

**WESTERN AUSTRALIAN COLLEGE OF TEACHING BILL 2003**

*Committee*

Resumed from 6 May. The Chairman of Committees (Hon George Cash) in the Chair; Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training) in charge of the Bill.

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

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

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

Hon GRAHAM GIFFARD: The Government does not support the amendment, nor does it agree with the propositions put by the honourable member in moving the amendment. The part of the Bill that the member seeks to remove is a requirement for a member of the college to give notice to the college after he or she has been ordered to pay damages or compensation as a result of civil proceedings that have arisen from events during the practice of teaching in a school; that is, the person was employed, engaged or given permission to teach in a school. In the Government's view, it will be relevant for the college to be aware of those matters because they may well go to the question of the teacher's registration. I notice that this provision also refers to a person being convicted of an offence and, although it has not been proposed to delete those words, such matters should also be properly managed by the college. The category of matters provided for under clause 51(1)(a) are matters that should be brought to the attention of the college, and for that reason we do not agree that they should be removed from the Bill.

Hon DERRICK TOMLINSON: Will the parliamentary secretary provide examples of the sorts of matters that would be subject to civil proceedings leading to damages or compensation?

Hon GRAHAM GIFFARD: I am advised that a couple of examples that are intended to be covered by this clause are, firstly, a drowning in a school swimming pool when accidental death is recorded, and the school has failed in its supervision and a particular teacher is sued and found liable for damages. Another example might be an assault on a student when there is no criminal conviction but a teacher is successfully sued in a civil action. I am advised that those are the sorts of examples that are intended to be covered by the provision.

Hon DERRICK TOMLINSON: I suppose these sorts of actions relate to what is loosely or otherwise termed in loco parentis, which is the legal convention of the teacher having the responsibilities of a parent while a child is in his charge. The parliamentary secretary has given two examples. There have been a couple of cases of drowning, one of which occurred recently and the other of which has a longer history. I think it involved Fonty's Pool and the teacher was adversely commented on in the coronial inquest. My recollection is that the Department of Education and Training did not support the teacher, but that may be incorrect. In those examples a teacher was deemed to have been negligent in his or her duty, particularly in an in loco parentis case. In a court decision in New South Wales the in loco parentis related to children being on the school grounds early in the morning when unsupervised. The school was found to be negligent on the grounds of in loco parentis.

Those are disciplinary matters, which I would have thought would automatically have been brought to the attention of the school employer, whether it be the Department of Education and Training or a private school board. If the employer, whether it be the Department of Education and Training or a private school board, had not already taken some action, I would be very surprised. I would be very surprised if there were not a departmental inquiry relating to a drowning. I would certainly be equally surprised if there were not a departmental inquiry relating to an assault on a child while teachers were supposed to be supervising. I could not imagine Hale School or St Hilda's Anglican School for Girls not having an inquiry, because the parents would demand it. It is a matter for the discipline of the school.

When it comes to a question of civil proceedings, why impose a double jeopardy? There is already the prospect of a disciplinary action. Now, because a person then faces civil action - a civil action will be a private action probably taken by a parent or interested person - that person has to hazard deregistration. I would have thought that person had already hazarded deregistration by virtue of another inquiry by the employer. I would be very surprised if the employer had not reported that person for matters of serious incompetence to the Western Australian College of Teaching. It seems to me a double jeopardy relating to something that is involved in a civil action as opposed to a criminal action. I have no objection to paragraph (b) but I do have some concerns about civil action.

Hon GRAHAM GIFFARD: The member makes the point that the teacher may well have already been the subject of an inquiry. He also makes the point when he talks about serious misconduct that whatever instigated it, it may well have already been reported to the college. That may well be the case. However, this clause says that if someone has then been ordered to pay damages or compensation - that is, there is a finding against that

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person - and it has not occurred, it will be required to occur. The member says that he would be surprised if it had not occurred. That is fine, but he is saying that such an incident might already have been reported to the college. It might have, but the clause says that if it has not already been reported to the college and a court has a finding, it must be reported to the college.

Hon ALAN CADBY: There is a growth in the amount of litigation in schools. What happens in the United States will not necessarily happen here, but there have been a number of cases in which teachers have been sued because of the lack of academic success of children. What worries me about this is that at some stage it is likely that the courts will find in civil proceedings that a teacher is negligent in his teaching. The teacher may have been sued because he redirected a student into a course in which the student did not succeed. The teacher may have done it in the best interests of the child, but the parents might say that the child has failed - whatever fails means - and they then took action against the teacher. Although I do not want it to occur, I am sure it will come.

Hon Derrick Tomlinson mentioned Hale School and St Hilda's Anglican School for Girls. Having talked to parents at those schools, I am aware that deep down many of them feel that they might want to take action because they pay a considerable amount of money for their child's education. They expect to pay for success. Of course, the school does not promise success; that is dependent on the child. It worries me that action could occur and that a teacher, through no fault of his own, is likely to be deregistered. The clause does not state that a teacher will be deregistered; it states that the college must be notified. The only reason the college would want to know is to look at a teacher's registration. That is what worries me about this clause. The parliamentary secretary must be aware that litigation in schools is growing. Parents are looking for any excuse to put the blame on the teacher or on the school rather than on themselves. That is why I am particularly worried about this clause.

Hon BARBARA SCOTT: I rise again to support my amendment. I also support the argument about double jeopardy put forward by Hon Derrick Tomlinson. One of the concerns behind my moving the amendment was the right of a teacher to appeal against such a case. Seven days seems to be a very short time in which to give notice to the college if the teacher has been ordered to pay damages or compensation and has not been given the opportunity to appeal against it.

Amendment put and a division taken with the following result -

Ayes (11)

Hon Alan Cadby	Hon Paddy Embry	Hon Barry House	Hon Derrick Tomlinson
Hon George Cash	Hon Peter Foss	Hon Barbara Scott	Hon Bruce Donaldson
<i>(Teller)</i>			
Hon Murray Criddle	Hon Frank Hough	Hon Bill Stretch	

Noes (13)

Hon Kate Doust	Hon Nick Griffiths	Hon Jim Scott	Hon Ed Dermer <i>(Teller)</i>
Hon Adele Farina	Hon Dee Margetts	Hon Christine Sharp	
Hon Jon Ford	Hon Louise Pratt	Hon Ken Travers	
Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Giz Watson	

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Pairs

Hon Norman Moore	Hon Tom Stephens
Hon John Fischer	Hon Robin Chapple
Hon Robyn McSweeney	Hon Sue Ellery
Hon Ray Halligan	Hon Kim Chance

**Amendment thus negatived.**

Hon BARBARA SCOTT: I move -

Page 33, line 8 - To delete "7" and insert instead "21".

This amendment will enable a teacher to have sufficient time. In other examples in the Bill the number of days has been increased to 14. Seven days is not long enough.

Hon DERRICK TOMLINSON: I commence my remarks by apologising to Hon Barbara Scott for not having the wit to recognise this sooner. As the member said, a previous amendment has increased a period from seven to

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14 days. I think the same cogent argument applies here. I wonder whether the member will agree to amend her amendment to 14 days.

The CHAIRMAN: The amendment before the Chair in the first instance is to delete “7” and, if agreed, insert “21”. I give the call to Hon Barbara Scott knowing that the proposition has been put forward, and that she may wish to accept it.

Hon BARBARA SCOTT: I would like to change my amendment so that the “7” in the Bill is replaced by “14”.

**Amendment, by leave, altered.**

Amendment (figure to be deleted) put and a division taken with the following result -

Ayes (16)

Hon Alan Cadby	Hon Peter Foss	Hon Simon O’Brien	Hon Bill Stretch
Hon George Cash	Hon Frank Hough	Hon Barbara Scott	Hon Derrick Tomlinson
Hon Murray Criddle	Hon Barry House	Hon Jim Scott	Hon Giz Watson
Hon Paddy Embry	Hon Dee Margetts	Hon Christine Sharp	Hon Bruce Donaldson

(Teller)

Noes (7)

Hon Kate Doust	Hon Graham Giffard	Hon Ljiljanna Ravlich	Hon Ed Dermer (Teller)
Hon Adele Farina	Hon Nick Griffiths	Hon Ken Travers	

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Pairs

Hon Norman Moore	Hon Kim Chance
Hon John Fischer	Hon Sue Ellery
Hon Robyn McSweeney	Hon Jon Ford
Hon Ray Halligan	Hon Louise Pratt
Hon Robin Chapple	Hon Tom Stephens

**Amendment thus passed.**

**Amendment (figure to be inserted) put and passed.**

Hon BARBARA SCOTT: I move -

Page 33, line 20 - To delete “\$5 000” and insert instead “\$1 000”.

If a teacher is convicted of an offence and does not advise the College of Teaching within the specified time, that teacher will be fined \$5 000. I believe that is a very harsh impost on a teacher, who will be subject to double jeopardy. I seek the support of members to reduce that fine from \$5 000 to \$1 000.

Hon PETER FOSS: Hon Barbara Scott has raised an interesting question, because there are degrees of culpability in this offence that are probably not catered for by the offence itself. A \$5 000 penalty seems to be extremely high if it is purely a matter of a person omitting to do something, such as getting a return in late. If, on the other hand, it is a wilful omission to do so, and the person seeks to conceal from the college the fact that he or she has had a conviction in particular, the penalty appears to be a bit low. It is a case of one of those compromises that is unsatisfactory. Perhaps it would have been better to provide two penalties; that is, one penalty of \$5 000, as in this clause, and a more serious penalty for a wilful failure.

It is a bit of a problem that there is a tendency now for people who want to enforce something to use a big stick when in fact it is quite unreasonable to do so. We hope that if a person just forgot for a couple of days, the college would not bother to prosecute. If a person were convicted under this provision, the college would need to be notified that that person had been convicted, so it could get somewhat repetitive. It seems a bit strange. It might be interesting to hear from the parliamentary secretary whether this penalty is intended for a person who wilfully omitted to advise the college or whether it is purely intended for a person who just forgot to do so or was not aware of the law. If it is the former, I think the penalty is a bit low; if it is the latter, I think it is a bit high.

Hon GRAHAM GIFFARD: As has been indicated during debate on other fines in the Bill, this penalty is intended to indicate the seriousness of the matter. We are talking about circumstances that may well bring into

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question the teacher's registration with the board. We are dealing with matters that should not be taken lightly by parties to them. I am advised that the \$5 000 penalty reflects the seriousness of the matter and is set as a maximum fine. If, as Hon Peter Foss has alluded to, the matter involves innocuous circumstances in reporting the matter to the college, and not grave omissions that the college would deem seriously recalcitrant, those extenuating circumstances can be taken into consideration. The maximum fine is set at \$5 000 to reflect a reasonably serious matter.

Hon PETER FOSS: I do not think I got an answer to my question, because I asked whether the penalty is intended to reflect the seriousness of a wilful refusal but will also apply to an accidental omission. They are two very different types of offence. The answer that it will be up to the college, or obviously a magistrate in the end, to decide what sort of penalty will be imposed is not a very good one. On that basis, it is certainly not an answer to this Parliament. We could make every penalty life or death, and then say that the court can take into account how serious the offence is. We have to say what we believe is the relative importance of the particular offence. I asked whether the \$5 000 penalty is intended to apply in the case of a person's wilful omission to advise the college; that is, to someone who fears that he or she will lose his or her registration and wilfully suppresses that information. If it is, \$5 000 would be too low. If it is just intended to hurry people along in getting in their return, it would be too high. If, on the other hand, it is meant to cover both situations, we have an unsatisfactory situation. On the one hand, we have a serious, morally culpable offence, for which \$5 000 may be too low; on the other hand, we have a mere late filing offence, for which people should not be subject to a major fine and should not have to go to court and argue that their offence should be dismissed as minor. People should not be put in that position for a minor offence. I am really asking the parliamentary secretary which offence this penalty is intended for. Is it for the wilful refusal? If so, why does it not say so? Is it just for the late filing offence? If so, the penalty is too high. Is it for both offences? If it is, I think it is a problem.

Hon BARBARA SCOTT: The point that Hon Peter Foss has made - I thank him for his clarity - clarifies in my mind the reason I moved the amendment. There are two issues here. We are talking about the late filing of information advising the College of Teaching of a serious offence. My point is that a person now has 14 days to appeal against that penalty, and if that person does not let the college know within that time, he or she will be fined \$5 000, even before the appeal proceeds. It is a late filing fine, which I think is very high for that offence. The person may already be facing additional legal fees to clear his or her name. It does not give a person an opportunity to clear his or her name and to appeal the case. If a person does not let the college know, that person can be fined up to \$5 000. I think it is too high.

Hon GRAHAM GIFFARD: The amount of \$5 000 is intended to apply to the more wilful, serious transgressions of the type to which Hon Peter Foss has alluded.

Hon PETER FOSS: I thank the parliamentary secretary for that. It is very helpful to have those words on the record. We might not be able to deal with it now, but I suggest that when the college believes that the delay in the notification is merely an oversight, the Government provide for some sort of civil penalty of, say, a \$100 fine rather than take someone to court. It would avoid the need to prosecute someone for a mere omission.

I am very pleased that the parliamentary secretary said that the fine of \$5 000 is principally aimed at wilful omissions, in which circumstances the \$5 000 can be defended. Nonetheless, that does not alter the actual offence. The clause does not provide for wilfully failing to notify; it provides for just failing to do so. The matter could be improved if a distinction were made between "wilful omissions" and "accidental omissions". I do not think that someone who is a little late in sending in information should be forced to contest the matter. As Hon Barbara Scott pointed out, there are 14 days in which to appeal. If a person does not agree with the conviction, that person will be running around like nobody's business to lodge an appeal. The last thing that person will be thinking about is a note saying that although he has just been convicted he will lodge an appeal. The person will be too busy doing many other things. This happens all the time; it is not a surprise to me. Many civil servants believe they must make sure people do not wilfully do something. They take the extreme case, which is perfectly legitimate, although I do not think it is the right approach. The Bill does not allow for mere omissions. The Corporations Law addresses this quite well: people who are slack at getting things done should receive some sort of financial penalty. It should be able to be easily imposed for both the organisation and the person who was slack. There is a difference between a person who is slack and one who wilfully breaks the law intending to deceive. I do not think that has been catered for or that we can now include it. That is a shame. The fact that there is no allowance in the Bill for these offences to be wilful is an inadequacy. It might be possible to change the legislation to provide a fine of \$5 000 for wilful omissions and a civil penalty of \$500 for other omissions. I am not suggesting we now amend that. That would have been one way to make an easy distinction between the wilful omission and the other one. I certainly accept that when an omission is wilfully made, the offender should be prosecuted. It should be proved that it is wilful and a penalty should then be imposed. However, it is a shame that the college must prosecute if it wants to impose any form of penalty. One

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way of dealing with it could be to impose a late filing fee on notification. It is silly if a late filing fee can be imposed when the college does not then go to the trouble of saying it is a wilful omission. Otherwise, as Hon Barbara Scott said, it is a very severe penalty for a late notification through tardiness or an oversight. A late penalty fee and the provision of an offence for wilful omissions would have been a better way to deal with it. A wilful offence would also attract the late payment fee anyway.

Hon GRAHAM GIFFARD: The clause provides for persons who have had an order against them to advise the college. If they do not do so within 14 days, the college may impose a penalty for not providing that information to the college within that time frame.

Hon Peter Foss: The college or the court?

Hon GRAHAM GIFFARD: I am advised it is the college.

Hon Peter Foss: Which clause contains that provision?

Hon Barbara Scott: The college can impose the fine.

Hon GRAHAM GIFFARD: My adviser is checking that.

Hon Peter Foss: I understand it but where does it say that?

Hon GRAHAM GIFFARD: As I have previously indicated, it is the maximum fine. I am advised that the distinctions to which the honourable member referred, which are valid, can be accommodated to include in the regulations fines that do not exceed \$5 000. That is contained later in the Bill in more general provisions.

Hon PETER FOSS: Clause 83 indicates the opposite. I am pleased we clarified that. Clause 83(2) makes it quite clear that any offence against the Act is to be prosecuted before a magistrate. That will apply also to offences under the regulations. Although I understand that those matters can be taken into account, a decision will have to be made to prosecute, proceedings will have to be brought and the defendants will have to instruct counsel, even though they have pleaded guilty. By that stage, they will have incurred about \$1 000 in expenses, some on behalf of the college, which can be recouped from the member. It would be better if this penalty applied to a wilful offence, and the clause provided the imposition of a late filing fee. In other words, if a person filed a notice under clause 51, the regulations could have provided for a late filing of fee of \$100. The processes could have applied and consideration could have been given to whether the person had committed the offence wilfully or otherwise. The parliamentary secretary says that the provision encompasses both types of offence and that that can be taken into account; however, that is not usually done when setting penalties. An obvious similar example is the offences of causing grievous bodily harm and intentionally causing grievous bodily harm. If a person intended to cause grievous bodily harm, the penalty is considerably more serious than if he merely intended to assault somebody but caused the victim serious bodily harm as a result. Two different kinds of offence are not always created in one. The character of the offence, and not just the circumstances, must be taken into account. There will always be mitigating and aggravating factors. However, the character of the offence perpetrated by the offender who wilfully omits or refuses to do something is different from somebody who happens to be late. Members must keep in mind that serious offences usually come under the provisions of the Criminal Code, under which intent must be shown. The words in clause 51 are sufficiently clear that the offence is committed merely by omission. There are many offences of that nature in which the prosecution does not have to show that the person intended to commit the offence. If that is clear - and I think it is - there are two offences: a minor offence in which intent does not have to be proved and a major offence in which intent must be proved. They are different in character; they are not just circumstances of aggravation or mitigation. Although there is the possibility that an offence could be committed by accident, the penalty could not possibly be \$5 000. In fact, a person could be fined \$5 000 if intent did not have to be proved because even if the offender did intend to commit the offence, it is not a relevant aspect of the offence. The Bill must provide for an offence that is committed wilfully before it is a relevant matter to the offender. I would have thought that a teacher wilfully suppressing information was a relevant fact regarding whether the teacher should remain registered. It says something about a person's character if he wilfully suppresses telling people about a particular set of events. It shows that the person is dishonest. That has a totally different character of offence from an offence in which somebody omits to tell people about a particular set of events.

This offence has been subject to very woolly thinking. It has not clarified the two types of offences. Unfortunately, we are not in a position to rewrite it. However, I suggest that the college seriously consider a different procedure that will not drive it batty. It seems that the alternatives are to either prosecute an offender - it would be silly to prosecute a teacher just for being late - or to let the matter go. That must be taken into account. When the Commonwealth Government took over Corporations Law, it completely mucked it up and needed to rewrite the legislation. The Commonwealth Government said it was so-called simplification. Only

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the Commonwealth Government could call legislation as big as that a simplification. The Commonwealth Government worked out that it had overkilled it. The State Government has overkilled this provision.

I do not have a solution, but I can understand Hon Barbara Scott's point. This is a lesser type of offence that does not include wilful omission to commit the offence as a factor in proving the offence. On the face of it, the only relevant factors that must be proved by the prosecution are that the offender had not done something. Therefore, the point Hon Barbara Scott has made is that a very high penalty would be applied to an offence that does not contain as one of its elements a wilful intent. The parliamentary secretary could say that the provision is intended to provide a penalty for those cases involving wilful intent; however, that may never be revealed during a hearing because the prosecution would not have to prove wilful intent to establish the offence. To show that the offence was wilful might be considered irrelevant, even in pleading, because it is not an element of the offence. Hon Barbara Scott has picked up the nature of this offence, which is a non-wilful offence, and has said that the proposed penalty for this non-wilful offence is too big. I agree with her. This is the wrong way of going about it.

**Amendment put and negatived.**

**Clause, as amended, put and passed.**

**Clause 52: Member to notify College about loss of qualifications -**

Hon BARBARA SCOTT: I move -

Page 33, line 29 - To delete "7" and insert instead "21".

I seek leave to alter the amendment to replace "21" with "14" to give teachers an adequate amount of time to inform the college.

**Amendment, by leave, altered.**

Hon GRAHAM GIFFARD: The Government will accept the amendment.

Hon CHRISTINE SHARP: I spoke in support of the first amendment of this type in which the time frame was amended from 7 days to 14 days. I support the honourable member's position on this amendment.

**Amendment, as altered, put and passed.**

Hon BARBARA SCOTT: I move -

Page 33, line 32 - To delete "\$5 000" and insert instead "\$1 000".

The same argument to amend the previous clause applies to this amendment. A person will have to give written notice to a college within 14 days of cancellation of the concerned publication. The current provision applies a severe penalty, which the Opposition would like to be reduced to \$1 000.

Hon GRAHAM GIFFARD: The Government will not support the amendment. In a sense it is a rehash of the previous debate in different circumstances to bring about the notification requirement. By and large, the argument for the imposition of the penalty is the same argument that was had under the previous clause. Similarly, the Government opposes this amendment.

Hon PETER FOSS: The parliamentary secretary said that the same arguments apply; does he also believe that this fine extends to the case of wilful refusal?

Hon GRAHAM GIFFARD: Yes, I do.

**Amendment put and negatived.**

Hon DERRICK TOMLINSON: I have an observation and a question. Clause 52 relates to a qualification - which can be a piece of paper, a diploma or a certificate - being withdrawn by the conferring body. The withdrawal of a qualification of that kind by a conferring body is a serious matter. I can imagine circumstances of it being withdrawn, but it would be an unusual occurrence. However, more common is the presentation of bogus qualifications, such as an institution offering for sale degrees such as the university of west Rottneest, for example -

Hon Alan Cadby: I went there.

Hon DERRICK TOMLINSON: A fine campus. That university may have offered a Diploma in Education for a fee of \$2 500. Perhaps the university of western Hawaii may have offered a PhD for \$350. People have trotted out bogus qualifications of that kind. There have also been cases in which people have set themselves up as lawyers and have cited qualifications that they have never earned. Chief executive officers of local government authorities - shock, horror - have presented qualifications that they have never earned. This clause relates to a

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qualification which, having been conferred, is withdrawn. I cannot find anywhere in the Bill where the college may act on a bogus qualification. Clause 56 refers to membership that may be cancelled when certain registration requirements are not complied with, and it relates to a qualification being withdrawn. Does the Government entertain the college having the capacity to act when a bogus qualification has already been approved by the college, membership of the WA College of Teaching has been approved, and it subsequently discovers that it has been duped?

Hon Peter Foss: There may be a real qualification but not for a very substantial position.

Hon DERRICK TOMLINSON: Yes, the famous BA (failed) from Calcutta. I do not think the college would have accepted that qualification for teaching.

Hon PETER FOSS: The one off the Internet.

I would like to add another element. There are in fact universities in the United States that could not, strictly speaking, be described as issuing bogus qualifications. Anyone has the capacity to start a university.

Hon Derrick Tomlinson: There might be some in Australia, too.

Hon PETER FOSS: Yes. It might then issue degrees. They are not bogus degrees; they just have a very low threshold. I think this is the point that is being made: the college may accept that in the first instance through some error; but, having accepted it, it has been accepted. It is not a bogus qualification; it is a genuine qualification. If, subsequently, the college forms the view that that qualification is not a sufficient qualification - I just add to what Hon Derrick Tomlinson's question - what then?

Hon GRAHAM GIFFARD: I think it is the same question. I am not sure whether there is a distinction.

Hon Derrick Tomlinson: It is a very important distinction.

Hon GRAHAM GIFFARD: It is an offence to provide a bogus qualification in the first place. The honourable member is probably aware of that. That is set out in clause 81, which covers circumstances in which bogus qualifications were presented. However, that was not the member's question. The question was about the capacity to cancel registration when a person has committed an offence. I want to take advice on that, because I expected it to be provided for in clause 56, as the member has alluded to, but clause 56 does not appear to do that. I think the member is right.

Hon Derrick Tomlinson: Clause 81 merely deals with the bogus qualifications on application.

Hon GRAHAM GIFFARD: That is right. The member asked what would happen if it got past that. My expectation is that it should be included in clause 56, but it is not provided for. I want to take advice on that, because there may be a gap. In relation to people whose qualifications are from overseas, in the first instance the registration process of the college requires someone to hold a qualification that is approved by the college. The college will need to approve that qualification in the first place.

Hon Peter Foss: What if it is approved and the college finds out later that it is not very good?

Hon GRAHAM GIFFARD: It probably comes into the same category that Hon Derrick Tomlinson alluded to; that is, the college does not want it. The implied proposition is that the college may decide that it does not want people to be registered if their qualification is from a particular institution that might be a post office box or some other sort of bogus organisation.

Hon Derrick Tomlinson: They are two quite different cases.

Hon Peter Foss: They are.

Hon GRAHAM GIFFARD: They are different cases; I do not say that they are not. The point is that if the college forms the view that it does not want people whose registration qualification is not now acceptable to them - I think that is the point the member is making, and he is right -

Hon Derrick Tomlinson: One person has falsely claimed the qualification, which is a bogus qualification. The other person has correctly claimed the qualification, but it is an inadequate qualification. One is a judgment about the qualification; the other is a judgment about the wilful conduct of the applicant.

Hon GRAHAM GIFFARD: I know they are not the same. One has a penalty attached to it directly. A person who has wilfully misled the college in applying for registration has committed an offence. That does not necessarily mean that the college will cancel that person's membership, but the person has committed an offence. In that sense, of course, they are not the same. In either event the college will have the power to say to the person, "We have now formed the view that your qualification is not acceptable, because we now know a bit

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more about it, and you will need to upgrade your qualification, otherwise we will cancel your membership.” We may need some provision like that. I think that is what the member is alluding to.

Hon Derrick Tomlinson: Yes. At the moment the college cannot even inquire into the qualification until the application for renewal comes up.

Hon GRAHAM GIFFARD: Yes, or unless the school reports the person for incompetence.

Hon Derrick Tomlinson: Yes - serious incompetence.

Hon GRAHAM GIFFARD: I do not want to go back to that debate. I want to take advice on this matter, because Hon Derrick Tomlinson has identified a possible gap in the Bill. It is another -

Hon Derrick Tomlinson: It is another example of the inadequacies in the drafting.

Hon GRAHAM GIFFARD: No. It may be that when we get to clause 56 we will not vote on it today -

Hon Derrick Tomlinson: Are you proposing to defer it?

Hon GRAHAM GIFFARD: I think we may well defer clause 56 when we get to it. The member has raised a good point, and I will need to get advice on a possible amendment.

Hon PETER FOSS: What the parliamentary secretary has suggested is a good course of action. If presenting a bogus qualification is an offence, the person can be prosecuted, and the college can then be notified and do something about it. However, this whole process may take three years. There possibly is a solution, but it will be a very slow and lengthy process. It may take three or four years before the person even comes before the college in such a way that the college can deal with the matter, and during that time the person will be registered and can continue to teach. To give an example, the qualification may be from the East Carolina University and the college may have somehow mixed that up with the University of South Carolina, the latter being a highly respected university and the other not existing so far as I know, although there may be a person in east Carolina who is issuing degrees and has constituted himself as a university in order to do so. I do not think that, even with the five-year renewal, the college will have the capacity at that stage to form a different view.

Hon Graham Giffard: That is not right.

Hon PETER FOSS: I think it is arguable. The problem is that if the college ceases to approve the qualification -  
The DEPUTY CHAIRMAN (Hon Simon O’Brien): Order! We are considering clause 52, which is about notification to the college about loss of qualifications.

Hon PETER FOSS: It does fit into that, because -

The DEPUTY CHAIRMAN: The member is now canvassing a number of other clauses that are quite separate.

Hon PETER FOSS: It is actually spot on.

The DEPUTY CHAIRMAN: I ask Hon Peter Foss to restrict his comments to clause 52, because there are other clauses that deal with this matter.

Hon PETER FOSS: I will come to why it is spot on. This may, in fact, be the clause under which this matter should be dealt with. Presumably at some stage, upon finding out that there is no such university, the college will formally disapprove of that form of qualification, and at that stage it will cease to be a qualification. However, it will not cease to be a qualification under the terms of clause 52, because clause 52 refers to the qualification being withdrawn or cancelled. The more likely scenario is that the qualification will cease to be approved. However, that is not dealt with in clause 52.

Hon Graham Giffard: That is right, but it will be dealt with on renewal of registration, so it will ultimately be resolved.

Hon PETER FOSS: Yes, but that may be five years away. The college may discover one week after the person has registered that the university does not exist -

Hon Graham Giffard: You said it would not be resolved. It would be resolved on renewal of registration.

Hon PETER FOSS: I believe there is a basis in administrative law for possibly challenging that. However, we will leave that for the moment, because I do not think that is something the parliamentary secretary can deal with at this time. Clause 52 may be the appropriate place in which to deal with this matter. Clause 52(1) provides that a member of the college must give written notice. Clause 52 deals with loss of qualifications. We perhaps need to have another subsection that provides that if the college cancels the approval of a qualification, it shall notify the person. That could then be followed by the words in subclause (2) -



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As soon as possible after receiving a notice under this section the College is to consider the notice and any other information it considers relevant and decide whether or not -

- (a) the membership of the person should be cancelled under section 56(1)(b); or
- (b) it is necessary to hold an inquiry.

Therefore, it may be necessary to amend clause 52 as well.

Hon Derrick Tomlinson raised the question of withdrawing or cancelling qualifications. As I understand it, universities do not withdraw qualifications purely because they do not like someone.

Hon Derrick Tomlinson: Nor do they grant qualifications purely because they like someone.

Hon PETER FOSS: Yes. I was involved in one of these cases as a lawyer. Generally speaking it is due to the fact that the university has discovered plagiarism. A classic example is a Doctor of Philosophy thesis that turns out to have been plagiarised. In that circumstance the university will determine that the person has committed academic fraud. In fact, even if there is academic merit in the PhD thesis, the PhD will be withdrawn because of that academic fraud. Usually the plagiarism also removes the academic merit of the thesis. Even if the plagiarism is in only a small part of the thesis and is not central to it, it will still cause the PhD to be withdrawn because of the academic fraud that has been perpetrated. The case in which I was involved was not at the PhD level -

Hon Derrick Tomlinson: Do you mean you lost your doctorate?

Hon PETER FOSS: No. I was the lawyer acting for the university when an academic fraud case came up. A person who attains a PhD may have committed a murder. A university does not inquire into a person's character, as far as I know; it inquires into a person's academic capabilities. That would be a fairly rare occasion, however - not that that means we should not cater for it. It is not like being qualified as a lawyer. A person can lose his qualification as a lawyer by reason of unprofessional conduct. I can lose my qualification as a lawyer if I misbehave as a lawyer. However, I cannot lose my law degree, no matter how badly I might behave. Academic qualifications cannot be withdrawn for other than academic reasons. However, qualifications of a professional nature can be withdrawn for other than academic reasons. Do any of the qualifications that we are talking about here fit into the category of qualifications that are not strictly academic? Does the parliamentary secretary foresee under this clause any qualifications of such a nature that they could be withdrawn for other than academic reasons? Will any qualifications be specified that are not of an academic nature and that will be capable of being lost by reason of some disciplinary process? For example, if a person had been a registered teacher in the United Kingdom for five years, could that person lose that qualification if he was struck off as a registered teacher in the United Kingdom because of improper behaviour? Are we dealing with both kinds of qualification?

Hon GRAHAM GIFFARD: The question of qualification is a matter for the institution that confers the qualification, not the college. The college is in no position to -

Hon Peter Foss: It specifies the qualifications.

Hon GRAHAM GIFFARD: Yes, it can approve of that qualification but it most certainly -

Hon Peter Foss: Will it be specifying qualifications that are of a non-academic nature?

Hon GRAHAM GIFFARD: Not as far as we know. It is not intended. I am not sure which qualifications the member is talking about.

Hon Peter Foss: The example I gave was a registered teacher who had worked in the United Kingdom for five years.

Hon Derrick Tomlinson: I assume that the word "qualification" will be defined in regulations, if it is not defined in the Act.

Hon GRAHAM GIFFARD: Yes, it will be defined in the regulations. The ability to remove a qualification will not be there because, clearly, that cannot be done. If an institution, wherever it may be, grants a qualification, then it is for the institution to -

Hon Peter Foss: Yes, I know that.

Hon GRAHAM GIFFARD: However, the college will be able to remove the registration of a teacher, which can be for non-academic reasons. There are provisions in relation to unprofessional conduct.

Hon Christine Sharp: I cannot hear the parliamentary secretary.

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Hon GRAHAM GIFFARD: Sorry. Some provisions in the Bill relate to unprofessional conduct and allow the college to take action on that basis. The college could not remove someone's qualifications if they had not granted them in the first place. However, the college might decide to not approve of that qualification, which would cause obvious difficulties for registration and re-registration.

Hon ALAN CADBY: Hon Peter Foss mentioned something that has caused me concern. Currently, unqualified teachers work in the system. The answer to a question I asked in the House a few months ago was that 17 full-time equivalent teachers are not qualified to teach. We also have teachers in the system who have a two-year qualification, a three-year qualification, a four-year qualification and even a five-year qualification. I imagine that the college will want to improve the academic qualifications of teachers over time, just as the universities did. I remember when a person could lecture at a university if he or she held a bachelor's degree. Now, I do not think people can get a foot in the door unless they have a master's degree at the very least.

Hon Derrick Tomlinson: People with a bachelor's degree are still working in some institutions.

Hon ALAN CADBY: Yes, but they have been there for quite some time. Let us say that I am a qualified teacher. I know, from an answer given by the parliamentary secretary, that because I have been teaching for the past five years I will automatically be deemed a teacher for the process of this registration. In five years, the college may decide that to be a registered teacher a person must have a minimum qualification of a four-year degree, whether it be a three-year degree followed by a Diploma of Education or a four-year Bachelor of Education qualification. If teachers are currently registered and their qualifications are acceptable because they have been teaching for one year in the past five years or they have the academic qualifications to get registration, what will happen to those people if, suddenly, the goalposts move and the colleges say that a registered teacher must have a four-year degree or the equivalent? The college, not the university, will have the power to withdraw the qualification -

Hon Peter Foss: To withdraw the approval.

Hon ALAN CADBY: Yes, to withdraw the approval. That could be a serious issue. I know it is a big worry for some people. Hon Bill Stretch spoke to me some time ago about his daughter or daughter-in-law who is, I think, a two-year trained teacher. She is very concerned about what might happen to her. Many schools in the country rely on those sorts of people; that is, those who have a two-year or a three-year qualification. If we say to them that they are no longer accepted by the college as a registered teacher because they do not have a four-year degree, what harm will we do to the kids in the country? It is a very serious issue on which I would like some clarification.

Hon GRAHAM GIFFARD: We are getting wide-ranging debate on this provision. As members already know, the Bill provides transitional provisions for people who are currently teaching in the system but who do not necessarily hold the qualifications that the board might list as a desirable qualification for registration. They will be able to continue to teach and, under those transitional provisions, be admitted to the college as members. The Bill also provides, under those transitional provisions, that the want of an academic qualification will not preclude them from re-registration.

Hon Peter Foss: In which section is that found?

Hon GRAHAM GIFFARD: In the transitional provisions in clause 5 of schedule 4, "Renewal of registration gained under this Schedule (approved qualification not necessary)". That covers all the people in the system about whom the member is concerned.

**Clause, as amended, put and passed.**

**Clauses 53 to 55 put and passed.**

**Clause 56: Membership may be cancelled where certain registration requirements not complied with -**

Hon GRAHAM GIFFARD: I prefer not to deal with this clause at the moment. I have indicated to members that they have made an interesting point, and if we were to propose an amendment to the Bill, this would be the appropriate clause to amend. I ask that we defer consideration of this clause.

**Clause 56 postponed until after consideration of clause 89, on motion by Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training).**

**Clauses 57 to 60 put and passed.**

**Clause 61: Inappropriate and trivial complaints -**

Hon BARBARA SCOTT: An issue has been raised by the Association of Independent Schools of Western Australia about paragraph (a), which is unclear in relation to inappropriate and trivial complaints. This provision

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is extremely vague and will obviously need to be extended in the definitions by regulation. Will that be the case? It would be of great concern to the non-government sector if the college addressed issues that would be more appropriately dealt with by the employer. Can the parliamentary secretary comment on that? The clause states -

The College is not under a duty to deal with a complaint made to the College about a member of the College if of the opinion that the complaint -

(a) is in respect of a matter that could more appropriately be dealt with by another person or authority;

Can the parliamentary secretary explain that provision?

Hon GRAHAM GIFFARD: I am not sure what objection the member raised. The clause states -

The College is not under a duty to deal with a complaint . . . in respect of a matter that could more appropriately be dealt with by another person or authority.

A complaint could be more appropriately dealt with by the school. The College of Teaching is not under a duty to deal with the complaint if it is best dealt with by the school. The provision is inserted to indicate to the college that it should not meddle with matters in schools.

Hon BARBARA SCOTT: I thank the parliamentary secretary for the explanation, which puts aside that query. Those matters would be more appropriately deal with by the employer in the non-government sector.

**Clause put and passed.**

**Clause 62: Disciplinary action may be ordered for unprofessional conduct -**

Hon DERRICK TOMLINSON: My question relates to subclause (3), which reads -

A person who is no longer a member of the College may be investigated or otherwise dealt with . . . as if that person were still a member of the College.

If the person is no longer a member of the college, why investigate or take disciplinary action? I must refer to clause 64. If I contravene standing orders, I am sure you will tell me, Mr Deputy Chairman. Clause 64 outlines the four disciplinary actions that can be imposed: conditions, suspension, the imposition of a penalty not exceeding \$5 000 or the cancellation of the person's membership. If a person is no longer a member of the college, the only disciplinary action available is that in clause 64(c) - the imposition of a fine up to \$5 000. I asked the parliamentary secretary on an earlier matter why action might be taken against a person who is no longer a member of the college, and he said it related to a case in which the person wanted to reapply for membership. If such a person were to make application, and if the college were aware of some report about professional misconduct, that matter would be dealt with at that time. A person who is no longer a member of the college will be subject to disciplinary action for unprofessional conduct, as dealt with in clause 63, yet the only penalty available will be that under clause 64(c). Why would the college want to investigate and take disciplinary action against a person who is no longer a member of the college? If it were a matter of criminal conviction, that would already have been dealt with in a court of proper jurisdiction. Serious misconduct that is not of a criminal kind that makes a person unfit to teach is irrelevant because serious misconduct that renders a person unfit to teach relates to a person who is teaching. A person cannot teach if he or she is not registered. Would the college want to look at a person who is no longer a registered teacher because it was said he or she was seriously incompetent, not just incompetent? Clause 63(1)(d) refers to "a person who contravened this Act". Clause 63(1)(e) reads -

that a person has contravened a condition of the person's membership relating to the way he or she practices teaching.

I am puzzled why the Government is even entertaining giving the power to the college to deal with a person who is not a member of the college.

Hon GRAHAM GIFFARD: I refer to the intention of clause 62, and matters that flow from it. The honourable member has identified that the college could deal with a person who is no longer a member of the college, and could impose a penalty to be paid by that person for unprofessional conduct. That is part of the Bill. The point of dealing with a person who is no longer a member of the college is to avoid the situation in which people who have engaged in unprofessional conduct resign from the college to avoid sanction and to avoid cancellation or suspension of their membership, and then seek to re-enter the college. If not for this provision, it would not be until that person applied to re-enter that an inquiry and investigation would be held into the previous conduct. Yes, the member has dealt with the basis of dealing with a matter under clause 62, and the resolution of the

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matter under clause 64(c). The intention is to prevent people from resigning from the college to avoid disciplinary action. Therefore, the college would have a record or history of that former member of the college.

Hon DERRICK TOMLINSON: I find this amazing. We recently amended section 8 of the Police Act. A section 8 dismissal was a dismissal at the discretion of the Commissioner of Police on the sole cause that the commissioner had lost confidence in the officer concerned. This was a very powerful instrument of discipline within the Police Service. I still have some regrets about what we did to that section: we required the Commissioner of Police to give notice to an officer that he should give reasons why the commissioner should not dismiss the officer. Section 8 dismissals are for very serious misconduct. We talked about serious misconduct yesterday. Mere misconduct is dealt with by the disciplinary tribunal. Section 8 of the Police Act applies to serious misconduct, which is corruption or a criminal act punishable by imprisonment. However, the amendment to section 8 of the Police Act allowed the officer to resign, and thereby avoid dishonourable discharge under section 8. The person in the Police Service is allowed to resign to avoid dishonourable discharge; however, teachers are not to be allowed to resign from the teaching service or the College of Teaching because we want to get them! We do not want them to escape. We want to discipline them. We want to impose a fine of up to \$5 000 on them. The same Government can deal with giving police officers the opportunity to resign to avoid dishonourable discharge on the grounds of serious misconduct, not merely unprofessional conduct, but it cannot allow teachers to resign from the College of Teaching because, as the parliamentary secretary said, we do not want them to avoid disciplinary action. I find that very difficult to comprehend in the light of the treatment of police officers.

**Clause put and passed.**

**Clause 63: Unprofessional conduct -**

Hon DERRICK TOMLINSON: My question relates to subclause (1)(e). Unprofessional conduct is defined as -  
that a person has contravened a condition of the person's membership relating to the way he or she practices teaching.

Is this a question of the manner of teaching? Is it a question of content? For example, would it be a contravention of the subclause if a music teacher taught maths, when the person was employed on condition that music only be taught because the person was competent to teach music only? I do not think that would relate to the way a person practises. If the person taught in a way that was too didactic in his or her presentation, as I would have -

Hon Ljiljanna Ravlich: I was just going to say that.

Hon DERRICK TOMLINSON: That is why I used it. I gave Hon Ljiljanna Ravlich a chance to wake up, did I not, sweetheart?

*Withdrawal of Remark*

The DEPUTY CHAIRMAN (Hon Simon O'Brien): Order! That exchange might have been between the honourable member and Hon Ljiljanna Ravlich, in which case it was unruly. However, if I am being unfair and the honourable member was addressing the Chair, he should not do so using the term "sweetheart"!

Hon DERRICK TOMLINSON: I withdraw my unparliamentary language, Mr Deputy Chairman.

*Committee Resumed*

Hon DERRICK TOMLINSON: Will the parliamentary secretary explain what "way" means in that context?

Hon GRAHAM GIFFARD: I am advised that the way a person practises teaching refers to capacity. As has been said previously in debate, the principal of a school will refer a matter to the college. The way a person is teaching refers to a person who is unable to demonstrate a skill or competence in communicating concepts, performing tasks, mastering processes or generally controlling children in the classroom. Those are the sorts of matters for which in the first instance the school might take action against a teacher and may then refer that teacher to the college.

Hon DERRICK TOMLINSON: Given that explanation, we are running the risk of debating the question we debated at length yesterday; that is, serious incompetence versus incompetence. If the parliamentary secretary is saying that the college will give conditional registration to a teacher who is not competent in classroom behaviour, who is unable to manage discipline in a classroom or who has not mastered the subject matter, I would have thought that person would not have met the standards and would never have been registered as a teacher. I am not quite sure what the national guidelines will be. I have made some inquiries and been told that

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they are not even a smile in their mother's eye at this stage. Is the parliamentary secretary referring to a person who is incompetent but not seriously incompetent?

Hon Graham Giffard: We are revisiting the same thing.

Hon DERRICK TOMLINSON: Are we revisiting that same thing?

Hon Graham Giffard: That is right.

Hon DERRICK TOMLINSON: Good grief!

Hon ALAN CADBY: I have a problem with this clause. We all know that in the reality of life in schools many teachers are asked to teach subjects outside their domain. They may not teach the subject in a way that I would deem to be acceptable, but they may have been forced into doing so because the school instructed them. For example, an English teacher in a school is told that his or her position no longer exists but is asked to teach geography because the school is desperate for a teacher of geography. The school knows that the teacher is not qualified to teach geography but he or she is a good teacher who has a good relationship with children etc. However, the teacher will go into the classroom without sufficient knowledge of the content of the subject area.

Hon Derrick Tomlinson: That is especially a problem with this proposed subclause.

Hon ALAN CADBY: Exactly. That teacher would be at risk of deregistration for doing that. That worries me. Who is in the best position to judge the way a teacher practises teaching? All of us who have been teachers in a classroom know that one of two kids sitting next to each other could think the teacher is the best in the world and the other could think the teacher is incompetent. The same thing happens in school departments. The head of a department could say that teacher X is magnificent and teacher Y is incompetent. That may be because of only a fleeting visit as the head of the department walked past the door of the classroom. Teachers do not normally go into other teachers' classrooms to judge their competence because they do not have time to do that. Because of the response given by the parliamentary secretary and the comments made by Hon Derrick Tomlinson, it worries me that some teachers will be judged in this way and may face the risk of deregistration. If I am back in school next year teaching mathematics and I am asked to teach English for a day, I will say no, because I am not competent to teach English. I could be judged as incompetent. I would not know how to teach English. I supervise, but that is pretty well it. Parents might complain that their children had a teacher who knew nothing about the novel they were studying. Parents could follow that on. It could go all the way up to the registration board. I could have my registration cancelled. That is a worry. Subclause (1)(c) needs to be thought through a bit better. It is also not clear to me what is meant under paragraph (e) by the words "the way he or she practices teaching". I do not know who will make that judgment. I am not a professional politician as such. I actually came from the classroom.

Hon Graham Giffard: You are paid to do what you do when you are a professional politician.

Hon ALAN CADBY: That is right. I am raising a real issue that I know about. I do not think the parliamentary secretary would question my knowledge of teaching. I am being pragmatic. What does it really mean? Will it force people to think very carefully about what they teach? In government schools alone, there would be many teachers who are teaching mathematics and science and who would be fearful of this clause, because they are incompetent to teach those subjects through no fault of their own. They are being forced to teach subjects outside their domain because this Government is doing nothing to retrain or train teachers in the subjects in which there are teacher shortages.

Hon GRAHAM GIFFARD: We talked seriously about this issue yesterday.

Hon Alan Cadby interjected.

Hon GRAHAM GIFFARD: I am not sure how serious members opposite are. They can do what they want. They can carry on with that theme, but I do not take seriously the arguments that are being raised. The member is saying that a principal might tell a teacher that his maths position was being abolished but that the school would keep him on as an English teacher, and that the school would then report that teacher to the College of Teaching for being seriously incompetent, because he was asked to teach a subject with which he was not familiar.

Hon Alan Cadby: The parents might. There are sometimes complaints from schools or parents about a teacher not being qualified to teach a subject.

Hon Derrick Tomlinson: It does not have to be reported. It is an inquiry by the college.

Hon GRAHAM GIFFARD: I understand that these provisions will come into play when a teacher is dismissed or suspended. The school will be obliged to notify the college of that. The member is telling me that a school

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could abolish a teacher's position, ask him to do something that it knows the teacher is not qualified to do, and then report the teacher for not doing something competently. That is not a realistic proposal, nor is it realistic to expect the college to say in that situation that it is terrible and that it will deregister the teacher.

Hon Alan Cadby: The parents could make the complaint to the school.

Hon GRAHAM GIFFARD: It is up to the school to deal with its own issues. That is what we were talking about yesterday.

Hon Alan Cadby: If a school dismisses a teacher, it must report that to the college.

Hon GRAHAM GIFFARD: That was the whole point of what we were talking about yesterday; the school will manage these things. Schools manage teachers and teaching. The employers will make decisions about the quality of the teaching in their schools. If a school dismissed a person because his position had been abolished and not because he was an incompetent maths teacher, the principal would not be required to notify the college that that person had been dismissed. It would not necessarily be a question of incompetence; it would be a question of no longer having the same number of positions available for the teachers who had been teaching in that subject area.

Hon Peter Foss: This is not dependent on someone being dismissed.

Hon Derrick Tomlinson: It is subject to an inquiry by the college.

Hon GRAHAM GIFFARD: As I have previously explained, the college will not go to all schools to check on teachers.

Hon Derrick Tomlinson: There are many ways in which the college could institute an inquiry, and not just on the dismissal of a teacher.

Hon GRAHAM GIFFARD: Under the legislation the obligation will be on the school or employer to notify the college of misconduct or unprofessional conduct. That is the obligation. That is how the Bill is designed.

Hon Peter Foss: Are you saying that it will ignore complaints from the public?

Hon GRAHAM GIFFARD: I am not saying that there will not be complaints from the public.

Hon Peter Foss: Will it ignore them?

Hon GRAHAM GIFFARD: No. As we discussed a short time ago, the college will also have the ability to decide that a complaint made to it would be more appropriately dealt with at the school level. There are mechanisms in the Bill.

Hon Derrick Tomlinson: It can also conversely make the decision that it will inquire.

Hon GRAHAM GIFFARD: It does not have to.

Hon Derrick Tomlinson: No, but it is capable of doing that.

Hon GRAHAM GIFFARD: When serious misconduct is brought to the attention of the college, it will have the capacity to deal with it.

Hon Peter Foss: Serious misconduct is defined.

Hon GRAHAM GIFFARD: We have repeatedly discussed that the inclusion of the word "serious" really provides a distinction between a principal not wanting to have a teacher teaching within the school any longer, and a principal forming the view that a person is so bad a teacher that he should not teach in any school. That is the distinction that has been repeatedly described. Members opposite can dream up scenarios and overcomplicate the provisions of the Bill; however, the provisions are much simpler than members opposite are suggesting. The scenario that Hon Alan Cadby provided in terms of a person's registration being threatened is not realistic. I do not believe that that would be possible if in every other respect that person was a competent teacher.

Hon Alan Cadby: The scenario I explained of what can happen in a school is true. That does occur. You are saying that it is misleading.

Hon GRAHAM GIFFARD: What I am saying is that these things are more appropriately dealt with at the school level. The college will not deal with matters that are more appropriately dealt with at the school level.

Hon Peter Foss: How do you know? It is not in the legislation.

Hon GRAHAM GIFFARD: The college will have the ability to make judgments about complaints.

Hon Peter Foss: It will have the ability, yes.

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Hon GRAHAM GIFFARD: That is what it will be set up to do. It will be set up to make those sorts of discretionary decisions and to say that a matter should be sorted out between the school and the teacher, and it will.

Hon DERRICK TOMLINSON: We have gone well and truly off the track. I want to bring the parliamentary secretary back to the language of the clause. Unprofessional conduct is defined under paragraph (e) as being -

that a person has contravened a condition of the person's membership relating to the way he or she practices teaching.

I repeat: it is a condition of the person's membership relating to the way he or she practises teaching. I think I have correctly understood the answer that was given to the question I asked; that is, it may be. However, when I asked what was meant by the way he or she practises teaching, the parliamentary secretary referred to aspects of a person's classroom conduct - how the teacher related to children, managed the classroom, taught and so on. If that is correct, I want that on the record. Registration for membership under clause 35, which we have passed, requires at paragraph (c) that a teacher "has achieved the standards of professional practice approved by the College". We have been told that that standard of professional practice will be a national framework that the college will help to formulate. The parliamentary secretary is now saying that we will allow the college to register a teacher on the condition that he or she comes up to scratch in some aspect of professional practice. That is what I interpret the parliamentary secretary to have said. If that is the correct interpretation, I want that on the record.

Hon GRAHAM GIFFARD: No, I am not taking any issue with the clarification that the member has just made. I confirm what he has just said.

Hon Derrick Tomlinson: You confirm it?

Hon GRAHAM GIFFARD: Yes.

Hon PETER FOSS: I take issue with the parliamentary secretary on the method by which a complaint from the public will be dealt with. Let us start with the proposal by Hon Alan Cadby; that is, that a teacher will be asked to teach in an area in which he is not competent. I can confirm that I know that happens. Many teachers, especially in the state government system, have complained that they are maths specialists, but they have been asked to teach geography - it seems there is a shortage of geography specialists. They are not competent to teach geography. I believe that is a problem with the public system. Parents get very upset about this and complain about the teacher. When the Western Australian College of Teaching is in existence, they will complain to the college - nothing is more certain - and they will have a very legitimate complaint. Their complaint will be that the teacher is incompetent to teach the subject he is teaching. One would assume that that is contrary to the standards of professional behaviour required under the national standards. I cannot believe that a teacher would not be required to be able to teach a subject in order to teach that subject. If that is not to be the basis of teaching, it would be a very strange standard. Of course, that matter would be referred to the school. However, it cannot be referred to the school. If ever there was a case that could not be referred to the school, it is one in which the school is at fault. How could that matter be handed over to a principal, who has told a teacher to teach in an area in which he is incompetent, for that principal to make the decision? To me, it would be an absolute and total abdication of the responsibilities of the college if it handed over that matter to the principal.

I do not know whether all principals are teachers and therefore must be registered. However, I would have thought that the appropriate way for that matter to be dealt with would be for it to be inquired into by the college, and then for the college to summon the principal to find out whether the principal is competent. Then it would be interesting, because at that stage it might turn out that the system is incompetent. That might end up being quite a good result. Is that a possibility? In other words, a parent may complain that his child has a totally incompetent geography teacher. Upon learning of that, the college may make preliminary inquiries and find out that the person is totally incompetent as a geography teacher. In fact, he is a geography teacher who has never taught any geography in his life, and was told that he had to teach it one week before the term started - or, as often happens, one week after the term started.

Hon Derrick Tomlinson: What if his peers complain about his competency?

Hon PETER FOSS: We do not even need to take it that far. The parents complain. Can the college say that it thinks it is a complaint about the teaching qualifications of the principal? If the college summons the principal, what can the college then do? Does it have the capacity to make a report saying that it believes there is incompetent teaching, but there is no fault on the part of the teacher; that the reason the person is teaching that subject is that he was directed to do so by the principal; and that it examined the principal and does not believe he is an incompetent principal because in fact he is caught by the system? Can the college report that that has happened? If that were the net result, it would be a good one. If the matter is just passed down to the principal

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to deal with, it will just get swept back under the rug again, and there will be no change. In the scenario to which I have referred, when the complaint comes in against the teacher, can the college investigate the principal; and, having investigated the principal, can the college absolve the principal by saying that it is not the principal's fault; it is the system's fault?

Hon GRAHAM GIFFARD: In the scenario that Hon Peter Foss has painted, there are two types of difficulties. One is with the teacher himself; the other is with the school and what it is doing to deliver education to the students. In the case of a difficulty with the teacher on an individual basis as a member of the college, the college is likely to refer matters to the school in the first instance for the school to deal with, because, as we have just discussed, many of those matters are dealt with more appropriately by the school. However, if the complaint is that the school is doing -

Hon Peter Foss: The parents do not know what the school is doing. All they know is that the teacher is useless.

Hon GRAHAM GIFFARD: Yes. If the school is at fault, rather than the teacher, that matter goes to the registration of the school, and that matter might be more appropriately dealt with. The college has the ability to refer complaints to another person or authority. That means that the college might make a complaint to the minister or to the Department of Education Services, which deals with the question of the school's registration.

Hon Peter Foss: If it were a public school, that would not help much. It will all get swept under the carpet, won't it?

Hon GRAHAM GIFFARD: I do not think I need to respond to that. The point is that a question about the school's performance can be raised with the minister or the Department of Education Services. The college can refer an issue of that nature to them. Alternatively, if the college is of the view that the matter relates to the competence of the teacher, it can refer it to the school. That is how it can best deal with those sorts of complaints.

Hon PETER FOSS: I must say that I am disappointed with that answer, because I thought for a little while we had the inkling of a good idea. It seems to me that if that were the process, we may in fact have a public watchdog that says, "There is a problem in that school. The standard of teaching is not good enough. However, it is the fault neither of the teacher nor of the principal." This is more likely to happen in a government school than in a private school. Private schools tend to hire people by their specialities. They do not hire a maths teacher to teach geography. Unfortunately, the Department of Education and Training has an enormous pool of people whom it swirls around and settles in various little niches close to or soon after the beginning of the year. It has been a management problem with the Department of Education and Training for years. I know that for years it used to keep its personnel records on little cards. That was in our time in government. When we came to government, the department was still keeping its records on little cards. Not surprisingly, in a very large system, it did not work out very efficiently in allocating people to the right job. However, it is still happening. Even though I now understand the department has the records on computer, people end up in the wrong place.

If we had a public watchdog that said, "Incompetent teaching is going on there, but it ain't the fault of the teacher and it ain't the fault of the principal; it is the fault of the government system" - I am not saying that it is this Government's system or the previous Government's system; I am talking about the government system - we might have a very useful watchdog. However, if all the college does is send the matter on to the minister, what minister would get terribly toey about the fact that his system is not working? The Department of Education Services will not do much either. That would work perhaps with a private school, but the private schools do not have the problem.

I must say that I am disappointed. If members of the College of Teaching decide to read our debate - one never knows; they may not do so - I urge them to take the course of action that I believe should be taken, because I believe they have the capacity to do that.

**Clause put and passed.**

**Clauses 64 to 66 put and passed.**

**Clause 67: Inquiry open to public -**

Hon PETER FOSS: I move -

Page 42, line 13 - To insert after "person" -  
or a complainant

The question of whether proceedings should be open or closed is very vexed. However, I accept the scheme that has been proposed here, except in relation to who may request that all or part of an inquiry be closed to the



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public. It can be seen that there will be circumstances under which the affected person may request this. I expect that in most cases affected persons will request it. Assuming that this does not happen, it may very well be that a complainant may be put off by the fact that his or her details are being made available. It seems that the only protection the complainant has is contained in clause 67(3), which, as far as I can tell, is not dependent on clause 67(1) or (2). In other words, it stands independently. I would first of all like the parliamentary secretary's confirmation of that. Subclause (3) is not an amplification of the closing to the public; it is in fact a separate power that the college has, of its own accord, to suppress those details. It is very important for that to be confirmed, because if it is in any way an amplification of other powers reliant on an application under subclause (2), I have serious concerns. Let us get that one out of the way first, and then I will go back to subclause (2).

Hon GRAHAM GIFFARD: The answer is yes.

Hon PETER FOSS: That still does not alter my fundamental problem, in that it may very well be that the person who has complained - especially if the complaint is of a sexual nature - is the person who may wish to have the proceedings closed.

I suggest that we defer consideration of this clause. I spoke to Hon Christine Sharp, and she has asked that the committee defer consideration on this clause. As there is another deferred clause to come back to anyway, I thought the parliamentary secretary might wish to look more closely at this amendment himself.

Hon Graham Giffard: If we intend to defer this clause, I will state now that the complainant under the Bill is intended to be the school or its principal, not the general public. However, you are right - one of the persons affected by a complaint - the victim, for example - might want a closed hearing. The Government will not oppose this amendment, so long as it is properly advised.

Hon PETER FOSS: That is all the more reason for postponing consideration of this clause. I moved the amendment, and perhaps I should seek leave to withdraw it. The parliamentary secretary, when the deferred clause is considered, may be able to come back with better words than those that I have suggested. I seek leave of the committee to withdraw my amendment.

The DEPUTY CHAIRMAN (Hon Simon O'Brien): Hon Peter Foss has moved the amendment standing in his name, and he now seeks the leave of the committee to withdraw that amendment.

Hon Derrick Tomlinson: Can we make the withdrawal conditional on the moving of the amendment again when the clause is brought on again?

Hon Peter Foss: You can always move it again, even when leave has been sought to withdraw.

The DEPUTY CHAIRMAN: Order! It was made clear by the discussion in the committee that there was an intention, on the undertaking of the parliamentary secretary to consider the matters raised, to defer this clause in order for him to do that. Hon Peter Foss is now seeking leave to withdraw his amendment on that basis.

**Amendment, by leave, withdrawn.**

**Clause 67 postponed until after consideration of clause 89, on motion by Hon Graham Giffard (Parliamentary Secretary to the Minister for Education and Training).**

**Clause 68: Procedure and evidence -**

Hon DERRICK TOMLINSON: I commend the sentiments of this clause - that proceedings of an inquiry are to take place with as little formality as possible and will not be bound by the rules of evidence, and the college is to be able to determine its own procedures. That is highly desirable, because the clause refers to a committee appointed by the college, which will consist of teachers or administrators. My concern arises when I read clauses 69 to 72, because what is intended in clause 68 to be non-legalistic in the manner and form of procedures becomes a very legalistic procedure indeed. Clause 69(1) reads -

In conducting an inquiry, the College is to give the affected person an opportunity to -

- (a) call and give evidence;

I suggest "calling evidence" might also mean calling witnesses, as well as documents or evidence in any other form. The subclause continues -

- (b) examine and cross examine witnesses; and
- (c) make submissions.

Under clause 70 the college may draw such conclusions of fact relating to evidence in proceedings in another jurisdiction, any findings or reasons for judgment. The college may draw its own conclusions of fact in making an interpretation of the evidence, findings, decisions, judgment or reasons for judgment. Clause 71(1) states -

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A party to an inquiry may -

- (a) appear before the inquiry in person; or
- (b) be represented by another person.

Under this clause a legal practitioner may be authorised to represent and provide advice for the purpose of acting for a party in connection with an inquiry. Under clause 72 the committee of peers - the college - may give a notice to require the person to attend. This sounds very much like a subpoena to me. The college may require a person to produce documents. This is a very legalistic authority. The college may also examine witnesses on oath or affirmation. The college may require a person who appears before an inquiry to take an oath or make an affirmation, or authorise a member of the board to administer an oath or affirmation.

I go back to clause 68, which is where I started. I commend the sentiment expressed in that clause, because the process is intended to be informal and to proceed according to procedural fairness; however, it will also proceed according to the procedures that the college itself sees fit. The provisions in clauses 69 to 72 are similar to the legalistic procedures of a court. The process could be very judicial. A defendant may have legal representatives who may cross-examine and who may make points of law. It is very legalistic. There is nothing at all in the Bill that states that the college may have legal representation. The committee of peers, who will be elected and appointed by the college, will comprise teachers and education administrators who, without legal advice, may have to deal with a very legalistic defence. I strongly recommend that the parliamentary secretary look at sections 11, 12 and 13 of the Public Sector Management Act 1994, which relate to all matters of professional conduct in the public sector and are a much more appropriate way of describing the intention of clause 68, which is denied by clauses 69 to 72.

Hon GRAHAM GIFFARD: Clause 68 will give the college the ability to proceed with an inquiry at a level of formality and technicality that it judges to be appropriate. Clause 68 will allow the college to deal with matters in an informal way if it deems appropriate. The Bill outlines the provisions for the calling of witnesses, the giving of evidence, and the rights of an affected person in formal hearings. These powers and procedures may be exercised by the college. Not all inquiries held by the college will necessarily reach that level of formality. Parties will have rights when the college conducts formal inquiries. The Bill does not intend for the college's inquiries to be formal, as in a courtroom. I am not sure whether provisions that relate to the taking of evidence, the powers of inquiry and what the college deems to be appropriate mean that every time the college looks into a matter, it will set up a process that can be likened to a court.

Hon Peter Foss: It may not have any control over it.

Hon GRAHAM GIFFARD: No. More serious, hotly contested matters may end up being formal matters. All these provisions may be invoked under those circumstances. I know from my experience of working in commissions that have the ability to deal with matters informally and, if they deem appropriate, to deal with matters more formally, that these matters get handled at the appropriate level of formality depending on the circumstances of the case. These provisions simply set out people's rights in the event that these matters proceed to more formal hearings. Clause 68 is intended to give guidance to the board about how it shall deal with its inquiries. Notwithstanding the provisions of clauses 69 to 72, it still gives the board the ability to deal with matters at the appropriate level of formality.

**Progress reported and leave granted to sit again.**