRAHAM GIFFARD: I move -

Page 12, after line 22 - To insert -

- (4) A suspension or revocation under subsection (2) is to be given to the course provider in writing signed by the Minister and is to state the grounds relied on in making the decision.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20 put and passed.

Clause 21: Remuneration of advisory committee members -

Hon GRAHAM GIFFARD: I move -

Page 13, after line 17 - To insert -

- (3) A determination is only to be made after having regard to the recommendation of the Minister for Public Sector Management.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 22 to 25 put and passed.

Clause 26: Disclosure of information -

The CHAIRMAN: Listed on the notice paper are some alternative recommendations. The parliamentary secretary will have to choose which recommendations he proposes to move, because they have some consequential effects.

Hon GRAHAM GIFFARD: I move -

Page 15, lines 23 and 24 - To delete the lines.

I intend next to move committee recommendation No 7b. Committee recommendation No 8a, which is the amendment I have just moved, seeks to delete paragraph (d) of subclause (2), and committee recommendation No 7b seeks to delete paragraph (e). Members will note that committee recommendations Nos 8b and 7b both attend to the insertion of a new subclause (3), which states -

Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

These recommendations seek to insert an identical subclause. Therefore, it is necessary to move only one of those recommendations; otherwise, we would insert the same subclause twice. I will first seek to delete unwanted paragraph (d) and will then move to delete the second unwanted paragraph and insert a new subclause to replace them both.

Hon SIMON O'BRIEN: One point that will have struck any observer during the course of this committee debate is the expedited progress that has been made. The progress that has occurred reinforces how useful it can be for a committee to report on Bills that contemplate quite complex matters. In this case, we are dealing with a piece of legislation that falls under one of the nine identifications of the different types of Bills that can be termed uniform legislation and that are dealt with by the committee of which I am a member. It is particularly useful to

have a committee report to expedite what might otherwise have been extremely protracted proceedings either at this or some other stage of the debate. I assure members that behind the closed doors of the committee room, the committee put in the sorts of hours that were needed to produce the report that is now assisting us. I acknowledge the work of the other members of the committee and particularly the committee staff who assisted us to work through those complex matters.

I have risen at this time not simply to acknowledge that point but also to reinforce to members what they are considering under this clause. I am very glad that there appears, so far anyway, to be unanimity of acceptance of the spirit and letter of the committee's recommendations. However, it is important to note as we proceed through these provisions, uncontroversial as they are in this Chamber at this time, that they deal with matters of parliamentary privilege. One matter to which the Standing Committee on Uniform Legislation and General Purposes has applied itself to consider in its deliberations on not only this Bill but a range of other Bills is that forms of uniform legislation that owe their origin and development either in whole or in part to jurisdictions outside this State - whether another State has prepared a template Bill or a form of uniform legislation inspired by the Commonwealth Parliament - sometimes, and indeed frequently, pay scant regard to the question of parliamentary privilege. If the Parliament were to consider matters of uniform legislation that, for example, extended certain state powers to commonwealth officers, it might decide that that was a proper, convenient and useful thing to do. Therefore, it might acquiesce and participate in a system of uniform legislation by adopting a mirror Bill, a template Bill or any of the other legislative mechanisms that are available to us. Not infrequently, the deliberations on and development of uniform legislation take place over successive Governments. With that sort of gestation period and broad level of stakeholder input, such Bills are received in a bipartisan way when they finally reach the House. That can lead to the expeditious passage of a Bill, once it gets to the House after having been to a committee.

That is all fine, but, as I have indicated, on many occasions the standing committee has identified matters that touch upon parliamentary privilege. When the authors of the Bill are persons other than those closely connected to the Western Australian Parliament, we must look out for some of the provisions that may be included in this sort of Bill and others of its kind and ensure that we do not inadvertently or without a full appreciation of what we are doing infringe upon this Parliament's ability to exercise its privileges in the future. If it were allowed to go through unchallenged, it could sit dormant for a very long time and then years or even decades down the track it could pop up to bite a future Parliament or a committee of the Parliament on that part of its anatomy that I will not colloquialise about on this occasion.

I invite the committee to pause for the few minutes I have taken to draw attention to this provision. I am very pleased that the Government has so willingly taken on board this recommendation in the way in which the parliamentary secretary has just outlined, because it will redress any possible doubts about what might occur in the remoteness of proceedings 20 years down the track if one of our committees needed to seek information about matters that impact on the matter that is being legislated for.

Hon Derrick Tomlinson: Doesn't the Parliamentary Privileges Act apply only if legislation specifies so?

Hon SIMON O'BRIEN: No. Some people may argue that. I certainly would argue the converse.

Hon Graham Giffard: As did the committee.

Hon SIMON O'BRIEN: Yes. Hon Derrick Tomlinson has raised a very useful query by way of interjection. He has hit on the precise matter that the standing committee has observed with numerous Bills; that is, some draftsmen in some remote place in Canberra or Queensland, working in good faith, have put in legislation provisions that touch upon matters such as those contained in clause 26(2)(d), which we are proposing to delete. At the moment the clause refers to whether the recording, divulging or communicating of information is prohibited for the purpose of answering a question asked in a House of the Parliament. I use that one example. Once that matter is raised, the potential and, in the minds of some people involved in other proceedings down the track, the presumption exists that that reference to the privileges of Parliament somehow will overcome the automatic privileges that, in Hon Derrick Tomlinson's mind, in my mind and in the minds of other parliamentarians, should occur as a matter of course. When those words touch on parliamentary privilege, it can be presumed that a Parliament, in agreeing to this legislation, acquiesces in that matter.

Hon Derrick Tomlinson interjected.

Hon SIMON O'BRIEN: Yes. It then raises the question of whether a Parliament can waive its own privilege. If individual pieces of legislation expressly apply something, it opens a potential can of worms that some poor Clerk of the Parliament must deal with; for example, a recalcitrant witness in a very important committee inquiry 20 years down the track.

Hon Derrick Tomlinson: Or, alternatively, a treasure chest for a constitutional lawyer.

Hon SIMON O'BRIEN: Yes, and that is not the business we are in. I do not know what the honourable member will do in his retirement or in his next career. If it is constitutional law, I apologise now for apparently queering the pitch for him. I thank the committee for the opportunity to make those comments. On behalf of the standing committee, I draw the attention of members to this matter. It will come up again and again. It has probably come up before.

Hon Graham Giffard: I concur with Hon Simon O'Brien.

Hon SIMON O'BRIEN: I thank the parliamentary secretary for moving in this way.

Amendment put and passed.

Hon GRAHAM GIFFARD: I indicate to members that I accept fully the points made by Hon Simon O'Brien. As I flagged a moment ago, I move -

Page 15, lines 25 to 28 - To delete the lines and insert instead -

(3) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27: Immunity from tortious liability -

Hon GRAHAM GIFFARD: Members will note that pages 34 to 37 of the committee's report relate to clause 27 of the Bill. I may have misunderstood the report, but the committee clearly has some concerns about the extent to which the Bill purports to grant the Crown immunity from tortious liability. I have privately discussed with members the clause and this aspect of the committee's report. The simple truth is that members have indicated to me that they find the current wording unacceptable and that it goes too far. The Government and I accept what members have said to me privately. It is certainly not my desire that this Bill contain a provision that extends crown immunity beyond the norm. We do not propose to make this clause the focus of the debate on this Bill. We do not believe that the clause is necessary for the passage of this Bill and for it to operate fully and effectively. For those reasons this clause is not required in the Bill.

The CHAIRMAN: The parliamentary secretary need only vote against the clause. It will extend the question of immunity well past the State.

Hon GRAHAM GIFFARD: That is right. I indicate that we will vote against the clause.

Clause put and negatived.

Clauses 28 to 31 put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed forthwith through remaining stages.

Report

Report of committee adopted.

Third Reading

Bill read a third time, on motion by Hon Graham Giffard (Parliamentary Secretary), and returned to the Assembly with amendments.