LEGAL PROFESSION AMENDMENT BILL 2016

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 5: Section 548A inserted —

Debate was interrupted after the amendments moved by Mr J.R. Quigley had been partly considered.

Mr J.R. QUIGLEY: I want to pick up the thread of where we were before the luncheon adjournment. The amendments to clause 5, which we are dealing with en bloc, exactly replicate the request by the Legal Practice Board, the Law Society of Western Australia and the Western Australian Bar Association. The minister said in her contribution that to allow these amendments would give the legal profession the right of veto over any increase. That is a mischaracterisation. As I have pointed out, for the last 70 years, the profession has regularly, if not on an annual basis, increased the fees for the library contribution to enable the library to keep up to date and to expand as it has. Therefore, the allegation that as a result of these amendments that I have brought to this chamber and to this Parliament, at the urging of the Law Society of Western Australia and the Western Australian Bar Association, and with the concurrence of the board, the profession would have the right of veto over any increase is preposterous, given the history of this matter. But as I have already pointed out, in the legislation there is the power to regulate access to the library. If the profession did not arrive at a comfortable or reasonable agreement with the government on the law library contribution amount, the door would be closed. It would say that if someone does not pay for access to the library, they do not get into the library. As I said at the outset of this speech, the composition of the boards of both the Law Society of Western Australia and the Western Australian Bar Association—the composition of their executives—is by democratic vote, and if the executive of either of those bodies did not come to a reasonable agreement and the members were locked out of the library, I am sure that the executive would be replaced, no question. This is a responsible profession that has been performing a public good in maintaining this facility for decades.

Proposed section 548A(3), which we are dealing with, states that the regulations must specify a method by which the amount of the contribution is to be calculated but, as previously mentioned, that is all the subject of the regulation that we are told is not even in its drafting stage, yet the minister said in the chamber that a method had been worked out and it is to be sorted through the working group with the concurrence of the society, the association and the board. That is news to everyone, because no-one can tell us what that method is. We will get to that during consideration in detail.

Mr C.J. TALLENTIRE: I would like to hear a bit more from the member, please.

The SPEAKER: We would love to hear a bit more, member for Butler.

Mr J.R. QUIGLEY: I am sure you would, Mr Speaker, and I do not say that with any sense of cynicism, because you are a practitioner yourself. You could confirm, although I will not invite you to do so, that many of the profession do not access the law library. They have their own resources in their own legal practices and, beyond that, they use electronic searches for loose-leaf texts and everything.

The profession is very worried about cost shifting in a regime in which the Attorney General can just impose things. What do the words mean? That the Attorney General can determine it. Proposed section 548A(5)(b) states —

> … the proposed amendment is intended to apply and have regard to any submissions made by those bodies.

The Attorney General might have regard to them; he can regard them and put them in the bin—the same thing that happened with the letter of 4 April when the society and the association wrote to the Attorney General urging these amendments. But today the minister said that these stakeholders had never suggested any of these amendments and did not support them. No, because the minister, the Deputy Premier, did not know about it. The Attorney General would have received that letter and presumably kept it to himself or binned it. I am not suggesting that the minister in any way misled the chamber, but what has been put before the chamber is what those bodies want, and they do not want this selfishly. They have worked up this resource for decades for the public good—for the profession's and the public's good. As I said, they are now on the brink of watching this library be boxed up and put into vaults.

The order of business in this chamber is that when we get to the relevant clause, we move the amendments. Later in consideration in detail, if this amendment is lost or even if it is passed, we will come to the method by which the amount of contribution is to be calculated. For example, is a notional rent to be charged for the floor space of this library or is it to be factored in the value of the asset that the government takes? Under clause 7, in proposed section 596B, there is reference to the library's assets. Bear in mind, Mr Speaker, that these assets were

purchased with contributions that you, I and every other legal practitioner made. These assets, which immediately before the commencement date are vested in the board, now are to be vested in the state. Therefore, in working out the method of calculating the amount to be paid, will an allowance, discount or consideration for the value of the asset being brought to the books of the state be factored in, even though the state wants to put most of the assets in a box in a vault?

For those reasons, the opposition supports the Western Australian Bar Association and the Law Society of Western Australia in urging this chamber to adopt the amendments I have moved, which reflect exactly what stakeholders understood was coming from the working group, but which did not eventuate.

Mrs L.M. HARVEY: I would like to address a couple of the things that the member for Butler said. As I have said previously, the amendment he has moved to proposed section 548A(3) was never requested by the stakeholders. I concede that the other two amendments were requests that the stakeholders had put to government in December 2015 as part of the consultation process and again more recently. We have rejected those for a number of reasons, and I will outline them. First of all, the Legal Practice Board, which had been running the law library at the Supreme Court, said it was not interested in continuing to run that library. A large part of the decision the government made in refusing to put a right of veto onto the stakeholders with respect to any fee increases around running the library was in the context of the declining contribution to the law library by the Legal Practice Board over time. In 2011, the Legal Practice Board contribution to the law library was $904 455. That declined over the years to a low point in 2013 of $427 756, and most recently in 2015 the contribution was $565 616. Part of the reason for this merger was that with the Legal Practice Board being less interested in running the library and its declining contribution to the library, which was to do with the financial pressures the board was facing, it was seen as a good opportunity to amalgamate the two libraries into one facility in one location to get some economies of scale and to ensure the sustainable future of the law library, which is such an important resource for our sector.

Currently, the law library at the Supreme Court does not pay rent. That facility is provided by the government free of charge; there is no rental cost factored into that. This is not going to change because the law library combined facility will be in government-owned and operated buildings. The government believes this model provides a sustainable future for the combined law library, through economies of scale and reducing duplication. All stakeholders have been engaged in the process. They have been given reassurance not only in debate in this chamber but also in the legislation, which says they will be consulted on any proposals to change the regulations in the future. It is a good model. The government has made a decision on this. Effectively adopting the opposition's amendments would have the effect of the representative groups being able to deny any increase to funding. The government cannot anticipate what the changing requirements of that law library would be in the future and to allow right of veto to the users, who are only paying a proportion of the cost of the law library, does not make good sense. A consultation process is set out in the legislation. The Attorney General, as occurs with every other minister, will have to sign off on any prospective fee increases.

Ms M.M. Quirk: It is a tax, not a fee!

Mrs L.M. HARVEY: The member for Girrawheen can ask her question in a minute.

The consultation process will take seven months or, should they be unable to reach some agreement, there is a nine-month notification process of any fee increase to allow the different groups to lobby for an alternative arrangement. We think we have the tension right and we will not accept the amendments proposed by the member for Butler.

Ms M.M. QUIRK: I accept it is the member for Butler's amendment, but I am mindful to rise because I want to know what is the minister's understanding of a fee and a tax.

Mrs L.M. HARVEY: It is not a fee for service. That is what the levy bill is all about. Under clause 5(6), that levy has to be paid—that is, the contribution into the law library fund, which will be established under the Financial Management Act 2006. The funds that are raised through the levy can be used only for the purposes of the law library. There is no opportunity for government to cost shift and take that fund for any other purpose. It is prescribed by legislation that the levy that is collected has to be paid into the law library fund and that that fund will be used for the purposes of maintaining a library.

Ms M.M. QUIRK: The minister has not answered my question. Does the minister appreciate that a levy or fee relates to cost recovery? This is, in fact, a tax because under the legislation —

Mrs L.M. Harvey interjected.

Ms M.M. QUIRK: I have not finished my question. I was waiting for the minister to listen. The legislation empowers the imposition of more than cost recovery and, therefore, to use the word "fee" is misleading. I want the minister's comments on that.

Mrs L.M. HARVEY: The bill defines it as a levy, which is a contribution. Some would call it a tax, but it is a levy for a specific purpose, which is the law library fund and it is for the maintenance of the library.

Ms M.M. QUIRK: The minister does not seem to understand that it is not the purpose for which the money is collected; it is the quantum of money. When this legislation does not define any quantum of money and it permits more than cost recovery, it is a tax and not a fee or a levy.

Mrs L.M. HARVEY: My advice is that a tax is a compulsory exaction by a public authority for public purposes enforceable by law, and that is the reason we have this levy bill.

Mr J.R. QUIGLEY: It is time to vote on the amendment, but I would like to respond to the minister's last assertions that the board found itself under financial pressures and approached the government.

Mrs L.M. Harvey: I did not say that.

Mr J.R. QUIGLEY: I thought the minister said it was under financial pressures.

Mrs L.M. Harvey: I said that there was declining contribution to the library from the Legal Practice Board, which they attributed to financial pressures —

Mr J.R. QUIGLEY: Exactly!

Mrs L.M. Harvey: — that were not linked to it. I did not say they approached the government. In 2012, when they were looking at the establishment of the new court precinct, it was determined this might be an opportunity to amalgamate the two libraries, and at that point in 2012, the Legal Practice Board expressed that it wasn't interested in running the law library in the Supreme Court into the future.

Mr J.R. QUIGLEY: I wish to address that part of the minister's remarks in which she said that the board was under financial pressure. The board was under financial pressure because of other matters, not because of the library. Of course, I have already averred to one of those other matters in that the board suddenly got sprung upon it a commercial rent although it was a statutory authority and the government had for decades upon decades given this statutory authority access to accommodation. Then, the lease was up, and it had to go to new premises and fit that out at huge cost. The lease is expiring at the old Kings Hotel building and the board had been told it had to pay rent. When it shifts, it has to acquire premises and fit it out. Of course it is under financial pressure. It is because this government has put it under extra financial pressure.

I refer to the minister's assertion that this library is very important for this sector and the lawyers should be paying for it. The government is setting up a scheme with an uncapped ceiling whereby lawyers who do not use the library or will never use the library are required to pay for it. That is not only a taxation, which the member for Girrawheen has referred to, it is requiring members of the profession to subsidise other sectors. That is why the society and the association have asked me to bring forward these amendments. I have done so. I have advocated the utility of these amendments and why they should be adopted by this chamber. I hear what the minister is saying. It is time to bring it to the vote. I have nothing further to advance.

Mrs L.M. HARVEY: To respond to the member for Butler, the Legal Practice Board's issue with rent is completely separate from the law library. The law library at the Supreme Court was located in an annexe to the Supreme Court and had nothing to do with the rental negotiations with the Legal Practice Board; they are two separate issues. However, as a result of the financial pressures of the Legal Practice Board, whatever they were attributable to —

Mr J.R. Quigley: Rent!

Mrs L.M. HARVEY: That is what the member is asserting; I do not know that. There were declining contributions to the law library, and at that time, in 2012, the State Solicitor was advised that the Legal Practice Board did not wish to run the law library at the Supreme Court any more, and this was seen as an opportunity to have a new amalgamated library at the new justice complex at the old Treasury building, which is what this legislation will enable.

Division

Amendments put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the noes, with the following result —

Ayes (16)

Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Mr P.C. Tinley
Ms J. Farrer	Mr M. McGowan	Mrs M.H. Roberts	Mr P.B. Watson
Mr W.J. Johnston	Mr P. Papalia	Ms R. Saffioti	Mr B.S. Wyatt
Mr D.J. Kelly	Mr J.R. Quigley	Mr C.J. Tallentire	Ms S.F. McGurk *(Teller)*

Noes (32)

Mr P. Abetz	Mr J.M. Francis	Mr S.K. L'Estrange	Dr M.D. Nahan
Mr F.A. Alban	Mrs G.J. Godfrey	Mr R.S. Love	Mr D.C. Nalder
Mr I.C. Blayney	Dr K.D. Hames	Mr W.R. Marmion	Mr J. Norberger
Mr I.M. Britza	Mrs L.M. Harvey	Mr J.E. McGrath	Mr D.T. Redman
Mr V.A. Catania	Mr C.D. Hatton	Ms L. Mettam	Mr A.J. Simpson
Mr M.J. Cowper	Mr A.P. Jacob	Mr P.T. Miles	Mr M.H. Taylor
Ms M.J. Davies	Dr G.G. Jacobs	Ms A.R. Mitchell	Mr T.K. Waldron
Ms W.M. Duncan	Mr R.F. Johnson	Mr N.W. Morton	Mr A. Krsticevic *(Teller)*

Pairs

Mr R.H. Cook	Mr B.J. Grylls
Mr D.A. Templeman	Mr J.H.D. Day
Ms J.M. Freeman	Ms E. Evangel
Ms L.L. Baker	Mr G.M. Castrilli

Amendments thus negatived.

Mr J.R. QUIGLEY: Can I take the minister to proposed section 548A(3) that we so spectacularly unsuccessfully tried to amend and ask about the method by which the amount of the contribution is to be calculated. The minister mentioned that the method was the subject of discussions with the stakeholders, being the Legal Practice Board, the Law Society of Western Australia, the Western Australian Bar Association, the Department of the Attorney General and the courts. Can the minister tell us the method by which the amount will be calculated?

Mrs L.M. HARVEY: As I said previously, the collection development is still being negotiated through the board and with the stakeholders. Whether it will be a dollar amount per practice certificate or a percentage value of the practice certificate is under discussion. We are looking for ease of administration and a simple collection method so that, administratively, this is a simple procedure for the Legal Practice Board to undertake. It is looking at a levy to cover up to one-third of the cost of running the library, and the government is going to cover the rest.

Mr J.R. QUIGLEY: When the minister says the board is looking at that, is the one-third levy government policy?

Mrs L.M. HARVEY: The regulations have not been drafted as yet, member for Butler, but the stakeholder reference group will be engaged in this once the legislation is passed. Obviously, we cannot draft the regulations until this legislation is through, but the proportion of the cost of running the library that the levy would cover is currently under discussion. The discussions concern that it will be between a quarter to a third of the cost, with government covering the rest. The collection development, as I said, is still under discussion with all those stakeholders.

Mr J.R. Quigley: The collection?

Mrs L.M. HARVEY: Whether the collection development will be a percentage of the practice certificate, a dollar amount on the practice certificate —

Mr J.R. Quigley: Or a surcharge?

Mrs L.M. HARVEY: It is the subject of consultation with the stakeholder groups at the moment. I am not sure what the member is asking.

Mr J.R. QUIGLEY: I want to know the method because the minister indicated that the government's policy is to set the amount at somewhere between a quarter and a third of the cost of running the library. Did I understand the minister correctly?

Mrs L.M. HARVEY: That is subject to consultation at present and it will be subject to further consultation once the legislation has been through. I am advised that the levy to cover between a quarter and a third of the cost of running the library is under discussion. As I said previously, the collection method is still being determined. The Legal Practice Board obviously wants a very simple administrative structure for the collection, so if a percentage of the practice certificate is an easier way and an easier form of administration, that is what we will go with. If a set dollar amount is easier, that is what will be finalised through the regulations. There has been robust consultation on this and I believe that will continue into the future. I think it has been a very cooperative process up until now to get the legislation to the point where we can look at operating the amalgamated library.

Mr J.R. QUIGLEY: I pick up on the minister's comment that the consultation process has enjoyed cooperation by all the stakeholders, which is very much what I said during my speeches on the amendments.

Mrs L.M. Harvey: There has been a steering group since 2012, so it has been in operation for three years.

Mr J.R. QUIGLEY: That is right, and ongoing cooperation.

Mrs L.M. Harvey: And a large number of stakeholders are involved in that.

Mr J.R. QUIGLEY: That is right, and it is changing, too, because the executives change. Lots of lawyers are involved. They have been totally cooperative the whole time. That is why we were disappointed that the government saw the amendment as some sort of wedge to a right of veto. However, if I understand correctly that it is part of the practising certificate fee, it does not matter whether a practitioner ever uses or goes into the library. It could be a practitioner, of whom there are many, in the regions. A practitioner in Geraldton or Broome who never physically goes to the library will still be required to make a contribution through their practising certificate. What I am getting at is that it is a compulsory fee.

Ms M.M. Quirk: It is actually a tax.

Mr J.R. QUIGLEY: It is a compulsory tax and it does not matter where one lives or whether they ever go into the library, they will still be taxed to fund it. Is that the situation?

Mrs L.M. HARVEY: I think we have been pretty clear that we have a levy bill before us.

Ms M.M. Quirk: It's a tax.

Mrs L.M. HARVEY: The member for Girrawheen can call it a levy or a tax.

Ms M.M. Quirk: There is a legal difference, minister.

The ACTING SPEAKER: Member!

Mrs L.M. HARVEY: Can I finish my sentence? Why does the member not just stand and ask a question instead of interjecting on me?

Mr P.B. Watson: Happiness is.

The ACTING SPEAKER: Member for Albany!

Mr P.B. Watson: She's not one of the happy clappers.

Mrs L.M. HARVEY: It is lovely to have a relevant interjection!

The purpose of the levy collection is for a contribution from the Legal Practice Board to the maintenance of the law library. This is irrespective of other fees and charges that may be incurred as a result of user fees or individual fees for services that practitioners may require; for example, people who use those services for photocopying and those sorts of things would pay a fee. This is an appropriate contribution from the Legal Practice Board for the maintenance of an amalgamated law library, which is available for any of the legal practitioners in the state to use. Regardless of whether they use it, the facility will be there and the majority of it will be funded by the state government, not the Legal Practice Board. The Legal Practice Board is being asked, via this levy bill, to make a contribution towards the maintenance of a library that is predominantly for the use of its members.

Ms M.M. QUIRK: The minister mentioned to my colleague that the aim was to impose a cost of between one-third and one-quarter of the running costs of the library. Is that correct? Would it be true to say that an amount that the government wants to divest itself of spending has been arrived at, and it is now a question of calculating backwards to see what appropriate percentage or quantum of the practising certificate should be taken by way of a tax?

Mrs L.M. HARVEY: The proposed levy will cover the additional cost to DOTAG of providing this service to all legal practitioners and any additional resources that may be required by the law library to enhance the collection.

Ms M.M. QUIRK: The minister says that DOTAG will pay an additional cost to run the library. Is she contending that that is how the tax is being calculated?

Mrs L.M. HARVEY: I believe that the method that will be specified by the regulations was raised in consultation with the Law Society of WA, the Western Australian Bar Association and the Legal Practice Board. The principles for setting the fee have not been set in stone but conceptually it has been agreed that the contribution or levy will cover the marginal cost of the additional library resources—in particular, librarians, who will be required to service the profession—as well as whatever additional contribution may be required to enhance the collection.

Ms M.M. QUIRK: The government is merging two libraries into one. At the briefing, I was a bit confused about how that would be done. I can understand the initial stages of moving, storage and assets surplus to requirements, but ultimately merging two libraries into one should bring about some cost savings.

Mrs L.M. HARVEY: Although we expect that there will be some economies of scale and some efficiencies in amalgamating the two libraries, as a result of this merged facility, DOTAG will also provide a range of services to a large number of practitioners who previously did not have access to those services. It is looking at enhancing the opportunities for legal practitioners by expanding the collection available to them to use.

Ms M.M. QUIRK: The minister is saying that additional resources will be available to practitioners than were available previously, so therefore will this cost more money?

Mrs L.M. HARVEY: As a result of the merged facility, the legal practitioners who previously had access to the Legal Practice Board library of the Supreme Court will now also have access to the DOTAG library facility and resources. DOTAG, by virtue of more people accessing its collection, will have some additional costs as a result of that. However, there will be an opportunity for the legal practitioners in the state to access a larger collection and a better resource.

Ms M.M. QUIRK: That is offset by the Legal Practice Board library closing. Surely there will be an offset. If two libraries are being merged into one, even if there is a larger collection, surely savings will be made.

Mrs L.M. HARVEY: Not necessarily, because not all legal practitioners had access to the DOTAG library; they had access to the Supreme Court library. The Supreme Court library resources are being amalgamated into the DOTAG library resources but at present it is difficult to know what the additional costs will be because we are not yet sure of the efficiencies that can be gained by merging administrative structures and those sorts of things. It is looking as though the quantum of the additional cost of the new library will be somewhere between $850 000 a year up to about $900 000 a year.

Ms M.M. QUIRK: Can the minister advise what the current cost of a legal practising certificate is?

Mrs L.M. Harvey: No, member; I would have to take that on notice.

Ms M.M. QUIRK: Is the minister aware of whether there is any discount to government lawyers for a legal practising certificate?

Mrs L.M. HARVEY: I am advised that government lawyers do not need a practising certificate.

Ms M.M. QUIRK: Private practitioners will be contributing to a library that principally was used by government lawyers who did not pay for a practising certificate at all. Is that correct?

Mrs L.M. HARVEY: Those legal practitioners in private practice will now have access to an expanded collection that they previously did not have access to.

Ms M.M. QUIRK: There are no regulations and there is no ballpark figure as to what will be charged. The minister has told us that it will be a percentage between one-third and one-quarter, so that is 25 per cent and 33 per cent, but we do not know the percentage of what, because we do not know the cost of a practising certificate. Is that correct?

Mrs L.M. HARVEY: No, that is not correct. In arriving at a method for calculating and collecting the fee, the steering committee is engaged in a consultation process about what that method will be. Whether that needs to be a percentage of the cost of a practising certificate or an additional cost on a practising certificate is yet to be determined. The actual value of a practising certificate is not necessarily relevant in these circumstances. What needs to be determined is what the collection development will be to ensure that the levy covers about one-quarter to one-third of the cost of running the library. There is a consultation process. Obviously if it is determined that it is a percentage of a practising certificate, the value of a practising certificate is relevant when calculating the formula. At present the value of a practising certificate is not necessarily relevant to the total levy that will be collected as a result of the legislation. I am not quite sure what the member for Girrawheen is getting at.

Ms M.M. QUIRK: In fact, the minister has been helpful, because she clarified the situation. The Legal Practice Board of Western Australia currently takes money out of the practising certificate fee which, for members' information, is about $1 250 or something like that.

Mrs L.M. Harvey: I am advised it is about 10 per cent.

Ms M.M. QUIRK: Okay, that is good.

The value taken is something like $125 or $150—just to be generous—and the minister is talking about between 25 per cent and 33 per cent which, on my interpretation, is about $300 to $400; 25 per cent would be $300 and 33 per cent would be $400. The minister is now telling us that it might be worked out by way of a percentage but that is still being discussed with stakeholders. It could be on top of the $1 250. It might not, as is currently

happening, come out of the existing $1 250. It might be in addition to the cost of the practising certificate. It might increase the cost of a practising certificate.

Mrs L.M. HARVEY: At the moment the percentage of practising certificates that is currently going to the upkeep of the existing library is about 10 per cent. What we are proposing with the new library is that the levy covers between one-quarter and one-third of the cost of running the library. They are different things.

Ms M.M. QUIRK: I accept that. In that case, can the minister tell me what she expects the percentage to be in general terms and whether that could effectively be out of the existing practising certificate amount that is collected or whether it might be a separate hypothecated amount that is added to the current cost of the certificate?

Mrs L.M. Harvey: As I said, the method has not been determined.

Ms M.M. QUIRK: But there is the potential it could be an add-on to the existing practising certificate.

Mrs L.M. HARVEY: I cannot speculate —

Ms M.M. Quirk: You did earlier.

Mrs L.M. HARVEY: I cannot speculate on that because the collection development is still being negotiated with the board and we have not arrived at what the collection method will be. The consultation process with the steering committee over the last three years has been robust and my expectation is that the consultation will yield a collection development method that is acceptable to the Legal Practitioners Board, the Law Society, the Western Australian Bar Association and other people involved in this process.

Ms M.M. QUIRK: I accept that it is still subject to consultation. All I want to clarify now is that everything is on the table. It might be a percentage of the existing practising certificate charge or an add-on to the practising certificate charge.

Mrs L.M. HARVEY: As I said, it has not been decided; it is subject to negotiation.

Ms M.M. QUIRK: Minister, I am asking whether both options are being considered by the committee.

Mrs L.M. HARVEY: I will say this again. The collection development is still being negotiated by the board and what is being considered is a set dollar amount for a practising certificate or a percentage of the practising certificate. It has not been determined, bearing in mind that the Legal Practice Board has been making a contribution to the library so that it does form a part at present of the legal practising certificate cost. It has not been determined. It is still being negotiated. I cannot clarify whether it will be a dollar amount of a practising certificate or a percentage of the practising certificate or what that method of collection will be, because those negotiations have not been finalised and are subject to the legislation passing and to the steering committee turning its mind to the regulations.

Ms M.M. QUIRK: I accept that there is no concluded view. But the definition of "negotiations" is that things are being discussed. Various matters have been, as the minister said, covered in robust discussion. I am asking the minister what is forming the subject of that robust discussion. Is it the option that it be a percentage of the existing practising certificate? Is that option being discussed? Is it option 2, that a set amount is placed on the cost of the practising certificate—in other words, an amount on top of the practising certificate?

Mrs L.M. Harvey: As I have said, that has not been determined.

Ms M.M. QUIRK: I am not asking the minister what has been determined. I am asking what options are being canvassed in these robust discussions.

Mrs L.M. Harvey: I have already answered that.

Mr J.R. QUIGLEY: The bottom line—do I understand it correctly?—is that the issuance of a practising certificate will entail the compulsory payment by a practitioner to the library fund unless that practitioner works for the state of Western Australia.

Mrs L.M. HARVEY: The contribution to the state will be made by the Legal Practice Board of Western Australia. The Legal Practice Board will collect the levy from practitioners. It is not the individual practitioners who pay directly into the law library fund; rather, the Legal Practice Board will collect the levy. The Legal Practice Board will then make a make contribution to the law library fund.

Mr J.R. QUIGLEY: Yes, I know, but it is not Legal Practice Board money, because it is only the collection agency. The sum is being set by the government after consultation and the Legal Practice Board will operate as a collection agency. It is not its funds; it is just putting in what it collects from practitioners. Is that correct? I do not want the minister to get up and down. The minister agrees with that. The proposition I am putting is that this means, does it not, that a practitioner who never uses the library or never has the need to use the library—there

are hundreds of those—will nonetheless be required to pay the levy and subsidise the library even though they never step foot in the library, whereas practitioners in government employment who do not pay for a practising certificate will have unlimited access?

Mrs L.M. HARVEY: The state will be taking over the running of the library that was previously run by the Legal Practice Board. The Legal Practice Board used to make a contribution towards the maintenance and running of the library via a collection method through its legal practice certificates. What is changing is that that library will be amalgamated with the Department of the Attorney General's library in a new facility, so each of those practitioners will now have access to the entire Department of the Attorney General's library. The method of collection of the Legal Practice Board, with respect to its contribution to the maintenance of this amalgamated library, is yet to be determined. That will be set in regulations in consultation with the Legal Practice Board. The board will collect that contribution in whatever format it determines will provide ease of administration and is the simplest method of collection. It will then make a contribution, on behalf of its registered practitioners, to the law library fund for the partial cost of maintaining the new amalgamated library.

Mr J.R. QUIGLEY: In relation to the method, the minister said that will be in consultation with the profession and will be reduced to regulation. The profession's concern is that there will not be a chance for the wider profession to participate in that. We have explained to the profession, and most of the profession knows anyway, that with regulation it is tabled and then gazetted. I do not know if the minister's experience is different, but in my experience I have not seen a motion of disallowance in this chamber on any regulations —

Mrs L.M. Harvey interjected.

Mr J.R. QUIGLEY: Yes, but it is not a common occurrence that those regulations are debated, and therefore I ask: would the government consider, once having drafted the regulations, circulating them amongst the profession for a 28-day period—which is reasonable—so that there can be feedback? What we have here is an urgent letter, from Monday of this week, going to the Attorney General because what came out in the final iteration of the bill was not what the profession understood would be the final position. Whilst there will be some consultation with committees, will the government consider publishing these to the Law Society of Western Australia Inc and the Western Australian Bar Association, 28 days before it is intended to table them, so that the profession—which has been so cooperative throughout this process, by the minister's own acknowledgement and which has, over many years, through its own fees, built up this library—can have an opportunity to comment on the method before it is tabled? That seems reasonable.

Mrs L.M. HARVEY: I draw the member's attention to proposed section 548A(5), which refers to engagement with the Legal Practice Board, the Law Society of Western Australia Inc and the Western Australian Bar Association. They are considered to be the representative bodies for legal practitioners, so the government, rather than dealing with every lawyer in the state represented by those three bodies, is dealing with those organisations as part of the stakeholder reference group and others as part of the consultation process in drafting the regulation that will determine how the fees are to be collected. I put it to the member that it is incumbent upon those representative bodies to communicate with their members with regard to how this regulation is being drafted and the collection method that is being developed. That is why we have a stakeholder reference group—so that we have the representative bodies for legal practitioners in this state working with the government on ensuring a smooth transition to the new library and the smooth operation of the new collection method for the maintenance of it.

Mr J.R. QUIGLEY: There are three stakeholder groups mentioned in proposed section 548A(5), and I would just like to point out that the Legal Practice Board does not represent practitioners; it regulates practitioners. It does not make representations on behalf of practitioners. My further concern is that, although it might be a surprise to some in this chamber, not all lawyers are members of the Law Society Western Australia Inc, because they choose not to be. As a member of Parliament, I am not a member of the Law Society and have not been for some years, although I was for two decades before entering Parliament, but I am not just talking about Parliament. A lot of lawyers cannot afford the fee or choose not to pay it, or their firm will not pay, and if the firm does not pay—I am talking about small firms—those practitioners do not join. There is another situation in which national firms are reluctant to pay for their practitioners to join the Law Society, so they fall out through the cracks. Secondly, not all barristers are members of the Western Australian Bar Association. It is not a prerequisite of being a barrister to join the WABA. All that is required to be a barrister is for a person who is suitably qualified to attend before the full court and announce their intention to renounce the practices of a solicitor and henceforth to practise only as a barrister. The short point I make is that those bodies are not representative of all practitioners. My concern is for those practitioners who are not covered by those associations and who might never use the library. I do not want to say who, but I spoke only today to a very senior practitioner, a Senior Counsel, and I said, "How often do you use the library?" They said, "I can't think of the last time", because they have the Bar Association library and their own library. What is happening is that

people who are never going to use the resource are being required to pay for the resource, and those same people, or numbers of them, will never have a say in the method by which this impost is going to be levied.

Mrs L.M. HARVEY: It is no different from the current situation. The current situation is that the board makes a contribution to the maintenance of the existing law library at the Supreme Court and it collects that contribution through a levy on the practising certificate. That will not change. The Legal Practice Board currently makes that contribution and will continue to make that contribution. What will change is the availability of resources to the people who have been making contributions, through the practising certificate, towards the law library. They will have expanded resources at their disposal. The existing system is basically being transposed into the new amalgamated library system and lawyers who pay charges for a practising certificate will continue to pay those charges, regardless of whether they access the library or not. That has been the case for the many, many years that the existing library, run by the Legal Practice Board, has been in operation.

Mr J.R. QUIGLEY: I appreciate that; thank you, minister. However, the stark difference is that the size of the library and the sorts of things it subscribes to—I am thinking of electronics; the thousands and thousands of dollars' subscriptions—will no longer be in the hands of the lawyers. The size of the library and the expenses that it engages itself in—that is, the subscriptions to services—will no longer be in the hands of the legal profession but will be decided by the government.

The second stark difference is that the current system is underpinned by a democratic process. If the members of the profession do not like the library facility that the board is setting up for them, they can vote those people off the board. In November or December when the little voting envelope comes around, they can vote those people off the board because they are spending too much on the library or they are not getting the right gear for the library. It is a democracy. As I have stated, under this bill, the minister can impose a cost on practitioners regardless of whether they ever set foot in the library. If it was user-pays, it would be a little bit different. People could buy a library card with a magnetic strip on it that would give them access to the library and hang it around their neck as we do in this Parliament, and as visitors do, with the ID card. That library card might cost them $2 000 or $3 000 a year. It might cost a lot more than the practising certificate. However, at least they would be given a choice about whether they want to access the resource. The underlying concern of the profession is not with the minister—I assure the minister that it is not with her. The concern is that over time, when this government has come and gone, and maybe the next government has come and gone, this will have set up a structure whereby the government can cost-shift the library, which is used heavily by the government sector, to the legal profession simply by increasing, as the member for Girrawheen said, the library tax. I do not think I can say anything more on this particular aspect.

Mrs L.M. HARVEY: Member, at present stakeholders have input through the Legal Practice Board's library consultative committee. That has representatives from the Law Society of Western Australia and the Western Australian Bar Association, and judicial and government membership. That consultative input is proposed to continue with the new library structure.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Sections 596A and 596B inserted —

Mr J.R. QUIGLEY: I want to take up the last comment that the minister made, which was to inform the chamber that the library is run by a consultative committee.

Mrs L.M. Harvey: It is not run by a consultative committee, but a consultative committee will have input into the resources.

Mr J.R. QUIGLEY: At the moment, the committee has a very heavy input into the shape and size of the law library.

Mrs L.M. Harvey: It has that input through the Legal Practice Board's library consultative committee.

Mr J.R. QUIGLEY: Correct. In this clause, once again, we have a bugbear. Whilst the minister is in government, she might not appreciate it—I am not saying she does not; she might come to appreciate it next year, hopefully, but who knows —

Mrs L.M. Harvey: I hope not, member.

Mr J.R. QUIGLEY: I am sure the minister hopes not. I am just saying that the legislative process looks a bit different from this side of the chamber than it looks from the minister's side of the chamber.

Clause 7 seeks to insert proposed new sections 596A and 596B. Proposed section 596A states in part —

> (2) Without limiting section 596, the Governor may make regulations with respect to the provision, operation and management of the law library, including —

That does not provide for any input from the profession, which will ultimately have to pay for the resource or a sizeable hunk of the resource. That does not provide for input from a library committee. I anticipate what the minister's answer will be. I do not want to put words in the minister's mouth. However, there is no mention in proposed section 596A(2) of consultation with the users of the library. Proposed subsection (2) goes on to provide that the regulations may include things such as access to and use of the law library; the terms on which persons may be given access to and use of the law library facilities; and the borrowing of resources and the manner of securing a resource if it has been loaned. It does not provide for consultation. Under the current system, the subcommittee of the Legal Practice Board, the body set up by the profession, is alert and sensitive to all those issues and consults with the profession. However, that is not provided for in proposed section 596A(2).

Proposed section 596A goes on to state —

> (3) Regulations made for the purposes of subsection (2) may —
>
> (a) adopt wholly or partly any rules or administrative procedure published by any person or body —
>
> (i) with or without any modification or amendment; and
>
> (ii) as in force at the time of adoption or as amended from time to time;
>
> or
>
> (b) provide for the making of rules or administrative procedures by a person or body.

This gets back to the issue that although members of the profession may be consulted, they will not have the right to determine how much they will pay to access the library. They will not even get, under this legislation, input as to the size and shape of the collection. I am told by the librarian that the Department of the Attorney General collection, for example, is oriented more to government agency usage, whereas the law library at the Supreme Court is biased more heavily to law reports and texts that practitioners are likely to use when on their feet in court. That is a concern, minister. Where will the profession get input into the size and shape of the collection?

Mrs L.M. HARVEY: There is no reason why the practitioners' stakeholders would not be consulted with respect to the resource mix in the library, and they certainly have not expressed any objection to this new section. This new section allows for the making of regulations that will cover things like the fees that may be charged for interlibrary loans, for scan-and-send facilities, or for deposits or bonds for books that might be taken from the law library into the courts. Obviously, the fees need to be prescribed by regulation, consistent with the levy collection legislation. Other areas that will be covered by the regulations are interlibrary lending loan costs and interlibrary lending codes. Any legal practitioner can make a request to the library for resources that they require or that they want the library to hold for them. That will not change from the existing regime.

Mr J.R. QUIGLEY: The minister raised a point I was going to raise with her. The minister said that "including the payment of fees" in proposed section 596A(2) relates to interlibrary loan fees. The Western Australian Bar Association raised with me that it has been told the new amalgamated library will not be a lending library and that the WA Bar Association library will not be able to borrow from the amalgamated library. The minister suggested that that will not be the case. I wonder whether she can clarify that, because a concern of the WA Bar Association is that it will pay a library levy, tax, fee or whatever, but the library at the bar will not be able to borrow from the new library. I wonder whether the minister could clarify that.

Mrs L.M. HARVEY: I cannot speak for the WA Bar Association, but my advice is that books will not be able to leave the building. The library will be located in the new David Malcolm Justice Centre. Books can be taken from the library into the courts, but it is proposed that the books will not leave the building. No hard copy books will be able to be removed from the building, but there is obviously a scan-and-send facility for those people who would like to use it. To give the member an idea, in 2014–15 eight hard copy books were borrowed from the Department of the Attorney General library and 20 from the Legal Practice Board library, so it is a small number. For the integrity of the library resource and to prevent the issue of resources being vandalised, if you like—which was raised in the stakeholder reference process—it is proposed that the books remain in the building and hard copy loans be limited only to be taken into courts and they remain within the actual justice complex building.

Mr J.R. QUIGLEY: That in itself raises a new issue, because my understanding was that they could be taken from the library into court.

Mrs L.M. Harvey: Into court, yes.

Mr J.R. QUIGLEY: But now the court will be split between two sites, as it were. Someone appearing in the Court of Appeal will be at the Supreme Court Gardens and not at the David Malcolm Justice Centre. I know that during the hearing of an appeal, when the opposing counsel raises cases or the court asks about a ruling, the first thing a practitioner does is hive off down to the library, grab the volume and come back up to court. I get from

the minister's answer that if a practitioner is appearing in the courts that will still be operating at the Supreme Court Gardens, and given that what DOTAG is not taking from the law library is to be stored away in vaults, practitioners in the old Supreme Court building will not have access to those library books. I cannot understand this, because surely to take a book out of the library and not return it would constitute a circumstance of unprofessional conduct. This is not just like some ratepayer going to the Stirling library and taking a book out. If a practitioner takes a book out and does not return it, it can constitute unprofessional conduct. I wonder what the inhibition would be. I know it will be difficult for practitioners to run out of the court, sprint up through Supreme Court Gardens and across St Georges Terrace to grab the book. The minister is telling me not to worry; none of this will happen because the practitioners in the Supreme Court building will not be able to take a book out of the library into court; only practitioners appearing before a judge in the David Malcolm Justice Centre will be able to. That is a concern for practitioners. I do not know whether that was thought of in the minister's answer. I know the minister's adviser said the books would be available for court, but I do not know whether the minister appreciated that the courts will be on two campuses—the library will be in the new campus. A practitioner appearing before the Court of Appeal in the old campus will not be able to take a book out of the library and take it to the new campus. Some of these reports, as I said earlier, are a bit obscure. For example, not many practitioners have a set of Irish law reports easily to hand.

Mrs L.M. HARVEY: The advice I have been given is that the books will not be permitted to leave the building, but there will be a facility to get copies of cases within those books for practitioners to take away from the building. I cannot answer whether the books will be permitted to leave the new building to be taken to the Supreme Court. I am happy to take that question on notice and advise the member at a later time.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MRS L.M. HARVEY (Scarborough — Minister for Police) [4.06 pm]: I move —

That the bill be now read a third time.

MR J.R. QUIGLEY (Butler) [4.07 pm]: I rise to make a few comments in regard to the Legal Profession Amendment Bill 2016. The opposition supports the amalgamation of the libraries; it will not be voting against that. We have moved amendments that were brought to us out of concerns raised by the profession itself. Obviously some hooks have yet to be ironed out in this. One of those was the last one that the minister referred to—that is, the usage of resources of the library across two campuses. The other concern is the size and shape of the collection and what input the profession will have. As stated earlier, electronic subscriptions are terribly expensive including how many licences are available under subscription. We are keen to see equity across the profession in terms of access and ease of access to those. As the minister would be acutely aware, with wi-fi in the twenty-first century, a practitioner in what will become the old campus—the Supreme Court in the Supreme Court Gardens—can quickly access texts held in the DOTAG collection over the wi-fi if they have a user number to do so. Some at the bar table, notably at the government end of the bar table, will have immediate access to the full electronic suite of resources held by the amalgamated library, whereas people at the other end of the bar table will not. The other concern the Labor Party has is the issue of access to justice at a reasonable price. We know that a lot of people cannot access justice because of its expense, hence an increasing number of litigants appear in person. We will be very interested to see, with these regulations, whether litigants appearing in person have access to the library or whether it will be limited to practitioners only. It is not an even contest in litigation if one end of the bar table has unlimited access to a legal resource—that is the library—and a self-represented litigant at the other end of the bar table is excluded from the library. The opposition wants to see equity in access and in usage and all of this delivered at a fair and just price for the legal profession.

Question put and passed.

Bill read a third time and transmitted to the Council.