Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 8 December 1999

QUEENSLAND LAW SOCIETY AMENDMENT BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (4.39 p.m.): The Queensland Law Society Amendment Bill is another anti-consumer initiative of the Beattie Government. This Bill diminishes the rights of Queensland's consumers. It restricts the entitlements of those persons who suffer pecuniary loss through misappropriation by practising solicitors or their employees of money or property entrusted to a solicitor. It is clear that the current situation of the Legal Practitioners Fidelity Guarantee Fund is parlous. It is equally clear that urgent remedial action is required. Nevertheless, the coalition's position is that such action should not be at the cost of innocent people who have entrusted their faith and perhaps their life savings to a solicitor firm which have then been subjected to a criminal abuse of trust.

We firmly believe that the immediate answer to this problem is clear. The body of the fund is primarily made up of interest generated from money placed in solicitors' trust accounts by their clients. However, only a proportion of the interest moneys are deposited in the fund and the fund has a $5m ceiling. Not only that, but the moneys held in the fund are critical to the performance of the Law Society's regulatory role. Almost all of the society's regulatory functions have historically been paid from moneys deposited in the fund. What this means is that the share of moneys that defrauded clients actually get from interest moneys generated on overall clients' accounts is quite small. There is a need for this situation to be rectified to ensure that Queensland consumers do not become victims of both fraudulent legal practitioners and a Government that has been greedy enough to expropriate interest moneys that could have been used to bail these people out of their problems.

The other clear problem is that the fund is artificially limited to $5m. This is actually silly and has placed an ongoing impediment on the fund being able to expand to a more sustainable level. I will speak at greater length on these two points in a moment. However, at the outset I will address two policy matters. The first is Legal Aid.

At the moment, the bulk of interest moneys from solicitors' accounts is credited to Legal Aid. For example, during the past financial year around $8.6m was received by Legal Aid Queensland from statutory interest sources. It is plainly our view that Legal Aid Queensland should not be deprived of a cent of funding. While I believe that the Queensland Law Society goes too far, I note that in its submission to the Government's green paper on legal professional reform it suggested—

> "No justification exists for the Government continuing to use interest paid on clients' money deposited in solicitors' trust accounts to fund Legal Aid. The only legitimate and appropriate use for such money is for the benefit of solicitors' clients by funding an appropriate regulatory regime. Legal Aid is a Government responsibility."

I think this is one of the great problems, and this Bill perpetuates the problem, that is, up until now we have had a situation where Governments have used clients' moneys to benefit Legal Aid but have not left enough in the fund to benefit the very clients who have been harmed by solicitors. I do not pretend that this is an easy problem to fix. We should never be in the situation where we have a cash-strapped Legal Aid Office and a cash-strapped fidelity guarantee fund fighting over the crumbs.

The policy position set out by the Queensland Law Society has merit. It is the primary responsibility of Governments, both State and Federal, from consolidated revenue to provide sufficient funds for Legal Aid. If there are adequate amounts in reserve from the interest earned on solicitors'

trust accounts after meeting the needs of clients, then those moneys should also be allocated for Legal Aid. To me, there is something fundamentally wrong about a debate which centres on which of two deserving causes should miss out when the clear solution to the problem is for successive Governments to stop ripping off clients' interest moneys and start becoming accountable and responsible by utilising general funds in the consolidated revenue fund. If there is ever a crisis in Legal Aid funding, then the solution is not to create a crisis in the funding of the fidelity fund.

The first key benchmark of best political practice is looking after consumers and the needy by responsible funding and not by pitting one off against the other and trying to conduct a debate at the margin by arguing over who should get the scraps from an ever-diminishing revenue source.

My second point is that the legal profession itself has to play its part. I think all of us are getting sick and tired of legal fidelity funds getting into strife around Australia through a very small proportion of legal practitioners ripping off their clients. If the fund does not have a sufficient body at any particular time, then the legal profession itself will have to pay for any excess through levies. I fully support that part of the Bill which allows for levies to be imposed by regulation.

The Law Society also has to do its part in dealing with so-called entrepreneurial solicitors. I am always very wary of any proposal to exclude people from compensation who have been ripped off by professionals on the basis that the work was itself not part of their traditional work. The reality is that professionals are placed in a position of trust—I know that the Attorney-General appreciates this—in terms of bargaining power and of influence. They are in an unrivalled position to abuse their trust.

Solicitors, because of the very nature of estate, conveyancing and commercial work, are in a position to know their clients' financial affairs. Through the use of their trust accounts and the fact that they hold trust deeds, wills, powers of attorney and certificates of title, they are in a position not only to misappropriate funds but also to suggest certain commercial courses of action. I suggest to the Attorney-General and to the Law Society that many vulnerable persons who rely on their legal practitioners for advice could well be advised to do any number of things, including investments, and yet under this Bill they will be left out to dry.

The point I make is that it is fundamentally unfair to assume that a solicitor who has done the wrong thing by his or her clients will not abuse his or her position of trust in his or her professional capacity. In those circumstances I suggest that restricting compensation in the manner set out in this Bill could operate in a harsh and unconscionable manner.

The coalition approaches this whole matter from the viewpoint of the rights of clients. It approaches it from the viewpoint that there are certain ethical and professional standards that must be upheld. It approaches it from the viewpoint that if a client has been ripped off by a solicitor in his capacity as a solicitor, then the consumer should not be short changed by the State.

We do accept that changes have to be made, and by and large we believe that this Bill goes about things generally in the right manner. In particular, we support empowering the council of the Queensland Law Society to impose reasonable levies to meet any insufficiency of assets in the fidelity guarantee fund. We support empowering the imposition of levies by regulation and we support validating levies previously imposed by the council and providing for levies collected to be part of the fund and not to have been advanced by the society.

We welcome legislation to take away some of the inherently counterproductive restrictions that apply under the Queensland Law Society Act with respect to the fund. In particular, we welcome the move to do away with the restriction on the council not to be able to impose a levy on practitioners for the purpose of the fund of more than $20 a year or $100 during a practitioner's career. Obviously this restriction was unrealistic and has led to the council imposing general levies and providing money out of its general funds. Any move to clear up the legal doubts about these general levies is sensible and is to be welcomed. The then President of the Law Society, Jeff Mann, said in last year's annual report—

> "The pockets of practitioners are not a bottomless pit. Again, obligations imposed on practitioners to contribute to the Fund undermine viability of legal practices."

That is an important point that should not be lost sight of. For some time now the Law Society has gone out of its way to ensure that clients who have been victimised by the activities of certain dishonest solicitors are not financially disadvantaged. The point needs to be put on the public record. However, I do not believe that legal practitioners can walk away from helping to indemnify the criminal activities of their colleagues. I do not believe that the current situation is fair for either innocent clients or honest solicitors. The situation has to change. There is a place for a proper and sensibly run fidelity fund. However, I believe that there is certainly an opportunity to pursue other ways of being able to indemnify clients in the event of fraud on the part of solicitors.

In the Australian Financial Review of 3 September this year, the Law Society estimated that successive State Governments have, since 1986, scooped more than $115m from interest moneys that would otherwise have been credited to the fund. I would suggest that if only a small proportion of

those funds had not been diverted, then the injustices that this Bill will perpetrate would not have come to pass.

I would like now to comment generally on some of my perceptions with regard to the operation of this legislation. I would also like to talk about the perception of the legal profession in general. It is probably very fair to say that the legal profession, as a collective, is very similar to the political profession as a collective, that is, that we are not held in very high esteem in the community. However, it is also fair to say that, generally, legal professionals as individuals or politicians as individuals have a significant degree of support and respect in their own communities, because they are involved in the local church, they are involved in the local P & C or the local P & F, they are involved in the local Brownies, the scouts, or whatever the case may be and are very much community-minded people. Many people have respect for solicitors on an individual basis. However, I believe that the actions of some who engage in unconscionable conduct from time to time— and it is a minority; I do not know what percentage, maybe 2%, 3% or 4%—tarnish the reputation of the profession in general and, unfortunately, I believe, really undermine the good work that is done by very many legal professionals in this State.

However, as I indicated in my speech earlier, I believe that most solicitors realise that they are in a position of great trust for their clients; that in many cases, they are dealing with people who have been friends, and family friends, for a long period—people they come across in their local communities—and they know that they have an obligation to do the right thing by them. So what happens is that, occasionally, one of those solicitors runs off the rails; their inherent dishonesty comes out; they might have got themselves into an unfortunate situation or are unable to resist the amount of money which they might have deposited in their accounts, which is clients' money; and they run away with it or do the wrong thing with it. The same situation applies when dealing with first mortgage investments or loan investments.

I believe that is one of the reasons we have this situation with this piece of legislation before the Parliament which, in general, is reasonable legislation. But specifically, according to certain sections of the legislation, it is absolutely immoral, because it seeks to retrospectively deny a legitimate entitlement that some people who have been the victims of solicitors' fraud would have otherwise expected. I do not believe that we can come into this Parliament and pass those sorts of laws. I am sure that the Attorney-General, as a person who was the previous State President of the Council for Civil Liberties in this State, should have had some sort of moral or conscience problem as he set about doing this. I want to touch on that in a moment.

Certainly, we have one group of people in this State who are out of pocket to the tune of $6.5m collectively, and this legislation seeks to ensure that they may not be able to legitimately or reasonably recover any more than about $2m of that. That is absolutely and completely immoral. I say to the limited number of honourable members opposite that they have to think very carefully about the principle of what they are about to do here by passing this legislation and retrospectively denying those people a right and entitlement that they would have otherwise expected under the Queensland Law Society Act, as it existed before the passage of this piece of legislation—a process that is currently in place which probably would have seen those people legitimately expect to recover the $6.5m that has been defrauded—established, that is—from those people.

I wish to read into Hansard a letter that I received from some people. I will leave out the name of the offending solicitor because there may be some legal action pending. I believe that these are very, very salient points for members to consider. In regard to the Queensland Law Society Amendment Bill 1999, the letter says—

> "The above Bill has now been read a second time. We members of the ... Action Association are highly concerned with some sections of the Bill.
>
> ...
>
> Many elderly, self-supporting people were misappropriated of their life savings at the hands of a former Gold Coast solicitor. Some of these are now sick and destitute.
>
> PLEASE NOTE:- These funds were not lost through imprudent investment as suggested by some politicians we have met. They were stolen at source."

This comes back to what I was saying before; that these particular people, in common with many other people around Queensland, trusted that person. That person was their family solicitor. They knew that person for a long time. They knew that person socially. They knew that person in the community. They trusted that person absolutely. They entrusted their money with that particular person. They trusted that person to do the right thing by them. But that person defrauded them, let them down, and said at the end of the day, "Look, it is okay, because the Legal Practitioners Fidelity Guarantee Fund is going to look after you." We know now, by the actions of this Government in passing this legislation today—if it so does—that that will not be the case. The letter continues—

"The receiver, Mr. David Lombe, of Deloitte Touche Tohmatsu, allocated victims against the Queensland and New South Wales Law Societies on the basis of where the funds were entrusted."

So we are dealing here with a former solicitor in Queensland who was struck off; and also, I understand, a former solicitor in New South Wales who defrauded people in Queensland and New South Wales.

The important point to remember out of this is the following: New South Wales is going to move to assist those people. The letter continues—

"The New South Wales Law Society has decided to pay out victims in order of hardship, health, etc., 50% first payment, 8% interest and some legal expenses followed by further payment of the remainder as funds become available. The first victims are about to be paid."

They say—

"OUR CONCERN WITH THE QUEENSLAND BILL"—

and this is very, very important—

"Included in the Auditor-General's report to Parliament in 1998/1999 on Audits performed for 1997/1998 ... Section 4.2, is the Legal Practitioners Fidelity Guarantee Fund. 'The Legal Practitioners' Fidelity Guarantee Fund is administered by The Queensland Law Society Incorporated (QLS) in accordance with the Queensland Law Society Act 1952. The fund is used to reimburse members of the public for losses suffered by threat or misappropriation by solicitors and their staff.

...

Part of the Queensland Law Society Amendment Bill, 1999 is an attempt to reduce liability and minimise refunds to victims.

Amendment of s 24 (Application of fund)

Clause 6.(1) Section 24"—

and I intend to have some more to say about that at the Committee stage—

"In working out the amount to be applied for reimbursing the person, the council may—

(a) have regard only to the amount invested, or purported to be invested, as principal for the loan or purported loan; and

(b) deduct any amount, whether of principal, interest or another payment however described, paid in relation to the loan or purported loan, that the person has received."

They say—

"... Insertion of new s 24C

Clause 8. After section 24B—

insert—

'Fund does not protect investments

'24C.(1) This section applies if a practising practitioner receives or holds an amount on trust and is instructed to invest the amount.

(2) A claim may not be made against the fund for reimbursing pecuniary loss suffered because of the practising practitioner's unlawful conduct in relation to the amount.

(3) However, subsection (2) does not apply if the principal purpose for which the practising practitioner holds the amount on trust is a purpose other than investing the amount.

Clause 6 is highly unacceptable because it deducts interest paid by"—

the solicitor—

"... on the purported loans from the principle purported to be invested."

This is a very, very important matter that we are discussing—a departure from the way in which the Legal Practitioners Fidelity Guarantee Fund has operated over many years. The letter states further that the solicitor—

"... convinced his clients (with fraudulent documents) that he had made investments on their behalf. He misappropriated the funds but paid monthly interest, covering up the theft. It means that investors who were long time clients would receive no return of principal, eg, 8 years with"—

the solicitor—

"at 12.5%. Misappropriation goes back to the 1980s. New South Wales is not regarding interest paid as return of principal. Clients allocated against Queensland are being discriminated against. Clients of the same solicitor are being treated differently."

Lorna Bartholomew and Robert Firth state further—

"On behalf of our Association—

we—

"met with Independent Mr. Peter Wellington on Thursday 16th September 1999. Mr Wellington asked our representatives which section of the Bill they were dissatisfied with and, after re-reading Amendments s24.Clause 6 and 8, Mr Wellington commented (according to Lorna's memory) 'This is totally unacceptable. This State spends thousands of dollars advertising Queensland as the State in which to invest. No one will want to invest in a state where interest is considered as payment of principal. This Bill could have devastating repercussions for any investment in Queensland. It is totally against all economic law' "—

and at that point I include fairness as well. The letter continues—

"During the period of misappropriation, solicitors advertised that they have a Fidelity Fund, yet this supposed protection was not viable because the Queensland Government, for many years, has scooped off excess funds to fund Legal Aid, surely a community responsibility."

The letter states further—

"We ask the question, 'What protection has any Queenslander (or people investing in Queensland) got when funds are misappropriated?' "

I would add "under these circumstances". The letter states further—

"We are not trying to get anything that is not rightfully ours. We are trying to get our principal back not (principal as payments of interest"—

the solicitor—

"made to us).

We are quality Australians who have worked hard, fought for Australia, involved ourselves in a range of community services, some decorated for bravery and service and all working towards self-funding retirement so that we are not a burden on this country. None of this has been recognised and we are being treated like greedy failed investors trying recoup losses.

We therefore, request that you look closely at this legislation and we ask for your support by amending it.

Yours faithfully,

Bart Bartholomew."

I think that that association has put the problem very succinctly, because it is a moral and ethical problem. This Parliament has, as its primary responsibility, an obligation not to legislate to snuff out retrospectively people's legitimate entitlements but to legislate to protect the entitlements of people. In those circumstances, any legislation that we pass should be only prospective, not retrospective. None of us would like that to happen to us. We have the situation in which those people have now lost the principal source of their income for the rest of their lives. This Parliament is going to be party to that. This Parliament is going to be responsible for passing legislation that seeks to take away their rights.

No doubt, the Attorney-General will stand in this place later and argue that the situation will be only a base consideration for the Queensland Law Society. However, the Queensland Law Society has said that it will be bound or guided by the legislation that will be passed by this Parliament. So the Attorney-General will argue that these people—these honest, hardworking Australians who have been broken by this incident—may, in actual fact, receive all of their entitlements. We know full well that, once this principle is enshrined in legislation under this new section, they are not going to. It is going to be used as the base position for the Queensland Law Society when it is considering the claim against the fund.

I will explain to honourable members what this issue is basically all about. Previously, if a claim had been made against the fund, that claim was paid out in full. An archaic section in the Law Society Act states that there is a cap of $60,000 and that the Law Society is not bound to pay out any amount above $60,000. However, during successive Governments in this State, it has done that. We need to appreciate that. Historically, that cap, which is antiquated and needs to be looked at as well, has never been used. Now we see a situation in which the Law Society is saying to the Attorney-General—and the Attorney-General is passing it on as some sort of indicative threat to the Parliament—that if the Parliament does not move with regard to these investment loans, then the Law Society might act on that $60,000 cap and not pay out anything. That is the threat. However, the important point to note is that, historically, that cap has never been used.

This is what is happening. Let us say that a client of a solicitor invested $100,000 with that solicitor in 1989—10 years ago. Over the past 10 years, that solicitor has paid out 10% interest a year.

Those interest payments add up to $100,000. At the end of the day, the solicitor has defrauded the original $100,000 principal which was in his trust account and has run away with it. When these folk who are members of this association went to see him, initially they said to solicitor X, "We would like our money." He said, "It's right there. Here's your next interest cheque." When they go back to see him they are then told by the solicitor, "Bad luck, it is all gone." Notwithstanding the fact that the solicitor looked after himself reasonably well by apparently diverting assets off elsewhere, those people were told that the money was gone. They were then told that they would be able to claim against the fund.

However, this legislation considers interest payments as payments of principal. This legislation says that, in relation to that $100,000 that was invested initially, the $100,000 that was paid subsequently in interest will be treated as principal. So that $100,000 will be deducted from the $100,000 invested and the obligation on the Queensland Law Society, in considering its liability, may be zero, because the interest payments made are to be treated as principal. Similarly, if a person had invested $100,000 six years ago and there had been six interest payments of $10,000 per annum—that is 10% and $60,000 over that period—the $60,000 that had been paid in interest would be considered a principal repayment, which leaves that particular person expecting to receive only $40,000.

Over a period of 10, 12, 15 years, or whatever the case may be, many of those people who entrusted their money with their solicitor have been paid more in interest than the principal amount that they invested. Imagine the hue and cry around this State or nation if 20 years ago somebody deposited in their bank $200,000 and went back to withdraw that amount of money after a certain period and was told by the bank that the $200,000 has been paid out in interest over the subsequent 20 years and that, therefore, the bank would not be paying that person the invested principal amount.

Mr Bredhauer: But they didn't invest it in a bank.

Mr SPRINGBORG: The issue is that those people invested in a system, whether it was a loan mortgage, a first mortgage investment, or whatever the case may be. Some of those people transferred money across from trusts. They were told by the solicitor, "Have I got a deal for you." The important point that the Honourable Minister is missing is that those people's money was in a fund and they were protected by the Legal Practitioners Fidelity Guarantee Fund to the extent that their full principal could be paid out in the event that something went wrong.

If the Honourable Minister does not believe me, then he should contact the Honourable Jeff Shaw, who is of Labor ilk and who is also the Attorney-General in New South Wales. He has indicated to us and also to the Attorney-General that there is a moral obligation on the State of Queensland to ensure that these people are paid out, because that is what he is doing in New South Wales. That Government recognised that what happened was wrong. We in Queensland probably also recognise that it is wrong, but we are saying that it is all too hard, that there is not enough money in the fund and that we cannot come up with some way of overcoming the problem. So, instead, we are pulling back on a principle that states that those people have a right to be justly compensated.

There is a very close correlation with the argument about money that is put into a bank. The important thing is that those people put their life savings into the bank. When they do not get their principal back, they become what they did not want to become. They become reliant upon the Commonwealth to pay them a pension or some other form of income support. They did not want that or expect it. They made what they thought was a reasonable investment, trusting their solicitor. We know full well that those sorts of situations will occur in the future. If the Attorney-General wants to do this, he should move to do it prospectively, not retrospectively, because those people had a legitimate expectation that they would be justly compensated for what happened.

I have had the opportunity to meet with those people and I appreciate their concerns. I know that the Attorney-General has met with them and spoken about those issues. They are very reasonable people. In this particular case, they are principally from the Gold Coast. The Attorney-General knows, as I do, that other impending issues will possibly become a drain on the fund over the next couple of years. We know that. However, we have an obligation to the people who have been affected to date not to retrospectively deny them a just entitlement or right. There are ways of overcoming the structural problems to ensure that the money is available to assist us in meeting that obligation into the future. That is important.

In my discussions with those people, they were not unreasonable. I said, "Let's say we come up with some sort of amendment where you could be compensated the full amount over five or six years. Would you be happy with that?" They said, "Yes, we would be happy with that. We don't want the whole lot up front right now. We would be happy if we received it over a period. Some of us invested several hundred thousand dollars and others invested less than that. As long as we had an indication, similar to what happens in New South Wales, that we could be paid as money becomes available to the fund, we would be happy."

There may be a degree of mirth on the other side of the House about this, but the New South Wales Attorney-General has recognised the principal of paying people their full principal amount, not the crafty idea of taking the principal, subtracting the interest and then treating that as principal. He has also recognised that there is an entitlement to interest at the rate of 8% and reasonable legal fees as well. Is there something wrong with what Jeff Shaw is doing in New South Wales? There is nothing wrong with it at all. He has recognised something.

I have tried to point out the problems with the legislation and I have also tried to come up with some suggestions to solve those problems. I know, as the Attorney-General does, that we have a significant systemic and structural problem in relation to the Legal Practitioners Fidelity Guarantee Fund. I am sure that the Attorney-General appreciates that. He also knows that there is a difficulty in extracting from consolidated revenue the amount of money that this State requires to run legal aid. The Attorney-General often talks about the Commonwealth's role in relation to legal aid. He knows full well that I am not supportive of the Commonwealth's position. Over the last year the Commonwealth Government increased the amount of money that goes to legal aid by about $1m, but that is terribly insufficient. We know that. We have no problem with saying that. We have no problem with offering the Attorney-General all the support that he wants if he goes to Canberra and battles with the Commonwealth on the issue of legal aid. That problem has been addressed somewhat in the past year, but it is still behind what it was.

In Queensland, during the Budget deliberations it has been far easier for Treasury to shift the obligation to the Legal Practitioners Fidelity Guarantee Fund by diverting the income stream that goes into the fund. Even a Master of Economics would probably be incapable of understanding completely how the thing operates. Basically, there are a couple of income streams. In the first instance, a certain amount of money is diverted into legal aid and a certain amount of money goes into the Legal Practitioners Fidelity Guarantee Fund. Another income stream goes off here and another over there and so on. That creates some of the problems.

To give members some idea, in the past financial year in Queensland, about $10m in interest was earned on the trust accounts of solicitors. That is clients' money. Do members know what happened to that money? Of that $10m, $8.6m went into legal aid and $1.5m went into the Legal Practitioners Fidelity Guarantee Fund. In this State, the Legal Practitioners Fidelity Guarantee Fund, or the solicitors' fidelity fund for short, is in a parlous state. Technically it is bankrupt. It cannot meet the expectations of aggrieved clients who have been affected by the actions of defaulting solicitors. It cannot meet the expectations of the honest solicitors of the State, who are overwhelmingly in the majority and who have to be levied to try to ensure that some degree of payment is available.

I will move a series of amendments to the legislation. I will move an amendment that seeks to strike out the obnoxious sections of clause 6 that deny retrospectively the rights of people, who have lost money that was invested with solicitors, to reliably or reasonably expect that they can be compensated for the full amount of principal. We are talking about the principal amount invested and not the principal minus interest which is then considered to be the principal. We are talking about the amount of principal that was invested forgetting the interest, because interest is interest. It is the same if someone goes to the bank and invests money. I will move an amendment to take the situation to where it is now.

We know full well that the $60,000 cap has never been used. We know full well that it is being used as a threat in this particular case. Why should it be used as a threat now when it has never been used in the past? Why should the $60,000 cap on payouts be used as a weapon to put legislation through this Parliament that will deny a justifiable entitlement to people who have lost money that was entrusted to their family solicitors? I will be seeking to remove that clause from the legislation. If that amendment succeeds, it will leave the current situation intact, that is, the Law Society is bound to consider paying out the full amount without the crafty base that is being built into the legislation.

I will then seek to move an amendment that will increase the ceiling from $5m to $10m so that the fund is able to build up to a reasonable base. In that way, it will contain a substantial amount of money to cover claims that are made in the future. At the moment there is legal aid, which is a legitimate area of Government, and there are the legitimate expectations of the victims of defaulting solicitors. We are picking winners and losers when we should be looking after both groups. My amendment is about putting a reasonable ceiling in place.

The amendment also seeks to restrict any diversions from that income stream until such time as the Legal Practitioners Fidelity Guarantee Fund builds to $10m. After it has done that, the money will trickle over into legal aid. In that way, the fund will contain a substantial amount of money that can be used to fund the victims of the sort of fraud that we have been talking about. A sum of $10m is reasonable. While that will cause a shortfall in legal aid in the first instance, the State has an obligation to fund that out of consolidated revenue. We must not penny pinch over the protective mechanism that looks after the victims of fraudulent solicitors.

People are cynical enough. We only have to look at the issue of negligence claims against solicitors and the insurance companies that look after them. We hear cute arguments about what negligence is and what fraud is. People say, "We can't compensate you because the money was in his general fund and not his trust fund." People say, "That is a matter of negligence", so the matter goes to the insurance company. The claim might be $5m and the company spends $3m fighting it and then comes up with a cute argument that it is fraud, and it goes backwards and forwards. We have to do away with those cute arguments and be genuine about really looking after people. I am talking about providing a solution. I know that there is a revenue implication from it—

Mr Foley: What is your solution?

Mr SPRINGBORG: The Attorney knows that in other States the ceiling is much higher than it is in this State. I think that he is a reasonable man when it comes to these sorts of things.

Mr Foley: I am asking you what your solution is.

Mr SPRINGBORG: I am coming to that. We know that the Budget review process dictates that the income stream for legal aid principally comes from the interest on the legal practitioners' trust accounts. I am trying to say let us establish a principle here in Parliament that the State should be funding legal aid principally from the Consolidated Fund. Once the Legal Practitioners Fidelity Guarantee Fund reaches a sustainable level, there is an opportunity for that income stream to then be returned to legal aid.

In my amendment we will seek to lift that ceiling from $5m to $10m and to ensure that the income stream which is diverted away from the Legal Practitioners Fidelity Guarantee Fund is not diverted away from the solicitors' trust accounts until such time as the fidelity fund reaches $10m. Once it does, it will then spill over into legal aid. When it drops back below $10m, the income stream is then diverted solely back into the Legal Practitioners Fidelity Guarantee Fund.

Mr Foley: So who should pay for all of these claims?

Mr SPRINGBORG: Who should pay for all these claims? Quite clearly, because they predate this legislation, there is an obligation on the Law Society and I suppose, by implication, on the Government. We have a legislative responsibility to put in place a mechanism whereby the fund can become solvent and these people can be paid from the fund—we are dealing with claims made prior to the legislation being passed—as the fund comes into a financial position that would enable it to pay claims. That is what I am saying. It is a bit similar to the principle which is being adopted in New South Wales.

Let us accept that there is not enough money in the fund now. I am trying to put forward a solution. The Minister might have some problems of a financial nature with it—I appreciate that—but it is a reasonably well thought out solution. It says that we agree that they should be paid their amount of principal in full—not the principal minus interest—over a period of time. That is why it is my intention to try to strike out clause 6, which provides that interest is not to be considered as part of the principal.

I have suggested a solution. The Attorney may not necessarily think it is a solution, but at least it is something that can be considered by this Parliament. It is something that has been reasonably thought through, notwithstanding the issue of the funding of legal aid, which I know has been a historic difficulty for Attorneys-General in this State. I know that; we all know that.

Unfortunately, the funding of justice in this State is the mid range of our process. We have police on one and we have corrections on the other side. The administration of justice is considered to be the non-sexy side, quite frankly. We are always able to find significant revenue to fund enforcement and putting more police out there on the streets, and that is good; I welcome that. We are always able to find significant revenue for the corrections side, which is important as well, to make sure that we have a sufficient number of prisons. But in the middle, in the very, very important area of the administration of justice—

Ms Bligh interjected.

Mr SPRINGBORG: I know hear a bit of mirth from the member for South Brisbane and also the member for Cook. But that is something that is referred to not just by me but by many in the legal profession in general—even members of the Bench. I am sure the Attorney-General appreciates that point. People like to see police on the streets, and that is great. We like to know that the bad crooks are going to go to jail. So we have police and jails. But who processes them in the middle? The courts!

Mr Bredhauer: Are there good crooks? Where do they want to see the good crooks?

Mr SPRINGBORG: I am talking principally about violent and sexual offenders. I think there is a widely held belief that a range of non-violent offenders should not be in jails, but those other sorts of criminals should be. They want to know that the nasties will be put away.

In the middle is the administration of justice. Whether it be the number of magistrates or the number of judges, the resourcing required for the courts or the funding required for legal aid, it is a very,

very difficult case to have to argue. Perhaps I should say that it is easy to argue for the funding but it is not such an easy thing to be able to secure that funding. It is something that is out of sight, out of mind. Every day of the week people see that somebody has escaped from prison and every day of the week people see a police officer on the street, but they do not always come across a judge, a magistrate or a courthouse.

I do not think that the important area in the middle, the administration of justice, is given proper consideration. That is why such reliance has been placed on the income stream from solicitors' trust accounts. It has been used to fund legal aid in this State instead of those funds going principally where they should go, that is, into the Legal Practitioners Fidelity Guarantee Fund. Let us break from the way we have been doing things. Let us recognise the principle.

The other option, I suppose, is to support the ceiling of $5m and then to make sure that the income streams for the Legal Practitioners Fidelity Guarantee Fund are not directed to legal aid until such time as the fund reaches $5m. I must admit that it is hard to understand how all this works. When there is the situation in which $10m is earned in interest from solicitors' trust accounts and only $1.5m goes into the fund and it is in a parlous state, one really has to sit back and think, "How could that be the case?"

I would say that there are some good aspects to the Attorney-General's legislation, but there are also some quite worrying aspects to it. We have enshrined in this legislation a principle that I believe offends basic justice. People such as those who have been defrauded in the circumstances previously outlined should be able to have an expectation that they will be paid out in full, notwithstanding the $60,000 cap which has not been enacted in the State insofar as I can recall. What we need to do tonight is to prevent moving away from that very, very important principle in this legislation. People have a just right to compensation. We have to look at the structural problem that exists within the Legal Practitioners Fidelity Guarantee Fund. I am not even saying that that fund is the best way to go in the future. I know it is a moot point; it is a debate that the Attorney is having with his department, with the Law Society and with people who have an interest in this matter. I do not really know what the answer is. There is the issue of fidelity bonds, of structuring a proper fidelity guarantee fund. Who knows at the end of the day?

At the Committee stage I will move an amendment to address some of the structural problems which have existed historically not only under this Government but also under successive Governments in this State because of the difficulty in being able to secure appropriate legal aid from the Consolidated Fund. As a result of that, the responsibility has been transferred to the Legal Practitioners Fidelity Guarantee Fund, which was set up to protect the victims of defaulting solicitors in cases of established fraud. The vast majority of very good, honest and hardworking solicitors throughout Queensland have a reasonable expectation that in the event that one of their own does something wrong, there will be some protection for themselves and also for the clients.