LEGAL PRACTICE BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 38: Refusal of application -

Debate was interrupted after the clause had been partly considered.

Dr J.M. WOOLLARD: Mr Speaker -

The SPEAKER: Members who are currently having a conversation should leave the Chamber so that others can listen to the member for Alfred Cove.

Dr J.M. WOOLLARD: I had intended to move an amendment to insert new subclause (5) into clause 38. I spoke with the Solicitor General during the break. Can the Attorney General clarify clause 40(3)(e)? It may not be necessary for me to move the amendment depending on the Attorney General's interpretation of that paragraph.

Mr J.A. McGINTY: Clause 40(3)(e) of the Legal Practice Bill gives the Legal Practice Board the power to require the holder of a certificate to undertake and complete to the satisfaction of the board continuing legal education or training of a type or types specified by the board. I am sure the Solicitor General will have advised the member that both the Western Australian Bar Association and the Law Society of WA have proposals for continuing legal education. Those proposals are intended to come into effect and will be given full force as a result of the provision in clause 40(3)(e). Continuing legal education will be of a mandatory nature.

A provision in the Bill also makes the breach of a condition imposed upon a practice certificate a disciplinary matter, which would constitute misconduct. It is a disciplinary matter if a legal practitioner does not undertake and complete continuing legal education imposed by the Legal Practice Board; it could lead to that person losing his or her practice certificate for failing to comply with the direction from the board. That is the way in which it is intended that this provision will come into operation. As we said yesterday when this matter was raised, we are really talking about the same issue and agreeing that it is desirable that there be continuing legal education, including about ethical matters, and that it is intended that that will come into effect under the provision to which the member has just referred.

Dr J.M. WOOLLARD: I accept that both the Bar Association and the Law Society have agreed that there should be mandatory continuing legal education. Can the Attorney General now clarify the process that will be put in place to ensure that people complete the legal education; and, if they do not, how that will be followed up and what penalties will apply?

Mr J.A. McGINTY: The short answer is that the courses proposed by the Western Australian Bar Association and the Law Society of Western Australia will be accredited by the Legal Practice Board. Using the powers contained in clause 40(3)(e), it will be a requirement of the granting of a practice certificate that the practitioner undertake those accredited courses. I refer to the recommendations from the Law Reform Commission of Western Australia's 1999 review of the criminal and civil justice system that deal with this matter. Recommendation 440 provides -

> 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.

Both recommendations will be given effect by the provisions of this Bill, coupled with the practice that is intended to flow from the enabling provisions contained in the legislation.

Dr J.M. WOOLLARD: Given the Attorney General's assurance that clause 40(3)(e) ensures that there will be mandatory continuing education and that this will be followed up, it is not necessary for me to move my amendment to insert a subclause (5).

Clause put and passed.

Clauses 39 and 40 put and passed.

Clause 41: Board's powers of inquiry -

Mrs C.L. EDWARDES: Part 12 of the Bill deals with complaints and discipline. Why is clause 41 under this part of the Bill, which deals with practice certificates, and not part 12? What are the board's powers in relation to complaints? It appears that under this clause the board will have the ability to take action without requiring a complaint to be referred to it. I ask the minister to explain the location of this clause in the Bill. Will the board be able to make applications or inquiries without requiring a complaint to be first made to it?

Mr J.A. McGINTY: This clause provides the board with a power to conduct inquiries on the issue of practice certificates. A power is contained in the words that have been used in the clause to enable the board to conduct an inquiry on its own motion. This has been clarified because there was some doubt whether that was permissible under the 1893 Act. The intention of this legislation is to make it clear that the board has the power to undertake that inquiry. It is in the legislation because it relates to the general subject matter of this clause; namely, the power to conduct an inquiry in relation to practice certificates.

Clause put and passed.

Clauses 42 to 55 put and passed.

Clause 56: Pro bono services -

Mrs C.L. EDWARDES: Clause 126(3) on page 83 refers to handling legal matters without cost. What is the connection between that clause and clause 56? Why is clause 56 included at this stage of the Bill? What is meant by "duties as directors" are not breached?

Mr J.A. McGINTY: Under the Corporations Act, a director of a company must act in the interests of the company. Clearly, by undertaking work for which no reward is received, there could arguably be a conflict of interest. It makes it clear that the accepted practice of pro bono work is to be interpreted as being consistent with the duties of a director to maximise profits or to do everything in the interests of the shareholders or the company.

Clause put and passed.

Clause 57 put and passed.

Clause 58: Disclosure obligations -

Mr J.A. McGINTY: I move -

Page 41, after line 2 - To insert -

Penalty: $25 000.

Page 41, line 22 - To delete the line.

The purpose of these amendments is to correct an error in the drafting of subclause (1). Subclause (1) as it is printed on page 41 does not include a penalty for a breach. The penalty actually appears at the end of subclause (2) whereas it should appear at the end of subclause (1). I think this might be the amendment that was referred to by the member for Nedlands.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 59 to 80 put and passed.

Clause 81: Disclosure obligations -

Mr J.A. McGINTY: I move -

Page 53, after line 24 - To insert -

Penalty: $25 000.

The purpose of this amendment is similar to that of the previous amendments; namely, to overcome a shortcoming in the drafting.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 82 to 97 put and passed.

Clause 98: Local practitioners are subject to interstate regulatory authorities -

Ms S.E. WALKER: This clause comes under division 4, miscellaneous. Subclause (1) provides that a local practitioner, in engaging in legal practice in this State, must comply with any condition that is imposed by another State. Under what circumstances would that arise?

Mr J.A. McGINTY: Clause 98(1) is designed to ensure harmonisation of practices in Western Australia with the model of the national profession. This subclause relates only to disciplinary matters that are taken against a practitioner in another State. Subclause (1) states -

> A local practitioner, in engaging in legal practice in this State, must comply with any condition, restriction, limitation or prohibition in respect of his or her practice imposed by a regulatory authority of another State -

These are the key words -

> as a result of disciplinary action against the local practitioner.

Now that we are looking at a national profession, if a practitioner is disciplined by the equivalent of a legal practice board in any other jurisdiction, the limits, restrictions or conditions that are imposed by the equivalent of the Legal Practice Board in any other jurisdiction will be observed here.

Ms S.E. Walker: How would that situation arise? Would a person have to be practising in another State? The clause refers to a local practitioner engaging in legal practice in this State coming under the discipline of another State. Would the situation arise if a practitioner flew interstate to undertake work and then came back to Western Australia?

Mr J.A. McGINTY: That is one example. These days, large national firms in particular hire legal practitioners from interstate. I am sure members are aware of criminal barristers coming to Western Australia from the eastern States to defend people. The Government is trying to loosen the arrangements between the States to provide some national uniformity on admission and conditions attached to practice certificates. This clause is really a mirror of clause 100, which states -

> A regulatory authority of this State may exercise in respect of an interstate practitioner any power conferred on it by a law of another State relating to the regulation of legal practice.

For example, if a Victorian practitioner came to Western Australia and misbehaved, the practitioner could be dealt with by the Legal Practice Board here, and that would be binding on the practitioner in Victoria. Clause 98(1) is the converse of that. It will ensure that state boundaries cannot be used as a reason to avoid limits or conditions on a practitioner's ability to practise.

Ms S.E. Walker: I thought that is what it meant. That would apply to a practitioner who was severely reprimanded or suspended in New South Wales who came over here. However, the clause does not make that clear to me.

Mr J.A. McGINTY: Recently, exactly that circumstance arose. A practitioner was struck off in New South Wales and attempted to appear here. That is the classic situation that this clause is designed to avoid.

Ms S.E. Walker: The interpretation of clause 98(1) is left so wide open that it seems a local practitioner could be practising in this State and come under a disciplinary proceeding from another State. It does not say whether that practitioner has entered the jurisdiction either physically or by means of correspondence.

Mr J.A. McGINTY: The jurisdiction can be invoked only within the jurisdiction.

Ms S.E. Walker: The Attorney General could write to a solicitor, for example, who is conducting legal business between the States. The solicitor might say something false in the correspondence. Could the solicitor then be subject to disciplinary proceedings of the other State?

Mr J.A. McGINTY: He could, provided there is sufficient connection with the other State to invoke the jurisdiction of the relevant legal practice board.

Ms S.E. WALKER: I was concerned that the clause could be read to mean that a local practitioner who is engaged in legal practice could, for some reason, have restrictions imposed on him by another State.

Mr J.A. McGINTY: Essentially, something must give the equivalent of the Legal Practice Board in the other jurisdiction the jurisdiction to deal with the practitioner. It cannot deal with someone outside its jurisdiction; it must be in respect of legal work done within its jurisdiction. That does not necessarily require the physical presence of somebody within the state borders. However, the nature of the work may be involved with a local legal action or something of that nature. The member is right: it is cast broadly. However, it is intended to be cast broadly to ensure that there is national uniformity, and this is part of the national uniformity being sought.

Clause put and passed.

Clauses 99 to 102 put and passed.

Clause 103: Applying for registration -

Ms S.E. WALKER: I refer to subclauses (1), (2)(c) and (3). A foreign lawyer who is applying for registration is required to state in the notice whether he is the subject of any disciplinary proceedings in the place that he has come from. However, how do we know that? Nothing in the Bill states that that will be checked. What does it mean? The onus is on the foreign lawyer. Is the board required to follow through on that?

Mr J.A. McGINTY: The foreign lawyer is required to make a declaration. Of course, that is not necessarily enough to stop someone making a false declaration. However, one would assume that a declaration or a requirement for a declaration might act as a form of significant deterrent at least. This is included as a filter, so that somebody who wishes to come under the provisions of part 8 of this legislation in relation to foreign lawyers is required to sign a declaration stating that he or she is not subject to disciplinary proceedings in a foreign country. It acts as a filter. It is presumed that the board would have the power to check on the declaration if the need arose.

I draw the member's attention to paragraph (i) on page 68. A foreign lawyer may apply for registration under this division by lodging a written notice with the board. The notice must -

> give consent to the making of inquiries of, and the exchange of information with, the applicant's home registration authority regarding the applicant's activities in practising law in that place or otherwise regarding matters relevant to the notice;

Again, it puts someone on notice, and gives consent to the appropriate checks being made. If any issues were to be raised, there is certainly sufficient power to enable the board to undertake appropriate checks.

Ms S.E. WALKER: I looked at that provision, and also clause 41, which deals with the board's powers of inquiry. It is fair to say that under this Bill a lawyer who has come from overseas could be the subject of many disciplinary proceedings in the jurisdiction from which he came. There is nothing that requires the board to conduct a mandatory check, which I believe is a little disturbing. How many foreign lawyers are admitted in Western Australia each year?

Mr J.A. McGINTY: There is no provision to regulate foreign lawyers currently practising in Western Australia; this is a new provision. This regime operates in most other States and is, therefore, compatible with their arrangements. I do not know how many foreign lawyers will take advantage of the provision for registration.

Ms S.E. Walker: Do you know how many foreign lawyers have been admitted to practise in Western Australia at this stage?

Mr J.A. McGINTY: Lawyers who are admitted to practise come under a different provision. This is not an admission procedure; it is a procedure for recognising foreign lawyers who work in foreign law. It is not aimed at lawyers from South Africa who are admitted as practitioners in Western Australia.

Ms S.E. Walker: Do you think it is an anomaly in the Legal Practitioners Act?

Mr J.A. McGINTY: Do you mean because it has not been regulated in the past?

Ms S.E. Walker: No, because it is not mandatory to check up on them.

Mr J.A. McGINTY: I note the point. Clause 105 requires the board to be satisfied that the applicant is registered to practise law in a place outside Australia. I also draw the member's attention to paragraph (c), which requires the board to register the applicant if the board "considers that the applicant is not, or is not likely to become, subject to any conditions in practising law in that place" etc. That certainly gives the board all the powers that are necessary to conduct the appropriate inquiries if there is an issue. To require a formal inquiry for a routine application about which there is no contention could be an onerous imposition on the board. I believe there are sufficient powers in this Bill to deal with that matter.

Ms S.E. Walker: The board need only inquire by either phone or facsimile from the relevant disciplinary service in another jurisdiction. I put that matter on record because, as the Attorney General knows, one never assumes anything and it is important that I raise that matter.

Mr R.F. JOHNSON: I was listening very intently to the member for Nedlands and I found her contribution fascinating. I would dearly love to hear more from her on this clause.

Mr B.K. Masters: Much more!

Ms S.E. WALKER: I thank the members for Hillarys and Vasse.

I refer the Attorney General to subclause (3). Is it satisfactory to accept a copy of an original instrument on such an important matter, given that documents can be doctored in many ways?

Mr J.A. McGINTY: Yes. This provision is consistent with the national scheme. I draw the member's attention to subclauses (4) and (5), which take the issue of a copy of the relevant qualification somewhat further.

Clause put and passed.

Clauses 104 to 106 put and passed.

Clause 107: Applicant to be notified of decision -

Ms S.E. WALKER: This clause refers to notification to an applicant of a successful decision. It is rather strange that subclause (2) states -

> If notice is not given to an applicant within 90 days after the applicant lodges a notice in accordance with section 103, the Board is taken to have refused to register the applicant.

What if an application goes missing? Should the board not be required to notify an applicant one way or the other? I am wondering why applicants are not notified that they have not been successful.

Mr J.A. McGINTY: Clause 107(1) requires that -

> The Board must give an applicant written notice of its decision to register the applicant as a foreign lawyer, to refuse registration or to impose conditions on registration.

In other words, any decision made by the board about a foreign lawyer must be notified to that person. Subclause (2) is a default provision that is intended to keep the board on its toes by providing a time limit of 90 days in which to notify the applicant after he lodges the notice in accordance with clause 103. If notice has not been given within that time frame, it is deemed to be a refusal. A right of appeal against that exists under clause 113. This provision ensures that a decision is made and that the matter is not continually put on the board's agenda and never appropriately dealt with. Any decision the board makes must be communicated.

Clause put and passed.

Clauses 108 to 125 put and passed.

Clause 126: Certificated practitioner acting as agent for unqualified person -

Mrs C.L. EDWARDES: I referred to this provision earlier when I talked about matters under this legislation that may only be done for profit by a certificated practitioner. Can the Attorney General explain what is meant by subclause (1) and what are matters under this Act that may only be done for profit? I am interested in the words "only be done for profit", as they seem to be an inclusion.

Mr J.A. McGINTY: I am surprised as well. This wording comes from section 79(1) of the Legal Practitioners Act, which reads -

> A certificated practitioner shall not act as agent for any person other than a certificated practitioner in or concerning any matter which under this Act may only be done for profit by a certificated practitioner.

Mrs C.L. Edwardes: But what does it mean?

Mr J.A. McGINTY: I would have preferred to use straightforward English language. However, it means that only certificated practitioners can charge for legal work.

Ms S.E. WALKER: This is not just about money but the fact that a practitioner is not allowed to appear in court unless he is certificated.

Mr P.B. Watson interjected.

Ms S.E. WALKER: The member for Albany should go back to sleep; he is a twit.

Is that not what it is about?

Mr J.A. McGinty: I do not think so.

Ms S.E. WALKER: Are we discussing clause 127 or 126?

Mr J.A. McGinty: We are still on clause 126.

Ms S.E. WALKER: Sorry.

Clause put and passed.

Clauses 127 to 145 put and passed.

Clause 146: Legal practitioners to make payments towards Guarantee Fund -

Mrs C.L. EDWARDES: I was surprised to find that $20 is written into the Bill as the amount practitioners must contribute to the guarantee fund. The fund must be very healthy if the Legal Practice Board and the Law Society are still happy for it to be included. What is the amount of the fund and what have been recent applications of it over the past couple of years?

Mr J.A. McGINTY: The balance of the fund will hit $15 million this month. I recently had discussions with the Law Society about this matter. The member will be aware that there is ongoing concern that a major action involving defalcation on the part of a solicitor could bankrupt the fund. Fortunately, that has not occurred in Western Australia in recent times. The average outgoings from the fund in this State have been very modest. We have been discussing the appropriate ceiling of the guarantee fund. The suggestion is that we progressively move the ceiling to $20 million, but not in such a way as to deprive the Legal Aid Commission, which receives half of any surplus that is distributed, and community legal centres or other worthwhile projects - which in my language are fundamentally community legal centres - of any funds. We have been discussing the way in which we might be able to make an annual distribution from that fund while progressively increasing the ceiling on it. I was a little surprised to see the $20 figure in the legislation and to learn that it applies for only the first five years of practice. It would make more sense to apply it to someone's last five years of practice, when he or she can most ably afford it.

Mrs C.L. Edwardes: How would someone know it was the last five years?

Mr J.A. McGINTY: Exactly. I think this is a bit quaint; nonetheless, it provides us with a fund that is working and is useful. Apparently no consideration has been given to extending the rules so that a practitioner must make an ongoing annual payment. The balance in the fund is growing and stands at $15 million.

Clause put and passed.

Clauses 147 to 159 put and passed.

Clause 160: Application -

Ms S.E. WALKER: This part is about complaints and discipline. Clause 160 provides that this part applies to "any person who is a legal practitioner, including a legal practitioner who does not hold a practice certificate". Does this Bill cast the ambit of whom people can complain about much wider than that found under the Legal Practitioners Act? I ask that because of the new definition of legal practitioner. Under this legislation, a legal practitioner will be defined in part as -

> . . . 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;

Really, it is anybody who is on the roll. I give the example of politicians in this Chamber, who are legal practitioners but are not practising and do not have certificates. I ask about that because currently, section 25 of the Legal Practitioners Act refers to the complaints committee and its functions, which are to supervise the conduct of practitioners. Currently a practitioner under the Legal Practitioners Act means a person admitted and entitled to practise as a barrister and solicitor. The Bill omits the reference to entitlement to practise. A person must be certificated to practise, and cannot go into a court without a certificate unless employed by the Crown or other bodies. Is this casting the net wider than is the case under the Legal Practitioners Act? Under that Act, can someone complain to the complaints committee about any lawyer in this House who is no longer practising?

Mr J.A. McGINTY: Any practitioner on the roll is entitled to practise if he or she obtains a practice certificate. That was the discussion we had when we last dealt with this matter. Any person on the roll is subject to these disciplinary provisions in respect of behaviour to which this part of the Bill relates. That is as succinct as I can put it.

Ms S.E. Walker: I am asking about the current situation. Under section 25 of the Legal Practitioners Act, can someone make a complaint to the complaints committee about a person in this Parliament who is on the roll? That is the test.

Mr J.A. McGINTY: The current provision is in section 25 of the 1893 Act, and the comparable provision in the Bill refers to the board receiving complaints about any illegal or unprofessional conduct on the part of any practitioner, whether occurring before or after admission as a practitioner, or about any neglect or undue delay in the course of the practice of law. The Government has not carried forward into this legislation the words "in the course of the practice of law". However, clause 175 is worded differently, subclause (1) of which reads -

> A complaint to the Complaints Committee as to the conduct of a legal practitioner, whether occurring before or after his or her admission as a legal practitioner, may be made under this section.

We are talking about the conduct of a legal practitioner that touched on that capacity. If I may give a couple of examples, a person who did not have a practice certificate but who was nonetheless on the roll and convicted of a serious offence might well be deemed worthy of being struck off. Another example is a member of Parliament who is on the roll and does not have a current practising certificate but who practises law. The wording contains an indication of another sort of matter that could be caught by a non-certificated practitioner. It refers to "whether occurring before or after his or her admission". Again the notion is that some past conduct may come to light, which would warrant some action being taken. The key is not necessarily the possession of a practice certificate but being on the roll of practitioners.

Ms S.E. WALKER: Is this provision casting the ambit wider than it is currently under section 25? Can a complaint be lodged under section 25 against a person who is on the roll but who has not practised for 25 years?

Mr J.A. McGINTY: It does not cast it any wider. Section 25 of the current legislation refers to any practitioner. A practitioner is different from a certificated practitioner, so the possession of a certificate is not relevant currently and will not be relevant in the future.

Clause put and passed.

Clauses 161 and 162 put and passed.

Clause 163: Members of the Complaints Committee -

Dr J.M. WOOLLARD: Before I move my amendment, could the Attorney General give a description of the current complaints committee, its make-up and how it operates?

Mr J.A. McGINTY: In order to share the work around, I am told that there are two complaints committees to receive complaints from members of the public about the behaviour of legal practitioners. The committees have a chairperson and two community representatives who are not legal practitioners. The work is divided in such a way that one community representative sits on each of the two complaints committees to deal with those matters. What is required by the existing legislation is the same as that contained in this legislation. That is, that there be not fewer than two representatives from the community so there can be more if it is thought appropriate in the circumstances.

Dr J.M. WOOLLARD: I remind the Attorney General of the commitment he gave to the Law Reform Commission about the recommendations of the review of the civil and criminal justice system in Western Australia, in particular recommendation No 443. The recommendation states that for public confidence in the process of review and its implementation, there should be significant community representation in the membership of regulatory bodies of the legal profession and the Law Reform Commission. The *Australian Oxford Dictionary* definition of significant is "having a meaning; indicative; having an unstated or secret meaning; noteworthy; important; consequential". If the Attorney General is to implement the recommendations of the Law Reform Commission, he must ensure there is significant community representation. I do not feel confident with the wording of clause 163(1)(b), which states "not less than 2 representatives of the community". It is not a significant contribution from the community.

Mr J.A. McGINTY: The member is quite right. The Government has a strong commitment to the recommendations of the Law Reform Commission, not just those contained in the 1999 review of the civil and criminal justice system. The Government is doing its best to implement as many of the recommendations as possible. As the member has rightly observed, recommendation No 443 of the 1999 Law Reform Commission report calls for significant community representation in the membership of regulatory bodies of the legal profession. The most significant thing the Government has done with this legislation is to empower the community representative - who is not to be a lawyer - in a way that has not previously been the case. Schedule 2 of the Legal Practitioners Act 1893 states that a representative of the community does not have a deliberative vote on any question in the exercise of a disciplinary jurisdiction. That creates a token community representative who is not allowed a vote. I refer the member to page 174 of the Bill. Clause 13(1) of schedule 2 states -

> At a meeting of the Complaints Committee, subject to subclause (2), each member present is entitled to a deliberative vote.

The Government has sought to honour the recommendation of the Law Reform Commission by giving members of the committee the right to vote rather than allow more people to participate without a vote. That will enhance the role of the community representative.

Dr J.M. WOOLLARD: The Attorney General has stated that there are two complaints committees. How many members does each complaints committee comprise? How do the numbers stack up between legal representatives and community representatives?

Mr J.A. McGINTY: The current provision is dealt with by means of a quorum of how many people are required to be there. Section 25(5) of the Legal Practitioners Act 1893 states -

> At any meeting of the Complaints Committee a quorum is constituted by 3 members, of whom -
>
> (a) 2 are persons appointed under section 25(2)(a) -

Who are legal practitioners -

> ; and
>
> (b) one is a representative of the community.

We are talking about a minimum of two lawyers and one community person. That provision has been carried forward into this legislation on page 173 of the Bill, where in schedule 2, division 2, procedure, it states -

> **9. Quorum**
>
> (1) At any meeting of the Complaints Committee a quorum is constituted by 3 members, of whom -

Two are appointed as lawyers and one is a representative of the community. There has been no change in that requirement, other than to give the community representative a deliberative vote in proceedings before the committee.

Dr J.M. WOOLLARD: In which case, I assume there is not a change in accordance with the recommendations of the Law Reform Commission to make it a significant number. Previously three people have formed a quorum on these committees, two being legal practitioners and one community representative, and it is still the same. Surely the arguments that were put before the Law Reform Commission to enable it to come up with this recommendation have not been taken into consideration, because the minister says that three people constitute a quorum, and 12 people could be there. The Law Reform Commission specifically asked that there be significant community representation. I wonder whether three is enough, or if the total number is something like 20. I hope the Attorney General can give some indication of the number on that committee, because if it is 20, three will be insufficient. I move -

> Page 106, line 23 - To delete "2" and substitute "3".

Mr J.A. McGINTY: I refer to recommendation No 443 of the Law Reform Commission 1999 report. If the member regards significant community representation as being expressed only in numbers without voting, I disagree. In my view, the desire of the Law Reform Commission in recommendation No 443 has been accommodated by giving, for the first time, the community representative a vote. It is more important that that person be allowed to vote than the number who sit there and are not allowed to participate in the voting deliberations of the committee. The total number of people who could be on a complaints committee is a chairperson and not fewer than six other legal practitioners, and not fewer than two other representatives of the community. They are drawn from that pool; something fewer than that are there at any one time.

Dr J.M. WOOLLARD: I congratulate the Attorney General on giving the community representative who is a member of this committee the power to vote, but it should not be limited to voting. The recommendation of the Law Reform Commission does not refer to voting; it refers to community representation. Having a voice, and knowing that that voice is heard in the voting, is just as important. The Attorney General said that the number includes a chairperson and not fewer than six other legal practitioners, but that could be a chairperson and 20 legal practitioners. I want to know what are the numbers for this committee. It would be a nonsense to have one community representative with a voting power and 12 legal representatives on that committee.

Ms S.E. WALKER: I rise to clarify my understanding. How many people sit on the complaints committee to hear matters?

Mr J.A. McGINTY: I am told that it is not the most popular committee to sit on. The requirement is for at least three members to be at a hearing. I am told that in practice three members would attend in most circumstances, but that other matters may attract more committee members. The committee does not attract a large number of practitioners; the tribunal or board is a different proposition.

Ms S.E. WALKER: The member for Alfred Cove has a point. I record that acknowledgment. It is fine that the provision refers to not fewer than six members. However, the member for Alfred Cove is right: it does not matter whether the community representative has a vote because that vote will be subsumed by the other membership. Will the complaints committee deal with less serious complaints than those considered by the disciplinary tribunal? I have not examined it closely.

Mr J.A. McGinty: Yes.

Mrs C.L. EDWARDES: Can the Attorney General explain what he means by yes? I refer to the different matters and the changes in responsibilities.

Mr J.A. McGINTY: In a broad sense, the functions of the tribunal will be subsumed into the state administrative tribunal, the Bill for which will be second read next Tuesday. The more serious matters, to use the general terminology, will be dealt with externally; that is, essentially by a judge, a community representative and a professional representative. Lesser matters will be deal with by the complaints committee, as identified in clause 177. This provision also spells out the requirement for the consent of the legal practitioner involved that the committee may exercise a summary jurisdiction. When a legal practitioner is found guilty of unsatisfactory conduct, the maximum penalty that can be imposed by the committee is a fine of $2 500. Any significant disciplinary matter must be referred on and cannot be dealt with by the committee.

Mrs C.L. EDWARDES: Clause 164 spells out the functions of the complaints committee. The House is reaching a concern raised with the Opposition relating to the interaction between the complaints committee, the complaints officer and the disciplinary tribunal. The Attorney General suggested that the disciplinary tribunal will be subsumed into the state administrative tribunal. The concern is about the committee taking on its own investigations and inquiries. Subclause (1) states that one of the functions of the complaints committee is -

> (c) to inquire into such complaints and, where the committee so determines whether for cause or not and whether the Complaints Committee has received a complaint or not, any -
>
> (i) conduct on the part of a legal practitioner; or
>
> (ii) matters relating to legal practice,
>
> for the purpose of determining whether it may constitute unsatisfactory conduct;

That wording is similar to that in section 25(1)(c) of the Legal Practitioners Act. However, there have been cases in which complaints that have been lodged with the complaints committee have not proceeded because it has become too hard for the complainants, who might be in a vulnerable category because they were the subject of sexual offences or whatever and close their eyes and do not want to deal with it anymore. There is some confusion about whether the complaints committee can continue to investigate a complaint when the complainant has withdrawn or no longer wishes to proceed with it. However, there may well be some substance to the complaint, which the complaints committee acknowledges, but it does not proceed with its inquiry and/or investigation. Given the fact that there is similar wording in the Legal Practitioners Act, and confusion exists today about whether the committee has the power to continue to investigate or even to undertake inquiries into complaints on its own, can the Attorney General put on the record what the committee's powers are? Can the committee continue to investigate a complaint once it has been withdrawn if the committee feels there is just cause to do so? Can it make inquiries of its own accord when it feels there is just cause to do so? More often than not, it does not make inquiries of its own accord and does not continue to investigate complaints after they have been withdrawn even though the committee may have acknowledged to the complainants that there is just cause to do so?

Mr J.A. McGINTY: I think the answer to that is found in clause 164(1)(c), which provides that one of the functions of the Complaints Committee is to inquire into such complaints and, where the committee so determines whether for cause or not and whether the Complaints Committee has received a complaint or not, any conduct for the purpose of determining whether it may constitute unsatisfactory conduct.

Mrs C.L. Edwardes: That is the same as section 25(1)(c).

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

Mrs C.L. Edwardes: If confusion about that exists today, can you clarify that the committee can do so, if for no-one else but the complaints committee?

Mr J.A. McGINTY: The clear intention of this legislation is that the complaints committee be able to initiate matters of its own motion.

Mrs C.L. Edwardes: If a complaint is withdrawn and the committee believes there is just cause, can it continue without the complainant?

Mr J.A. McGINTY: It can persist with the matter regardless of the view of the complainant.

Ms S.E. WALKER: I will draw on the comments of the member for Kingsley. What concerns me about the complaints committee is its interpretation of unprofessional conduct under section 25 of the Legal Practitioners Act and unsatisfactory conduct under clause 164 of the Legal Practice Bill. I have read documents of cases in which I view the conduct of the practitioner as totally unprofessional. We do not know who is on the complaints

committee. Despite the fact that the lawyer in one case I read made inaccurate statements to the court, which in my view swayed the judicial officer, the complaints committee said that that person's conduct was not unprofessional. What are the criteria? Who sets the criteria for unprofessional conduct? What are the criteria for unsatisfactory conduct?

Mrs C.L. Edwardes: And what is the difference between unsatisfactory conduct and unprofessional conduct?

Ms S.E. WALKER: Will the actions of the new complaints committee be transparent? Will its reasons for making a decision be given? That is a matter of public interest. In court, legal counsel have great power to make inaccurate statements that could affect a person's ability to obtain justice. It is important that when legal practitioners behave in an unprofessional way, they should not come before a committee made up of people with whom they went through law school, who may take the opportunity to ruin that person's career. How will the new complaints committee determine what is unsatisfactory conduct? Will the proceedings be open? Will the complaints committee give its reasons for finding that certain conduct was not unsatisfactory? With the permission of the complainant, will the reasons be published, so that people can find out what transpired and on what basis the committee came to the conclusion that the conduct was not unprofessional or unsatisfactory?

Mr J.A. McGINTY: The complaints committee always has provided and will continue to provide its reasons. Natural justice requires no less than that.

Ms S.E. Walker: To whom?

Mr J.A. McGINTY: To the complainant.

Ms S.E. Walker: What if someone else wants to know?

Mr J.A. McGINTY: And to the practitioner involved.

Ms S.E. Walker: Will the proceedings be open? Will you be able to walk in and listen to them?

Mr J.A. McGINTY: No.

Ms S.E. Walker: Why?

Mr J.A. McGINTY: That is the way it has been for a hundred-odd years. I go back to the member's first question, which arose from the case that she judged to involve unfair or unprofessional behaviour. The current jurisdiction of the complaints committee is to deal with any illegal or unprofessional conduct on the part of any practitioner, or any neglect or undue delay in the course of the practise of law. The disciplinary jurisdiction of the complaints committee will be significantly broadened by the new definition. I refer the member to the definition of "unsatisfactory conduct" on pages 8 and 9 of the Bill, which includes unprofessional conduct, illegal conduct, neglect or undue delay, or a contravention of the legislation. I presume that those matters are caught within the current definition. Most importantly, paragraph (e) of this definition in the Bill contains a new provision, and covers -

> 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 expect of a reasonably competent legal practitioner.

This provision significantly expands the range of matters over which the complaints committee will have jurisdiction to include standards of competence, on which disciplinary action could not previously be taken. All members of the committee will put their minds to ascertaining whether the behaviour of a legal practitioner falls short of the standard of competence and diligence a member of the public is entitled to expect. That will include the community representatives giving the community standard of competence and the legal practitioner giving the professional standard.

Ms S.E. WALKER: The new provision does not mean that a complainant could now bring a complaint in new circumstances.

Mr J.A. McGinty: Yes, it does. You have misread it if that is what you believe.

Ms S.E. WALKER: I heard and know what the Attorney General said. He said that the definition now includes conduct occurring in connection with legal practice that falls short of the standard of competence and diligence, and that this is new. It is not something new. I have a document in which a complainant states that the conduct of a lawyer, by anyone's measure, had fallen short of a standard of competence and diligence that a member of the legal profession should uphold in a court of law. Anyone who read that document would come to the same view that the conduct was unprofessional. On the other hand, a person might find that it did not fall short of a standard of competence and diligence.

Mr J.A. McGinty: That test could not be applied. It is not a provision in the legislation.

Ms S.E. WALKER: I know; it would be unprofessional conduct.

Mr J.A. McGinty: No, not necessarily. That is why this provision is in the Bill. It will expand the definition of what constitutes disciplinary conduct or conduct that will invoke the disciplinary jurisdiction. The conduct the member for Nedlands is referring to does not currently fall within it.

Ms S.E. WALKER: If unprofessional conduct does not fall short of a standard of competence and diligence, what does?

Mr J.A. McGinty: It does not necessarily.

Ms S.E. WALKER: In my view it does.

Mr J.A. McGinty: Good luck to the member, but she is wrong.

Ms S.E. WALKER: I do not think I am wrong. Lawyers are expected to have a standard of competence and diligence. Any judicial officer would expect a lawyer to have standards.

Mr J.A. McGinty: The provision is in the Bill because the very problem the member raised is not currently covered.

Ms S.E. WALKER: I have difficulty with the fact that there are people who have gone through law school - I am not judging the legal profession as a whole - and, according to the Attorney General, have said that they do not like being part of the complaints committee. That could work against a person seeking justice. What criteria will determine what is serious enough to go to a complaints committee and what is serious enough to go to a disciplinary tribunal? Why does the Bill provide for a complaints committee at all? As the member for Alfred Cove rightly stated, under this Bill an independent observer will no doubt be banned from saying anything. I do not think a complainant will receive proper justice unless a different legal complaints committee is established.

Dr J.M. WOOLLARD: I refer the Attorney General to recommendation 443 in the project summary of the "Review of the Criminal and Civil Justice System of Western Australia", which states -

> For public confidence in both the process of review and its implementation there should be significant community representation in the membership of regulatory bodies of the legal profession and the Law Reform Commission.

The submissions summary suggests on page 30 that an objective, non-legal body with disciplinary and fiduciary powers be established for aggrieved clients. How can the Attorney General state that the Government is implementing the recommendations of the Law Reform Commission given the commission is recommending that a non-legal body be established? The complaints committee can have representation from two community representatives who can have voting power, but those representatives could be completely outnumbered by the other members of the committee. Although only three members will constitute a quorum, six lawyers might be present. In fact, including the chairperson, 12 legal practitioners could be present. If the Attorney General were to say that the complaints committee would comprise the chairperson and a maximum of six legal practitioners, paragraph (b) would be acceptable. However, that is not the way the clause is worded. Clause 163(1)(a) states "a chairperson, and not less than 6 other legal practitioners". Paragraph (b) states "not less than 2 representatives of the community". The recommendation from the Law Reform Commission states that there should be significant community representation. In order to guarantee that there will be significant community representation the Attorney General should either modify paragraph (a) to read "a chairperson, and no more than 6 other legal practitioners" so that they will be divided equally, or increase the number of community representatives to ensure that they can make a significant contribution. In that way the Attorney General will fulfil the commitment that he has given to implement the recommendations of the Law Reform Commission.

The ACTING SPEAKER (Mr A.D. McRae): I have allowed the debate from previous speakers, particularly the member for Nedlands, to drift into other areas. However, that probably has not assisted us to focus on the question before the House, which is the amendment on the Notice Paper in the name of the member for Alfred Cove. The question is that the words to be deleted be deleted.

Amendment put and negatived.

Clause put and passed.

Clauses 164 to 168 put and passed.

Clause 169: Composition of Disciplinary Tribunal -

Dr J.M. WOOLLARD: I do not intend to proceed with my amendment to this clause. We do not need to discuss this for very long, because I do not believe the Attorney General will fulfil the commitment that he has given to the Law Reform Commission. I put on the record again that recommendation 443 states -

> For public confidence in both the process of review and its implementation there should be significant community representation in the membership of regulatory bodies of the legal profession and the Law Reform Commission.

Subclause 1(d) commences with the words "one or more other persons as representatives of the community". These words should be deleted. I ask the Attorney General if he would please give a description of the membership of the disciplinary tribunal.

Mr J.A. McGINTY: The disciplinary tribunal is composed of those persons listed in clause 169, which is the chairperson, those members of the board who are not members of the complaints committee, legal practitioners appointed under subclause (2), which is a new provision that states -

> Each member of the Disciplinary Tribunal holding office under subsection (1)(c) is to be appointed by the Board from amongst certified practitioners of not less than 8 years' standing.

The Attorney General will also appoint members to the board as representatives of the community after consultation with the minister responsible for consumer affairs. Clause 7 lists the members of the board, which will consist of the Attorney General, the Solicitor General, each Queen's Counsel and each Senior Counsel - currently there are between 30 and 40 Senior Counsel in the State - and 12 legal practitioners with at least three years standing, who will be elected to the board. Potentially, the board will be a very large body. Those people are eligible to sit on the board provided they are not also members of the complaints committee. At the risk of being accused of repeating myself, the same applies to the tribunal as applies to the committee; that is, the community representative will be given a vote for the first time. Previously the community representative was not entitled to a vote.

Dr J.M. WOOLLARD: What is the Attorney General's interpretation of significant community representation?

Mr J.A. McGinty: You are testing my patience. One of my pet hates in life is repeating myself, and I do not intend to do it.

Dr J.M. WOOLLARD: The Attorney General has just told us that the community representative will be outnumbered 40 or 50 to one.

Mr J.A. McGinty: I do not intend to repeat myself.

Dr J.M. WOOLLARD: I do not think the Attorney General can afford to repeat himself. The board will not have significant community representation. There will be only one community representative to possibly 40 or more legal practitioners. The Attorney General has given voting power to one community representative - hoo-ha! Goodness me! That is not significant community representation. I would have thought that this Government would have tried to ensure that the community had a voice.

Clause put and passed.

Clauses 170 to 184 put and passed.

Clause 185: Powers of the Disciplinary Tribunal in relation to individual legal practitioner -

Ms S.E. WALKER: I refer to clause 185(4). Will a record of the evidence be taken at the disciplinary tribunal hearings?

Mr J.A. McGinty: I am told it always is.

Clause put and passed.

Clauses 186 to 220 put and passed.

New clause 221 -

Dr J.M. WOOLLARD: I move -

> Page 146, after line 21 - To insert the following new clause -
>
> **221. Cost estimates and alternative dispute resolution**
>
> A legal practitioner is not entitled to recover costs from the client in civil matters unless -
>
> (a) prior to substantial work being undertaken for the client, and at least every 12 months thereafter, the legal practitioner has provided the client with an estimate of the likely cost of resolving the dispute; and

(b) the legal practitioner has advised the client of the possibilities of alternative dispute resolution, how to access alternative dispute resolution resources and the cost implications of alternative dispute resolution.

I draw the Attorney General's attention to recommendation 72 of the "Review of the Criminal and Civil Justice System in Western Australia" by the Law Reform Commission of Western Australia, which states -

> The *Legal Practitioners Act 1893* (WA) should be amended to impose an obligation on all legal practitioners instructed in a civil matter to:
>
> (1) consider the possibility of ADR; -

That is, alternative dispute resolution -

(2) apprise clients of the possibility of ADR;

(3) give clients specific advice about the availability of ADR resources; and

(4) discuss with clients the cost implications of ADR.

Where in the Legal Practice Bill has this recommendation been included? If it has been included in another clause, I am happy to withdraw this amendment. However, I have not been able to locate it. Again I remind the Attorney General that during estimates he gave an assurance that he intended to implement all the recommendations of the Law Reform Commission, and I remind him that this is a recommendation of the Law Reform Commission.

Mr J.A. McGINTY: I suspect that a bit of licence has been taken with the observations that I made not only in the Estimates Committee hearings but generally. I am a strong supporter of the great work that has been done over the past 31 years in Western Australia by the Law Reform Commission, and have undertaken to implement, to the extent desirable and possible, those outstanding recommendations. In this Parliament we frequently see those recommendations being implemented in one form or another. However, the Government will not implement some recommendations. It may be that the passage of time has rendered them irrelevant; or there will be the odd one with which the Government does not philosophically agree.

Any practitioner worth his salt would offer advice in civil matters to his clients along the lines of recommendation 72 of the Law Reform Commission's review of the criminal and civil justice system. It is the Government's view that the intent of that recommendation is best achieved not by, as has been recommended, amending the Legal Practitioners Act, but by these provisions being contained within the professional rules of the Western Australian Bar Association and the Law Society of WA. I guess that there could be a debate about whether they should be included in the Act. The advice that I have received is that it is best to allow them to be dealt with by the professional rules, and that is what we intend to do. Accordingly, we have not provided for the implementation of recommendation 72 in the 1999 report of the Law Reform Commission.

Dr J.M. WOOLLARD: If, as the Attorney General stated, any legal practitioner worth his or her salt would fulfil these responsibilities, I do not believe the Law Reform Commission would have recommended that the provision be included in the Bill. It must be obvious to members of the Law Reform Commission that this is not happening. Many members of the legal profession hope to see a movement away from the former adversarial system to alternative forms of dispute resolution. I believe some of the other States now include in their budget estimates the amounts they are spending on alternative forms of dispute resolution. They have, therefore, taken on board these measures. This amendment would be a good path for Western Australia to follow. The Law Reform Commission must believe that when people consult a lawyer they are immediately encouraged to take someone to court rather than consider mediation, arbitration or another form of dispute resolution.

I am very disappointed that the Attorney General is unwilling to consider this recommendation. It is much healthier for the community if people are encouraged to negotiate or consider other measures for settling disputes before going to court. All lawyers should adopt that attitude. They should suggest to their clients other forms of dispute resolution, rather than immediately advise that the matter go to court, which is a very costly way to settle a dispute for the average person in the street. The Attorney General has said that the Law Society of WA will examine this matter. However, this is not a recommendation from the Law Society. The recommendation came from the Law Reform Commission, which believes that this provision must be legislated for to ensure that lawyers worth their salt suggest these other avenues of dispute resolution to their clients.

New clause put and negatived.

Clauses 221 to 246 put and passed.

Clause 247: Regulations as to professional indemnity insurance -

Dr J.M. WOOLLARD: I have previously discussed this clause with the Attorney General. I foreshadow that I will move -

> Page 159, after line 5 - To insert the following -
>
> > **"insurance"** means insurance provided by an insurer authorised under the provisions of the *Insurance Act 1973* (Commonwealth);

Many constituents outlined their concerns to me about the outcome of litigation arising from the finance brokers scandal. As you, Madam Deputy Speaker, probably know, three cases have now been to court with the Director of Public Prosecutions; there was an admission of guilt in the first case and the last two cases were lost. People want to know why they were lost and the DPP will appeal those cases. However, with regard to the civil cases that will arise, the Law Society of WA uses Law Mutual (WA), which is not an authorised insurer. It is a mutual fund offering members a product that is outside the definition of insurance under the Insurance Act 1973. The fund is administered by the Law Society. However, the agreement at the moment between the insurers and the Law Society does not specify who will make up a shortfall in the fund's assets should they be exceeded by the fund's liabilities. The Law Society is not undertaking liability by way of insurance and, as a consequence, is not regulated by the Australian Prudential Regulation Authority under the Insurance Act. My constituents are concerned that with the hundreds of cases that may go to the courts in the next few years, Law Mutual's pool of money will be insufficient to cover the full costs. I note that Law Mutual is hoping in the future to be covered by Australian Securities and Investments Commission financial services, but at the moment it is not. I ask the Attorney General, who is very concerned for the welfare of the many elderly citizens who were subject to those scam dealings - I am trying to think of the words used by the Attorney General to describe what went on in the finance broking scandal - whether he will give consideration to these people.

Mr J.A. McGINTY: The member for Alfred Cove seeks to include in the Bill a definition of insurance that means -

> . . . insurance provided by an insurer authorised under the provisions of the *Insurance Act 1973* (Commonwealth);

I am advised that insurance can be provided only by an insurer authorised under the provisions of the Insurance Act. Therefore, the amendment is a circular provision. The amendment does not adequately cover the real issue the member seeks to address. The Australian Prudential Regulation Authority, the regulatory body for the insurance industry, has advised that Law Mutual (WA) does not offer insurance. It is a mutual fund that offers assistance up to the amount of $100 000. For amounts in excess of that figure, Law Mutual arranges insurance pursuant to the provisions of the Insurance Act. I do not think the amendment of the member for Alfred Cove would add anything to this legislation or the requirement that is to be cast on practitioners to maintain professional indemnity insurance.

Dr J.M. WOOLLARD: I have in my hand a letter from the Australian Prudential Regulation Authority, which clearly states -

> . . . the Law Society is not undertaking liability by way of insurance, and in consequence, is not regulated by APRA under the *Insurance Act 1973*.
>
> As Law Mutual is not prudentially regulated by APRA, APRA has limited information in relation to its operations.
>
> . . .
>
> If these State Governments wish to ensure that both the mutual funds and the professional indemnity covers they provide fall under the *Insurance Act 1973*, the respective State legislatures will be required to enact the necessary legislation to ensure that a person is undertaking liability by way of insurance in respect of the cover provided by each mutual fund. Should this occur, the bodies providing the cover would be regarded as "insurers" and they would then fall under the prudential regulation of APRA. This would entail the need to conform to the *Insurance Act 1973* which includes inter alia Prudential Standards relating to reserving, risk management, and regular reporting requirements.

In relation to this Bill, the letter states -

> While a guarantee cannot be given that a general insurer regulated by APRA will have sufficient assets at all times to meet its insurance liabilities as and when they fall due, such prudential regulation of insurers is likely to give a greater deal of comfort to both the insured professional and the ultimate consumer of the cover (persons making claims against the insured professional Insured named in the policy).

Those people are our constituents. The letter continues

> As indicated above, the *Insurance Act 1973* enforces adherence to minimum prudential standards including minimal capital requirements and liability valuations to a higher probability of sufficiency than is generally the case for non regulated insurers.

The concerns expressed to me by many of my constituents prompted me to send APRA a copy of this Bill. The letter refers to APRA's review of this Bill and states -

> *Regulations as to professional indemnity insurance* it appears that the Law Society is required "…to make authority with one or more insurers for the provision to legal practitioners of professional indemnity insurance…" and legal practitioners are required "…to take out and maintain professional indemnity insurance in accordance with the requirements of the Act,

It goes on to say that the wording does not define what constitutes insurance, in that it does not make reference to the Insurance Act 1973, nor does it define an insurer as being an authorised insurer.

The DEPUTY SPEAKER: Before the member resumes her seat, will she indicate whether she intends to formally move her amendment?

Dr J.M. WOOLLARD: I do, Madam Deputy Speaker, unless the Attorney General is able to give an assurance that, by a provision elsewhere in the Bill, support will be provided for people affected by the finance broking scandal who take their cases to court. When a number of those cases have gone to court and the fund is empty, and there is no provision in this Bill, does that mean the Government will accept responsibility? If not, where will the money come from?

Mr J.A. McGinty: Is it the intention of the member that this amendment would make the Law Mutual (WA) arrangement an insurance arrangement?

Dr J.M. WOOLLARD: It would mean they would have to make the necessary changes to conform.

Mr J.A. McGinty: I do not think it has that effect.

Dr J.M. WOOLLARD: This is the advice I have been given from the Australian Prudential Regulation Authority. I am happy to table it. Could the Attorney General explain to me how the Act will cover this?

Mr J.A. McGinty: It will not.

The DEPUTY SPEAKER: I remind members that, because we do not formally have an amendment that has been moved, we are actually dealing with the question that clause 247 stand as printed. That is the question before the House.

Ms S.E. WALKER: I was very interested in the clause the member for Alfred Cove was talking about. The member for Alfred Cove talks a lot more sense than some of the other people I hear in here sometimes. At least she puts in the effort, and she has raised some very good points in relation to this Bill. I would like to hear what she has to say further.

Dr J.M. WOOLLARD: I do not believe the Attorney General has the benefit of advice from APRA or any other body. What will happen to the people affected by the finance broking scandal when the Law Mutual (WA) fund has been exhausted? Will the Government come to the rescue of those people? The Government certainly has not come to the rescue of the people whose cases have so far been taken to court by the Director of Public Prosecutions. Queen's Counsel from the eastern States come to WA to represent the finance brokers. The Director of Public Prosecutions, who does not have a forensic accountant as part of his staff, has been looking at what has been happening in the finance broking scandal. The Attorney General played this issue very well when in opposition. He spoke very well on behalf of the people affected by the finance broking scandal, and he did a wonderful job of exposing the former Minister for Fair Trading. I would like to know how he will support those people, now that he is in government. The cases are falling over one after another. No extra funds have been given to the Director of Public Prosecutions to help with these cases.

Both the Police Force and the Director of Public Prosecutions have said that the cases were strong enough, but the cases have fallen over. The Attorney General has allowed that. He has not assisted in any way. He has not given the DPP any extra resources. I am now bringing to his attention as a minister in this Government the fact that a lot more civil cases are likely to occur over the next two years and they may exhaust the funds that Law Mutual (WA) has in its kitty. When those funds are exhausted, what will the Attorney General do? Is he hoping that it will occur at the end of his term of office and that it will not be his but the next Government's problem? The Attorney General gave a commitment to those people who were affected by the finance broking scandal. If he is unwilling to allow the insertion of this definition of insurance, which I have been strongly advised will give those people an assurance that their interests will be protected, what will the Attorney General do now it has

been brought to his attention that the funds may not be enough to cover all the costs that arise from the finance broking scandal?

Clause put and passed.

Clauses 248 to 253 put and passed.

Schedules 1 to 4 put and passed.

Title put and passed.