

Legislative Council

26 February 2008

LEGAL PROFESSION BILL

In committee.
Clause 1.

The Hon. A. BRESSINGTON: I have quite a lengthy speech on this particular bill, the reason being that I think it is important that the detail be entered on the public record. It has been a difficult process navigating around this bill, and many agendas appear to have been flushed out in the process. As I understand it, this is a piece of legislation that, if passed in this parliament, will regulate the legal practitioners of this country nationally, so it will fit into a national framework.

The original intention of this bill was to bring state and territory standards and codes of practice into line with each other. I am sure that all the non-legal members here would applaud the regulation of standards and implementation of a code of practice for the legal profession, yet this bill appears to focus more on those who would offer their services and experiences as advocates and/or paralegals than on the legal profession itself. That is perhaps not surprising, given that it is lawyers who have drawn up this legislation in the first place.

I do not want to appear to be too cynical, but the real problems that face the average citizen when engaging with the legal profession on many occasions is that for social issues they rarely receive justice. We seem to have two categories of 'victims' of the legal profession, if I dare put it that way. We have those who need legal aid and those who do not. Those who do, find that the funding they get is rarely enough to get them to trial; and those who do not need legal aid often pay through the nose until their money runs out and they, too, are left high and dry.

I had lunch with a well respected member of the legal profession who shared with me how the majority of lawyers, in his opinion, view clients in what must be considered two of the most vulnerable groups of our society—those involved in probate and those involved in family law. His comments to me were disturbing and, as time goes by, I have seen little evidence to dispute his take on what is fast becoming a despised profession. He said to me:

When lawyers see the clients from probate or family law, they literally rub their hands together because this is easy money. The last thing we want to do is get involved in a trial, so we get together...

that is, the lawyers representing both side

and we calculate how much money there is, and then we determine how far that money will get us or how far we want that money to get us.

In fact we structure a management plan of the case to get the case to where we want it to be, that is, pre-trial, for the money to be utilised and expended and then, when there

is very little left, we suggest settlement. By that time they will walk away with nothing (the clients), and we have done very little pre-trial preparation and we have made a lot of money in the process.

If any part of this statement is true, and I do not know because I am not a lawyer, I suggest that this national piece of legislation will do nothing to meet the needs of those who engage legal practitioners and will also do little to address the unethical practices this lawyer has described to me. I have serious concerns about the spirit and intent of this bill, such that I believe we ought to follow the direction of other states in at least one very important aspect.

When he spoke to this bill the Hon. Paul Holloway said, amongst other things, that it seeks to deal with the reservation of legal work and legal titles to allow for rebuttable presumption where an advocate could be charged with giving legal advice. In essence this bill insinuates that lay-persons providing advocacy services, personal representation and exchange of public information could be charged with an offence.

During the government briefing provided to my research officer it was clearly stated that, for example, where a person may assist or even represent a family member in a case before, say, the Residential Tenancies Tribunal, the Administrative Appeals Tribunal or similar forums where a legal practitioner is not required, the advocate, in the words of the person who provided the briefing, will not be immune from possibly facing a charge of giving legal advice. Instead, an automatic presumption will be applied against the person to show why they ought not be prosecuted. So this is not 'innocent until proven guilty' but rather 'guilty until proven innocent'. It also means that the person in question will wear the onus of proving that the services they provide do not constitute engaging in legal practice or practising law.

The accused in such matters will not have a presumption of innocence in a matter relating to advocacy because the burden of proof lies with the person to prove that the advocacy provided did not constitute engaging in legal practice or practising law. This would not be so dangerous if the definition of engaging in legal practice included practising law, but the bill has no such definition and I am informed that this will be left to the regulations, a curious direction, I must say, given that the definition of engaging in legal practice or practising law is really essential to determining the intent of the bill. That cannot be debated by members here or in the other place.

The passage of the regulations will depend upon the Legislative Review Committee either allowing or disallowing the regulations, and to my recollection about three out of six members of that committee have a legal background. Perhaps the Hon. John Darley should be alerted to this matter when these regulations come before that committee and, if there is no clear definition of what will constitute engaging in legal practice or practising law, and it is not present, be reminded that advocates and paralegals, who are sometimes the only viable and affordable contacts for many average citizens, may be able to be charged with an offence under this bill.

We were told in a briefing by the Attorney-General that engaging in legal practice or practising law would be determined by fee for service, or if a person is representing himself or herself as a legal practitioner. The explanation was that quite often lawyers who have been disbarred turn to advocacy work and charge for services as a lawyer,

and under these circumstances I have absolutely no objection to their being charged under this legislation.

But, what of a person who is assisting another in, say, the Family Law Court? The assisting person is making telephone calls, photocopying documents and travelling to court hearings and being reimbursed for those costs, so will that constitute fee for service? This may be a way of avoiding having that particular debate in the first place because, from a layperson's perspective, it would be a legal minefield because of the difficulty in reaching agreement on that point alone, that is, on the definition of engaging in legal practice or practising law. We have already heard that nationally the consensus is that the definition should not be part of the bill because, as I understand it, it is too complex to determine.

Perhaps this should be an indication that special care needs to be taken in considering the recommendations that will underpin this bill. This is not the only confusing aspect of the bill. Contrary to the Hon. Paul Holloway's assertions, it is not written in any way that articulates that a rebuttable presumption will apply to the functions of practising law per se. It is written specifically in relation to the concept of rebuttable presumption (as in clause 15, page 32) with respect to the advertising of the practitioner's title only, that is, lawyer, barrister, QC, etc. In other words, the minister's stated intentions for this bill were not clear at all.

It is my concern that not using the term 'legal services' (as at clause 7, page 28) may be the back door for ambiguity needed in this bill to cause sufficient confusion in legal proceedings arising from this bill to have unwitting people successfully prosecuted. For example, the definition of 'legal services' on page 23 states:

work done, or business transacted, in the ordinary course of engaging in legal practice;

Again, without knowing what the regulations will state regarding the definition of 'legal practice' and 'practising law', this aspect is as clear as mud, and we are unable to have an open debate on this matter of concern. On page 22 a definition of 'engage in legal practice' tells us to 'see section 7' and this brings us back to the lack of clarity that could well secure a prosecution.

Therefore, I would suggest that these clauses of the bill are so ambiguous and unsatisfactory that they require rewriting in plain language that is easily translated from 'legalspeak' to fair legal practice with little room for interpretation in order to safeguard the interests of those who lend themselves to assist others in need. For some who are even more sceptical than I (and there are some) this could also be seen as a measure put in place nationally (with the exception of Western Australia) to discourage advocates and paralegals from stepping on the toes of lawyers.

This council's President (Hon. Bob Sneath) used to be a union advocate and, as such, was responsible for obtaining good outcomes for workers. Under this bill, his work may have been hampered by the uncertainty of a definition of 'engaging in legal practice' or 'practising law', if he represented those workers in the industrial tribunal, for example. If members think that I am drawing a long bow here on the intent and spirit of this bill, I assure them that I have heard of an example of a family law matter

where an advocate was banned from attending pre-trial conferences with a constituent. The Legal Services Commission basically declared who could and could not advocate for one of their clients who had difficulty speaking English and who had been associated with the advocate for some 12 months prior to the Legal Services Commission engagement.

The problem seemed to be that the advocate knew all too well the games that are played in the Family Law Court and was banned on the allegation of being belligerent and disruptive. In fact, the lawyer who originally was involved in implementing the ban went on leave and was unable to continue. The lawyer who took over the case was instructed not to engage with the advocate at all. As this case progressed, the lines of communication opened out of necessity and it was soon discovered by the new lawyer that the advocate was in fact not belligerent but well informed, and they have worked well together now for some months.

My point is that some legal professions tend to flex their muscle when they are feeling threatened or when their own inadequacies or inactions may be pointed out. What would stop them, under this bill, from pursuing a conviction of engaging in legal practice or practising law in a matter such as this when the definition of such an offence is left open-ended and when a rebuttable presumption means that the burden of proof lies with the accused to prove his or her innocence rather than the lawyer having to prove guilt? As an example, we could see the Legal Services Commission engage Crown Law to prosecute a person who was doing nothing more than lending a hand and protecting the basic rights of adequate legal representation to a citizen of this state.

In my time in this place, which is limited compared to that of others, I have heard reports of abuses of power that seem incomprehensible and, of course, the usual response to this is 'vexatious litigant: beware'. I do not believe for one minute that everyone is merely disgruntled; indeed, rather than vexatious, they appear to be legitimately vexed.

It is also curious, indeed, that this bill has presented at a time when there is an increasing trend developing, from necessity, where advocates are being engaged, or individuals are self-representing in matters relating to areas such as child protection, disability, WorkCover and other defences because funding through Legal Aid does not quite get them to trial, and they are, literally, left up the creek without a paddle. Some self-represented litigants have, in fact, been very successful in pointing out misrepresentations and poor interpretations of how the law has been applied and there are, as I said, a growing number of people who are becoming more and more self-educated about the law.

Of course, this should be of concern only to legal practitioners if it could be proven that, prior to self-representation, the legal practitioner had not explored all of the appropriate actions to ensure a just outcome for an individual. It could be difficult and embarrassing to explain into the future, perhaps, how an increasing number of average citizens could obtain better outcomes without legal representation.

Sadly, there seems to be a pattern emerging here in South Australia, where advocacy and information services are being dismantled bit by bit. There are many who are

feeling that their role in seeking the best possible outcomes for their clients are treated with contempt rather than gratitude for their selfless efforts to assist others to navigate their way through a complex and expensive system that often sees the money run out before an outcome can be achieved.

We know there are people who may simply have no access to qualified legal representation because they are on a low income, they do not qualify for legal aid or they may be better represented or advised through experienced advocates, such as self-represented litigants who may have gone before them. The Workers Compensation Tribunal is a clear example where injured workers report having often been given better information and advice from other injured workers than the lawyers they had previously engaged at great cost with no outcome. Many share amongst themselves the legal precedent set in their own cases, or those of their colleagues precedents which serve as a beacon for those who would otherwise be fooled into believing that they could achieve a just outcome through expensive legal representation, at least until the money runs out.

It is not only these clients who are affected. This bill has a net that could be cast so wide as to draw in a number of professionals who, by merely undertaking their day-to-day duties, could be seen as committing an offence. Doctors, nurses, teachers, police officers and counsellors could quite easily find themselves in the position of having to prove that they were not engaging in legal practice. For example, it is not unusual for a counsellor to advise a rape victim of her rights and perhaps even inform her of the outcomes of those who went before her. However, under this bill, the counsellor could well be charged with an offence and have to prove the unprovable, because of a lack of definition regarding what is engaging in legal practice or practising law.

I submit that the reason that a rebuttable presumption is a key feature of this bill is to exclusively reserve for the legal profession all aspects of legal work, because it cannot define it at all, least of all in a manner that would be acceptable to the community at large. The danger here is that marginalised sectors of the community may not have the option of engaging with an advocate or, in fact, self-represent for fear of an offence under this legislation.

So, what happens to those seeking justice who can access initial Legal Aid funding but whose funding will not see them get as far as a trial? Sadly, this is more often than not the case. I have referred many constituents to legal practitioners who are unable to see the case through. In fact, many get to the point where their lawyer is able to produce only a chronology of the case to be tried, present this to a preliminary hearing, and then have to pull representation because further funding is not available. In other cases, defence lawyers are unable to call vital witnesses because of the time constraints and the money that that will incur before the court.

These are not isolated examples. So far this has been the outcome for every constituent (being someone dependent on Legal Aid funding) that I have referred to a lawyer. We have, in fact, referred many of those constituents to advocates who have been able to assist them in various ways. Under this legislation, the advocate could be determined to be acting illegally which, in a way, will self-perpetuate what is already a bad merry-go-round that is, victim seeks justice; victim has no money; victim gets

legal aid; victim's funding runs out and further funding is not granted; victim gets no justice. Then, of course, there is the flipside of this: victim seeks justice; victim engages a lawyer; victim spends thousands of dollars on legal representation; victim's money runs out; victim still gets no justice.

In a very recent case there is the example of a family who simply would not be beaten down by the system. I refer now to the Easling family. In their defence of allegations of sexual abuse they spent an estimated \$1.2 million over a period of five years to get justice. I would like to know how many people could ever hope to find those sorts of resources. Mr Easling was, indeed, blessed with a family who could and did continue to make sacrifices in order to see justice done, and it paid off in the end, not financially but with a just ruling of innocence that would see a man redeemed of having to wear the label 'child sex abuser' for the rest of his days. This, of course, is the exception to the rule, and we have to wonder how the legal profession believes that it can sustain itself into the future. Perhaps this is where the necessity for this bill originated. Perhaps we have to wonder whether the average citizen, in the not-too-distant future, will have no access at all to justice if this bill becomes a reality.

I know of people in Queensland, New South Wales, Victoria and, of course, South Australia involved in child protection, family law, and WorkCover disputes, just to mention a few systems that are true thorns in the side of the judiciary, the legal profession and the governments of those states, as well as the federal government. They are a nuisance because they are well-informed and will not play the legal merry-go-round game that is often used to exhaust a person financially, emotionally and psychologically. How will they fare with this bill? Of course, how will we ever know of the adverse effects, if there are any? They will continue to be branded vexatious litigants or disgruntled people and that will be the end of their story, as it so often is now.

I have not attempted to amend this bill because there are enough legal eagles in this place to take up the responsibility for ensuring that the Legal Practitioners Act will be improved upon. There are many in this place who are far more qualified than I am to guarantee that this legislation will be adequately supported by fair and reasonable regulations.

Now we come to what I consider to be a deplorable set of circumstances and ample evidence that an ICAC is an absolute must in this state. I base this on the premise that the amendments to this bill proposed by the opposition are necessary to see that the victims of Magarey Farlam have some recourse and a way of achieving justice.

As is obvious from earlier speakers' comments, the Magarey Farlam matter has been made worse by the strategies used by the Law Society supervising it. The amendments, however, will not stop the rort and so-called slush fund provisions of the act which are replicated in the bill. What may be achieved is that other members of the public will at least be better informed of the risks they take when putting their hard earned money in the hands of lawyers. The amendments will not overcome a system that is riddled with incestuous conflicts of interest that can come into play in the handling of cases of fraud at law firms and subsequent claims. Nor does the bill improve fully enough the existing tortuous compensation claims system, although

subject to getting a clear explanation of the latest government amendment which refers to 'ordinarily prudent, self-funded litigants' there may be some improvement.

The Attorney-General's amendments will do little to address the needs of the Magarey Farlam victims but will ensure that future victims will know that to proceed in a litigious manner will, in fact, exclude them from accessing payment of compensation from the guarantee fund: a course of action, I have been informed, was the only option offered to victims of Magarey Farlam by the Law Society, when I say that I mean to litigate. An action that will see them now deemed as not sensible, reasonable or prudent people in the future if others were to take their advice.

I firmly believe that no legislation at all is far better than bad legislation, and any of the proposed amendments, in my humble and non-legal opinion, would seem to make this bill an even greater disaster than the one that already exists for the victims of a badly managed and poorly audited lawyer's trust account. The amendments to this bill create a totally unacceptable situation in which the Law Society has conflicts of interest which give it an excess of power over ordinary citizens.

There is no way that the society should have the responsibility for auditing the trust accounts of lawyers and then when the audit fails have the power to supervise the distribution of remaining funds and the determination of fraud victims' compensation claims. Now, as a result, we have a huge mess where blatant conflict of interest has been an unconscionable level of abuse perpetrated against innocent citizens in this state. The most disturbing thing about this is that the victims of a crime have borne witness to the fact that transparency and accountability are nothing more than a myth, let alone justice.

The Hon. Dennis Hood suggested that the current system could be made more just if the government were to find, from general revenue, about \$5 million to replace the amount ripped off clients each year and given to legal aid and community centres, and if the society were to continue its regulation of lawyers' trust accounts and a conflict of interest free separate independent insurance type scheme were established for clients.

I have absolutely no problem with the sentiments of the Hon. Dennis Hood in this matter. With this Magarey Farlam situation there are so many sides to the story, there are so many different opinions and views, that it is really hard to make your way through the mire and get to a reasonable and sensible conclusion and solution for these people.

This matter has hit and hurt people from the small end to the big end of town and the Law Society does not seem to care. The victims were told at a clients' meeting convened by the Law Society in February 2006 that they had been split into two groups: pooling and tracing. This forced the victims into an artificial case against each other. They were advised to get legal representation. They then introduced to the meeting two barristers and five lawyers and were told that this was their legal representation.

The pooling victims, simply stated, are those victims whose trust accounts were defrauded and who could argue that all remaining funds should be pooled and

distributed in proportion to the amounts each client should have in their accounts. The tracing victims are those who had nothing stolen and who could argue that they could take what was shown in their reconstructed ledgers, meaning the pooling clients, and would need to try to recover all their losses from other sources, principally the former Magarey Farlam partners.

There have been ample incidents to suggest that a resolution to this could have been reached out of court and through mediation. I have been told by a victim that a small group of tracing and some pooling victims were prepared to discuss settlement with the Attorney-General and the Law Society before the substantive case that decided how the remaining moneys were to be distributed. They had discussed among themselves taking 'haircuts' in concert with the potentially liable parties: the partners, the society, the banks and the partners, former auditors and all the insurers, but the Attorney-General and the Law Society refused to meet them to discuss any settlement.

Instead, the Law Society carried on with litigation, and with the Attorney-General's assistance, it seems, it has continued to drag the matter through the courts, refusing to accept the widespread condemnation of many parties, including the Supreme Court, of the system governing such cases. I repeat part of the damning opinion of Justice DeBelle, as quoted by other speakers:

One has the deplorable state of affairs that costs are continually being incurred to a point where, rather like *Bleak House*, by the time costs are paid, what is going to be left for these people who innocently suffer from the fall of another. There must be a better system.

In August 2006, a supervisor of the fund, an employee of the Law Society, obtained a Queen's Counsel opinion about how the remaining moneys were to be distributed. It favoured pooling victims but also provided for some tracing. However, the Law Society, with all its legal resources, appears not to have bothered to analyse the opinion, or maybe it did and discovered something it preferred to keep to itself. That is, as one victim discovered, that tracing would result in a better outcome for all victims.

In short, there was never a need for a case to be brought before the court. Despite this, a few weeks later, without warning, the Law Society asked the Supreme Court for pooling to be the method of distribution. That led to the pooling victims lodging a similar application, and that meant that the tracing victims had to counterclaim. Having seen battle joined between the two groups the Law Society then stepped away from the action—quite the strategic move by the Law Society, almost warlike. The pity is that the peak organisation of lawyers in this state finds it necessary to wage war against citizens and make them victims of their own legal system.

The Attorney-General's role here is dubious, to say the least, according to victims, and suspect. I cannot make any comment on that because, quite frankly, as I said, this has become so convoluted.

So, an artificial adversarial contest of the victims was created, and there is no doubt in the mind of some victims that this was intended to deflect attention from the society's

liability because, again, no option was provided to the victims to consult with the partners or the society. The end result, revealed in the Supreme Court last Thursday 21 February, was more than \$1.1 million in fees for lawyers, who are probably all Law Society members.

The only party which has not had to endure any costs associated with this fiasco is, in fact, the Law Society. It simply takes what it needs from the guarantee fund, all expenditure from which has to be authorised by the Attorney General, so money is recycled and regurgitated one way or the other. At least 25 lawyers are believed to have been acting for clients, and I am told that on one day the Supreme Court was populated by about five barristers and nine solicitors, plus a few assistants. It is a disgrace that such a lair of lawyers should be in court on a matter to determine how remaining money in a law firm's defrauded trust account should be distributed.

The victims in this have, of course, borne most of the cost because even if they recover their money from the guarantee fund, as the court has ordered, rejecting the Attorney-General's objection, they are only getting their own money back. And we call this the justice system; to many it appears to be more like the 'just us' system.

It also seems that the Law Society made a number of attempts to further deflect its part in this litigious affair. On 12 November 2006, an article in the *Sunday Mail* reported that 'there is disagreement between the parties whether they should pool the remaining money for equal distribution or whether each account should be traced to calculate the extent of individual losses.' There was no mention that the society had initiated the court case, forcing the victims to litigate against each other, in the first place. The article said that 'some of Adelaide's wealthiest families' were involved in this dispute, and it is alleged that information of that nature could only have come from someone with access to the Magarey Farlam files, files that should be confidential between practitioner and client.

It has also been put to me that representatives of the Law Society have behaved in a curious and spurious manner, and perhaps the following examples of their actions will validate this victim's statement. It seems that confidential information can be passed to the media, but when victims request the names and addresses of other victims to establish communication, and, I might add, to discuss settlement, they are told that an application should be made to the court for the information. No wonder about 30 lawyers were finally involved in the case on behalf of victims! The victims getting together for a class action, or at least a collective action, was no doubt the last scenario the Law Society wanted; it wanted to divide and conquer the victims. With that attitudinal and behavioural problem shown by the state's peak law organisation, how can anyone now walk through a law firm's door with any confidence?

Next, there is a case of curious and spurious correspondence. In a letter dated 19 December 2006 Margaret Kelly, then president of the Law Society, said to a victim who had sought a meeting between victims to discuss settlement that, because he was not legally represented, the discussions would inevitably lead to her, in effect, giving him legal advice about options, and it would not be proper for her to do so. Curiously, Ms Kelly was contradicting none other than the previous president of the Law Society, Ms Deej Eszenyi, who had stated in a letter to the same client dated less than four months before on 4 October 2006 that she could not provide him with legal

advice about what category he might fall under because he was legally represented. One view had to be spurious and both were curious, because in neither case was the victim seeking legal advice; just settlement discussions. Banned if you are and banned if you are not; a sad and sorry reflection on the society's ability to understand a simple request.

The intrigue just continued to spin, and the tangled web woven by those in the upper echelons of the Law Society even spread to misleading the society's own members. Ms Kelly, rather carefully it seemed, edited the actions of the Law Society in a letter to members dated 13th December 2006. She gave limited details about the proceedings and associated matters in providing details of costs excluding, of course, the QC's opinion, at least half a dozen directions hearings, and the costs of proceedings case; and nor did she refer to Justice DeBelle's conference suggestion or his *Bleak House* comment. Perhaps Ms Kelly was wary that some members of the Law Society would consider that the actions taken would be less than palatable to those lawyers who still lacked the arrogant, manipulative techniques of some other practitioners.

The Law Society's curious and spurious statements, mentioned earlier, are multiple. At the 17 February 2006 meeting of clients one person asked about the inspector's role in the matter and the then Law Society president, Ms Deej Eszenyi, had a seemingly ready answer. As the minutes of the meeting show, she said:

...the audits conducted were systems audits not designed to find fraud. The system audits were there to ensure systems were in place...Unfortunately the defalcations did not arise out of any misuse of the systems. They were carefully hidden forgeries in many cases, undertaken in a way so that they would not be discovered and not be seen in Law Society inspections.

Try running that past any lawyer who has been inspected; the response would be absolute non-acceptance.

I am also told the society refused to make available to victims its trust handbook; however, the victims got a copy anyway and found in chapter 20 that the inspector's or auditor's duties included the detection and prevention of fraud. That again shows that Ms Eszenyi either was not familiar with the handbook, which is a concern, or that she misled the people at the meeting, which would be an even greater concern.

Fast forward to May 2007, when the society promised victims a detailed, formal statement about the matter and promised that it would be distributed in the week beginning 11 June 2007. Despite several requests, the statement was never provided and, while it is alleged that the society has made no serious attempt to consult, negotiate or mediate settlement for the victims, its representatives appear to have gone out of their way to distort, deflect, divide and conquer while securing and protecting their own flanks.

Even more serious is the action of the Law Society in misrepresenting the views of the Supreme Court. In February 2007, the society's executive officer, Ms Jan Martin, wrote to members about the case and in the note claimed that paragraph 38 of Justice DeBelle's judgment in the distribution-of-money case justified the supervisor's actions.

It absolutely did not: it was purely descriptive. That false and misleading claim should be further investigated.

This could be made into a movie. This sorry saga of drama and betrayal of citizens would be a classic civil version of the bloodcurdling atrocities committed against citizens by those in power, as seen in the highly acclaimed movie *Braveheart*, starring our very own Mel Gibson. That story was somewhat embellished to ensure its success. The Magarey Farlam-Law Society epic would require no embellishment at all. Perhaps we could invite Franz Kafka back from the dead to write the script!

The victims tell me that individually and collectively they repeatedly asked the Attorney-General from as early as May 2000 to meet, but he refused. The Attorney-General's response is that he did not meet because he was at this point being litigated against and it was not appropriate for him to engage. The Attorney-General also stated that his office then approached the Solicitor-General to intervene. However, I am told by victims that it was the society that suggested to the Solicitor-General that he ask the Attorney-General to convene mediation.

What we have heard is that, after the Attorney-General agreed and after he said that he had received many positive responses to the proposal, the victims were subsequently told that the Attorney-General would not convene mediation until litigation ended, which the Attorney-General states is in line with the responsibilities and obligations of his office. He also said that he would not meet with any party until mediation had run its course.

Of course, what is clear from the information we have received is that the victims of this disaster believe that he (the Attorney-General) was simply not interested in mediation at all. It is the belief of the victims that the Attorney-General was not interested in talking to victims; that he did not care that they were being unwillingly and unnecessarily dragged through the courts at vast expense and involving time and stress. The Attorney-General of South Australia, they say, did not care that he was contributing to the unnecessary clogging of our courts and that he was heaping grievous injustices on the people he should be protecting.

A key overarching point appears to be that the Attorney-General has to authorise all expenditure from the guarantee fund. Because the society's expenses in this matter have come out of the fund, it is a fair perception that he is embroiled in this whole sordid affair. Even worse, he appears to have shown a disturbing indifference to the plight of Magarey Farlam victims. What has not been discussed is the conflict the Attorney-General is faced with. He is the first officer of the law for the state and, as such, I imagine his approach to this matter is one of the 'big picture', about which I hear so much in this job.

Neither the position of Attorney-General nor the vision required will ever be of a concern to me, thank goodness. I will not defend or accuse the Attorney-General of inappropriate conduct, because everyone has a different story, and there is much to be lost by anyone who could be held liable for this massive miscarriage of justice.

If the Attorney-General changes the guarantee fund to a fund of first resort, I understand this will mean that legal aid funding will be diminished and that those who

rely on legal aid funding will not receive the same level of funding they receive now. Of course, as I stated previously, I could argue that legal aid funding for the majority is inadequate anyway and that a reduction will not change very much at all the outcome for those people who qualify. I know this is a simplistic conclusion because it would mean that yet another group of victims would be created, and that is not a decision to be taken lightly.

It may also mean that taxpayers will inevitably bear the burden of this action to either replenish the guarantee fund or to fund legal aid. As I understand it, the guarantee fund is part of what is referred to as a 'slush fund', which saves the government about \$5 million a year in funding legal aid in community legal centres. Of course, this confirms in my mind that, should this slush fund be diminished and a precedent set for using it as a fund of first resort, taxpayers will indeed bear the burden through a levy or tax.

Is this fair to the 90 per cent of citizens who will probably never use the legal aid system? Some of the victims might respond by saying that they have for many years propped up the legal aid system for others and that, in their time of need, they have been abandoned by the government and the Law Society, so let all taxpayers share the responsibility of assisting the less fortunate and let it be shared equally. Many victims are bitter, disillusioned, and who could blame them after 2½ years of endless litigation, and now find themselves seriously financially compromised.

The Law Society also benefits from this guarantee fund, and it would be of little surprise to hear that the victims' own money is being drawn from the guarantee fund to pay for the litigation costs of this case. What an absolute insult to the victims! I do not care too much at all about any costs that would be incurred by the Law Society: after all, it has not suffered any cost for its obstructive behaviour in this entire matter.

According to information provided to me, if the Law Society shared equally with the clients the funding of the Legal Practitioners Conduct Board, instead of clients contributing an estimated 75 per cent, it would probably need to contribute another estimated \$40,000 of its members' funds to the board. Victims may think, 'Who cares? Let them pay [I must admit that I tend to lean in that direction myself] and let the Law Society explain to its members why this particular lurk no longer exists.' This would see justice done because we must remember that the Law Society took the original step to litigate when it was not necessary, almost certainly in a bid to spare its own insurance interests with Law Claims, which is operated by Lawguard Management, a company owned by the Law Society.

An unintended side effect of this could well see insurance companies under no legal obligation to fulfil their contracts under a range of different circumstances. For example, we pay comprehensive car insurance in the expectation that, if we are involved in an accident, our car will be repaired or replaced, as well as the other person's vehicle being taken care of. How would we feel if we were expected to litigate against the insurance company for those repairs or replacement of the vehicle? We would be very peeved, to say the least.

In fact, this is what has happened with Magarey Farlam victims. Magarey Farlam was insured for just this kind of scenario (that is, fraud) and, instead of the Law Society's

insurance company compensating the victims, the Law Society told them to fight each other first to retrieve what was left after the crime of fraud had taken place. In other words, the insurance company had no obligation at all to do the right thing. Victims were basically told, 'Suck a sav, and fight until there's nothing left.'

There is also the reality that Magarey Farlam should be held to account for the misappropriation of \$4.5 million of client funds embezzled by an employee of that firm. For example, if I owned a business and an employee of mine defrauded a client, the buck would stop with me. Word of mouth may just see that in the future fewer and fewer people will take the risk of putting their money into a lawyer's trust account because it is not worth the risk, and, as far as I am concerned, that would be nothing more than natural justice. But, then, who will pay for the fees mentioned earlier (estimated as being around \$400,000 of members' funds) to the Legal Practitioners Conduct Board and the Legal Education and Admissions Council?

Even more scary, who would fund the legal aid system of this state? Sorry, that was a momentary lapse, of course. The already overburdened taxpayers of South Australia will bear that burden and they will naturally pick up that bill. The only satisfaction is that this money will not be recycled over and over again through the coffers of the Law Society. We will see lawyers working for minimal amounts available through the Legal Aid system with absolutely no perks. Needless to say, another outcome may be that lawyers will simply not represent Legal Aid cases; and that scenario seems highly likely given the conduct of the Law Society to date.

An important question needs to be answered. Why did the Law Society become involved in this matter in the first place? I am told that some years ago there was a dispute between the Law Society and Magarey Farlam about the firm's amount of affairs work; that is, looking after client's financial and other affairs. The Law Society is believed to have been concerned that the work was not legal work and, therefore, would not be covered by their insurance. The matter apparently ended abruptly, resulting in the firm carrying on with the work anyway. The Law Society, therefore, may have felt aggrieved enough at losing the battle to have taken a keen interest in being able to take first-hand involvement in the affairs of the firm to which it appointed a manager when it collapsed in January 2006.

The Magarey Farlam affair has exposed a lengthy tally of issues of considerable concern, the least of which is that people suffer just because they are victims of white collar crime resulting from poor auditing standards, poor management, poor supervision and conflicts of interest; and it does not necessarily mean that victims will be entitled to receive what is legally and rightfully theirs. In fact, they will not even be referred to as victims but, rather, as investors in an effort to create the illusion that the only persons affected are wealthy capitalists.

The truthful picture is that these victims come from all sections of society. Children and youths are blocked from receiving an inheritance of \$2,500 from their grandmother on their 18th birthday, a small inheritance in the context of the total amount of a trust, but a very important amount to an 18 year old. A widow who spent many years caring for her mother and then had to care for her clinically depressed husband had her \$40,000 inheritance frozen. A post-graduate student whose trust account contains \$2,000—a fortune for a student, was frozen. These people had

nothing stolen. If the street talk is correct, the range went from those mentioned to others who lost more than \$1 million. I wonder how many members of the Law Society would take such a loss, and I also wonder to what extent they would have to go in order to be rightly compensated. Of course, they would have the benefit of being able to self litigate, which is how the victims' money has evaporated while trying to get their assets returned and their losses and costs compensated.

The Law Society appears to have been engaged in numerous actions which seem to lead to the conclusion that it was determined from the outset to protect itself from liability and to maintain this system at the expense of the innocent victims of white collar crime. There is some belief that the Attorney-General is equally culpable and has colluded in this matter, but, as I said previously, I am not sure of this and I know that over time eventually all will be revealed.

I am still not sure how I will vote on this bill or the amendments that will be put before us. I think that a lot of questions need to be asked in the committee stage of the Magarey Farlam section of this bill. I will be listening to the answers, discussion and debate most carefully in the committee stage in order to make my decision on this bill.