LEGAL PRACTICE BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 23: Articled clerk not to undertake other employment without consent -

Debate was interrupted after the clause had been partly considered.

Ms S.E. WALKER: Before questions without notice, I was asking the Attorney General how a person holding office, such as he, could serve as an articled clerk. I was not referring to him personally, but he may be able to recount his personal experience as an example. It is important for law students and the public to know how people who hold office, or are fully employed, can do articles. I asked the Attorney General how that can happen. Section 23 of the Legal Practitioners Act requires articled clerks to work when lawyers work, at least between the hours of 9.00 am and 5.00 pm. I am asking for examples of the kind of special circumstances the Attorney General has in mind. Does the Attorney General have some examples of how a person can do an articled clerkship, bearing in mind that the average law student works full-time for a year doing articles? Having done my articles over years, as have some of the other lawyers in this place, I am wondering, in the public interest, how that can be done. If a person cannot work during the hours mentioned above, how does that person serve articles?

Mr J.A. McGINTY: Clause 23(5) enables the Legal Practice Board, in special circumstances, to determine that clause 23(3) does not apply to an articled clerk. Clause 23(3) provides that the written consent of a legal practitioner to an articled clerk to take on outside employment cannot be given unless the hours of such other office or employment are outside working hours; in other words, when someone is unable to dedicate themselves full-time during office hours, the approval of the Legal Practice Board is required. The board must determine that there are special circumstances. Examples of such circumstances might include somebody who, while being an articled clerk, is also tutoring at the law school.

Mrs C.L. Edwardes: Could that include being a member of Parliament?

Mr J.A. McGINTY: It could include a raft of things, such as being an associate to a judge. There is a raft of special circumstances that this legislation does not seek to circumscribe or limit. It is a discretionary matter for the Legal Practice Board to consider in particular cases. I have provided a couple of examples.

Mrs C.L. EDWARDES: From an equity point of view with regard to other articled clerks, what would the board need to consider to meet the requirements of an articled clerkship, if special circumstances allowed the board to approve work outside the law office?

Mr J.A. McGINTY: The overriding consideration is the quality of the training and supervision offered to an articled clerk. The board must ensure that the special circumstances do not result in somebody receiving an inadequate level of training or supervision, as required by the Legal Practice Board.

Mrs C.L. EDWARDES: The Attorney General mentioned associates to judges. I do not know if it is still the case, but in the past a person could spend only six months as an associate to a judge. That would allow that person the other six months to acquire specialised training or supervision in a broader range of work. Does that still need to be approved as special circumstances, or would the articled clerkship just be approved within the 12-month period?

Mr J.A. McGINTY: The current policy of the Legal Practice Board is that any time spent by an articled clerk as an associate to a judge will count as only half the 12 month period required, regardless of the length of time somebody spends as an associate to a judge. If somebody spends two years, it still counts as only six months or half the articles' requirement. That is the policy. Associates of judges are dealt with under subclause (5), which deals with the special circumstances to which we have referred. Subclause (7) can make it conditional. Those clauses interact. It is not the case that an associate who is also an articled clerk can serve only six months, but whatever time the person serves as an associate counts as only six months towards the 12-month requirement of articles.

Ms S.E. WALKER: The current constitution of the Legal Practice Board is different from that under the new provision. What is the quorum of the board for determining issues such as applications for special circumstances? How many special circumstances have been dealt with in the past 10 years? What quota of people are granted special circumstances leave not to do the normal clerkship?

Mr J.A. McGINTY: We do not have the figure for the past 10 years of the number of people who have been dealt with under the special circumstances clause, but it is not uncommon.

Ms S.E. WALKER: How many people this year?

Mr McGinty: I do not know. The answer to the first question is to be found on page 169 of the Bill in clause 4 of schedule 1 which states that any four members of the board form a quorum.

Ms S.E. WALKER: Is it correct that to determine whether someone has special circumstances, there need be only four members of the board present?

Mr J.A. McGinty: That is what the words say.

Ms S.E. WALKER: Under section 25 of the Legal Practitioners Act 1893, the board currently consists of the Attorney General, the Crown Solicitor, every one of Queen's Counsel and nine practitioners of at least three years standing. How many people were given leave last year? A general figure must be known, as the Attorney General has someone from the board present.

Mr J.A. McGINTY: The important thing to bear in mind is that the requirement of special circumstances is unchanged from the Legal Practitioners Act 1893 and the Bill that we are currently considering in detail, as also is the quorum for the Legal Practice Board under section 4 of the Legal Practitioners Act 1893, under which subsection (2)(a) states that any four members of the board form a quorum. No change is being made in either of those areas. As the member would be aware, the Legal Practice Board has an admissions committee, which deals with all matters associated with admission to practise, which makes a recommendation to the Legal Practice Board. The quorum and the circumstances to be considered by the Legal Practice Board are not proposed to be changed by this legislation.

Ms S.E. WALKER: If the Attorney General cannot answer my question now, could he provide that information? In the past five years how many people have been granted special circumstances leave and for what reasons? It is very important for the profession to be open and transparent on these issues. If there are only a few articled clerks who go through each year but most other clerks have to work for 12 months, often under onerous conditions for a pitiful wage, it is important that we know how many people go through and are excluded from having to work 12 months full-time and for what reasons. Will the Attorney General make the details available?

Mr J.A. McGINTY: Stating that nothing has been changed by this legislation, either in terms of the quorum or the criteria, was to suggest to the member for Nedlands that if she required general information the appropriate parliamentary procedure is for a question to be placed on notice. If she places a question on notice, I will happily answer it.

Clause put and passed.

Clauses 24 to 26 put and passed.

Clause 27: Qualifications for admission of legal practitioners -

Ms S.E. WALKER: The Attorney General has kindly consented to give a brief overview of why five-year articled clerkships will be abolished. The Attorney General had sought to have clause 27(2)(b) as an amendment but, having spoken with the member for Kingsley, we would like an explanation from the Attorney General before we consider it further. The Attorney General said he would provide a thumbnail sketch.

Mr J.A. McGINTY: I thank the member. I have made available to members of the Opposition correspondence dated 20 May 2003 from the Legal Practice Board. Attached to the correspondence is the interim report by the practical legal training advisory committee, which recommends the abolition of five-year articles. It is a seven-page document dated May 2003. In essence, a small number of people proceed under the historically antiquated five-year articles scheme as the means by which they gain admission to practise law in Western Australia. Last year, two people qualified as legal practitioners by undertaking five-year articles training. The year before that there was only one. Preceding years had a slightly higher number of people. Presently 22 people in Western Australia are undertaking five-year articles. It is expected that one person will be admitted this year, three next year, and one in 2005. It affects a very small number of people. The figures are set out in the report to which I referred. The reasons five-year articles have been recommended for abolition are neatly covered in the document. If members request, I am happy to table it but the document has already been made generally available. The first page of the document deals with the historical circumstances. The first legal admission practice rules were established in Western Australia in 1833. Apart from special reference to British barristers, other fit and proper persons who were not otherwise qualified were allowed to practise law in Western Australia. That is the origin of five-year articles training. It was established in the days before the State had formal legal education. The program has continued since then. During the 1970s and since, every State except Western Australia has abolished the five-year articles program - the untrained articles program, if I can loosely refer to it that way. The point is made in the third paragraph on page 2, which states -

> Western Australia is now the only State in Australia where 5 year articles remains a means of admission as a legal practitioner.

References are then made to numerous reports. The 1985 Clarkson report commented on five-year articles, recognising that their presence within the Western Australian admission system "was an anomaly of history." It is interesting to note that the "anomaly of history" was observed by Mr Clarkson at a time when Western Australia had one law school only, and entry to that law school was subject to a restrictive quota. This report goes on to observe -

> Since then, the quota has been greatly relaxed and the number of law schools has increased to 3, thus very substantially increasing the number of places available for tertiary qualification.

Reference is then made to a number of reports: the Eckert report, the Priestley recommendations, the national competency standards for entry-level lawyers, and other reports, all of which point to the abolition of this historical anomaly, including the Council of Chief Justices, which on 4 April 2002 unanimously approved and adopted the uniform admission laws, which excluded the concept of five-year articles. Not only is that point endorsed by the chief justices, but also a lot of what is contained in the Bills that are presently before the House give effect to a desire to modernise and standardise throughout Australia a number of issues relating to the legal profession. This particular recommendation would bring Western Australia into line with the national standard approach. SCAG - the Standing Committee of Attorneys-General - has done the same. The recommendation from the Legal Practice Board is -

> . . . either the system of 5 year articles needs to be substantially revised and extended, or alternatively abolished.

Nobody intends to revise and extend them, therefore they should be abolished.

Ms S.E. WALKER: I do not want to comment comprehensively, but I know of one person - Maria Saraceni - who did a five-year articled clerk course while she was a teacher -

Mr J.A. McGinty: And a friend of mine as well.

Ms S.E. WALKER: Good; I am pleased to see the Attorney General has friends.

Mr R.C. Kucera: We could make a point, but we shan't.

Ms S.E. WALKER: That is not like the minister.

The ACTING SPEAKER (Mr A.P. O'Gorman): Member for Nedlands.

Ms S.E. WALKER: I went to law school with Maria Saraceni, and she has gone on to contribute to the legal profession - she is an expert in costs. It is a shame that we may lose people who want to practise law but may not be able to because this choice is taken away from them, very similar to the Attorney General's situation. He could not have done his articles unless he had those special circumstances. I understand from what he has said that not many people get that opportunity. Does the Attorney General know of any damage being done to the profession by that practice continuing? What the chief justices say about anything does not usually mean that the Attorney General will follow. I will provide an example of that in the debate on the sentencing Bill concerning Judge Hammond in the Hammond report. Some people, for financial reasons or whatever, could become valuable members of the legal profession, notwithstanding that other States have not followed these lines.

Mr J.A. McGINTY: The argument in favour of retention of the system is that it enables a very small number of people - one or two a year - to become practitioners, who would otherwise be excluded because of not having achieved the academic entry standards generally required of the law schools, although I note that the University of Notre Dame Australia law school does not operate exclusively on the basis of academic performance. Generally speaking, historically the graduate admission programs have been more open to other attributes, rather than just being based on a tertiary entrance examination score.

I guess the essence of the argument is found in the recommendations to me from the Legal Practice Board. Very importantly, the recommendations read as follows regarding the five-year articled clerk program -

> This system perpetrates a method of learning that has long been recognised as ineffective, inefficient and onerous.

Ms S.E. Walker: Onerous to whom?

Mr J.A. McGINTY: I presume it is to the student or five-year articled clerk and the profession - each of those descriptions. When the legal profession in Western Australia makes such an observation about a very small

loophole, or the way in which a small number of people access practising law in Western Australia, the Parliament should take note of it. The recommendations continue -

> It is the Committee's view that 5 year articles have rightly been identified as an "anomaly" and "insufficient" to deliver a proper attainment of the necessary academic and practical requirements for admission.

In other words, it is saying it is substandard.

Ms S.E. Walker: Attorney General, let's be fair. One or two people might be excluded from doing it by choice, but it may disallow people who make a contribution from acting in that way.

Mr J.A. McGINTY: There is no denying that. The report further reads -

> Attaining qualification for admission as a legal practitioner through 5 year articles is also inconsistent with the revised uniform admission rules which require completion of a tertiary academic course which includes the equivalent of at least 3 years full-time study of law.

It later reads -

> It is the Committee's view that revising and extending the 5 year articles program cannot be justified having regard to the small number of persons who seek to gain admission in this way. This conclusion is reinforced by the fact that none of the existing universities in Western Australia have indicated any enthusiasm for the maintenance of 5 year articles, let alone any extension of the program.
>
> . . . it is the Committee's firm recommendation that steps be taken to procure the abolition of admission as a legal practitioner by way of 5 year articles as soon as possible.
>
> This will be an important step towards a national profession and will result in Western Australia being better positioned to implement the uniform admission rules.
>
> Any legislation abolishing 5 year articles ought contain a "grandparent" clause so that persons whose articles of clerkship have already been registered by the Legal Practice Board will continue to be entitled to admission upon satisfying the existing requirements of the Legal Practitioners Act.

Rather than holding up the House on this issue, I have indicated an approach to the Opposition. Although this matter does not affect a great number of people, and the amendment to give effect to the abolition of the five-year articles would be relatively simple - namely, a one-clause amendment - I was not prepared to proceed at the eleventh hour to introduce a new concept into the Bill. Accordingly, I seek advice from opposition members on whether the matter should proceed. The arguments of the last 10 or 15 minutes adequately cover the issues involved. It is not fair to introduce the five-year articles matter into the Bill. It was only in recent days that the Legal Practice Board of WA adopted this view. I am happy to make this amendment to the Bill if the Opposition is also happy to do so. Otherwise, it will not proceed.

Mrs C.L. EDWARDES: I thank the Attorney General for that and for the consultation his officers have had with members of the Opposition. One thing that comes to mind is that the only people who have not been informed or involved, apart from the key stakeholders who provide the service, are people who want to use it. That could be difficult given the small number of people available. One of the points made was that applications tend to be made by sons and/or daughters of legal practitioners. I do not know whether that means anything. However, it is a provision that will enable some people to study law. It was pointed out that the University of Notre Dame Australia opens its door wider than other legal education institutions. The Opposition will therefore consider the report and if agreement is reached that could be dealt with in the other place.

I refer the Attorney General to subclause (3)(b), which reads -

> The Board may require a person to do all or any of the following -
>
> (b) to serve a term of articles specified by the Board in addition to the qualifications referred to in subsection (2)(c),

If a person whose qualifications fitted within subclause (2)(c) came from overseas, would a further term of articles be required? Does this happen on a regular basis?

Mr J.A. McGinty: I am told that the board normally imposes that condition without being requested to do so in the sort of circumstances outlined. It particularly relates to people coming into the jurisdiction from overseas. Each case is dealt with on its merits generally, in the way described by the member for Kingsley.

Clause put and passed.

Clause 28: Admission of legal practitioner -

Ms S.E. WALKER: Is the definition of a legal practitioner now different from that which is in the Legal Practitioners Act?

Mr J.A. McGinty: That is right.

Ms S.E. WALKER: It is included. I think we had an extensive discussion on this last time we debated the Bill during the consideration in detail stage. A person is no longer required to practise as a barrister or solicitor of the Supreme Court of Western Australia to be admitted as a legal practitioner. The wording is different.

Mr J.A. McGINTY: I think that if a person is on the roll, which is a requirement for a person to be a legal practitioner, and has not been disqualified, he is entitled to practise.

Mrs C.L. EDWARDES: I refer to admission as legal practitioner and the responsibility to the court, although this issue might be more appropriately discussed more fully later. Debate has occurred on the role of a legal practitioner when admitted to the court. Is his first responsibility a duty to the court, or is it a duty to his client and to the court or to just the client? I have examined the Law Council of Australia Rules on Professional Conduct and Practice, the Lawyers Professional Responsibility in Australia and New Zealand, the Law Society's Professional Conduct Rules, the Bar Association's Conduct Rules and the report on the inquiry into the legal profession and its future organisation by the Australian Law Reform Commission, which deals with a review of adversarial systems of litigation. In addition, the Law Society of Western Australia has conducted ethics seminars in the past. The views among all those bodies are inconsistent. However, there is a view that is consistent, and that is the view that legal practitioners have a duty to the court and a duty to the client. In my legal training I was taught that a legal practitioner's duty is first and foremost to the court; that is, legal practitioners cannot act for their clients in any way that is inconsistent with their duty to the court, such as by putting to the court propositions that are different from what they know to be true. There is a debate among prosecutors that they, not the defence counsel, are the ones who have a duty to the court. If that view is starting to permeate through the court system, I would be concerned, because it might then continue to permeate through to the younger members of the legal profession. The legal profession is becoming younger. If the older, wiser and more experienced practitioners do not conduct the training of our younger practitioners, then we will not have a solid basis of views about the responsibilities and ethics of the legal profession; and if we do not have ethics in the legal profession, then it will not flow on into the justice system.

The duty of legal practitioners to the court is a serious issue and one that we need to discuss. It may be that it is not appropriate to incorporate that into this Bill. The reason I have raised the issue now is that I believe we need to determine where it should be placed. It is imperative that legal practitioners can pick up an Act in the future and know where their first responsibility lies. When I was doing my legal training we went from *Cordery's law relating to solicitors* through to seminar papers, codes of conduct and practice rules. If we were to ask a young legal practitioner today whether he knows what the rules of conduct of his profession are and whether he has read those rules in recent days, he would probably say he has not done that since he was an articled clerk. I ask the Attorney to respond.

Mr J.A. McGINTY: It is crystal clear that the primary duty of every practitioner is to the court. That derives from practitioners being officers of the court. Perhaps rather than ask people whether they are aware of the duties that they owe, it would be interesting to ask young practitioners these days whether they know what officers of the court are. They probably think officers of the court are the staff of the Supreme Court, for example, not themselves. I do not disagree with anything that the member has just outlined to the House. There are two views on this. One view is that the provision is unnecessary, very much for the reasons that the member has given. It is crystal clear from the case law. It is also crystal clear from the various conduct rules of the Law Society, the Bar Association and the like to which the member has referred. The rules make it perfectly clear that, as an officer of the court, a legal practitioner's primary duty is to the court. The other view, which I guess is the one the member is putting forward, is that for the sake of clarity and so that there cannot possibly be any misunderstanding, and perhaps also, even more importantly, because it is such a fundamental proposition, it should be in the legislation. I do not take issue with the member on that. In the past, the approach has been to include those matters as part of the retention of the inherent jurisdiction of the Supreme Court with regard to legal practitioners. That includes practitioners being officers of the court. The essential requirement is that officers of the court owe their primary duty to the court. That should be so well known and fundamental that it is unnecessary to prescribe it in the legislation. That is the counterargument. I do not disagree with the member's proposition. However, the approach in the past has been to not prescribe it in the legislation.

Ms S.E. WALKER: The member for Kingsley raised an important point. Having served for a long time in the court system, I can tell members that defence counsel and prosecutors alike realise that their first duty is as officers of the court. That is in a statute, or is written down somewhere, but I cannot remember where.

Mr J.A. McGinty: I do not believe it is.

Ms S.E. WALKER: If it is not, it is very well understood. The second matter the member for Kingsley raised is interesting. There is a difference in how defence counsel and prosecutors conduct their cases and where they consider their duties lie with regard to who or what they represent. It is not the duty of prosecutors to win a case at all costs. They are ministers of justice and it is their duty to search for and present the evidence and the truth to the court and jury to find out the truth, whereas it is the duty of defence counsel to apply themselves vigorously to win their cases on behalf of their clients. That is the difference between the defence and the prosecution. The first duty of defence counsel and prosecutors is as officers of the court. In all my time in the courts I did not see them have any difficulty with that proposition.

Mrs C.L. EDWARDES: The member for Nedlands made a key point. She said that it is written in an Act somewhere that officers of a court owe their primary duty to the court.

Ms S.E. Walker: It is something to do with legal practitioners.

Mrs C.L. EDWARDES: It might be in the legal practitioner's rules of conduct and the like, but it is not in an Act. I started with the premise that it must be written down in a statute. For example, the preamble of the Western Australian Bar Association's conduct rules states that barristers owe duties to the courts, to other bodies and persons before whom they appear, to their clients and to their barrister and solicitor colleagues. That is a very general statement. The Law Council of Australia's model rules of professional conduct and practice consistently refer to a duty to a client under advocacy and litigation rules. They refer to relations with other practitioners, third parties and the standard of conduct in the legal practice. However, it does not refer to an officer of the court owing his duty to the court first and foremost. Under the heading "Court Proceedings", the Law Society's professional conduct rules state -

> 13.1 Subject to these Rules Counsel shall conduct each case in such manner as he considers will be most advantageous to his client.
>
> 13.2 A practitioner shall not knowingly deceive or mislead the Court.
>
> . . .
>
> 13.4 Counsel shall at all times:
>
> (a) act with due courtesy to the Court before which he is appearing . . .

However, it does not say anywhere that the primary duty of an officer of the court is as an officer of the court.

Ms S.E. Walker: It might be in case law somewhere.

Mrs C.L. EDWARDES: We might all believe it; however, it is not written down. The member for Nedlands - who has been in practice for some time - cannot put her finger on it straightaway, and I cannot put my finger on it straightaway. I spoke to many senior counsel in Perth. I asked them what they knew about the matter, and they could not put their fingers on it either. It is something that is known and respected; however, I am concerned that it is not clearly written down. If we are about to bring into the twenty-first century a new piece of legislation, maybe we should think about that.

Mr J.A. McGinty: Should we maintain some mystique about the profession?

Mrs C.L. EDWARDES: The legal profession will lose the value of what it stands for over a long period if there are no wise and experienced men and women in the profession training younger lawyers. The profession is attracting more and more younger people. Standards of conduct in the legal profession should be considered seriously and inserted into legislation. We do not want to do that off the top of our head here and now, but I ask the Attorney General to seriously consider it because we all agree with it.

Mr J.A. McGinty: That is right.

Mrs C.L. EDWARDES: We as lawyers know what our responsibility is and we all agree with it. Why should we not put it in writing so that all lawyers know that their first duty is to the court?

Clause put and passed.

Clauses 29 to 33 put and passed.

New clause 34 -

Dr J.M. WOOLLARD: I move -

> Page 25, after line 23 - To insert the following new clause -
>
> **34. Continuing legal education**

(1) The Board is to establish the requirements for a program of continuing legal education for legal practitioners, including requirements for legal ethics and legal procedures.

(2) The Board is to require legal practitioners to undertake such continuing legal education and training programs and courses, accredited in accordance with rules made by the Board under section 252, as the Board considers appropriate.

This Bill was not originally on the Table for debate this week. I have drawn up some amendments that are being prepared for presentation to the Chamber.

Mrs C.L. Edwardes: We've got them.

Dr J.M. WOOLLARD: I asked the Attorney General during the Estimates Committee hearing what had happened to the recommendations in the review of the criminal and civil justice system by the Law Reform Commission of Western Australia. This proposed new clause comes from the recommendations in that review. The part of the review titled "Submissions Summary" refers to legal education and the research conducted by the Law Reform Commission, and states -

> A recurring theme throughout the submissions is that: ' . . . continuing education should be a requirement for a certificate to practise'.

The review refers to the code of ethical conduct and continues -

> Most of the . . . submissions dealing with standards of ethical conduct cite the need for a Code of Ethical Conduct for the legal profession in Western Australia.

Two recommendations that would address that issue are numbered 440 and 441 in the part of the review titled "Project Summary". Recommendation 440 states -

> Legal ethics training should be required for students to obtain undergraduate law degrees. Attendance at legal ethics continuing legal education courses also should be required for practitioners in order to renew practise certificates.

Recommendation 441 states -

> A program of mandatory Continuing Legal Education should be established in Western Australia. Accredited providers should be obliged to include coursework on legal ethics and legal procedures.

I bring this to the attention of the Attorney General because when I asked him about these recommendations during the Estimates Committee, he led me to believe that the Government was committed to implementing the recommendations of this review. If this recommendation is not taken up now, it will be many years before the legal practice legislation will come back to this House.

I ask the Attorney General to support the inclusion of this new clause in accordance with the assurance that was given to the Law Reform Commission and other legal practitioners.

Mr J.A. McGINTY: I will make two comments. First, this is not the appropriate place for a requirement of this nature, which deals with the admission of legal practitioners. This type of requirement could be placed upon a practice certificate, which is dealt with under part 5. I do not understand why it is being suggested as an amendment at this stage of the progression of the Bill.

Secondly, this issue has been the subject of considerable discussion and agreement between the Legal Practice Board, the Law Society of WA and the Western Australian Bar Association. In the drafting of this legislation, a provision differently expressed and different in effect to that which is sought to be achieved by the member for Alfred Cove has been inserted in clause 252(1), which states -

> The Board may make rules with respect to all or any of the following -

Paragraph (i) then states -

> the accreditation of continuing legal education and training programmes, courses and providers;

That provision encompasses all manner of things with regard to continuing legal education and training programs and could include matters relating to ethics as well as aspects of legal practice. I do not disagree with the sentiments expressed by the member for Alfred Cove, other than how she goes about achieving them. However, it was thought best done by having the Legal Practice Board accredit courses that are proposed by the professional associations - the Law Society and the Bar Association - which would then run them. That is the way in which this matter is sought to be progressed, and there is express provision in the legislation to that effect. It is not appropriate for the board to undertake a role broader than that prescribed in the legislation; that

is, to accredit the courses and to include those in the rules in the manner that has been outlined. I do not think the proposition of the member for Alfred Cove adds anything to what is allowed under clause 252.

While I am on my feet I will deal with the next amendment, which is of a comparable variety, proposed by the member for Alfred Cove. In my view, the effect of her amendment to clause 38 is already adequately covered by clause 40(3)(e) of the legislation, which is on page 31 of the Bill. That clause refers to practice certificates, and gives the Legal Practice Board the power to impose a condition that the holder of a certificate undertake and complete, to the satisfaction of the board, continuing legal education or training of a type or types specified by the board. That meets the objectives of what the member for Alfred Cove has proposed. Accordingly, it is not my intention to support either of those amendments.

Dr J.M. WOOLLARD: I thank the Attorney General for drawing to my attention those aspects of the Bill. However, the recommendation of the Law Reform Commission clearly states that continuing legal education be mandatory.

Mr J.A. McGinty: That will be achieved under what is proposed in the Bill.

Dr J.M. WOOLLARD: Clause 252 refers to the accreditation of continuing legal education. It does not say that such education will be mandatory. The use of the term continuing legal education means it will be up to individual people to choose to undertake such education.

Mr J.A. McGinty: The board can make the issuance of a practice certificate contingent on a person undergoing continuing legal education. My understanding is that that is its intention. That means education would be mandatory, although it would not say so in the legislation.

Dr J.M. WOOLLARD: Is the Attorney General saying that under clause 252(1)(i), the board will stipulate that continuing education is mandatory?

Mr J.A. McGinty: Yes. That will achieve what the member wants while allowing the board a bit more flexibility in achieving that objective.

Dr J.M. WOOLLARD: The Law Reform Commission also recommended, particularly in recommendation 440 of its review, that legal ethics be a component of a continuing educational program. Where in this Bill is that specified? Has the Attorney General discussed the issue of legal ethics education with the board, and will that be part of the mandatory program? Where in the Bill is the guarantee that ethics will be part of the ongoing educational program for legal practitioners?

Mrs C.L. EDWARDES: I acknowledge and support the sentiment put forward by the member for Alfred Cove. We all support continuing legal education. It is absolutely essential that practitioners participate in such education. Practitioners in large firms have a greater ability than those in medium or small firms or sole practitioners to get further education and be informed about changes to the laws and the like. It is absolutely essential that continuing legal education take place.

I totally support the member for Alfred Cove's comments about ethics. The Law Society of Western Australia has run ethics courses. However, community attitudes have changed, and it now demands that legal ethics be paid greater attention by the private sector. It should be an integral part of lawyers' continuing legal education.

Mr J.A. McGINTY: I think there is unanimity of views about this matter. The articles training program currently includes a significant section on ethics. Both the Law Society and the Bar Association, in their draft training programs, have indicated that the programs will contain sections dealing with ethical issues. It is all covered, and it is appropriately left within the areas laid down in the Bill that would meet the very objective the member seeks to achieve.

I ask the member for Alfred Cove whether this matter can be dealt with quickly, because it will have to be adjourned shortly.

Dr J.M. Woollard: You have said that it is contained within the articles training, and that the Bar Association is keen to see ethics training. Where in this Bill will there be a requirement for mandatory continuing education to cover ethics?

Mr J.A. McGINTY: It is allowed under clauses 252(1)(i) and 40(3)(e), and their interaction.

Mrs C.L. Edwardes: There is also a strong recommendation from this Parliament.

Mr J.A. McGINTY: That message is loud and clear from this debate.

Dr J.M. Woollard: Is the Attorney General stating that clause 252(1)(i) means that there will be mandatory continuing education that includes legal ethics?

Mr J.A. McGINTY: Clause 40(3)(e) makes it mandatory.

New clause put and negatived.

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