

LEGAL PROFESSION AMENDMENT BILL 2016

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Section 548A inserted —

Mr J.R. QUIGLEY: In relation to clause 5, I wish to move the amendments standing in my name on today's notice paper. I forecast in my speech that I would ask to move those en bloc, because they are all to exactly the same point and I do not know whether the government will accept me moving those three amendments together, although they are all to the one clause and are all to the only point of contention in this bill.

Mrs L.M. HARVEY: Madam Acting Speaker, I seek your advice on whether that would be appropriate in the circumstances.

The ACTING SPEAKER (Ms L.L. Baker): Yes, that is fine. We can pass that.

Mrs L.M. HARVEY: Yes, the government is happy with that.

Mr J.R. QUIGLEY — by leave: I formally move —

Page 3, line 3 — To insert after “calculated” —

and that the amount must be agreed to by the Legal Practice Board, the Law Society of Western Australia Inc and the Western Australian Bar Association

Page 3, line 14 — To delete “or” and insert —

and

Page 3, lines 21 and 22 — To delete —

and have regard to any submissions made by those bodies

I was taken somewhat by surprise by the minister's reply to the second reading, during which she indicated that none of the stakeholders had indicated that they were seeking any amendment like that moved by myself. I am surprised because I had raised this matter after the stakeholders—that is, the Law Society of Western Australia and the Western Australian Bar Association—had, as joint signatories, written a letter to the Attorney General. In their letter, they proposed an amendment—not in exactly the same words that I have used; I have used fewer words—to the government that expressly put —

5) Before an amendment to regulations mentioned in subsection ... is made, the Attorney General must —

They have struck out paragraph (a) in its entirety, and included —

... (a) notify the Legal Practice Board, the Law Society of Western Australia Inc and the Western Australian Bar Association of the proposed amendment at least 9 months before the beginning of the first financial year to which the proposed amendment is intended to apply; and

(b) thereafter obtain the written agreement to the proposed amendment by the Legal Practice Board, the Law Society of Western Australia Inc and the Western Australian Bar Association.

It continues —

The proposed reformulation of clause 548A(5) (set out above) enjoys the support of both the Western Australian Bar Association ... and of the Legal Practice Board. Notwithstanding the views of all three bodies, the Society notes with concern that the formulation of clause 548A(5) in the bill is in the manner set out at the commencement of this letter.

In the circumstances, the Law Society and WABA respectfully request that following its introduction the bill be referred to the appropriate standing committee to enable the Law Society, WABA and any other interested body or party who may wish to advance submissions as to the appropriate formulation of clause 548A(5) (or of any other provision in the bill) to do so.

The Society would also be happy to discuss its concerns in a meeting with either or both of you, if that might assist.

That letter was emailed to the Attorney General and to the Chair of Committees of the upper house, Hon Adele Farina. It is with the utmost surprise that I hear the minister say that there is no indication from stakeholders that they support this amendment or that they want the amendment that I have moved. It is actually in writing to the Attorney General. Why am I not surprised?

Mrs M.H. ROBERTS: I think the member for Butler is making some excellent points here and I would like to hear him substantiate his argument further.

Mr J.R. QUIGLEY: Why am I not surprised that the Minister for Police, in her reply to the second reading, said that there is no indication from stakeholders that they want this amendment? All three stakeholders—the Legal Practice Board, the Law Society of Western Australia and the Western Australian Bar Association—have set it out in writing. Why am I not surprised that the Minister for Police said that there has been no indication? I do not blame her at all. I anticipate that the Attorney General would have said, “Here’s another letter from the lawyers. Let’s bin this. Let’s delete it out of our inbox and, if a hard copy exists, let’s shred it. Let’s get rid of this idea. I want the sledgehammer. I do not want to go to the trouble of having to strike any agreement with this profession. I just want to say what it is.” So I am not surprised that the Minister for Police comes into this chamber and says that there has been no indication from any stakeholder that they want this amendment. It is quite the contrary. As soon as they saw the last iteration of this bill—I am told they met last Friday and then again on Monday—they sent off this letter urgently. They wrote it and struck out, in case there is any doubt, “Dear Attorney General” and put “Dear Michael”. The Minister for Police has no idea of the existence of this letter. Labor says that it respects the profession, the Legal Practice Board and the Western Australian Bar Association. The amendment that I bring forward to this chamber is the amendment that the Legal Practice Board, the Western Australian Bar Association and the Law Society wants. In fact, in discussions with the Legal Practice Board, its spokesperson said to me, “We want out of the library. We’ll only be collecting the fee during the issuance of the practice certificate.” They said to me expressly, “The amount to be levied is to be agreed between the Attorney General, the Western Australian Bar Association and the Law Society—we’re not really keen to be part of that.” It was the understanding of the board that there would be agreement between the profession and the Attorney General as to the amount.

In her second reading contribution, the minister said that there is a method by which this is to be calculated and that we will come to that after this. But there is no method. We are told that a method will be invented and we will come upon it after the passage of this bill. We will ask about that in consideration in detail. There is nothing further that I can add now.

I received thanks from both the Western Australian Bar Association and the Law Society after I indicated to them that I would move the amendment that they were seeking. Both wrote back thanking me and saying that my efforts were very much appreciated. One email states —

On behalf of the Law Society I echo the words ... of my colleague, Mr Howard SC.

It expressed appreciation that the Labor opposition is moving amendments that the Legal Practice Board, the Western Australian Bar Association and the Law Society are all seeking. So it is wrong for the minister to inform this chamber that these stakeholders do not support this amendment. The government can vote this amendment down by its numbers, but it is slapping down the legal profession.

Mrs L.M. HARVEY: The amendment that the member for Butler has on the notice paper proposes to amend proposed section 548A(3), which is basically the formulation of the initial regulations.

Dr A.D. Buti interjected.

Mrs L.M. HARVEY: No—the formulation of the initial regulations. In the letter that the member read out, the Law Society sought an amendment to proposed section 548A(5), so that, when the initial regulations are being amended, which is a recalculation of the fee at a future point in time, a requirement is inserted that the Attorney General must obtain written agreement to the proposed fee amendment from the Legal Practice Board, the Law Society and the Western Australian Bar Association. It wanted to delete the word “or” in proposed subsection (5)(a) and replace it with “and” and then, in proposed subsection (5)(b), delete every word after —

notify the Legal Practice Board, the Law Society of Western Australia Inc and the Western Australian Bar Association

The reason the government has rejected that—and the Attorney General, in my view, was quite right to do so—is that the users of the library, who have agreed as part of this process to partially contribute to the maintenance of the library with the contribution of a levy, would then be the very same people, as a result of the requested amendment, who would have a right of veto over any fee increase. That is obviously not appropriate. Generally speaking, most of the people who are going to have to pay the fee towards the maintenance of the library would reject a fee increase. We felt that it was appropriate for the Attorney General to be the final decision-maker on any fee amendment that may occur in the future, and we declined to entertain that right of veto for the Legal Practice Board, the Law Society and the Bar Association to limit the ability to increase fees in the future. That would have been an amendment to proposed section 548A(5), not proposed section 548A(3), which is the amendment that the member has on the notice paper.

I stand by the advice that I have received from the Attorney General, and on his behalf, that there has been no request from the proponents, as the member suggested, to amend proposed section 548A(3). We have no request. There was some debate about proposed section 548A(5). We have declined that request, and instead settled on a process under which, should there be any future amendment to the regulations set out under proposed section 548A(5), there will be a consultation process. It will be a seven-month process by consultation, or a nine-month process if consultation could not reach agreement, and the Attorney General will decide to set a fee. This basically then gives the proponents an additional two months to lobby for an alternative arrangement. That is what we have agreed on. Under proposed section 548A(3), the initial regulation, the collection method for those fees is still being developed and negotiated with the board. As I said in my response to the second reading debate, it has not yet been determined whether it will be a set dollar amount or a percentage of the cost of a legal practice certificate. We are looking for a simple collection method and ease of administration for the purposes of the management of the library.

Mr J.R. QUIGLEY: I asked for all the amendments to be moved at once. The minister might have overlooked the fact that the motion includes an amendment to proposed section 548A(5)—both proposed subsections (3) and (5). The minister was in simple error when she said that the letter from the stakeholders addresses proposed subsection (5), while my amendment addresses only proposed subsection (3). That is clearly not right. Line 14 on page 3, where the amendment seeks to delete the word “or” and insert the word “and”, is smack in the middle of proposed subsection (5). The next part of the motion, which refers to lines 21 and 22 on page 3 and proposes to delete the words “and have regard to any submissions made by those bodies”, is also in proposed subsection (5). That is all proposed subsection (5), which deals with the fee to be struck in subsequent years. Proposed subsection (5) begins —

Before an amendment to regulations mentioned in subsection (3) is made, the Attorney General must —

Proposed subsection (3) enables the Attorney General to specify the method by which the amount of the contribution is to be calculated and when the payment is due. For the first year’s contribution, that will be settled under proposed subsection (3). That is the start-up one. For subsequent years, when the fee is to be increased, with the effluxion of time, we go to proposed subsection (5), because that will amend the amount that has been calculated in proposed subsection (3). That is why the amendment I have proposed also addresses proposed subsection (3). It may have been an oversight by the society when it was hurriedly preparing this letter on Monday to send urgently to the Attorney General. I handed this letter to the chamber clerks and asked them to assist me in drawing up the amendment that would reflect this letter. As was pointed out to me by the chamber clerks, the fee for the first year is to be calculated pursuant to proposed subsection (3). That is why I have proposed the amendment for proposed subsection (3) to require the amount to be agreed to by the Legal Practice Board, the Law Society of Western Australia and the Western Australian Bar Association. That is for year one. For subsequent years, and the review of that amount, we go to proposed subsection (5). That is why it is all there.

My amendment to proposed subsection (3) encapsulates exactly the amendment that the Law Society of Western Australia, the WA Bar Association and the Legal Practice Board are seeking for proposed subsection (5), but, instead of restricting it to subsequent years, makes it inclusive of year one as well. The Labor opposition is doing no more to this bill than assisting and trying to facilitate the Legal Practice Board, the Law Society of Western Australia and the Western Australian Bar Association. This is not a matter of Labor ideology or any such thing. It is the facilitation of the legal profession in a very important matter. The minister says that this would give the legal profession a veto over the setting of the fees and that no-one wants to see fees rise. The profession has been doing this for over 70 years, and for that time there have been increases in the fees, and it has never quibbled. It has provided this service to not only the private practitioners, but also the judiciary.

Debate interrupted, pursuant to standing orders.

[Continued on page 2355.]