

McGOWAN GOVERNMENT — TRANSPARENCY AND ACCOUNTABILITY

Motion

HON DR STEVE THOMAS (South West) [10.10 am] — without notice: I move —

That this house —

- (a) notes the promise of the Premier that his government would deliver a gold standard of transparency and accountability;
- (b) notes the many occasions in which the McGowan government has failed to deliver on the Premier's promise; and
- (c) calls on the Premier to finally deliver on his promise by raising his government's standards of transparency and accountability to a gold standard so that the Parliament and the community can be assured this administration is operating in an open, accountable and honest manner.

I deliberately made this motion broad because at the start of the process I wondered which particular angle I would take on this subject. There are so many opportunities that one might take to discuss the lack of accountability and transparency of the McGowan government. I thought I could examine the \$2 billion-plus slush fund that the government has carefully put in place to buy the 2020 election. I thought that might be a very interesting topic.

Hon Jim Chown: And the cost to homeowners.

Hon Dr STEVE THOMAS: The cost to taxpayers of Western Australia, who genuinely own the money.

But that is a small “d” deception. The government is carefully making sure nobody talks about its slush fund, because it does not want it in the public debate and public arena. It is not at the same level of deception as some of the other things that this government has been up to. Therefore, I decided that I would use a big “D” deception—one that I have been working on now for some time. Members probably get tired of hearing questions about contaminated soils and PFAS, but I ask them occasionally despite the ridicule that I receive from members on both sides of the chamber. Although it is a very difficult and technical issue, it is a very good issue on which to demonstrate the outright deception of the McGowan government and its lack of transparency in what should be an open admission of a problem that we could all work together to find a solution for. However, in its introversion and attempt to make sure that nobody knows what it is doing, the McGowan government has, dare I say it, dug itself into a hole which it is struggling to dig its way out of.

I have a number of bits of information from various freedom of information applications that I have made, and I want to reference a couple of them before I get into the more technical detail. I asked my first question without notice about PFAS on 11 October 2017, which is now more than two years ago, and members would be aware that I have asked quite a number of questions about it since. However, I have also had to seek more information because the government is very good at not answering questions—it is not an accountable government. I want members to be aware that in April 2018 the government became aware it had a problem with the PFAS-contaminated spoil coming out of the Forrestfield–Airport Link project. I have a series of FOI documents disclosed between various members, the Department of the Premier and Cabinet, the Department of Water and Environmental Regulation and the Public Transport Authority. There is no doubt that the chief organiser of the process in DPC is the director general of DPC, whom the Premier has put in place to try to fix the mess that everybody has managed to make in the interim. Emails have been passed back and forth. One email between DPC and the PTA on 3 April refers to the potential risk. The Department of Water and Environmental Regulation had been going through the process of assessing the spoil and what might be done with it because it wanted to use it somewhere. I am talking about a million cubic metres of spoil—an enormous volume.

Hon Alannah MacTiernan: Member!

Hon Dr STEVE THOMAS: I do not have a lot of time, minister, sorry. Is it a quick one because I have to get through this?

Hon Alannah MacTiernan: Are you acknowledging that your government, when you started this project, were well aware of this position?

Hon Dr STEVE THOMAS: I will come back to that, because this project was initiated by the previous government. However, the debate before the house is not whether the PFAS-contaminated soil is an issue; it is about whether the McGowan government has been honest about the problem and what it has been trying to do about it. This is a debate about honesty and integrity.

An email between DPC and PTA, which contains comments from somebody within DPC, states —

The DWER review of the site-specific risk assessment presents an opportunity to advance our discussions with the Commonwealth but also a risk. The risk is that DWER technical staff may review the report to the

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nth degree and provide a plethora of comments which are not useful. To mitigate this risk I suggest ... has a conversation with ... to stress the importance of DWER's review and to request a pragmatic response that is in the interest of the State. I believe that ... should review DWER's response before it is issued.

On 3 April last year, DPC suggested that there was a problem. It wanted to put the spoil under the third runway at Perth Airport, but there has been a problem; that is, the commonwealth government and DWER are concerned about it. The response from DPC was to manipulate DWER's concerns and make sure that the Department of Environment Regulation's report on the spoil was managed so that it would not embarrass the government's aims. There it is in black and white on 3 April 2018.

On 24 September this year, in a question without notice, I asked who wrote that email and why those things were done. The Minister for Environment, representing the Minister for Transport, provided the embarrassing answer that the email was sent from a non-executive officer of the PTA to other officers of the PTA and copied to a non-executive officer of the Department of the Premier and Cabinet. There was no accountability and no mention of who had been discussing this issue. It was simply an answer that said that the email had been sent but that it would not tell me what discussions had been held.

Let me take members back to March, April and May 2018 because the government was in panic mode.

Hon Jim Chown: It still is.

Hon Dr STEVE THOMAS: It is now in depression mode; it has probably moved on.

There was a problem and the government was trying to work out how it would deal with it. It had received a report in April 2018 from an external consultant who had provided an audit of what was called the "site-specific risk assessment" for the re-use of the spoil at the airport. This document is that review—that audit. This document is full of things that say there is a problem with both the aim and the site-specific risk assessment. It states that the government's agenda is in strife, as recognised in April 2018. In this document there are quotes such as —

- The assessment is missing some important information on the reuse site ...
- ...
- The conceptual site model ... is not well defined ...

It also states that in accordance with the national environmental protection plan, a description of the chemicals would need to be included. That was not done. It continues —

- The assessment should specifically address ... factors ... when assessing the potential for reuse of PFAS contaminated material ...

That was not done. This document is full of concerns about the site-specific risk assessment. On 24 September this year I asked the minister representing the Minister for Public Sector Management what was going on because this stuff was being done at that point by the Department of the Premier and Cabinet as much as by anyone else. In particular, I asked why documents were saying that the DPC rewrite of these documents needed to be included. The DPC was not happy with the site-specific risk assessment or the external audit, because neither of those gave a glowing tick to this government's plans to transfer this spoil to that site.

It goes further than that. By May 2018, this government had received some initial advice from the federal Department of the Environment and Energy and that is this document, which, again, was obtained under freedom of information. There has been no outward discussion about what is going on. This document states —

The Department advises ... that the Site Specific Risk Assessment is not currently sufficient to adequately determine risks associated with re-use of spoil at the proposed site.

It goes into some detail about what those risks are. It refers to the PFAS national environmental management plan and lists the national environmental management plan prescriptions for the re-use of PFAS, including a proposal for fill or burial less than two metres above the seasonal maximum groundwater level, re-use within 200 metres of a surface water body or wetland area, re-use in areas that can be identified with matters of national environmental significance, and fill or re-use in locations potentially affected by groundwater. It says that the proposal for re-use would trigger at least the first four of the eight or nine scenarios. I want to draw members' attention to the second one in particular—re-use within 200 metres of a surface water body or wetland area, because that is in the national environmental management plan.

When I started asking questions on 7 August this year, I asked the Minister for Environment whether he could confirm that some of the stockpiled material that was coming out of the Forrestfield–Airport Link was being stored close to or adjacent to Woodlupine Brook. The answer was —

The Kenwick Rail Freight Facility is located approximately 200 metres from Woodlupine Brook.

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Why did the government use the word “approximately”? It was because the NEMP for PFAS says that the Department of Water and Environmental Regulation needs to be more actively involved if it is within 200 metres. On 13 August, I got into a bit more detail because I wanted to know exactly how much it was. On 13 August, I asked the minister representing the Minister for Transport —

What is the minimum distance between FAL soil placed at the Kenwick rail freight facility project site and the Woodlupine Brook?

The answer was —

The Kenwick rail freight facility project site is located approximately 200 metres from Woodlupine Brook. I asked what the minimum distance is. The first time I asked where it is and the second time I asked what the minimum distance is, because it is at approximately the level at which further environmental investigation is required. The answer I got was “approximately”. On 15 August, I had to re-ask the question. My question on 15 August to the minister representing the Minister for Transport was —

Exactly how many metres is the distance between FAL soil placed at the Kenwick rail freight facility project site and Woodlupine Brook?

The answer was —

Forrestfield–Airport Link soil placed at the Kenwick rail freight facility project site is a minimum of 180 metres from Woodlupine Brook.

I have had to ask three questions to get an answer to whether the government is putting contaminated spoil too close to a waterway, which means that it should require a significant environmental investigation, and at least an acknowledgement by the Department of Water and Environmental Regulation that it has assessed the risk. Three times it took me. I asked what the minimum distance is and the government was happy to put a round figure on it when the real figure might embarrass it. I had to use the words “exactly how many metres” before I got an honest answer from this government.

The government has a problem with 800 000 cubic metres of spoil that it thought it would put into the airport project. The commonwealth has effectively said that it does not like the proposal and it does not trust this government’s environmental credentials on it, but it did not tell anybody that. For a year, it has been telling everybody that there is nothing to see here and it is all going ahead. I went to an estimates hearing and I was told that the government is still planning to use it. The site-specific risk assessment was rejected by the federal government and the federal Department of the Environment and Energy. I asked the minister whether he fixed it and ever resubmitted it, because it was rejected all the way back in the middle of last year, and the answer was no; the government did not bother resubmitting it. This government has had 16 months now to resubmit it if that was still the plan. It has never been resubmitted because the government knows that there is a problem. That is why we saw some interesting media come out at the beginning of this year. On 27 February, this media report in *WAtoday* by Nathan Hondros and Kate Hedley became public —

One of the state’s biggest political donors has quit a board post on a regional development commission after an explosive meeting in which he tried to secure a deal to dump millions of tonnes of toxic soil in the Peel region.

The report continues —

At the bizarre meeting in January Mr Poland told a local business owner how to acquire a valuable parcel of land in Myalup from the government without going to tender.

But first the business owner would have to solve a political headache for the government by facilitating the dumping of up to eight million tonnes of toxic soil from the Forrestfield Airport Link project on his land in Waroona.

That is a reference from 27 February 2019—almost a year after the government realised it had a problem with this contaminated waste. Immediately, various ministers, but in particular the Minister for Transport, jumped up and said that that was obviously not true and that was not how they do business. That was the first I had heard about this issue; I first read about it in the media. A week later, on 6 March 2019, the same author came up with a second story, which states —

The state opposition is calling on Transport Minister Rita Saffioti to come clean over the extent of contamination in soil unearthed by tunnelling work on the Forrestfield Airport Link project.

By 6 March this year, Mr Poland had involved a lawyer, who said that the cost of dealing with the contaminated sand from the Forrestfield–Airport Link was estimated at \$300 million. This is a quote from the lawyer —

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“There are facilities within the Peel region that would accommodate the necessary disposal of between 2–8 million tonnes of contaminated sand ...

The Minister for Transport responded in March this year with this —

“There has already been some progress, with the PTA working positively with Perth Airport with a view to them taking the bulk of the soil for use under the proposed third runway. The NorthLink project has also used some of the soil as fill material for two interchanges.

In March 2019, the Minister for Transport made a public comment that the government was working with Perth Airport to use the spoil under the third runway. The government gave up on its application for the site-specific risk assessment six or seven months earlier in the middle of 2018 and never resubmitted the document that would have been required to progress it. But the minister was suggesting in public that this process was still going to go ahead. It is absolutely not true. Why was Mr Poland running around trying to find a spot? The original story suggested that the business owner would have to solve a political headache for the government. Do members know what that political headache is? It is not telling the truth and not being honest with the people of Western Australia. This government and the Minister for Transport had a problem and could have simply said, “You know what, guys; we’ve got a problem. Members of the opposition, this is your project; you worked it up. How about you help us fix the problem?” Do members know what? We would have gone, “Okay; fair cop. We’re here to help; we’ll do our very best. We’ve got a problem.”

Hon Michael Mischin: We’ll swap places!

Hon Dr STEVE THOMAS: Yes! Give us back the government benches and we will fix it for the government, but, in the meantime, we are happy.

We asked a series of questions, because the question is whether Mr Poland was telling the truth. Is he more honest than the current government of Western Australia, the McGowan Labor government? The question was: did any interactions occur? Through the process, we received a copy of a letter dated 13 July to the Minister for Transport, Hon Rita Saffioti, from the chair of the Peel Development Commission. The subject line is “Forrestfield tunnel spoil disposal”. The letter reads —

Further to preliminary discussions with our Deputy Chair Greg Poland and yourself regarding the abovementioned matter ...

The letter goes on to state that the commission had recently met with Corina Johnson about the same issue. In the middle of last year, meetings were happening between the Minister for Transport and these outliers, who thought they could find a solution to the minister’s political problem with an environmental issue that she was keeping secret and not telling anybody. I asked in questions whether the minister had meetings with Mr Poland. The answer was that yes, she did. I asked whether the minister had had meetings with Corina Johnson. The answer was no, but that her parliamentary secretary, the member for Perth, had met with her, as had her staff and plenty of members of the government. When I asked in a parliamentary question who she was, the response was a photo! That is the accountability. “She is third from the left”, said the Minister for Transport. That is accountability for members! That is what this government does. That is accountability—a photo—because government members know that if the truth comes out, it will show that they have tried to hide and bury a toxic problem. That is a political problem for this government; its members are not telling the truth.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [10.31 am]: I commend Hon Dr Steve Thomas for his motion. It is regrettable that we once again have to visit this subject, but nothing has changed in some two and half years with this government. It started off being obstructive, deceitful, false, incompetent—that is presumably why it has had to resort to those other tactics—unaccountable and obscure rather than transparent. That continues. Every day we get the same examples. It is a pity that other members of the government benches are not here to hear this—they are no doubt absent on urgent parliamentary business—but in a sense it is a mercy to them. It must be enormously embarrassing to hear government members being brought to account, because they have to worry about this. It is really important to them, because at some stage they will be on the opposition benches, and if they are setting this as the gold standard of accountability and transparency, they will have visited upon them what they have inflicted upon Parliament, the opposition and the crossbenchers—by that I also include the Greens—because the amount of accountability has been zero.

One example that is fresh to my mind is one that I have been pursuing for a while. I would be surprised, frankly, if anyone in this place who does not have to support the government and oppose this motion as a matter of course does not support Hon Dr Steve Thomas’s motion. One issue that I have been pursuing for some time now is the question of whether our first law officer, our Attorney General, has leaked and disclosed to the media correspondence between the Clerk of this house, communicating on behalf of this house and the President in the course of litigation,

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and the State Solicitor, the government's lawyers in litigation. Eventually, the Attorney General came to admit that yes, he did, but it took seven questions over six days. The first question was —

Has the Attorney General or anyone in his office provided copies of correspondence from the President of the house to any member of the media?

I was referring to correspondence from the President, through the Clerk. The second part of the question was —

If so, who did so, to whom were they provided, when and for what purpose?

That was back on 18 September. The response on behalf of the Attorney General was —

The Attorney General is not aware of, or privy to, correspondence from the President of the house to any member of the media.

That is where we started. It had to be explored bit by bit, with every thread teased out, over the succeeding six days. After reframing these questions in a variety of ways to pin down the Attorney General to an honest answer, I asked yesterday —

- (1) Did the Attorney General show the letter to the reporter before it was tabled as part of the fifty-sixth report?

The Attorney General had eventually identified the letter concerned. It continues —

- (2) Where, on what date and at what time was it revealed to the reporter?
- (3) Who was the reporter?

Do members think he could answer those questions? No, he could not. His answer was —

- (1)–(3) Under longstanding conventions and practices in Westminster democracies around the world, members of Parliament talk to the press, —

That is right; they do. But he is a minister. He has obligations that go beyond simply playing politics. He has responsibilities and duties of confidentiality as a minister. As first law officer, he sets the standard for every other lawyer in this state, and the state is expected to be a model litigant. His answer continues —

whose participation in the political process is vital to an open and free society.

That is true, as long as we actually have open and free disclosure by government as well. It continues —

The Western Australian state Parliament, along with every other institution of its kind, recognises this important role by making provision for a press gallery within the building.

Wonderful! It continues —

It would be unrealistic, impractical and inappropriate for every member of Parliament who talks to the media to disclose publicly where, on what date and at what time the discussions took place, and with whom.

No; I am talking to him about being a minister. If he cannot remember when he slyly showed a member of the media a document that he had obtained from the state's lawyers in the course of his function, his responsibility, as first law officer, there is something seriously wrong with this government. That is an example of a McGowan Attorney General. That is an example of a McGowan minister. There are exceptions. Hon Stephen Dawson is a very able and, I have to say, a very capable Labor politician. That is his job.

Several members interjected.

Hon MICHAEL MISCHIN: Let us not put him off! He is a very able politician, but he is also a parliamentarian and he takes his duties as minister very seriously. I think we can rely on him to do what he thinks is right. I generally agree with what he does as a parliamentarian. But this is shabby stuff. This is deceitful. If this Attorney General were being questioned by the police regarding this —

Hon Peter Collier: Or the CCC.

Hon MICHAEL MISCHIN: — or the Corruption and Crime Commission, he would be revealed as someone who cannot be trusted, yet that is the example he is setting.

It gets better. We have a Leader of the House who is supposed to be a check on how matters are dealt with in this place. It is her responsibility as not only the proxy for the Attorney General, but also the Leader of the House who sets the standards to look at the questions and the answers, and if they are not satisfactory—if they are evasive, are deceitful, present a false picture, are too clever by half or are refusals for no good reason—to not present the answers. She should go back and say, “This is not good enough. This is not the standard of the Legislative Council.

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This is not the standard that I want to be identified by.” But we do not have that. I asked seven questions to get to some information, and even then the last one did not answer the question at all. I will be pursuing the matter. Frankly, I think this is pretty good stuff, because every time the Attorney General twists and turns, he destroys his reputation and the reputation of the government. Frankly, I think he needs to pull his finger out and take a good, hard look at himself, because that is the standard that may very well be visited on the Labor Party when it is over here and it will have no cause for complaint. It may be that the ministers over there will not be aware of it—they will have retired on their pension or received some sinecure—or may be quite happy to endure that, but they need to remember that at some time the Labor Party will be in opposition and it will have no cause to complain.

I had to reflect on Hon Dr Steve Thomas’s comment about a gold standard of accountability not being achieved. We assume that a gold standard is about improving standards. Maybe Premier McGowan is trying to perfect the standard set by the Burke government, which was renowned for this sort of thing and was roundly criticised by a Commission on Government after it was rightly consigned to the dustbin of history. Those standards are being reflected now. They are being perfected. Maybe Hon Dr Steve Thomas has simply misunderstood what Premier McGowan promised as a gold standard. Maybe the Premier was promising a gold standard of evasion, obscurity, obfuscation and deception, denial of respect to the Parliament and denial of accountability. Maybe that is what he was after. He is succeeding.

I urge members to support this motion. Eventually, it will sink in. Perhaps the lesson will be learnt only when this government is thrown out of office, as it rightly ought to be, or when these particular ministers are looked at by the Corruption and Crime Commission that they vaunt as being the protector of our democracy.

I expect an answer from the Attorney General. I will get it one of these days. I can tell members that at the moment, if he were answering these questions from a lawyer in a court of law, he would be held in contempt by the judge because he has not answered the questions and refuses to do so. It would be a contempt of court. The only reason the Attorney General can get away with it here is that there is no brake on his level of professionalism and behaviour. The Attorney General has demonstrated that over time. I will get the answers eventually. If the Attorney General has been—as I suspect is the case—concealing a contempt of Parliament, he will bring this government down with him.

HON MARTIN ALDRIDGE (Agricultural) [10.40 am]: I rise to contribute to this motion. I must say that this has become a bit of a common and ongoing theme in non-government business time, as well as potentially in motions on notice. Perhaps the house needs to consider naming one day each month “Transparency Day”. We bring out our dead, we thrash out the ideas and, at the end of the day, we order the government to hand over certain information that it has not provided to this house in the previous days of that month.

Hon Dr Steve Thomas: Perhaps we could have an opaque ribbon.

Hon MARTIN ALDRIDGE: An opaque ribbon! I thank Hon Dr Steve Thomas.

I want to raise a couple of issues that are directly relevant to today’s debate. Members would be aware that I have been pursuing the issue of the potential for the commonwealth Criminal Code Act to intersect with a voluntary assisted dying regime if one were to be enacted in Western Australia. I have been pursuing this issue for some time. It came about when I became aware of correspondence between the Attorney General of Western Australia and the Attorney-General of the commonwealth, in response to communication between the Attorney-General’s Department in Canberra and the Department of Health in Western Australia. For some time, I have been pursuing the Minister for Health to understand what this communication, which was created and initiated by the commonwealth Attorney-General’s Department, was about. On 3 September 2019, in question without notice 940, I asked, in part —

- (1) Has the commonwealth Attorney-General’s Department corresponded with the state Department of Health on this issue?
- (2) If yes to (1), please table that correspondence.

The answer was —

I thank the honourable member for some notice of the question.

I have been advised by the Department of Health that further time is required to answer this question. The information will be provided to the member as soon as it is available.

I understand that sometimes, particularly in a question without notice, things need to be worked through and checks and balances put in place. I asked this question on the Tuesday of the first sitting week in September. I did not pursue the issue on the Wednesday or Thursday of that sitting week. The house then went into recess for one week, and we came back the following week, on Tuesday, 17 September. By this stage, I thought that the government

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had had adequate time to consider this issue and that correspondence between two public service agencies on this issue was unlikely to achieve some top secret status or be in the interests of national security, so I was sure that the government would be able to table it. I waited until after question time, but no answer was given by the parliamentary secretary representing the Minister for Health. I then rose and made a point of order to the President that some 14 days had passed since the commitment to provide information had been made and no information had been forthcoming. The following day, after question time, I again rose and raised a point of order. This time, Hon Stephen Dawson jumped up and said that if this was the way I was going to behave, next time I would be told to put the question on notice. In hindsight, that might have solicited a response faster than this government is moving at the moment.

On Thursday, 19 September, Hon Alanna Clohesy, as the parliamentary secretary representing the Minister for Health, provided an answer to the question that I had asked on 3 September. She said “Yes” to the question of whether correspondence had been received. She went on to say, in part —

- (2) The minister is seeking advice regarding this matter. Further information will be provided at the earliest opportunity.
- (3) Yes, the minister has sought legal advice in relation to this matter from the Solicitor-General.

The Minister for Health refused to answer my question about providing a summary of that advice.

On Tuesday, 15 October 2019, I asked question without notice 1135. Still the minister said that he was seeking advice from the State Solicitor’s Office. The minister said that he had not received that advice at that stage and the decision on whether to table the correspondence would be made once he had received further advice. The answer went on to say —

The minister will comply with the provisions of the Financial Management Act 2006 if required to do so.

That was on 15 October. In my initial question on 3 September, I sought one communication, in whichever form it had come—I suspect it would have been an email or letter—between the commonwealth Attorney-General’s Department and the Western Australian Department of Health. How long does it take for the State Solicitor to provide advice to the Minister for Health about whether it is appropriate to provide to Parliament the communication that I seek? It might be the cynical side of me, but I wonder whether an ulterior motive is at play in preventing access by the Parliament to this communication, particularly at a time when the Parliament is actively considering the Voluntary Assisted Dying Bill 2019.

I want to contrast that record of behaviour by the parliamentary secretary representing the Minister for Health with that of the Attorney General. Hon Michael Mischin has raised a number of issues with the Attorney General. Yesterday, I asked the Leader of the House representing the Attorney General whether the Attorney General had received a response from the commonwealth Attorney-General; and, if so, whether the Attorney General would table that response. The response from the Leader of the House representing the Attorney General was —

- (1) Yes.
- (2) I table the attached letter.

How efficient was that?

Hon Peter Collier: I might give you one about whether or not he gave the information to the media.

Hon MARTIN ALDRIDGE: We will try!

To the Attorney General’s credit, this is not, as I suspected, a matter of national security. It does not attract top secret status. The letter was immediately tabled in the house by the Leader of the House representing the Attorney General. I am sure that letter will be useful during the consideration of the bill.

I want to raise another matter. I refer to the sixth report of the Auditor General of Western Australia, “Opinions on Ministerial Notifications”, and I quote —

The decision by the Minister for Education and Training, the Hon Sue Ellery MLC, not to provide Parliament with 2 documents previously released under the FOI Act was not reasonable and therefore not appropriate, as most of the information in these documents was publicly available.

Members probably will not recall, but around the time of the now failed education-cut regime of the Minister for Education and Training I asked about documents that the minister had released under FOI to Hon Mia Davies. Those documents contained, to some significant extent, information that had been redacted. I sought these documents in question time, and the minister’s answer was —

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No. The documents were released to Hon Mia Davies, MLA, under her freedom of information application in accordance with the Freedom of Information Act 1992. Access to the documents was granted on the basis that some, but not all, of the information fell within the scope of her application. Information that was outside the scope of the application, including personal information, was redacted. Should the applicant wish to appeal the decision —

To which I interjected —

I'm not FOI-ing you; I'm asking you a parliamentary question.

The President then called me to order. The minister went on to say —

Okay. No. The documents were released to Hon Mia Davies, MLA, under her freedom of information application in accordance with the Freedom of Information Act 1992. Access to the documents was granted on the basis that some, but not all, of the information fell within the scope of her application. Information that was outside the scope of the application, including personal information, was redacted. Should the applicant wish to appeal the decision, she is able to lodge a complaint with the Western Australian Information Commissioner seeking external review.

This is an extraordinary response. This was the way in which a minister responded to a member of Parliament asking a question. Obviously, this minister started to get some cold feet about her decision because she later tabled nine of the 11 documents in October 2018 and then issued a section 82 notice on 30 October 2018. The defence the minister made for not answering my question was that some of the documents included information that was not factual. These were communications between her, her office and her department. I am not sure how that is relevant to the question that I asked. It is relevant perhaps to the decisions that she and her office made with respect to proceeding with the education-cuts regime, which we now know was a complete failure of this government early in its term and one that I am sure voters, particularly in regional Western Australia, will not forget in 18 months when we head to the next poll.

In my last 30 seconds, I note that what was most extraordinary is the answer to this question I asked in late September —

Does the minister accept that her action in refusing Parliament access to the information it sought was “not reasonable and not appropriate”?

They were the Auditor General's words. The minister's answer was no. I have never seen a minister, following the release of a report by the independent Office of the Auditor General, who forms an opinion whether we like it or not, stand in this chamber and show such disrespect to the Auditor General of Western Australia. The Minister for Education and Training should be condemned for it.

HON ALISON XAMON (North Metropolitan) [10.51 am]: I rise to speak to this motion. It is a broad-ranging motion, so it is an opportunity for all of us to bring out our various grievances about this government's lack of transparency. I want to take the opportunity to provide some of my thoughts about where we are at in terms of freedom of information requests and restate some of my concerns about the State Records Office of Western Australia. As we know, the Office of the Information Commissioner and the State Records Office were established to assist us to develop and maintain accountability and transparency in Western Australia. Importantly, both bodies came out of recommendations arising from WA Inc and the Royal Commission into Commercial Activities of Government and Other Matters. To refresh the memory of members, recommendation 1 of that report states —

Freedom of Information legislation be enacted in this State as a matter of priority.

Recommendations 2 to 4 discussed essential matters about how the FOI legislation needed to work. Recommendation 20(a) and (b) led to the development of the State Records Commission out of further work of the Commission on Government. For the FOI legislation to achieve its purpose, it is essential that as much information as possible is provided to applicants who are going through the FOI process. The record-keeping practices also need to be sufficient to enable FOI officers to ascertain what information they need to hand over. We need to know whether records have been made, whether those records still exist and where they might be found.

The most recent annual report of the Office of the Information Commissioner shows that the last year has seen a substantial 11.5 per cent increase, or an additional 2 000 applications, in the number of FOI applications made in Western Australia. I am really concerned that this may reflect people resorting to using FOI in an attempt to uncover information that really should be more easily accessible and readily available. That annual report disappointingly shows a reduction in the rate of applicants who received either full access to the documents that they originally attempted to access or access to edited copies of the documents that they sought. We have also seen an increase in the number of documents that either do not exist or cannot be found, and sometimes an outright refusal to allow access to those documents. For example, police outright refused access to nearly 40 per cent of FOI requests.

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Among the issues that concern me about what is happening in the FOI space is the conflation of the documents that are deemed to not exist with documents that cannot be found. At the very least, these need to be articulated as two completely separate categories so that we can get a picture of what is happening with record keeping in this state. Reporting them together shows more lack of respect for the necessity for good record-keeping practices. As a starting point, the work of government needs to be open and transparent so that people do not have to resort to making FOI applications in the first place, simply to access much of the information that is held by our government agencies. The “Western Australian Whole of Government Open Data Policy” acknowledges that access to public sector data promotes more transparent and accountable government. Access to data also increases productivity and improves service delivery by supporting innovation, research and education, and by facilitating collaboration and evidence-based decision-making. That comes directly from the policy document. I acknowledge, of course, that some information held by government, particularly that relating to individuals, needs to be protected, and that an FOI regime is an essential transparency mechanism. It is deeply concerning that people are increasingly having to use that regime to access information, which I think can be easily argued should be made publicly available, and that even after they have gone through that FOI process, they are being denied access to that information. The annual reports are telling us that this is getting worse; it is not getting better.

I will recap some of the government’s decisions over the last few years. It has made the decision to utterly gut the State Records Office of staff, and I remind members that the State Records Office was established as a result of WA Inc. The government has completely ignored the State Records Commission’s warnings about the inadequacy of the funding made available to it to perform its legislative role, and it has instead buried the office into a supporting role within a department and removed any kind of specific budgeting and reporting for that office. We know that FOI and other transparency and accountability measures are not going to work if we do not have good and appropriate record management. To be very clear, the way we are dealing with FOI and state records at the moment definitely does not reflect gold standard transparency and accountability.

HON TJORN SIBMA (North Metropolitan) [10.57 am]: I am enjoying very much the resumption of normal programming on a Thursday morning. Unfortunately, we seem to be returning to a particular issue time and again because so much fodder is provided for us to call attention to. I will make two brief observations and then highlight an example that concerns me that is very different from some of the other issues addressed already.

I share with Hon Alison Xamon a deep despondency and concern for the systemic dysfunctionality of the Office of the Information Commissioner. It is certainly not equipped nor resourced to do its function properly. That is not because of any lack of professionalism or dedication on behalf of the staff concerned. It is just because they are dealing with a tsunami of applications. Those applications are the direct result of a government that refuses steadfastly, time and again, to provide answers to the questions that are put to it. There have been occasions in this chamber and in the other place when senior members of the government have had the outright temerity to question the validity of these applications being submitted in the first place; that, frankly, is a disgrace. They are the cause of this, yet they seem to wash their hands of that. The second observation I would make is that my first proper full-time job was in a national security environment. I very much know what a sensitive document is. I know what sensitive information is. I have dealt with that kind of information. I must say that outside of sensitive law enforcement or intelligence operations or delicate financial transactions, very little in the way of business conducted by governments should be protected by this veil of secrecy. All it does, frankly, is protect bureaucrats from accountability. I think sometimes executive government forgets the fact that if it exposed government decision-making more openly and more broadly, it might be able to fix some systemic problems. However, executive ministers are often co-opted into this, which is not to say they might not have their own particular justifications or reasons to keep information hidden from the public. We have had four or five members of this chamber speak to specific examples of government resistance to providing open and fair information in a timely manner. It has made a sick joke of the Premier’s bold claim that he would run an open, transparent and accountable government. That is a sick joke. It has never been the intention of the Premier to live up to those words—never. We see that because he refuses time and again to walk that brave talk. To quote an old adage, which I have quoted here before, the fish rots from the head down, and it smells awful. The Premier is not the only one who throws the cloak of secrecy over information. Every member of the government is in this conspiracy to conceal information from the public. It is very protective and highly sensitive of its own information. However, what is ironic about that is that there seems to be something of a cavalier disregard for the sensitive information of other people.

I have also asked seven questions on a specific issue of the Minister for Ports. I think she is a good minister, but it is a painful exercise to go through, to eat away—nibble, nibble—just to get morsels of information. This process has revealed that there seems to be a disdain on behalf of the government for the confidential information of others. I will not necessarily go through the entire detail, but a particular marine services company was operating lawfully on contract to the Pilbara Ports Authority, which somehow in the course of its legal commercial operations seemed to have upset somebody at the Maritime Union of Australia. The Maritime Union of Australia gets into the

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minister's ear and says, "I think you should have a look at this, minister", and the minister does. The minister has acted lawfully within the objects of section 75 of the Ports Authority Act 1999. Section 75 of that act gives the minister the legislative right to seek information, and we would think that that is exactly what a ports minister should have—absolutely, no problem with that. But there is, of course, the potential for ministers to go through that portfolio responsibility and perhaps be tempted to misuse information, which is why there are some provisions and caveats issued about the process by which that information should be provided. I want to read in section 75(4) of that act. It states —

Where the CEO or the board of a port authority furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the CEO or the board the public disclosure of the information would adversely affect the commercial interests of the port authority or any subsidiary or of any other person.

We would think that is reasonable. That is a necessary safety break on the unwarranted, flippant treatment of information that is genuinely commercially sensitive. In answer to a question I put to the minister on 18 September in this house, she very helpfully—I am not being disingenuous here—provided an email exchange between members of her office and senior executives of the Pilbara Ports Authority. It relates to the process by which the minister was seeking certain contractual documents to deal with a specific company. I will read some of this email in the time available. This email is from Mr Richard Barrett of the Pilbara Ports Authority. Mr Barrett is the director of corporate and government affairs. It was sent to Ms Karen Wheatland, presumably somebody in the minister's office at the time. It goes along these lines —

Hi Karen

As discussed, PPA's CEO has approved the provision of copies of these documents to you, for your information and reference only, subject to the following conditions of use:

- The request is via a section 75 request on behalf of the Minister.
- You agree to keep these documents strictly confidential and not copy, circulate or distribute, or otherwise disclose the contents or substance of, these documents to any third party without PPA's prior written consent.
- You note that, in the opinion of PPA's CEO, the public disclosure of these documents, or their contents or substance, would adversely affect the commercial interests of PPA and/or the counterparty (Odyssey Marine).

Please could you confirm that you acknowledge and agree to these conditions via return email?

There was a response. I believe it comes from the minister's chief of staff, Mr Cole Thurley, and it was sent directly to the CEO of the Pilbara Ports Authority, Mr Roger Johnston. It reads —

Roger,

I refer to Richard's email below.

I confirm that the relevant documentation is requested on behalf of the Minister for Ports under section 75 of the *Port Authorities Act 1999*.

Section 75 does not provide for or require that the Minister agree to any conditions, however I acknowledge advice that in your opinion, the public disclosure of these documents, or their contents or substance, would adversely affect the commercial interests of PPA and/or the counterparty (Odyssey Marine).

I did not think it was absolutely necessary for the minister's chief of staff to say, "We note your concerns, but we have absolutely no legislative requirement to comply with them." There is no need for compliance written into the act, but I thought it was interesting that the minister's chief of staff felt compelled to tell the chief executive officer, a very experienced person, that fact. When I see that kind of defensiveness, I think there might be something surreptitious and dodgy going on, so that is why I am going to pursue this, because this is the sole contract of one company at one port that the minister has sought at the behest of the MUA. I smell something wrong with this and I am going to keep pursuing it.

HON JIM CHOWN (Agricultural) [11.07 am]: May I first congratulate Hon Dr Steve Thomas for this motion we are addressing here today. I also note that virtually every party in this place has taken up the mantle in regard to this government's lack of transparency. Of course, the Premier, prior to his election, made a comment of great gravity, and that was that his government would have a gold-plated standard of transparency and accountability, and as we have been discussing here today, that is not happening. In fact, it is the reverse of what is happening. That is one reason that this government is going to be a one-term wonder. The public of Western Australia now

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understands that this government's achievements amount to very little at all, other than hiding the facts from this house and from the public at large. One of the great examples, in my belief, of a government showing its incompetence at an executive level from a ministerial perspective is Hon Dave Kelly. How can a government have a Minister for Fisheries such as this person who has virtually closed the door on the fishing industry because he could not get his own way last Christmas? The fishing industry is a highly professional group of people, and they have some leading bodies, including the Western Australian Fishing Industry Council and the Western Rock Lobster Council, made up of members who understand their industry comprehensively and who have always had a good rapport with the department, and in fact have the best interests of the public, and certainly their industry at large, at the front of their perspective.

This minister's thought bubble last Christmas—to socialise 17 per cent of the lobster industry—did not get across, and was not supported by this house. Quite frankly, I do not believe it went to cabinet for discussion at all. The Premier had to come back after Christmas and close it down. Here is a minister of the Crown who will not talk to the industry at all. I have asked a raft of questions over the past couple of weeks about these matters, including the local lobster program. Before Mr Kelly had his thought bubble, the Western Rock Lobster Council wrote to him, wanting to increase the local lobster catch by about 315 tonnes, so that Western Australians could get lobsters at a reasonable price. Through the three phases of that program it has been proven that the price of lobsters off the back of boats has dropped by 20 or 30 per cent. One of the responses to my question was that the fishermen are getting the majority of the lobsters and it is not worth it. That is wrong. The report that I asked to be tabled about this program said that only 12 per cent of lobsters taken under the local lobster program were used by local fishermen. Under phase 4, which should be happening later this year, part of the process will be that no lobsters will be allowed to be taken by the crew or the skippers of these crayfishing vessels. That is beside the point. The Western Rock Lobster Council has written to the minister asking him to formally say that the program will be in place for the forthcoming year. I asked when the minister would formally respond to the Western Rock Lobster Council in his official capacity as Minister for Fisheries to confirm that the local lobster program is endorsed by the McGowan government. It was not answered, except for an ephemeral response that actually meant nothing. This is a minister of the Crown who is meant to be representing a mature industry in this state, and he does not have the ability to answer a very simple question from a prime body in his portfolio area on a program that is beneficial to the population. It is unbelievable. A fish does rot from the head, and the Premier, at his next reshuffle, needs to move this guy on. Will he? Of course he will not, because we know the Labor Party is in total internal disruption. We have seen the Maritime Union of Australia walking out and supporting Roe 8 and Roe 9. I do not know what faction Mr Kelly belongs to.

Hon Alison Xamon: The missos.

Hon JIM CHOWN: The missos—right. Mr McGowan needs support from Mr Kelly's people to remain as the Premier. Seriously, this government is not serving the population and the industry of this state, especially the fishing industry. It has to stop, and my advice to the Premier is to do a reshuffle, and put some people up there with real ability and experience. I am sure he will find some on the back bench.

Hon Dr Steve Thomas: It is drawing a long bow.

Hon JIM CHOWN: It is drawing a long bow, I know, but something has to be done before the next election, and before things turn really bad.

I asked a question on Tuesday, 15 October about a levy that is imposed on the crayfishing industry, amounting to \$195 000, that was collected and ticked off, with all the paperwork, as stated in my question. This levy is used by the Western Rock Lobster Council for communications, a scoping study into spiny lobsters, a research and scoping study for statutory management authorities, management and projects. The fishermen pay a levy of \$195 000, and it is administered by the Department of Primary Industries and Regional Development. The minister, in response to my question about when the outstanding funds would be released to the Western Rock Lobster Council, said that the funds were administered by the department on behalf of the minister, and that the matter is currently being considered. The minister is withholding \$195 000 of fishermen's funds that should be going to the Western Rock Lobster Council, because he has his nose out of joint, and because of his petty attitude and his lack of ability to stand up as a minister and do his job properly for the industry he is meant to be representing. Those funds are 12 months overdue. In fact, next month, the levies will once again be imposed upon the lobster fishing industry of this state, and it will pay. In effect, because of this minister's inability to get over what happened last Christmas and get on with the job, in another 12 months' time, two years of funds may be withheld by this government. It is outrageous. It is not the minister's money and it is not DPIRD's money. It is the fishing industry's money that is going to the Western Rock Lobster Council for very good research reasons. Quite frankly, this minister's inability to be a minister has lost the confidence of the fishing industry to the point at which I doubt very much, if the opportunity arose, that it would use him for bait. This is a very good example of this government's inability to administer its ministries on behalf of the people of Western Australia. You have about 18 months to get it right, boys and girls, but quite frankly

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I believe the population of this state has made its decision already, and the one-term wonder of the McGowan government will go down in history as a government that made a lot of promises and achieved so very little.

HON ALANNAH MacTIERNAN (North Metropolitan — Minister for Regional Development) [11.16 am]: I am sorry that I do not have more time to respond to the usual litany of complaints that we have. We always understand that there are tensions between governments and oppositions, and that people want information, but I do not believe that we have seen a cogent case made here, in any sense of the word. I do not have much time, but I will spend a bit of time on Hon Tjorn Sibma's absolutely absurd proposition. First, however, Hon Dr Steve Thomas was asking why the Minister for Transport does not just acknowledge that there has been a problem. I ask the member to go back to the budget papers of 2018, a year and a half before he started asking questions, which clearly stated —

There is a risk that the Forrestfield–Airport Link project may exceed its approved budget. Spoil (i.e. excavated soil) from tunnelling has been found to contain minor concentrations of poly-fluoroalkyl substances (PFAS).

It stated that the government has clear options in place for soil removal and management of the FAL project. Here was a very clear recognition that there was a problem with a contract that was entered into under the previous government. It is also massively interesting that, in order for us to understand this issue more, on a couple of occasions the minister wrote to the director general of the Department of the Premier and Cabinet, firstly when Hon Mike Nahan was Leader of the Opposition, asking whether it was possible, during this term of Parliament, to get access to the business case and the Forrestfield–Airport Link definition plan, so we can actually understand what the previous government was planning. Hon Mike Nahan said no. That is transparency! When there was a change of leadership, we thought we might have another go, so we wrote to Hon Liza Harvey, Leader of the Opposition, and asked, again, whether we could have access to the Forrestfield–Airport Link and the Perth Freight Link plans, so that we could further understand what the previous government was proposing and what it had put in place. The answer, once again, was no. We have had very detailed questions asked in this place every day on the issue of PFAS, and they are answered. It is a complex issue and we are working with the commonwealth government and all the agencies to resolve the problem. Unfortunately, PFAS is widespread in the community and we believe we will be able to manage it, but we have never pretended that it is not a problem.

Hon Martin Aldridge expressed concerns about the release of a document by the commonwealth Attorney-General. He had sought the document from the state Minister for Health in the first instance. As I am advised, one of the complications for the Minister for Health was that the commonwealth Attorney-General did not want the letter to be released, and discussions were genuinely going on to try to resolve the issue. Subsequently, as Hon Martin Aldridge has said, he asked the same question of the state Attorney General, and the Attorney General released the information. The contextual difference was that by that stage it was very clear that Nationals WA members had somehow or other obtained a copy of the letter, so the Attorney General felt that, given that they already had the letter—presumably some way through the federal government—it was appropriate to release it. It was the federal government that did not want to release it, but somehow it had managed to leak a copy of the document. I am assured that that is the reason it was done.

With regard to Hon Michael Mischin's complaints, the state Attorney General has acknowledged that he showed that letter to a journalist and that he believed that the document was not confidential. The document was subsequently tabled in this place by the committee. The Attorney General believed that it was a matter of public interest that people understood what was, in his view, the poor advice that guided the actions of the committee.

I would like to now go through Hon Tjorn Sibma's complaints, because I find them absolutely extraordinary. Apparently it is not enough to answer a question that has been asked; we actually need to predict what the member might want to ask in the future. That is not our job. Part of my concern with this matter was to not name a particular company and put it into the spotlight by saying the things that might have to be said about it. I understand that the member may have a good relationship with that company and that the company might be one that supports a certain side of politics. My concern was to not unnecessarily name that company.

Let us set this out. I became Minister for Ports and I got a submission from the Maritime Union of Australia raising a prima facie case that something improper might have gone on—that despite very clear provisions in the marine services contract that these licences could not under any circumstances be transferred, the contracts had been transferred. That, in itself, given the clarity of the words, contrasts with what went on. There was then a complex story about the phoenixing of a company that was going into administration and about these contracts being reissued in the name of another entity, with overlapping players. Of course that is of concern. My response was that I thought there was something going on, prima facie, but I did not have weeks to go through and do a careful forensic analysis, so I sent it off to the State Solicitor and asked the State Solicitor to look at it. The State Solicitor came back with the first advice, "Well, we can't really tell because we don't have all the documents. The port has not given us all the documents."

If Hon Tjorn Sibma is so uninterested in this matter, I will not bother talking about it.

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The State Solicitor said, “We’ll give you this advice, but we have to tell you that we can’t give you the full advice.” Several members interjected.

Hon ALANNAH MacTIERNAN: Hon Tjorn Sibma finds Hon Jim Chown’s conversation more interesting. This is how serious he is. Seriously, the member sat there, asked questions and made allegations, and now he will not even listen to the answer.

Point of Order

Hon MICHAEL MISCHIN: Two things. Firstly, the minister ought to address her comments to the Chair. Secondly, I had an awful lot of large talk in my first term of office with objections about finger-pointing across the chamber and attacking members. We seem to have the same from a minister of the Crown now. Apparently you can get away with it if you are on the other side and if you are a member of the Labor Party, but I had a complaint made to the then President by a member of the Labor Party about casually doing that—casually pointing, to make a point in an argument, and look what we have had; we have had finger-stabbing here.

Several members interjected.

The ACTING PRESIDENT (Hon Matthew Swinbourn): Order, members! Quiet, please. Member, I was not here during the last term of Parliament, so I am not familiar with all your goings-on. I remind the minister that we are to conduct ourselves in a parliamentary manner, including addressing comments to the Chair. I encourage the minister to do that.

Debate Resumed

Hon ALANNAH MacTIERNAN: Thanks very much. I apologise if one of my hands moved beyond the boundary; I will try to keep my hands within the boundary here.

I actually thought Hon Tjorn Sibma was a bit better. He is someone whose intellect and honesty I respected. I would have thought, having made these allegations and talking about stinking fish and —

Hon Tjorn Sibma interjected.

Hon ALANNAH MacTIERNAN: Sorry; am I waving my hands too much?

Point of Order

Hon TJORN SIBMA: I think facts are important in discussions like this. I have not made a single allegation at all. The minister’s hyperbolic reaction, though, leads me to believe that there might be something more to this. I will sit down after that.

The ACTING PRESIDENT (Hon Matthew Swinbourn): There is no point of order.

Hon Alannah MacTiernan interjected.

The ACTING PRESIDENT: Minister, I have not given you the call yet! Please resume your seat. There is no point of order. The minister may resume her comments.

Debate Resumed

Hon ALANNAH MacTIERNAN: Thank you. I just thought that if Hon Tjorn Sibma was actually interested, he might want to extract himself from the fascinating conversation he is having with the member next to him and listen.

The State Solicitor wrote back and said, “Here’s our advice to date. We haven’t actually been able to get all the documents from the port, so the advice is conditional because of that.” What would have been the sensible thing to do? The sensible thing would have been to get the documents from the port—quite frankly, I think the port should have been prepared to provide those documents to the State Solicitor’s Office. But given that the port and the conduct of the officers of the port could have been in question, they did not do that, so I used my authority to quite properly ask the port authority for those documents. They were then sent and, as I have explained in detailed answers to the questions that have been asked in this place, those documents were obtained by me to ensure that the SSO’s advice was comprehensive. Those documents were not released to any other party. It would have been absolutely irresponsible of me to allow the port authority to say, “We are not going to allow the SSO to look at those documents.” I would not have had proper advice. My hands are too far forward. I am more concerned about who is driving your agenda on this, member.

Motion lapsed, pursuant to standing orders.