Question thus negatived.

ANIMAL WELFARE

Petition

Mr McGowan presented a petition bearing 1 082 signatures requesting that penalties for acts of cruelty to animals be increased.

[See petition No 19.]

TASK FORCE TO REVIEW FREIGHT VEHICLE MOVEMENTS

Petition

Mrs van de Klashorst (Minister for Family and Children's Services) presented a petition bearing 343 signatures praying that the proposed Perth metropolitan freight transport strategy not negatively impact upon the Swan valley tourist drive.

[See petition No 20.]

BOULDER PRIMARY SCHOOL - CLEANING CONTRACT

Petition

Ms Anwyl presented a petition bearing 147 signatures requesting that the Legislative Assembly review the tendering process of school cleaning to ensure that standards of school cleanliness are pre-eminent at the Boulder Primary School.

[See petition No 21.]

STATE RECORDS BILL 2000

Cognate Debate

On motion by Mr Board (Minister for the Arts), resolved -

That leave be granted for the State Records Bill and the State Records (Consequential Provisions) Bill to be considered cognately and that the State Records Bill be considered the principal Bill.

Second Reading

Resumed from 24 November 1999.

MS McHALE (Thornlie) [4.01 pm]: This is a long awaited Bill. I am pleased that we finally have the opportunity to debate it. The Egyptians and the Persians did it; the Greeks and the Romans did it; the Spanish, the French and the Danes did it; even the Pope did it in 1612; Josephine knew that Napoleon did it in 1794; and even the English did it, but they did not do it until 1838 when they legislated for it.

What were they all doing? They were keeping public records. In France it took the revolution to introduce the concept of archives managed for the benefit of citizens, not just for the Government. The English Public Records Act was proclaimed in 1838.

What about records in our State of Western Australia? The state library was authorised to accept official records in 1903 and the archives department was established within the state library in 1945. The state archives became a part of the Library and Information Service of Western Australia in 1988. I am pleased to say that we did not have a bloody revolution to turn the tide of public record keeping. However, I suppose the equivalent was the Royal Commission into Commercial Activities of Government and Other Matters.

As I said at the outset, this is a much awaited and long overdue Bill. The Australian Labor Party welcomes the fact that it will establish a legislative and administrative framework for the keeping of state records. Members will recall that the first Bill, a different Bill from that which we now have in front of us, was introduced in April 1998. Members on this side of the House welcome the changes to that first Bill. However we regret that one area of the Bill remains unchanged; that is, the arrangements for schedule 3 organisations. It is perhaps the most critical and concerning element of the Bill. I will dwell to some extent on why members on this side oppose the concept of schedule 3 organisations and their proposed treatment under this legislation and we will move some amendments to deal with them.

I respect the fact that this Bill has been on foot now for two and a half years. In the light of its history, the Labor Party will support the Bill so that it can be proclaimed and enacted. I can assure the minister, therefore, that we will not dwell on clauses in the consideration in detail stage or filibuster to any great length. However, I will test the Government's intentions with schedule 3 organisations and hope the Government will reassess its position in the light of the arguments put on this side of the House.

As I said two and a half years ago, the first state records Bill was a very poor Bill, not in its drafting but in the ideas underpinning it, especially the proposed composition of a state records commission. However, this Bill is an improvement.

Without going back to the French revolution or the history of the past couple of hundred years, the impetus for the Bill is the 1992 royal commission that had much to say about the management of public records. The commission said -

> Official papers were lost, deliberately destroyed or removed by officials. . . Such practices strike at the root of responsible government . . . Proper record keeping and effective record security are essential to good public administration.

There is no doubt that the sentiments expressed in those sentences are fundamental to good government, open accountability and effective management of the public record. The royal commission recommended that a separate and independent archives authority be established under its own legislation and that the Commission on Government inquire into the terms of the legislation. In 1994, the Auditor General also examined public records management and made two key recommendations: First, for a legislative and administrative framework to address deficiencies in the Act governing archives and public records and, secondly, for a system that is flexible enough to deal with technological advances and be compatible with legislation such as the Freedom of Information Act.

In July 1994, the then Minister for the Arts released a discussion paper on new public records legislation. It has taken this Government six years to introduce legislation - I hope not kicking and screaming - that is of critical importance to the Public Service and to a Government that is concerned about accountability and effective management. Six years is an inexcusable amount of time for the Government to take before introducing a Bill which it has some confidence will be passed. It is a pity we have in effect wasted more than two years, but so be it. It is preferable to have improved legislation than appalling legislation which the then Minister for the Arts thought he would get passed. Fortunately for him it was made obvious that not only would this House not support it but also, more importantly, those who worked in the field of public records, public record management and archives saw the Bill as being totally inadequate, inappropriate and in parts odious and incapable of achieving the objectives sought by a good Government.

Nevertheless, in 1994 the paper described the Library and Information Service of Western Australia's model for the management of public records; that is, a public records commissioner reporting to Parliament and the separation of regulatory and operational roles. The report then explicitly stated that the commission would be independent but the Public Records Office would be within the LISWA structure. I flag that point as it remains a matter of concern to those working in the field. The Public Records Office, referred to in the Bill, is not given an independent and separate status, unlike the State Records Commission.

I should correct my own terminology and then continue to use the incorrect terminology deliberately. When we first started out on the road to proper accountability, we were talking about public records. We on this side of the House still talk about public records. Unfortunately, members on the other side of the House do not see it in the same way and prefer to talk about state records. It may well be semantics but it is more than that as far as the Australian Labor Party is concerned. We want to establish a truly independent public records process and a public records structure - records which are ultimately for the public. Unfortunately, there is a subtle but deliberate difference in this Bill to change the emphasis from public records to state records.

I can see the minister frowning. Obviously he does not understand the subtlety. It is not a matter on which the Opposition would go to the wall but on which the minister may reflect and try to understand that what is a subtle difference for him is a very important one for others.

In 1995 the Commission on Government recommended a public records Act under which a commissioner for public records and a commission would set out the eligibility criteria for the keeping of public records. An interesting aspect of the Government's Bill is that it does not reflect the detail of the Commission on Government's recommendations, although the Bill is constructed around the need for an independent record-keeping authority. The extensive Commission on Government inquiry made appropriate, clear and well-considered recommendations. This Government has chosen to ignore the flavour and spirit of those key recommendations from the Commission on Government. That is inexplicable, as the recommendations from the Commission on Government would have enhanced the Bill that we have before us. This Bill therefore is still deficient in a number of areas.

The Bill proposes the establishment of a State Records Commission. It requires agencies defined in the Bill to develop a record-keeping plan and it regulates the period for which a record must be kept before destruction or archiving. The Bill puts a considerable onus on agencies to determine the requirements of a public record. However, there is no dispute on this side of the House that those requirements are necessary to ensure that we avoid the occurrences of the 1980s when records were not readily accessible. We accept that need. We have moved on from there to where we accept that record-keeping should be paramount. Agencies that are repositories of those records therefore need a very clear framework so that mistakes are not made and discrepancies do not occur. A record-keeping plan is a written statement of the records that are to be created and archived, the retention period for those records and the archives to which access will be restricted. It is a very comprehensive plan and, as I said, we accept the need for that plan.

The Bill also gives details of the time records should be kept and the time they should be kept before archiving. It also provides an opportunity for agencies to determine that a record will be restricted, and could be restricted for 75 years. That presents a degree of anxiety to people who work in the management of public records and in research capacities. Often good research is done through accessing archives. If agencies have an unfettered right to determine which

records will be restricted, it will impose severe limitations on people who wish to study the administration of this State. I hope the guidelines for agencies to determine the records that can be restricted and therefore inaccessible for 75 years are stringent and well considered, as those guidelines cannot be used to avoid scrutiny. There is absolutely no point in having a Bill which purportedly permits the management of public records if records are subsequently restricted by a time which amounts to most of our lifetimes. People wishing to conduct research would not be able to do so as they would die before they could access the records.

Mr Board: You are underestimating your life span!

Ms McHALE: Absolutely! I would be only 120 when I could conduct research on these archives.

One of the major changes in this Bill compared with the 1998 Bill relates to the composition of the commission. There was huge opposition to the 1998 Bill as it was constructed. It is pleasing to see that significant changes have been made. The original Bill had, as the commission's composition, a retired judge, an academic and a retired public servant. There was no requirement for a member of that committee to have any expertise in public record management, which was extraordinary and indicated almost an indifference to the professional field of records management.

Mr Pendal: It is interesting to note that in the United States, the federal archivist is appointed by the President and his only qualification need be a demonstrated interest in public records.

Ms McHALE: I thank the member for South Perth for that interjection. As he knows, the original Bill did not even require an interest.

Mr Pendal: No.

Ms McHALE: There has been a quantum leap in the composition of the proposed State Records Commission; that is, this Bill provides for a four-member commission: The Auditor General, the Information Commissioner, the Ombudsman and a person who is not a public servant but who has expertise in record keeping. The decision to have three "guardians" of accountability is interesting; I still have reservations about that. However, the amendment has much improved the first Bill and we on this side of the House are prepared to accept that commission. The Commission on Government considered recommending that those three persons be appointed to the State Records Commission, but and decided against it because of a potential conflict of interest.

I cannot let the opportunity go by without putting on the public record that a potential conflict of interest exists. Obviously this Government does not accept that, otherwise it would not have included those three persons in the Bill. However, the situation needs to be carefully monitored to ensure that having the Information Commissioner on the State Records Commission, the body that manages public records, does not create a conflict of interest. I urge the minister to be very prudent when reviewing and reflecting on the commission's composition to make sure that there is no real or potential conflict of interest.

The Bill goes into detail about the functions of the commission. Among other things, it is to monitor operations and compliance, to inquire into breaches of the Act and to ensure principles and standards. Those principles and standards go to record keeping generally and the outsourcing of arrangements for the management of public records, which is a very important role that the commission must undertake. We have grave concerns about enshrining in legislation the capacity to contract out. The Bill enables that to happen but the provisions apply to those agencies as if they were public service agencies. At least that links the contracting out of records into the loop of accountability. However, if the management of public records is seen to be a fundamental plank of proper accountability, I counsel against agencies contracting out the public records function, because the opportunity exists for things to go wrong and for papers to go missing or be destroyed inadvertently. If one is serious about public records management, it is clear that it is a core function of an agency. I cannot accept the view that it is a non-core function and, therefore, can be contracted out. Indeed, one of the core functions of an agency is to look after, preserve and manage its public records. The commission will also issue determinations on accessing archives, on archives that are to be exempt from transfer direct to the State Records Office after 25 years and on the retention and disposal of non-archival records.

For many people the management of public records is a dry subject. It does not have the gloss of some of the other topics we debate in this House. I ask members to look beyond that and realise the full importance of the subject; that is, the accountability of government through its public sector agencies, not necessarily for the here and now but for five, 10 or 20 years' hence. We are now laying down the foundations for a mechanism that will ensure mistakes are not made again. We have the opportunity to try to get this legislation right. I urge members to remember that although the subject may be dry, it is fundamental to the accountability of government.

The main concerns about this Bill are, first, the very strong inference that the State Records Office will be housed in and managed by the Library and Information Service of Western Australia. That concern has been expressed to me and to other members on this side of the House on a number of occasions. We are setting up a new system and trying to create a process which will be relatively foolproof; therefore, it is preferable that the State Records Office not be managed by and housed in LISWA but be independent from that agency and have a more integrated relationship with the State Records Commission. The Bill does not state explicitly that the State Records Office will be located within LISWA, but that statement was made very clearly in the second reading speech on the first Bill and it was also stated clearly in

1994 in the then minister's review. It seems there is a strong push for the State Records Office to be located within LISWA. We do not believe that is in the best interests of the State. However, the decision has been made and we are prepared to live with it. We will review it as time goes by.

I have referred to the keeping of records and archives for up to 75 years. We believe that period is excessive. With a few exceptions, we do not see the need for the archives to have such a restricted lifetime. The Bill fails to establish the right of access to government information within a reasonable time frame. A period of 25 years for keeping documents is determined to be reasonable and a period of 30 years for keeping cabinet documents, certainly federally, is deemed to be reasonable. We question very strongly why access to documents would need to be restricted for 75 years. If one is working on the principle of an inherent right of access to government information, which we do within a reasonable time frame, a 75-year time frame in general terms cannot be justified. I shall welcome the minister's response because the Bill restricts access.

The area of gravest concern is the special treatment given to three agencies and I will spend the rest of my time talking about this issue. For the benefit of members, I will recap on what the Bill provides. The Bill contains a list of public sector agencies. Schedule 1 contains the government organisations to which this Bill applies in its entirety. Schedule 2 contains non-government organisations that are therefore treated somewhat differently.

It is ironic, given the previous debate today, that they include electorate offices, and they also now include the Legislative Council, the Legislative Assembly and a committee of either or both of them. From memory, I do not believe that they were included in the first Bill. I understand that the Clerks of the Assembly and Council were most concerned about the application of the Bill to the two Houses, and they sought and gained the Government's approval to include them as schedule 2 organisations. For the purposes of the public record, when the minister responds would he comment on the process in relation to Parliament and whether I am right in saying that there was a shift from the original Bill to the second Bill; and if that is so, why that is the case? The Opposition is not opposing it, but for clarity and for the public record, it is important that that shift be properly documented. That is an important shift and, again from memory, it is not so documented in the second reading speech.

Schedule 3 applies to certain government organisations. They are the Electricity Corporation, the Gas Corporation and the Water Corporation. The Bill treats those three government trading enterprises differently from public service agencies, or government organisations listed under schedule 1, and other GTEs. One must look very carefully at the difference in and the regime and the protocols for the management of public records in the three most significant GTEs which provide the three most significant public sector services to the State: Gas, water and electricity.

The Bill requires the minister responsible for those three agencies to oversee the development of public record plans and to approve those plans. However, the State Records Commission, which was established to ensure that public records are kept appropriately and that records are chosen to become archives, has no operational involvement in those three agencies. The accountability for the management of public records stops with the relevant minister - the relevant minister being the minister responsible for energy, water and gas, not the minister responsible for public records. The situation now is that the records of those three utilities are not subject to the same public scrutiny and management that every other agency is subject to, including any other GTEs. The Opposition believes that is wrong on two counts. The most important reason it is wrong is that there are issues of safety regarding those three organisations. If any organisation’s public records should be subject to proper accountability and scrutiny, it is the records of those agencies in which things may go terribly wrong.

I will mention three episodes in recent times when things went terribly wrong. There was the water crisis in New South Wales with the cryptosporidium bacteria, the Longford gas explosion and the New Zealand electricity crisis some years ago. It is interesting that there have been three major incidents which involved public safety on a massive scale and which involved the very three organisations over which the State Records Commission does not have the same jurisdiction and control that it has over other agencies.

I do not want to disparage any public sector organisation. However, the importance of the scrutiny of the records of the Water Corporation, from a public safety point of view, is far greater than the importance of the scrutiny of the public records of a small organisation. The State Records Commission has the power to scrutinise and to change the public records of small organisations, and it has a punitive role regarding those organisations. This is the most critical element of this Bill. It behoves the Government to justify why it is not prepared to include those three organisations, gas, water and electricity, as schedule 1 organisations. There is no justification for not including them.

We have heard that in an earlier draft those three organisations were included. During the briefing of agencies, I suppose, it emerged that these organisations would be excluded from the full gamut of responsibility of the State Records Commission. If that is the case, that is a disturbing outcome. To put it another way, when the Bill was first drafted, there was every intention that those three utilities would be included in the Bill, and there is no reason for not including them. As the Bill has emerged, those agencies have argued, and have obviously won the argument, above the ultimate test of public safety, that they should not be subject to the same scrutiny that every other organisation is subject to.

As I said, that is terribly wrong. For a government to not be prepared to subject those utilities to the same scrutiny is inconceivable, particularly in the light of the water crisis in New South Wales, which was a huge public health concern, and also in the light of the Longford gas explosion. The royal commission into that explosion pointed to the deficiencies in the public record keeping of that company. In fact, the royal commission virtually had to seek the equivalent of an injunction to access documents so that it could trace what went wrong. Therefore, it is not without evidence and previous cases that the Government has made this decision. It appears to have made the decision to exclude these organisations in the face of very severe breaches of protocol and record management. Not only the Longford gas explosion but also the Sydney Water Corporation's disaster point to the importance of public record keeping.

The inference one could draw from the fact that the Government chooses to exclude these three utilities is that it has every intention to privatise them. One down, two to go, one would say. We know the fate of AlintaGas. If the Government is so intent on excluding these organisations, one must ask why. This Bill is not about commercial confidentiality; it is about the management of public records.

Access to those documents is then dealt with under the Freedom of Information Act. If a question of commercial confidentiality arises, it should be dealt with under that Act. It has nothing to do with this Bill, which establishes the administrative and legal framework in which our public records should be maintained. One does not exclude them at that point, but this Government has done so. Mechanisms exist in the FOI Act for individual issues of commercial confidentiality to be considered. That is where this Government is wrong in its management of this issue. It is confusing the management of records with access to those records.

This legislation should apply to every public sector agency in this State. It should not contain exclusions, but it does. That is a fundamental error and it is one that the Opposition will test during the consideration in detail stage to see whether the Government will change its mind.

I cannot stress enough the importance of these clauses. They introduce flaws in the Bill, which is otherwise improved along the way. I give credit to the member for South Perth for the amendments he made to the previous Bill and for the work he has done throughout the years with regard to public records. The Bill has come a long way, but we have met this wall. That is inconceivable and wrong, and it will ultimately jeopardise public safety. Members might think that is an extreme comment, but it is not until something goes wrong that we start to follow a paper trail. If the records are incomplete - if they have been lost, damaged or deliberately destroyed - we will never know the reason that things went wrong. It is very wrong that these government trading enterprises are being excluded at this stage. If problems or issues of commercial confidentiality arise, access to those records can be dealt with under the FOI Act, not under this legislation.

I raise one further issue with the minister and ask him to provide this information in his response. The original Bill contained a clause provided for public sector agencies that were subsequently privatised and what should happen to the records before and after the privatisation. I cannot find that in this Bill. I ask the minister to establish which clause deals with that situation.

The Opposition supports this Bill, albeit reluctantly in respect of the schedule 3 organisations. That is a fundamental flaw in the legislation. The introduction of this legislation is long overdue - its gestation has taken six years. It is probably not the longest wait we have had during my time in this House - one Bill took 20 years.

Mr Pendal: The original documents are now being considered for their archival value.

Ms McHALE: Let us hope that access is not restricted for 75 years.

This is an important Bill given what it introduces into public sector management. It had its origins to some extent in the Royal Commission into Commercial Activities of Government and Other Matters and the Commission on Government. I recall the comments made at that time about the destruction of papers, and as a researcher that distressed me enormously. However, if we are introducing a Bill to correct that, it should apply to every government trading enterprise and public sector organisation. It is not good enough to exclude the three utilities that produce gas, water and electricity. That is wrong and the Opposition will never accept it.

The Bill should be amended to remove reference to schedule 3, and the Opposition intends to move an amendment to achieve that during the consideration in detail stage. It is hoped that the Government will see fit to recognise that it is acceptable to include those utilities in the scope of this Bill and that it can deal with access under another Bill.

MR PENDAL (South Perth) [4.45 pm]: I suspect that this debate will be considered unremarkable. Making laws to deal with public records sounds a mundane thing to do. However, I strongly believe that we are dealing with one of the most important Bills to be introduced during my years in this Parliament. We are dealing with something that sits not at the apex of public accountability but at its foundation. The protection and preservation of public records from predators is vital, be that predator in human form, the silverfish of 30 or 60 years ago, or whatever the modern technological manifestation or equivalent may be.

That which is consigned to the past belongs to the future. That is not a clever one-liner; it is a truism. That which is handed to our state archivists for safekeeping is not something to be locked away; it is to be held in trust for future generations. When tyrants, despots and their ilk - every generation has them - want to protect their reputation, they invariably attack the public record. They burn, steal, alter and erase. We saw a recent example of that towards the end of the Bosnian conflict. Anything and everything was done to protect the wrongdoers from the adverse judgment of future generations. Closer to home, we saw regrettable examples of political interference with the public record in what we now call the "WA Inc years". The subsequent Royal Commission into Commercial Activities of Government and Other Matters referred to records having been lost, destroyed or removed. According to the commission, that resulted in a "false and incomplete account of the stewardship of government". That explains the profundity and importance of the matter we are dealing with today. As one of the earlier speakers said, that lamentable position resulted in the royal commission's arguing for a separate, independent archives authority that would operate under its own legislation with the aim of protecting what rightfully belongs not to us or to the past but to future generations.

Long before the WA Inc disclosures, I was in the position - I regret to say 12 years ago - of making some commitments in the lead-up to the 1989 state election when I was the shadow Minister for the Arts.

I am very pleased in some ways to claim partial paternity for the Bill before Parliament; I do not know whether one can claim partial paternity for anything, but I do so at least in the spirit of modesty.

We said as an Opposition in 1988 that we would recognise the "very special role played by the archival system in preserving and protecting documents and publications". Concerns were held even at that point, long before some of the worst fears of erasure and interference were realised and when it was known that all was not well. A number of things were promised to address what were seen to be problems that could arise in the immediate future, if they were not already in place. The then Opposition stated that it would "introduce a WA archives Act to add parliamentary emphasis and protection to this integral matter of information storage and to create a public records and archival agency". We made a promise in the same election campaign that reflected the emphasis of the day that was somewhat different from today's computer-driven information technology mentality. Members will see this by its wording: We promised to produce guidelines "to govern the purchase and use of archival paper for government". That reflected the concerns that were regarded as paramount in the late 1980s with the paper used in the then new facsimile machines. How things alter dramatically in the space of 12 years.

Mr Board: It is in 12 months these days!

Mr PENDAL: Indeed. The vagaries of politics are such that four years later I made some similar undertakings for the Opposition in the 1993 election campaign. With some significance, I did so in the single role of opposition spokesman for Heritage, and not as the spokesman for the Arts. The 1993 coalition heritage policy beefed up the demand for a strongly independent agency. The heritage policy was then at variance with the arts policy produced by the Opposition and its then spokesman, Hon Peter Foss. However, those of us responsible for the heritage policy were able to write into the document that which underpins this Bill. I am pleased that that happened. Although the professionals saw a lack of commitment in the arts policy of the day on this matter, they were somewhat cheered by the content of the 1993 heritage policy document.

Of course, added to these happenings was the controversy surrounding the disposal of records as outlined in the report of the Royal Commission into Commercial Activities of Government and Other Matters. That led to a new disturbance that occupied the Parliament for many months in the early 1990s. The decade moved on and the Government, by now the coalition Government - as flagged in its position paper in 1994 - did its best to reconcile the warring parties. It was not successful and, in the end, the Government failed quite dismally in that regard. Many of the professional bodies, such as the Records Management Association of Australia and the Australian Society of Archivists, were appalled at what they saw. A stalemate developed of sufficient magnitude to allow those professionals in the field to fear that we were no closer to modern, strong and effective legislation than we had been six years prior when it was first promised by the then Opposition. At one stage former Liberal leader Hon Barry MacKinnon was commissioned by some of the professional bodies, including the RMA, to lobby the then Minister for the Arts in an effort to bring that war-like situation to some satisfactory conclusion. Mr MacKinnon did some great work in that regard.

On another front with those professional bodies, a huge raft of amendments, to which the member for Thornlie referred, was introduced into this House in 1997 or 1998. These amendments represented an attempt by the mover - namely, me - to force the Government to honour what it had promised to do in 1993. I regret to say that the Government resisted every inch of the way. It was the case that the then minister - the position was to change - Hon Peter Foss, insisted that he and his advisers knew best, and that the policy pursued relentlessly by his political colleagues and the professional bodies for five or so years was, in his view, never going to come about. I suppose to the credit of the then minister, the Mexican stand-off came to an end when the minister agreed to pull the Bill out of Parliament to incorporate a huge array of amendments then on the Notice Paper in an attempt at reconciliation. This was an effort to achieve what everyone wanted; namely, effective protection of the public record in Western Australia. Therefore, the Government finally agreed that it was sensible to incorporate many of the amendments that had been negotiated by a variety of members of Parliament.

I recall also that they were negotiated in one very important instance by Laurie Varendorff, who represented the Records Management Association. If I recall correctly, that was a pivotal amendment that, frankly, I did not think we would see accepted; that is, the beefing up of the composition of the authority to the point at which the protective mechanisms had real teeth. That was an enormous breakthrough in the fight of many people to bring about a resolution to a matter that had hung around for years.

For the record, I mention a number of the people involved. In the early days people like Mark Brogan and Laurie Varendorff, whom I already mentioned, did an enormous job in bringing about the resolution. I refer to Vicky Wilson, Janine Douglas, Neil Granland, Jenny Edgecombe and Bob Sharman, who as a former State Librarian was a stalwart in the early years. I refer to some great academics like Lesley Marchant. I was reluctant to name names in case I forgot anyone; if I have, I apologise to those people.

However, this Bill is different due to their intervention, cooperation and collaboration with a number of members of Parliament.

This is a good Bill with the clear exception that the bodies referred to earlier, such as the Water Corporation and Western Power, remain exempt bodies, not entirely from the provisions of the Bill, but from the provisions that will apply to other government departments and agencies. They have been given a privileged position that they do not deserve. I suppose it is a tribute to their enormous power and influence within government that they have been able to stand aside from the system we are about to agree on in this Parliament. Why they should have been given that favoured treatment is a mystery to me, especially in the light of contamination of the water supplies in Sydney and the explosion of the gas works in Victoria, which brought home to us when the Bill was being argued in the community that they were the first agencies of government that should have been included rather than excluded.

The Bill is about more than a love of history or the preservation of heritage or its passing to new generations for research in all its forms. It is part of the accountability continuum found wanting in Western Australia under a variety of Governments, but which, to give Governments their due, is undergoing something of a revolution to ensure we arrive at this destination.

Ultimately, I suppose the argument that won was that half a loaf of bread is better than no bread. In fairness, statistically, the Bill probably represents not half a loaf but something in the order of nineteen-twentieths of a loaf. The missing slices are the three so-called exempt bodies. Like the member for Thornlie, who spoke before me, I very much regret they have been given that exempt and privileged status. I will vote for her amendment, which previously stood in my name.

All of that aside, it is great that after so many years this Bill will be dealt with in the consideration in detail stage tonight, be in the other place by the end of the week and be enacted before Christmas.

I place on record my thanks to the minister, Hon Mike Board, and the Leader of the House, Hon Colin Barnett. They appreciated the view that we, the professionals and the community had tolerated for long enough laws that were shown to be totally inadequate for the task, particularly over the past 15 years. The Bill could not have been introduced in the current climate as we head for an election were it not for some give and take behind the Chair. I therefore congratulate the ministers and the other people who played a role in that. It is a good Bill with the exceptions I referred to and I am happy to support it.

MR KOBELKE (Nollamara) [5.05 pm]: I listened with interest as the two members who preceded me outlined the strengths of the legislation and the importance of having such a law in Western Australia. I will not cover the issues as comprehensively as they did; rather, I will refer to a number of matters that relate to the Bill's function.

Clearly, any system of government must be accountable. If we do not have access to records, we cannot have accountable government. It is fundamental to good government that people have the right to access appropriate records and, as a result, be able to judge how decisions were made. That demands proper record keeping and the preservation of records.

As we saw earlier today, through all the procedures, there is a requirement for honesty. If people forge, change or destroy records or enter incorrect records, they destroy the evidence or information people need to make their case, whether it be for the consideration of individuals or good government. It is therefore important that standards are laid down and proper procedures are in place to ensure government and government-agency decision making is recorded in a meaningful way.

We should differentiate between the principle involved and the practice. I can only concur with the opinions of the members for Thornlie and South Perth, who are far more knowledgable about this matter than I, that the principles embodied in this Bill are excellent and that it is a big step in the right direction. However, even if we get the detail largely correct, will it be implemented and administered in a way that will give effect to those principles?

Given the debate that occurred today and many other instances that have occurred over the past several years, I am concerned that the high-minded commitment to having a public records management system may not be honoured in

the way this Bill suggests it will be. I hope I am wrong, but this Government has a track record of not doing what is required to maintain records to ensure accountable government.

In his second reading speech the minister refers to a high degree of transparency and accountability as being the hallmark of the legislation. We hope that is true in the Bill's final form - it has been indicated that some improvements should be made - and that the application of the law will ensure the highest standards of accountability and transparency. It is all very well for those words to be in the minister's speech, but putting them into practice may be another matter. We hope one will follow the other.

The Minister for the Environment, who introduced the Bill, said in the second reading speech -

> In western democracy it is taken for granted that the public will have access to the records of its Government. In the case of current records, freedom of information legislation is a fundamental way of achieving this.

The minister reiterated the importance of having access to records if any western democratic Government is to have reasonable, accountable standards that work effectively. She says further that freedom of information legislation is a key means by which that information can be accessed.

As the opposition spokesperson on freedom of information matters, I have a little experience in submitting FOI applications and following through the decisions made in my own and many other cases. While this Government has had to live under the Freedom of Information Act, it has tried on many occasions to thwart the Act's intention and operation. It is inappropriate now to go through chapter and verse of the many cases in which this Government has tried to avoid the application of the Act. However, I shall give a few generalisations of some of my experiences and then give one particular example.

I have often found that FOI applications lead to a government agency's providing an assortment of documents. One cannot tell whether they are a full set of documents, whether they have come from one or a range of files, or whether they are retained and saved in the particular agency to which one has made application. I do not say that applies in every case. Many government agencies bend over backwards to help with FOI applications. I have also found local government authorities keen to uphold the principles and practice of the Freedom of Information Act to the point that they do not levy a charge. The regulations allow a charge to be made under the Freedom of Information Act for the provision of documents and information; however, some agencies waive that charge and are happy to provide the information.

Some agencies, however, seek to thwart at every turn access to documents sought under the FOI Act. One example of that is when one is given an assortment of documents. An ordinary member of the public who is not conversant with the Act or its operation may believe that being given an assortment of documents is adequate and those are the only documents that exist. However, in some cases, an agency, or the person handling the FOI application in an agency, plays with the applicant and believes the applicant can be fobbed off by being given some documents. That is not the point of FOI and good record keeping. The point of good record keeping is that people have access to all documents to which they are entitled. I do not say that there are not proper processes for exempting some classes of documents; I accept that as a proper operation of the FOI Act. Aside from that matter, when a person makes an application for documents, the applicant should be told of all documents that fall within the application, be granted access to the documents to be handed over and an exemption claimed for the others. The applicant should not be simply handed some documents in the hope that he or she will go away.

In some cases with which I have dealt with the Minister for Labour Relations and her department I was given some documents. When I said there should be more, I was told there were no more. Then, when I appealed that decision, the department found some more documents. When I said that they still did not make sense because the documents referred to other documents that were not listed, the agency then said it had found some more documents. That scenario goes on and on. To get the information that should be provided under the FOI legislation is like trying to extract teeth. In other words, I have been given some documents but other documents that were clearly related to those documents were either missing or not alluded to in the response to my application. One then must continue to pursue the application when one finds that documents exist that were not mentioned in the first response to the application. I acknowledge that documents are sometimes misplaced or put in the wrong file and bad practices can occur by accident, as sometimes occurs in my electorate office.

Obviously, the intention of this legislation is to establish the best possible practices for maintaining those documentary records. However, I accept there will always be a level of mistakes. It may be that I have made FOI applications to agencies or departments with appalling record-keeping practices that cannot find documents that should be in a file or a group of files. In some case, unfortunately, I have concluded that, rather than bad record-keeping practices, games were being played to deny me access. I also suspect that games are played by some agencies to store documents as personal documents so that when an FOI application is made, documents contained in one or more "special" filing cabinets personal to a particular officer are regarded as outside the range of the Freedom of Information Act. That clearly is not the way in which the Freedom of Information Act is written and is to be administered. On a couple of occasions my interpretation of the information from agencies was that documents were being withheld as they were theoretically classified as personal documents and therefore not subject to the Act.

I shall refer to the particular example I said I would give which relates to an application to the Ministry of the Premier and Cabinet dated 26 June. In part, the letter states -

> I am seeking access to all documents relating to the Attitude Monitoring Study conducted in or about June 2000 including the full results provided to the Government under the contract with West Coast Field Services.

The latest correspondence I have is a letter of 14 August from the contracts manager of the Ministry of the Premier and Cabinet which, in part, reads -

> The decision I have made today as Contracts Manager, Corporate and Business Services Division, is as follows.
>
> After conducting an extensive search of the Ministry's records management data base and relevant areas of our agency we were unable to locate any documents up to the date of your application.

It means that in response to an application lodged at the end of June asking for a survey that was conducted in or about June - these surveys are generally done in May or June each year - the agency could find no documents to satisfy my request.

The letter goes on -

> This amounts to a technical refusal of access under Section 26 of the *FOI Act*. Section 26 states that "it is not possible to give access to a document if -
>
> a) all reasonable steps have been taken to find the document; and
>
> b) the agency is satisfied that the document -
>
> i) is in the agency's possession but cannot be found; or
>
> ii) does not exist."
>
> However, you may be interested to know that the Attitude Monitoring Studies for May and November 1999 were tabled in State Parliament on 22 June 2000. I understand that the May 2000 study is expected to be tabled in the week beginning on 14 August 2000. All of these documents are publicly available information (section 6, *FOI Act*) and copies may be obtained from Parliament House.

This response states that the documents cannot be found in the agency's possession or do not exist but that they were to be tabled in Parliament. That is a nonsense. Under the FOI Act, a public document does not fall within FOI legislation. I accept that when a document has been tabled in this place we cannot use the FOI Act to access it. However, my application relates to all documents relevant to that study. I am either being fobbed off or the Ministry of the Premier and Cabinet has an appalling record-keeping system. It must have received documents relating to the payment of hundreds of thousands of dollars in annual consulting fees which were not filed but which were given to officers to take home to hide under their beds. That is the standard of record keeping in the Ministry of the Premier and Cabinet that can be inferred from that answer. The department does not have a file that maintains all relevant data on attitude monitoring surveys from which it can provide a schedule indicating the documents that can be released and those for which it claims an exemption. This Government does not want to be open and accountable. It is a Government that in the past month has tried to hide information and correspondence in its possession about contracts for which the taxpayer is paying hundreds of thousands of dollars.

I return to the Bill before the House and the judgment one must make about the drafting of this legislation and its likely effect. It is a big step in the right direction - it could be a little better - for which the Government should be commended. However, when one examines the way in which the Government handles the laws on access to records - one can draw a parallel with its record keeping - it is a different picture. This Government is trying to be closed and secretive and it is trying to avoid accountability. That is my concern with this legislation and the way that the Government might implement it.

The Freedom of Information Act contains penalties for people who try to destroy or hide records. Similarly, this Bill contains a range of penalties. During the second reading speech the minister made the comment -

> Heavy penalties are provided for organisations that do not keep a record in accordance with the record keeping plan or illegally destroy a record, and for anyone who has illegal possession of a government record.

I understand the need for penalties; they play an important role. I also understand their necessity for people who illegally possess government records. However, I have a real worry about the use of these penalties while we do not have whistleblower legislation. If someone releases a public record, believing that to be in the public interest, and can mount a defence that it is in the public interest, the person should not be subject to such penalties. At the moment, unless the minister can point to something of which I am not aware, no legislation provides for adequate whistleblower protection. The real difficulty with these penalties that must be applied in certain circumstances is that they can be used to prevent the release of documents that most people would judge to be clearly in the public interest. It might not be in the interest of the Government of the day because it might show maladministration in government. That is not what this

legislation should be about. The legislation is supposed to be about making the Government accountable, yet penalties will be applied to people who are in possession of government records supposedly illegally. It is a difficult balancing act. The whistleblower legislation is necessary to separate the two situations: First, when a person has obtained a document illegally for his own gain and not for any public benefit; and, secondly, when it is acceptable for a person to possess documents which are not properly obtained but the person has clearly been motivated by the public interest. We need special provisions in the legislation to handle that difficult test. Those provisions are not in this Bill.

I turn to the offences contained in the State Records Bill 1999. Of course, the date itself tells a story because the Bill has been sitting around on the Notice Paper for about 12 months. Clause 78 reads -

Offences

(1) A government organization employee who does not keep a government record in accordance with the record keeping plan of the organization, commits an offence.

(2) A government organization employee who, without lawful authority, transfers, or who offers to transfer, the possession of a government record to a person who is not entitled to possession of the record, commits an offence.

(3) A government organization employee who destroys a government record commits an offence unless the destruction is authorized by the record keeping plan of the organization.

(4) A person who destroys a government record while the record is the subject of a notice under section 52 or an application made, or order or warrant issued, under section 53, commits an offence.

(5) A person who has unauthorized possession of a government record and who destroys that record, commits an offence unless the person owns the record.

(6) It is a defence to a charge of an offence under subsection (2), (3), (4) or (5) to prove that the alleged act was done pursuant to -

(a) a written law; or

(b) an order or determination of a court or tribunal.

(7) It is a defence to a charge of an offence under subsection (5) to prove that the person had no reasonable cause to suspect that the record was a government record.

The penalty is $10 000, so these offences are considered to be quite serious. I agree that if people commit offences under clause 78 in order to undermine the accountability of the system, the offences should be treated as serious matters. On the other hand, if the gaining of documents by methods not allowed for in the Bill is overwhelmingly for the public benefit, that should be another matter. It is of major concern that no provision is made for that in this Bill.

The minister made this interesting statement in the second reading speech -

> There has been a wish among some government records professionals for this bureaucracy to be part of the commission and therefore free from accountability to the minister. Not only is this likely to lead to another group which cannot be forced to be efficient but it is also bad in theory - the bureaucracy would supervise its own work.

I find that quote fascinating. Week in, week out the Minister for Fair Trading has said that he has no responsibility for his agencies, yet the minister sitting next to him is saying that the minister must oversee this bureaucracy because otherwise it will not be accountable.

Mr Shave: What does your leader say?

Mr KOBELKE: I am asking the minister whether he agrees with the second reading speech of the minister sitting beside him.

Mr Shave: You are speaking. What does your leader say?

Mr KOBELKE: I am asking the minister: Does he agree with the minister sitting beside him that it would be bad practice to allow the commission to be free of accountability?

Mr Shave: You just carry on.

Mr KOBELKE: The Minister for Fair Trading does not agree because that has been his practice for weeks. He has been saying that when it comes to the agencies under his control as the Minister for Fair Trading, he has no responsibility for making them accountable.

Mr Shave: You can say what you like. That is not what I said.

Mr KOBELKE: This Government has double standards. The Minister for the Arts, who has responsibility for the passage of this Bill, is telling us that if the commission were free of accountability to the minister, there would be a major problem and that it is not the way that Governments should work because the bureaucracy could not be forced to

be efficient and there would not be anyone to supervise it. That is very different from the belief of the Minister for Fair Trading. He believes that in his area of responsibility he does not need to look after the accountability of his agencies and that it is no concern of his. One minister is laying down one set of standards and the minister who sits beside him works to a set of rules which is exactly the opposite. The problem with this Government is that it has either no standards or double standards.

Exemptions are defined in clause 3 and then picked up in schedule 3. Clause 3, which covers interpretations, contains a definition of schedule 3 organisations, which is picked up in other provisions. The schedule 3 organisations are the Electricity Corporation established by the Electricity Corporation Act 1994, the Gas Corporation established by the Gas Corporation Act 1994 and the Water Corporation established by the Water Corporation Act 1995. Those organisations are to be excluded from the main provisions of the Bill. Other members have already expressed concern about that matter, because the Government, for its own purposes, is trying to hide information about these agencies. Whether the Government wants to hide what is happening in those three utilities or whether it wants to ensure that as it proceeds down the path of privatising them that information is not obtained, the fact is the Government has embarked on privatisation for privatisation's sake, not necessarily for the benefit of the State. It may have coincidentally been beneficial in some instances, but the Government has done it for its own ideological purposes. These three major utilities are important for the delivery of services in Western Australia. They are also major contributors to the revenue base of this State. In fact, over a four or five-year period, this Government has increased the total take from trading enterprises from roughly $125m to over $500m in the current budget. In just four or five years, there has been a fourfold increase in the tax take from utilities. The key utility contributing to that is the Water Corporation - that is by far the largest contributor - with smaller amounts coming from the Gas Corporation, which is already in the process of being privatised, and the Electricity Corporation.

Clearly, in any government-owned trading enterprise, there are areas in which commercial confidentiality must be upheld. However, too often commercial confidentiality has been used as the excuse for not revealing information, because it would either show the hand of the Government or embarrass it as a result of decisions it has made. That denies the public, as the owner of these utilities, the right to understand what is happening and to be able to make judgments on the decision making within, and the operation of, these utilities. The Government has preferred to cover up matters that are politically sensitive. It is not that there is any real case of commercial confidentiality in most instances; it is simply an avoidance of being open and accountable because of the decisions made by this Government. I have quoted one of those; that is, to increase fourfold the tax take from government utilities. There are more than those mentioned in this Bill, but the Water Corporation is the largest contributor to that tax take.

In closing, I add my support for the Bill. The Opposition certainly wishes to see the principles put in place. Some improvement is needed, such as the removal of the exemptions for those three authorities. However, the key issue will not be the passage of the Bill; it will be its implementation and the way in which this Government sets it up and runs it. The Opposition hopes that in the near future it will be in government and that it will be able to ensure that this legislation not only is put in place but also is made to work to the fullest extent possible.

MR McGOWAN (Rockingham) [5.32 pm]: I rise to add a few remarks to those made by my colleagues, the members for Thornlie and Nollamara. In doing so, I also indicate my support for this Bill. It will make a difference to the administration and preservation of state records. As such, it will be a valuable improvement. I just spoke to the member for South Perth, and he indicated to me that he has a long history of examining these issues. He feels that this Bill, subject to some amendment, will be a valuable improvement in dealing with these issues, in particular the preservation of what I suppose one could only call “documentary heritage”.

Before I deal with the specific issue of documentary heritage, I will support what was said by the member for Nollamara about freedom of information. I, too, have had a few experiences with freedom of information applications, which I suppose relate in a way to this Bill. I have made a number of FOI applications about various issues. When one receives the answers, often they are incomplete. Sometimes, parts which should not be cut out are cut out of the documents, and that detracts from the openness and accountability of government. I will give a couple of examples. I recently submitted an FOI application to the Minister for Lands, which was for all documents that had been dealt with. I am sorry, I forgot that the Minister for Lands is Hon Doug Shave; I thought it was the bloke who sits next to him. I do not blame the Minister for Lands for what has happened.

Mr Shave: Everyone else does!

Mr McGOWAN: No, I do not blame the minister. However, I will let him know what happened, because it is probably important for him to know.

Mr Shave: If you want to join a footy team, I have 100 people with whom you can get on side.

Mr McGOWAN: Yes. The Minister for Lands is one of the last people on earth I would want to be. In fact, he would be in the top 10 people I would not like to be.

I submitted an application, which I think might have gone to the FOI coordinator at LandCorp, concerning the convention centre project. It had been explained to me that, under the request for proposal document, LandCorp had

had some involvement with one of the convention centre tenderers. I had been informed that LandCorp had endorsed in writing, in a very general way, one proponent's project. I wrote my $30 cheque and sent my FOI application to LandCorp, asking for a copy of whatever documentation had been signed and sent by LandCorp regarding that issue. This concerned one of the tenderers, and it is no secret that the tenderer was the Leighton Contractors Pty Ltd consortium. I had heard that the documentation existed and that LandCorp had endorsed it. In fact, I had heard that there were two documents to that effect.

I received a telephone call from someone at LandCorp that no documentation, correspondence or letters, existed, and that LandCorp did not know what I was talking about. Nevertheless, obviously LandCorp would keep my $30. The telephone call that I received indicated that LandCorp was quite surprised and a little concerned, I suppose - not annoyed - about why I was wasting its time with such a letter. I informed the person who rang me that indeed I knew correspondence existed and that maybe she should look again. In any event, I received a letter from LandCorp, which contained a letter from LandCorp to, I think, the Leighton consortium, indicating the broad support of LandCorp for the Leighton proposal on the Swan River foreshore. The phone call I received about my FOI application was either deliberately or through a lack of work an attempt to put me off the scent regarding the fact that some correspondence existed.

Mr Shave: LandCorp would not do that.

Mr McGOWAN: If I had not known that correspondence existed, I would have assumed there was none because LandCorp informed me of that.

However, I know that another piece of correspondence was not forwarded to me for my $30. That concerns me. The Parliament has directed these government departments to provide information in this way, and it is certainly in the public interest. I know that there were two pieces of correspondence - in fact, I am absolutely positive there were - yet when LandCorp forwarded its letter to me, I received only one piece of correspondence. Obviously, there has been a breach of the Act.

Mr Shave: Why don't you put in a letter of complaint to the minister and ask him to investigate?

Mr McGOWAN: Because I know that the minister is a very busy man, with all that doorknocking. I know that he must be very busy out on the streets meeting all those people who subsequently say all sorts of terrible things about him. Nevertheless, I am happy to put in a letter of complaint because that matter is of concern. However, my other concern is that I was advised that no correspondence existed, which would have put me off the scent completely -

Mr Shave: So you will definitely write me a letter?

Mr McGOWAN: No, I have not written to the minister; I wrote to LandCorp.

Mr Shave: No, you said you will write to me.

Mr McGOWAN: I will write a letter to the minister. I have written plenty of letters to him in the past.

Mr Shave: Just outline the circumstances accurately.

Mr McGOWAN: I thought that the record in *Hansard* would be sufficient. However, I will write a letter to the minister, with a copy of *Hansard* enclosed. By the way, has the minister tabled that statutory declaration that he said he would table today?

Mr Shave: There is a bit of a problem with that.

Mr McGOWAN: Why is that?

Mr Shave: It is not my property. You should really ask the person who made the declaration. However, as I said, I will table it before the close of business today. There is no problem with that.

Mr McGOWAN: You will table it?

Mr Shave: I said I will.

Mr McGOWAN: Good. The minister asked whether I would write to him, so I asked him whether he would table that statutory declaration. We have both made a commitment to doing something, so we will both have to get around to it.

Mr Shave: I will table my declaration by the close of business today. How about your writing me a letter by the close of business tomorrow?

Mr McGOWAN: I will do that. I will also enclose a copy of the *Hansard*, because I know the minister is busy. He will probably have knocked on many more doors by lunchtime tomorrow.

My second concern about the FOI legislation relates to the fact that I made an FOI request of the Minister for Tourism at least a month ago. I think the time frame in the legislation is one month. I requested copies of documents about various aspects of the convention centre project. Admittedly it was a large application, but extensive documentation has been generated during the planning process. I have received no word whatsoever from the minister's office. As far as I

am concerned, that is a breach of the Act; it is certainly a breach of the spirit of the Act. That concerns me because this project obviously has huge ramifications for State Treasury. I am very interested in seeing the documentation and its provision should be part and parcel of the Government's much-touted public accountability program.

It should not surprise me that I have received no response, because I have written to the Minister for Tourism twice about receiving a briefing on the project. On 1 August I was given 30 minutes' notice of a briefing. I was rung at 1.30 pm to be told that a briefing would be held at 2.00 pm. I called the minister's office and said that I could not attend and requested another appointment. I tentatively arranged with Mr Roy Laming, the minister's chief of staff, for a briefing to be provided on a Tuesday evening. I saw Mr Crockett in Parliament House on the night in question and thought that the briefing had been arranged but that I had not been advised. That was not the case. Despite two letters, a number of telephone calls and a tentative arrangement, the Government has managed to give me only 30 minutes' notice of a briefing. Obviously I could not attend at such short notice. It is a pity that the Premier is not here to be disabused of his fantasies in that regard. Given what has happened, it is not surprising that I have received no response to my FOI application to the Minister for Tourism about the convention centre project.

This Bill will provide for the preservation of the State's written records. Obviously I support that. Documentary heritage can often be of great significance to those who examine what took place in days gone by. As the member for South Perth said, it is a very good thing.

While I am addressing the subject of heritage, I will make a few ancillary points. If we intend to protect this State's heritage, we must separate the Planning and Heritage portfolios. They are mutually exclusive. The Arts and the Environment portfolios can be effectively combined, and the Environment and Heritage portfolios have a natural connection. However, the Planning and Heritage portfolios have a natural dichotomy, and they should be separated. It is obvious to heritage groups throughout Western Australia that the minister responsible for these portfolios regards planning as most significant and heritage as a subsidiary issue. The Opposition has already made the commitment that, if it is elected to government, it will divide the portfolios and ensure that heritage issues receive the appropriate consideration of a minister who has that area as his or her primary responsibility.

That leads me to ask: Where is the new heritage Bill? The Minister for Heritage introduced the Bill last year and it was comprehensively demolished by the Opposition. In a parliamentary first, the minister withdrew the Bill and undertook to have it redrafted following criticism by members of the Opposition, which was strongly supported by community groups concerned about heritage issues. As yet we have not seen a redrafted Bill. The current legislation was a landmark Bill, but it was written in the style of the times - even though that was only 10 years ago. It is out of date and it can be improved. When will that redrafted Bill be introduced? The community would like to see a new Bill debated shortly.

When the new legislation is introduced, heritage must be its primary focus, not ancillary issues. We have seen examples of that in the past. The Minister for Planning and Heritage obviously puts his Planning portfolio responsibilities before his Heritage portfolio responsibilities. I would like to see heritage issues treated with the respect they deserve. No decision has been made about the Raffles Hotel, but I will address another case. I refer to the building at 31 Malcolm Street, West Perth. Contrary to a Heritage Council recommendation, the Heritage Minister has directed that the building not be heritage listed. The building can be seen from the steps of Parliament House; it is over the road on the southern side of this building. It is an old house constructed in 1883, and it is significant because it was constructed for Edith and James Cowan. Architecturally, although it has been modified to some degree, it is a striking building. I often condemn the minister for making off-the-cuff decisions without the benefit of any expertise. I walked over the road to inspect the house and found that it retains much of its original integrity. It is a striking and attractive building and it is historically significant as the home of the first female member of Parliament in our nation's history. As such, it deserves to be preserved. I call on the Minister for Heritage to change his decision about this building. Its design, history, authenticity and importance to those elected to public office and the wider community is significant.

Mr Wiese: You are almost speaking like an expert.

Mr Board: On heritage!

Mr Carpenter: He is an expert.

Mr McGOWAN: I thank the member for Willagee for that interjection. I am sure he has good reason to make it.

This building needs to be preserved, and I call on the Government to do so. Edith Cowan was a conservative member of Parliament as a Nationalist Party member; therefore, I show my bipartisan credentials in supporting the preservation of this building. Edith Cowan was quite old by today's standard when she was first elected to Parliament, being in her sixties, by which age most members have left this place.

Mr Pendal: To which building do you refer?

Mr McGOWAN: I refer to 31 Malcolm Street, West Perth.

Mr Pendal: Everything has been taken from there over to Edith Cowan University, for which those responsible should have been shot. It has been taken to the campus.

Mr McGOWAN: That is not the information I have been given by the Heritage Council of WA. The member for South Perth must be referring to another building. It is important that the Malcolm Street building be preserved, and I call upon the Minister for Heritage to take that step. It is important to preserve our State's history. We need a new heritage Bill. I call on the members for Wagin and South Perth to check their facts and consider the Heritage Council material on this issue.

Mr Pendal: You are right inasmuch as it should be at Malcolm Street.

Mr McGOWAN: Members opposite should walk across the road and take a look - I will even escort them. I support the Bill and the amendments to be moved by the member for Thornlie.

MR BOARD (Murdoch - Minister for the Arts) [5.52 pm]: It is with pleasure as Minister for the Arts that I reply to the second reading debate on this Bill. I thank the Opposition for its support for the Bill and its principles. This legislation has been strengthened from that originally put before the House. I thank all members for their contributions, including the members for Thornlie, Rockingham and Nollamara. I particularly thank the member for South Perth for his contribution not only today but over a long period. His persistence in many ways has brought this Bill to the House in a way of which all members can be proud. I thank the member for his work in opposition and for his concern about public records and government accountability.

Mr Pendal: Thank you.

Mr BOARD: I will take the opportunity at the third reading stage to thank others who have contributed to the Bill.

Unashamedly, this Bill is about consistency across government. It is about public record keeping of the highest standards, bringing into the twenty-first century public records and public accountability, which in many ways was the notion behind the genesis of this Bill. It was raised by not only the Royal Commission into Commercial Activities of Government and Other Matters but also the Commission on Government. Those inquiry reports recommended stronger and more consistent record keeping across government, and a body to look after public records and to provide public access at appropriate times. This requires keeping records which are fundamental, not only to heritage but also to government in this State.

The Government has produced a Bill which requires government agencies to think consistently and solidly about their record keeping. In fact, it will be mandatory for government agencies, local government, Cabinet, Parliament and a range of other bodies to make plans for their record keeping. Those plans will require all such bodies to think about the records to be kept for the benefit of the State to become part of our archive material. They will need to consider documents not required in the long term, but needed to be kept within the agency. The bodies must consider the method by which the records will be kept, the access and maintenance of records and the manner in which the records will be destroyed, if that is to be the case. A consistent standard will be created and maintained across the public sector.

The Bill will establish the State Records Commission, the membership of which indicates it will be independent and have the highest levels of accountability with public records. By the inclusion of the Auditor General, the Ombudsman, and the Information Commissioner on the commission, the manner of this body’s constitution and its record management capabilities will give us the strongest and most independent body possible. This will create standards by which government agencies and others will keep their records.

Some concerns were raised during debate about the independence of the commission. I can assure members that the commission's independence is embodied in this legislation, which indicates that the minister cannot direct the commission in any way, other than about record-keeping policy. However, the commission cannot be directed by the minister on individual records or individual agencies.

Accountability is at the core of this legislation. I thank members for recognising that fact. The Government will continue to ensure that all information available to the community will be part of this record-keeping process. The commission will determine what records must be kept in approving agencies’ record plans. The agencies might put the plans together, but the commission will determine whether the plans meet the standards required.

A number of issues where raised. The member for Thornlie stated that the Public Records Office would not be independent. As three highly independent authorities will be part of the organisation, it will be as independent as possible. It cannot be directed by the minister. The commission will report on an annual basis to Parliament on the operations of the Act. It can report to Parliament on any authority which does not adhere to, or acts against the interests of, the Act. The commission will be able to report directly to Parliament, as does the Auditor General. A great deal of parliamentary scrutiny can ultimately occur. Therefore, the commission will be incredibly independent. Also, the commission will have a working committee, which will be appointed by the commission, not the minister; it will be a working body of the commission.

Ms McHale: I was talking about the Public Records Office, not the commission.

Mr BOARD: The Public Records Office will comprise a group of public servants who will be independent of government influence.

Sitting suspended from 6.00 to 7.00 pm

Mr BOARD: I now deal with some of the issues raised by members. The second reading speech dealt with the main aspects of the Bill, which are accountability and legislation that provides for consistent record keeping. The legislation will bring record keeping into the twenty-first century. The member for Thornlie referred to the independence of the State Records Office, which is located within the Library and Information Service of Western Australia. I indicated that in view of the nature and make-up of the proposed State Records Commission, the records office will be as independent as any body could be. The legislation does not allocate the ministerial responsibility for the State Records Office, as this may be determined by administrative edict. In effect, the opportunity exists at any time for ministerial responsibility to be within another minister's portfolio or with the Premier. In the transitional period, when the new body will have a large workload with archival material and the large volume of records that will be established over the first few months, the State Records Office needs the support of the existing services within LISWA. The Government sees no need to set up another bureaucracy at additional cost to the State as the records office within LISWA will do a tremendous job. The independent State Records Commission will determine the policy direction of the State Records Office. The office will function as would any independent public sector body working under the policy direction of a commission. That augurs well for the independence of the commission and the functioning of the working group.

The Opposition raised a couple of other issues: Firstly, the ability for particular agencies or bodies to contract out their record-keeping liability to another body - I suspect to a private sector body - although I do not envisage all agencies will pursue this option. In view of the changing nature of technology, particularly digitalisation and the advent of the need to store and transfer electronic information both written and pictorial in a digitalised form, it may be that professional and specialist bodies with the expertise or the ability to afford that expertise in the long term are needed. Although I do not think many agencies will avail themselves of that opportunity, it is important that it is possible for them to do so; hence it is embodied in the legislation.

Concern was expressed about protecting that information from the eyes of the public for 75 years. The Government does not envisage that would be a regular term for protection. However, the Government has good reason for personal and sensitive information - certainly medical records are protected for up to 100 years - and long-term commercially confidential contracts to be protected well over the 25-year period. That will need to be part of the plan put forward by an agency and approved by the State Records Commission, and would be in line with the accountability factors in the Bill.

The member for Thornlie was concerned about privatisation and the contracting out of various government functions. Clause 8(5) will allay the fears of the member for Thornlie, and we will discuss that aspect during the consideration in detail stage.

The member for South Perth and members of the Opposition raised concerns about government trading enterprises. Not all bodies that are considered to be GTEs are fully corporatised bodies within the meaning of the legislation. They are responsible to boards which are responsible to different ministers. The reality is that in a deregulated world, and in competition against the private sector, the ability of the Government to direct GTEs through more than the one minister is not in keeping with other government decisions. Trading enterprises are required to have record plans that need to be stringent and consistent with the legislation and are approved by the relevant minister's legislation. The Government is not walking away from the accountability factors, and feels that is consistent with previous government decisions.

The Bill has been a long time coming to this stage. I thank the previous Minister for the Arts, Hon Peter Foss, for his consistent work on this legislation. The support from the Opposition and Independent members has been valuable not only to get the Bill to this point but in making sure the Bill has a smooth transition through this House. I commend the Bill to the House and look forward to the operations of the State Records Bill.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title -

Ms McHALE: My question relates to the short title of the Bill and the shift from public records to the State Records Bill. I apologise to the minister. I was late returning and may not have heard him address a number of the issues to which I will refer. As I said during my speech, we have always seen the need for public records legislation. The previous Minister for the Arts decided in his wisdom to change it to "State". It is in my view more than semantics to change those words. It is shifting the emphasis away from a truly public record to records that belong to the State. In other words, in my view and in the view of those who work in the area of records management, the records are the records of the people and not of the State. Why has this Government seen fit to make that shift?

Mr BOARD: "State" is a more inclusive name for the Bill and does not take away from any provisions concerning access. The "State" applies to records still in official use and "public" is open to the public and is available for inspection only. The reality is that all information is used by the State, including that outside the State. As the member will know, we have included in the Bill local government, ministerial offices, Cabinet and so forth. Since the Bill has been widened, we feel that that name is appropriate.

Ms McHale: That is all right.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Interpretation -

Ms McHALE: This is the first opportunity I have had to deal with the very contentious issue of the schedule 3 organisations. I refer specifically to line 11 on page 3 that reads -

> **"government organization"** means an organization in Schedule 1 but does not include an organization in schedule 2;

I have not prepared an amendment I seek. Perhaps if I could foreshadow my amendment and then call on one of my colleagues to speak so I could write out the amendment.

The SPEAKER: We are in your hands.

Ms McHALE: This goes to the issue of whether the three public utilities - Water Corporation, Western Power and AlintaGas - should be treated differently. During the second reading debate I spoke extensively on why the Bill is flawed in that it excludes those three organisations from being treated in the same way as other government organisations. It is not in the public interest that those three utilities be treated differently. It is a question of safety, and in my speech I referred to Sydney Water Corporation's crisis with the cryptosporidium bacteria in the water supply; to the Longford gas explosion in Victoria; and to the electricity crisis in New Zealand, all of which had some reference to the importance of public records. Those three organisations should be treated in exactly the same way as is any government organisation, that is, they should be subjected to the same rigorous processes, plans and monitoring as any other government organisation, and indeed every other government training enterprise. But for reasons best known to this Government - which we suspect go to the ultimate privatisation of those utilities - the Government has seen fit, very wrongly, to exclude these three organisations from being treated in the same way as other organisations. Therefore, I move that the words "and does include organisations listed under Schedule 3"-

The SPEAKER: I indicate that we need to have amendments in writing. The Table can give advice as to wording which is acceptable. There can be difficulties with amendments that are worked up fairly quickly. Another avenue open to the member under standing orders, depending on what the minister can tell us, is to move for a postponement of this clause. That may allow an opportunity for some legal input to ensure that if everyone wants to do it, the right form of wording can be found. Quite a few avenues are open to the member. If she is foreshadowing that amendment, there is time to work out what she wants to do. It is not in a good form at the moment, and she needs to specify the line. The table officers can help the member.

Ms McHALE: I have worked it out. I move -

> Page 3, line 12 - To insert after "Schedule 1" the phrase "and Schedule 3".

The definition will then read -

> **"government organization"** means an organisation in Schedule 1 and Schedule 3 but does not include an organization in Schedule 2;

This is a threshold argument and obviously if this amendment is defeated, there is little point trying to amend every other reference to schedule 3 in the Bill. I have chosen this clause because it has the first reference to the schedules.

Mr PENDAL: In the second reading debate I alluded to my intention to support any amendment of this kind, which effectively strikes out schedule 3. It means we can get rid of the definition of schedule 3 organisations listed at page 56 of the Bill. No matter which way it is done, I support the amendment moved by the member for Thornlie. The Government has decided to exclude from the ambit of the Bill the three organisations of all the government organisations - whether departments, government agencies, trading organisations or whatever they are called - one would expect to be included; that is, the Electricity Corporation, the Gas Corporation and the Water Corporation. It beggars belief that the Government, even at this late stage, is prepared to put in jeopardy a Bill that will attract a lot of kudos, and will bring a lot of credit to the Government that gets it on the statute book. If it does not put it in jeopardy, the Bill will be a little diminished by the provision that everyone else will be subjected to the real strictures of the legislation, but these three exempt organisations will not be. As I mentioned in the second reading debate, these organisations will be given preferential treatment.

Why make the assertion that these are the first three that should be included, rather than the first three to be taken out? The first reason could be that mentioned by the member for Thornlie. The second reason is that they are core government services that inevitably provide services to the public that recent experience alone proves the point that these organisations are fallible. Apart from the gas explosion in Victoria, the contamination of the Sydney water supply, and the notion that the records of those organisations can be treated in a diminished, or inferior, way to those of any other government department, the reasoning defies belief. Those organisations not only provide essential services, but also provide them in circumstances in which public health and safety come into the equation all the time. I recently

needed to call out AlintaGas officers because I managed to put a spear through the gasworks of my home, and for a moment or two it seemed that I would put my electorate in jeopardy. Gas and water supplies are about as basic as supplies get. They have public health, safety and security aspects. I simply do not understand why the Government wants to put them in an inferior position. It demonstrates once again what these quangos are able to do, and the power they are able to exert over their ministers to bring about the sort of result achieved in this legislation. It is a bad result, and I support the amendment.

Mr BOARD: The Government will not support this amendment, and it will not accept amendments to the organisations listed in schedule 3. That is not to imply under any circumstances or in any way that there will be lack of accountability on the part of AlintaGas, the Water Corporation and Western Power. In fact, clause 27 of the Bill specifically deals with schedule 3 organisations and their record-keeping plans. As I indicated in the response to the second reading debate, although I understand the sentiments expressed, the reality is that consistent with government decision making with regard to government trading enterprises, they are corporatised bodies that are fully responsible under their own legislation to a board in a commercial sense. They can be directed by only one minister and, as a result, in a deregulated environment those bodies need to be able to act in the commercial world competing against the private sector. With organisations that were previously government bodies, for commercial confidentiality reasons the Government will seek to protect some of the information as the activities are contracted out. Many of the contracts run for long periods, and a number of gas contracts are for more than 20 years. In a commercial situation we could put taxpayers at greater risk of higher costs from organisations that do not want to share their intellectual property or share information that is often available in the contracting or tendering regime, which would give them an opportunity to win a contract in competition with the private sector.

Mr Pendal: None of that is in jeopardy; I do not know what you are arguing about.

Mr BOARD: We are talking about the fact that, consistent with previous government decisions, GTEs are, by their very nature, responsible in the commercial sense to a board. This Bill has implications only to government organisations, not the private sector. Those bodies are dealing in a commercial world. The Government has made decisions in the past, and will continue to make decisions, to give them the opportunity to act commercially in every way possible; and, consistent with previous government decisions, Cabinet has approved those three exemptions.

Section 27 deals directly with the need for GTEs to have a record-keeping plan. That plan would generally, consistent with the practice for other government organisations, need to be approved by the minister. We have not had difficulties in the past, and I suspect that record keeping will be first class.

Ms McHALE: It is interesting that the Government's priority is to commercial confidentiality, while members on this side appear to be talking about public safety. The problem with the Government's intransigence on this issue is that it is being driven by this notion of commercial confidentiality over and above the importance of -

Mr Board: You are drawing a very long bow if you are suggesting that public safety will be in jeopardy as a result of this legislation. In fact, it will be quite the opposite.

Ms McHALE: The minister may say that to me now, but as soon as something goes wrong and there is an attempt to trace back from the emergency through the paper trail, the minister will rue the day he said that. I remind him again that one of the telling findings of the royal commission into the Longford gas explosion was the -

Mr Board: GTEs are required to have a record-keeping plan.

Ms McHALE: Yes, but no-one can scrutinise those plans, so no-one will know whether they are adhering to them. Of course the minister will tell me the Water Corporation will keep its records well, but the feedback I have been getting is that one of its problems is its record keeping. This Bill will not enable the maximum scrutiny of those records, because the GTEs will not be subject to the same rules and regulations. The GTEs will have record-keeping plans, and the ministers responsible for those plans will approve, or otherwise, those plans. However, all the ministers will need to do is send a note to the commission saying that they have approved those plans. They will not need to refer those plans to the commission. That is vastly different from the requirements that are placed on all other organisations. If the minister is worried about commercial confidentiality, he should deal with that matter through the FOI Act, not through this Act. It is irresponsible for the Government to exclude these organisations.

Mr BOARD: The minister is responsible to this House and may be scrutinised by this House if there is any lack of record keeping by those trading enterprises.

Amendment put and a division taken with the following result -

Ayes (15)

Ms Anwyl	Mr Kobelke	Mr McGowan	Mrs Roberts
Mr Brown	Ms MacTiernan	Ms McHale	Mr Thomas
Mr Carpenter	Mr Marlborough	Mr Pendal	Mr Cunningham (*Teller)*
Dr Constable	Mr McGinty	Mr Ripper	

Noes (26)

Mr Ainsworth	Mr Day	Mr Masters	Mr Sweetman
Mr Baker	Mrs Edwardes	Mr McNee	Mr Trenorden
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Minson	Dr Turnbull
Mr Bloffwitch	Mr House	Mr Omodei	Mr Wiese
Mr Board	Mr Johnson	Mr Osborne	Mr Tubby *(Teller)*
Mr Bradshaw	Mr MacLean	Mr Prince	
Mr Cowan	Mr Marshall	Mr Shave	

Pairs

Dr Gallop	Mr Court
Dr Edwards	Dr Hames
Ms Warnock	Mr Nicholls
Mr Bridge	Mrs Parker
Mr Graham	Mr Barnett
Mr Grill	Mrs Holmes
Mr Riebeling	Mrs van de Klashorst

Amendment thus negatived.

Clause put and passed.

Clauses 4 to 19 put and passed.

Clause 20: Existing organizations to lodge draft plans -

Ms McHALE: The Bill does not provide for a time frame for the agencies to have lodged the draft plans. I note that clause 20(2) provides for that to be published in the *Government Gazette*. What time frame will be applied to agencies? Will an agency have unlimited time to develop the plan? I note that when new agencies come into existence, they have six months in which to prepare their plans. What is the minister's intention in regard to existing agencies?

Mr BOARD: Most agencies already have some kind of record plan, although they will be required to submit a new record plan to the commission for approval. I am advised that the expiry period is two years in which all record plans are to be submitted to the commission.

Ms McHale: Is that in the Bill?

Mr BOARD: Yes, it is in the Bill, and we are just seeking that at present. Is it essential that the member have that information now?

Ms McHALE: It is important. If it is in the Bill, it should be found. If it is not in the Bill, there is a gap in the administration of the Bill. It is important because some agencies may be reluctant to develop their record-keeping plans. If there is no time frame for their submissions, it is open-ended. I would have thought that a time frame could have been put in the Bill to tighten that up. Clearly, the agencies need a framework in which to operate. Another issue, which in partly related to this clause, is about government agencies that are subsequently privatised. Did the minister refer to that in his response?

Mr Board: Yes, I did.

Ms McHALE: Where is that?

Mr BOARD: Clause 8(5) states -

> If a person that is not a government organization -

That relates to those that are outsourced.

> - takes control of a government record from a former organization -
>
> (a) the person is to be taken to be a government organization for the purposes of this Act; and
>
> (b) the former organization's record keeping plan is to be taken to be the person's record keeping plan.

That deals with the issue of either privatisation or passing on a government business outside.

Ms McHale: Again, it is important that we have a time frame.

Mr BOARD: Clause 28(5) indicates that not more than five years is to elapse between the approval of a government organisation's record-keeping plan and a review of it or between one review and another. From what we can see, it does not specify that there must be a given time in which the plan must be submitted. I am happy to change that and put

in a two-year period, as I believe the intention of the Bill is that all plans be submitted to the commission within two years of the establishment of the commission. If we drafted an amendment now, I would be happy to move it.

THE DEPUTY SPEAKER: Would members prefer to do that now or wait until the Bill goes to the upper House?

Ms McHale: I am happy, and think it is preferable, to do it now.

Mr BOARD: If we do it through the upper House, we will get the wording correct and it will meet the requirement.

Ms McHALE: Is the Government making a commitment to amend the Bill in the upper House to give a time limit?

Mr Board: It will be a maximum two-year period for agencies to submit their plans to the commission.

Ms McHALE: I am happy with that.

Clause put and passed.

Clauses 21 to 26 put and passed.

Clause 27: Schedule 3 organizations to have plans -

Ms McHALE: Clause 27 relates to the arrangements which have to be put in place for the three public utilities that have now been excluded from the proper jurisdiction of the State Records Commission. Also a number of other government trading enterprises, such as the Gold Corporation, are not exempted from the application of this legislation. I have a question on subclause(4). Is there an intention to set up an advisory process for the ministers responsible for those utilities? Who will advise the ministers responsible for water, electricity and gas on whether the record keeping plans are adequate?

Mr BOARD: The advice of the State Records Office will be available to the ministers and they can seek the advice of the commission. I believe this is an issue of accountability and it is to make sure that the ministers are satisfied that the general standards are being met within their organisations.

Clause put and passed.

Clause 28 put and passed.

Clause 29: Government organizations to report periodically -

Ms McHALE: Clause 29 excludes the schedule 3 organisations from having to report to the commission. I wonder whether the minister thought, given his other comments about the scrutiny of records, that it was acceptable that those three organisations will not have to report to the commission at intervals "as the Commission from time to time directs". Does that reduce the accountability and transparency of the whole plan by having that clause.

Mr BOARD: I believe that it does not. If the three organisations listed in schedule 3 had a mandatory requirement to report to the commission, there would be no need to have schedule 3. They are accountable to the board and to the minister, who is accountable to this House. It is mandatory for them to have the plan. We dealt with that issue in the previous amendment moved by the member.

Clause put and passed.

Clauses 30 to 49 put and passed.

Clause 50: Applying for access to State archives -

Mr BOARD: I move -

> Page 33, lines 10 to 13 -To delete the lines and substitute the following -
>
> (3) A government organization that had access to a State archive before it was transferred to the State archives collection is, on application to the Director, entitled to have access to it at any reasonable time.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 51 put andnegatived.

New clause 51 -

Mr BOARD: I move -

> Page 33, after line 13 - To insert the following new clause -
>
> **51. Access to archives may be controlled**
>
> For the purpose of ensuring the safe custody of and protecting the condition of a State archive, whether in the State archives collection or not, the Director may attach conditions to a person or a government organization having access to it.

New clause put and passed.

Clauses 52 to 57 put and passed.

Clause 58: Membership -

Ms McHALE: Clause 58 deals with the composition of the commission. Are the Office of the Auditor General, the Information Commissioner and the Ombudsman all subject to this legislation? Is there a potential for Caesar to judge Caesar?

Mr BOARD: Those offices are subject to the legislation and they may already have record plans. I do not believe there is a conflict of interest. If there were on any issue it may be declared. The Government is trying to achieve independence. The Auditor General, the Information Commissioner and the Ombudsman, by the very nature of their work and expertise in independent record keeping, bring total accountability and consistency. The presence of the Auditor General and the Information Commissioner will enhance the independent nature of the commission.

Ms McHALE: I do not in any way intend impugning the integrity of those offices. However, I recollect that the Commission on Government considered the appointment of the Ombudsman, the Information Commissioner and the Auditor General and decided that that was not the best way to go. Does the minister have any comment about why the Government decided that? The three individuals have accepted the changes to the Bill, but did any or all of them express reservations about being on the State Records Commission?

To summarise my questions, I am asking for a comment about the Commission on Government's recommendation and an indication of whether any of the three officers expressed reservations.

Mr BOARD: Neither I nor my adviser is aware that those people have expressed reservations. In fact, it has been the opposite. None of those officers have raised any concerns about a conflict of interest. My understanding is that they believe it will enhance and assist their current positions. From that point of view, we do not believe there will be a conflict of interest that might inhibit their ability to fulfil their current legislative roles.

As a result of concerns that were placed on the record after the introduction of the State Records Bill 1998, the legislation was amended and brought back to the House. As the member indicated in her contribution to the second reading debate, a quantum leap has been made. The State Records Commission will be seen to be totally independent and will report to Government. Those officers are at the highest echelon of public scrutiny.

Ms McHale: It will report to the Parliament, not to the Government.

Mr BOARD: Yes. The role of the commission has been strengthened. We are happy with the choice of officers.

Clause put and passed.

Clauses 59 and 60 put and passed.

Clause 61: Principles and standards -

Ms McHALE: This clause directs the State Records Commission to establish principles and standards. Will those principles and standards apply to organisations under Schedule 3? It is not entirely clear whether the intent of the clause will apply to Schedule 3, which lists those organisations that do not have to report to the commission.

Mr BOARD: The government trading enterprises will adopt the principles established by the commission. We expect those standards to be adhered to and incorporated into the record plans of those enterprises. As indicated earlier, those plans are approved by the responsible minister and, therefore, are subject to the scrutiny of this Parliament. We expect that the responsible minister would ensure that the spirit of the standards required across government is incorporated into the record plans of those organisations.

Ms McHALE: How will the commission know those standards and principles are being adhered to if schedule 3 organisations do not have to report to it?

Mr BOARD: I suspect we will know whether the standards and principles are followed through the nature of those enterprises as public bodies and through issues raised by members of Parliament or the public. Any concerns about the way records are kept might be addressed in this place. The member is suggesting that those government trading enterprises would want to hide information and not be accountable to their board or minister. I assure the member that is not the case. We expect high standards from those trading enterprises. The responsible minister will ensure they conform to the spirit of this legislation. Schedule 3 is needed because these enterprises are commercial bodies, not because of any lack of accountability within them.

Clause put and passed.

Clauses 62 to 84 put and passed.

Schedules 1 and 2 put and passed.

Schedule 3 -

Mr PENDAL: This is my final act of opposition. I again go on record as saying that, for the reasons I outlined in my contribution to the second reading debate and the earlier stage of consideration in detail, it is a mistake to include Schedule 3 in the Bill. The issue is not, as the minister said in his response to the second reading debate, that information about a water contamination scandal or a gas explosion in a public facility might be kept from the public. The issue is the extent to which the agency is able to control the archival process of such incidents through in-house record keeping. The fear is not of the impact this legislation could have on contemporary society in the wake of a contamination of the metropolitan water system or the explosion of a gasworks but of the impact it could have on future generations by denying them full access to the records of those events for research and other purposes. The minister has not allayed that concern.

I listened to his argument of commercial confidentiality with some interest. I regret to say this as the minister is a personal friend of mine. Perhaps I should not say that; I do not want to give him the kiss of death.

Mr McGinty: Can I say he's also a personal friend of mine?

Mr PENDAL: Is he? I think that, between the member for Fremantle and me, he has been finished tonight. However, as the Premier is interstate and is having problems with protesters, he probably will not read the transcript.

If the minister has one fault, it is that he came into the Parliament in 1993 and did not experience time in opposition. I mention that only because the argument of commercial confidentiality has been used by Governments since time immemorial. The only thing that alters is that people move from the left-hand side of the Chamber to the right-hand side. When in government, they adopt the false god of commercial confidentiality. I say there is no such thing as commercial confidentiality when a company enters into a contract with a public agency, although I know that is not the law. It should be tough luck. It is what a company takes on when it enters into a contract with a public authority. This schedule is important because it is the kernel of the Bill. I commend the minister, he has overcome the intransigence of his predecessor. He will be seen as having put on the statute books an important piece of legislation. It is sad that it is only 97 per cent of it. It lacks only in one glaring detail; that is, that we will allow those three so-called exempt organisations to have a privileged position not enjoyed by any other public authority in Western Australia. That is a bad piece of public policy. This clause containing that exemption is a bad piece of legislation.

Ms McHALE: I will use this opportunity to bring the debate back to what the member for South Perth considers to be the kernel and what I consider to be the most critical element of the Bill; people can live with the rest of it. There has been some give and take and a number of important issues have been resolved that go to the concerns of the archivists. This schedule, however, concerns public safety and has a broader application and much more serious consequences for the public health and ultimate safety of the State. If, heaven forbid, anything goes wrong - members have seen the experiences of New South Wales, Victoria and New Zealand - and we do not have the same accountable agencies in terms of the records, it will be on this Government's head.

I have heard nothing in the debate or the response from the minister to indicate any justification for exclusion. The minister's admission that the standards and principles of the State Records Commission apply to these GTE's is all the more reason why the Water Corporation and the electricity and the gas corporations should have been included. It is a serious omission and one whose full import may not be realised. It is erroneous to have excluded them and there is no justification for it whatsoever. As I have said time and again, if there are problems of access, we should not deal with them in this Bill, which is about proper record keeping and accountability; they must be dealt with in the other Bill. It is a shame that on a question of public safety the Government has not seen fit to amend the legislation.

Mr BARNETT: I have not heard all of the debates and I apologise for that. I have gathered the tenor of the debate from recent comments. Some comments have been made about commercial confidentiality. That is a realistic issue. In the energy sector contracts can extend to the order of 20 years. The issue, however, is not simply one of commercial confidentiality. The point has been lost.

The spectrum of government agencies ranges from a government department that is totally accountable and operates under public service regulations through to a number of increasingly independent agencies. Much of what is often described quite loosely in this House as GTE's gives an impression of independence from the minister; however, that is not generally the case. In the spectrum from pure government agencies through to agencies that are as autonomous as they can be but remain in government ownership, at the extreme right of autonomy or independence are Western Power and AlintaGas. A little back from that extreme is the Water Corporation, then the port authorities and others. Under the energy regulation legislation that was passed a couple of years ago, Western Power and AlintaGas are strictly corporatised. The Water Corporation is close to that but not to the same degree.

AlintaGas has been privatised, so we are talking about Western Power Corporation. Western Power has a board. There are a lot of boards in Government. Western Power's board is set up as though it were a private corporation. The board members of Western Power are subject to all the responsibilities and are exposed to all the liabilities and penalties of company directors, which can include jail. It is not a matter of a slap across the wrist or the members losing their positions. They are as exposed as any board member of any private Australian Stock Exchange listed company. That is

a different dimension. Members can debate in this Chamber, but we do not face going to jail if something is wrong. I am not being dramatic, that is the reality of the issue. The legislation concerning totally corporatised entities states that the chief executive accounts to the board and the board through the chairman accounts to the minister. The minister - in this case for Energy, me - represents the collective ownership of the people of Western Australia.

Mr Thomas interjected.

Mr BARNETT: Others may not. The member can wait for his turn to speak. They report to the minister. The reason for that is to ensure the lines of accountability are clear. If the Government decides that something should apply to Western Power, it is the responsibility of the Minister for Energy alone. It may follow a decision by Cabinet, but the Minister for Energy alone has the power to instruct, communicate and direct the board. That is the prime reason Western Power is exempted under this legislation. It is not about protecting confidential information. It is not that public records within Western Power will not be recorded and protected in the same way. The one difference is that it will not be the Minister for Arts who has responsibility for this Bill, it must at law under the Western Power legislation be the Minister for Energy who effects that role. It is not so much about confidentiality as it is about the rights, responsibilities and liabilities of the directors and staff of Western Power as a truly corporatised entity and its relation to Government, which can only be through the Minister for Energy. That is the reason it is exempted. It is not exempted from responsibility but it will be executed through the Minister for Energy and it must have its own legislation.

Mr PENDAL: I will make a brief final comment in response to the Minister for Energy. He has given the reason why we should not have any exempt organisations. If there is no question of commercial confidentiality such as that to which I referred, the minister has conceded that we are not talking about contemporary issues. I concede that there are occasions when contemporary activities of a government trading organisation need to have an umbrella under which they can operate commercially.

The argument the Opposition makes is that it is not talking about contemporary issues but about the saving and preservation of the records. In the ordinary course of events those records would not necessarily become available for 10, 20 or 30 years. There was a capacity in this Bill not to have schedule three organisations; instead, we would put an embargo on the information. Therefore, this is not the place for the minister to be arguing what is otherwise a valid point - or at least the last minute or so of what he was saying. Members, therefore, could have used the embargo to properly protect those situations without making the public record regimes of those organisations answerable only to the minister. As far as I am concerned the Bill has now passed and I have put it in the bin. Protecting some of the records from the public gaze for 75 years is mentioned somewhere in the Bill. Some of those records concern delicate issues such as people's adoptions. No one objected to that. People objected to the Government directing that those records would never become available; therefore, they would be destroyed and no one would have them even after a reasonable embargo period.

My answer to what the minister has said is that he has given the reasons why the Government should have supported the Opposition's position. There should not have been an exemption of the kind that put the three exempt organisations under the ministerial regime rather than under the Public Records Office regime. Were there a need to have an embargo on some of the more so-called commercially confidential deals, by all means stick an embargo on it and say that no one can have access to the records for 25 years. For example, British and Australian Government cabinet records do not become available for 30 years after the event. That is why every year at Christmas *The West Australian* is filled with pages about matters that were the subject of federal cabinet discussions 30 years earlier that the National Archives of Australia will now allow the public gaze to fall on. The Bill would have been better without the inclusion of exempt organisations.

Mr THOMAS: I heard the Minister for Energy expounding his doctrine of commercial confidentiality. I felt constrained to come into the Chamber and listen to a doctrine he has expounded on a number of occasions. On this occasion, as before, the minister is wrong. The argument of the Minister for Energy is that Western Power - the organisation that remains in the public sector - operates under corporate legislation and the rules of corporate governance apply to the directors. Therefore, Western Power is accountable in the same way as the management of BHP or any other public company is responsible to shareholders, and the interests of those shareholders are protected by rigorous rules of corporate governance. The minister's analogy breaks down, as is clear in the exposition of his case, as he represents the shareholders. Public companies such as BHP hold annual meetings at which shareholders can ask questions of the directors. They can seek to gain information about the way the company in which they have an interest is being governed. They have some rights to information. If the directors are not of a mind to give the information they want and feel the best interests of the shareholders are served by the shareholders' not having access, the shareholders are entitled to sell their shares and invest their capital in some other business. They do not have to remain as shareholders if they cannot get the information they want. Western Power and the Water Corporation, and in the past AlintaGas, have captive shareholders and a captive market. As customers of Western Power we cannot divest ourselves of these shares, so to speak, or of the products of that business, even though it operates under something that is analogous to corporate governance.

The Commission on Government addressed this model that the minister expounded on this occasion, and on many occasions over the past few years. The COG came up with a set of recommendations on the dilemma between

protecting the public interest in matters of commercial confidentiality and the public's right to know about the operations of organisations such as Western Power and AlintaGas. The Minister for Energy likes to see himself as the embodiment of the shareholders, the people of Western Australia at large, and if he is satisfied, the shareholders should be satisfied. Of course, the minister does not represent all the people of Western Australia. COG recommended there should be a presumption that questions raised in Parliament should be answered, and the Government should not be able to cite commercial confidentiality as a reason for not answering parliamentary questions, as this minister, above all has a habit of doing. The COG recommended that if there were occasions - this arises from time to time in such matters as patents and intellectual property - where questions could be asked which, if answered, would reveal matters of sensitive intellectual property, a committee such as the Public Accounts Committee should recommend when those matters came within the proper grounds for citing commercial confidentiality and refusing to answer public questions. This has been discussed on many occasions, and once again the minister has misled the Parliament in expounding the doctrine of commercial confidentiality as he sees it.

Mr BOARD: Comments on schedule 3 were made throughout debate on the Bill. The Minister for Energy made some pertinent points and elaborated on my comments in the second reading debate.

Mr RIPPER: I would not like this debate to conclude without making reference to my own experience of record keeping in Western Power. Schedule 3 will exempt Western Power from certain record-keeping requirements in this legislation.

Mr Board: No, it does not exempt them. Western Power must report to the minister rather than to the commission, and it is required to have a record plan.

Mr Pendal: It receives preferential treatment.

Mr RIPPER: Western Power has some deficiencies in its record-keeping. I am concerned it might have a preferential regime under this legislation. I submitted a freedom of information request to Western Power about a human resources program it had been involved in that had required considerable expenditure. I was concerned when the documents from Western Power did not include a contract for the payments made to a human resources consultant. I was also concerned that there appeared to be no assessment of the outcome of the human resources program. I pointed out to Western Power that some documents related to my FOI request had not been provided. I went through an internal review process, and Western Power could not provide any further documents. I then appealed to the Information Commissioner. The commissioner agreed with my expectation that there would be additional documents. The commissioner required Western Power to search for additional documents. When Western Power carried out the searches required by the Information Commissioner, 35 additional documents relevant to my freedom of information request became available. However, I still did not get a contract between Western Power and the human resources consultant. Western Power was spending millions of dollars on a human resources program and it is inconceivable it would do that without a contract with the consultant.

I am concerned about the quality of record keeping in Western Power, given that it was unable to produce the 35 documents that finally came to light or a contract with the human resources consultant. When I hear my colleagues debate the issue of Western Power having a preferential regime for record keeping, I am reminded of my experience with Western Power. I know it is an important commercial organisation. However, it is also a publicly-owned organisation. Publicly-owned organisations are subject to different rules from privately-owned organisations. The subjecting of organisations such as Western Power to those different sets of rules that apply in the public sector with regard to accountability and record-keeping of course constitute one set of reasons that people want to keep an organisation such as Western Power in public ownership, because they want a strategic public utility to be subject to those sorts of rules. I am concerned that by the minister's own description, Western Power will have a preferential regime - I think was the phrase that was used.

Mr Board: No.

Mr RIPPER: Under this legislation Western Power will have a different, and arguably lesser, set of accountability requirements for record-keeping from other public sector organisations.

Schedule put and passed.

Schedule 4 put and passed.

Title put and passed.

STATE RECORDS (CONSEQUENTIAL PROVISIONS) BILL 1999

Second Reading

Resumed from 24 November 1999.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.