

STATE RECORDS BILL 1999
STATE RECORDS (CONSEQUENTIAL PROVISIONS) BILL 1999

Cognate Debate

On motion by Hon Peter Foss (Attorney General), resolved -

That leave be granted to debate Orders of the Day Nos 13 and 14 cognately.

Second Reading

Resumed from 13 September.

HON N.D. GRIFFITHS (East Metropolitan) [2.38 pm]: I am not the lead speaker for the Opposition. These Bills are very important. The Opposition wants them dealt with fairly promptly, but not necessarily as promptly as I will deal with them at the moment. I understand that Hon Mark Nevill is proposing to speak.

HON MARK NEVILL (Mining and Pastoral) [2.39 pm]: I do not intend to speak for very long on these Bills, except to say that I support them. I acknowledge the interest that Hon Phillip Pandal has shown over the years in getting a proper records Bill in this State.

I remember when the Royal Commission into Commercial Activities of Government and Other Matters was completed, and a Bill in this House dealt with the records generated by that royal commission. There was a proposal to destroy all sorts of material. I was one of the people who strongly opposed that. For posterity, it would be interesting to know what material was provided. All those sorts of questions relate to how we deal with records. The Battye Library in this State has done a very professional job of keeping many of our records intact. However, unfortunately, a large number of records throughout the State have been lost. I know that a lot of the records of South Kalgoorlie Primary School, where John Tonkin was educated, were sitting in the school years after it had been closed down. Those lists are very important for genealogical and many other purposes. I strongly support this Bill, and I have given an indication to the minister that I will not delay it.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.41 pm]: The State Records Bill contains a provision that has caused some concern for the Labor Opposition. It relates to schedule 3, which exempts Western Power and the Water Corporation from the requirements of this state records management regime. The Opposition was told that this Bill would get much needed parliamentary time only if it dealt with this matter succinctly, and it is my intention to do so. However, it now appears that the Government seems to have plenty of time to make motions orders of the day. Presumably, therefore, we have a little more time to spend on this Bill now that a particular motion has been made an order of the day for next week.

The Bill includes AlintaGas as part of schedule 3, but the Attorney General has an amendment seeking to remove that entity from the provisions of the Bill. That was drawn to my attention only as I was walking into the Chamber. In fact, I have been caught a bit short.

Hon Peter Foss interjected.

Hon TOM STEPHENS: Perhaps the Attorney General will do me the courtesy of supporting my proposed amendment.

Hon Peter Foss: No, I would withdraw the Bill before I did that.

Hon TOM STEPHENS: The Attorney General would withdraw the Bill rather than do that?

Hon Peter Foss: Yes. You know what the situation is. It has taken us this length of time to get to this stage. The Government would like it to be passed, and it has been agreed that it will be passed.

Hon TOM STEPHENS: The Attorney General is saying -

Hon Peter Foss: I will not waste my time.

Hon TOM STEPHENS: The Government seems to have plenty of time.

Hon Peter Foss: No, I will not waste my time with amendments that will not go anywhere. Do you want the Bill passed or not? I have been through this. I brought in the Bill originally. I have had to go through all these battles. This is the way we get it through.

Hon TOM STEPHENS: All right. However, it appears that the Government has plenty of time to waste.

Hon Peter Foss: It is not a matter of time. It is a waste of time to deal with it if it is not accepted.

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

Hon TOM STEPHENS: It appears that the Government has endless amounts of time. It has had the opportunity to move around motions and to make them orders of the day. It has previously indicated that it has a tight legislative program. The Opposition has been trying to assist the Government -

Hon Peter Foss: I am happy to adjourn this. If you do not want this Bill dealt with, just adjourn it.

Hon TOM STEPHENS: The Attorney General can do whatever he likes, but he cannot have it both ways. He cannot say that the Government has a tight legislative -

Hon Peter Foss: I am just saying that you are wasting your time.

Hon N.F. Moore: It is not to do with the legislative program; it is a waste of time dealing with it if you do not support it.

Hon TOM STEPHENS: The Attorney General cannot on the one hand argue that the Opposition must deal with legislation expeditiously because of the restricted opportunity for dealing with issues, and on the other hand slide in -

Hon Peter Foss: The legislation can be dealt with if you agree to it. If you want to amend it, it will not go anywhere.

Hon N.F. Moore: That is what he means; it has nothing to do with the time of the House.

Hon Peter Foss: It does not matter how much time we waste; the Bill will not progress if you make those changes.

Hon TOM STEPHENS: Would the Attorney General refuse to progress the Bill?

Hon Peter Foss: I have been through this. The sorts of matters you are discussing are the reason it has taken so long to get this legislation into the House. If you want it to go through, you deal with the Bill as it is. If you do not want it to go through, you alter it. It is that simple.

Hon TOM STEPHENS: I will make my remarks against that backdrop.

It was drawn to the attention of the Opposition that, in drafting this legislation - prior to the privatisation of AlintaGas - Cabinet, without submission or organisational request, included AlintaGas, Western Power and the Water Corporation in the schedule. The Opposition attempted to discover the reasons for Cabinet's decision to exempt those organisations from the state records management regime governing all other government instrumentalities and departments. It was put to us that Cabinet made the decision because those instrumentalities were part of the Government's privatisation agenda.

Hon Peter Foss: That is not the reason. It is because they are government trading enterprises.

Hon TOM STEPHENS: The argument was put forward that the Government intended to privatise AlintaGas, which has now happened, and would then proceed to privatise the other government utilities.

Hon Peter Foss: That has not been said by government at any stage.

Hon TOM STEPHENS: Regrettably, it has been said. We have asked the Government to make available the arguments or documentation in support of the exemption of the two remaining enterprises but, unfortunately, it has resisted tabling any such submissions.

Hon Peter Foss: We do not intend to privatise either of them.

Hon TOM STEPHENS: It is interesting that the Attorney General says that.

Hon Peter Foss: Nobody else has said otherwise.

Hon TOM STEPHENS: It has been said otherwise.

Hon Peter Foss: Has it been said by any member of the Government?

Hon TOM STEPHENS: It has been said in reference to -

Hon Peter Foss: By whom?

Hon TOM STEPHENS: That is sufficient for the moment. I do not propose to position the Attorney General -

Hon Peter Foss: Cabinet has only 17 members.

The PRESIDENT: Order! The Attorney General will have his opportunity to respond in due course. In the meantime, the Leader of the Opposition has the call.

Hon TOM STEPHENS: I know what a vindictive Government this is.

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

Hon Peter Foss: There are only 17 of us. Who said it?

Hon Simon O'Brien: We are trying to debate the State Records Bill. Can we leave the personal stuff out of it and get on with the debate? It is important.

The PRESIDENT: Order!

Hon Simon O'Brien: You are way out in left field.

The PRESIDENT: Order! I call Hon Simon O'Brien to order.

Hon TOM STEPHENS: The Opposition remains concerned about the Government's agenda and its handling of government trading enterprises. Three trading enterprises were to be exempted from the requirements of this Bill. That fills us with anxiety about the Government's agenda. The Opposition was alerted to the fact that the exemptions have as their genesis a connection with what is not owned up to as being the Government's agenda. One must keep in mind that this was the Government which, when confronted with questions about its intentions regarding AlintaGas prior to the last state election, did not own up to its privatisation agenda. It certainly did not own up to its privatisation agenda of Westrail. As members know, other aspects that were also not owned up to have subsequently become the Government's agenda. It is alarming that the Government insists on exempting Western Power and the Water Corporation from the requirements of the State Records Bill. People who seem to have had good access to the Government's agenda for those utilities have expressed concerns to the Opposition. We have discovered that the explanation given for exempting Western Power and the Water Corporation from the requirements of the State Records Bill is that those utilities are on the Government's privatisation agenda.

Hon Peter Foss: If the Government were to privatise either of those organisations, how would they be caught by the Bill as it is presently drafted? They would cease to be in schedule 1 and there would be no need to have them in schedule 2. If the Government did privatise them, the Bill would become irrelevant. The member's point is off the mark.

Hon TOM STEPHENS: The privatisation of those corporations would require that their records no longer be in public purview. For example, the minister will know that for an extended time I have been trying to find out about the assets of AlintaGas that have fallen into private hands. I have been interested in finding out specifically what art works went with AlintaGas from public ownership. The Minister for Energy, through the Minister for Justice and the Minister for the Arts, replied that the Government had no intention of making available information about the records of the assets that were on the assets register of AlintaGas even when it was a government-owned utility.

Hon Peter Foss: How would AlintaGas be caught? We are exempting it because it is no longer in schedule 1. Once AlintaGas is privatised, it ceases to be in schedule 1 and is not caught by the Act.

Hon TOM STEPHENS: The current records of Western Power and the Water Corporation are public assets and would be required, if this Bill were enacted, to remain as public records unless they are disposed of according to the regime that is identified for the statute book by this Bill. Those records would not be disposed of if the Water Corporation or Western Power were privatised other than in accordance with that regime. It alarms me that two of the trading enterprises of government have been singled out and quarantined from treatment under the provisions of the State Records Bill. The Opposition fears that those enterprises are on the Government's privatisation agenda. Regrettably, the pre-election assurances of the Minister for Justice and his cabinet colleagues count for nothing. Previously, I have listened to assurances on a gold royalty. The Minister for Justice campaigned in my own electorate that there would not be one. During the previous election campaign, the minister also stated that AlintaGas would not be sold. Regrettably, if the people of Western Australia have the misfortune of having this Government returned to office after the next election, the only thing that will protect them will be the requirements of law at best. Unfortunately, the Government does not regularly confine itself, even under the requirements of law.

Hon N.F. Moore: I beg your pardon!

Hon Peter Foss interjected.

The PRESIDENT: Order! The Attorney General and the Leader of the House should not interject so that the Leader of the Opposition can concentrate on the substance of the Bill. This is a second reading debate on the general policy of the Bill; not a response to interjections about detail.

Hon TOM STEPHENS: I asked questions of both the Minister for Energy and the Minister for Water Resources about the need for exemptions. The Minister for Energy did not have the courtesy to reply. However, the Minister for Water Resources responded that the Bill compromised one of the key principles of corporation, being maintenance of competitive neutrality, and that the significant rights of access that the commissioners, the

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

director of government records and the minister who will be responsible for the State Records Office would have to information held by the corporation may compromise commercial-in-confidence material.

I am keen for the minister to explain to the House why the Water Corporation should be subject to competitive neutrality. It is the only entity in Western Australia that carries out its functions. Given that, what material must be kept commercial in confidence? The same could more or less be said of Western Power.

Hon Bob Thomas: What about the \$300m to prop up the budget?

Hon TOM STEPHENS: Perhaps that is so. We have been advised that privatisation is the main reason for the need to include these entities. Coincidentally, no written documentation has been produced to explain how those entities came to be included under schedule 3. Why were those trading enterprises suddenly singled out? The exemption of those two trading enterprises augurs badly for Western Australia. The cat is now out of the bag - we know exactly what is on this Government's mind.

The Bill requires schedule 3 organisations to prepare a record-keeping plan for approval by their ministers. The Minister for the Arts has advised that the State Records Office will provide assistance to organisations preparing record-keeping plans based on the policies and standards set by the commission. I can see no legislative requirement in the Bill for the organisations to seek or accept this assistance. I would like an assurance - for what it is worth these days - from either the Attorney General or the ministers representing the relevant ministers, that such assistance will be sought and accepted. Given that it is up to the relevant minister to approve the record-keeping plan, I would like an indication from the Attorney General what record-keeping expertise is available to ministers. The Bill is flawed if it does not require those organisations or their ministers to consult the State Records Office in the preparation of their record-keeping plans. It is only their minister, no doubt with an acute lack of record-keeping expertise, who will sign off on the plan. I would feel much more comfortable if these organisations were required to at least consult the State Records Office. I see no reason that they could not go to the next step and obtain the opinion of the office on their draft plan. I cannot see how such a requirement could in any way impinge on the commercial in confidence of these organisations. After all, the Opposition is not suggesting that any documents should be shown to the office.

Clause 68 of the Bill provides that the State Records Commission may at any time request a schedule 3 organisation to report to its relevant minister about an aspect of its record-keeping capacity. The commission must specify when the report is to be provided, and the organisation is required to report in accordance with that request. The relevant minister must then give to the commission written advice of the report. If the report indicates that the organisation is not complying with its record-keeping plan, written notice must be given of the failure to comply. I see nothing in the Bill that addresses non-compliance by Western Power or the Water Corporation with their record-keeping plans. It appears to be a very big flaw in the measure. Any assurance from the Attorney General or the Minister for the Arts is worthless if no statutory requirement applies to Western Power or the Water Corporation to comply with the record-keeping plan. It is clear in my view, and that of those in record management, that this is an odious exclusion. The Government is wrong-headed in this regard. I can imagine the processes in the cabinet room hinted at by certain people. Ministers with a privatisation agenda said that they would not have trading enterprises that are on the chopping block for privatisation affected by requirements to maintain state records in accordance with a statute. Without any cabinet submission or any supporting documentation from the utilities or agencies, the ministers pop out of the cabinet room indicating that these trading enterprises are exempt. The Attorney General, representing the minister in another place responsible for this Bill, has made it clear that if an amendment were carried in this House which embraced the two trading enterprises remaining in government hands, the Bill would go no further. That is the Government's commitment to state records management.

Hon J.A. Scott: Is that what he said?

Hon TOM STEPHENS: Yes. If we amend it in any way, the Bill is dead. That is a solid and decent threat by the Attorney General. To be frank, I believe him. It shows the Government's commitment in this regard. It is indicative of the Government's agenda with trading enterprises. Undoubtedly, it reflects what is in the mind of government members, if re-elected, regarding the Water Corporation and Western Power. Ministers in this Government do not believe in government, or that government has a role in Western Australia. They do not believe that Governments are capable of government. The experience of those ministers in government should convince them of that view and this Government has proved its inability to govern. No wonder ministerial colleagues are determined to ensure that nothing stands in the way of their privatisation agenda in the core areas of government activity. The Government has issued the threat, which I accept at face value. The Bill should be progressed and put into law, even without my preferred amendment. The Bill should be considered and sent back to the other place with an invitation for it to include an amendment to include the two utilities under the requirements of the statute. I recognise that if I were to move that amendment, the Attorney General would use

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

that as an excuse to not proceed with the legislation. Better one bird in the hand than two in the bush. The Labor Party accepts the threat, and takes it for what it is: It indicates the Government's intention and sincerity on record management.

I note that the 1993 Royal Commission into Commercial Activities of Government and Other Matters recommended a state records management regime.

Hon N.F. Moore: Will you spend a few moments telling us why it made that recommendation?

Hon TOM STEPHENS: Presumably the Royal Commission into Commercial Activities of Government and Other Matters had the good foresight to realise that there would be the likes of the Leader of the House and his colleagues.

Hon N.F. Moore: They were thinking of your 10 years of mismanagement and absolutely corrupt government. Do not point your finger at me.

The PRESIDENT: Order!

Hon TOM STEPHENS: I hope the Minister for Tourism will leave around every possible document he has touched that relates to the Perth convention centre.

Hon N.F. Moore: They are there for you to see.

Hon TOM STEPHENS: I am sure we will have the opportunity when in government of looking over those documents.

Hon N.F. Moore: I would like you to look now. I keep inviting you to have a look.

Hon TOM STEPHENS: We will look at every one of the documents and the minister's handling of that deal. We will look at the deals of his colleague beside him, and the one who was previously over there. This Government has presided over the stripping of government assets and the flogging off of contracts in ways that have probably never been done by any Government anywhere in the western world, and in a way which obligates the following Government to place all that documentation under the scrutiny it needs. There is something essentially odious about what the Government has been doing when in office.

By virtue of the carriage of this Bill, I hope the state records will be required to be maintained so that enough trails will be left around of the ministers' mishandling of government contracts and contracting out and their links with their mates in the 500 Club. They have signed up multimillion dollar contracts using taxpayers' funds for the construction of tunnels and roads, which have not involved fair processes at all. They have all the hallmarks of scandal over them. When the final analysis of this Government's period in office is made, with the assistance of the passage of this Bill there will be sufficient records to bring to book the likes of the ministers who have been involved in these various shenanigans.

Hon Greg Smith: Are you saying they are corrupt?

Hon TOM STEPHENS: If the member is sorry to interrupt, he should not!

The Commission on Government suggested a different course for this legislation. It finally emerged in a modified form, but that is better than its being ignored. Given that, the Opposition will support its passage.

The Australian Labor Party believes that the greater good would have been served by the inclusion of those two utilities in the legislation. If the Labor Party were in office, it would have more carefully followed the recommendations in the Commission on Government report about the establishment of a state records system.

The Labor Party will support the passage of the legislation. I understand the Government's threat. It is important to recognise why some exemptions have been allowed. Those reasons are self-evident and relate to this Government's silent agenda that leaks out from time to time; that is, if it is re-elected, it will have extra utilities on the chopping block for privatisation.

HON DERRICK TOMLINSON (East Metropolitan) [3.12 pm]: I listened with growing chagrin to the conspiracy theories espoused by the Leader of the Opposition. It is appropriate that I put on the public record the very small role I played in ensuring that this Bill was introduced and that it is being dealt with now.

Several weeks ago I received a telephone call from a person who has an interest in the State Records Bill. I cannot recall his name, but if the leader wants me to provide it, I will do so. I am not trying to conceal his identity, but I do not recall his name at this moment. The caller requested that I establish the progress of the State Records Bill. He impressed upon me that it was desirable that the Bill be debated before the end of this Parliament and asked whether I could find out from the Attorney General the Government's intentions. I did so and was advised that, although it was probably highly desirable that the Bill proceed, given the amount of

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

business on the Notice Paper, the high priority given to other legislation and the short time available before the Legislative Assembly must be dismissed, it was unlikely that it would proceed. I advised my constituent what I had learnt. He was disappointed and we left it at that.

About a fortnight ago, I received a telephone call from the member for South Perth - Mr Phillip Pandal - who asked me what I knew about the progress of the Bill, and I told him what I have just told the House. Of course, the member for South Perth was previously the member for the South Metropolitan Region in this House. He reminded me of the origins of the State Records Bill and the part that he, Hon Peter Foss and I played in opposition and our involvement in events relating to the records of the Royal Commission into Commercial Activities of Government and Other Matters. Members will recall that when the royal commission reported, there was a move to destroy all or some of its records. Much to the annoyance of the Government, which wanted the records destroyed, the then Hon Phil Pandal moved in this House that the royal commission records be stored in archives and be given secret status for 30 years. The Opposition prevailed, in that the royal commission's records have been preserved. That experience caused the member for South Perth to pursue the enactment of state records legislation. During the telephone conversation with me about a fortnight ago he asked my advice about how this matter could be brought on and dealt with before the end of the parliamentary session. My advice to the member for South Perth was that if he could get the assurance of all opposition parties that the Bill would be dealt with expeditiously in debate, I was sure the Leader of the House would agree to have the Bill dealt with. I assumed when the matter came up today that the member for South Perth had been successful. There was no conspiracy, and there was no intention to even bring on this Bill, contrary to the conspiracy theory that has been advanced that if we were to win the election and form the next Government, we would privatise all sorts of government entities. That is a spurious argument. The Bill was brought on because it was assumed that there would not be a long debate on the matter.

Hon Tom Stephens: Sit down and shut up!

Hon DERRICK TOMLINSON: It is interesting that when we stand and give an honest exposition, the conspiracy theorists tell us to sit down and shut up. The intention was to bring on this Bill because it was deemed an important piece of legislation. I understood it was brought on because agreement had been reached that it would be dealt with expeditiously; and I sincerely hope it will be.

HON HELEN HODGSON (North Metropolitan) [3.17 pm]: The Australian Democrats support this Bill, although we are concerned about some aspects of it. In response to some of the comments of Hon Derrick Tomlinson, I am in no way a conspiracy theorist, but I also received correspondence from the member for South Perth asking whether the Bill would be dealt with expeditiously. I am pleased that the Bill has been brought on, but that was not on the basis of any undertaking; we were just told it would be included in the batch of Bills that would be dealt with prior to prorogation. This legislation is important enough to warrant that sort of treatment.

This Bill has had a fairly chequered history. I have heard some of the discussion about the history of this Bill, and it is interesting to examine where it came from and where it has gone. My starting point with this legislation was the report of the Commission on Government. Part 2 of report No 2 contains a fairly extensive examination of state records and makes 24 recommendations. Those recommendations were my starting point for examining this Bill and working out whether it dealt with the needs of this State. I understand that after the Commission on Government, the minister at the time, Hon Peter Foss, issued a discussion paper in about 1994.

Over the past three years I have received regular correspondence and submissions from people with a vested interest in this Bill, and that is one of the reasons I indicated to the Leader of the House that I needed a bit of time today to get my papers in order. Some of that correspondence dates back to 1997 and essentially states that the proposals that were brought forward at that time were not considered acceptable to the people who were charged with maintaining the integrity of the records of this State. On 21 October 1998, according to the records of the other place, a version of a state records Bill was introduced; but, again according to the records, on 24 November another Bill was introduced. I believe that at some stage in the intervening period, although I did not track the exact date, the original Bill was withdrawn because it was considered that it had a number of deficiencies. Some of those deficiencies were dealt with between the two versions of the Bill.

Further amendments were made when the Bill progressed through the other place. What has emerged is far more acceptable to the people I have talked to on this matter, although some matters are still outstanding. The response from the people who will administer this - the Australian Society of Archivists and various individuals - is that this Bill has been significantly improved. It is still not perfect, but it is better for this legislation to be in place than to have no legislation at all. For that reason, the Australian Democrats support the Bill.

I will work through the shortcomings of the legislation - I put these on record because I hope that at some stage in the future, these shortcomings can be addressed to meet the recommendations of the Commission on Government. One of the stances of the Australian Democrats is that it supports the recommendations of the

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

Commission on Government on all matters. The Commission on Government began with a recommendation to establish an Act. It then recommended that a public records authority be established and looked at an appointment method and some of the technical issues that surround that. This is one issue that has not been properly resolved to the satisfaction of people working in that area. That is because of the relationship that will arise between the commission established under this Bill, the public records office and the Ministry for Culture and the Arts, of which the Library and Information Service of Western Australia is currently a part. It is proposed that the public records office be located within LISWA. That is contrary to the recommendations of the royal commission, which said that the public records office should report directly to the State Records Commission, although the Commission on Government refers to it as a public records authority. People who have an interest in this have advised me why this structure is inappropriate. Although the Bill nominally separates the functions of the State Records Office from the commission, it will not happen in practice; yet the structure is based on the premise that the two will operate independently and separately. This will cause some administrative problems for lines of command and so on. Under the Act, the State Records Office will take on some of the tasks that go beyond its current role within LISWA, such as advising agencies on the preparation of record-keeping plans and preparing reports with recommendations to the commission. These functions are outside the current operations of the State Records Office and the authority of LISWA. What will happen is that on one side, a group of people within LISWA will take part in activities that are outside LISWA's normal scope, yet they will be responsible, through that line. On the other side will be a commission, which will administer the system at arm's length. The independence of the commission is important - it must be independent from Parliament and the Executive. However, it is not meant to be independent from the people who carry out the work. This has been brought to my attention because there is potential for confusion in reporting lines and resourcing issues. The people working within the State Records Office will report through LISWA - as I understand it, the office will be a department within that organisation - and will compete for funding. This happens when there is limited funding to administer a large department. It would be far more satisfactory for the State Records Office to be outside this department, with the commission, and for it to have separate funding and an autonomous role that is monitored and supervised by the commission. The model is not adequate in that it does not properly establish the links between the commission and the State Records Office, which will carry out the functions that the commission requires.

The next recommendation deals with disposal standards and plans. This is covered in parts 2 and 3 of the legislation. The Commission on Government recommended that there be an object to maintain the integrity of records for audit and public purposes, whereas the legislation states that it is to best serve the interests of the State. I hope the recommendations and the provisions are interpreted in a very similar context - I am sure they will be - but I point out that there is a slight difference.

The next batch of recommendations deals with the application to specific types of public authorities or public agencies. It is not quite appropriate to define them in this context, because this looks at the application to ministerial offices, electorate offices, cabinet documents, courts and tribunals, royal commissions, the Governor and Parliament. The royal commission recommended generally, with the exception of electorate offices, that those groups be subject to the public records legislation. That has been carried through into the legislation, because schedule 1 defines government organisations and lists the bodies identified in the Commission on Government report that need to be covered by this legislation.

Parliament is a special and very interesting situation. I hope that the method adopted in this legislation deals with it adequately. The essential problem with incorporating Parliament into a record-keeping regime is that the records have a very special status. There is the question of ensuring the integrity of those records and ensuring that parliamentary privilege is not breached. The way that has been dealt with in the legislation appears to be satisfactory, although I do not pretend to be an expert on parliamentary privilege, having managed to avoid any such committees during my time in this House. However, I think it has been dealt with adequately by providing a separate part 2 to cover parliamentary departments and specifically exclude Parliament from the general provisions.

Having said that Parliament is a special case, Cabinet is not. We are all aware that many of the issues raised during the Commission on Government, the royal commission and in many of the other commissions and hearings in this place related to cabinet documents. Cabinet documents are specifically included in government departments, so that they are a part of the regime.

That leads me to another issue about this legislation; that is, the responsibility for developing a record-keeping plan is placed on the government department. That is fine as far as it goes, and it could not really be anywhere else, except that that responsibility includes the power to restrict access to certain documents for certain periods. The commission certainly has the obligation to check that, and I would be extremely concerned if I found that record-keeping plans had been developed with the object of obstructing access rather than of making public

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

documents generally available to the public when the public needs access. That may develop over time. We must rely on the commission, which will check these plans, to ensure they are developed with a proper balance between the need to keep some information confidential and the need for public access to public documents.

The issue of government trading enterprises has been raised quite extensively and I add my concerns to those raised by the Leader of the Opposition. I am concerned that certain government organisations are excluded from the operation of this legislation, especially in view of the nature of the three organisations. I go beyond that: A report was tabled in the House recently by the Standing Committee on Public Administration that considered remedies available to recipients of contracted-out government services. It is another gap in the record-keeping regime. When there is subcontracting, privatisation or outsourcing, there is no way of including the subcontractors under the record-keeping regime. The Standing Committee on Public Administration tabled a report of its findings from a visit to the United Kingdom. It highlighted the inability of the ultimate consumers of a service in the United Kingdom to access documents relating to that service when it is provided by a third party. That is not dealt with in this regime. Once a document is outside the control of a government department it is not subject to a record-keeping regime. If an organisation is, for example, working on a purchaser-provider model and someone wants to know the information on file, it will be very difficult to access the information. The number of purchaser-provider outsourcing arrangements in place will create a problem in maintaining the integrity of the records. The legislation contains a provision that refers to privatisation. When an organisation is privatised, the records go with the organisation and are no longer subject to the public record-keeping regime. That is a serious shortfall and weakness in the legislation.

The Commission on Government looked at the relationship between archiving systems and current records. The time frame used is 25 years. The Commission on Government recommended that there be a compulsory transfer of records to the public archives after 25 years so that the integrity of the records can be maintained and access provided. That has been followed through in this legislation, except that it is not mandatory. It can be controlled through the record-keeping plan. If a government organisation decides that it wants to retain its own records and not transfer them to the public archives, it will be entitled to do so, provided it is specified in its record-keeping plan. It is another departure from COG's recommendations. I hope it does not prove to be a serious departure and that the integrity of the records is maintained.

The legislation also addresses access to Aboriginal cultural issues, which is another COG recommendation.

There is an interesting relationship between the freedom of information legislation and the public record system. It is the result of a COG recommendation. Public record archives are meant to pick up where freedom of information provisions end. That is fine, provided the freedom of information system is working adequately. I believe one of the next members to speak may have something to say about freedom of information in this State. The relationship is as anticipated in the COG report.

Requirements cover the disposal of information after it has been archived. The requirements are reasonable. An offence has been created that relates to the unauthorised disposal of records.

The legislation contains a number of weaknesses. I am concerned about the extent to which government organisations can set parameters in their plans that could compromise the overall archiving system in the future. It is the commission's job to vet the plans and make sure that does not happen. The State Records Office should be independent from LISWA. It should report through the commission and have separate appropriations. I have mentioned my other concerns about schedule 3 agencies, and the problem of contracting out. Although the legislation covers government organisations and their employees, it does not extend to other parties that may contract with the organisation.

Finally, I raise a matter that some members of this place may have seen referred to in the media. I must tread carefully when referring to this matter. It is an issue that arose in Derby 20 or 30 years ago. One of the difficulties in investigating those sorts of matters is going back and finding out what happened. Who did what? What did the government department authorise? What were the standard procedures in place at the time? It is very difficult to go back that far and reconstruct events from anecdotal or contemporary records. That is what a good public record system will allow us to do. It will mean that when issues that date back that far are brought to us as individuals or as members of Parliament, or brought before the courts, people will be able to go back and search the information and find out what happened and why. That is a very important feature of our justice system, and of our history, and it is an important reason for having adequate protection of our records. I hope this legislation, despite its holes, will do that. It is certainly better than having nothing in place, which is the current situation. The Australian Democrats support the Bill.

HON SIMON O'BRIEN (South Metropolitan) [3.38 pm]: I raise some matters that are quite different from those canvassed by recent speakers. The legislation has two purposes. The first relates to the preservation of

Hon Peter Foss; Hon Nick Griffiths; Hon Mark Nevill; Mr Tom Stephens; President; Hon Derrick Tomlinson;
Hon Helen Hodgson; Hon Simon O'Brien

records that properly document the business of government. There has been talk about conspiracy theories, WA Inc and the Government's privatisation agenda. I wish to speak only of the second purpose of this legislation, which is the permanent retention of a part of Western Australia's historical estate. While some members seem more interested in talking about political matters, I am more concerned about practical matters in relation to some of our state records. I have received correspondence from historians, archivists and others involved in records management, who are concerned about the keeping of permanent records of government. No doubt other members have received similar correspondence. Interestingly, some of this correspondence was by email, rather than the more traditional hard copy, which I gather, from the tone of many of the communications, these correspondents value highly - as indeed do I. One of my correspondents was Dr Neville Green of Cottesloe. Dr Green wrote to me in terms very similar to those that were relayed to the Chamber by Hon Derrick Tomlinson when he described his dealings with someone who was also interested in these Bills.

Hon Derrick Tomlinson: It was not Dr Green.

Hon SIMON O'BRIEN: As Hon Derrick Tomlinson points out, several people are interested in these Bills. Dr Green gave me the benefit of a number of examples of why we need to maintain our public records for posterity; it is not only for the sake of personal interest, but also for practical reasons. Dr Green's letter reads in part -

Police records are another problem area because like schools, so many of the records were created in remote country districts and have, over the years, been subject to a passing cavalcade of officers as well as termites and floods. Historians working on Native Title history reports find in the earliest police records the names of hundreds of Aboriginal men and women in association with pastoral stations. Such records are one of the most important sources of information that will offer proof that their ancestors were (or were not) in the area at the time of pastoral settlement. Unfortunately many of the earliest police records are not in the archives.

The trouble with records generated and dealt with by people is that they involve the human element. I encountered this on the Fremantle wharves when I was part of the boarding branch of the then Bureau of Customs in 1982.

Hon Derrick Tomlinson interjected.

Hon SIMON O'BRIEN: It was the boarding branch, not the bawdy branch. However, I am glad that I attracted the member's attention, at least for a moment. The boarding branch had enormous ledger-like books which dated back to the nineteenth century. Those quite enormous documents; when opened, the full-page width was fully five feet to six feet across. They recorded the entry of vessels into the port of Fremantle since the days of C.Y. O'Connor. Those five or six feet of linear space contained a wealth of information written in beautiful, copperplate handwriting. At the time it was written that information would have been quite mundane, but to an observer almost 100 years later it is very interesting. The information included details of the number of British and foreign men on board the vessel, the number of stowaways, the cargo tonnage, the lines of cargo, where the vessel had been, the size of the vessel and whether it was powered by sail or by steam, and so on. In addition to being of personal interest, those sort of records are also of great interest to contemporary researchers and analysts who are involved in a range of activities of public interest - for example, public transport, various aspects of engineering, and in urban planning and town design. The information in those ship registers is in danger, if it is not preserved, of being lost forever. That is the only record of its type. There are no copies, and it is only ancient ink on paper. It made me, as a 20-year-old, shudder to view those documents and see that the latest entries were made - this is 10 or 12 volumes later - in roughly scrawled blue biro; it did not matter if one made a mistake, because one could use some white liquid paper on the blue pages. What will we do if we cannot preserve these records in a slightly better fashion than at the moment?

The human element comes very much into play. I am aware of Dr Neville Green's testimony. I have just given an example of the sort of things that are of great concern to archivists, and to me, about the future of our records, if we do not have some sort of established and enforceable framework within which people who handle those records can work.

[Continued on page 2698.]

Sitting suspended from 3.45 to 4.00 pm