

LEGAL PROFESSION AMENDMENT BILL 2016

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No. 1

Clause 5, page 2, after line 21 — To insert —

CPI means the all groups consumer price index for Perth published by the Australian Statistician referred to in the *Australian Bureau of Statistics Act 1975* (Commonwealth) section 5, or if the index is not published, another similar index nominated by the Minister;

No. 2

Clause 5, page 2, line 25 — To delete “calculated”.

No. 3

Clause 5, page 3, line 2 — To insert before “method” —
amount of the contribution or the

No. 4

Clause 5, page 3, after line 22 — To insert —

(5A) Unless agreement is obtained as mentioned in subsection (5)(a), neither regulations specifying an amount of contribution to be paid nor regulations specifying a method by which the amount of contribution is to be calculated in any year (the *calculation regulations*) can be amended so as to increase the amount required to be paid in any year to an amount that is greater than the amount that would have been payable in that year, if calculated under the calculation regulations and adjusted for any CPI increase plus 2.5% per annum, pro rata, from the date on which the calculation regulations were made or last amended (whichever is later) to the date of the proposed amendment.

Mrs L.M. HARVEY: I move —

That amendment 1 made by the Council be agreed to.

This amendment effectively adjusts clause 5. If we work at amendment 4, we are looking at putting a cap on the value of the increase of the fees to the law library at consumer price index plus 2.5 per cent per annum and then as a result of that, with the other amendments, insert a definition of CPI as in the consumer price index for Perth, published by the Australian Statistician referred to in the Australian Bureau of Statistics Act 1975, and deleting some words in order to have amendment 4 make sense.

Mr J.R. QUIGLEY: The opposition will vote with the government on this amendment, but before we take that vote I would just like to make a couple of brief comments. Mr Speaker will recall that when the Legal Profession Amendment Bill 2016 originally came before this chamber, I spoke on submissions made to the opposition, which were embraced by the opposition's submissions made by the Law Society of Western Australia and the Western Australian Bar Association. In the original bill it provided that the levy raised from the profession to go towards the new law library, which will essentially be the Department of the Attorney General library in the David Malcolm Justice Centre, was left to the Attorney General to strike—that is, to try to come to an agreement with the legal profession. If the legal profession could not agree to the amount that the Attorney General wanted to levy against the profession for the DOTAG library, then the Attorney General could just strike the rate himself and that was that. In other words, he could cost shift. There was the capacity for this Attorney General, or any future Attorney General, to cost shift the cost of the DOTAG library wholly on to the legal profession, when this DOTAG library was being used by all of the departments, the judiciary and others. This was against a scenario, or looked at in context of over decades and decades the legal profession's levy was going towards the Law Library at the Supreme Court, which was available to not only the legal profession, but also all members of the public.

The Labor Party then moved an amendment, Mr Speaker might recall, to the effect that if there could not be agreement between the profession and the Attorney General as to the amount of the levy, then the profession could give notice that it was withdrawing from the library. The profession felt that that was the only equitable way out. It was an extreme measure, but they were up against the wall. We moved this amendment, the government defeated that amendment but then as a result of it being moved in the upper house, the Attorney General came back to the negotiating table with the legal profession and then agreed upon a cap for the levy. I have received copies of correspondence between the Law Society of Western Australia and the

Western Australian Bar Association that they are both now happy with the negotiated outcome between the profession and the government.

The last thing that I raised, in moving the amendment, was access to the library itself. This was in the context of the original levy that the legal practitioners paid when taking out their annual practice certificate, which went to the establishment and maintenance of the Law Library at the Supreme Court of Western Australia. It has, in fact, been dismantled in its entirety and there are very few books that are going over to the DOTAG library. As I said in my previous speech, a lot of the volumes are being packed up for storage. The importance of my remarks in terms of access is this: there are many poor litigants who are self-represented because they cannot afford the ever-rising costs of legal fees. In fact, the Hon Chief Justice, during Law Week, delivered a lecture to community legal centres and observed the important role that they play because 22 per cent of Western Australians who intersect with the legal system are, on an income–asset test basis, eligible for legal aid. Only eight per cent of those people actually get legal assistance, so there is a whacking great 14 per cent of litigants —

Mr W.J. JOHNSTON: I would like to hear further from the member for Butler.

Mr J.R. QUIGLEY: It needs to go on the record, because the member for Carine comes from a very wealthy electorate that can afford lawyers, but there are a lot of us here who represent people who have not got the resources to seek a legal remedy. I am not talking about just criminal trials now; I am talking about seeking civil remedies. These people have not got the legal resource to engage legal representation. As the Chief Justice identified, of the 22 per cent of litigants before the courts who would qualify on an asset–income test for legal aid, because of the severe cuts to legal aid, only eight per cent get it, so there is a whacking great 14 per cent of people who would be eligible for legal aid who do not get it, and a lot of other people who cannot afford it in any event. When they appear before the courts, they need access to the texts and reports. Some of the reports are available online, I agree, but not the texts that explain the law. In most cases they are subscriptions that are expensive to access and now that this library is going into the David Malcolm Justice Centre, it will be the Department of the Attorney General library, and access will not be available to the public.

During the course of the negotiations the Department of the Attorney General indicated that it would grant additional funding to the Legal Aid Commission—in the order of \$250 000 was being discussed—so that the general public could access legal tomes at the Legal Aid Commission library, so that they would not be shut out of the process. We will be keeping a very close eye on the budget as it rolls forward on whether the government will hold good to that indication. It is not a promise yet, but there has to be access to the law that governs the people by the people. That has to be a principle: that those who are subject to the law should have access to it. The only access that they will have to these works will be through the Legal Aid Commission library.

The last point I wish to make, which I touched on in the earlier speech and I know the profession would like me to raise here in Parliament today, is access by the profession to the library. Under this scheme, in the first year, the profession is contributing over \$600 000, but it is the DOTAG library. To get access to the library, practitioners have to go up to the twenty-third floor and ask reception for access to the library. Then they have to be accompanied down to the library where the receptionist will use a magnetic key card to give the practitioner entry. I know you are a legal practitioner, Mr Speaker, and I know that this would have been anathema to you in your busy working life to have to go up to the twenty-third floor and ask for someone to come down to give you access to the library. I cannot imagine that this would be anything other than a massive disruption to the workings of the reception area of the Department of the Attorney General staff on the twenty-third floor. The legal profession came up with the suggestion that when they pay for their legal practice certificate, they can also pay a modest sum for the issue of a magnetic card that would carry all sorts of information as to the identity of the holder and whether they have paid their practice fee—the whole works. DOTAG responded that that would create security issues in the courts. The legal profession has asked me to point out to Parliament that this is fanciful given that in all the other jurisdictions in Australia where they have secure libraries and secure courts, members of the legal profession are issued with a card. The Law Society went so far as to contact the Law Society in the United Kingdom and were given assurances that in the United Kingdom, which includes Northern Ireland—where you would think that there would be live security issues—such cards are issued to the legal profession to gain access to the library. The Law Society intends to continue with ongoing representations to DOTAG in this regard, and we hope that, like the levy situation, those matters come to a successful conclusion.

Mr W.J. JOHNSTON: I am desperate to hear further from the member for Butler.

Mr J.R. QUIGLEY: I am just closing now.

The profession hopes that in these further negotiations about access to the library, the minister will come to see reason and say that if someone is secure enough to be on the bar roll and to have a practice certificate to be a legal practitioner, they are not going to present such a security threat inside a library for heaven's sake and they are allowed at the bar table in the courts. For convenience, that card should issue.

I have made all the remarks that I think the profession would make here this afternoon were it speaking on the floor of this august chamber. We thank the government for coming to this compromise, and I thank the government on behalf of the legal profession, both the Law Society and the Western Australian Bar Association. We do not want to see those two other matters slip from the radar screen—that is, some extra funding for the Legal Aid Commission so that its library can be made available to members of the public; and, secondly, a magnetic access card to the DOTAG library at the David Malcolm Justice Centre for members of the legal profession. I now conclude my remarks. The opposition supports the amendments contained in the message from the Council.

Mrs L.M. HARVEY: In response, the amendment on the notice paper is somewhat different from that which was prepared when we were at the consideration in detail stage of this legislation previously in this place, in that the original amendment proposed would have effectively given right of veto to the Law Society and the Western Australian Bar Association with any contribution increase. If agreement cannot be reached, this amendment allows the fallback position that the maximum increase that could be imposed is consumer price index plus 2.5 per cent per annum pro rata. That is a very sensible amendment so that there is a fallback position should an agreement on fee increases be unable to be reached between the government and the stakeholders through the advisory committee.

I refer to the issue that the member raised about those members of the community who may be self-representing litigants. Arrangements for those individuals are being negotiated with the Legal Aid Commission to give them access to the Legal Aid library. I understand that the member sees that as a second-best measure. However, those negotiations are taking place in good faith with both sides, and the government is hopeful that we will receive a sensible outcome.

I refer to access to the library. The idea to have an ID for the library issued to over 5 000 practitioners in Western Australia was proposed. Looking at that, we found it cost-prohibitive and only a small proportion of those practitioners use the library regularly because of a proliferation of online resources and case law and changes in the research environment. The security in the building is the way it is because the court is located there. As with a lot of buildings in the city and indeed around the world, anybody who wants to visit any of the DOTAG premises within the David Malcolm Justice Centre needs to go to the level 23 reception. If they want access to the law library, a librarian will come up, verify that the individual who wants access to the library is a member of the legal profession and is legally entitled to use the library. The librarian will then escort those people down to the library to use the resources there. The proposed operating hours of the new library are similar to those of the previous Supreme Court library. Public access was not allowed at the Supreme Court library and indeed that is not changing with the new location, except for self-represented litigants. We are trying to negotiate a different outcome for them at present.

The government thanks the opposition for its support of these amendments and indeed for supporting the swift passage of this legislation through both houses of Parliament. Indeed, that was required because we want this legislation to become law for the opening of the library in the David Malcolm Justice Centre on 1 July. I thank the member for Butler for his contribution.

Question put and passed; the Council's amendment agreed to.

Mrs L.M. HARVEY — by leave: I move —

That amendments 2 to 4 made by the Council be agreed to.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.