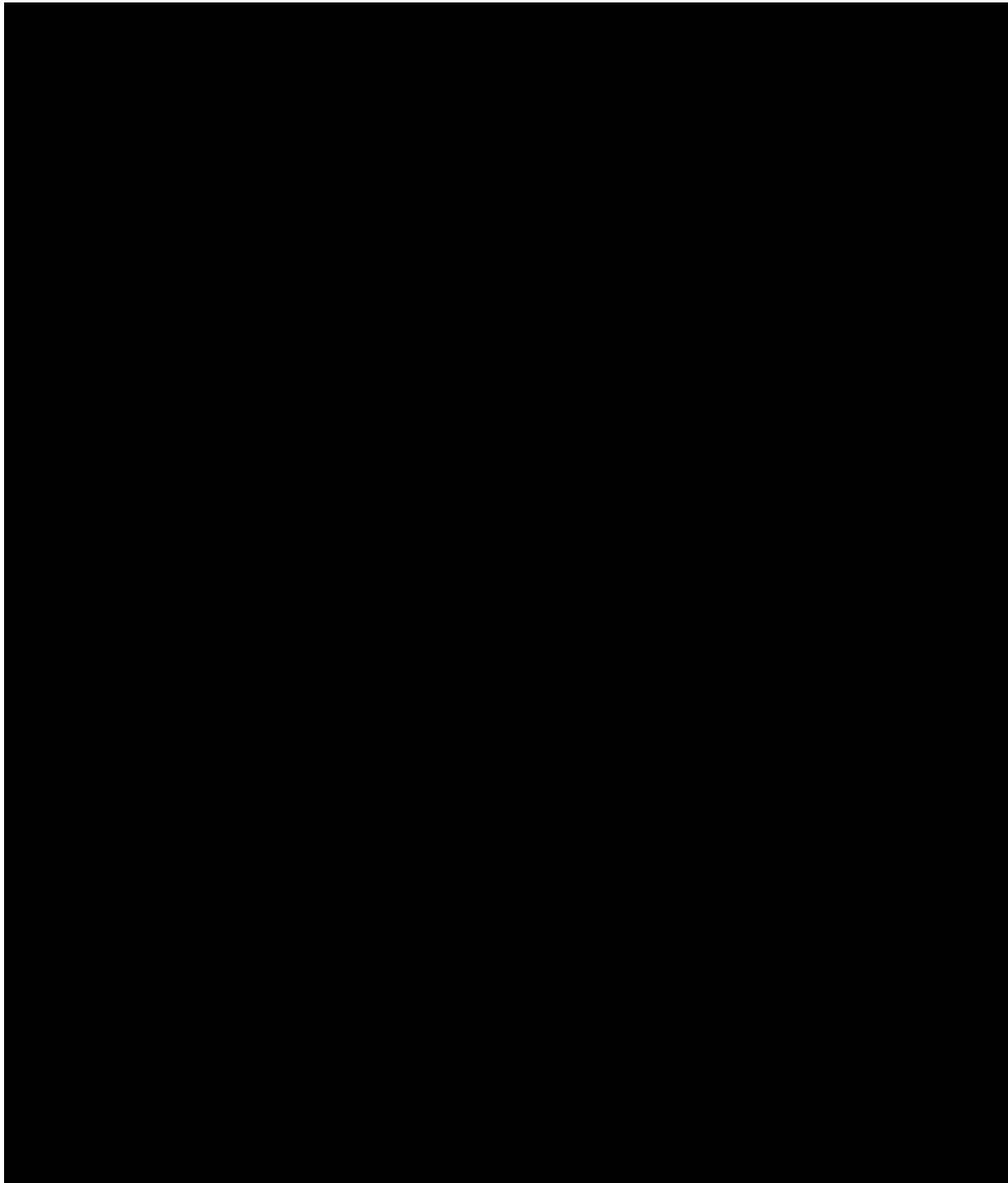


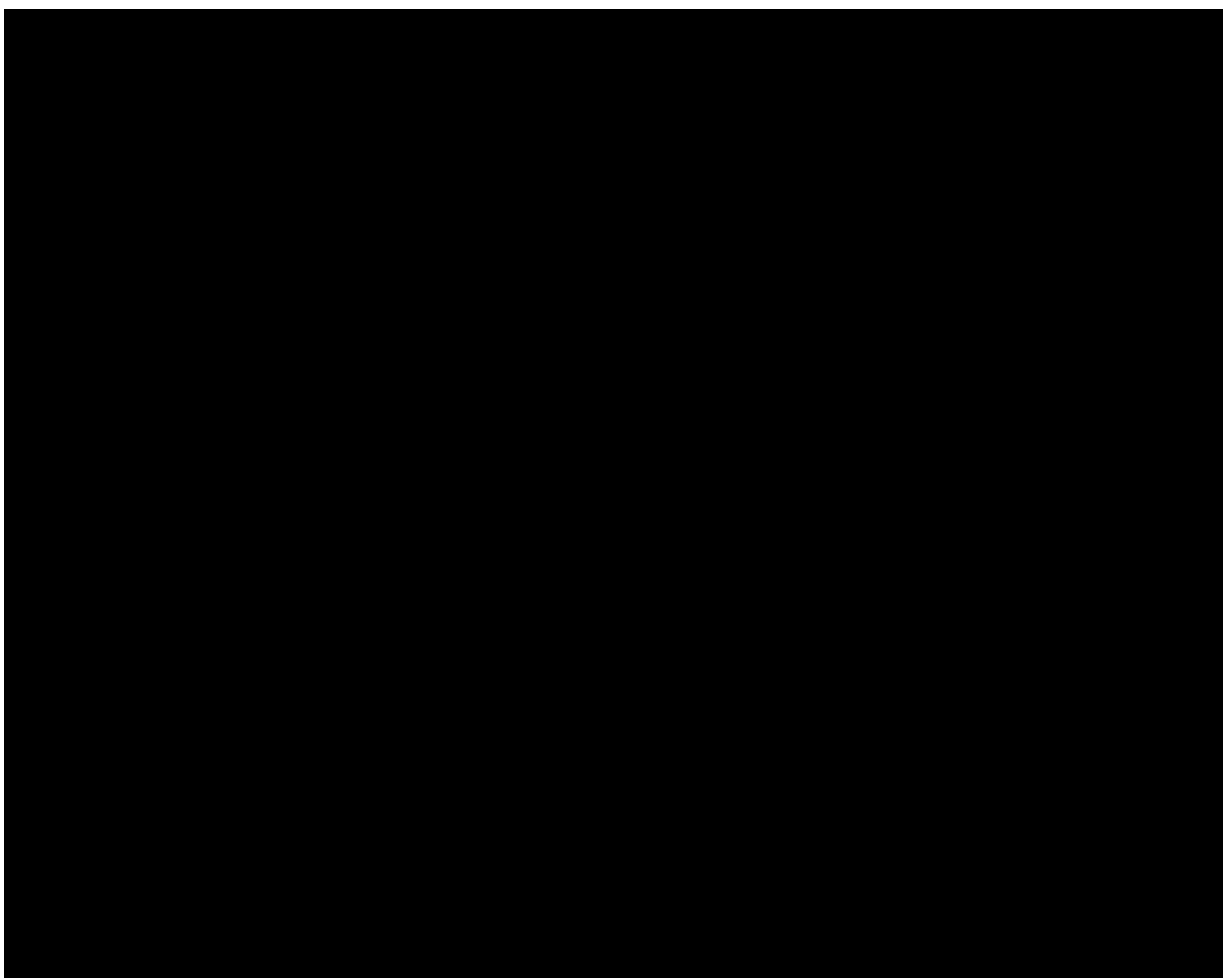
LEGISLATIVE COUNCIL

Wednesday 25 March 2026

The PRESIDENT (The Hon. Benjamin Cameron Franklin) took the chair at 10:00.

The PRESIDENT read the prayers and acknowledged the Gadigal clan of the Eora nation and its Elders and thanked them for their custodianship of this land.





SOLICITORS INSURANCE

Production of Documents: Order

The Hon. JOHN RUDDICK (15:41): I seek leave to amend private members' business item No. 3051 standing in my name on today's *Notice Paper* by:

- (1) Omitting paragraph (p) and inserting instead:
 - (p) all communications between the Department of Communities and Justice or the Attorney General and:
 - (i) government representatives or Ministers of other States and Territories of Australia; or
 - (ii) representatives of providers, other than Lawcover Insurance or ABC Insurance, of compulsory professional indemnity insurance to solicitors of other States or Territories of Australia.
- (2) In paragraph (q) omitting "all States" and inserting instead "other States".

Leave granted.

The Hon. JOHN RUDDICK: Accordingly, I move:

That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents created since 25 November 2022 in the possession, custody or control of the Attorney General or the Department of Communities and Justice relating to insurance for solicitors in New South Wales:

- (a) all documents relating to the retainer, including all modifications, for Deloitte Australia for the provision of actuarial advice and modelling to the Department of Communities and Justice or the Attorney General as referred to in the letters from the Attorney General to ABC Insurance dated 13 July 2025 and 6 February 2026;
- (b) all documents relating to information provided by the Law Society of New South Wales or Lawcover Insurance Pty Ltd to Deloitte Australia or the Department of Communities and Justice for the purpose of Deloitte Australia providing actuarial advice or modelling to the department or the Attorney General;
- (c) all communications between the Attorney General, the Department of Communities and Justice, the Law Society of New South Wales, including the Law Society Council, or Lawcover Insurance which refer to:
 - (i) ABC Insurance; and

- (ii) whether Lawcover Insurance should remain the sole provider of compulsory professional indemnity insurance for solicitors in New South Wales.
- (d) all documents relating to whether Lawcover Insurance would have capacity or would desire to provide compulsory professional indemnity insurance to New South Wales solicitors if ABC Insurance was also approved to provide such insurance;
- (e) all documents relating to the recusal of Michael Tidball from consideration by the Department of Communities and Justice or advice to the Attorney General concerning whether ABC Insurance or Lawcover Insurance should be approved by the Attorney General pursuant to section 95 of the Legal Profession Uniform Law Application Act 2014 (NSW);
- (f) all documents created, dated or received by Mr Tidball and which refer to:
 - (i) ABC Insurance;
 - (ii) Lawcover Insurance; and
 - (iii) compulsory professional indemnity insurance for solicitors in New South Wales.
- (g) all documents relating to all official or unofficial meetings or discussions attended by Mr Tidball with all representatives of ABC Insurance or Lawcover Insurance concerning compulsory professional indemnity insurance for solicitors in New South Wales;
- (h) all documents provided to or relied upon by the Attorney General to:
 - (i) consider whether to approve any application by ABC Insurance or Lawcover Insurance for the 2023-24 New South Wales solicitors' practising year;
 - (ii) consider whether to approve any application by ABC Insurance or Lawcover Insurance for the 2024-25 New South Wales solicitors' practising year; and
 - (iii) consider whether to approve any application by ABC Insurance or Lawcover Insurance for the 2025-26 New South Wales solicitors' practising year.
- (i) all documents relating to whether to approve any application by ABC Insurance or Lawcover Insurance for the 2026-27 New South Wales solicitors' practising year;
- (j) all documents relating to the matters identified by stakeholders referred to in the letter from the Attorney General to ABC Insurance dated 13 July 2025;
- (k) all communications between the department or the Attorney General and the stakeholders referred to in the letter from the Attorney General to ABC Insurance dated 13 July 2025;
- (l) all documents relating to the matters identified by Lawcover Insurance referred to in the letter from the Attorney General to ABC Insurance dated 26 February 2026;
- (m) all communications between the Department of Communities and Justice or the Attorney General and the stakeholders referred to in the letter from the Attorney General to ABC Insurance dated 26 February 2026;
- (n) all documents relating to all legal advice received by the Attorney General as to whether he had the power to not approve the ABC Insurance policy for the reasons stated in the letter from the Attorney General to ABC Insurance dated 13 July 2025;
- (o) all documents relating to all legal advice received by the Attorney General as to whether he had the power to not approve the ABC Insurance policy for the reasons stated in the letter from the Attorney General to ABC Insurance dated 26 February 2026;
- (p) all communications between the Department of Communities and Justice or the Attorney General and:
 - (i) government representatives or Ministers of other States and Territories of Australia; or
 - (ii) representatives of providers, other than Lawcover Insurance or ABC Insurance, of compulsory professional indemnity insurance to solicitors of other States or Territories of Australia.
- (i) all government representatives or Ministers of all other States or Territories of Australia;
- (ii) all representatives of all other providers, other than Lawcover Insurance or ABC Insurance, of compulsory professional indemnity insurance to solicitors of any other State or Territory of Australia;
- (q) all documents relating to ABC Insurance, Lawcover Insurance or compulsory professional indemnity insurance for solicitors in other States or Territories of Australia; and
- (r) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

The purpose of my motion under Standing Order 52 is to shed light on the monopoly of professional indemnity insurance for solicitors in New South Wales, which is endorsed by the Attorney General. When it comes to economic policy, the Minns Government is centrist, not crazy left like former Victorian Premier Dan Andrews, so it is a mystery that the Minns Government wants to uphold a monopoly and thereby punish many thousands of solicitors in New South Wales with high premium costs for their insurance. Of course, that high cost is passed on to clients, which jacks up legal bills. The Law Society of New South Wales has a venerable history. It was founded in 1842 as a professional association for lawyers, which is good, but today it wears three hats. It is a professional

association, a regulator and a monopolistic insurance provider via the wholly owned subsidiary Lawcover Pty Ltd.

Professional indemnity [PI] insurance is often the second largest expense for a law firm after staff. Lawcover makes a pre-tax profit of about \$24 million a year. It is a very lucrative operation for a humble professional association. PI insurance is compulsory for New South Wales solicitors, and it is compulsory to buy that insurance from Lawcover, unless a solicitor works in a firm that also has an office in another State. If they do, they can access significantly cheaper and higher quality PI insurance. But 70 per cent of New South Wales solicitors do not have an interstate presence. Of course, the larger firms have an interstate presence, so suburban and country practices heavily cross-subsidise larger law practices.

The average premium per legal practitioner paid to Lawcover insurance is between double and 2½ times the equivalent in Victoria, where there is a competitive private-sector market. Liberty Mutual-backed ABC Insurance has attempted to enter the market on a number of occasions to provide competition, but ABC Insurance was rebuffed by the Attorney General because of his puzzling protection of the Lawcover insurance monopoly which, frankly, resembles a cartel. Perhaps that is overstating it but, to truly know, we need transparency, and that is what the call for paper seeks. In February 2025 the Attorney General approved the Lawcover insurance policy, before the annual renewal cycle had opened, but only gave ABC Insurance a decision in July, some five months later, and after the renewal cycle had closed. That is quite odd.

When I asked the Attorney General about potential breaches of the law, and a potential breach of the Australia-United States Free Trade Agreement, he appeared to not have considered those matters. The Attorney General waved away any potential breaches of the law, including breaches of the free trade agreement, by saying that ABC Insurance could "run off to the Federal Court to get relief". The House should look into that to better understand why the Attorney General avoided questions on the basis that there could be potential litigation and to understand why the Attorney General appears to be inviting litigation. Further, I note that at the Portfolio Committee No. 5 budget estimates hearing on 11 March 2026, Mr Tidball, the Secretary of the Department of Communities and Justice, informed the committee that he had recused himself from the Lawcover matter.

Was Mr Tidball claiming that he was conflicted? In any event, it is quite unclear how it is possible for the secretary of such an important department to recuse himself from an important part of his department's field. That seems quite impractical and raises questions that warrant investigation by the House to better understand how that conflict of interest was managed. Was Mr Tidball recused? If so, when and why did he recuse himself? How was that officially noted? My motion under Standing Order 52 will not determine whether the monopoly will continue, but hopefully it will answer unsolved questions. I commend the motion to the House.

The Hon. EMMA HURST (17:46): On behalf of the Animal Justice Party, I express our support for the call for papers, and I thank the Hon. John Ruddick for moving the motion. Significant concerns have been raised with my office about the effective monopoly operating by Lawcover in the delivery of professional indemnity insurance to the legal profession and the negative ramifications of that, including higher insurance costs, but particularly the effect on smaller firms and sole practitioners as well. I note also there are a lot of questions about why the Labor Government has allowed that monopoly arrangement to remain in place, particularly when other competitors seek to enter the market. The matter was raised by the Hon. John Ruddick in a budget estimates hearing, but he was unable to obtain satisfactory answers from the Attorney General on the topic. Therefore I believe the documents will be very helpful for members of the House to obtain greater clarity and answers about what is going on. Again, I thank the member for the motion.

The Hon. MARK BUTTIGIEG (17:47): The Government does not oppose the Hon. John Ruddick's motion. However, it is worth noting that there is a great deal of overlap between it and his supplementary questions following the most recent budget estimates hearing with the Attorney General on 11 March 2026. The Department of Communities and Justices is in the process of preparing responses to those questions. Professional indemnity insurance is essential to the functioning of our legal system. It protects solicitors from the consequences of professional negligence and also ensures that consumers are protected and can access legal help when they need it. For that reason, a level of professional indemnity insurance is mandatory in most cases.

Insurance is already one of the most significant expenses faced by legal practices. It is important that the professional indemnity insurance market is stable and that cover is accessible. The Legal Profession Uniform Law generally requires solicitors to hold or be covered by an approved professional indemnity insurance policy to practise. The Attorney General has a statutory role in approving professional indemnity insurance policies each year that can be made available to New South Wales solicitors and barristers. For solicitors who are required to hold or be covered by an approved professional indemnity insurance policy, they must have a minimum coverage of up to \$2 million per claim. Solicitors may also take out optional top-up cover, which provides additional protection for risks above the \$2 million compulsory cover threshold.

ABC Insurance wrote to the Attorney General on 20 November 2025, informing him that it intended to distribute its professional indemnity insurance policy to New South Wales solicitors for the 2026-27 practising year. The policy is in the same terms as the policy ABC Insurance submitted to the Attorney General for approval for the previous practising year. The Attorney General determined not to approve the policy on 10 July 2025. The decision and reasons for that decision were published on the Department of Communities and Justice website and can still be found there. On 26 February 2026, the Attorney General wrote to ABC Insurance, advising that he did not approve of its policy for the 2026-27 practising year.

The decision and reasons for the decision will also be published on the Department of Communities and Justice website. In making the decision, the Attorney General considered a range of factors, including mandatory requirements under the Legal Profession Uniform Law (NSW), as well as relevant discretionary public interest considerations. Lawcover Insurance wrote to the Attorney General on 8 December 2025, seeking approval for its professional indemnity insurance policies for the 2026-27 practising year. The Attorney General determined to approve those policies on 26 February 2026.

Ms SUE HIGGINSON (17:50): I come from the perspective of a practising solicitor and I am part of the Lawcover scheme. I think that what members need to recognise and understand is that the legal practitioner system is governed by a bunch of really high-standard rules, but at the end of the day, it is a self-regulated profession. The insurance that we are required to have is not for lawyers; it is for their clients. It is for everyday people who may suffer harm because of failure, accident or misconduct. If there has been any good lobbying to members by other insurance companies, there should be some kind of automatic, forensic alarm that goes off for members to look at what this is.

I understand competition for the sake of competition—some buy into that and think that is really important. But the most important thing is that when everyday, ordinary people engage the services of legal practitioners for their home, their families, their injuries or their businesses, if by chance something goes wrong in the exercise and delivery of those services—remembering that lawyers have fiduciary duties to their clients—they are the people that the insurance is for. It is not for the lawyers or the practising law firm; it is for the people that every lawyer in this State serves. It is really important that any insurance scheme has the level and degree of particularity and specificity that legal practices in New South Wales cover, and that the people of New South Wales are protected from the things I have mentioned.

The call for papers is probably a good idea. I do not think there has ever been any secret to insurance schemes of legal practice in New South Wales. It has always been an open and transparent process, and there has always been a scheme and a system that is designed, and is fit, for practice. I speak as a sole practitioner who has operated a sole practice in New South Wales, as somebody who has managed a large practice, and as somebody who has managed a public interest community legal centre practice. The spectrum and scale of products that are made available to lawyers—and, ultimately, their clients, the citizens of New South Wales—are incredibly well-tailored, well-considered and well-designed products. If there is any departure from them, we ought to proceed with real caution.

The Hon. CAMERON MURPHY (17:54): The Government supports this motion. I do not know a lot about the Lawcover scheme. I was only a solicitor for a matter of days. I was not sure that I had passed the bar exam, so I took out a practising certificate as a solicitor. A few days later, I got a notification that I had passed. I then had to go through an excruciating process to obtain a certificate of fitness, handed one in, and took out a different practising certificate as a barrister. The underlying issue that the member is concerned about is having competition in this field. As the previous speaker, Ms Sue Higginson, said about the professional indemnity insurance, it is there for the clients. That is the important thing. It is really important to make sure that there is consistency in the way that insurance applies. At the Bar Association, we effectively have a similar scheme to Lawcover.

The Hon. John Ruddick: You've got competition—barristers have competition.

The Hon. CAMERON MURPHY: There is and there isn't. The way it works in the Bar Association is quite simple: Every barrister takes out insurance cover for the first \$1.5 million, I think. When someone joins the Bar Association—of which virtually every barrister is a member—it has a group policy that covers everybody for liability from \$1.5 million to, I think, \$50 million, or thereabouts. I do not remember the exact amounts, but it is something like that. There is no competition, effectively, above that initial amount.

What determines how much someone pays in terms of competition is often the difference between how much criminal and civil work they do, the types of cases they take on and how often they work. Where there is competition, people are looking for things like what they have to notify the insurer of in terms of making a claim if they have a complaint against them. Not a lot of attention is paid to the cost; it is not a driving factor in this. What is important is making sure that people know they are covered for their clients and that the system is stable

and is going to work, and we do not have an insurer going broke. I am not sure that there is a huge, underlying issue here to be corrected.

The Hon. STEPHEN LAWRENCE (17:57): I also watched Mr Tidball give evidence at budget estimates hearings. He indicated that he did not involve himself in Lawcover matters. He also indicated that he thought he had a conflict of interest, or a perception of one: He was previously the CEO of the Law Society. There was nothing in the nature of a conflict of interest that might be considered to be relevant to this question of policy. He was quite transparent about the nature of that conflict. I clarify that, because I do not think that was mentioned in the mover's remarks.

In terms of Lawcover, it is important to note that it is owned by the Law Society of New South Wales, so it is true that this is a monopoly of sorts, but it is also the legal profession insuring itself through a wholly-owned subsidiary of the professional association. HIH Insurance—which was a famous insurance company that failed—had been the sole insurer for the legal profession. When it collapsed, that had a terrible effect. As Ms Sue Higginson said, this is fundamentally about the consumers and about the community who need protection through insurance. While it is true that competition is the starting point and competition is generally a virtue, that is not always the case, as I understand it, with insurance. The particular arrangement in place in this instance has, effectively, been seen fit to be continued.

Actuarial advice that was prepared, which the Attorney General considered, showed that in the short term, some solicitors would benefit from lower premiums due to a lower risk profile. It could have the benefit of better aligning risk and premium costs. Competition could drive lower administrative costs and efficiencies, but the existing market arrangement has proved stable and costs are reasonable and in line with some, but not all, jurisdictions. The advice said that there is a risk that, over time, premium levels would return to existing levels and be somewhat higher due to the introduction of new marketing and search costs. That effect is modest but real and undermines the theoretical benefits of competition. There is substantial risk of volatility in premiums and more general market volatility. There seems to be a strong case that the existing arrangement is in the public interest. We should not jeopardise the public interest simply because of some theory about the benefits of competition.

The Hon. CHRIS RATH (18:00): I speak on behalf of the Opposition to indicate our support of the Standing Order 52 motion moved by the Hon. John Ruddick, as we support greater accountability and transparency.

The Hon. JOHN RUDDICK (18:00): In reply: Every other professional association in New South Wales that requires professional indemnity insurance has competition. Prior to coming here, I worked as a mortgage broker. I had to buy professional indemnity insurance every year. There was a market. For some reason, 70 per cent of solicitors in New South Wales do not have one. Lawcover is making a pre-tax profit of \$25 million a year. That is a lot of money. I am guessing that is in the top 500 companies in New South Wales. All insurers have to put aside capital reserves in case there is a freak event and a lot of claims. I understand that Lawcover is so awash with cash that it has put aside three times the amount of cash it needs in reserves. That is a lot of dead capital.

I thank the Hon. Emma Hurst for indicating her support of the motion. I thank the Hon. Mark Buttigieg and the Government for indicating they will not oppose the motion. I always enjoy the contributions of Ms Sue Higginson, but we disagree. I believe that competition fosters quality and lower costs. Monopolies create sloth. That is what we have here. I was interested to learn that barristers have choice for the first \$1.5 million of professional indemnity insurance but are covered by a group policy after that. It would be my strong suspicion that very few claims are over \$1.5 million, so the Hon. Cameron Murphy confirmed there is competition for the vast bulk of the market. That is a good thing. If it is good for barristers, why not for solicitors? I thank the Hon. Stephen Lawrence for letting us know that HIH Insurance was, at one point, the sole provider for the legal industry, but it went bust. That tells us that we need more competition. I usually agree with everything the Hon. Stephen Lawrence says, but he referred to a "theory" that competition will produce a better product and a lower price. We have 5,000 years of history that tells us that competition is a good thing. I commend the motion to the House.

The DEPUTY PRESIDENT (The Hon. Emma Hurst): The question is that the motion be agreed to.

Motion agreed to.

