## LEGAL PROFESSION AMENDMENT BILL 2016
## LEGAL PROFESSION AMENDMENT (LEVY) BILL 2016

*Cognate Debate*

Leave granted for the Legal Profession Amendment Bill 2016 and the Legal Profession Amendment (Levy) Bill 2016 to be considered cognately, and for the Legal Profession Amendment Bill 2016 to be the principal bill.

*Second Reading — Cognate Debate*

Resumed from 16 March.

**The ACTING SPEAKER (Ms J.M. Freeman)**: I give the call to the member for —

**MR J.R. QUIGLEY (Butler)** [11.21 am]: I do not worry about your hesitation, Madam Acting Speaker, because the name of my electorate has changed several times in my parliamentary career and I am very happy to represent the good people of Butler, stretching from Quinns Rocks to Two Rocks, as it does. I hope, as the house has granted leave for the two bills to be considered cognately, that the government will reciprocate when it comes to the amendments and that I can move the amendments en bloc and speak to them as one, because they are all part of the one clause, rather than having to go through each one individually. However, we will consider that when we come to it.

I rise to comment on these bills, having spoken with many of the stakeholders involved—that is, the Legal Practice Board, the Law Society of Western Australia, and the Western Australian Bar Association. I have some familiarity with the operation of the law library, having first visited it in 1973, when it was not the law library that it is today. I think it was then a fairly small library, situated in what is now the Chief Justice's chambers, in the back corridor of the Supreme Court building. The purpose of these two bills is to amalgamate the law library, currently situated in the Supreme Court of Western Australia, with the library of the Department of the Attorney General, currently situated in Westralia Square. It is worth remembering, just for the moment, a bit of the recent history of these libraries.

When I was admitted to the legal profession in Perth in 1975, the profession was still relatively small by today's standards. The profession played an integral part in providing a library for the use of both practitioners and the court itself. The Legal Practice Board, under the then Legal Practitioners Act 1893, was charged with the responsibility of running the library, and could raise money for this purpose through its fees. Its principal source of income is the issue of legal practice certificates. I have not got the exact figure, but I understand they are currently priced at around $1 500 per annum. The issue of legal practice certificates could then help to fund the library. As I am about to speak against a particular provision in this bill—that is, how the contribution sum is raised—I should at the outset declare that I have no interest in this matter, although I still hold a current practice certificate. I think I am one of two practitioners in this Parliament to hold a current practice certificate, the other being the member for Girrawheen, whom I definitely know holds a current practice certificate. Each of our certificates is endorsed "pro bono only" and, therefore, we do not pay the legal practice fee, so anything I say here today will have no impact on me personally in terms of costs.

As I said, the Legal Practice Board raises substantial funds through the issuance, on an annual basis, of legal practice certificates. The Legal Practice Board is a statutory body created by an act of this Parliament, and its primary duty, up until this point, has been to regulate the legal profession by determining the grounds for admission to the legal profession, the annual renewal of practice certificates, supervising the requirement for ongoing legal education, auditing all practitioners on a regular basis against their obligation to attend lectures and undertake continuing legal education—which I do on a regular basis, and I have been so audited—and to operate, under the act, as a subcommittee of the board, the Legal Practitioners Complaints Committee, which receives complaints against practitioners, investigates them and, where appropriate, prosecutes them before the State Administrative Tribunal.

The Legal Practice Board, as I said, was also charged with the responsibility of maintaining a law library. As I said, the library is located in the Supreme Court building, but is not available to the public. It is used by the legal profession and the judiciary. In a real sense, not in an illusory way, the lawyers, through their annual practice certificates, were providing a library and resources to be used by not only themselves, but also the judiciary and other law officers. They were contributing, in a very real sense, to the development of the law, and to the availability of law reports and other papers to the judiciary and others.

By 2011, the cost of the law library annually to the Legal Practice Board had risen to $904 000. Additionally, the Department of the Attorney General would contribute $250 000, plus the equivalent of one full-time employee. Until recent times, nine people were employed in the library—the librarian and eight staff. In 2012, the library was trying to achieve economies, and the annual cost fell to $777 000, as I understand it, through the attrition of staff and the reduction of staff wages. It was of great concern to the board that it was facing these sorts of

figures. Historically, it was nothing like this. As long ago as 2012, the board approached the government to see whether the government would divest, or take away from the board, the responsibility of running a library, when its core function was supervising the legal profession in Western Australia. It is a very important function, because the legal profession is not a private club or a private organisation. The legal profession is a public profession regulated in the first instance by statutes of this Parliament and by the Supreme Court through which it chooses who to admit as practitioners. The board is performing this public function and that is its core function, so it asks the government to relieve it of the responsibility of running a library. At the same time, the board undertook drastic cost-saving measures and in 2013 drove the cost down to $427 000, primarily through the withdrawal of staff. In 2014 that crept up by $3 000 to $430 000—I should say, plus the $250 000 per annum it was getting from the government. Last year that figure rose to $565 000 plus the $250 000 the government contributes.

Although I say that it is a public profession, the members of the Legal Practice Board are elected by a plebiscite amongst the profession. If members of the profession are dissatisfied with the library service being offered and the amount they are charged for the library, they have the capacity to vote against members of the Legal Practice Board at the annual elections. A democracy is involved. The library, of course, has a committee, members of which are drawn from the profession and the Law Society. It determines the shape and size of the library, by which I mean it determines what it will place emphasis on. The law library of the Supreme Court of Western Australia places a lot of emphasis, not unexpectedly, on law reports and texts, including law reports from common law countries, such as the Irish Law Reports and other reports that impact upon the development of the common law.

The board has said it would like to be relieved of this obligation and the department said we should amalgamate the two libraries and relocate them into the new David Malcolm Justice Centre. A working group was set up involving the Western Australian Bar Association, the Law Society of WA, the Legal Practice Board and officers from the Department of the Attorney General. It was agreed that there would be this amalgamation. This, of course, would require funding, which is addressed in the first of the two bills, the Legal Profession Amendment Bill 2016. Clause 5 inserts a new section in the Legal Profession Act 2008. Proposed section 548A provides —

> (1) In this section —
>
> ***law library*** means the library established under section 596A.

That was the old law library. It continues —

> (2) The Board must pay to the State an amount each year calculated in accordance with the regulations as a contribution towards the cost of providing and maintaining the law library.

The profession and all its stakeholders had no difficulty with the proposition that it continue to contribute to the maintenance of the law library in its amalgamated form. The proposed section further provides —

> (3) The regulations must specify —
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> (a) the method by which the amount of the contribution is to be calculated; and
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> (b) when payment becomes due.
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> (4) An amendment to regulations mentioned in subsection (3) must be made at least 7 months before the beginning of the financial year to which the amendment will apply.

Proposed subsection (3) refers to the regulations specifying the amount that the profession will contribute. Proposed subsection (5) provides —

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

This will be done in agreement with the profession—that is, how much the profession will contribute to this library. It continues —

> (b) 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 have regard to any submissions made by those bodies.

Proposed section 548A(5) gives the ultimate power to the Attorney General to fix the contribution and notify the profession, "I will take on board what you are saying; here is the sum." At this point the profession then raised

its stiffest objection and said that this is not what it understood would be happening as a result of this working group and that it thought that there would be goodwill. After all, for more than 70 years the profession has maintained a law library for the use of not only professionals who are paying their legal practice certificate, but also others who get it at a discounted rate. By that, I mean all government employees who are practitioners do not pay the full whack of a legal practice certificate. We will come to that at the consideration in detail stage. They pay a much reduced rate. They are not paying a contribution towards the library because the Department of the Attorney General has its own library. It is the same for the judiciary and other law officers. They do not contribute to the library. However, the profession has been happy to provide this library as a resource for them as well.

After 70 years of proceeding in goodwill, this government comes in and says it will endeavour to reach an agreement with the board on the costs of maintaining the library, but at the end of the day, if the profession does not like the determination, the government shall impose it. We object to that. We are not dealing with rascals here. The people on these committees with whom we are dealing are the very pool of people at the top of the profession from which the judiciary are chosen because they are regarded as the crème de la crème in intelligence, character and reasonableness. They will not go around standing up the government just for the sake of doing so. However, the profession is very much put out by the notion that at the end of the day, the government will just say this is what they will contribute and this is what access to the law library will cost.

Let us talk about access for a moment. In fact, a lot of the profession do not or very seldom use the law library at the Supreme Court of Western Australia for the following reasons. Barristers, for example, have to join the Western Australian Bar Association and the Bar Association has a very good library.

Barristers do not leave bar chambers to traipse all the way down to the Supreme Court to read a book; they go to their own library, which is funded by a fee that they have to pay when they join the Western Australian Bar Association. However, barristers are now also required to make a contribution to the law library that they do not use. They have never quibbled at that, but they do more than quibble—they raise their strongest objection, as government members know because they have written to them—about the notion of the government coming along and saying, "We're going to set a fee, like it or lump it. This is what the profession is going to pay so stump up each year for your contribution to the library." I have spoken with members of the profession, including members of the Western Australian Bar Association and the Law Society of Western Australia. They do not want their objections to this fee to be read as meaning that they do not want to contribute any more, and the library should be packed away—stuffed away in some musty corner and vandalised. That is not their intention. They intend to seek equity in terms of contribution, not to open a door that allows the Attorney General in the future to cost-shift onto the profession the cost of running the Department of the Attorney General library so that the profession then has to subsidise the government. That is not fair. The profession does not want to see that library vandalised.

Before making this speech in response, I went down to the Supreme Court library—I have not been there for a while—to re-familiarise myself with the place. The shelves are starting to empty. I asked the librarian, "Are you getting ready for the move—packing up the books to put them in a van to go up to the David Malcolm Justice Centre?" This librarian has worked there for over 18 years. I do not want to put it too high, but she was obviously quite emotional when she gave me her explanation. She said, "No, not at all Mr Quigley. DOTAG has been down here, saying it just does not want a lot of this. All these valuable books are being packed up into boxes to be put away in a vault somewhere." The very thing that the profession said it did not want to see happen—the vandalising of the library—is happening. It is happening because the library operates out of a floor space of about 950 square metres at the Supreme Court rent-free. I understand that the DOTAG library is about 900 square metres, and we are told that the floor space at the new David Malcolm Justice Centre will be about 800 to 850 square metres. Obviously, a lot of the books will have to be discarded. All the books that the profession has contributed to over the years are now going to be discarded. What is more, the law library will move to the David Malcolm Justice Centre, and it will have a lot of pressure on it because the profession is growing. Practitioners do not need just one volume of law reports; they have to have multiple volumes of law reports. Once the library moves to the David Malcolm Justice Centre, practitioners who appear in the Supreme Court—the Court of Appeal and other civil work will still be happening in the Supreme Court—will have to hotfoot it across the Terrace to the David Malcolm Justice Centre to withdraw books and take them down to the Supreme Court. The library will obviously have to have multiple copies, otherwise the books will be out of the building. We are now told that much of the law library is being just packed up and put away.

It is sad because the relationship between this government and the legal profession has plumbed a very low depth. There is no trust between the government and the legal profession, and the government treats it very cynically. The legal profession knows that it is treated with disdain. Of course, the Attorney General makes no secret of this. On Tuesday, 5 April, in the other place, in a very smarmy, arrogant way, he made a comment about our former Governor, Malcolm McCusker, QC, regarding the Bell Group litigation. Malcolm McCusker,

QC, is regarded throughout Australia as one of the finest legal minds in the country. I could name half a dozen of them: Mr McCusker, QC; Bret Walker, SC, in Sydney; Justin Gleeson, SC, the Solicitor-General, but it would be unfair of me to go on and say that this is a comprehensive list because that would exclude people. I am saying that Mr McCusker, our former Governor, is amongst the crème de la crème of jurists in Australia. What did this arrogant, smarmy Attorney General say of this jurist, talking about the Bell litigation? He was talking about legal opinions given concerning the constitutional validity of the Bell litigation, and the Attorney General stated —

> Much has been said about the opinions that have been given by various lawyers for particular parties. All of a sudden Mr Malcolm McCusker is being elevated to the finest legal mind in the state and suddenly he takes precedence over these matters being dealt with by a court. It appears that his opinion is sacred writ; if he says something, it has to be right.

What a smarmy put-down of Mr McCusker. This was said on 5 April, in the evening, before the Attorney General —

**Ms M.M. Quirk**: After dinner?

**Mr J.R. QUIGLEY**: Probably after dinner—good point, member for Girrawheen. He had obviously had his nose in the gravy trough rather than reading the transcript of the High Court on the internet. If he had read what the High Court stated about the operation of sections 5F and 5G of the Corporations Act, the Attorney General certainly would not have spoken those words and put down Mr McCusker. He would have realised that Mr McCusker was right on the money. The Attorney General had only to read what the High Court was saying in response to Mr Bret Walker, SC, and to Justin Gleeson, SC, the Solicitor-General. Of course, the arrogant Attorney General did not stop there. He is not beyond putting down the Solicitor-General of Australia, too. The Attorney General continued —

> The Solicitor-General for the commonwealth all of a sudden is not someone who is an advocate for a party to wit the interests of the commonwealth. All of a sudden he is some kind of impartial and fair broker. They are extraordinary propositions.

This Attorney General is a fool! This Attorney General did not read the transcript; this Attorney General missed the opening sentence of Mr Justin Gleeson, SC's announcement of appearances. He said that he appears for the Australian Taxation Office and for the Attorney-General for Australia. None less than Mr Brandis, QC, has instructed Mr Gleeson in what he should put before the High Court, yet this smarmy Attorney General in Western Australia has been putting down the Solicitor-General of Australia, who is acting on behalf of the Attorney-General of Australia.

**Ms M.M. Quirk** interjected.

**Mr J.R. QUIGLEY**: Yes, member for Girrawheen, he must have had his nose deep in the gravy trough in that dining room when this transcript was posted on the internet. It is offensive. The profession knows the opinion he has of him. Take the Chief Justice, for example. Who will ever forget the smart letter—I do not mean smart as in clever; the stinging letter—the Chief Justice wrote to the Attorney General complaining about the Attorney General's interference with the independence of the judiciary because the Chief Justice had decided to do what other courts around the country do—that is, selectively videostream to the internet some cases of high public interest. The High Court and the Victorian Supreme Court do it. As soon as the Attorney General got wind that that was what the Chief Justice was going to do, he withdrew funding from the Supreme Court to stop it. The Chief Justice, quite rightly, wrote that he saw this as nothing else but an interference with the independence of the judiciary. As the Chief Justice explained, we are part of Asia; we are on the same time line. Many Asian students of very, very wealthy businessmen throughout Asia come to Western Australia to study law and be admitted to the Western Australian bar and then go back to their country. He said, "What a magnificent thing if I could videostream to the internet the admission ceremonies so that throughout Asia all the wealthy businessmen and their families would see our court in action and their child, niece or other family member being admitted to practice. What a thing to promote our jurisdiction." This has been stopped by the Attorney General withdrawing the funding to permit it to happen. What did the Chief Justice say? "The public has intense interests in other high-profile cases, but they could not be viewed because they are too busy in their daily working lives." The Chief Justice nominated the first of them, which was the Rayney appeal. No jury and no people could be affected by the broadcast of the proceedings. However, people throughout Western Australia and Australia generally had an intense interest in the outcome of that appeal. The Attorney General stopped him from doing that, so the relationship between the Attorney General and the court, and the Attorney General and the legal profession could not be lower. People cannot come into this Parliament and slag off the leader of the legal profession in Western Australia, Mr Malcolm McCusker, QC, and pretend to have any credibility. I can just imagine, when the Governor sits in Executive Council, what a greasy suckhole the Attorney General would have been when speaking to the Governor.

**Mrs L.M. Harvey**: Excuse me.

**Mr J.R. QUIGLEY**: He is two-faced. He would go down there and be polite and then come into this Parliament —

*Withdrawal of Remark*

**Mrs L.M. HARVEY**: Madam Acting Speaker —

**Mr J.R. QUIGLEY**: I withdraw the words.

**Mrs L.M. HARVEY**: It is a question of relevance. We are discussing the law library.

**The ACTING SPEAKER (Ms J.M. Freeman)**: Member, you withdrew the words; that is good. It is the bill, but it is the second reading speech.

*Debate Resumed*

**Mr J.R. QUIGLEY**: I am addressing that, at its heart, this Legal Profession Amendment Bill relies on trust between the profession, who funded the library, and the Department of the Attorney General, which is taking it over and folding it into one library. The lack of trust has completely dissipated, and I was giving examples of how the Attorney General has slagged off leaders of the profession and interfered with the independence of the judiciary. In this sort of environment, how can the legal profession repose any faith or trust in the Attorney General? It is absolutely impossible. Well, the Attorney General would like to say, I anticipate—I do not want to put words in his mouth—what happens, and this will take me to the next part of the bill, if the negotiations with the profession break down on the contribution they should make to this library. Where would that leave us? That would leave the profession with the whip hand. The profession could say that it will not contribute that sum and the government would be stuck. That would not be the case at all because this government believes in user pays.

I turn now to proposed section 596A, which deals with the law library. It reads —

> (1) The State may establish and manage a law library for the use of the judiciary, local lawyers and other prescribed persons.

It does not say anything about interstate practitioners; perhaps they will be prescribed. It continues —

> (2) Without limiting section 596, the Governor may make regulations with respect to the provision, operation and management of the law library, including —
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> (a) access to and use of the law library; and
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> (b) the terms on which persons may be given access to … the law library facilities …; and
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> (c) the borrowing of resources and the manner of securing a resource if it has been loaned.

If members of the profession do not come to the party and make a reasonable contribution, the door can be shut on them and they could be told if they are not contributing to this library, they cannot access it. It is not that the profession, in the absence of an ultimate power by the Attorney General to impose a fee, is left stranded; they can say, "Well lawyers, if you don't want to make a contribution, don't come to the library, full stop." As I said, the Western Australian Bar Association and the Western Australian Law Society are not bloody-minded; they have been providing this service to the profession, the judiciary and members of the government sector, who do not contribute to it in any way, for over 70 years. The goodwill on their part is indisputable but they do not want a system that this government is setting up whereby they can cost shift the whole cost of the DOTAG library onto the profession.

I come now to access. I referred to clause 7 to determine what is the ultimate veto if they do not get agreement from the profession. If lawyers do not want to pay a reasonable sum, they should not come into the library. As I said, that would not worry most of the profession because most of the profession rarely go there. Think about it. A lot of the legal resources are now available online. I am talking not only about all of *Hansard*, although we were told at the briefing that not all of *Hansard* is on there, but as the Clerk Assistant has reminded me, it is all backloaded on there. The State Law Publisher has backloaded on the internet all the old statutes from 1890 or something like that, including all the law reports. They are all available to anyone in Australia who googles them. The other day, when preparing my remarks, I wondered how long it would take for a member of the public to get informed about the development of federalism in Australia under case law. I googled it and the first thing that came up was the seminal engineers' case argued by the late Sir Robert Menzies in September 1920. Articles on it appeared on the screen within two minutes. When I first entered the law, if we were asked by the master to research a line of cases from which developed federalism in Australia as we know it today—that is, with the supremacy of the commonwealth and no reserve state powers et cetera—it could take the best part of half a day digging around in the library. No wonder practitioners go to their screen. This comes to the second part of

access, because I asked a judge, who will remain nameless—I do not want any of them marked down for talking to me.

**Ms M.M. Quirk**: Odds are, it was a bloke.

**Mr J.R. QUIGLEY**: It was a bloke, because there have not been any women appointed to the Supreme Court.

**Ms M.M. Quirk**: The last 19 appointments have been men.

**Mr J.R. QUIGLEY**: Exactly, and the Chief Justice has written on that gender inequality too. It was a bloke I was speaking to. I said, "Your Honour, when you are preparing judgements in your chambers, do you use the DOTAG library?" He said, "Of course." I said, "Situated at Westralia Square?" He said, "No; it is all on the screen." They just key in a number and there is what we would know as the loose-leaf texts. I am sure that the member for Girrawheen, whose interjection I took earlier, will know about them, such as the Commerce Clearing House tax reports, and even *Cross on Evidence* has been in loose-leaf —

**Ms M.M. Quirk**: I have been looking at the ASIC company law reports lately.

**Mr J.R. QUIGLEY**: Is that the loose-leaf ones concerning insider trading?

**Ms M.M. Quirk**: Yes.

**Mr J.R. QUIGLEY**: That is a very interesting area. I think a lot of people around the cabinet area would be looking at that same area of insider trading, member for Girrawheen.

Getting back to the point, I asked His Honour what he does and he said that he accesses it on the screen on his desk so that he does not have to leave his judicial chamber.

Now we will have an amalgamated library and the profession will make a huge contribution to that library, which will be primarily the Department of the Attorney General's library, because, as the librarian told me, the officers from DOTAG have spent five weeks at the library saying what they do not want and most of it will be packed into boxes and put in some musty vault. What will happen to the members of the profession who will fund this? Will they also get access to this material on their screens? I bet that they will not. I bet that they will have to go to the library to access it on a terminal. There will be two classes of passengers—two classes of users. There will be the A-class shareholders, who are all the people associated with the government, including judicial officers. We will wait until the practitioner from the State Solicitor's Office comes to advise the minister at the table, because I am sure that she will be able to confirm what her access is. There will also be the others—the members of the profession—who will not have the same ease of access. But who will pay for all of this? The people with the restricted access will be the big contributors. I was at the briefing on these bills with the member for Girrawheen and she astutely asked the adviser how much DOTAG had estimated it will cost to make the DOTAG library generally available to the profession. My recollection is that the answer was that it would cost $850 000. When I mentioned that to members of the profession, they fainted—I could hear them hit the deck over the phone! As I said earlier in my speech, they trimmed their sails and got it down to $430 000 and then the annual subscriptions to services drove it up to $565 000 last year and now they are looking at $850 000.

Under these amendments, there is a method by which the annual contribution will be calculated, but this method is not set out in the legislation. I have complained recently about what happens in Parliament. We complained about this during the consideration of the Motor Vehicle (Catastrophic Injuries) Bill, because 10 of the 33 operative clauses after the definition clauses were subject to regulation that had yet to be formulated. At the briefing, when I said that the advisers must have put their minds to the regulations because the government wanted this matter through by 1 July so that it could fire this up for the next financial year, I was told that they had not because the legislation had not been passed, but then they would turn to the regulations. We are being asked to vote for this legislation without knowing the method by which the amount of the contribution is to be calculated. This is very important. Is the method to include, for example, a sum for rental for the floor space of the library? At the moment, the law library, funded as it is by the Legal Practice Board principally, occupies some 900-odd square metres at the Supreme Court rent-free. As I have said, the Legal Practice Board, which is a statutory body performing a public function, not a function on behalf of a private club, was told about 18 months ago that the government would no longer provide premises for it and that it would have to turn to the profession to raise the money to pay rent. This is unbelievable for the government statutory body. We could say that the lawyers can afford all this. We could say that whatever the contribution is, the lawyers are wealthy; they can afford it. But might I remind members that it is highly unlikely that that will happen; there is a snowflake's chance in a hot place of that happening, because the lawyers, understandably, will pass this cost on to the consumer. They will not deplete their income; they will pass it on to the consumer as a cost of their legal practice.

Let us think about this for a moment. When there is a case on appeal and a senior counsel is briefed, he will have a junior. They both will have paid their legal practice fee, of which a portion will be the amount to be levied for the new amalgamated library. They will be instructed by solicitors behind the bar table, all of whom will have

made a contribution to the law library through their legal practice fees. The firm itself, if it employs, as some of these firms do, 100 or 200 cost earners, will make a huge contribution to the law library, but none of those people will use it because the firm maintains its own library, and most of it is online anyway. All of this drives up the cost of access to the law and makes it even harder for people to litigate their disputes.

We say that it is time for the Attorney General to rethink his relationship with the legal profession and not speak of it in the derisory fashion that he does; rethink his relationship with the members of the judiciary and not deal with them in the offhand manner that he does; restore the good relationships that had hitherto existed between the profession, the judiciary and the executive, which are at an all-time low; and proceed to amalgamate this library in the spirit of goodwill that the profession has demonstrated for over 70 years, and not set up a scheme whereby the Attorney General can cost-shift the price of maintaining the DOTAG library to the legal profession. If he does that, under proposed section 596A, everyone in the legal profession will enjoy exactly the same access to all reports, be they in hard copy or online, as that enjoyed by government lawyers, who will pay little towards it.

We have given notice on the notice paper of amendments that we intend to move. Those amendments are relatively short. All they do is to take away the sledgehammer that the Attorney General is so intent on arming himself with by just imposing a fee upon the whole of the profession, by saying that this should be arrived at by agreement. I am just picking up the amendments. They are the only amendments that we have and cover clause 5, proposed sections 548A(3) and 548A(5). I will be moving the amendments during the consideration in detail stage. The first amendment, to proposed subsection (3), seeks to insert the words —

> 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

The second amendment, to proposed subsection (5), seeks just to delete the disjunctive "or" and in its place put "and", so that the Attorney General must obtain the written agreement of the board, the society and the bar association and notify them nine months before the beginning of the financial year what the new amount is going to be. They are very simple, very small amendments that I am told reflect the understanding that the profession was given from the working paper. I mentioned in my speech that the government might be prepared to let me move those amendments as one motion, but I will wait until we get to that stage. The amendments are all on the one page and concern the one clause. If we are able to move the amendments and make submissions in relation to them in one go instead of in three different motions, I am sure that the passage of this bill through this chamber will be accelerated—we will do it a lot faster—but that is up to the government. Otherwise, we do support this. Let everyone understand that Labor does support the amalgamation of these libraries, but only on equitable and just terms for the legal profession.

**MS M.M. QUIRK (Girrawheen)** [12.13 pm]: As my colleague the shadow Attorney General has said, the opposition supports the Legal Profession Amendment Bill 2016 and the Legal Profession Amendment (Levy) Bill 2016. On the face of it they are non-contentious, but to use a well-worn cliché, the devil is in the detail. By way of preliminary remarks, I have to concur with my colleague, but probably not with the same hyperbolic flourish as he used. It is sad that so many law reforms are needed but are not being introduced by the inert and ineffectual Attorney General, yet these bills have reached the house because, as I will explain shortly, they are about shifting expenses and the government trying to save money. We have been waiting for a range of issues and law reforms for a considerable amount of time and they are stuck in the Attorney General's in-tray, but because these bills are about saving money, they have been rushed through with some haste.

I observed in the briefing that we had on this bill that the second reading speech was somewhat opaque, and I will refer to why I think it is opaque shortly. Because it is opaque and because there is no detail in the legislation itself, we rely on regulations, which have not been produced. How this scheme is going to work in practice and the quantum of the levy are unknowns. This government might pride itself on removing red tape, but what it has in fact done, not only in this bill but also generally, is to remove all the significant details from substantive legislation and put them in regulations, which are not scrutinised by this Parliament. That is incredibly unsatisfactory.

I asked in the briefing what would be the quantum of money levied from the practising certificate fees. They were unable to tell me, but I think I know the answer; that is, it may well be more than cost recovery. The levy that is imposed on law practitioners may well be more than the cost of actually running the library, because the Legal Profession Amendment (Levy) Bill empowers the government to impose a tax as opposed to merely cost recovery. On its face, as I said, this looks pretty non-contentious, but it actually is imposing a tax. As my colleague alluded to, people say, "It's just the legal profession; they're rolling in it; they can afford it." Frankly, there are many sole practitioners and there are community legal services, so there are a range of people who practise in the legal profession who are not rolling in it. In any event, if it is a tax, the government should be up-front about it. I expect the minister to be able to tell us what is contemplated to be taken by way of the levy and what are the calculations. Frankly, it is implausible to say that the government does not know this, because

I suspect this is part of the budgetary process and that the Attorney General, through his advisers, would have run the sums on what the government anticipates receiving from this levy. That is the first point to make. The existence of the Legal Profession Amendment (Levy) Bill means that the government intends to impose a tax as opposed to merely cost recovery. As the legislation stands, that can be done without the level of notice and consultation that the opposition regards as satisfactory, and that is why the member for Butler has proposed an amendment to the bill. We need to know what component will be deducted from the practising certificate and the rationale for doing so.

The current situation is also not clear, as the member for Butler said. There have been different contributions from the Legal Practice Board over the last four years. It has gone from nearly $900 000 four years ago to about $500 000 last year, so, again, it is not as though it is a set amount every year. I am interested in how that amount is calculated. With the imposition of this tax, who will calculate what periodicals, texts, other books and electronic resources are needed for the library, how will that budget be managed and how do we know that the legal profession will get value for money? As I said, I am particularly disappointed about the lack of clarity on these matters. I am particularly disappointed that we do not know, for example, about the hours of access. As the member for Butler asked: is there going to be more restricted access because it is effectively a library of the Attorney General's department or will everyone who has contributed to that tax have the same access as the Attorney General's lawyers to the library? We do not know whether access will be limited in any way, or the same people who have access at the current hours will still have that, because that is also something that will be subject to regulation. That is another issue. The government has brought a bill to this chamber and Parliament, saying, "Trust us, all of that will be in regulation. Trust us to stick our hand in the piggy bank" at a time of massive debt, when all ministers have to find savings. They are not even prepared to do it by way of cost recovery but under the regulation, insisting on having the power to raise it as a tax, which means, of course, that the sky has no limit. At the same time this is being done, the government is not assisting in providing a better understanding of the law to the community, and the member for Butler gave a very good example, on videostreaming cases of great public interest. I commend the Chief Justice for his many efforts to try to make what is incomprehensible to many people in the public more comprehensible, so that they can understand the legal system better. I am saddened by the fact that community legal centres and the Aboriginal Legal Service of Western Australia are facing funding cut after funding cut, with increasing demand to provide services under very constrained financial circumstances. I am equally concerned that victims of domestic violence have to fend for themselves in court and are not assisted by police officers. Again, court is a very confronting place for someone who is not familiar with the legal system and it saddens me. In other jurisdictions police officers will, for example, accompany victims to assist them in getting violence restraining orders.

To conclude, we are signing a blank cheque. Although it might be seen to be user-pays—people are prepared to pay for a service—we are not yet sure of the extent of that service. We are not sure of the quantum of the tax and all that is left to chance and trust. I can tell members that trust has well and truly evaporated before now.

**MRS L.M. HARVEY (Scarborough — Minister for Police)** [12.21 pm] — in reply: I thank members for their contributions to the second reading debate on the Legal Profession Amendment Bill 2016 and the Legal Profession Amendment (Levy) Bill 2016. The purpose of the amalgamation of these two libraries is not about cost saving to government, and it is not about any kind of budget efficiency measure. The genesis of this amalgamation was back in 2012 and the impetus for the amalgamation was explained quite clearly in the second reading speech. The Legal Practice Board indicated that it was no longer interested in having any involvement with the law library at the Supreme Court. That is the first reason for the amalgamation. The second reason is that it was recognised by government that we required a law library for the judiciary, for members of the legal profession and for government legal officers. That should be best located in the new justice complex at the old Treasury building, and what was required was to reduce some inefficiency, duplication and costs to the profession and government in running and supporting two law libraries. This is really about being able to put the resources into one better library resource rather than splitting that effort and having unnecessary duplication in running two separate libraries. The government does not expect any cost savings out of this amalgamation. There may be some efficiencies gained by amalgamating two managerial structures, but the purpose of this, in response to the Legal Practice Board indicating it did not wish to have involvement in the law library at the Supreme Court, was to convene a steering committee to actually look into the way forward. The steering committee for the project to amalgamate the law library consisted of representatives from the Supreme Court, the Legal Practice Board, the Law Society of Western Australia, the Western Australian Bar Association, the State Solicitor's Office, the Director of Public Prosecutions and Parliamentary Counsel's Office. It was a very comprehensive consultation process with the steering committee over time, and out of that we have come to this point, with the amalgamation of the two libraries seen as the appropriate way forward.

To address the accusation that the Attorney General will have carte blanche to set the fees and cost shift, that is not what is being proposed here. At this point in time, the government and the Attorney General cannot articulate what the fee will be. However, a process of development of the regulations has been established. Consultation of

the fees is occurring with all the stakeholders. What has not been determined as yet is whether it will be a percentage of the practice certificate or a set dollar amount per practice certificate. The Law Society, the Bar Association and the Legal Practice Board have been consulted as to how that fee should be set and how it should be specified in regulation. It is conceptually agreed that the fee will cover the marginal cost of the additional library resources and particular librarians who will be put in place to service the profession and to enhance the collection.

Although it has been said that the Attorney General can set the fee, he has the power of decision-making with respect to the fee, as does every minister. Every minister signs off on fees that are set by regulation. However, the determination of those fees is usually done in consultation, and the principles for setting that fee, although not being set in stone, conceptually, have been established that it will cover the marginal cost of those library resources. As I mentioned earlier, all the stakeholders involved in this process have expressed satisfaction with that process. At no point have any of those stakeholders indicated that they would be supportive of the amendment that has been put forward by the member for Butler, and, as such, the government is not inclined to support the amendment. I am sure that we will get to debate that during consideration in detail.

I thank members for their contributions to this debate and look forward to further examination of the principles of the legislation when we go into consideration in detail.

Question put and passed.

Bill (Legal Profession Amendment Bill 2016) read a second time.

Leave denied to proceed forthwith to third reading.