LEGAL PRACTICE BILL 2002

Consideration in Detail

Clauses 1 and 2 put and passed.

Clause 3: Interpretation -

Mrs C.L. EDWARDES: This clause includes a number of definitions. There is a new definition of "bank" that was not in the previous Act. Is there a specific reason for including this new definition?

Mr J.A. McGINTY: I remember receiving correspondence recently from either a credit union or the organisation representing credit unions thanking me for including this definition in the Bill. The explanatory memorandum states -

> a bank can be a financial institution which complies with either the definition of an authorised deposit-taking institution (ADI) contained in the *Banking Act 1959* (Cth) or one that is established through some other State or Commonwealth law. An ADI is a body corporate, not necessarily a "bank", which is authorised by the Australian Prudential Regulation Authority to operate as a banking institution. This provides greater flexibility in the types of financial institutions in which trust funds can be deposited beyond the traditional banks.

The key, as far as this legislation is concerned, is in the last sentence.

Mrs C.L. EDWARDES: So trust accounts for all of those things for which the firms need to ensure the accounts are properly managed, can go into, say, one of the credit unions or one of the other deposit-taking institutions under the wider definition since the federal Government deregulated the banks. Is that the reason this definition is in there?

Mr J.A. McGINTY: That is correct, provided it is an approved deposit-taking institution. That is the new definition of bank, so it will have the effect, I am advised, of expanding the range of institutions in which a trust account can operate.

Ms S.E. WALKER: Clause 3 contains a definition of "articled clerk". It appears to be a new definition under this legislation. Can the Attorney General explain what is happening with that?

Mr J.A. McGINTY: I am told that there is no definition of an articled clerk in the current legislation. What is sought to be done here is not to change the definition of what an articled clerk is in any way, shape or form, but simply to provide that it is defined. It is a tidying up exercise without any attempt to change any existing practices pertaining to who an articled clerk is or what constitutes an articled clerk. It is simply to provide that it is defined, having been undefined in the previous legislation but well known in practice.

Ms S.E. WALKER: It appears to me that, under the current Legal Practitioners Act, part II "Articled clerks", there is different wording. The current section 9 "Conditions for the articling of clerks" seems to be different from clause 19 of the Bill before the House.

Mr J.A. McGINTY: The definition contained in clause 3 of the Bill does not in any way change what an articled clerk is. The provisions in section 9 of the Legal Practitioners Act 1893 were intended to be, in a broad sense, taken over by clause 19 of the Bill before the House. That deals with the evidence to be produced of good fame and character. This alteration was made at the request of the Legal Practice Board in relation to the provision of evidence of those aspects; that is, if a person is of good fame and character and has reached the age of 16. These are the same characteristics, essentially, that are contained in section 9 of the Legal Practitioners Act. It was a change requested by the board to prescribe the way in which those matters are proved, and the evidence in support of them is provided. That is in clause 19, not in the definition as such.

Mrs C.L. EDWARDES: I refer the Attorney General to a new definition, "costs agreement", which means an agreement made under section 221(1). Obviously it has been a new phenomenon and as far as I can gather, extensively used to get out of legal aid, or to earn more money by exceeding the costs they might have been entitled to. What happens now, and what is the Attorney General changing with this legislation, in the area of costs agreements?

Mr J.A. McGINTY: Can I make the bold statement, "nothing"? I hope I am right.

Mrs C.L. Edwardes: So what is being incorporated is what is practised currently, and that is what is being legislated for.

Mr J.A. McGINTY: Yes, and section 59 of the Legal Practitioners Act of 1893 is in substantially similar terms. The intention was to effectively re-enact that. There may have been some updating of the terminology, but there

was no intention to change any important principle of it. It may even be identical. I have not had a chance to double check.

Ms S.E. WALKER: I might not have understood the Attorney General. Clause 3 of the Legal Practice Bill, interpretation, contains a definition of "articled clerk". However, there is no such definition in the Legal Practitioners Act 1893. I thought the Attorney General said that definition was in the Act in any event.

Mr J.A. McGinty: No.

Ms S.E. WALKER: Is it just a tidying-up provision?

Mr J.A. McGinty: The intention is to carry forward the current meaning. There is no change in the meaning of "articled clerk".

Ms S.E. WALKER: We will get to that, I suppose. That was not one of the raft of amendments that the Attorney General brought in on 25 February, was it?

Mr J.A. McGinty: No, it was not.

Ms S.E. WALKER: The Bill was brought into the House in October or November, and then over the Christmas break an enormous amount of amending was done. Who in the legal profession had the opportunity of considering the raft of amendments that were brought in on 25 February?

Mr J.A. McGINTY: The Bill has effectively been drawn up under the chairmanship of the Solicitor General, with input from all of the legal stakeholders. The amendments that were made after the Bill was first introduced into the Parliament and that are now incorporated in this Bill by virtue of the pro forma amendment came from three sources. The Legal Practice Board was a significant source. The Law Society of Western Australia and the Bar Association also approached the Solicitor General or me with suggested amendments. The amendments that were tabled in this place and are now incorporated in the Bill in each case came from one of those three bodies. There might also have been some drafting matters that were picked up by parliamentary counsel in reviewing the legislation after it had been introduced. I should say also that with regard to the corporate structures for law firms, such as incorporated legal practices and the like, this has been an ongoing project through the Standing Committee of Attorneys General. We wanted to ensure that the Bill picked up the current state of thinking at a national level on the incorporation of legal practices, so some adjustments were made as the thinking was refined on that issue during the few months from when the Bill was introduced to when the amendments were brought forward. I think it is true to say that in respect of the matters that have been dealt with at a national level, the Bill now reflects the national state of play and will be a model for the other States.

Ms S.E. WALKER: The reason I asked about the amendments is that last night I attended a function at which there were a lot of members of the Law Society, and when I mentioned some of the amendments that had been made to the first Bill they did not appear to know about them and told me they had probably come from the Legal Practice Board. I know that the Legal Practice Board includes members of the Bar, but, apart from the Legal Practice Board, have the amendments that came to the Assembly on 25 February been considered by the Law Society and the legal profession generally, because my understanding is that they have not?

Mr J.A. McGINTY: The Law Society has been in constant dialogue with the Solicitor General on this matter. Alison Gaines, the Executive Director of the Law Society, has been constantly advised of the nature of the amendments. As I have said, this Bill has been a cooperative exercise between all the key stakeholders, in particular the Legal Practice Board, the Law Society and the Bar Association, which have provided us with fairly constant input into what the amendments should contain. I have spoken with the Law Society about these amendments. The Law Society has been advised of the amendments and has raised no objection; indeed, it continues to advocate strong support for the passage of the Bill in its entirety.

Ms S.E. WALKER: One of people to whom I spoke last night was Elizabeth Heenan, who is the President of the Law Society. I asked her about some of the amendments, and she indicated that she did not play any part in those amendments. That is why I am asking whether the legal profession, through the Law Society, has considered the consequences of all the amendments that have come in after the initial rather large Bill came in.

Mr J.A. McGinty: It was certainly aware of them,

Mrs C.L. Edwardes: Did the Attorney send a copy of the amendments to the Law Society for its information and/or consideration?

Mr J.A. McGINTY: The nature of the process with the stakeholders was consultative. The answer is I did not, but papers were changing hands on a daily basis between the various people involved, and the draft Bill was flowing between the members of the committee, on which the Law Society was represented. I cannot stand here

and say that a particular amendment was formally given to the Law Society, but there was certainly no lack of freedom of information, if I can put it that way, in the way the amendments were passed backwards and forwards. Certainly since the amendments have been produced and the Bill has been reproduced pro forma we have had feedback from the stakeholders. A lot of the exchanges occurred on an informal basis between the Solicitor General and the other members of the committee. Because I have met on a number of occasions with both the Law Society and, more particularly, the Legal Practice Board, I know that they have had enormous input. The Legal Practice Board wrote to us as late as two weeks ago - that was our most recent correspondence from the Legal Practice Board - and suggested further amendments, to which we did not agree. It has been a ongoing process. I cannot answer the question more specifically than that.

Ms S.E. WALKER: I do not want to labour the point, but it is an important point given the amendments and the consequences of the amendments. The members of the legal profession have inquisitive minds and want to know what is happening in their profession. I have received a lot of letters from the legal profession about this Bill. Can the Attorney General's advisers tell me whether a copy of the amendments was sent to the Law Society?

Mr J.A. McGINTY: I have answered that question.

Ms S.E. WALKER: The Attorney cannot tell me and his advisers cannot tell me?

Mr J.A. McGINTY: I consulted with the people who are sitting with me in giving the answer that I gave a few moments ago.

Mrs C.L. EDWARDES: I refer to the definitions of "disqualified person" and "engage in legal practice". Those are new definitions. It was previously referred to in the Legal Practitioners Act, section 32A, as "engage in the practice of law", whereas it now states "engage in legal practice", as set out in clause 4. Under "disqualified person" it also states -

> (b) . . . or in any other place (whether in or outside Australia);

That means that if somebody is disqualified, suspended or otherwise prohibited from engaging in legal practice anywhere in the world, they are obviously disqualified in Western Australia. What is the difference between engaging in legal practice and engaging in the practice of law?

Mr J.A. McGINTY: I am advised it is a more felicitous way of saying the same thing. The current provision is in section 77 of the 1893 Act, and it states -

> (1) No person other than a certificated practitioner shall directly or indirectly perform or carry out or be engaged in any work in connection with the administration of law . . .

It is thought this is just a better way of expressing the same notion without a significant change in the meaning of the law.

Mrs C.L. EDWARDES: I wondered if it did not apply to the changes that have occurred over time whereby not everybody goes into legal firms; many of them go to private companies to practise law. Does it incorporate the wider practice of people in law as against just saying the same thing? Is there really a purpose to it?

Mr J.A. McGINTY: I am advised that it is an attempt to bring together the provisions that should all be concentrated in one area. It is not intended that this will go any further than the prohibitions contained in current sections 76 and 77 of the Legal Practitioners Act. For instance, section 6 of the 1893 Act, states -

> (3) . . . a practice certificate is required to be held by every practitioner -
>
> (a) engaged in the practice of law in Western Australia, whether or not as an employee; or
>
> (b) prepared, or purporting to be prepared, to be retained for reward in the practice of law in the State, otherwise than as a practitioner merely seeking a position as an employee.

There is no intent to change the law.

Mrs C.L. Edwardes: Is the drawing up of wills - quick wills or easy wills; some name like that - changed by the outcome of that decision? It is not broadening the base of the current practice.

Mr J.A. McGINTY: No; that is clear. The area we have debated considerably during the drafting of this Bill is more the situation in which somebody has been struck off as a legal practitioner and then seeks to practise as an advocate before different tribunals - industrial relations is one example.

Mrs C.L. Edwardes: Workers compensation would be another example.

Mr J.A. McGINTY: Yes. It has also arisen in the context of the proposed new state administrative tribunal and the ability of a lay advocate to appear, if that lay advocate is a struck-off lawyer.

Mrs C.L. Edwardes: Would this stop them from appearing?

Mr J.A. McGINTY: This does not change that.

Mrs C.L. Edwardes: Why not? They probably charge more money.

Mr J.A. McGINTY: There may well be sound policy reasons to do that.

Ms S.E. WALKER: The definition of "legal practitioner" has been changed. Will the Attorney General explain why?

Mr J.A. McGINTY: The definition has been changed at the request of the Legal Practice Board, because there was thought to be an ambiguity in the current definition. Section 3 of the 1893 Act states -

> "**practitioner**" shall mean a person admitted and entitled to practise as a barrister and solicitor of the Supreme Court of Western Australia . . .

The Legal Practice Board was concerned about the meaning of the word "entitled" - did it give rise to a right to a practice certificate; was someone who had a right to a practice certificate entitled to practise as a lawyer? The definition has been changed to terms agreeable to the Legal Practice Board -

> **"legal practitioner"** means a person -
>
> (a) who is admitted as a legal practitioner, whose name is on the Roll of Practitioners and who is not a disqualified person; . . .

It removes any ambiguity from who is a legal practitioner.

Ms S.E. WALKER: I am having some difficulty with this, because of the consequences that flow from changing the definition of "practitioner". In the current definition a person cannot be a practitioner and he cannot hold certain offices unless he is a person admitted and entitled to practise. That has been in the Act since 1893; I went back and read the Act. Did the Legal Practice Board, when considering this amendment, consider whether that meant practitioners were entitled to practise on their own account, or did they have to complete their restricted practice year?

Mr J.A. McGINTY: The Legal Practice Board wrote to me on 11 November 2002 about the Legal Practice Bill. It stated the Bill had been considered by an ad hoc committee of the board and that the board had also received comments from the law complaints officer and the trust accounts inspector. It provided me with 10 pages of suggested amendments to the Bill. In relation to the question raised by the member, it has nothing to do with whether a person is authorised to practise as a sole practitioner as that is covered elsewhere in the legislation. Part of the document states -

> The definition of "*legal practitioner*" needs to be clarified in its use of the words "*entitled to practice*". Is a person who is admitted and entitled to obtain a practicing certificate "entitled to practice", or is it only a certificated practitioner? If the latter, what is the difference between a "*legal practitioner*" and a "*certificated practitioner*"? Also, what about those mutual recognition applicants whose practising certificates only allow them to practice as a "barrister"? That would seem to put them outside the definition.

That was the nature of the issues it was raising. As a consequence, the definition was amended to overcome those problems that I am told have beset the Legal Practice Board for a great number of years.

Mrs C.L. EDWARDES: I would like to obtain a copy of that.

I do not fully understand the potential ambiguity, even as the Attorney General has explained it. This Bill deals with admission. That is what we are talking about. A legal practitioner "means a person who is admitted". Part 4 of the Bill defines what that means. Clause 33 deals with restrictions on entitlement to practise. A legal practitioner is a person who is admitted and entitled to practise. If there were an ambiguity, why continue to operate using similar language? Clause 33 refers to an admitted legal practitioner who is not entitled to practise and must not practise "on his or her own account until he or she has completed, after being admitted, a term of 12 months as an employed legal practitioner". Is the definition of a legal practitioner being changed to someone whose name is on the roll, and not a disqualified person? That is, someone who is admitted not having done his restricted practice year. Is such a person a certificated practitioner?

Mr J.A. McGinty: No.

Mrs C.L. EDWARDES: No. People are articled clerks, then admitted; they then have restrictions on their rights to practise for a further year as restricted practitioners. People then receive their certification. Is certification to be a legal practitioner being changed to when someone is newly admitted and put on the roll?

Mr J.A. McGinty: The answer to that might be by reference to clause 35, which states that a legal practitioner must hold a practice certificate in order to practise.

Mrs C.L. EDWARDES: When does a person get a practice certificate?

Mr J.A. McGinty: When a person applies for one.

Mrs C.L. EDWARDES: What are the criteria?

Mr J.A. McGinty: A person must be a legal practitioner to apply for one.

Mrs C.L. EDWARDES: A person can get a practice certificate after being admitted except for the provisions in clause 33, which state that a person cannot be admitted to practise until he has completed 12 months as an employed legal practitioner.

Mr J.A. McGinty: No, we are talking about admission.

Mrs C.L. EDWARDES: No, we are not. We are talking about holding a practice certificate. A person cannot obtain a practice certificate on admission; it can be obtained only at the end of the 12 months of restricted practice.

Mr J.A. McGinty: Once a person is admitted he is entitled to obtain a practice certificate.

Mrs C.L. EDWARDES: Okay, but a person is not entitled to practise and must not practise on his own account. A person can undertake -

Mr J.A. McGinty: Restricted practice.

Mrs C.L. EDWARDES: Yes, for a further 12 months. That means the stages are: articled clerk, admission, practice certificate - a person is then a certificated practitioner -

Mr J.A. McGinty: Yes.

Mrs C.L. EDWARDES: Then a person has to complete his restricted practice year. What happens at the end of the 12 months; does the person with whom a restricted practitioner has worked sign off on anything to prove the 12 months have been completed?

Mr J.A. McGinty: No, the operation of clause 33 provides an automatic entitlement. There are no further procedures.

Mrs C.L. EDWARDES: No further documentation is required?

Mr J.A. McGinty: It is a statutory entitlement.

Ms S.E. WALKER: Is this not bringing in another category or way of a person being certificated? A person is certificated once he is admitted and signed onto the roll. The Legal Practitioners Act 1893 is a more recent form of an Act that has been in force in this State since 1829 and in England forevermore. It is an adopted Act. I have a copy of the old Act that states that to be a legal practitioner a person must be someone admitted and entitled to practise as a barrister, solicitor and attorney. In 1992, under the present Act, a person could not practise on his own account unless he completed 12 months restricted practice. From what I could gather from *Hansard* the Barristers Board was keen on that provision because it wanted to raise the level of standing and integrity of the profession. It is always about that. A person cannot currently practise on his own account in Western Australia unless he has completed his articles, is on the roll, certificated, and has completed 12 months restricted practice with a person who is entitled to employ a practitioner. Is this Bill not creating a new category of practitioner who can become certificated? Are we not creating a category of person to be admitted who then engages in legal practice and becomes certificated? Is that correct?

Mr J.A. McGinty: No, there has been no change in what is proposed. A person completes his articles, in which case he is entitled to admission. Admission entitles a person to practise law. A person also has an entitlement to apply, as an independent exercise, for a practice certificate. That is the current arrangement and will remain the arrangement under the legislation before the House. The limitation on practising on one's own account for 12 months is in the current Act and is proposed to be retained in this Bill.

Mrs C.L. EDWARDES: Under the current Act, section 24 - Certificate of admission - states -

> Every person who is admitted as a practitioner shall be entitled to obtain from the Registrar of the Supreme Court a certificate of that admission . . .

That is what the Attorney General just said.

Mr J.A. McGinty: No, I have not mentioned the certificate of admission. I mentioned a certificate of practice - that is what a person independently applies for. A certificate of admission follows a person's admission ceremony in the Supreme Court as a matter of course.

Mrs C.L. EDWARDES: Is that not what the Attorney General just said about obtaining a certificate of practice?

Mr J.A. McGinty: No. Once a person has been admitted he can apply for a certificate of practice. That is the current arrangement. It is not proposed to change it. There are two certificates.

Mrs C.L. EDWARDES: I remember getting my practice certificate.

Mr J.A. McGinty: Did you move the member's admission?

Mrs C.L. EDWARDES: In actual fact the Solicitor General was totally responsible for me!

A person has an admission certificate and a practice certificate?

Mr J.A. McGinty: Yes.

Mrs C.L. EDWARDES: A person is admitted and then applies for the practice certificate? That happens almost at the same time?

Mr J.A. McGinty: The same day - on payment of a fee.

Mrs C.L. EDWARDES: Okay. Where is the certificate of practice referred to under the current Act?

Mr J.A. McGinty: In section 6.

Mrs C.L. EDWARDES: Section 4 refers to "practice certificate" -

Mr J.A. McGinty: Sections 3 and 4.

Mrs C.L. EDWARDES: It is not clear is it?

Mr J.A. McGINTY: The intention is to clarify all these things. We are currently operating under an antiquated Act and a number of these concepts need clarity. The wording is not intended to change the practice but to provide greater clarity to overcome the confusion to which the member just referred.

Ms S.E. WALKER: The Attorney General said this was an antiquated Act because it dates back to 1893. It is actually quite a modern Act. The Barristers Board and the legal profession have been fairly progressive.

After a person is admitted he must do his restricted year. Has the Attorney General done his restricted year in legal practice?

Mr J.A. McGinty: I do not see what that has to do with the Bill.

Ms S.E. WALKER: It does have something to do with the Bill -

Mr J.A. McGinty: No it does not, so move on to the next item.

Ms S.E. WALKER: I have read an article that the Attorney General wrote for *Brief* when he became Attorney General. It said that when he was a politician he found time to complete his law degree, do his articles and tutor in constitutional and administrative law at the law schools of both the University of Western Australia and Murdoch University. However, it does not refer to restricted practice. This is relevant because I will refer to the consequences of the definition of "legal practitioner" in terms of the office of Attorney General. Has the Law Society of WA generally had a look at this provision because it is changing the criteria required to qualify as Attorney General? That is why I asked the Attorney General whether he had done his restricted practice. This is not personal. It is important for the legal profession and for Western Australians who aspire to reach the high office of Attorney General - the highest law officer of the Crown - to know the criteria required for that position. That is why I am asking about the removal of the words "entitled to practise" in the definition of legal practitioner.

This Bill will make consequential amendments to the Supreme Court Act, one of which will be to the office of Attorney General. Section 154(1) of that Act refers to "Her Majesty" - can that be changed - and states -

> Her Majesty's Attorney General shall be a practitioner as defined by the *Legal Practitioners Act 1893*

Currently, a person has to be admitted and entitled to practise before being eligible to be appointed as Attorney General. If the Attorney General has not done his restricted practice, he is not entitled to practise on his own account. At the moment, to do restricted practice would mean spending a year engaged in legal practice under supervision. I am happy to supervise the Attorney General, because I would qualify. However, it would be

interesting to know whether the Attorney General is qualified to hold that office under the current Supreme Court Act and Legal Practitioners Act. If the Attorney General has not done his restricted practice - he is not prepared to tell us - removal of the words "entitled to practise" will make the definition fit in neatly with his qualifications. He has been admitted on the roll - I checked that in the *Law Almanac* - and recently became a certificated practitioner. Therefore, the legal profession and the people of Western Australia are entitled to know whether the criteria will be changed for the office of Attorney General in this State.

Mr J.A. McGinty: The answer is categorically no. This Bill does not change those criteria.

Ms S.E. WALKER: In my view it does, and I will explain why.

Mrs C.L. EDWARDES: I would like to allow the member for Nedlands the opportunity to further expand on her comments.

Ms S.E. WALKER: We are dealing with the first law officer of the Crown. I put on record that other Acts that outline the qualifications for a Supreme Court judge require a person to be admitted and entitled to practise as a person of eight years standing. Unless the Attorney General can take me through the Act and explain otherwise, it is my understanding that a law student could do his articles, get on the roll and become Attorney General. If this legislation is passed, an Attorney General will only have to be admitted and be on the practitioners roll. That will be the result of these two Bills before the House. If the criteria for the office of Attorney General in this State are to be changed, then the matter must go before the legal profession. That is why I asked whether these amendments have been put before the legal profession.

Last night I asked several senior lawyers in this city whether they appreciated that the criteria for the office of Attorney General were changing - in my view, quite clearly they are. An Attorney General is required only to do his articles and be put on the practitioners roll. This is an important point. When the Attorney General is away and another minister takes over his role, if that minister is not qualified to be an Attorney General he is simply a Minister for Justice. For example, the current Attorney General might have to go on leave and the Treasurer might take over. However, it does not entitle him to an audience before the court because section 154(6) of the current Supreme Court Act states -

> Nothing in this section shall be deemed to give any Minister of the Crown not being the Attorney General the right of audience in any court of law.

A person can get that right of audience by doing their law degree, or their articles under the old system, and going through a series of examinations and work experience. My first query is whether, under the current legislation, a person can hold the office of Attorney General after having been admitted as a practitioner but never having done their restrictive practice? My second query is whether, under this new legislation with the criteria in the definition of "legal practitioner" being changed, a person who has just done his articles and a politician can then become Attorney General? Can the Attorney General take me through these provisions in those Acts?

Mr J.A. McGINTY: In section 3 of the Legal Practitioners Act the definition of "practitioner" states in part -

> a person admitted and entitled to practise as a barrister and solicitor of the Supreme Court of Western Australia

The requirement is that a person be admitted and entitled to practise. A person who had been admitted and appeared on the role is entitled to practise. That is the beginning and end of the story. These provisions do not change that.

Mrs C.L. EDWARDES: I will pick up on that again. I refer the Attorney General to section 8 of the Supreme Court Act, which deals with the qualification of judges and acting judges. I note that in the consequential amendments no amendment is made to section 8. To be eligible to be appointed as a judge of a court, a person must have been a barrister or solicitor of the court with at least eight years standing and practice. How is that to be interpreted in light of the change to the definition of "legal practitioner"?

Mr J.A. McGINTY: Moving on to the next Bill we will consider, I refer to page 71 of the Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002. In order to introduce change and greater clarity, I refer the member to that Bill and note its current requirement that to become a judge or acting judge, a person is to have been a barrister or solicitor of eight years standing. Proposed subsection (1) of clause 119(4) states -

> A person is eligible for appointment as a Judge of the Court if that person -
>
> (a) is or has been a legal practitioner and has had not less than 8 years' legal experience;

Mrs C.L. Edwardes: Legal experience means standing practice in the State as legal practitioner. Once a person is admitted, does the time count from the admission rather than from after the end of a person's restricted practice year?

Mr J.A. McGINTY: A person must still have to have practised, not just have been admitted.

Mrs C.L. EDWARDES: A person must have been admitted and have practised. On a previous occasion when I was the Attorney General and appointing judges and magistrates, I counted the period of time from the end of the restricted practice year. Was that incorrect?

Mr J.A. McGINTY: I am told it would have been counted from the time of the certificate of practice, which in most cases would have been straight after admission, including the restricted practice year. The member will also recall that one of the reasons the definition of "legal experience" has been changed is to deal with the issue of the Commissioner of the District Court of Western Australia, Dennis Reynolds. He was some months or maybe a year short of the requisite eight years practice to become a judge; therefore -

Mrs C.L. Edwardes: I thought we were counting his time from the end of his restricted practice year and that that is one of the reasons why he was short of the eight-year requirement. However, you are saying that that was incorrect and that we should have been counting from the date of admission before he was entitled to practise as a judge.

Mr J.A. McGINTY: My understanding is that the counting in his case started from the date that he received his practice certificate, which was effectively the date of admission, but that he did not spend eight years as a legal practitioner with a practice certificate before he was appointed as a magistrate. Clause 119(3) of the Acts Amendment and Repeal (Courts and Legal Practice) Bill provides for proposed subsection (2) and includes the definition of legal experience, which includes judicial service. That is the mechanism by which Commissioner Reynolds will be able to be appointed as a judge.

Mrs C.L. Edwardes: I note that you have not included in the Bill the words "standing and practise as an Attorney General".

Mr J.A. McGINTY: Perhaps the member would like to move that amendment. It would be self-interest on both our parts.

Ms S.E. WALKER: Does an Attorney General have to be entitled to practise on his or her own account under the current legislation to fulfil the criteria of that office?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: Does the Attorney General fulfil that criteria?

Mr J.A. McGinty: I am sorry, the member added the words "on his or her own account". An admitted practitioner is entitled to occupy the office of Attorney General. There is a precedent for it.

The DEPUTY SPEAKER: When the Attorney General talks to the member for Nedlands away from me, it is very difficult to hear. It is such a riveting debate.

Ms S.E. WALKER: I would like the Attorney General to clarify that again. Does an Attorney General have to be entitled to practise on his or her own account under the current legislation to fulfil the office of Attorney General?

Mr J.A. McGINTY: Section 154(1) of the Supreme Court Act states -

> Her Majesty's Attorney General shall be a practitioner as defined by the *Legal Practitioners Act 1893* . . .

A practitioner is somebody who has been admitted and is entitled to practise. There is probably a limit to how many times I can repeat the same information for the member for Nedlands.

Dr J.M. WOOLLARD: I was trying to follow the Attorney General. To be a legal practitioner, a person must have finished his degree, completed a year of articles and must have done another year of restricted practice -

Mr J.A. McGinty: The last of those criteria is not required.

Dr J.M. WOOLLARD: A person can complete a degree and one year of articles and then become a legal practitioner.

Mr J.A. McGinty: A person is then admitted and is entitled to practise law.

Dr J.M. WOOLLARD: A person can practise law. Where does the restricted practise come in? What does a person get at the end of the year of restricted practice?

Mr J.A. McGINTY: Nothing. The statute simply says that once a person has completed 12 months of working - to put it in my words - for someone else as lawyer -

Dr J.M. Woollard: That is articles.

Mr J.A. McGINTY: No, that is beyond articles. After a person has worked as a legal practitioner for a year, that is known as the restricted practice year. A person is then entitled to practise on his or her own account by himself or herself without restriction. No further procedure is involved; it is simply a statutory right.

Dr J.M. WOOLLARD: While a person holds the title of legal practitioner, is he not entitled to practise until he has done a year of restricted practice?

Mr J.A. McGinty: He is entitled to practise, but he must work for someone rather than practise as a sole practitioner.

Dr J.M. WOOLLARD: To qualify as a legal practitioner, does a person have to get his degree and do articles for a year?

Mr J.A. McGinty: Yes.

Dr J.M. WOOLLARD: Does a person become a legal practitioner after he has completed his restricted practice and has worked for someone else for a year?

Mr J.A. McGinty: The person is already a legal practitioner.

Dr J.M. WOOLLARD: Is a legal practitioner like being a student for a year?

Mr J.A. McGINTY: No. A person is a legal practitioner but the restriction on that person being able to work for himself or herself is lifted after 12 months. That is how it works.

Ms S.E. WALKER: Does a person have to have done his restricted practice to fulfil the office of Attorney General under the current Supreme Court Act?

Mr J.A. McGinty: The answer is a clear no.

Ms S.E. WALKER: Why?

Mr J.A. McGinty: I have said it five times.

Ms S.E. WALKER: It is important. A person must fulfil his restricted practice year to hold any other senior office in this State.

Mr J.A. McGinty: But not as Attorney General.

Ms S.E. WALKER: It is strange that this Act is being changed to suit the Attorney General's criteria and qualifications. Either the Attorney General has not done a restricted practice year or is not prepared to tell us. I assume that if he is not prepared to tell us, he has not done it. Members of the legal profession would like to know; I have asked them. They want to know whether the person at the top of the legal profession - the first law officer of the Crown - has only been admitted and is on the roll. What qualifications does a solicitor general need?

Ms J.A. RADISICH: The context that we have been discussing for the training of law graduates in their first year out of law school is the article clerk training program. Is it acceptable under this legislation for a person to undertake equivalent training through an organisation such as the College of Law, which operates out of Sydney, and to then be admitted to the bar concurrently in New South Wales and Western Australia?

Mr J.A. McGINTY: I refer the member for Swan Hills to clause 90 of the Bill before the House. Somebody who has been admitted to practise in New South Wales, having completed that State's requirements for the equivalent of articles, would be entitled to engage in legal practice in this State on the terms set out in that clause. In effect, that arises pursuant to the mutual recognition arrangements, but in future it will also be a statutory right as part of the establishment of a national legal profession in Australia.

Dr J.M. WOOLLARD: I understand from what the Attorney General said that once a person has finished a law degree he must do articles for a year before being given the title of legal practitioner. However, that person can work only with other legal practitioners for a further year - called the restricted practice year - before being entitled to function as a legal practitioner in his own right in a solo practice. That is why I believe the member for Nedlands has questioned whether the Attorney General has done the restricted practice year with other practitioners, which would entitle him to work solo as Attorney General.

Mr J.A. McGINTY: A provision of the Supreme Court Act operates independently of the provisions of the Bill currently before the House and requires that an appointee to the office of Attorney General be a practitioner; that is, somebody who has been admitted to practise and is therefore entitled to practise. That is the statutory requirement to fill the office and that is enough.

Ms S.E. WALKER: The fact is that an Attorney General must be able to practise on his own account to fulfil his role as Attorney General. He cannot do that unless he has done his restricted practice year.

Mr J.A. McGinty: The member misunderstands the situation. A statutory provision regulates the office of Attorney General.

Ms S.E. WALKER: So I could issue a press release tomorrow stating that any law student who felt that he or she wanted to go into political life could, as soon as his or her name was on the roll of practitioners and he or she became a member of this Parliament, become the first law officer of the Crown without having to do the restricted practice year?

Mr J.A. McGinty: Yes, that is right.

Ms S.E. WALKER: That is all I wanted to know. It is a strange thing, because the laws of England were brought to this colony when it was formed. I refer to 24 Victoriae No. 15, which was the law in place when this colony was first formed. Under the part on administration of justice (civil), section 14 states -

> That Her Majesty's Attorney-General shall be a barrister-at-law of the English or Colonial Bar, -

I know that it makes the Attorney General cringe when I use those terms -

> and shall be appointed from time to time by Her Majesty, her heirs, or successors,

Mr J.A. McGinty: I am that, in the antiquated terminology in which you put it.

Ms S.E. WALKER: The point is that the Attorney General had to be someone who was entitled to practise on his own account. In 1992 a new provision was introduced which put a bigger hurdle in the way of anyone who wanted to become a barrister. We are entitled to be barristers and solicitors in this State, but in order to be a barrister, one must do the restricted practice year. It is a bit like saying that someone will become a surgeon by statute; that a person could do his medical degree and, while other people do their internships to be qualified as surgeons, this person could, by statute, become president of the medical association and a surgeon. That is what this is about. Anybody who wants to have an audience in a court of law must go through a process. I believe that, since 1993, the Legal Practitioners Act intended anyone who wanted to practise on his own account to fulfil certain criteria. The Attorney General has not fulfilled those criteria. That is my point. I asked members of the legal profession last night whether they were aware that the legislation would be changed in this way and they were horrified. These people have been in the profession for years and have had to obtain these qualifications. They are suddenly being told that someone aged 26 -

Ms J.A. Radisich interjected.

Ms S.E. WALKER: I know. Someone who is young, ambitious and probably brilliant but has no legal experience could be appointed to that position. That is the only point I wanted to make.

Dr J.M. WOOLLARD: The Attorney General referred me to a clause in the Supreme Court Act that gives him the power to act as Attorney General. Clause 154 of that Act states -

> Her Majesty's Attorney General shall be a practitioner as defined by the *Legal Practitioners Act 1893,*

The Legal Practitioners Act 1893 states -

> **"practitioner"** shall mean a person admitted and entitled to practise as a barrister and solicitor of the Supreme Court of Western Australia,

Therefore, according to the Act to which the Attorney General referred me, I do not believe that someone who has a law degree and has done his articles is able to practise as a barrister and solicitor.

Mr J.A. McGinty: That is right, unless he has been admitted.

Dr J.M. WOOLLARD: He must go on and do his restricted practice - he must work with others - before he can become a solo practitioner and practise as a barrister or solicitor of the Supreme Court.

Mr J.A. McGinty: You are wrong.

Dr J.M. WOOLLARD: I have read from the two Acts. Where am I wrong?

Mr J.A. McGinty: The Attorney General must be a practitioner. A practitioner is someone who is admitted and entitled to practise as a barrister and solicitor. A person who is admitted to practise has a right to practise as a barrister and solicitor of the Supreme Court of Western Australia from the date of his or her admission.

Mrs C.L. Edwardes: There are restrictions on the matters on which they can appear in court.

Mr J.A. McGinty: No

Mrs C.L. EDWARDES: So there is no limitation on what restricted practitioners can appear on before any court?

Mr J.A. McGinty: That is right. There is no restriction whatsoever.

Dr J.M. WOOLLARD: The Attorney General said that someone would finish his law degree, take articles, become a legal practitioner and then undergo restricted practice for a year. However, the Attorney General is stating that while this person is undergoing this restricted practice he can practise as a barrister and solicitor of the Supreme Court. My understanding of what the Attorney General has just said is that the minute a lawyer finishes his articles, he can immediately move into the role of barrister or solicitor of the Supreme Court. Could he clarify that?

Mr J.A. McGINTY: Any person who has been admitted to practice has a right to practise in every area of the law as a barrister and solicitor before the Supreme Court of Western Australia.

Dr J.M. Woollard: Is that as soon as he has done his articles?

Mr J.A. McGINTY: Once a person completes his articles, a ceremony is held in the Supreme Court and the person is admitted to practice. He gets a certificate of admission. He is then entitled to practise. If he gets a practice certificate -

Dr J.M. Woollard: Do you mean to practise as a barrister or solicitor in the Supreme Court?

Mr J.A. McGINTY: Yes, as a barrister or solicitor of the Supreme Court, and that is unrestricted.

The point that is trying to be made has nothing to do with this legislation. Joe Berinson, a very highly thought-of former Attorney General of this State, had not, to the best of my knowledge, completed his restrictive practice. The last Attorney General in Tasmania had never practised law. There is a raft of people throughout the history of Australia who have been very highly thought-of and successful Attorneys General and who have not made a professional career out of the practise of law as such. There is nothing particularly unusual about this event, and the law is not being changed by this Bill.

Ms S.E. WALKER: There is a qualification on entitlement to practise under section 16A of the Legal Practitioners Act, which states clearly that someone is not entitled to practise -

> . . . until completing a term of 12 months as an employed practitioner in the office of a practitioner authorised by this Act to take, have and retain an articled clerk.

Mr J.A. McGinty: That is a bit of selective quoting. You should read the whole lot, because it means the exact opposite of what you just said.

Ms S.E. WALKER: It also says "on his or her own account". I am exploring the legislation, which I am entitled to do.

Mr J.A. McGinty: Don't misquote it.

Ms S.E. WALKER: I am not misquoting it.

Mr J.A. McGinty: Yes, you did. You left out the words "on his or her own account".

Ms S.E. WALKER: I am not misquoting it at all. I have had experience in quoting the legislation, and the Attorney General has not. I will quote it the way I quote it. I presume the Attorney General is a practitioner admitted under section 15(2)(a) or (b). He is not entitled to practise until he has completed 12 months as an employed practitioner or he has practised on his own account for 12 months.

Mr J.A. McGinty: On the basis of that, I would stick to the day job rather than go back to law.

Ms S.E. WALKER: After what I have heard in here, I do not think the Attorney General could even handle legislation regarding preliminary hearings. He had to get the member for Innaloo to deal with that legislation. I now know why. At the time I did not know that the Attorney General was admitted in only 1995 and has never practised.

Several members interjected.

Ms S.E. WALKER: I want to know that these Acts are not being amended to change the office of Attorney General to suit certain criteria.

Mr J.A. McGinty: I have said that five times.

Several members interjected.

Point of Order

Dr J.M. WOOLLARD: I am having great difficulty hearing the member.

The ACTING SPEAKER (Mr P.W. Andrews): Indeed. I know there is considerable affection between the member for Nedlands and those members to my right. However, as it is five past five on a Thursday afternoon, why do we not cool down the fun we have with the insults and address the clause?

Debate Resumed

Ms S.E. WALKER: For the record, I have no feelings at all for any members on the other side.

One of my concerns relates to masters of the Supreme Court. Under section 11A of the Supreme Court Act, a master of the Supreme Court must be a practitioner as defined in the Legal Practitioners Act and have not less than five years legal experience. Are we also changing the definition of a master of the Supreme Court? It is odd that a master of the Supreme Court must have five years legal experience but the chief law officer of the Crown does not need any. Unfortunately, it happens to be the member for Fremantle. I have looked at the legislation closely, and this is what I have come up with. A master of the Supreme Court is a very important position in this State. I have the highest regard for this State's Supreme Court judiciary and officers. They have the highest level of integrity. Are we now changing the definition of a master of the Supreme Court? Currently, to become a master of the Supreme Court one must be admitted on the roll and also have five years legal experience. Under this legislation, must a master have five years legal experience from the time he is entitled to practise on his own account or from the day he signs the roll with a shaky hand?

Mrs C.L. Edwardes: How many years experience is a magistrate required to have?

Ms S.E. WALKER: I could not find that in the magistrates Act.

Are we changing the qualifications for a master of the Supreme Court? How many years of legal experience must a master now have?

Mr J.A. McGinty: There is no change.

Mrs C.L. EDWARDES: Under this clause, a law complaints officer means the person holding the office of that name under section 167. Is that a new position that is being created in statute or a current position that is being legislated?

Mr J.A. McGINTY: Section 3, interpretation, of the Legal Practitioners Act 1893 contains a definition of law complaints officer that is in substantially similar terms to the definition contained here.

Mrs C.L. Edwardes: My apologies.

Ms S.E. WALKER: I come back to qualifications and legal experience. There has been discussion of this issue among members of the legal profession. The Law Society of Western Australia recently sent out an alert regarding the relationship between an articled clerk and the principal. Under the Legal Practitioners Act - we are talking about qualifications - a lawyer must spend 12 months doing articles. That can be done in a variety of ways. I would like to know how it can be done as Leader of the Opposition, and I am sure the Attorney General will fill us in when we get to that clause. The Law Society alert states -

> The Full Bench of the Western Australian Industrial Relations Commission has held that a contract of Articles of Clerkship is a contract of service and the Principal is the employer of the articled clerk.

The interesting part states -

> Section 10(1) of the *Legal Practitioners Act 1893* . . . provides that "*no practitioner shall take, have or retain an articled clerk unless that practitioner is of not less than 2 years' standing and is an individual practising on his or her own account"*.

A person is not allowed to employ an articled clerk unless he has done his restrictive practice and had two years experience.

Mrs C.L. Edwardes: It is not just employment but also supervised training.

Ms S.E. WALKER: Absolutely. It seems odd that someone can be the chief law officer of the Crown - the pinnacle, the top of the tree - but be admitted only on the roll and not have done restricted practice. I think that the change that was commensurate with the definition in 1992 meant a change to the office of Attorney General. I just wanted to raise that point for future discussion.

Mrs C.L. EDWARDES: I refer the Attorney General to the definition of "record", which is being changed. Is this a standard definition now being used, taking into account, obviously, electronic transactions and all the rest of it? How different is this definition from what is in the Evidence Act? I do not have a copy of the Evidence Act to do a comparison at the moment, although I am getting one. How different is this definition from that in the Evidence Act, and is it a standard one that is being used elsewhere?

Mr J.A. McGINTY: Yes, it is a standard provision. It is the same as that which appears in the Criminal Code, the Industrial Relations Act and the Stamp Act. There is just a desire to achieve that uniformity.

Mrs C.L. EDWARDES: I refer the Attorney General to the definition of "unsatisfactory conduct". I refer also to the Legal Practitioners Act, at sections 25, 26 and 28A. The Bill has attempted to bring in unprofessional conduct, and illegal conduct as is referred to in each of the sections in the Legal Practitioners Act. Section 25 establishes a complaints committee, which can receive complaints about any illegal or unprofessional conduct - which are defined in the Bill in paragraphs (a) and (b) under "unsatisfactory conduct" - on the part of any practitioner whether occurring before or after admission as a practitioner, and any neglect or undue delay - which is contained in paragraph (c). Section 28A of the Act also refers to unprofessional and illegal conduct, or neglect or undue delay. The Act, however, does not refer to conduct as defined in paragraphs (d) or (e). Paragraph (d) reads -

> a contravention of this Act, the regulations or the rules;

This does not fall within any of the other categories. I would have thought this was unprofessional conduct. Has there been some concern in the interpretation? I am not quite sure what paragraph (e) contains that is not already covered under (a), (b) or (c).

Mr J.A. McGINTY: Paragraph (d) of the definition of unsatisfactory conduct was requested by the Legal Practice Board, and included at its request, to place beyond doubt that it would have the power to deal with someone who fails beyond doubt to satisfy a statutory requirement, which may not in itself be unprofessional conduct. More particularly, paragraph (e) reads -

> conduct occurring in connection with legal practice that falls short of the standard of competence and diligence that a member of the public is entitled to reasonably expect of a reasonably competent legal practitioner.

I am told that competence has never been equated with professionalism, which is an interesting notion, so incompetent behaviour, I am told, has not been regarded as unprofessional conduct that would come under paragraph (a). This paragraph makes sure that the Bill picks up the question of competence and what the public is entitled to expect, which might fall short of unprofessional conduct. The other issue is that a lot of the provisions in this legislation, as I said at the outset, are part of the national profession project being overseen by the Standing Committee of Attorneys General. This is a standard provision, which appears in the other States. The Government is doing as much as it can to have this legislation help us achieve our contribution towards a national profession.

Mrs C.L. EDWARDES: Are there any cases that the Legal Practice Board - or, previously, the Barristers Board - might have liked to pursue, but was unable to do so successfully because of not having paragraphs (d) or (e), and being unable to include the case under unprofessional conduct?

Mr J.A. McGINTY: I am told that we cannot specify a particular case in relation to paragraph (d), which is a contravention of the Act, regulations or rules, but there have been numerous cases in which the question of competence might well have amounted to negligence in the way in which a practitioner dealt with a matter. The client was told by the Legal Practice Board to sue for negligence. It is not necessarily unprofessional conduct that would bring it into the scope of the law.

Mrs C.L. Edwardes: So it was not necessarily undue delay, but wrong advice, or issuing writs out of time. I notice the next clause deals with suing out writs and processes. Are those the kinds of issues that have come up in the past?

Mr J.A. McGINTY: That is exactly the sort of thing that paragraph (e) is meant to cover.

Dr J.M. WOOLLARD: Can the Attorney General point me to the clause in the Bill under which, if someone takes articles and is then a legal practitioner, that person must do restricted practice working with other practitioners for a year before being able to go solo? What is to stop a person from finishing articles and then moving interstate, or someone finishing articles in another State and moving here, and setting up as a legal practitioner?

Mr J.A. McGINTY: Clause 33.

Ms S.E. WALKER: Just to put everything on the record, the Attorney General did raise the issue about Hon Joe Berinson being Attorney General. He held that office, as far as I can see, from 1983 to 1993. The new section that imposed an additional requirement on people who wanted to practise on their own account was brought in by Bill No 48 of 1992. I am not sure when that was proclaimed - I am just finding out. However, by the time this Bill came in, that Attorney General had been in the position for nine years, and not long after it was proclaimed he ceased to be Attorney General because a new Government was elected. To use that argument, he would have been entitled to hold the office of Attorney General because, under the criteria then, and the definition in the Legal Practitioners Act, he would have come within that Act in not having to do a restricted year. I have no more to say on clause 3, and I would like to move on to clause 4.

Clause put and passed.

Clause 4: Meaning of "engage in legal practice" -

Ms S.E. WALKER: Can a person engage in legal practice without supervision?

Mr J.A. McGinty: Yes.

Ms S.E. WALKER: How?

Mr J.A. McGinty: By doing his job.

Ms S.E. WALKER: A person has to be supervised if he wants to engage in legal practice. How is engaging in legal practice different from doing a restricted year? A person who is doing his restricted year is not allowed to do certain things without supervision. Which of the things in this clause can a person do without supervision that he cannot do without supervision in his restricted year?

Mr J.A. McGINTY: Clause 33 places a restriction on a legal practitioner practising on his own account during his first 12 months after admission. The definition of "engage in legal practice" in clause 4 spells out what constitutes legal practice. The only statutory restriction - although the member for Nedlands is introducing the notion of supervision - is that a person cannot engage in legal practice on his own account.

Mrs C.L. EDWARDES: Does that not imply supervision?

Mr J.A. McGinty: It might, but it is not a statutory requirement.

Mrs C.L. EDWARDES: If a person cannot practise on his own account, that obviously means he has to have someone supervise him.

Mr J.A. McGinty: I think that is right.

Mrs C.L. EDWARDES: He cannot go into partnership with another person, and he cannot open up his own legal practice and be a sole practitioner. Can he work in a mining company?

Mr J.A. McGinty: Perhaps the definition of "practising on his or her own account" in clause 3 of the Bill will throw some light on that matter. As to whether someone can work as an employee, I think the answer is yes.

Mrs C.L. EDWARDES: So a person can work for a mining company and do all the work that is outlined in clause 4?

Mr J.A. McGinty: I am told that the person can be employed by a mining company, but if he wants to undertake legal practice on his own, he will need to be employed by another lawyer.

Mrs C.L. EDWARDES: Why?

Mr J.A. McGinty: I am told that is the current practice.

Mrs C.L. EDWARDES: Yes, but in what section of the Act is that found?

Mr J.A. McGinty: It is found in section 16A of the Act, or clause 33 of the Bill; namely, a person cannot practise on his or her own account. It is the interpretation of that.

Mrs C.L. EDWARDES: So a restricted practitioner cannot sign off on a writ? He has just been certificated and is a legal practitioner for a mining company. Why can he not sign off on a writ?

Mr J.A. McGinty: He can, but in order to satisfy the restricted practice requirements under clause 33 of the Bill he is required to complete a term of 12 months as an employed legal practitioner in the office of a legal practitioner.

Mrs C.L. EDWARDES: So a person who has served 12 months in a mining company is not entitled to restricted practice unless he has been supervised by a legal practitioner?

Mr J.A. McGinty: That is right.

Mrs C.L. EDWARDES: However, if he works in Telstra's legal unit or department, which may be just him and one other person, that will qualify him for restricted practice? A number of years ago there was some concern about where people could do their articles, and there was some discussion about whether judges could take on an articled clerk. That was overcome, and judges did, and do, take on articled clerks. However, it is restricted - not in the sense of restricted practice - to a six-month turnaround, for very good reason; because it allows those people to gain experience both in the court and in a practical sense. Can a certificated practitioner do all the things that are outlined in clause 4 or is he restricted in some way because he is not entitled to practise on his own account?

Mr J.A. McGinty: The answer is yes, provided he meets the requirements of clause 33, which is basically reflected in the current arrangements.

Ms S.E. WALKER: I want to complete the Joe Berinson issue, because it is important. Section 16A of the Legal Practitioners Act was proclaimed on 1 February 1993. Joe Berinson ceased to be Attorney General on 16 February 1993. That is just a matter of historical record. What qualifications does a person need to have to supervise a restricted practitioner, given that an articled clerk can be supervised only by a person who has done his restricted practice and has had two years practising on his own account?

Mr J.A. McGINTY: It is set out in section 16A of the 1893 Act and clause 33 of the Bill.

Ms S.E. WALKER: Is there any difference between section 16A and clause 33?

Mr J.A. McGinty: No.

Ms S.E. WALKER: If people are entitled to hold the office of Attorney General without having done their restricted practice, are they entitled to practise on their own account after they have finished holding that office? Are they entitled to put up their shingle?

Mr J.A. McGINTY: Only if they comply with the Act.

Ms S.E. WALKER: How could they under the Legal Practice Bill comply and be entitled to practise on their own account?

Mr J.A. McGINTY: If they have complied with the terms of the Act. It is that simple.

Ms S.E. WALKER: Are there any new clauses that would give an Attorney General the entitlement to practise on his own account afterwards?

Mr J.A. McGINTY: The answer is no.

Ms S.E. WALKER: There is nothing about engaging in legal practice by dint of doing unsupervised work as an Attorney General?

Mr J.A. McGinty: I have said it five times; I am not going to say it again.

Ms S.E. WALKER: This is important because we are looking at engaging in legal practice.

Mr J.A. McGinty: The answer remains the same.

Ms S.E. WALKER: I am entitled to that answer.

Mr J.A. McGinty: You have had it five times.

Ms S.E. WALKER: I am asking specifically whether there is anything in this legislation.

Mr J.A. McGinty: The answer is no.

Clause put and passed.

Clauses 5 and 6 put and passed.

Clause 7: Members of the Board -

Mrs C.L. EDWARDES: The constitution of the members of the board has been increased by three legal practitioners of at least three years standing. Has there been a problem in getting sufficient people to form a quorum? With reference to subclause (1)(c), the previous constitution referred to a person who was not a judge of any court in the State; that has been changed to "who is not a full-time judicial officer". If the Attorney General does not want a judicial officer on the Legal Practice Board, why is the full-time restriction included, which then allows for any part-time judicial officer? I noted the Attorney General's media release earlier this year when he was considering part-time appointments.

Mr J.A. McGINTY: The number of practitioners on the board has been increased from nine to 12 to ensure that there are sufficient people to fulfil the functions of the board. It was difficult to obtain sufficient people to volunteer their time, and by increasing the number it was thought it was more likely to properly fulfil those functions. The member referred to the change in terminology to a full-time judicial officer. This was to overcome an anomaly whereby we could have a part-time judicial officer. There was a suggestion that the Chairman of the Town Planning Appeal Tribunal might be a judicial officer. In the past a practitioner has filled that office while practising in the private profession, and it was thought those people should not be excluded. The term "judge" could have been interpreted as a judicial officer. To add greater clarity into those areas, it was decided to exclude full-time judges but not to exclude those people who are substantively practising in the profession.

Mrs C.L. EDWARDES: Why should there be a policy position to exclude a judge? What is the reason behind allowing somebody who practises part time to sit on the board? I would have thought there would have been strong reasons for that not being so.

Mr J.A. McGINTY: We are moving from an era in which every judge and judicial appointment was full time to accepting the modern work force. A number of people might accept part-time employment, either because of family responsibilities or a lifestyle decision or because of a mixed function with their private professional practice and a part-time judicial position that they occupy.

Mrs C.L. EDWARDES: Is there a policy position to exclude a judge from sitting in judgment on legal practitioners who appear before him?

Mr J.A. McGINTY: It is accepted that once a legal practitioner is appointed to be a judge, his or her role and functions are quite different; no more profoundly so than, for instance, a Supreme Court judge who might sit on the Legal Practice Board and deal with disciplinary matters against a particular lawyer, when ultimately it might be the same Supreme Court that has to determine whether that practitioner should be struck off. It is undesirable. It is not quite a separation of powers, but it is certainly a separation of functions. It is important that that be observed in order to keep the judges separate from the day-to-day regulation of the profession itself, particularly in a disciplinary function.

Mrs C.L. Edwardes: What if we moved to having part-time Supreme Court judges?

Mr J.A. McGINTY: We would then have a very interesting problem to deal with.

Mrs C.L. Edwardes: Under your proposed changes, they would be eligible to sit.

Mr J.A. McGINTY: The Solicitor General has drawn to my attention whether a senior counsel appointed to be a commissioner of the Supreme Court, for example, would then forfeit his or her position on the Legal Practice Board. That is probably a good example.

Mrs C.L. Edwardes: A commissioner is doing it part time.

Mr J.A. McGINTY: Or even full time for a two or three-month period. As a matter of practice that commissioner would not sit on the board during that period, but he should not forfeit his membership of the board on that account.

Ms S.E. WALKER: I move -

> Page 10, line 11 - To delete "State" and substitute "Crown".

I referred to this issue during the second reading debate. Although the Opposition supports the Bill, it strenuously objects to the deletion of references to the word "Crown". We think it is petty. It is against the state Constitution, which states in section 2-

> (1) There shall be, in place of the Legislative Council now subsisting, a Legislative Council and a Legislative Assembly: and it shall be lawful for Her Majesty, by and with the advice and consent of the said Council and Assembly, to make laws for the peace, order, and good Government of the Colony of Western Australia and its Dependencies: and such Council and Assembly shall, subject to the provisions of this Act, have all the powers and functions of the now subsisting Legislative Council.

I had discussions with some members of the Law Society on this issue last night and they asked why we were dealing with such trivial legislation. It is nitpicking at institutions or people who have the word "Crown" in their title. As I said during the debate, there is a crown in the carpet in this Chamber. We have had a referendum. I like living in a democracy. We are privileged to live in a democracy. The people had a vote on the basis that the Attorney General agreed with one vote, one value. People voted to retain the current system of a constitutional monarchy. As I said, some members of the Opposition voted for a republic and some voted to retain the current

system. The fact is that we have a constitutional monarchy. The Attorney General is using his power to bring in legislation to make petty changes, one of which is to make the Crown Solicitor a State Solicitor. It is all on a fancy and a whim because he does not like it. He wants to delete Her Majesty's Attorney General. It is just nitpicking. Crown Prosecutors suddenly become State Prosecutors.

When I ask for copies of Acts in this place, such as the Constitution Act, they all state that the copyright is reserved to the Crown in right of the State of Western Australia. Reproduction is not permitted except in accordance with copyright law and the consent of the Attorney General. The Attorney General is not at liberty to make changes to everything that mentions the Crown in this State. All he has done is nitpick. It is disrespectful to the people who hold those offices. It is all done on a whim. The people of Australia voted in a referendum to retain the current system. The Attorney General has a hide to come in here and prepare us all for when we suddenly become a republic just because he has some power.

The Opposition disagrees with this on two levels. During the second reading debate I read from an article in *The West Australian* titled, "Queen, wigs set to go". Interestingly enough, in clause 7 there is provision for the Solicitor General to be on the Legal Practice Board. If there is no Solicitor General, it is to be the State Solicitor. The clause also refers to "each Queen's Counsel". I do not think the term Queen's Counsel can be deleted, but members can see the irony. It is simply nitpicking. In the article, the Attorney General stated that, if he could, he would also get rid of the wigs and gowns used in criminal proceedings. He refers to them as "clobber". He does not say that about archbishops or other people.

Ms M.M. Quirk: How would the member know?

Ms S.E. WALKER: He does not come into this Parliament and say that. He does not suggest that we get rid of the clobber that vicars, choirboys and archbishops wear.

Ms M.M. Quirk interjected.

Ms S.E. WALKER: The member for Girrawheen should speak up but I know she is restrained by Caucus and cannot. She is not allowed to give her own independent opinion.

Dr J.M. WOOLLARD: I am interested to hear more from the member for Nedlands.

Ms S.E. WALKER: The Attorney General wants to get rid of wigs and gowns because he has never practised in a criminal court. He has never had to attend a criminal court and prosecute or defend someone indicted on a serious criminal matter. After a person has been found guilty by a jury, he has never had to walk past family members of that person and be shouted at or vilified.

Ms M.M. Quirk interjected.

Ms S.E. WALKER: I understand the difficulty of the member for Girrawheen's position. She would be a great speaker if she could get up and speak on her own account. I do not think she has ever practised in a court of law as a criminal lawyer. It is an important issue for people who wear wigs and gowns. Thank goodness the Attorney General does not have the power to take them from judges in their own courts. If the Attorney General had visited the criminal courts and seen how poorly designed they are he would realise that prosecutors have to use the same entrance as family members and friends of the accused, and other people who may be there to threaten and intimidate witnesses. Wigs and gowns give a degree of anonymity. That is the first point.

Secondly, it takes away - as I said before - everything about the person except their powers of advocacy. The jury is there to listen to what they have to say and their reasoning behind it. I have had people approach me who are, quite frankly, outraged that the Attorney General has suggested or even had the arrogance to suggest - never having had the experience of dealing with it - that we get rid of this "clobber", as he calls it. It is an important consideration for the prosecution and the court because a person's liberty and life are at stake. Fortunately, even though he suggested in that article that wigs and gowns could go, he does not have the power to do that. However, he does have the power to bring this Bill before Parliament and start nitpicking over different areas in which the word "Crown" appears.

The Opposition will divide on both clauses it opposes. Its point in relation to this Bill is that the people - having voted in a democracy - voted for a constitutional monarchy. That is the system in place at the moment, no matter how strongly some people may feel about it. I know some judges feel strongly about having the royal crest behind them, but the point is that that is the system in place at the moment. The Opposition will oppose this clause.

Mr J.A. McGINTY: I will make three quick points. From time to time the names of particular legal officers change to reflect the prevailing view or contemporary standards. The Crown Solicitor represents not the Crown but the State. He is the public servant who is accountable to me. He is accountable not to the Queen but to the State; he works for the State. That is the modern reality and we are doing no more than reflecting that in this

provision. A range of other senior law officers have no reference to the Crown in their title. The position of Director of Public Prosecutions, which was created in around 1990 if my memory serves me correctly, reflects that he is the Director of Public Prosecutions. It does nothing more than that. The title of Solicitor General retains no reference to the Crown. On St Patrick's Day it was most appropriate to observe that even in Ireland the equivalent of the Crown Solicitor is called the Chief State Solicitor.

Dr J.M. WOOLLARD: I find this provision quite interesting because, as Mr Acting Speaker knows, I come from a background of involvement as a member, a councillor and the president of what was known as the Royal Australian Nursing Federation and became the Australian Nursing Federation. My membership with the College of Nursing at that time then changed from the College of Nursing to the Royal College of Nursing.

We all know what is on the agenda for discussion with the general community. However, I wonder why the word "Crown" is being removed from this legislation. Although the Attorney General stated that this change simply keeps things up-to-date, all members swore an oath under the Constitution that reads -

> I . . . do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law. So help me God.

The affirmation was made to Her Majesty Queen Elizabeth II.

Until we have community debate on whether Australia will become a republic, is it appropriate to start taking the word "Crown" out of legal documents at this stage?

Mr J.A. McGINTY: Obviously Western Australia is a constitutional monarchy. The fundamental constitutional provisions that entrench the role of the Queen in our governmental processes cannot be altered without a referendum. However, I believe that a range of other things should be changed over time, regardless of whether they refer to the Queen or anyone else, to reflect the modern reality. We are allowing legal firms to incorporate, which they have never been allowed to do. Why should they not be allowed to access modern company structures? We are changing things in the same way that the days when the Crown Solicitor was truly the Crown Solicitor are long gone. It is a matter of making sure that things are contemporary, which is what we are doing.

Dr J.M. WOOLLARD: I accept that the Legal Practice Bill makes many changes, some of which are very good for the legal profession. With regard to the Constitution, what other changes will be made in other Bills? Is this the start of all reference to the Crown being omitted from all the Bills that come before Parliament?

Mr J.A. McGinty: No.

Ms S.E. WALKER: It is not true that the days of the Crown are long gone. The Crown is still with us. It is in our State Constitution. I dare say that the Attorney General will be speaking on it at the Constitutional Convention on Saturday. I am sure that the Attorney General will be pleased to attend that function as Her Majesty's Attorney General. The Crown is not long gone; it is still with us. The Attorney General wants to tear down traditions. They are important to our community. They give people a sense of stability. I am not just talking about being old-fashioned. Some people go to a church service at Christmas. I went to St Georges Cathedral. At that time, a lot of tradition is on display in the form of robes and of hymns that we learnt during childhood etc; it is important. The Attorney General wants to tear down traditions on a whim. When a person has power, it is important that he use it wisely. I do not think the Attorney General is using his power wisely.

Amendment put and a division taken with the following result -

Ayes (14)

Mr C.J. Barnett	Ms K. Hodson-Thomas	Mr B.K. Masters	Dr J.M. Woollard
Mr M.F. Board	Mr R.F. Johnson	Mr P.G. Pendal	Mr R.N. Sweetman *(Teller)*
Mrs C.L. Edwardes	Mr W.J. McNee	Mr M.W. Trenorden	
Mr B.J. Grylls	Mr A.D. Marshall	Ms S.E. Walker	

Noes (22)

Mr A.J. Carpenter	Mr R.C. Kucera	Mr A.D. McRae	Mrs M.H. Roberts
Mr J.B. D'Orazio	Mr F.M. Logan	Mr N.R. Marlborough	Mr D.A. Templeman
Dr J.M. Edwards	Ms A.J. MacTiernan	Mrs C.A. Martin	Mr M.P. Whitely
Mrs D.J. Guise	Mr J.A. McGinty	Mr A.P. O'Gorman	Ms M.M. Quirk *(Teller)*
Mr J.N. Hyde	Mr M. McGowan	Ms J.A. Radisich	
Mr J.C. Kobelke	Ms S.M. McHale	Mr E.S. Ripper	

Pairs

Mr R.A. Ainsworth	Mr M.P. Murray
Mr T.K. Waldron	Dr G.I. Gallop
Mr M.G. House	Mr J.R. Quigley
Mr D.F. Barron-Sullivan	Mr C.M. Brown
Mr J.H.D. Day	Mr A.J. Dean
Mr J.P.D. Edwards	Mr S.R. Hill
Mr J.L. Bradshaw	Mr J.J.M. Bowler
Mr M.J. Birney	Mr P.B. Watson

Amendment thus negatived.

Clause put and passed.

Clauses 8 to 18 put and passed.

Clause 19: Who may be an articled clerk -

Ms S.E. WALKER: Currently a person can become an articled clerk in certain ways. Will the Attorney General explain those ways and whether there is any amendment to them in this Bill?

Mr J.A. McGINTY: The amendment is to section 9 of the current legislation, the Legal Practitioners Act, which provides -

> No person shall be articled to a practitioner unless and until such person has -
>
> (a) satisfied the Board that he or she is of good fame and character . . .

The change, which is reflected in clause 19 of this Bill, requires that a person provide to the board such evidence as the board may require of good fame and character. It goes on to make provision for the board to inquire into that matter.

Mrs C.L. Edwardes: Is that a new clause to be inserted?

Mr J.A. McGINTY: Yes. It was requested by the board to enable it to make inquiries and to require the production of evidence.

Mrs C.L. Edwardes: But it has been able to do that without that clause.

Mr J.A. McGINTY: No. I am not sure about the practice a long time ago but in recent times there were doubts about the board's capacity to request more information and to conduct an inquiry into a person who provided information to the board that he or she was of good fame and character. It was, therefore, thought desirable to spell it out.

Mrs C.L. Edwardes: You are training lawyers too well.

Mr J.A. McGINTY: A number of issues were raised and the clause was designed to clarify any doubts on issues of that nature. That is the nature of the change, which will give the board greater power to supervise articled clerks in the sense of requiring them to produce, if need be, more material and to enable the board to inquire into that material. Both provisions were thought to be lacking in the current legislation.

Mrs C.L. EDWARDES: Why is subclause (4) necessary? Surely it is not necessary to put into the statute that if the board decides, upon inquiry under this clause, that a person is not of good fame and character, that person must not be articled to a legal practitioner.

Mr J.A. McGINTY: There is a suggestion that when the member for Kingsley ceases to be a member of Parliament she might like a job at the parliamentary counsel office!

Mrs C.L. Edwardes: I have been asked that on several occasions.

Mr J.A. McGINTY: At first blush, I agree with the member, but as a drafting matter, it was designed to make it clear that having conducted an inquiry, there was no doubt whatsoever that the board had the power to say that a person could not be articled. It is perhaps there for overstatement and abundance of caution.

Ms S.E. WALKER: Why has this come about? It seems very inquisitorial. There is no definition of good fame and character. Will the board on a whim be able to pick and choose the person whose history they might poke around into? What is good fame and character? Why is it not defined? Much time has been spent on defining everything else. It is important that after people have done all the necessary years of study, they have some idea at the end of it what will happen to them.

Mr J.A. McGINTY: These words have been in the Act since time immemorial. I am told that they have been tested over the years.

Mrs Edwardes: At least since 1923.

Mr J.A. McGINTY: At least since then, and no doubt the precursor of it as well. My advice is that they have been there for time immemorial and I am happy to accept that. There is an accepted meaning to those words. One can always refer to judicial words and phrases to find a greater elaboration. There is no change in the criteria.

Ms S.E. WALKER: I accept that they have been around for a little while, although not quite as long as the Attorney General said. Now that the board can poke around in people's backgrounds, it has extra power. The Bill does not indicate what would not count as good fame and character. If someone were convicted of a traffic offence, would that be taken into account? Can people ask the Legal Practice Board what it means? Should people not have some idea before they start their law degree, which takes years and is very onerous?

Mr J.A. McGINTY: I guess they could. I do not intend to deliver a treatise on the meaning of good fame and character as part of this debate. Advice could be sought on the meaning of those words. They are longstanding and reasonably well understood in the broader community.

I will clarify one point in relation to the drafting of subclause (4). It has been drawn to my attention that subclause (1) relates to the provision of information to the board. Subclause (4) relates to further inquiry and the consequences of that further inquiry. There could be seen to be a distinction between the two.

Mrs Edwardes: Thank you.

Clause put and passed.

Clause 20: Who may have an articled clerk -

Mrs C.L. EDWARDES: The member for Nedlands has an amendment to this clause on the Notice Paper. Prior to her moving that amendment, will the Attorney General advise of the differences between section 10 of the Legal Practitioners Act 1893 and what is proposed under this clause?

Mr J.A. McGINTY: Clause 20(1)(c) is a new provision that provides that a legal practitioner must be -

> approved to take, have and retain an articled clerk by the Board.

The other new provision is contained in subclause (2), which again replicates the last clause that we were talking about and enables the Legal Practice Board to hold an inquiry into a legal practitioner on whether that person should be approved under subclause (1)(c). In the same way as the board can conduct an inquiry into the fame and good character of a proposed articled clerk, it can conduct an inquiry into a practitioner. However, that inquiry is not into a practitioner's fame or good character but on whether he or she should be approved to have an articled clerk.

Mrs C.L. EDWARDES: I thank the Attorney General for that explanation. I had the pleasure, as a legal practitioner, of retaining an articled clerk. It was a great opportunity and experience. I took on a mature age student - a woman with a family who was moving back into the work force. Taking on an articled clerk is quite an onerous task, not only when one is running one's own legal practice, as I was at that time, which is onerous in itself, but also in having the responsibility of ensuring that the articled clerk is trained so that he or she is not an embarrassment to the legal practitioner at a later time. Why has provision been made to create a new process for

approving a legal practitioner to have and retain an articled clerk, and what would be the reason for holding an inquiry into the legal practitioner? Were there problems in the past with legal practitioners who reached the two years legal standing and so on automatically taking on articled clerks? Was the previous process unable to stop legal practitioners who perhaps were considered by their peers to be inappropriate to provide training - that is, they may not have met the good fame and character test if they had had to take it again - from taking on articled clerks?

Mr J.A. McGINTY: Before I answer that question, I draw members' attention to subclause (6)(c), which makes another change to the current legislation. Section 10(3) of the Legal Practitioners Act lists a range of government legal agencies that are able to take on articled clerks. The Director of Public Prosecutions is not mentioned in that section, although the Crown Solicitor, the Director of Legal Aid and the Australian Government Solicitor are. I suspect that what occurred was that the DPP -

Mrs C.L. Edwardes: When it was split.

Mr J.A. McGINTY: I suspect it was not picked up then. I suspect that since then the DPP has been a person approved by the board to take articled clerks. It is appropriate that it be updated to reflect the arrangement.

Mrs C.L. Edwardes: We certainly hope so, otherwise the member for Nedlands -

Mr J.A. McGINTY: It would raise questions about her.

Mrs C.L. Edwardes: Has it happened through the Crown?

Mr J.A. McGINTY: That was the arrangement. The Director of Public Prosecutions as a separate entity would have been approved by the board for that purpose. I outline that for the sake of providing a complete answer to the question about what changes are being made through the clause. That one is of a technical nature. I am advised that from time to time the board has been concerned that a particular legal practitioner has abused an articled clerk by using him as a clerical clerk.

Ms S.E. Walker: And paying a pittance.

Mr J.A. McGINTY: Some articled clerks have been treated as slaves.

Mrs C.L. Edwardes: They were the old days when the articled clerks had to go out and pick up the whites from the laundry and all that.

Mr J.A. McGINTY: The Solicitor General is looking very embarrassed at this stage!

Mrs C.L. Edwardes: It was before my time. Some of the documents relating to the original articled clerkships and their duties are very interesting.

Mr J.A. McGINTY: That is the sort of people the new provision is aimed at. I think that deals with the issue the member raised.

Ms S.E. WALKER: I enjoyed my articles. However, a friend of mine from law school had an appalling time. She was paid a pittance and worked all hours. I know articled clerks work all hours anyway, but this was especially bad. Is there anything people who find themselves articled to legal practitioners like that can do under this legislation?

Mrs C.L. Edwardes: The Solicitor General does not want to comment on that one!

Ms S.E. WALKER: I think it is important. That person made her life a misery.

Mr J.A. McGINTY: The articled clerk can ask for a transfer. This provision gives the board the power to determine whether the legal practitioner is approved to take, have and retain an articled clerk. I suspect that the nature of an inquiry by the board would enable previous articled clerks to be called to say that the employer was a slavedriver and treated them unfairly and unreasonably. That might well affect the appropriateness of the legal practitioner's being allowed to take more articled clerks. As it relates to someone halfway through his articles, I suspect that the provision to retain an articled clerk could allow such an inquiry to take place, although one would not envisage it to be the normal remedy.

Ms S.E. WALKER: I move -

> Page 17, line 15 - To delete "State" and substitute "Crown".

I realise the time. On behalf of Her Majesty's Opposition, I move this for the same reasons I moved the amendment to clause 7.

Amendment put and a division taken with the following result -

Ayes (11)

Mr M.F. Board	Ms K. Hodson-Thomas	Mr A.D. Marshall	Dr J.M. Woollard
Mrs C.L. Edwardes	Mr R.F. Johnson	Mr B.K. Masters	Mr R.N. Sweetman *(Teller)*
Mr B.J. Grylls	Mr W.J. McNee	Ms S.E. Walker	

Noes (20)

Mr A.J. Carpenter	Mr J.C. Kobelke	Mr M. McGowan	Mr A.P. O'Gorman
Mr J.B. D'Orazio	Mr R.C. Kucera	Ms S.M. McHale	Ms J.A. Radisich
Dr J.M. Edwards	Mr F.M. Logan	Mr A.D. McRae	Mr E.S. Ripper
Mrs D.J. Guise	Ms A.J. MacTiernan	Mr N.R. Marlborough	Mr M.P. Whitely
Mr J.N. Hyde	Mr J.A. McGinty	Mrs C.A. Martin	Ms M.M. Quirk *(Teller)*

Pairs

Mr R.A. Ainsworth	Mr M.P. Murray
Mr T.K. Waldron	Dr G.I. Gallop
Mr M.G. House	Mr J.R. Quigley
Mr D.F. Barron-Sullivan	Mr C.M. Brown
Mr J.H.D. Day	Mr A.J. Dean
Mr J.P.D. Edwards	Mr S.R. Hill
Mr J.L. Bradshaw	Mr J.J.M. Bowler
Mr M.J. Birney	Mr P.B. Watson

Amendment thus negatived.

Dr J.M. WOOLLARD: My question is about the word "Crown". The Attorney General said that he had received comments from the Legal Practice Board, the Law Society of WA and the law reform society. Did the recommendation to delete "Crown" and insert "State" come from one or more of those groups?

Mr J.A. McGinty: No, that reflected government policy.

Clause put and passed.

Debate adjourned, on motion by Mr J.A. McGinty (Attorney General).