SCHOOL CURRICULUM AND STANDARDS AUTHORITY AMENDMENT BILL 2017

Second Reading

Resumed from 28 November.

HON DONNA FARAGHER (East Metropolitan) [1.13 pm]: I rise as the lead speaker for the opposition on the School Curriculum and Standards Authority Amendment Bill 2017. I indicate at the outset that the opposition will support the legislation; however, we have some reservations. There is a caveat on that, which will become clearer as I progress through my contribution to the second reading debate. Although we have not circulated amendments on the supplementary notice paper, I would like to go into the committee stage to ask a number of questions of the minister.

The bill, as it stands, is fairly short and deals with a couple of quite separate issues, which are also related. The issue at hand is the disclosure of student data.

I want to deal with the two main parts of the bill. The first part deals with NAPLAN Online. I understand that the School Curriculum and Standards Authority is currently prevented from releasing student data for the purpose of participating in NAPLAN Online. Given that NAPLAN Online is expected to commence in 2018, amendments are needed to permit the disclosure of identified student data that is held by the authority for the purpose of student registration; therefore, to enable participation. I want to thank the minister for giving us a briefing and for the subsequent discussions I had with SCSA about this bill. That was very much appreciated. As I understand it from the briefing and the minister's second reading speech, if these amendments are not approved, the authority will have to individually collect and manage consent from the 123 000 students who will participate in NAPLAN Online. SCSA has kindly provided me with more detail on this aspect of the bill. Should the bill pass, SCSA will be able to collect relevant registration data from the three school sectors. I am using politicians' talk; I am sure that I should use particular words, but hopefully everyone is getting the gist of what I am saying. The information will be loaded into the SCSA data system, then loaded by SCSA into a secure NAPLAN assessment platform which will be administered by Education Services Australia in a WA-specific section. I further understand that the WA-specific platform will be secure and that no-one other than SCSA will be able to access it. Once the information has been loaded, Education Services Australia will send the unidentified information to the Australian Curriculum, Assessment and Reporting Authority for analysis and marking. Once this has been done, the results will be loaded back into the WA-specific platform and linked back to the name of the student. The results will be made available to schools and the education sectors and systems. That is a fairly simple summary, but I hope that it captures the process. I indicate that the opposition is comfortable with that aspect of the legislation. We recognise the importance of making sure that those amendments go through.

The second part of the legislation will insert new provisions into the School Curriculum and Standards Act 1997 that will permit the authority to disclose identified student data for research purposes. The second reading speech states that this is to promote or understand outcomes connected with student achievement and wellbeing. Under the act, the authority is currently prevented from releasing personal student information. The opposition and I, as the shadow Minister for Education and Training, understand the importance and value of research both now and in the future. Indeed, the minister's second reading speech refers to the Telethon Kids Institute, which is an outstanding research institution—one of many that operate across our state. The concern that has been raised by the opposition about this element of the bill is that it provides fairly scant detail on the procedures and parameters regarding the level of information that will be able to be disclosed. At the end of the day, we are contemplating allowing student data, including personal information, to be released to research bodies under certain circumstances. I suggest that, as a general rule, it is more information than the minister can seek under the act. As I understand from the second reading, the minister can be provided with individual information in certain circumstances, but as a general rule the minister will seek information in aggregate form, not in individual form. As I understand from the briefings provided to me—these are some of the questions that I will put to the minister during the committee stage—some of the types of information being contemplated for release include a child's name, address, date of birth, Western Australian student number, gender, exemptions from school, student achievement data and so on. The opposition and I as shadow minister are certainly not discounting the worthiness of such work, but I believe that we, as a Parliament, should be clear on how and what level of this information can be released. I say for the benefit of members in this house—obviously we do not reflect on what happens in the other place, but it is important for this debate—that the bill before us has been amended since being introduced in the Legislative Assembly about three weeks ago. The bill was amended in the other place in response to some initial concerns that I raised with the minister prior to the debate in the other place, and I want to thank her for listening to my concerns and seeing that that amendment was put forward. To assist members, clause 8, proposed section 32B of the bill refers to the disclosure of information for research involving students. The original bill, under proposed subsection (6), stated —

> the Board —

That is, the School Curriculum and Standards Authority —

> must establish procedures to be approved by the Minister relating to the disclosure of information under this section.

More broadly, the opposition and I felt that the procedures should be subject to regulations that can be tabled in this house. This would enable Parliament and individual members to scrutinise those regulations when they are tabled and ultimately, if we are unhappy with it, could seek to disallow. Obviously, whilst removing the role of just the minister, it would be anticipated that any regulations tabled in this house would have been approved by the minister before coming in here, so the minister would still have a role. The amendment therefore moved by the government in response to my concerns and subsequently supported by the opposition in the other place was to remove proposed subsection (6) and replace it with the following —

> The regulations may prescribe procedures relating to the disclosure of information under this section that the Board must comply with.

I indicate to the house that although this amendment is an improvement, there are still some reservations. As I have said, during the committee stage I would like to seek some assurances from the minister about what she intends to have included in the regulations. I appreciate that the regulations obviously would not have been drafted yet, but I expect that we should be able to get some level of understanding from the minister about her intentions on their development and what will and will not be included. I will give just a couple of examples. Firstly, will the regulations specify all fields of data that the board will be able to disclose for the purposes of research involving students? Secondly, will the regulations stipulate that the disclosed information can be used only for the purpose for which it was originally requested? That relates to the fact that researchers will often have more than one research project underway at any point in time. I presume that individual requests would need to be put to the board for each individual project rather than using the information across a range of projects, but I would like to have that clarified by the minister. Also, would the regulations specify that SCSA maintains a register that will outline, amongst other things, the number of requests for information, what was released and so forth? With regard to that particular aspect, and I indicate that I have spoken to SCSA about this, it would be prudent for this information to also be detailed in the agency's annual report. I think that would add another layer of transparency to the process. I understand that other agencies provide similar information in their annual reports and I think that it would be helpful to Parliament and anyone else who takes an interest in this issue.

Another aspect raised during the debate in the other place was about any pre-existing orders that may be in place with regard to a child. I have sought further clarification on this issue. I understand that if the authority has been notified by a school that orders exist in relation to access to a child or their data, the authority must not release that data for the purpose of research without the express permission of the authorised caregiver of the child. It would be helpful if the minister could confirm whether my understanding is correct, and also whether this will be prescribed in the regulations.

I do not intend to delay the house too long on the second reading debate, because most of the questions about this bill can probably be answered at the committee stage. The opposition supports this legislation, albeit with some caveats with respect to research. I reiterate that the opposition supports research being undertaken. We recognise the value of research and that it can have a positive impact both now and into the future on student achievement and wellbeing and the like. That is certainly not in question. However, we are dealing with a bill that will enable identifiable information to be provided under certain circumstances. I expect that those will be very strict circumstances, and I also expect that it will not happen very often. However, it is important that the parameters and procedures with respect to the disclosure and accessibility of student information are clear to everyone. That includes not only the School Curriculum and Standards Authority and the board of the authority when they are making decisions on this matter, but also researchers who are seeking this information, and members of the community. We need to remember that we are dealing with sensitive data that relates to children, not adults who are able to make decisions for themselves about whether to participate or not participate.

Certainly from my perspective, we will be seeking assurances from the minister about the protections that will be provided. We also reserve our right to seek to disallow the regulations when they come to this house in due course if we are not satisfied that they provide adequate protections or reflect the assurances that will no doubt be provided by the minister during the committee stage. I hope we will be able to work through the outstanding issues. As I have said, we support the legislation, but we have some reasonable concerns, which I am sure the minister will be able to address fulsomely in her response. With those comments, the opposition supports the legislation.

HON ALISON XAMON (North Metropolitan) [1.27 pm]: I rise as the lead speaker for the Greens on the School Curriculum and Standards Authority Amendment Bill 2017. I indicate that the Greens will also be supporting this legislation. However, similar to the opposition, we have a number of reservations around this legislation and will be seeking some assurances from the minister throughout the course of this debate. We hope the minister will be able to give some undertakings about a range of safeguards within the future regulations, and

we will be keeping a keen eye on what comes out in the regulatory framework. I want to raise a number of issues, and I hope the minister will be able to respond to most of those issues in her reply.

This bill seeks to amend the School Curriculum and Standards Authority Act 1997 to permit identified student data held by the School Curriculum and Standards Authority to be disclosed to enable Western Australian students to participate in the National Assessment Program — Literacy and Numeracy Online. The bill also seeks to correct an oversight in the drafting when the School Curriculum and Standards Authority was created back in 2011. Amendments to section 9 of the act will permit the disclosure of identified student data for the purposes of registration in NAPLAN Online and clarify the authority's ongoing role as the test administration authority for NAPLAN and other assessments that are subject to state and commonwealth agreements.

I understand that this bill was declared urgent in the other place in the hope that if it was passed, it would enable Western Australia to be ready for NAPLAN Online next year. As I understand it, 200 schools are scheduled to commence NAPLAN Online in 2018, with the remainder to be online the following year. I understand that there are some significant challenges around the transition to NAPLAN Online, although this might provide the government with the motivation to improve the internet capacity in some schools, because I note that that remains an ongoing issue for far too many of our schools. From the briefing on the bill, I understand that there is a fix that can be applied for one year in the event that this legislation is not enacted, although the fix, as it has been described to me, is time limited and somewhat messy. The bill before us is relatively short and straightforward, and is designed to ensure that we do not have to go down that path.

In addition to the amendments facilitating Western Australia's participation in NAPLAN Online, proposed amendments to section 32 of the act allow identified student data to be disclosed for research involving students, and I will be speaking on this particular issue. Clause 4 of the bill contains the following definition —

> ***research involving students*** means research conducted by any person or body in relation to either or both of the following purposes —
>
> (a) promoting student achievement or student wellbeing;
>
> (b) understanding outcomes connected with student achievement or wellbeing;

I understand that the personal information that could be released under this provision is quite broad, and can include names as well as ages, addresses and details about parents, including their educational achievements, occupations and even their criminal history. I note that the board may impose conditions on the provision of the information. Proposed new section 32B provides for a statutory penalty of $10 000 for contravening the condition that applies to the disclosure of the information. This proposed section also provides for regulations prescribing the procedures relating to the disclosure of information that the board must comply with. I note, again, that this amendment was introduced in the other place, and I understand that further amendments have been foreshadowed or at least submitted in clarification.

The Greens are reasonably comfortable with the sharing of students' information for the purposes of NAPLAN Online. This is the tenth year of NAPLAN, and more than one million students in years 3, 5, 7 and 9 sit the NAPLAN test in Australia each year. In Western Australia, NAPLAN tests are taken across more than 1 000 schools in this state. The research arising from the results of standardised testing does not improve outcomes, and I note that the information provides only limited information about achievement, but the Greens recognise that it can be valuable to help ascertain where increased support is needed, and it also helps to build the evidence base to inform policy in this area. I note, however, that even with 10 years of NAPLAN data, we have made little progress in education outcomes.

The Greens also continue to acknowledge and share many of the concerns about NAPLAN, and how it has been evolving, including concern about the impacts on classrooms, particularly for younger children. In year 3, the earliest year in which NAPLAN testing can be undertaken, we are talking about children who can be as young as seven years old when they take the test, and there are concerns that this might be too young for many children. It is another example of what many educators would indicate as a disturbing trend in education in Australia—to push formal learning down to younger and younger children. The evidence shows that this is not necessarily in the best interests of our children and does not result in improved learning outcomes over the longer term. I am particularly concerned that for far too many children the NAPLAN tests have become quite high stakes and can result in high levels of stress. We know that the NAPLAN tests contribute to levels of stress for many children and are compounding a general reduction of play-based education and enjoyment in learning. As a qualified play leader, I find that a disturbing trend in educational approaches. NAPLAN results can too often distract from broader efforts to improve student experiences and ensure that all children are given the best chance to learn and succeed. I note that the concerns I raised about the impact of NAPLAN are fairly widespread and not new, but instead of being addressed, and I think they really need to be, it appears that NAPLAN is becoming even more high stakes from year to year, and that really needs not to be the case. It is only a narrow measurement and despite the test

only reflecting a way an individual student may be performing on any individual day, results are nevertheless being increasingly requested in school admission applications. I am very concerned about that, because I do not think we have put that much pressure on students who are sitting their Australian tertiary admission rank, because at least that includes both exams and ongoing coursework throughout the year.

The Greens have concerns more broadly with the way that NAPLAN data is increasingly being used. We note that transparency and access to information are important within a democratic society, but we also have a responsibility to ensure that educational and other potentially sensitive data is being used in the best interests of children rather than there being the potential for misrepresentation or even harm. It is important to distinguish between data that is useful to inform effective policy development and that which is appropriate to be released publicly. NAPLAN data is valuable and should be used for research that informs evidence-based decision-making, but the Greens remain absolutely adamant that the data should not be used for league tables or to rate classrooms or individual students.

The bill before us seeks to further broaden the potential for NAPLAN data to be used and published. This has potential benefits, but as we have already seen with NAPLAN, it also has some significant risks, and, as such, it is important that we are careful and diligent in our scrutiny of these sorts of moves. The bill will allow the sharing of identified student data with researchers. During the briefing, the Telethon Kids Institute and Edith Cowan University were used as examples of researchers that would like to have access to this sort of data. However, it was not made clear why they needed to have identified data. I would be interested in examples of the research proposed or anticipated that requires identified data. The definition in the proposed amendments of research involving students is broad and is not restricted to a university or other formal research bodies, which tend to operate under very strict ethical guidelines. Researchers are not named and they are not required to have any particular credentials, so my understanding is, for example, that under this legislation, if a government department or a private research consultancy wants to do research, there is nothing in the legislation before us to stop them applying for access to identified student data.

This provision is unlike provisions in other legislation that has enabled government data to be shared, specifically for the Telethon Kids Institute's developmental pathways project. The Greens are ardent supporters of high-quality research; it is something that we insist on all the time, particularly when findings can potentially feed into improved outcomes for students, and particularly for students from disadvantaged backgrounds. I am one member of this place who frequently draws on the incredibly important and useful research done by reputable institutions such as the Telethon Kids Institute, so I acknowledge that the bill requires that research be done for the benefit of students, which is very welcome. The Greens support data collection and evidence-based decision-making in education. In fact, the Greens education policy states —

> Decisions about curriculum, testing, reporting and teaching should be based on evidence and be made in consultation with appropriate educational experts, teachers, and their unions and other stakeholders.

We have a really strong position on the need to facilitate this sort of approach. The Greens are also strong advocates of government openness and transparency. Balancing that with this legislation is a challenge for the Greens because we are also a party that recognises and values human rights, which also includes an individual's right to privacy. This is where some tensions start to play out. The Western Australian "Whole of Government: Open Data Policy" 2015 provides some guidance on the release of government data. That policy states —

> Agencies are encouraged to adopt a position of data openness, with the prerogative in favour of data release, unless there is a clear need to restrict or preclude access for reasons of privacy, confidentiality, security or other relevant considerations …

The policy goes on to state —

> Before releasing data, agencies should carefully consider and address any privacy concerns. That is, data that is released must not be, or able to be, associated with any individual. Agencies may need to de-identify data, which means removing anything that can identify a person. Caution needs to be exercised where disparate datasets, individually de-identified, could potentially be linked or combined to re-identify individuals.

I have to say that this policy sounds very reasonable. Releasing identified data is generally not something government departments are permitted to do, and there are sensible reasons for that approach. Firstly, we know that releasing data that identifies individuals by its very nature infringes on a person's right to privacy. Privacy is a universal human right. In fact, I remind members that the right to privacy is acknowledged under the International Covenant on Civil and Political Rights, which recognises that a basic human right to privacy is premised on the autonomy and dignity of the individual. Under international obligations, Australia must respect the fundamental principle of protecting people's privacy. As a recognised human right, privacy protection generally should take precedence over a range of other countervailing interests, such as cost and inconvenience. However, that being

said, I recognise that privacy protection is not absolute. The Australian Law Reform Commission has noted that often privacy rights clash with a bunch of other individual rights and collective interests, such as freedom of expression and national security. When circumstances require it, the vindication of individual rights must be balanced carefully against other competing rights. We must carefully consider any proposal that potentially infringes on the right to privacy and whether indeed this bill before us represents a case in which that balance weighs in favour of releasing personal information.

The second reason a government generally does not allow the release of people's data is the quite significant risks associated with doing that. Some people have quite compelling reasons for wanting to protect their address or that of the school that their children attend. Back in 2011, when I participated in debate on the Curriculum Council Amendment Bill—the bill that set up the School Curriculum and Standards Authority—I spoke about safeguards around access to student records, particularly in cases in which there might be domestic or family and domestic violence and one parent may, for very good reasons, not have access to a student's address. I would like to know what extra safeguards we might be considering under the School Curriculum and Standards Authority Amendment Bill 2017 for these sorts of cases.

I will talk a little bit about the Australian Curriculum, Assessment and Reporting Authority. The NAPLAN data is collected nationally and it is already used for a variety of research projects. ACARA, which is the national body charged with administering NAPLAN, has strict protocols regarding access to the data that it manages. The protocols provide that the data to be released will be de-identified to a necessary level to prevent identification of an individual student to ensure student privacy is maintained. Where appropriate, it also maintains school test and item security. Furthermore, data that may hold a risk of potential identification of an individual due to the existence of unusual characteristics will be removed from the data prior to its release. I find it interesting that ACARA does not release identified student data to researchers, yet we are proposing to enable the School Curriculum and Standards Authority to do it. I would be grateful for the minister's advice regarding whether this was brought up during consultation on the bill and how people who were consulted responded to this.

I want to talk a little about the rights and protections for children and young people. Even as a parent, I would like to know about and have a say in who has access to personal information about me and my children. I think that parents' consent is extremely important. The bill before us does not give parents the opportunity to have a say in what happens to information about their own children or, in fact, themselves. As a parent, information and details to do with my life could potentially be released. Quite appropriately, as a society, we afford particular and special protections to young people under the age of 18 years, including protections around sharing information about them, particularly in the area of youth justice, but also more broadly. The Greens have long held the view that we need to ensure that children under 18 years have privacy protections. We also believe that it is important to enable children and young people to have a say in decision-making on issues that affect them. We should be thinking about not only parental consent regarding the release of information, but also the consent of children and young people themselves. In relation to consultation—there is a reason I mention this—all five universities, the Department of Education, Catholic Education of WA, the Association of Independent Schools of Western Australia, the Department of Health, the Government Chief Information Officer, the Information Commissioner, the Western Australian Council of State School Organisations, the Parents and Friends Federation of Western Australia, ACARA, the Telethon Kids Institute and the State Solicitor's Office were consulted in the development of this bill, but I am interested to know whether the Commissioner for Children and Young People was also consulted. The reason I ask is that I think this is an area about which the commissioner is likely to have an opinion. Both the current and the previous commissioners have often spoken about the need to ensure that children are consulted and are able to give consent around issues pertaining to them. Parents, schools and research bodies are represented in the list of those consulted, but, again, we are increasingly recognising that children often have very different views and ideas from those of adults and that they are important and valuable in their own right. This means that it is quite important to ask children their views on decisions that will impact them, and barring the capacity to undertake direct consultation, the Commissioner for Children and Young People's role includes being able to advocate on behalf of children. I think this is something that needs to be remedied.

In relation to the broader issue of consent in research, the School Curriculum and Standards Authority Amendment Bill 2017 seeks to circumvent the need for people to consent to their data being released in certain circumstances. I appreciate that seeking consent from research participants can be extremely difficult—of course it can—particularly for participants from rural and remote areas. I have heard, for example, about the extraordinary lengths that the Telethon Kids Institute went to to obtain consent from the parents of children who participated in the recent groundbreaking foetal alcohol spectrum disorder study done at Banksia Hill Detention Centre. That research also required informed consent from all the children who participated in the study. I understand that undertaking the process of gaining consent was extremely time-consuming and difficult, yet it was a really crucial part of the research that provided an amazing window into what was happening for these children. I think it has enriched what has turned out to be an incredibly valuable and also quite heartbreaking study about the prevalence of FASD and other neurodevelopmental impairments in young people in our justice system.

At the heart of this legislation is the question of when it is appropriate to infringe on people's right to privacy—an area in which I think Western Australia generally has quite a lot of work to do. We do not have overarching privacy legislation in this state. I think that is a pretty significant weakness in our legislative regime. The gap has been recognised for a long time; in fact, as far back as 1976 the Law Reform Commission was talking about the need to do something about this issue. I note that the development of a privacy bill stalled in the 1980s, apparently because of a perceived need for uniformity between jurisdictions within Australia, but since that time other Australian jurisdictions, apart from WA, have comprehensively managed to address privacy issues at least in the public sector. In most jurisdictions that has been done via legislation, although I note that in South Australia it is by administrative procedure. In the meantime, WA has continued to lag behind, with a collection of privacy provisions in different statutes and our freedom of information laws, which provide a person with access to and a process for correction of their personal information. WA attempted to enact comprehensive privacy legislation via the Information Privacy Bill 2007, but momentum was again apparently lost before it was achieved. I understand that the government may be looking to remedy this, and certainly the Greens welcome progress in this space.

I raise the broader issue of the importance of data linkage—an issue we raised in the briefing. I understand from the briefing on this bill that it is anticipated that the disclosure of identified information provision will mainly be used for the release of large datasets on which it is just not possible to seek consent from each individual, rather than smaller sets of data that might involve a difficult and time-consuming process but we know we can still do it. Traditionally, access to large government datasets has been through Data Linkage WA, which undertakes quite a rigorous process of connecting bits of data about individuals and then de-identifying them to make sure it is not breaching the privacy of individuals before being released for use by researchers. Data linkage has been used for health and medical research in WA since the 1970s. Since its inception, Data Linkage WA has evolved into an enormous system that now includes over 40 years of data from more than 40 collections across the health, education and welfare sectors; recently, education attendance and suspension data was added.

Last year, a data linkage expert advisory panel established by the Department of the Premier and Cabinet released a review of Western Australia's data linkage capabilities entitled "Developing a whole-of-Government data linkage model". The report noted the long and highly successful history of data linkage in WA. Linking health data has attracted more than $136 million in research and related funding into the state from external sources and helped to support more than 400 studies into some really important issues, including research on improving mental health legislation, reducing criminal recidivism and changing vaccination schedules for children in the Kimberley. The success of linked health data has led to a growing demand for non-health data, including data relating to training and education, justice and corrections, as well as disability services and community. The review noted that broadening data linkage beyond health is seen as an important opportunity if WA is to make the best data-driven policy decisions for the community through a whole-of-government approach.

The review also identified some challenges to data linkage in Western Australia. The system is struggling with demand and that has led to increased costs and longer wait times, and evidence suggests that other states and countries are hesitant to share data with WA due to our lack of privacy legislation. The review recommended that the state government draft privacy legislation and consider the formulation of data-sharing legislation. Given that WA has a very strong and a very proud history in this area, why not use data linkage instead of committing the release of identified student data? I recognise that data linkage can be time consuming and expensive, but it also allows researchers to access more information while providing stronger protections for individuals' privacy. That is a positive outcome that we need to look at.

Last year, the Productivity Commission, in its inquiry into the establishment of a national education evidence base, reported on the importance of establishing linked education datasets. The commission looked into ways to address the challenge of what data to collect and how to use it to support the generation of evidence about what works best in education, and the application of this evidence to inform decision-making. Not surprisingly, at that point the commission found that existing data should be collected and used more effectively. It also found that WA's lack of a legislated privacy regime can hamper the sharing of information, given that several jurisdictions specifically allow the sharing of data with other jurisdictions provided the recipient is subject to the same privacy principles as the originating jurisdiction. This effectively signifies mutual recognition of privacy laws in like jurisdictions.

The commission recommended that the federal, state and territory governments develop a high-quality and relevant Australian evidence base about what works best to improve education outcomes and to support the use of that evidence. I think that the idea of establishing a national database that has rigorous research quality control processes sounds very promising. I hope that the Minister for Education and Training is engaged in new work to progress this sort of proposal.

Rather than seeking to permit the disclosure of data without parental consent, the Productivity Commission noted that advances in technology offer the potential to reduce the time and cost of seeking consent to use data for

education research. It recommended that schools incorporate formal consent and notification to individuals about use of their personal information for education research at the point of data collection. The commission also recommended that the federal, state and territory governments introduce policy guidelines that give explicit permission to data custodians to share data to facilitate public interest research, and that the guidelines include time frames, conditions for release and the criteria for decision-making, as well as the reasons for decisions and review procedures. This proposal would create a less ad hoc approach to the release of data than the legislation before us.

As I mentioned, the issue of research ethics was raised in the briefing. Access to information about individuals for the purpose of research raises significant questions around research ethics. These are covered quite comprehensively in the "National Statement on Ethical Conduct in Human Research". The national statement was developed jointly by the National Health and Medical Research Council, the Australian Research Council and the Australian Vice-Chancellors' Committee to provide clear guidance for those who are conducting research with people. The statement sets —

> … national standards for use by any individual, institution or organisation conducting human research. This includes human research undertaken by governments, industry, private individuals, organisations, or networks of organisations.

This statement recognises that researchers bear significant ethical responsibility towards research participants and trust is placed in researchers to protect participants. It also recognises that research can involve significant risks and it is possible for things to go wrong. Sometimes risks are realised despite the best of intentions and care in planning and practice and sometimes they are realised because there has been a technical error or ethical insensitivity or neglect or even just a blatant disregard. The statement discusses the issue of participant consent. It states —

> 2.2.7 Whether or not participants will be identified, research should be designed so that each participant's voluntary decision to participate will be clearly established.

The statement also notes —

> 2.3.5 An opt-out approach to participant recruitment to research may be appropriate when it is feasible to contact some or all of the participants, but where the project is of such scale and significance that using explicit consent is neither practical nor feasible.

According to these guidelines, the opt-out approach should be used only for research that carries no more than low risk to participants and when the public interest in the research substantially outweighs the public interest in protection and privacy. Requiring that individuals be provided an option to opt-out of having their identifiable data is probably worthy of consideration. I understand that the information about the National Assessment Program — Literacy and Numeracy is usually sent home to parents before children sit the tests. If it is not practicable to seek consent for the release of their personal information at that time, we could at least include the option to opt out for parents and children who have compelling reasons to do so.

Under the national statement, a research ethics review body may grant a waiver of consent if it is satisfied that —

> a) involvement in the research carries no more than low risk … to participants
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> b) the benefits from the research justify any risks of harm associated with not seeking consent
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> c) it is impracticable to obtain consent …
>
> d) there is no known or likely reason for thinking that participants would not have consented if they had been asked
>
> e) there is sufficient protection of their privacy
>
> f) there is an adequate plan to protect the confidentiality of data

The statement states that given the importance of maintaining public confidence in the ethics that are employed in our research processes, it is the responsibility of each institution to make publicly accessible summary descriptions of all its research projects for which consent has been waived. For example, this might happen in the form of annual reports. It is important for transparency and accountability. I am really hoping that we will see a similar provision within the regulations.

The statement also refers to research governance and states —

> Each institution needs to be satisfied that:
>
> (a) its human research meets relevant scholarly or scientific standards;

(b) those conducting its human research:

(i) are either adequately experienced and qualified, or supervised;

We would like to see that also reflected in the regulations. Clearly, significant work has gone into the development of the "National Statement on Ethical Conduct in Human Research". It provides a good overarching body of information about ethical considerations with regard to access to data for research. I think it is a very important framework for us to look at when formulating the regulations.

What are the other things the Greens would like to see in the regulations? As I have said, we would like to see many of the elements of the "National Statement on Ethical Conduct in Human Research". We also want to see a robust process that clearly articulates what tests will be used to establish that a disclosure is reasonably necessary. We expect that any research for which the release of identified data is mooted must at a minimum comply with the guidelines set out in the "National Statement on Ethical Conduct in Human Research" and be approved by a registered human research ethics committee. Human research ethics committees play a really central role in the Australian system of ethical oversight of research that involves people. Ethics committees review research proposals that involve people to ensure that they are ethically acceptable and in accordance with relevant standards and guidelines.

We note that research undertaken by universities already requires approval by the university's ethics committee; however, I again note that this bill does not limit research to any particular individual or research body, so it is going to be very important to ensure we have review mechanisms for non-university research and that we apply the same level of rigour to the ethics surrounding approval of the use of such data.

With regard to the release of data from Aboriginal students, we would like to see special provisions that comply with the National Health and Medical Research Council's guidelines titled, "Values and Ethics: Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research". We expect robust provisions to ensure that any publication of the research results do not enable identification of individuals. We would like any research for which identified data is released to be subject to ongoing monitoring and scrutiny to ensure that proper protections are in place throughout the use of such data.

Privacy protection provisions need to be subject to regular review. This is going to become particularly important, given technological developments that have implications for access to data and the risk of data being breached, and technological developments in new protections that are becoming available and that will change over time. The regulations should require identification of a data custodian so that responsibility for the data from initial handover to the deletion of all copies at the conclusion of the research is clearly articulated. If individuals—parents or students—are not happy with how their data has been handled, there needs to be a robust and clearly articulated complaints process that is easily accessible, including to children. Information about the complaints process should be provided on the School Curriculum and Standards Authority website. If people are unhappy with SCSA's review of their complaint, they should have the opportunity to take their complaint further—for example, to the Ombudsman or to the State Administrative Tribunal. We know that the proposed research needs to be subject to rigorous scrutiny and that data should not be released for inappropriate use to further political agendas or to promote narrow conceptualisations of outcomes.

As I mentioned earlier, it would be appropriate to require an opt-out approach to consent, when feasible, and to contact some or all of the families of students whose data is going to be used, in situations in which the project is of such a scale or significance that using explicit consent is neither practical nor feasible. As I mentioned earlier, we need a process in place to enable families to opt out when, for valid reasons, they do not want to have their address released and want to have their wishes respected. I appreciate that we are talking about a very small number of people—for example, those who have moved because of issues of family and domestic violence—but they should have the option to have that flagged on their records. We would also like the School Curriculum and Standards Authority annual report to include details on what information was released, to whom and for what purpose so that people can scrutinise how the information has been used. I suggest that a summary of research findings could also be included on the SCSA website at the conclusion of the research. This information should be provided to students and parents if at all feasible.

I note that in many ways, privacy issues have been exacerbated by advances in technology and information is able to be accessed and shared much more quickly and more widely than ever before. That means that government departments have access to a whole range of very personal and sensitive information, and it is even more imperative than it has been in the past that we ensure that government information is protected by significant safeguards. People need to trust that government departments will protect the personal information that they have in their care. People need to feel confident that it will not be abused. The implications of not doing the right thing—in this case, having data breached—could have wideranging implications, including undermining people's confidence in government.

The legislation before us potentially enables SCSA to release to researchers private information about students and their families. As I have already noted, the Greens are ardent supporters of quality research and we recognise that one of the things that hampers research in Australia is ready access to data. We recognise that the public interest benefits of allowing greater access to data are substantial, but we must remember that these benefits need to be balanced with the cost of infringing on people's right to privacy and the potential risks associated with the misuse of that data. As a parent, I regularly receive correspondence seeking consent for a range of things. Requests might come from government departments or researchers or directly from the school itself. In fact, recently I got a request for one of my children to participate in a particular research project being undertaken by the Mental Health Commission. I consented to that, and my son also needed to consent. As parents, we might choose to say yes or no, but, importantly, we are provided with the opportunity to consider each request on its individual merits. This legislation will take that right away from us.

The bill requires thorough scrutiny. It needs to be considered in light of the significant work being done on data linkage, privacy protections and database development. The absence of privacy legislation in WA means that these issues are being dealt with in a piecemeal fashion and in the absence of overarching legislative protections, which is obviously not ideal. Members know that some pretty horrific experimental studies have been conducted in the past, but significant work has been done in the last decade or two on consent and participation, as well as on research ethics more generally, and we now have stringent requirements for universities and other research bodies. I would like to see the work that we do in this place build on those advancements in protections for research participants, rather than take us backwards. Any release and use of data should be guided by regulations and protocols that are framed in the best interests of children and their families and are aimed at developing a more socially just education system.

On that note, after balancing all these different provisions, the Greens have made the decision to support this legislation, but I have articulated a range of concerns that come with it and specifically the sorts of provisions that the Greens expect to see in the accompanying regulations. We hope that the passage of this bill at this time means that there will be time for the regulations to be compiled in a timely manner with the significant feedback from this place. I hope that the comprehensive regulations will try to strike that necessary balance between the importance of research and the importance of protecting privacy.

HON SUE ELLERY (South Metropolitan — Minister for Education and Training) [2.14 pm] — in reply: I thank members for their contributions to the debate. If I can put the School Curriculum and Standards Authority Amendment Bill 2017 in some historical context, it might be helpful to members when they contemplate the kinds of questions that have been asked so far. Nationally, every jurisdiction agreed to proceed with NAPLAN Online back in October 2014. The arrangements and requirement to share this information flowed from that decision. It is useful to note some other things. Hon Alison Xamon listed all the bodies that were consulted with in the drafting of this legislation, and it is important to note that that included the five universities; the Department of Education; the Catholic Education Office; the Association of Independent Schools of Western Australia; the Department of Health; the Government Chief Information Officer; the Information Commissioner; the Western Australian Council of State School Organisations, and for those new members who are new and do not realise it, that organisation represents the voice of parents in public schools across Western Australia; the Parents and Friends Federation of WA Inc, which is the voice of parents in Catholic schools across Western Australia; the Australian Curriculum Assessment and Reporting Authority; the Telethon Kids Institute; and the State Solicitor's Office. I draw particular attention to the two parents bodies because it is worth noting that they are supportive of the legislation before the house today.

In respect of some of the issues raised by Hon Alison Xamon in particular, I take her point that this bill is being progressed in a piecemeal fashion to the extent that it goes to issues around the way in which the ethics of research are managed, the way privacy is dealt with and the way that sharing information is dealt with. She is right to that extent. The broader issues that she raised about how we as a state deal with all those issues are not a debate for today. However, it is something that the government is working on and I encourage her, if she has not done so already, to seek a briefing from the Information Commissioner and the Government Chief Information Officer about how we are progressing those things. The difficulty we have and the reason we need to do this in a piecemeal fashion is that we are on a time line—not one created by this government, but, in fact, created by the previous government and governments across Australia in 2014 when they set the time line for when NAPLAN Online would roll out. We needed to take action to address an inadequacy in the existing legislation.

This legislation was last amended in amendments to the Curriculum Council Act in 2012, which saw the creation of the School Curriculum and Standards Authority and the board. I am advised that at that point there was an oversight, so the provisions around releasing identified student data for the purposes of testing and research were limited. We are fixing an error that was made back in 2012. We are on a time line that was set back in 2014. Although I understand the seriousness of the issues raised by Hon Alison Xamon, it is for those reasons that we are not able to address those issues in the legislation before us today.

In respect of some of the other questions asked about the detail of the legislation, I have some information that I will canvass now, and then I am happy to answer specific questions when we get into committee. The only data that could be released will be defined in the regulations, and it includes the Western Australian student number; the child's name, gender, address and date of birth; their Aboriginal and Torres Strait Islander status; the language of the student spoken at home; their parents' main language spoken at home if it is other than English; the educational program in or for which the child was enrolled or receiving home education; the option or combination of options under section 11B of the School Education Act, which is around university courses or workforce; educational programs other than what the student was most recently enrolled in; and education achievement. On the criteria to disclose data for research, a judgement has to be made that the disclosure is reasonably necessary; the purpose for the disclosure can only be achieved with the personal information that is held by the authority—that is, only from the list I have already read out; it is impracticable to obtain consent from individuals about whom the information relates; and disclosure is in accordance with procedures to be stipulated in regulations, which will be drafted to support the bill. Work has begun on drafting those regulations.

Another question was: when is data reasonably necessary to be released in an identified form? Applicants will have to demonstrate that their research is justifiable by its potential benefit and contribution to knowledge and understanding of education achievement and/or the wellbeing of children and young people, and applicants will also have to demonstrate why it is impractical to seek individual permission from parents and caregivers. The processes for disclosing the data for research will be detailed in the regulations. I thank Hon Donna Faragher for raising that issue with me personally. I am pleased that we were able to shift it from what was going to be an internal policy to a disallowable instrument. The processes will resemble those that have already been developed by the Department of Health's data linkage unit. The process will include a data governance component, which will ensure compliance with relevant law; data protection and management; intellectual property and financial considerations; compliance with the authority's contractual conditions; and an ethics component, which will articulate the benefits of the research and the need for identified data without consent. The applicants will need to identify any risks to participants; complete a communication plan, which will include how the research will refer to individual data and researcher expertise; and complete a disposal plan, which will articulate how the researcher will dispose of the data once research is completed. This will have to align with the requirements of the authority, which will be articulated in the processes and procedures that will sit below those regulations. With respect to penalties, a statutory penalty of $10 000 does not limit civil remedy, which essentially means that the authority will be able to seek additional penalties, obviously on advice from the State Solicitor's Office, if a judgement is made that a breach goes beyond the provisions set out in the statutory penalty.

On the issue of communication to parents, it is proposed that identified data will be released, which assumes that it will be done without the permission of parents. However, it is important that the regulations articulate how the authority will report publicly. I appreciate that the question was raised about including such information in the authority's annual report. I am advised that the department is seeking advice on how it might do that. We are not yet sure how that will be done, but the department is working on that now. For those parents who might want to ensure that their contact details are not revealed, when the authority has been notified by a school that orders to access data relating to a particular child exist, the authority will not release data for the purposes of research without the permission of the authorised caregiver.

A question was asked about what kind of research will be undertaken, what information will be released and what we are envisaging. This is not driven by the School Curriculum and Standards Authority, but by whoever wants to do the research. To a certain extent, this is a hypothetical proposition. However, it is envisaged that such research would seek to understand and improve outcomes in educational achievement and related areas, such as health and the criminal justice system. I am sure that everybody in this house, particularly the two speakers, understands that there are intersections between those things. An example of this research, based on requests received by the authority in the past, involves linking education enrolment and achievement data with health records for particular groups of students to understand public health or social outcomes and trends. It may also inform the performance of the authority's statutory functions, policymaking and identification of actions to address public health and social issues. We do not have a sense of specific examples of what research might be the basis of a request. The information I have just given is based on requests that were made to the authority historically.

With those comments, I am happy to commend the bill to the house. I indicate that we will go into committee for further clarification of a number of issues.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Martin Aldridge) in the chair; Hon Sue Ellery (Minister for Education and Training) in charge of the bill.

Clause 1: Short title —

Hon ALISON XAMON: I want to ask a couple of questions. When the regulations are compiled, is specific provision likely to be given to safeguards around access to student records, particularly in cases in which there is family and domestic violence? Is that likely to be a consideration?

Hon SUE ELLERY: Yes.

Hon DONNA FARAGHER: I seek the minister's guidance. I want to ask a number of questions about the regulations when we get to clause 8. I am happy to hold off until we reach clause 8 before asking my questions. I appreciate that a question has just been asked. It would be useful to get an idea as to whether I should ask them now or when we get to clause 8.

Hon SUE ELLERY: I am pretty relaxed. I think it makes logical sense to ask those questions in clause 8, which is where the regulations sit. The chamber may want to do something different. Clause 1 is about general matters, not the specifics.

Hon DONNA FARAGHER: I will ask a question that I was going to ask when we reach clause 8 that picks up on the points the minister raised about the annual report in her second reading response. I appreciate that the minister indicated that the School Curriculum and Standards Authority is seeking further advice about this, but if information is included in the agency's annual report, that would increase the level of transparency in the process. If it is found for whatever reason that the advice provided to SCSA is that it is not possible, will the minister give an undertaking that a database will be set up in SCSA that will effectively provide the same information so that if someone—Parliament, a member of Parliament or anyone else—seeks that information, they will be able to gain it even though it is not able to be provided through an annual report process?

Hon SUE ELLERY: I cannot imagine why it could not be provided in the annual report, and I am supportive of it being provided in the annual report. I have to cover our bases; we need to get legal advice about that. The only thing that I think might be an issue is that obviously it would involve entering into a contractual arrangement, but it would not be the standard contractual arrangement. I cannot see any reason that we would not publish that material in the annual report, and that is my preferred policy position, which I will discuss with the executive director. I am happy to give the member the commitment that that is my preferred position. I cannot imagine why we could not do that, but given that we have not explored all the detail about how we would do it, I would be loath to say that we will do it without first getting advice from whomever I need to get it. However, I will give a commitment that we will be as transparent as we possibly can about making sure that the people of Western Australia, through their parliamentary representatives, will be able to access information about the nature of research projects that are being undertaken using that data, hopefully in a timely fashion.

Hon DONNA FARAGHER: I appreciate the two undertakings that the minister has provided. Similar to the minister, I would argue that I do not see any particular reason that the information cannot be put into an annual report. Whether it is in the annual report or not, I expect that in any event the School Curriculum and Standards Authority would establish a database that would outline the relevant details of the applicant, the research project and all the necessary information that might have been provided, or otherwise. Can the minister give me clarity on whether SCSA intends to establish such a database?

Hon SUE ELLERY: Indeed, I am happy to give a commitment that, in one way or another, we will deliver that.

Hon ALISON XAMON: I want to confirm whether the Commissioner for Children and Young People was consulted on this legislation.

Hon SUE ELLERY: No, he was not.

Clause put and passed.

Clauses 2 to 6 put and passed.

Clause 7: Section 32 amended —

Hon DONNA FARAGHER: My question relates to penalties. Clause 7 states, in part —

> Penalty for this subsection: $10 000 and imprisonment for 12 months.

I note what the minister indicated in her reply and I understand that this was raised during debate in the other place. Can I get some clarity about the suggestion that the penalty will not be limited to $10 000? The way that it has been written in the bill, it seems that the penalty will be a fine of $10 000 and imprisonment for 12 months. I think the minister indicated that civil penalties might arise if higher penalties are sought. Could the minister provide a little more detail on that aspect?

Hon SUE ELLERY: I am advised that the bill before us sets out the statutory penalty. On top of that, parliamentary counsel advises that, for whatever purpose, such as the breach was very serious—I cannot imagine the circumstances—the authority will not be limited in taking civil action to pursue an alternative penalty. Clause 7

sets out the statutory penalty, but I am advised that it will not prohibit the authority from taking civil action if it is deemed necessary.

Clause put and passed.

Clause 8: Section 32A and 32B inserted —

Hon DONNA FARAGHER: I have a few questions about proposed section 32B(6), which relates to the regulations that may prescribe procedures. I appreciate that the minister, in her reply to the second reading debate, outlined a range of identifiable information that could be provided. She said "including" and then referenced a whole heap of fields of data, if I can put it that way. I am just trying to get some clarity that the regulations, as the minister understands they are developed, will detail all the fields of data that can be disclosed. I ask that question because section 19E of the current act refers to how a student record is opened. It states —

> A student record is opened by the giving of the following information to the Authority, in accordance with section 19H, in respect of a student —
>
> (a) the student's —
>
> (i) name, including any previous name; and
>
> (ii) address; and
>
> (iii) date of birth;
>
> and
>
> (b) particulars of —
>
> (i) any educational programme in which the student is enrolled or that is being provided to the student; or
>
> (ii) any option under section 11B of the School Education Act for which participation arrangements have been made in respect of the student,
>
> at the time when the record is opened, or in the case of an exempt child, particulars of the exemption; and
>
> (c) any other prescribed information.

I sought some advice yesterday about whether any regulations that relate to this act detail the other prescribed information. I would expect that that provides a greater level of detail of what information can be provided. I will say—it was only very quickly asked yesterday—that we could not locate any prescribed information. I want to be clear on whether the information that can be disclosed effectively relates to the student record that is referred to in the act; and, if so, what is the other prescribed information? Is that the information that the minister provided in her reply; and, if so, is there other information?

Hon SUE ELLERY: The answer is yes. The list that I read out, which I will read again so that anyone reading *Hansard* can follow the debate, is the only data that could be released, and will be defined by the regulation. It will be limited to that list—I will read it out in a minute—and it is our intention that that list will be spelt out in the regulations. The list, for the purposes of those people who are reading this debate in 2075, is: the child's WA student number, name, gender, address and date of birth; whether they are Australian Aboriginal and Torres Strait Islander; the language of the student spoken at home; their parents' main language, other than English spoken, at home; the educational program in or for which the child is or was enrolled in, or receiving home education; the option or combination of options under section 11B of the School Education Act 1999, vocational education and training university courses or workforce; educational programs other than what the student was most recently involved in; and education achievement.

Hon DONNA FARAGHER: I thank the minister for providing that list. I ask the minister whether the School Curriculum and Standards Authority holds any other student data that is not included in that list.

Hon SUE ELLERY: The technical answer is yes; heaps. It goes to a range of things, but it includes more information about the parents' educational background and level of disability. I was flippant when I said that the technical answer is yes; heaps. There is no intention to include a reference or in any way incorporate that other information into what could be released for the purposes of this bill.

Hon DONNA FARAGHER: The reason I asked that question is to confirm that the list the minister has provided will not have a rider at the end of it that would enable the board to say, "A researcher would like X information, and because there is a clear and admirable need to disclose that information, we can get around what is on the list." The minister has said that what is detailed in the list she has provided is the only information that will be able to be provided. Will there be any extenuating circumstances under which a researcher could request additional information that SCSA might hold?

Hon SUE ELLERY: The answer is no. The list is limited to what I have just read out.

Hon DONNA FARAGHER: Thank you. I raised this question during the second reading debate, and I think I know the answer, but I ask it again for the purposes of *Hansard*. Will the regulations stipulate that the disclosed information can be used only for the specific purpose for which it was originally requested? It is understood that researchers will often have multiple projects underway, some of which might be related. I would expect that an individual request would need to be made for each individual project, and that the researcher or research body would not be able to use the information more generally across a range of projects. Could I get some clarification of that?

Hon SUE ELLERY: I am advised that the answer is yes. Researchers will be required to enter into a contractual arrangement that specifies that they are to use the released data for only the purpose for which they originally applied for that data. I presume that if they wanted to use that data for a project other than the project for which they were originally granted permission to use that data, they would need to make another application.

Hon ALISON XAMON: The minister indicated in her reply that there would be reference to specific guidelines around ethics. Is the minister likely to draw on the "National Statement on Ethical Conduct in Human Research", which is well established and understood, in order to provide consistency towards the approach to ethics?

Hon SUE ELLERY: Yes, we are.

Hon ALISON XAMON: Great; I am pleased to hear that. Further to that, as I raised during the second reading debate, will there also be specific provisions that reflect the "Values and Ethics—Guidelines for Ethical Conduct in Aboriginal and Torres Strait Islander Health Research"?

Hon SUE ELLERY: I am not in a position to give the member an answer to that question now. If that is incorporated in the national guidelines to which the member just referred, the answer is yes. I give the member an undertaking that we will look at that, and I will give the member an answer outside of this debate.

Hon DONNA FARAGHER: While we are on that, I was told in the briefing that was provided to me that an ethics committee would be established to consider applications and provide advice to the board. Can I confirm that such a committee will be established; and, if so, who will sit on that committee?

Hon SUE ELLERY: The committee will comprise individuals with relevant skills and expertise for a research application. It may include—so it will depend, I think—a parent association representative; a university-based ethics professional; an authority executive management member; relevant school systems and sector representatives; an authority board member and a member of the governance unit who is not one of the above; and any other members as the board might deem suitable.

Hon DONNA FARAGHER: I have a couple more questions. Again, the minister indicated this in her second reading response, but I want to be absolutely clear: will the regulations stipulate that, where the authority has been notified by a school that any orders exist in relation to access to a child or their data, the authority must not release that data? If yes, can the minister detail for me how that will be adhered to? I presume that would mean that, individually, SCSA may have to remove that data prior to its release, but it would be helpful to understand how the process would occur to ensure that that data is not provided to a research body.

Hon SUE ELLERY: Where the authority has been notified by a school that any orders exist in relation to access to a child or their data, the authority will not release data for the purpose of research without the permission of the authorised caregiver, and the authority itself will contact the caregiver to ascertain that directly. If permission is not given, the data will be removed before it is released to the researcher.

Hon ALISON XAMON: Will the regulations require the identification of a specific data custodian, so that responsibility for the data from the initial handover until the conclusion of the research is clearly articulated?

Hon SUE ELLERY: The best of the advice available to me is that the answer to that question is no. I think when the member was making her second reading contribution, she was referring to a broad set of best practice principles that might apply. That is why I made the reference in my second reading reply to some of the issues the member raised in her contribution. I acknowledge that we are dealing with this in a piecemeal way; in the absence of an overarching set of agreed principles by government, given the time lines not of our making, we will have to proceed with this in a piecemeal fashion. That is why I made the point to the member that I think it would be useful, if she has not done so already, to take advantage of a briefing from the Information Commissioner about the broad set of principles that the government as a whole should adopt.

Hon ALISON XAMON: In relation to these provisions, we are talking about being able to hand over data to a number of potential entities. I am talking about ensuring that, when that data is handed over, it is quite clear that someone is identified as being, if you like, the buck-stops-here person, in being able to maintain the integrity of that data, particularly any privacy provisions. This pertains to the regulations associated with the release of this particular data to the entities, as yet unknown, who will be the recipients of that data. It strikes me that it is quite

essential there be a specific provision making it clear that someone is to be held responsible for making sure that that data is handled responsibly, from inception to the conclusion of the research.

Hon SUE ELLERY: I have been advised that we can do that. Bear in mind that the regulations have not yet been drafted.

Hon Alison Xamon interjected.

Hon SUE ELLERY: Yes, and I am trying to give the member an answer.

I am being advised that we can build that into the regulations. We know now that a contractual arrangement will be entered into, but I cannot say that one person will be identified as the holder of the information—where the buck stops—because the work has not been completed yet on what those contracts will look like, or what the regulations will look like. The authority has started work on what the regulations might look like, but it has not provided that to parliamentary counsel—with due respect to the advisers from the authority, of course—so there has not been that overriding legal look at what the contractual arrangement or the regulation should look like. However, I am happy to give the member a commitment to ensure that that issue is addressed in the drafting, and I will make sure that the authority seeks specific advice from parliamentary counsel, or the State Solicitor if that is required, about how that could be incorporated.

Hon DONNA FARAGHER: Can I also just confirm that no system or school sector would be identifiable in any information disclosed? I am talking about whether a school is independent or Catholic.

Hon SUE ELLERY: We are not identifying the sector that that child is enrolled in.

Hon DONNA FARAGHER: I thank the minister. That was a question that had been put to me previously and I just wanted to make sure that that was clear.

Under the regulations, will there be an ability for the board to be required to advise the minister of the proposed release of data prior to its release; and, if so, would there be an ability for the minister to withdraw the board's approval if she or he felt that the information could be requested directly from the school from which it was being sought? I recall from one of the briefings that a request had previously been put to the School Curriculum and Standards Authority for the release of certain information but that it had been rejected. Given the cohort that was being looked at, SCSA took the view that if a researcher was seeking individual information, it was reasonable to seek consent. I am looking at the failsafe option if the minister felt that she may take a different view to the board based on information presented to her; and, if so, whether that could be included in the regulations.

Hon SUE ELLERY: It is certainly not proposed in the bill before us that there be any kind of ministerial veto. Frankly, I would not want it. I cannot imagine the board wanting to give it to me either, but I would not particularly want it. The criteria are what I referred to in my second reading speech and they are determined by the board. I expect that the board might inform me in regular meetings that it has released data for project X, but the bill does not include or envisage any form of ministerial veto.

Hon DONNA FARAGHER: From my perspective as the shadow minister I would expect that SCSA would at the very least inform the minister when information is provided, given that it relates to students. If I have the undertaking from the minister that SCSA will ensure that she and future ministers are provided with that information, I would be pleased to have that confirmation.

Hon SUE ELLERY: I will be requesting it from the board. The board is pretty good, so I would imagine that it will provide it to me, or any minister frankly, as a matter of course, bearing in mind that we are talking about a board. I have the power to issue a directive, but I am not going to. I am assured by the executive director that it would be common practice for the board to inform the minister of the day what research projects have been facilitated through these arrangements.

Hon DONNA FARAGHER: My other question relates to the disposal of data. I might have missed it, but I think the minister mentioned that there would be a requirement in the regulations detailing the disposal of data—what is the disposal plan? Perhaps the minister could provide some further advice about that.

Hon SUE ELLERY: Similar to the Department of Health's arrangements, the process will include a disposal plan. When a decision is being made about whether to concede to the request, they will need to set out their proposed disposal plan and they will be held to account against that plan.

Hon DONNA FARAGHER: This is my final question, unless Hon Alison Xamon raises something that means I will have to jump up again, and it is about the regulations. I appreciate that the minister has provided us with a great level of detail about what she expects to be in the regulations. That has been enormously helpful. Once the regulations have been drafted, will SCSA consult with the Association of Independent Schools of Western Australia, Catholic Education of WA, parent bodies and others—effectively, those that the minister has identified have been consulted on the bill—to ensure that they are comfortable with the regulations?

Hon SUE ELLERY: Yes, it will. A commitment has already been given to those organisations that they will be consulted about the regulations.

Hon ALISON XAMON: I have a few more questions. Firstly, is it likely that the regulations will contain any complaints process for individuals who are unhappy with the way their data has been used?

Hon SUE ELLERY: We would need to get legal advice about that. It may be that that sits within the procedures that sit underneath. Generally speaking, certainly in the education portfolio, the complaints and dispute resolution mechanisms do not sit in disallowable instruments; they sit in the policies underneath—policies that are well ventilated—that is, those that are on respective websites et cetera. I would need to get advice about that, but I suspect that the answer is that it will be in the policy documents and not in the regulations.

Hon ALISON XAMON: Will the regulations contain any regular review process to see how the privacy provisions are being held up?

Hon SUE ELLERY: It is not normal practice, I am advised, to put that in the regs. There are certainly provisions in the act—that is, statutory reviews of the act. When those statutory reviews are done for this act and others, the regulations are looked at when that review is done.

Clause put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Sue Ellery (Minister for Education and Training)**, and passed.