LEGAL PRACTICE BILL 2002

Second Reading

Resumed from 23 October 2002.

Ms S.E. WALKER (Nedlands) [7.54 pm]: This is a serious Bill on several levels and is intertwined to some extent with the next Bill on the Notice Paper, the Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002. I will pre-empt my comments on the second measure in making my comments on the Bill before us. The Opposition supports the Legal Practice Bill, although it proposes amendments, and will support the Acts Amendment and Repeal (Courts and Legal Practice) Bill provided parts 5 and 8 are removed. The Attorney General stated in his second reading speech on this Bill -

> In introducing this Bill, the Government provides a package of reforms that respond to the community's interest in having a more modern and relevant framework for the legal profession and the courts.

That is true to an extent. The Attorney then referred to the repeal Bill as follows -

> . . . will replace outmoded references to the Queen and the Crown with terminology more appropriate to the Western Australian context.

The West Australian of Saturday, 26 October 2002 contained an article headed "Queen, wigs sets to go" that is relevant to these Bills; it reads -

> Deleting references to the Queen from WA courts and the legal system is a necessary prerequisite for Australia becoming a republic, according to Attorney-General Jim McGinty.
>
> Mr McGinty said this week that legal practices in WA needed to be modernised. They would not be advanced by maintaining traditions no longer relevant to society.
>
> References to the Queen and crown would be removed in favour of terminology based on the State or Commonwealth under legislation before State Parliament.
>
> Examples including renaming the Crown Solicitor as State Solicitor . . .

One reason for reading this excerpt is that the Crown will oppose the reference to "State Solicitor" in the Legal Practice Bill. I will explain why.

Mr J.A. McGinty: Did you mean the Opposition or the Crown?

Ms S.E. WALKER: I am sorry; I meant the Opposition. I tend to think I am in court sometimes.

Mr J.N. Hyde: It was a flashback.

Ms S.E. WALKER: Indeed, member for Perth. I will not call you, Mr Acting Speaker, "Your Honour", yet!

The ACTING SPEAKER (Mr McRae): "Your grace" is okay.

Ms S.E. WALKER: That would be going too far, although I think the Attorney General would like to be called that from time to time.

Examples of reform outlined in the article include issuing indictments in the name of the State, and issuing each summons in the name of the court. The article further reads -

> Mr McGinty said that politicians and local government councillors would no longer have to swear the royal oath under changes proposed for next year.

Interestingly, is the change in the politicians' oath not included in the Bill because the Attorney General does not have the power to make such a change and he realised that to be the case only after he had made that statement? The article continues -

> He also wanted to abolish the practice of judges and lawyers wearing wigs and robes while presiding over criminal cases.

The Attorney General does not have the power to make that change either; only the judge of the court has that power. We are dealing with someone who does not have a knowledge of the criminal justice system. The article continues -

> Judges and lawyers looked "absurd wearing the clobber from centuries ago," he said.

I find that interesting.

Mrs C.L. Edwardes: He never got a chance to do it.

Ms S.E. WALKER: That is right. He never wore a wig and gown.

Mr J.A. McGinty: I have, but not often.

Ms S.E. WALKER: I think the Attorney General has not even done his restrictive practice. I have been a bit hard on the Attorney General in the past. However, looking at the Legal Practice Bill forced me to look at the Legal Practitioners Act, so I scrolled through the *Law Almanac*. I had not realised that the Attorney General was not admitted until 1995. It states that James Andrew McGinty - tell me if I have the right person - was admitted on 4 September 1995. He obviously was a student until fairly recently. I became interested in his background. I went to another publication, *The Western Australian Parliamentary Handbook*, which indicates that he came into Parliament in 1990, and five years later he was admitted. During that period he had ministerial appointments while he was building up his studies in law. He was Minister for Housing and had responsibility for other portfolios from 1992 to 1993, and Leader of the Opposition from 12 October 1994 to 8 October 1996. I wondered how he got admitted in September 1995, because, as I recall, a person must spend 12 months doing articles. I understand now why the Attorney General is always making pronouncements about judges and lawyers looking absurd in their clobber, because basically he was a student. As far as I can tell, he has never even done restrictive practice, so he is not entitled to practice law anywhere in Australia, let alone in Western Australia. However, I could be wrong about that. His comments are an insult to judges and lawyers who practise in the criminal jurisdiction, when they have to stand in the criminal courts with serious criminals. The reason they wear their wigs and robes - I was always pleased that I did - is not only for anonymity; the Attorney General does not understand that it takes away everything about the person bar his or her advocacy. It is a serious atmosphere. A person's liberty is at stake. If someone flounces in there in a tight miniskirt and a low-cut top, the jury might be attracted to that person and not to what that person is saying.

Mr J.N. Hyde: Why don't you wear a paper bag?

Ms S.E. WALKER: The member for Perth can, because it would look good on him. It would be a vast improvement on his looks!

Mr J.N. Hyde: You are not taking your sacking from tourism very well.

Ms S.E. WALKER: It was voluntary, actually.

Mr J.N. Hyde: No; people in Broome wanted you sacked.

Ms S.E. WALKER: It was voluntary.

That is why it is important to wear wigs and gowns in court. I can see why the Attorney General has no respect for traditions. He does not ask why vicars wear all that clobber and does not say that they should take off their collars. That was brought home to me when I attended a service at St George's Cathedral on Christmas Eve. He does not ask why choirboys do not get rid of all the clobber they wear in church. I reckon it is a bit of envy, because he will never wear it. He does not ask why the scouts, the cubs or the girl guides do not get rid of their clobber. The Army and the Navy do not get rid of their uniforms. However, the Attorney General wants this clobber to go.

The only clobber I have seen on this Bill is the amendments that were delivered to me at a late hour. I refer to that because it was very inefficient and disorganised for the enormous number of amendments to these Bills to be delivered to my office late yesterday afternoon and for me to be expected to be prepared today. The Attorney General has had two months to look at these Bills, yet these amendments turned up at my office late yesterday afternoon. These amendments had not been delivered to the shadow Attorney General this morning when I spoke to him. That is how organised this Attorney General is, but I can understand it, because he has never been in a professional practice. The article continues -

> Judges and lawyers looked "absurd wearing this clobber from centuries ago," he said.

It is trivial of the Attorney General to bring in this sort of legislation, which tinkers at the edges of our Constitution, when other far more important issues need to be debated in this Chamber. There are far more serious things going on in our community internationally, nationally and locally. The article continues -

> "If the law is to be held in high regard by the community, it needs to be contemporary rather than antiquated."

Getting rid of all the pageantry and the attire that people wear in church, for instance, would not make anyone feel better or that it was more modern. It is part of the tradition, and tradition stabilises a community. When the Attorney General refers to clobber, he is talking from a position of ignorance, having never had to stand in a court and deal with serious crime and a person's liberty. In any event, it is for the judge of the court to make that decision, not the Attorney General. The article continues -

> But South-West Law Society spokeswoman Rhonda Parks said judges and lawyers wearing wigs in criminal cases, and references to the monarchy, gave the courts and legal system a sense of tradition and respect.

The Attorney General does not want to maintain that tradition and respect in the system. I continue -

> By wearing wigs and robes, judges and lawyers were able to maintain a degree of anonymity in the community. "It also makes it a non-gender court," . . .

I will come back to that. I will set the scene -

Mr J.L. Bradshaw: I think she is on their side of politics too.

Ms S.E. WALKER: Who - Rhonda Parks? She is probably practising in the courts and knows what she is talking about. This is what happens when a person speaks from a position of ignorance. That is an issue, and I raise it because the Opposition will move amendments to the Legal Practice Bill.

The Government's amendments relate to the deletion of the word "crown" from Western Australian Acts. As I say, they will be opposed because the Attorney General's rationale for bringing forward this piece of trivial legislation is that it is an outmoded, monarchical expression. It is easy to say that if the Opposition opposes aspects of this Bill that delete the word "crown" or references to the monarch, it is a bunch of constitutional monarchists. However, I know that that is not the case. I know there are many on our side who are republicans and would like a republic. There are some who are constitutional monarchists. That is not what this issue is about for the Opposition. The issue is about a belief in the democratic process. I will come back to the Opposition's belief in the democratic process and the 1999 referendum, held on a one vote, one value basis, in which we decided to retain the current system.

The Legal Practice Bill is a serious Bill for the legal profession and the Law Society of Western Australia. I have received many letters relating to their support for this Bill. The Government has had a briefing from the Law Society, which supports this Bill. I was a bit disappointed with the attitude of the Law Society in relation to the Opposition's view on the removal of the word "crown", because it said that it was a political issue. I was disappointed because I would have liked it to look at it from a legal viewpoint, given the Western Australian Constitution and the interweaving of the Crown, the Legislative Assembly and the Legislative Council acting jointly in the Parliament. I will come back to that issue when I speak to the repeal Bill.

I draw attention to the generally incompetent manner in which this Bill was finally presented. Along with the series of amendments that were delivered to my office late yesterday afternoon was a 31-page explanatory memorandum relating to the various amendments. This Bill, along with the repeal Bill, brings about what is said to be necessary reform to streamline the profession in an evolving and often complex business world. I am interested in the number of offences created by this Bill and to know if there are currently offences with such severe penalties under the Legal Practitioners Act. I accept that this Bill contains new provisions dealing with business structures, interstate practitioners, foreign lawyers and multidisciplinary practices. Although the Opposition will deal in detail with the Bill, I make first reference to part 6, business structures. It enables a practitioner to adopt any form of business structure, including a corporation, from which he or she was previously excluded. Pursuant to clause 46, a legal practitioner is still required to comply with the provisions of this legislation. The rather large penalty of $50 000 will be imposed on an incorporated legal practice if it fails to notify the Legal Practice Board of its intention to provide such legal services.

Interestingly, I also note that a new role of legal practitioner director is to be imposed on incorporated legal practices. Such a person will be responsible for a variety of things in a practice, including managing the legal services functions in accordance with professional and legislative obligations; ensuring ethical and professional duties are not interfered with by other directors; as I read it, vicarious liability for the monitoring of misconduct by other legal practitioners in the incorporated legal practice; and disallowing association with non-legal practitioners who are inappropriate in the commercial legal context. It is interesting that an offence is created in that the incorporated legal practice will incur a hefty penalty of $25 000 if it leaves the position of legal practitioner director vacant for more than seven days. Failure to notify the Legal Practice Board will incur a further penalty of $10 000. Under clause 53(3), the board can appoint a certificated practitioner if it is deemed appropriate.

Under clause 58 disclosure obligations by all members of a practice to a client are legislated. Failure to disclose creates an offence punishable by a fine of $25 000. Clause 67 also carries a penalty of $25 000 if an incorporated legal practitioner fraternises, for want of a better word, with a prohibited person under four criteria laid out. Clause 3 describes a prohibited person as a person who -

(a) is a disqualified person;

(b) is or was an employee of a legal practitioner and who has been convicted of any fraudulent conduct in respect of any money or property belonging to or held or controlled by the legal practitioner by whom that person is or was employed or a client of that legal practitioner; or

(c) is the subject of an order in force under section 135;

I will not go into clause 135 because that will be considered during consideration in detail. Needless to say, these offences show - as the Attorney General said in the second reading speech - that the legal profession is serious in maintaining and keeping a tight control on its integrity and professionalism. I wholeheartedly endorse that.

Some of the provisions to which I have referred may have been amended. In that case, I have some difficulty with the undue influence provision under clause 74, which discusses an officer or employee having or bringing to bear undue influence on a legal practitioner. I am sure that the Attorney General will iron out my concerns. The Bill provides for the formation of multidisciplinary partnerships under clause 75. It is quite an exciting development for the profession. It wants this legislation enacted as soon as practicable. The nature of a multidisciplinary partnership is spelt out under clause 75, which states -

> A multi-disciplinary partnership is a partnership between one or more legal practitioners and one or more other persons who are not legal practitioners, where the partnership business includes the provision of legal services.

I am not sure why there is no penalty for a failure to disclose under clause 82 - disclosure obligations - as there is with a corporation. I am sure that we can go through that during the consideration in detail stage. I also read clause 83 with interest, which I was going to raise with the Attorney General. When I had a cursory glance at the amendments I noticed it was to be deleted. Clause 83 states -

(1) For the purposes of the application of this Act, a service (other than a legal service) provided by a partner or an employee of a multi-disciplinary partnership is taken to be provided by a legal practitioner unless prior written disclosure is made to the person to whom the service is provided that it is to be provided by a person other than as a legal practitioner.

(2) If prior written disclosure is not made before any such service is provided, the duty of care owed by the person providing the service is not less than that of a legal practitioner who provides the same service.

The Bill also streamlines the process by which an interstate practitioner can practise in this State and a practitioner from this State can practise in other States. Part 7 deals with the admission of interstate lawyers to practise in this State and our lawyers who wish to practise elsewhere in Australia. The provisions streamline what is quite an onerous process. Currently - I have done this myself - should an interstate practitioner wish to practise in this State and represent someone in our community - which is often done in the profession as we see high-flyers choose not to use this State's talented lawyers and prefer to pay hundreds of thousands of dollars to use eastern States counsel - he has to go through a formal application through a mutual recognition scheme. As I recall, that is usually done through the Supreme Court. I am interested to know how the new procedure will work and whether the Supreme Court will have to be involved with the procedure. Under the Bill I believe it will be automatically deemed provided a practitioner can show the necessary qualifications. I am interested to see how it will work. I imagine it will save the Supreme Court - if it will still handle the process - some time.

I note that pursuant to clause 93 an interstate practitioner who takes up an office in Western Australia has to comply with onerous requirements of the Bill as if he were a local practitioner. An interstate practitioner is deemed to have an established office in Western Australia if he or she retains an office from which legal services can be offered or if he or she provides services from an office in this State maintained by an employer or legal practitioner. Clause 93 refers to an interstate practitioner complying with the requirements of this Bill as if he or she were a local practitioner. Failure by the interstate practitioner to notify the Legal Practice Board of his or her practising will incur a fine of $2 500. That provision ensures that interstate practitioners have proper professional indemnity insurance, for which the penalty for not having this insurance is $2 500. I am interested to know how the penalties in this Bill were worked out; I am sure the Attorney General will let me know. In some areas of the Bill they are rather large and in others not very large.

There are new provisions for foreign lawyers, and the distinction between foreign law and domestic law is defined. Much of the legislation is copious and in the main, I expect, well thought out for the legal profession. Clause 105 of the Bill stipulates who may practise foreign law in this State -

(2) A person must not practise foreign law in this State unless -

(a) the person is a certificated practitioner;

(b) the person is a registered foreign lawyer; or

(c) the person is a foreign lawyer who practises foreign law in this State on a temporary basis or who is subject to a migration restriction and who -

(i) does not maintain an office for the purpose of practising as a legal practitioner in this State; or

(ii) does not have a commercial legal presence in this State.

If a person does practise when not entitled to, that person will receive a penalty of $10 000.

Under subclauses (3) and (4), a person practising as a foreign lawyer when not entitled to could not be paid for any work that was done; would have contravened clause 105 and would not be able to recover any amount of money for any work done; and if the person had been paid, the money would have to be repaid and the person subject to debtor action. Again, a foreign lawyer must register with the Legal Practice Board, but not any foreign lawyer can register. It is interesting to note that a foreign lawyer who registers with the board must register by written notice and must provide information pursuant to clause 106. I found that provision interesting and wondered how it would work in practice. Clause 106 states -

(1) A foreign lawyer may apply for registration under this Division by lodging a written notice with the Board.

(2) The notice must -

(a) state the applicant's educational and professional qualifications;

(b) state that the applicant is registered to practise law in a place outside Australia by a specified foreign registration authority in that place;

(c) state whether the applicant is the subject of any disciplinary proceedings in that place (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to that registration -

I wondered how that provision would be followed through -

and, if so, give details of those proceedings or investigations or that action;

(d) state whether the applicant is a party in any pending criminal or civil proceeding that might result in disciplinary action being taken . . .

(e) state that the applicant's registration in that place is not cancelled or currently suspended as a result of disciplinary action;

The paragraphs go on to include a few criteria that must be met by a foreign lawyer when an application to the Legal Practice Board is made for registration under that division.

Interestingly, the next two subclauses state -

(3) The notice must be accompanied by an original instrument, or a copy of an original instrument, from the applicant's home registration authority -

(a) verifying the applicant's educational and professional qualifications . . .

. . .

(c) stating whether there is any matter known to the authority that, in its opinion, may render the applicant unfit to practise law in the place concerned or to practise foreign law and, if so, giving details of that matter.

(4) The applicant must certify in the notice that the accompanying instrument is the original or a complete and accurate copy of the original.

There are some other criteria relating to translation and so on and I am interested to know how the board will verify those criteria. I imagine it would be a tricky process; however, I am sure it has been thought through. It may be that modern international communication systems or processes have been set up with the Legal Practice Board.

I note that under clause 110 - I am not sure whether this provision has been changed, but I thought it was a little unfair to a foreign lawyer - the board has up to 45 days to notify an applicant whether he or she has been registered and, I suppose, can practise. I wondered whether 45 days was too long a time. However, if I have read clause 110(2) correctly and an applicant does not hear from the board within 45 days after the application has been lodged, the application has been unsuccessful. That does not seem right to me. Subclause (2) states -

If notice is not given to an applicant within 45 days after the applicant lodges a notice in accordance with section 106, the Board is taken to have refused to register the applicant.

If I read the clause correctly, it is possible that a foreign lawyer who wants to conduct some very important business in Western Australia could be waiting to hear from the Legal Practice Board when it has granted the application but the mail has gone adrift. There may be a system in place to cover that situation or it may have been dealt with in the proposed amendments to the Bill; however, that is one issue that the Opposition will canvass.

I do not have much more to say about the Bill. The Opposition wholeheartedly supports these changes. However, the drafting of part 9 under the heading "Unqualified and prohibited practice" appears to be a little unwieldy, although it may have been sharpened up under the proposed amendments.

Clause 126, referring to a prohibition on unqualified legal practice, states -

> (1) A person must not engage in legal practice unless the person is a certificated practitioner.

If a person does that, there is a penalty of $10 000.

Clause 127(3) states -

> It is a defence to a charge under section 126(1) in respect of the doing of work to show that the person who did the work has not directly or indirectly been paid or remunerated or promised or expected pay or remuneration . . .

Therefore, a person can engage in legal practice provided that person does not get paid for it. I could be reading that wrongly, but that could be one interpretation of those provisions.

The rest of this Bill deals with complaints and discipline. There has been a bit of publicity about why those areas are being focused on in this legislation, which the Opposition supports. I note that not so long ago a person masqueraded as a lawyer in this State, which was, of course, very disturbing. More recently there have been instances of people applying to become legal practitioners coming under intense scrutiny, as they currently do and as they should do. The Opposition will go into some detail in the consideration in detail stage on those matters in part 12 of the Bill.

Legal costs, referred to in part 13 of the Bill, are always an issue. Most lawyers usually stay away from that area, as it usually makes their hair stand on end. However, a few notable lawyers in this State have a penchant for costs and it is a good thing to see that area of the law being tightened up.

I do not want to make any further comments on this Bill, except to say that the Opposition supports it; it supports the streamlining and modernising of the legal profession in this State. I think the Attorney General said that the legislation would lead the way forward in some respects. I will await the consideration in detail stage to move our amendments, but the Opposition supports this Bill.

MRS C.L. EDWARDES (Kingsley) [8.29 pm]: I support the Legal Practice Bill and the comments of the member for Nedlands. There is, of course, a concern about the removal of the word "Crown" from the term "Crown Solicitor", so that thereafter that person will be the state solicitor. That is similar to the whole question of a republic and making changes by stealth. In a referendum in 1999, the people of Western Australia voted overwhelmingly against a republic. Irrespective of the way in which each of us as individuals voted, that indicates that a Government cannot just make the changes it wants and remove all references to the Crown. Irrespective of how the people voted, a Government cannot make changes without going back to the people with a referendum. The Opposition suggests that, for the Attorney General, this follows the same pattern as one vote, one value; that is, the Attorney General prefers the legislative form to get what he wants, instead of going back to the people and seeking the respective changes by way of a referendum. Of course, the issue is, where does one stop in making the changes? I am not sure that the East Perth Football Club, which is commonly known as the Royals, would like to become known as the Proletarians, for instance. We can make fun and light of the changes that the Attorney General has brought forward, but the question is, where do we stop?

Mr C.J. Barnett interjected.

Mrs C.L. EDWARDES: The Crown and Anchor pub.

Mr C.J. Barnett: What will happen to the carpet in this Chamber? Will you snowpake out the image of the crown?

Mrs C.L. EDWARDES: I will comment on the carpet shortly. I am a republican. The critical issue is that the Government needs to go back to the people, and as recently as 1999 the people voted "no" overwhelmingly at a referendum. As such, the Attorney General cannot come into this Parliament and, as a necessary prerequisite to becoming a republic, start removing all elements of the Crown. It is not acceptable. It is republicanism by stealth and, as such, the Opposition is totally opposed to it.

The Opposition supports the changes to the legal profession. They have been put forward by a committee that has been working for some time to come up with the respective changes. An issue of particular concern was the

new corporate structure under which the legal profession could operate. Some members of the legal profession have wanted that for a considerable time. There are advantages in it. I can see clear advantages, particularly in the country region, in the legal profession being able to work with non-legal professional persons in a way that would provide strong, solid support to a local community and be advantageous to it.

There is also the recognition of national practising certificates for lawyers in Western Australia and reciprocal rights; the registration of foreign lawyers, to which the member for Nedlands referred; and the strengthening of the disciplinary powers of the Legal Practice Board, the Complaints Committee and the Disciplinary Tribunal. In the second reading speech and also in the comments of the member for Nedlands, reference was made to two recent cases; namely, the person who masqueraded as a solicitor and also the case of a stalker who was admitted as an articled clerk. The latter case is currently before the Legal Practice Board. As such, I do not want to say too much about it, because I would not want to make comments that were prejudicial to the case. However, in the Attorney General's public comments that have been reported on previous occasions, he has emphasised this case. Cases are not always as they seem to be. There is usually another side of the story, and I believe some of the information that is going before the Legal Practice Board, such as that which was reported in *The West Australian* yesterday, is an example of that. We must be cautious about using examples to justify the legislation without having the full facts before us. This is not to say that the strengthening of those disciplinary powers and the provisions determining who can be admitted as legal practitioners is not overdue. That has always been an important matter.

Whilst I was studying I had the privilege of working for the Barristers Board for a number of years on a part-time basis. It was there that I got the inside information on some of the practices that were being exercised by legal practitioners. As a legal practitioner, I feel quite sad that some practitioners do not do the right thing by their clients. By the same token, Western Australia has been well served by the system that has been in place for a long time. Compared with the eastern seaboard and its much larger population, this State has not had many disciplinary cases. That is not to say that the seriousness of those cases involving the manipulation of trust accounts and clients losing money that have become quite renowned will be undermined. They were serious cases and any strengthening of the disciplinary powers of the respective committees will be welcome.

As I indicated, this side of the House will support the legislation. I will have more to say on the Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002 and about what the Attorney General sees as a necessary prerequisite to this country becoming a republic; that is, to remove all references to the Crown in the many Acts of Western Australia. More importantly, I would like to focus on the Crown Solicitor and the special role that he plays in this State and what the Attorney General is doing by making those changes. It might be seen as an attempt to prepare everybody for this country becoming a republic but it will, in fact, have greater consequences for such an office. We support the legislation.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [8.38 pm]: I do not need to add to the arguments of the legal profession. Earlier I interjected and I want to place those comments on the record. I do not do so to be entirely flippant but to reiterate a serious point made by the members for Nedlands and Kingsley. The Attorney General and this Government have taken an arrogant approach to simply deem it upon themselves to remove such terms as "crown" and "royal" to modernise the legislation. It is a fact that I publicly supported Australia becoming a republic when that issue was prominent around 1999. I was probably the first well-known Liberal in this State to support Australia becoming a republic. I spoke at conventions and conferences. I spoke at the Australian Constitutional Convention in Canberra in support of a republic. However, I do not support changing some of the institutions and conventions of this State without the people of this State saying that that is what they want. It is arrogant to do so. I can think of some flippant examples. The member for Kingsley mentioned the East Perth Football Club. Where does it stop? For example, will the Royals become the Presidents? The legal statutes can be changed, but does this say to other members in the community that they cannot use those terms? It is a serious point. When the republic issue was raging, a group in my electorate raised a serious concern. It agreed with Australia becoming a republic, but it wanted its name - Royal Freshwater Bay Yacht Club - to keep the "royal" prefix. That name was part of the tradition and history of the club. Whether or not club members supported a republic, it was important to them. There are trivial examples. People use the term Crown Lager. Will that be outlawed? Will the name Sovereign beer be outlawed? What about the Crown and Anchor Hotel? Those terms are part of our culture. The Government has said that it will change the term "Crown Law". Will it change the term "crown land", which is a well-known and well-used term? We could look at some of the great institutions of our State, such as Princess Margaret Hospital for Children, Royal Perth Hospital and King Edward Memorial Hospital. People have a love and affection for the history and names of those institutions. There would be outrage in this community if the Attorney General were to take the royal prefixes from the names of those institutions. What about the Royal Automobile Club of WA? I am sure that institution would also have a view on this matter. If the Attorney General thinks this is such a great idea, he should tell the community what is the real agenda of the Government. I do not think the Government should do this, short of the people of Australia or this State indicating their support for a republic and therefore the loss of some of this terminology,

which would go with that. As I said, I supported the call for a republic and I still support a republic for Australia, if it is done in the right way. However, I do not support what would effectively be a unilateral action by this State Government to take that terminology out of our law and, by implication, out of common usage and from the names of state institutions. I do not think there has been any public discussion of this. I challenge the Attorney General to tell us his view on changing the names of Princess Margaret Hospital for Children and Royal Perth Hospital. Following the logic of his argument, the Government would move to change those names. I do not say this in a ridiculous way, but would the Government take the image of the crown out of this carpet? Does it object to the carpet in this Chamber? I do not. Indeed, even if Australia were to become a republic, I would still like some of those symbols of our heritage of the past 200 years to remain. That is important.

As the Opposition has indicated, we support the sensible and perhaps overdue reforms as far as the legal fraternity is concerned. The legal profession strongly supports those changes. However, I ask the Government to rethink some of the changes that it will impose on the common usage of language and on the convention and institutions of this State. That has not been discussed at all within the community. I suspect that members of the community might have very different views on this issue to the Government, whatever their views might be on whether Australia should become a republic.

MR B.J. GRYLLS (Merredin) [8.42 pm]: I will put forward the National Party's point of view on the Legal Practice Bill 2002. Like the Liberal Party, the National Party will support this Bill. However, I look forward to my more learned legal colleagues putting forward their amendments to this legislation. The National Party will certainly take part in that debate as well. I will take some time to put forward the National Party's discussions on this Bill.

From our research, we understand that the Legal Practice Bill will bring greater clarity to the standards required by and the regulation of legal practitioners, that it will modernise the structure and functions of the Legal Practice Board and the operations of the complaints committee and disciplinary tribunal, and that it will enable the creation of incorporated legal practices and multidisciplinary partnerships. Up to this point, lawyers have had only the option of working as sole practitioners or going into partnership with other lawyers. This legislation will also regulate foreign lawyers who advise clients in this State on matters pertaining to foreign law. Foreign lawyers were not regulated in the past. It will also introduce national practising certificates to Western Australia. These certificates have operated across all jurisdictions in Australia with the exception of Western Australia and Queensland, thus putting legal practitioners in this State at a disadvantage in the national market for legal services.

My National Party colleagues have raised some issues about this Bill. In making these reforms, the Government has acknowledged that the interests of consumers must also be safeguarded. The Bill therefore places some accountability and other requirements on legal practices in the context of these reforms. For example, a number of provisions relate to incorporated legal practices and multidisciplinary practices, and impose strict requirements on the management of the legal affairs within such firms. These include requiring incorporated legal practices to have a solicitor as a director, who would be responsible for ensuring compliance by the firm, its officers and employees with the regulations and professional obligations that normally apply to any legal practitioner. It also requires that an incorporated legal practice must take out professional indemnity insurance in addition to that taken out by the legal practitioners working within it. It applies the same provisions regarding legal fees, costs and trust accounts that are applied to individual legal practitioners. Furthermore, an incorporated legal practice would be vicariously liable for how its officers and employees managed clients' financial interests. This is to ensure that consumers' financial interests and funds are adequately protected. This legislation will prohibit disqualified legal practitioners from being involved in incorporated legal practices as directors, officers or employees, and it empowers the Legal Practice Board to audit the incorporated legal practices and makes provision for their investigation. These safeguards to cover provisions are in relation to the national practicing certificates, and foreign lawyers are also covered under this legislation. The main issue of concern the National Party would like to have recorded is that sufficient consumer safeguards are in place covering the operation of the incorporated legal practices and the multidisciplinary partnerships. We have had a briefing from the Law Society, which is of the view that this legislation will serve regional areas well, given the experience of other legal professions that country lawyers disproportionately take up multidisciplinary practices and incorporated structures, when they are available.

The National Party will be supporting this Bill. We take some interest in the amendments to be put forward by the Liberal Party. Once again we put on record our concerns about conflict of interest in the multidisciplinary partnerships. Many examples of these conflicts of interest have been played out, especially in the United States, but we are beginning to see them in Australia as well. National Party members are concerned that these were acknowledged by the Attorney General, and perhaps this legislation can ensure that this situation will not arise in Western Australia. In the United States, cross-selling of services has been a significant trend over the past few years. It is evident that there are pitfalls where there is insufficient regulation. Law firms will look to the

accounting sector as a logical partner for multidisciplinary practice. The most highly publicised breach of ethical standards due to conflict of interest in recent time has been the Enron case. Three companies working within Enron have been exposed as assisting the company in unethical behaviour. The first was its legal firm, the second the investment banker Merrill Lynch, and the third Andersen Worldwide. Each of these three firms, in an attempt to retain what was possibly their largest corporate client, refused to acknowledge the perilous financial position of Enron. Andersen Worldwide, an external auditor, did not exhibit sufficient objectivity. It has become evident that its technical audit team did raise concerns about the internal dealings and performance of Enron, but the engagement partner quashed this information. Enron was Andersen's second largest client, which places enormous pressure on the engagement partner to retain the client. As has been revealed in the media, this has occurred at huge financial cost. Merrill Lynch, the investment banker, of which Enron was a client, has been found to have had an overwhelming conflict of interest. On one hand, Merrill Lynch had Enron as a major investment banking client worth a significant amount to the firm, but on the other hand it was recommending the stock to investors without disclosing the true financial position of Enron. The message from the Enron experience should be heeded here, even though it refers to auditing. The public interest was neglected. Audits were being done as a client service, which denotes a dilution of the auditor's independence from the company. This is particularly evident where there are perverse compensation plans with the cross-selling of services.

National Party members, although supporting this legislation, wish to place on the record that they are concerned about conflict of interest, and would like the Attorney General, in his contribution to this debate, to address exactly how this conflict of interest can be avoided in Western Australia.

MR J.A. McGINTY (Fremantle - Attorney General) [8.49 pm]: I thank members opposite for their at times gracious support of this legislation. It is important. The legal practice legislation in this State dates back to the nineteenth century and is no longer appropriate for the regulation of the legal profession in this State. As such, this legislation constitutes a very significant reform that is welcomed by every legal body in Western Australia that I am aware of.

The Law Society has been campaigning hard for support for this legislation. The Chief Justice has had input into this legislation. To the best of my knowledge, the legislation contained nothing to which he objects and he warmly supports most of the contents. The Legal Practice Board has had significant input into the provisions contained in the legislation. The Standing Committee of Attorneys General has for many years been working on the concepts that underpin a number of provisions in this legislation, particularly those that were referred to in some detail by the member for Merredin in his address relating to corporate structures for legal practice.

I, and no doubt many other people, have received representations from many law firms urging support for the expeditious passage of this legislation. A number of issues of detail have been raised by members during the course of this debate. It is my intention that when we come to the consideration in detail, most probably on Thursday of this week, we will deal with each of those matters properly and give members an opportunity to fully develop them and me the chance to fully explain them.

I should place on record that this legislation is about providing a modern structure based on principles of efficiency for the conduct of the legal profession in Western Australia. Members would be aware of that general approach of having modernity and efficiency as underlying principles for much of what we are doing for law reform in this State, which are also guiding this piece of legislation. Quite significant reforms have been made to the practise of law by not only this legislation, but also other changes, most of which have come about as a result of the implementation of various recommendations from the Law Reform Commission in Western Australia.

Last year we abolished the antiquated practice of preliminary or committal hearings. A committee of experts is currently working on the reform of defamation law in Western Australia. It is all designed to make the operation of the law modern and efficient for substantive law as well as procedural issues. Later this year, the Government will be bringing into the Parliament a series of Bills to significantly reform the way in which the Magistrates Court operates. They were worked on under the previous Government, but we have also taken this opportunity to incorporate the multitude of recommendations from the Law Reform Commission to further update the work that has been done. Rather than having the antiquated procedures that currently beset work in the Magistrates Court, we will have a modern and hopefully efficient first level of justice in this State.

I can deal very briefly with the in-principle question that has been raised by members opposite in respect of the Crown, the Queen and the monarchy with regard to legal provisions in this State.

Ms S.E. Walker: How do people set about being articled?

Mr J.A. McGINTY: I thank the member for that gracious contribution!

The issue is the way in which we can address antiquated provisions contained in legislation. I will give an instance of the kind of example that bobs up frequently through the laws of this State. I simply raise this to highlight the absurdity of some of the provisions contained in the law at the moment. The instruction that a

police officer needs to issue to people who are engaging in a riot is set out in section 65 of the Criminal Code. This must be said out loud to rioting people as an order for dispersal. It is a condition that must be met in order to sustain a charge under the Criminal Code for people who have refused to disperse when there has been a riot. A riot was shown on television the other night. One can imagine the way in which this instruction would be received by such a crowd of rioters. The police officer is required by the Criminal Code to say these words -

> Our Sovereign Lady the Queen charges and commands all persons here assembled immediately to disperse themselves and peaceably depart to their habitations or to their lawful business, or they will be guilty of a crime, and will be liable to be imprisoned for 14 years. God save the Queen!

I think that would have struck fear into the hearts of those young hoons who were rioting in the streets of Perth. That is an example of the need to modernise these provisions. I am sure that a police officer who read that out would be as embarrassed as anyone else, but the law requires that to be done.

Mrs C.L. Edwardes: Do police officers actually do that?

Mr J.A. McGINTY: Yes; they are required to if they want to sustain a charge under that provision. It is absolutely necessary that that be done. I give that as an example.

Another example is a Law Reform Commission report that was tabled in the Parliament today. The report deals with the very important question of judicial review and recommends that we abolish the prerogative remedies and writs. That goes to a question of substance, and we will look very closely at it and see what we can do. It moves beyond striking out antiquated terminology such as that contained in section 65 of the Criminal Code, to which I just referred, and the other provisions mentioned in this legislation. Incidentally, the legislation has the support of the Chief Justice of Western Australia as it will modernise his court by striking out those obsolete pieces of terminology that refer to the Crown.

I explain briefly why that is the case. Many of the provisions contained in Western Australian law date to colonial days. The Commonwealth of Australia was formed with the enactment of the Commonwealth of Australia Constitution Act. Section 106 effectively provides that the States will derive their legal existence no longer from the Crown but from the creation of the Australian Commonwealth; in other words, legal existence will come from a legal document and no longer from the Crown. It is arguable that from that date some 103 years ago, the Crown ceased to have relevance, although we continued to use the terminology. I accept the historical reasons for that. Since that date, the legitimacy of Australian law, particularly Australian constitutional law, has been derived from an expression of the will of the Australian people as expressed in the Australian Constitution rather than, as had been the case prior to that, from the British Crown. Any further issues relating to the Crown and its relevance to the law in Western Australia were struck a further blow by the Australia Acts of the 1980s, which expressly ruled out the exercise by the English monarch of her royal powers other than when she was in Australia. The "Crown" is an antiquated term that no longer has legal meaning in the Australian context as a result of those two developments.

Having said that, the colonial hangovers remain and act as an impediment to an efficient legal system. What does it mean? What is this reference to the English Crown? There are all sorts of doubts when most people know that when we talk about the Crown, we are talking about the State of Western Australia. We are not achieving a republic through this legislation. We are not changing any specific powers that are to be exercised. Any doubt about that, particularly relating to proceedings in the court, can be alleviated by the proposed amendment to section 37(2) of the Supreme Court Act by clause 128(5) of the amendment and repeal Bill. It illustrates that we are doing away with antiquated terminology and not changing any substantive provisions; and setting the basis for a more -

Mrs C.L. Edwardes: What about the Crown Solicitor? He is not antiquated.

Mr J.A. McGINTY: I will accept the member's word for that! Of course he is not. He is in fact the state solicitor. It is interesting -

Mrs C.L. Edwardes: He is the Crown Solicitor.

Mr J.A. McGINTY: It is interesting that comparable changes have been made in the Commonwealth and a number of other States. His powers, duties and responsibilities will be unaffected by a name change from the Crown Solicitor to the state solicitor.

Mr C.J. Barnett: Would you continue to be a minister of the Crown?

Mr J.A. McGINTY: I hope one day to be a minister of the State.

Mrs C.L. Edwardes: He is the first law officer of the Crown.

Mr J.A. McGINTY: By this series of amendments we cannot and would not seek to achieve to remove the Queen from the Constitution. She is part of the Constitution until a referendum is won that decides otherwise.

We cannot legally remove her from the Constitution, notwithstanding the desire and disposition of some people to try to achieve that objective. This Bill will sweep away outdated and, today, meaningless terminology and replace it with more modern and acceptable terminology in exactly the same way that we sweep away outdated machinery and regulatory provisions and put new provisions in their place to aid the legal profession throughout the twenty-first century. I appreciate the point of view put by some members of the Opposition. However, the Opposition appears to oppose the substantive provisions of the Bill, which enjoy the support of all legal bodies without exception. That is the Opposition's prerogative, but we do not agree with it.

Question put and passed.

Bill read a second time.