

ACCOUNTABILITY WATCHDOGS

Matter of Public Interest

THE DEPUTY SPEAKER (Mrs D.J. Guise): Today I received a letter from the Leader of the Opposition seeking to debate as a matter of public interest the following motion -

That this House condemns the Gallop Labor Government for failing to deliver on its promise of openness and accountability, by underfunding, weakening and politicising Western Australia's accountability watchdogs.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

The DEPUTY SPEAKER: The matter shall proceed on the usual basis.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [3.21 pm]: I move the motion.

Accountability is a basic building block or foundation of our Westminster system of government. Indeed, it is primarily the responsibility of this Parliament to ensure that Governments - that is, both ministers and public servants - are accountable, that public funds are used with propriety and that the public is fully informed on issues. This Labor Government has made all sorts of commitments and uttered fine sounding words about accountability but has failed to deliver. We as parliamentarians know that every day since the election of the Gallop Labor Government, this Premier in particular has declined to answer questions in question time. The most fundamental parliamentary aspect of accountability is answering the questions of our parliamentary peers. Repeatedly - even today - this Premier has led by example on simple questions of fact; he has set a poor example. It is not as though he does not know the answer. He probably does in most cases, but he deliberately chooses to attack the Opposition or to go down some tangent. I have never seen a Premier of this State so unwilling to or incapable of answering simple parliamentary questions. He sets the example and the others simply follow.

I turn to the officers who operate within our system of government in Western Australia. The Auditor General, the Ombudsman, the Information Commissioner and even the Electoral Commissioner all have important accountability functions. It is important that they are given the appropriate powers by this Parliament to undertake their duties, that they are given adequate resources to undertake their duties and that they are independent. They need to be truly independent officers - independent of the Executive Government of the day and of party politics. I do not reflect on any particular individual and I do not intend to do so. However, for various reasons we have increasing doubts about the independence of officers in those key functions.

The Auditor General has made clear in his report that he now finds it difficult to do his job because of a lack of resources. If the Auditor General is starved of resources to undertake audits in an increasingly complex world, where is the financial accountability? It will suffer inevitably, and not by deliberate design. The Office of the Information Commissioner, which is charged with a direct accountability and information role, is used by members of the community and often by members of the Parliament. The Office of the Information Commissioner and the Ombudsman's Office are to be collocated. How can that independence be protected in that way? The Electoral Commissioner appointment is made by the Government of the day. Yes, there is a requirement to at least consult the opposition leader. However, there is no particular requirement to take any notice of what the opposition leader of the day might say. The point I make is that these key positions of accountability need to be key positions of independence. It is about time this Parliament started to play a proper role in overseeing public expenditure, accountability and the performance of government at all levels of the structure, and not just ministerial performance. That is what this motion is about. It is about setting a genuine standard for accountability in this State. This is about the Parliament now taking the role that it has probably abdicated for some time.

The issue has come to light by the recent decision of the Gallop Labor Government to appoint as the Acting Information Commissioner a person who is a longstanding employee of government. I cast no ill reflection on her ability and diligence. However, the mere fact that that person sought at the last election to be a member of this Parliament as a member of a major political party immediately disqualifies her from that position. It is no reflection on her ability or personal integrity. She is just disqualified. A partisan political person cannot occupy one of those prime positions of accountability.

Mr M.W. Trenorden: You would think that if you were attacking the Government's accountability, the Premier might be in the Chamber. You would think there might be a few Labor Party members in the Chamber.

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Mr C.J. BARNETT: I think that interjection of the Leader of the National Party says it all. The Labor Party had many fine words to say about accountability, but its performance in government has been lacking in accountability. The Premier and most government members have shown absolute disinterest.

I will summarise because I do not intend to speak for long; I wish others to have ample opportunity to speak. There must be a clear separation of those positions of accountability from the Executive Government - from the political party in power at the time. This separation and independence relates to the appointment of someone to the position, to overseeing that person's performance in the role and to reporting.

As I said earlier, we need to address four key positions: the Auditor General, the Information Commissioner, the Ombudsman and the Electoral Commissioner. They all need to be independent officers. They need to be independent of government to do their duty diligently in an open, free-from-favour and free-from-fear environment. I propose that all those positions be appointed in a process that provides for a strong parliamentary role. The selection of a person nominated to any one of those positions should be a process overseen by the Parliament. Once a person is nominated, that appointment - I am talking about a permanent appointment, not an acting position - should be ratified by a majority, bipartisan vote of both Houses of Parliament. That will guarantee that the person's record is scrutinised and that the Parliament has in a bipartisan way deemed that person to be a fit and proper person to hold the position, without any encumbrances. Each of those positions should report to the Parliament directly, not to the Premier or the Executive. The Auditor General, the Information Commissioner, the Ombudsman and the Electoral Commissioner would in every sense be officers of this Parliament. It would involve parliamentary oversight of the selection of the nominee; a ratification of that person's appointment by a majority bipartisan vote in each House of Parliament; and a process of reporting directly to the Parliament, not the Executive. That person's appointment would be consistent with that of an officer of this Parliament and the person would be an officer of this Parliament. There would be no reason for any Government to fear that process. If that were done, situations like that which arose last week would not occur. Despite the merits or qualifications of the individuals concerned, no questions would arise. This Parliament would choose, endorse, ratify and keep accountable on behalf of all people of Western Australia those four positions of the Information Commissioner, the Auditor General, the Electoral Commissioner and the Ombudsman. That is true accountability and openness. That needs to happen in Western Australia. It should have happened long ago; it should happen now.

MRS C.L. EDWARDES (Kingsley) [3.31 pm]: I support this matter of public interest. Whether or not the motion is accepted, this Government is downgrading the Office of the Information Commissioner and the position of the Information Commissioner, which can only downgrade the importance and level of commitment that this Government attaches to freedom of information. The Attorney General said in Parliament last week that this Government would improve conditions under the Freedom of Information Act; that is, it would make more documents public. The Attorney General said that the amalgamation of the Information Commissioner and the Ombudsman was a recommendation of the Machinery of Government Taskforce. He admitted today that the Machinery of Government Taskforce did not make that recommendation. The Machinery of Government Taskforce recommended that the Government look only at collocation. The Ombudsman's office, the Office of the Public Sector Standards Commissioner and the Office of Health Review are in the process of collocating. The Government has proposed an amalgamation so that one person will be the Ombudsman and the Information Commissioner, and, when the legislation comes to Parliament, the privacy commissioner also. Western Australia will be the only State in Australia to combine those three positions. Do members see any synergies in the functions and roles of those three positions? There is a lot of synergy between the Information Commissioner and the privacy commissioner. That is why the working group established by the Attorney to look at privacy legislation recommended an independent office of the information and privacy commissioner, and that one person be the information and privacy commissioner. In question time today the Attorney General said that the Machinery of Government Taskforce had not made that recommendation; and that it was certainly not the case that the Government had made that decision when the position paper on privacy was placed on the Internet. He said that, subsequent to that release, the Functional Review Taskforce made the recommendation of amalgamation, not collocation. That has a totally different aspect. The budget papers this year referred to only collocation, not amalgamation. A number of questions must be asked. Is it really a question of money, and not outcome, that the Government seeks?

Some fundamental principles are involved. What is freedom of information all about? This proposal to amalgamate the Ombudsman with the Information Commissioner will create a perception of bias. First, those positions have different roles and functions. One only need look at the respective Acts in that regard. Section 63 of the Freedom of Information Act reads -

The main function of the Commissioner is to deal with . . . decisions made by agencies in respect of access applications and applications for amendment of personal information.

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The Parliamentary Commissioner Act indicates that the Ombudsman investigates any decision or recommendation that relates to matters of administration and affect any person or bodies of persons or whatever in their personal capacity. Different roles and functions are outlined.

The other aspect of the perception of bias is that the two other officers to be collocated with the Ombudsman will also become the information and privacy commissioner. I refer to the Office of Health Review and the Office of the Public Sector Standards Commissioner. Those offices are subject to the Freedom of Information Act. How can the person who is the Ombudsman and the information and privacy commissioner be in the same office and share the same resources, front desk and meeting rooms as two agencies subject to freedom of information? Do members think that any person with any dissatisfaction with the Office of Health Review and the Office of the Public Sector Standards Commissioner will have confidence in any decision made by the Ombudsman concerning those bodies if they put in a request for a review of an administrative decision or by the information and privacy commissioner if a complaint were made under the two respective Acts? The Ombudsman's report of last year - this year's is not available - indicates that 14 allegations were received against the Office of Health Review. There will be a clear perception of bias in this arrangement. Conflicts exist already. Allegations are dealt with by the Ombudsman against the Office of Health Review, which will collocate with the Ombudsman. The Office of Health Review and the Office of the Public Sector Standards Commissioner are subject to freedom of information, yet these agencies will immediately amalgamate, not just collocate, with the information and privacy commissioner and the Ombudsman. It will create a messy environment. One can add to that the function of freedom of information.

I refer now to the second reading speech by Hon David Smith on 28 November 1991 in which he highlighted the objects of the freedom of information measure as follows -

- (a) to enable the public to participate more effectively in governing the State, and
- (b) to make the persons and bodies that are responsible for State and local government more accountable to the public they serve.

They are key principles. One must have privacy as part of accountability in open government, and democratic participation in the policy processes of government. That is what the Freedom of Information Act is all about. Another key feature that the then Minister for Justice, Hon David Smith, referred to was that some features of our legislation are common with other freedom of information Acts around Australia. The Attorney General has made this point: he stated that Western Australia is different because other jurisdictions have the Ombudsman and freedom of information person operating together. Hon David Smith said -

Another key feature of this Bill is the creation of the office of information commissioner. The commissioner is an independent person charged with review of agencies' decisions.

The former minister said that although the WA Act is similar to other freedom of information Acts, our legislation has some very important features that distinguish it from others. A Labor Government introduced this measure. The Labor minister, Cabinet and Government of the day made the decision to distinguish the Office of the Information Commissioner so it was totally independent from other agencies.

Mr M.W. Trenorden: What date was that, member?

Mrs C.L. EDWARDES: It was November 1991.

Mr M.W. Trenorden: It was close to the end of their term then.

Mrs C.L. EDWARDES: Why would one amalgamate the office and role of the Ombudsman with the information and privacy commissioner? Why not involve the Information Commissioner in the discussions leading to the decision? The commissioner, in her foreword to a report tabled last week, clearly pointed out that omission. The Information Commissioner and her staff have worked very effectively. Although some departments are protective of their documents, most departments are most helpful in this regard after 10 years of operation of the office. That is due to the effectiveness and education process of the Information Commissioner and her staff. This woman, who has been the Information Commissioner and provided advice to all Attorneys General, both Labor and Liberal, regarding the development of privacy legislation, was totally ignored.

Mr J.A. McGinty: No, she has not provided advice.

Mrs C.L. EDWARDES: The Attorney General did not even put her on the task force.

Mr J.A. McGinty: She has given no advice whatsoever.

Mrs C.L. EDWARDES: She has attended two overseas international conferences on privacy. Why did this Government not utilise and get value from the information and knowledge that the Information Commissioner

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has? Last week the Attorney General said that the Information Commissioner was wrong, and he reiterated that when the commissioner said that this has not happened elsewhere. However, the Information Commissioner is right about the three positions. In Queensland, the Ombudsman is the information commissioner; the deputy is delegated with the job. The Northern Territory has an information and privacy commissioner. South Australia, Tasmania, Victoria, New South Wales and Queensland do not have information commissioners, and the Ombudsman has a very limited role. In Victoria, privacy is totally separate. No jurisdiction in Australia has an Ombudsman and an information and privacy commissioner.

Mr P.G. Pental: That is not what the Attorney General told us last week.

Mrs C.L. EDWARDES: That is right. If there are rational reasons for it, why, after 10 years, is the Government destroying the best system that this State has had? David Smith was the Attorney General's ministerial colleague back in those days. Labor came into government then and said that a key feature of the legislation was the independent nature of the office that would be created. It was not to be collocated, and it certainly would not be amalgamated. In fact, until a couple of months ago, the Attorney General said that it would not be amalgamated. Therefore, the reason for it must be dollars - nothing to do with outcomes.

While we are talking about dollars, what about the throwaway costs? At the moment the Ombudsman is spending \$1 million on refitting the offices for collocation of the three offices. Only a couple of years ago, Murray Allen, the former Ombudsman, refitted the whole office. Now that the Government is to bring in an information and privacy commissioner, there will be a further fit-out at St Martin's Tower. When the lease on the Information Commissioner's office is let go - I understand that will be shortly, but it will be extended until July next year when the legislation goes through this Parliament - there will be the make-good costs as well; yet that office has been specifically set up to run an information and privacy commission under two Acts. There are a lot of throwaway costs. What about the knowledge and experience of the staff, some of whom have probably been there since the beginning; that is, for the past 10 years? Again, that is another throwaway cost that this Government is not factoring in.

This measure was not in the budget or in the recommendations of the Machinery of Government Taskforce. It was not anticipated until a couple of months ago when the Functional Review Taskforce was established. Why has the Government changed its mind? It obviously has a lot more to do with dollars than with better outcomes. I do not believe that there will be better outcomes. The Opposition will not support this legislation. What will the Attorney General do in 12 months when the Acting Information Commissioner must be reappointed, because he cannot reappoint an Acting Information Commissioner for more than 12 months? Because the Opposition will not support the legislation, the position will have to be readvertised then. There has been a couple of months of thinking about this whole idea. It has not been thought through adequately. The current Information Commissioner has been left out of the picture. What is the real agenda? I suspect that there is a lot more that we do not know about and that the Attorney General is not saying.

MR M.W. TRENORDEN (Avon - Leader of the National Party) [3.44 pm]: A whole range of accountability issues are involved in this. The first one is that a convention of the Westminster system is that when a Government is under attack over accountability, it should have someone in the House. It is just amazing that when this sort of motion is moved, the Premier is not present in the House. It is unbelievable. There is no way that Carmen Lawrence, Peter Dowding or Brian Burke would have allowed their Governments to be attacked without their being in the Chamber. It is incredible. The other thing that happened today that I want to point out is that the Premier attacked the Leader of the Opposition about some statements he made in 2000. The Premier said that the Leader of the Opposition was caught out over statements that he made in 2000. He made a great fanfare about it. However, what did the Premier say in 2000? He said -

A Gallop Labor government will aim for the highest standards of openness and accountability.

That is straight off the Labor Party's web site and straight from its papers for the election campaign in 2000-01. The Premier wants to ping the Leader of the Opposition for not being accountable for a statement in 2000. What about his own statement? Why can he not be accountable for that?

Under Labor, unfortunately people never know where their money is being spent, how the public services are being delivered and whether they are being delivered effectively. That was the whole problem with the Brian Burke Government, and it is revisiting the Labor Party again under this Government. Clearly, Labor has walked away from that election promise that it would be accountable. When and where will it be accountable? When a party is in opposition, it sounds very good and fantastic when it makes all those statements. However, the trick is for people to move from the opposition benches to the government benches, become ministers and act on their own words. This Government has not been able to do that. It has found it more than difficult to rise to the call and to march under its own banner. It will not be open and accountable.

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Let us start with the Treasurer. I am pleased that he is back in the Chamber. I refer to the Auditor General. The Treasurer probably was not present when the member for South Perth moved his motion. I agree totally with the member for South Perth, and I would be very pleased to debate that issue about the Auditor General. However, the Treasurer has trimmed the Auditor General's budget.

Mr E.S. Ripper: We debated this, and I comprehensively despatched that notion to the boundary, yet you still repeat it.

Mr M.W. TRENORDEN: No, the Treasurer has not done that. He has not comprehensively despatched it anywhere. He has reduced the budget of the Auditor General. When Neville Smith was the Acting Auditor General of this State, what did the Labor Government of the day do when it knew that agencies would be under scrutiny? It reduced the operating budget of the Auditor General. I suggest that the Treasurer is going through the same process. He does not want the scrutiny or the accountability. How does he do that? He reduces the operating expenditure of the Auditor General. It is a standard ploy and a long-known Labor Party tactic. The situation is that the watchdog, the Auditor General, must put in his extraordinary annual report that his duties are at risk. Who was responsible for that? It was the Treasurer. The Treasurer and the Cabinet have decided that the Auditor General is just another agency, and that the Auditor General must live under the same constraints as everyone else. The problem is that the Auditor General pointed out to the Treasurer and a range of other people that the costs of audit have gone through the roof. At a time when the costs of audit have gone through the roof, the Treasurer has reduced the operating budget of the Auditor General.

I will make a little prediction, following the debate of a few weeks ago. When I ask the Treasurer next year what bid the Auditor General put in for the forthcoming budget, I will be interested to hear his answer. I can tell the House what his answer will be: it is private and confidential; it is for Cabinet alone. He will say that I am just a member of Parliament, and members of Parliament are not entitled to know what the Auditor General's bid is. That is what the Treasurer will say, as he said this year in the estimates hearings. That is precisely what he told me in the estimates hearings this year. He said that, as a member of Parliament, I am not entitled to know what the Auditor General requested. Is that open? Is that accountable? Absolutely no way. The Auditor General has said that that five agencies are weak in fundamental controls and reconciliations, and that leaves the public sector exposed to the risk of mistake, fraud and corruption. Those agencies are the Department of Industry and Resources, the Department for Planning and Infrastructure, the Department of Transport, the Government Employees Superannuation Board and the Department of Health. Two of the ministers responsible for those portfolios are in the Chamber; the other three are absent. Those agencies represent a huge slice of the Western Australian budget. The Auditor General has said that those agencies are at risk. However, what does the Government say? The Government says that the Auditor General will get the amount of money it decides the Auditor General should get, and that is it. That is being totally unaccountable.

I do not have time to go through all of the departments, so I will look only at the Department of Health. The Minister for Health has said that he will cut the health budget by \$40 million. The Auditor General has said that the Department of Health has no control over its audits. Therefore, the information that the minister will be using to make that \$40 million cut is flawed, unless he wants to call the Auditor General a liar, which I presume he does not. How can the minister tell the people of Western Australia that he knows how he can cut the health budget by \$40 million when the Auditor General has said that the procedures within the Health Department are out of control? We know that another qualification on the audits of the Department of Health will be made in a few weeks. How can the Minister for Health tell the people of Western Australia that he has health under control? He is totally unaccountable. There is no way the minister can speak with any justification on this issue.

MR P.G. PENDAL (South Perth) [3.51 pm]: In my view, we should go back to square one, square one being 1972, when this Parliament created the first Ombudsman in Australia. We should rule the line off at 1972 and begin again with five of the statutory appointments that we might regard as properly being appointments of the Parliament. Those five appointments are the Ombudsman, the Electoral Commissioner, the Information Commissioner, the Auditor General and the Commissioner for Public Sector Standards. The Parliament should pass its own legislation to declare each of the persons appointed to those positions officers of the Parliament. That would have two implications. First, the Parliament could then claw back these officers from being in the clutches of government and bring them back to this place. The Parliament should be responsible for the appointment of these people. We are told that some of those officers - for example, the Auditor General and the Ombudsman - are officers of the Parliament. I am saying that these people should not only be regarded as being officers of the Parliament but should also be physically and in all respects appointed by the Parliament; that is, by the Parliament as headed by the President and the Speaker, and under the normal head-hunting processes that take place outside of the Parliament. Secondly, that would give the Parliament, if it were serious about standing at arm's length from the Government of the day, the ability to say that the Parliament will determine the budget of those five people. The budget of those five people should not be subject to the normal pressure and

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fractiousness of the budget process. Until we do that, we will be kidding ourselves if we say that we are making any progress on this accountability issue.

We have heard mention today of the high standards of openness and accountability that the Government promised when it first came into office. In the past 24 hours I have experienced two occasions on which the openness and accountability of this Government has been put to serious test. Yesterday, in trying to prepare myself for the debate that will take place later today on the Nuclear Waste Storage (Prohibition) Amendment Bill, I was refused information by the Western Australian Radiological Council and was told that I had to go to a person in the Department of the Premier and Cabinet to get the information I need on that Bill. I explained that that person in the Premier's department has a ministerial head, and that person is the Premier, who is in charge of the Bill. I have been denied the chance to be briefed by the Radiological Council, and I believe that is a serious gap in accountability.

This morning I received a telephone call from the head of the Department of Culture and the Arts to tell me that an arrangement that I had made to take to lunch at Parliament House tomorrow the new Director of the State Records Office of Western Australia, Mr Tony Caravella, is to be denied to me unless I write to the Minister for Culture and the Arts and get her permission to bring the director to this open place for me to have some discussions with him. Not only that, but I was also told, through my electorate officer, that in my letter I had to tell the minister what I wanted to ask the Director of the State Records Office. That is not accountability. As I said in the letter of protest that I wrote to the Premier today, that is like Ceausescu's Romania of 1980 or Stalin's Russia of 1950.

Mr J.A. McGinty: It is like Peter Foss when he was the Attorney General in this State.

Mr P.G. PENDAL: I have had things to say on that matter. However, the Attorney General, who is on record with all of his nonsensical human rights stuff, has done absolutely nothing to clear the decks.

Mr J.A. McGinty interjected.

Mr P.G. PENDAL: Do not interrupt me. I have one more minute. The Attorney General has another 30 minutes.

I am telling the Attorney General that twice in the past 24 hours his Government has denied me the opportunity to get information - not private or confidential information, but public information. The Government needs to lift its socks on the issue of public accountability. For those reasons, I support the motion.

MR J.A. MCGINTY (Fremantle - Attorney General) [3.57 pm]: One of the disappointing aspects of the debate about the comments made last week by the retiring Information Commissioner is that the untruth that was put into the public arena was not corrected by the media. In order to have an informed public debate, all the facts need to be in the public arena. On Thursday, 16 October, the member for Nedlands asked me the following question without notice-

- (3) Is the Attorney General aware that in no other jurisdiction in the world are the functions of the Ombudsman and the Information Commissioner combined?

Nowhere in the media have the facts on this matter been put into the public arena. The fact of the matter - I will repeat it for everyone's information - is that it is abundantly clear that no jurisdiction in Australia has a separate Ombudsman and Information Commissioner.

Mrs C.L. Edwardes: No other jurisdiction has the Privacy Commissioner, the Ombudsman and the Information Commissioner combined.

Mr J.A. MCGINTY: Was my assertion correct?

Mrs C.L. Edwardes: Yes, but those three positions are not combined anywhere in Australia.

Mr J.A. MCGINTY: In many jurisdictions there is no Privacy Commissioner.

Mrs C.L. Edwardes: And in some there is no Information Commissioner.

Mr J.A. MCGINTY: To the extent that they do have these people, the Information Commissioner and the Ombudsman are the same person.

Mrs C.L. Edwardes: Not in all jurisdictions. In the Northern Territory it is not.

The DEPUTY SPEAKER (Mrs D.J. Guise): Order! Attorney General, just for the record, before we move on, it is disorderly to quote from the uncorrected *Hansard*, so if you want to paraphrase your discussion based on the quote -

Mr J.A. MCGINTY: No, I do not. I want to make the point that Western Australia is the only State that maintains separate appointments and offices for the Ombudsman and the Information Commissioner. All of the

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other States provide for the Ombudsman to undertake duties with regard to the review of decisions of agencies under the relevant freedom of information legislation. I will run through the situation in each of the other States. Queensland, like Western Australia, has a separate statutory office of Information Commissioner. However, the Queensland Ombudsman is also the Information Commissioner by way of concurrent appointment. Queensland does not have privacy legislation; there is therefore one person there.

Mrs C.L. Edwardes: But that person also delegates the information.

Mr J.A. McGINTY: The bureaucratic arrangements might well be replicated in Western Australia, as the proposal we intend to bring forward is based significantly on the Queensland model.

Mrs C.L. Edwardes: But, again, Queensland has no privacy legislation.

Mr J.A. McGINTY: Not at this stage.

Mrs C.L. Edwardes: Again, that is a specific and important position.

Mr J.A. McGINTY: We will debate the importance of that position next year. The Victorian Ombudsman provides a similar oversight role with regard to freedom of information matters, as he or she does with other administrative actions taken by agencies or public statutory bodies. As such, the Victorian Ombudsman has the power to provide a report and recommendations on any administrative action taken when an aggrieved person does not have a right of appeal or a right of review to a tribunal or when the matter merits investigation to avoid injustice.

Mrs C.L. Edwardes: Is privacy separate in Victoria?

Mr J.A. McGINTY: Victoria has a separate privacy commissioner. It is interesting that the member for Kingsley's good friend Bronwyn Keighley-Gerardy has said that she has no problem with amalgamating the privacy and FOI offices. For the life of me, I cannot think why we should not.

Mrs C.L. Edwardes: Neither did your task force.

Mr J.A. McGINTY: That is right, and that was proposed by the task force. However, the member for Kingsley appears to be drawing something very specific -

Mrs C.L. Edwardes: The FOI office has a different role and function from that of the Ombudsman's office.

Mr J.A. McGINTY: Everyone else seems to think that it is okay.

Mrs C.L. Edwardes: David Smith didn't, and you didn't in cabinet beforehand.

Mr J.A. McGINTY: That is not true.

Mrs C.L. Edwardes: Were you in cabinet when the Freedom of Information Bill was introduced?

Mr J.A. McGINTY: Yes, I was. Frankly, the notion that Western Australia, alone in the Commonwealth of Australia, should have an FOI commissioner separate from the Ombudsman beggars belief. In New South Wales, following an internal review of an agency's decision made under the Freedom of Information Act, a right of appeal existed in its Administrative Decisions Tribunal. The Ombudsman in New South Wales, under the Ombudsman Act 1974, may also investigate complaints regarding the conduct of an agency in a freedom of information determination. The Ombudsman has the power to make recommendations, but not binding decisions. Reports prepared by the Ombudsman are admissible before the New South Wales Administrative Decisions Tribunal. New South Wales also has a separate privacy commissioner.

However, the debate has been about whether the two existing offices of the Ombudsman and the FOI commissioner should be amalgamated, as they are everywhere else in Australia, with the additional provision that whatever the equivalent is of an administrative appeals tribunal - whether it be the Victorian Civil and Administrative Tribunal, or VCAT as it is known in Victoria, or the body I have just referred to in New South Wales - each body retain an appellate role in determining freedom of information matters. It is unfortunate that there was no media coverage to debunk the assertion contained in the question from the member for Nedlands and given prominence on the Liam Bartlett radio program and other programs last week; that is, that the amalgamation of the two offices in Western Australia would be unprecedented in the western world. It is important to place on record that such an amalgamation exists in every other State and Territory in Australia.

I want also to refer to the appointment of Ms Darryl Wookey as Acting Information Commissioner. The Leader of the Opposition said that people who have political affiliations should not be put into key governmental positions.

Mr C.J. Barnett: Not so close, no.

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Mr J.A. McGINTY: I am trying to paraphrase and do justice to what the Leader of the Opposition said. He said that people who have political affiliations should not be put into this position. I do not have a brilliant memory, but I certainly recall the signs on Bronwyn Keighley-Gerardy's front lawn urging at the 1993 state election a vote for Cheryl Edwardes and the Liberal Party. I remember it vividly.

Mr R.F. Johnson: That was her husband.

Mr J.A. McGINTY: Okay.

Mr C.J. Barnett: It is the same issue - perception.

Mr J.A. McGINTY: All I am saying is that Bronwyn Keighley-Gerardy has for 10 years done a very good job as the Information Commissioner in this State and I wish her well in her retirement.

Mr C.J. Barnett: And Darryl Wookey might be equally capable.

Mr J.A. McGINTY: Sure.

Mr R.F. Johnson: She tried to be a Labor candidate, for goodness sake! There is a big difference between somebody voting Liberal and somebody trying to progress to be a Labor candidate.

Mr J.A. McGINTY: It was a matter of far more than voting Liberal. Do members opposite recall the big sign that said, "Vote for Cheryl Edwardes, vote for the Liberal Party"? That sign was on her front lawn. That was why comment was made at the time that she would not bring a dispassionate mind to bear on the issues.

Mrs C.L. Edwardes: Did she?

Mr J.A. McGINTY: I think she did.

Mrs C.L. Edwardes: She has done an excellent job for 10 years.

Mr J.A. McGINTY: I am sorry, was the member for Kingsley out of the Chamber when I made the comment that I thought she had done a good job and I wished her well in her retirement? Let us at least be consistent. If the rule is to discriminate against someone because that person once either put up a hand for public office or declared an allegiance to a particular political party, it should apply to both sides of politics. If that is the criterion that we must employ, the previous Government should not have appointed Bronwyn Keighley-Gerardy.

Mrs C.L. Edwardes: It was her husband who was a member of the branch, not her; just get it right.

Mr J.A. McGINTY: The member for Kingsley's argument is that we should discriminate. We are talking about a person who will be the Acting Information Commissioner for a period of some months until the Parliament has considered the legislation; it is not the substantive appointment.

Mrs C.L. Edwardes: What are you going to do if the legislation is not through in 12 months? Under the Act you cannot reappoint her in an acting capacity.

Mr J.A. McGINTY: I will take the member's word for that; I did not know that. I will obviously look at that situation if and when it arises.

Mrs C.L. Edwardes: Don't bring in the legislation next year because of that and say that you're going to rush it through. You have now been alerted.

Mr J.A. McGINTY: I never do things like that.

I think Saturday's editorial in *The West Australian* mentioned the question of hypocrisy surrounding this issue. Oppositions complain when somebody with a political connection is appointed to these positions. When we were in opposition we complained about the appointment of Bronwyn Keighley-Gerardy owing to her overt friendship and political support for the member for Kingsley. I do not say that critically.

Mrs C.L. Edwardes: We didn't know all the comings and goings that were published in the *Sunday Times*. The *Sunday Times* was brilliant.

Mr J.A. McGINTY: Do not tell me, because I think there was enough in *The West Australian*.

Mr P.G. Pendal: Don't you see a big difference between someone who has a personal friendship with a member of Parliament, as in the case of the Information Commissioner, and the replacement who until recently had been an endorsed candidate for one of the parties?

Mr J.A. McGINTY: No.

Mr P.G. Pendal: Really?

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Mr J.A. McGINTY: Perhaps the difference is that one was a substantive appointment and the other was an appointment made as the Liberal Government made on six occasions when it was in government. We have appointed a public servant who has, as the Leader of the Opposition said, impeccable credentials and who is absolutely the appropriate person for the job, except for one thing; that is, she has put up her hand to be considered for public office.

Mr R.F. Johnson: That particular public office; not any public office.

Mr J.A. McGINTY: What, to run for the Labor Party and not for the Liberal Party?

Mr R.F. Johnson: No, I am talking about the office of Acting Information Commissioner. I don't think it would be a problem if she had been appointed to head another government department, one that is not as sensitive as the Office of the Information Commissioner. You have appointed 20 people to boards, committees and all the rest of it, which we are still trying to get the Premier to admit to and we are still trying to find out how much they are being paid. However, this appointment is a different one.

Mr J.A. McGINTY: In essence, the Opposition is saying that we must discriminate on a ground that is proscribed by the Equal Opportunity Act; in other words, it is unlawful in this State to discriminate against someone because of that person's political beliefs. It is against the law in this State to discriminate against someone in employment because of that person's political beliefs.

Mr R.F. Johnson: Not because of a person's political beliefs; most people have political beliefs.

Mr J.A. McGINTY: I will finish developing the point. I will take the interjection from the member for Hillarys in a minute, but I will not take it right now.

It is unlawful in this State to discriminate against someone because of a person's political beliefs. I will put it in simple terms. It is not a relevant ground against appointment that someone believes a person supports the Labor Party or the Liberal Party. It was not a relevant ground when the Opposition appointed Bronwyn Keighley-Gerardy. I do not know whether she was the recommended applicant - I have been told that she was not - but Cabinet made the appointment. However, the issue comes down to this: I asked the Solicitor General to find an appropriate person to act in the position of Information Commissioner following the retirement of Bronwyn Keighley-Gerardy and until the legislation was considered by the Parliament, and I said that I expected the acting period to be nine months. He came back to me with one recommendation, which was the Deputy Ombudsman in this State. She appeared to me to be the appropriate person, given that the proposal in the legislation is to amalgamate the offices of the FOI Commissioner and the Ombudsman. She has previously been appointed to the position on six separate occasions by the previous coalition Government; however, suddenly, somehow she has become disqualified.

We know that in 1993 for a period of some 10 months Darryl Wookey was a policy officer in the office of the Minister for Police - a coalition minister. Prior to that she was a policy officer in the office of Graham Edwards, who was also Minister for Police for an approximately equivalent, maybe marginally lesser, period. That is my understanding of the history of this matter. Does working in a minister's office disqualify a person from consideration for appointment to these sorts of positions? We move onto very dangerous ground when we start behaving in an unprincipled way and say that the Government of the day should compromise a person's career, discriminate against that person or act to his or her prejudice - for what reason? For the simple reason that someone has put up his or her hand and has asked to be considered for public office. Do we think so lowly of ourselves that we want to then discriminate against someone who wants to become one of us? Members should think long and hard about this. There is always the temptation to make the quick, cheap political point. I guess the Opposition made that last week.

Mr C.J. Barnett: No, we did not.

Mr J.A. McGINTY: It did. That is exactly what the Opposition was doing. This person was eminently qualified and was recommended for the job by the Crown Solicitor, who has served for some 40 years on both sides of politics. There was no suggestion of any political association, involvement or anything of that nature. Members opposite should try to elevate their own self-esteem when dealing with these matters and not condemn someone because he or she wants to join us in this place, become a member of Parliament and serve the public, as if that is something that should be held against them when they want to pursue their career as a significant career public servant.

Mrs C.L. Edwardes: Can you provide me with any reason for downgrading the office?

Mr J.A. McGINTY: No, but I can refer to a number of significant advantages of collocation and eventual merging of the offices of the Ombudsman and the Information Commissioner. I will give the member 10 reasons for that being a good idea. We can debate the merits of the matter when the legislation is introduced

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next year. First, there will be a rationalisation of citizens' avenues of redress. When people have an issue to do with a complaint about government, they will be able to go to the Ombudsman, the Information Commissioner or the privacy commissioner. All of those areas will be in one office. That is an obvious advantage of collocation or amalgamation of these offices, rather than the constant complaint we receive of people being shunted from one office to another based on the advice that, sorry, this is not an FOI matter; this is a privacy or Ombudsman's matter. We will put them all together into a one-stop shop that will provide a simple means of redress and create a shared support structure.

Secondly, why should Western Australia maintain the more expensive administrative structure of having separate offices for the Ombudsman and the Information Commissioner? The estimated saving from the collocation or merging of the two offices is almost \$400 000 a year. That will not impact on the decision-making ability or independence of the positions, but will simply do away with the bureaucracy underpinning the two offices, which is something the public will applaud.

The third reason for collocation or merging of the offices is the reduction in resources expended on dealing with complaints. Complaints often go back and forth between the two offices at the moment and I have no doubt that once privacy was introduced they would go between the three offices. Whether it is an FOI issue, a complaint involving the Ombudsman or a matter that overlaps, by having two offices rather than one office dealing with such matters extra resources are expended and that is a waste. Fourthly, there will be greater consistency in the requirements on agencies to report to statutory offices and a consequent reduction in workload. Again, from a bureaucratic perspective, that is a highly desirable end result. Fifthly, there will be a reduction in the financial needs of the statutory offices in future years. That has already been touched on. Sixthly, there will be significant benefits in areas of human resource management, training and career opportunities. Seventhly, there will be an alignment of Western Australia with other jurisdictions which have one office and not the multiplication of offices to which I have already referred. Eighthly, there will be a simplification of government accountability structures. Ninthly, there will be a freeing of resources within the Office of the Information Commissioner to respond better to additional roles under privacy legislation. They are nine very good reasons that merging the two offices makes an awful lot of sense.

Mrs C.L. Edwardes: Will you be keeping all the staff?

Mr J.A. McGINTY: This will take place next year; it is a long way off. We will have to wait and see.

Mrs C.L. Edwardes: But the structure of the office: will all those positions still be there?

Mr J.A. McGINTY: We have not even drafted the legislation yet. We will deal with things all in good time.

The one disadvantage that will arise out of the merger of the Ombudsman, the Information Commissioner and the privacy commissioner is the risk of a perception of bias and actual or perceived conflicts of interest when one office holder deals with a matter that overlaps between the jurisdictions. The situation in New South Wales and Victoria, which we intend to replicate here, is that an independent decision-making body has been established that is separate from those offices. In Victoria, the Victorian Civil and Administrative Tribunal, or VCAT, makes those decisions and in New South Wales I think the body is called the Administrative Appeals Tribunal. The administrative appeals bodies in those States deal with those matters, and that removes any problems of conflict in decision making, for example, as to whether a document should be released by the Ombudsman or matters of that nature.

Mrs C.L. Edwardes: There will be an increase in appeals because of a perception of bias.

Mr J.A. McGINTY: I do not think so. In the past 10 years, only four reported decisions have been made by the Information Commissioner about documents from the Ombudsman's office.

Mrs C.L. Edwardes: What about the Office of Health Review and the office of the Commissioner for Public Sector Standards?

Mr J.A. McGINTY: That is the information I have: four decisions in 10 years in relation to the Ombudsman, which concerns the debate about the merger. They are already collocated in that other sense. The problem the member has spoken about and which has been raised by the Information Commissioner is the issue of perception of bias or actual bias, because it is appealing against decisions that have been made. Those appeals will be taken out of this office, and there have been only four such decisions in 10 years. As a result of the various legislative amendments and administrative procedures we will be introducing, that situation will be inherently manageable.

I conclude my contribution by saying that we will have this debate next year. The Information Commissioner is retiring next week. I wish her well in retirement. Some of the comments she made on the Liam Bartlett program were intemperate and inaccurate, and the impression they have conveyed to members of this House and also to

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members of the public has been misleading. It is unfortunate that she should go out on such a note, but having said that, I thank her for her contribution over the past 10 years.

MR E.S. RIPPER (Belmont - Treasurer) [4.17 pm]: I was surprised to hear the Leader of the National Party once again debating the issue of the budget of the Auditor General, because we had that debate on Wednesday, 24 September, and I was able to demonstrate that the decline in the Auditor General's budget occurred during the term of the coalition Government, of which the Leader of the National Party was a backbench supporter, and that that decline had been reversed during the term of the Labor Government. I am also surprised that the member for South Perth has given notice of a motion essentially canvassing the same issue. Forgive me, I do not think it is ground hog day; I think we do have the capacity to deal with an issue once in this House and, when it has been dealt with, to move on. However, while members of the National Party and the member for South Perth appear to be able to talk, they do not appear to be able to listen. If they had listened to the debate on Wednesday, 24 September, they would know there was no need to debate the issue again; in fact, it would not be to their advantage to raise the issue again. The whole debate is based on a segment of the Auditor General's annual report for 2002-03. The report states that when assessing the overall position, it became clear that while the office's total expenditure had increased 16 per cent between 1993-94 and 2001-02, it had not kept pace with the corresponding 23 per cent in the CPI. Later on in the report's annual overview, the Auditor General stated -

My ability to continue to maintain the quality, quantity and integrity of the audit program in coming years, however, may be restrained if the current trend in resourcing continues.

I emphasise the words in the Auditor General's overview "if the current trend in resourcing continues". The Auditor General was referring to a trend that had run through the entire period of the coalition Government from 1993-94 to 2001-02, the first year of our Government. The trend has not continued. Therefore, the Auditor General's remarks are not relevant to his current situation; in fact, I can quote the situation of the budget of the Auditor General. In 2001-02, the last year to which he referred, there was a small real change in his appropriation; in other words, his appropriation did not entirely keep pace with inflation. After allowing for inflation, his appropriation declined by 0.18 per cent. That was at the time of our first budget. The budget increased but not by as much as inflation. In 2002-03 there was a real increase in the budget of 0.91 per cent; in other words, even after allowing for inflation there was a further increase in the budget which meant a real outcome for the Auditor General of an additional 0.91 per cent. In 2003-04 the budget has virtually kept pace with inflation, contrary to the trend that applied during the coalition years; in fact, in 2003-04 there has been a real increase of 0.02 per cent. That essentially means that the budget of the Auditor General for this financial year, after a real increase last year, has kept pace with inflation. Our forward estimates provide that the budget of the Auditor General will have a real increase over and above inflation of 3.02 per cent in 2004-05. That is already in our forward estimates.

This shows, therefore, a trend during the eight years of the coalition Government of the Auditor General's budget falling way behind the inflation rate. Had that trend continued, the Auditor General says it would have compromised his ability to do his job. The important point is that the trend has not continued. The Labor Government has reversed the trend and put real increases into the budget of the Auditor General in 2002-03, 2003-04 and forecast for 2004-05. Furthermore, the Government has conducted a rationalisation of the public sector, which should ease some of the pressures on the Office of the Auditor General. The number of government departments has decreased from 50 in 1999-2000 to 38 for the 2003-04 financial year. The number of statutory authorities has been reduced from 204 to 138 over the same period. The recent amalgamation of country hospitals will further reduce the number of different agencies requiring audit in 2003-04.

The entire foundation of the argument of the Leader of the National Party, first advanced on Wednesday, 24 September 2003, is shown to be without basis. He has come back into the Parliament today and repeated the argument, apparently not having listened to anything I said on Wednesday, 24 September. His mate the member for South Perth wants to come in and do it all over again. I am staggered. One of the lessons of parliamentary behaviour, I would have thought, is to listen to what the other side says so that the debate can be moved on. If the Leader of the National Party has a response to what I said about the change in the trend of the Auditor General's budget, he should have run that response into today's debate instead of just repeating what he said on 24 September. If the member for South Perth wants to debate this issue again, he needs to respond to the arguments and information I have put before the House. He cannot keep running on an untruth and a wrong foundation. He must respond to the information that the Government has put before the House.

On Wednesday, 24 September, I outlined why I value the work of the Auditor General. I think that the work of the Auditor General is important for my role as Treasurer. It is important for the Premier's role as Minister for Public Sector Management. The Auditor General deals with issues that are often below the radar of ministers. He deals with issues that public servants do not necessarily advise ministers about. His work is valuable. We, as a Government, respect his work. In particular, as Treasurer, I welcome the scrutiny of the Auditor General on

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the operations of the public sector in Western Australia and I welcome the recommendations that he makes, because that scrutiny and those recommendations help the Government to produce a public sector that is more effective and efficient in its use of taxpayers' resources and better meets the needs of the community we serve.

This motion should be totally rejected. Insofar as it relates to the Auditor General, it is totally without foundation.

Question put and a division taken with the following result -

Ayes (21)

Mr R.A. Ainsworth	Mrs C.L. Edwardes	Mr W.J. McNee	Ms S.E. Walker
Mr C.J. Barnett	Mr J.P.D. Edwards	Mr P.D. Omodei	Dr J.M. Woollard
Mr M.J. Birney	Mr L. Graham	Mr P.G. Pental	Mr J.L. Bradshaw (<i>Teller</i>)
Mr M.F. Board	Mr B.J. Grylls	Mr R.N. Sweetman	
Dr E. Constable	Ms K. Hodson-Thomas	Mr M.W. Trenorden	
Mr J.H.D. Day	Mr R.F. Johnson	Mr T.K. Waldron	

Noes (26)

Mr P.W. Andrews	Mr S.R. Hill	Mr M. McGowan	Mr E.S. Ripper
Mr A.J. Carpenter	Mr J.N. Hyde	Ms S.M. McHale	Mrs M.H. Roberts
Mr A.J. Dean	Mr J.C. Kobelke	Mr A.D. McRae	Mr P.B. Watson
Mr J.B. D'Orazio	Mr R.C. Kucera	Mr N.R. Marlborough	Mr M.P. Whitely
Dr J.M. Edwards	Mr F.M. Logan	Mr M.P. Murray	Ms M.M. Quirk (<i>Teller</i>)
Dr G.I. Gallop	Ms A.J. MacTiernan	Mr J.R. Quigley	
Mrs D.J. Guise	Mr J.A. McGinty	Ms J.A. Radisich	

Pairs

Mr A.D. Marshall	Mrs C.A. Martin
Mr B.K. Masters	Mr C.M. Brown
Mr D.F. Barron-Sullivan	Mr J.J.M. Bowler
Mr M.G. House	Mr D.A. Templeman

Question thus negatived.