

**BARNETT GOVERNMENT — INFORMATION RELEASE**

*Matter of Public Interest*

**THE SPEAKER (Mr M.W. Sutherland)** informed the Assembly that he was in receipt within the prescribed time of a letter from the Leader of the Opposition seeking to debate a matter of public interest.

[In compliance with standing orders, at least five members rose in their places.]

**MR M. MCGOWAN (Rockingham — Leader of the Opposition)** [3.05 pm]: I move —

That this house condemns the Barnett government for its secrecy and refusal to release information on key projects, including Metro Area Express light rail and the airport rail.

This has been one of the most secretive and deceptive governments in living memory in Western Australia. I was absolutely shocked and appalled when I learnt the other day that this government was going to the extent of trying to hide information of public importance that should be in the public domain by going to the Supreme Court of Western Australia to appeal a written decision of the government-appointed Information Commissioner. They are extraordinary lengths to go to to avoid openness and accountability. The government is using taxpayers' money to go to the Supreme Court to object to a decision of the Information Commissioner—an independent statutory body that examines these matters on a regular basis. It makes considered, worthy and extensive decisions in full knowledge of the law as it stands. This government is going to hide information that the public should have access to about potentially \$4 billion-plus of government spending. It is going to try to hide information of that magnitude by going to the Supreme Court. The government should be ashamed of itself for doing this. It should change its decision today. It should say that it is withdrawing the action and it will release the information. This is a test for the government.

I want to quote the Freedom of Information Act, which has been around since 1992. One of the objects of the act is to —

make the persons and bodies that are responsible for State and local government more accountable to the public.

The objects of the act will be achieved by —

creating a general right of access to State and local government documents;

The objects of the act are set out on the first page. It is one of the most important documents of accountability in Western Australia. It has been around for nearly 25 years. It is an important document that allows members of the public to have great scrutiny of government decision-making. This government is throwing it out the window in a way I have never seen before by taking Supreme Court action. The Premier is the guilty party in this matter and he cannot get away from it. We saw it earlier this year with the \$25 000-plus that the government spent trying to hide the report it did into Troy Buswell's car crashes throughout Subiaco. It spent \$25 000 fighting that case before the Information Commissioner said that the report must be released, and then the Premier reluctantly released it. Now we see the government taking Supreme Court action to try to hide important documents.

Let us look at the grounds on which the government is taking this action. It is saying that documents from the caretaker period cannot be released. *The West Australian*, in seeking the release of this information, has asked for documents from 26 January 2013 to 9 March 2013 on the Metro Area Express light rail and the Forresterfield–Airport Link. The government's objection to their release is based on the grounds that this was the caretaker period. According to the government's press release of 6 February 2013, the caretaker period started on that day—11 days after the government is now claiming some sort of exemption on the basis of the caretaker period commencing. There are 11 whole days in which the caretaker period did not exist, because the Premier said it did not, as he might recall, back in 2013. For those 11 days the government is claiming this new precedent, declaring this period as the caretaker period when the Premier himself said that the caretaker period did not begin until 6 February 2013. The government is hiding 11 days of documents on completely spurious grounds.

I have the Information Commissioner's extensive ruling here, of some 24 pages. The government's argument goes that documents from the caretaker period should not be released because they are, and I quote, "party political"; therefore, these documents should be kept hidden. That is written all through the agency submissions—that is, the government's submissions. The Premier says they are party political and therefore they should not be released. I want to make a few points. First of all, the documents relating to the specific commitments of the MAX light rail project and the airport rail link were created and drafted during the course of the last government, not during the caretaker period. That point has been made on numerous occasions, including by the Information Commissioner, who states, on page 18 of his decision —

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Consequently, I consider that the MAX Light Rail and the Airport Link projects are an ‘affair of an agency’.

He states further, on page 23 —

I have reviewed each of the disputed documents and considered their contents. I am satisfied that the documents all relate to either the MAX Light Rail or Airport Link. As noted ... the agency does not appear to dispute that these projects are ‘an affair of an agency’.

In other words, according to the Information Commissioner, the documents fit entirely within the Freedom of Information Act as being documents of an agency, and therefore disclosable by the government. If the government claims that they are party political documents, why to God is the taxpayer paying for the government’s Supreme Court challenge? Should the Liberal Party not be paying for the Supreme Court challenge if these documents are Liberal Party documents, as the government claims they are? The Liberal Party should be paying for this, not the taxpayers of Western Australia. Once again, the government is misusing taxpayers’ resources in a reprehensible way.

The second point I make is that the officers who worked on these documents are state employees. As we know, the Freedom of Information Act indicates that documents produced by those employees are disclosable. Those employees were not paid by the Liberal Party; they were not Liberal Party staffers and they were not on the payroll of the Liberal Party. They were working over the road in Hale House, paid for by the taxpayer, during that period. Therefore, why should those documents not be revealed as is intended Under the Freedom of Information Act?

It is an extraordinary development that the government would try to create, throughout this process, a new precedent that the caretaker period means that only these documents are party political. I can see how the government is trying to extend it. We all know that during the course of a government there are communications between the Premier’s office, ministerial offices and Liberal and National Party offices, and the like. Does that mean that any of those documents are therefore excluded because they are party political documents? It is a ridiculous argument. Does it mean that any documents prepared prior to the caretaker period that might be used during the course of an election are therefore excluded because they are party political documents? No, they are not. Therefore, to extend the argument through to the caretaker period is trying to create a very dangerous precedent under which this government seeks to allow governments all over Australia to avoid the purview and the intent of freedom of information legislation. It is disgraceful, and the Liberal Party, of all organisations, should be paying.

I have a copy of the Liberal Party’s policy on accountability and public sector management released in 2008, before it arrived in office. It states —

A Liberal Government will:

Review the manner in which Departments are administering the FOI process to ensure that Government is accountable and open in accordance with the spirit of the FOI Act.

There it is: the government is to be open and accountable in accordance with the spirit of the FOI act. What a difference six and a half years make. The Liberal Party has gone from holding this policy to being the most secretive government in living memory, and is trying to avoid the operation of the Freedom of Information Act.

Last week, in other ways, we saw the government uncovered and exposed in a range of things. I want to draw attention to the stadium promise. We sat here in the estimates committee last Tuesday, with the Premier being rude, abrasive and arrogant and objecting to answering any questions on this issue. Eventually we got answers out of the Department of Sport and Recreation. It turns out that the stadium contract, in net present value terms, is for \$1.57 billion. I have here 32 separate press releases about the stadium released since June 2011, up until the week before last. Talk about re-announcements; it is extraordinary. The re-announcements are unbelievable. I cannot believe that the press gets dragged out—it actually goes—for all these re-announcements. There are 32 press releases about the stadium, and is there in any single one of them a mention of \$1.57 billion? No, there is not. Unfortunately, I had to go through all of them and check. There is not a single mention of \$1.57 billion of spending in these press releases. There is not a single mention of that extraordinary figure, compared with the figure that until now we have been promised the stadium will cost. It is very difficult to get honesty, openness and accountability and the release of information from this government. However, it is not now just the opposition saying this. The evidence is there in black and white—a Supreme Court appeal by the government against the Information Commissioner to hide documents. That is an extraordinary development, which is also very dark and murky for the people of Western Australia. This government and this Premier are now attempting to subvert a law that has been in force for 23 years.

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**MR R.F. JOHNSON (Hillarys)** [3.18 pm]: I rise for a very short time in this debate, because I do so from this side of the house, and I do not want to take the time of some of the members on this side. I have to say that I have some sympathy with what the Leader of the Opposition is doing today. I have been trying to get information about the MAX light rail and the airport rail link for the past two and a half years, and it has not been forthcoming. I know for a fact that the then Minister for Transport, who was also the Treasurer, had serious concerns about the patronage and whether the project would raise enough funds in patronage to make it pay. The experts said the same thing. They said it would not be viable for another 10 to 20 years. I have been saying that for two and a half years. I want to be part of a government that is open and accountable. We are either for honesty and integrity, or we are for dishonesty and secrecy. I want to be the former.

**Mr D.C. Nalder** interjected.

**Mr R.F. JOHNSON:** I will not interrupt the minister, but I have the right to speak on behalf of my constituents. I object to my constituents paying tens of thousands of dollars for a Supreme Court challenge in this area. I think it is totally wrong and uncalled for. I have been in this Parliament for 23 years and it is the first time I have ever heard of it. I am not overly happy with the description that the Leader of the Opposition has put in his motion, so I would like to move an amendment.

*Amendment to Motion*

**Mr R.F. JOHNSON:** I move —

To delete all words after “house” and substitute —

, in the interests of open and accountable government, which the Premier has always espoused, calls on the Premier to immediately release the documents sought by *The West Australian* under the Freedom of Information Act relating to Metro Area Express light rail and airport rail, the release of which has been recommended by the Information Commissioner.

I have moved that amendment because I take seriously freedom of information. Without a doubt, there have been cover-ups in my government and I am ashamed of that. Certainly, there was a cover-up over the Buswell affair and the car crashes. The Premier says no, there was not, but there was for two weeks. We would not have heard a thing about it if it had not been for a member of the public coming forward. In this instance —

**Mr C.J. Barnett:** There was no cover-up and you know it.

**Mr R.F. JOHNSON:** Yes, there was a cover-up; of course there was. You know as well as I do. You should be ashamed of yourself. I used to think that you had integrity —

Several members interjected.

**The SPEAKER:** Thank you, members.

**Mr N.W. Morton** interjected.

**The SPEAKER:** Member for Forrestfield!

**Mr R.F. JOHNSON:** By all means, the Premier can move a motion in the party room and expel me. I will stand up to that. If he cannot stand the truth, that is his problem, not mine. All I do in this place, Mr Speaker, is tell the truth. Can anybody say that I am not telling the truth? Unlike the Treasurer, I am not a lackey to the Premier. Those members do anything the Premier wants. It is a one-man band that we have here. I was not going to speak this much, but if I am interjected on, I will be speaking.

**Mr M.H. Taylor** interjected.

**Mr R.F. JOHNSON:** Give it a break!

The problem in this chamber is that we have some people who literally are subservient to the one man in this chamber, and the bloke next to him is a disgrace.

*Point of Order*

**Mr N.W. MORTON:** I do not know how the member for Hillarys’ personal opinion of the Premier has anything to do with the motion before the house.

**The SPEAKER:** No, that is not a point of order.

*Debate Resumed*

**Mr R.F. JOHNSON:** It just shows how much knowledge some of our new members have—not a great deal.

I am not going to say any more. I have moved an amendment. I am hopeful that, in the interest of open and accountable government and in the interest of honesty, the members of this house will agree to the motion.

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**MS R. SAFFIOTI (West Swan)** [3.22 pm]: I wish to speak to this amendment put forward by the member for Hillarys. Basically, the amendment is that the house calls on the Premier to release these documents immediately. We have a decision by the Information Commissioner that these documents be released. As I understand, both the acting and permanent Information Commissioners agreed that these documents be released. There is no reason that these documents should not be made public.

I want to go through some of the points made in the submission. The Leader of the Opposition outlined a number of them, but I want to go through three key points outlined in the freedom of information decision, and also some of the points made by the government. The government is arguing that as soon as the caretaker period commences, ministerial offices become a branch of the party. That is what the government is arguing.

Several members interjected.

**The SPEAKER:** Members!

**Ms R. SAFFIOTI:** The government's submission basically states that as soon as the caretaker period kicks in, ministerial offices become a branch of the Liberal Party. That is complete nonsense, but that is what the government is arguing. I want to talk about some of the key points that the government makes in its submission. It states that documents produced in ministers' offices during the course of the caretaker period are of a different character as they are produced subject to the caretaker conventions. The submission goes on to state that it is unlikely that the disputed documents will relate to the affairs of another agency because they are party political during this period. The submission goes on to deal with the party political nature of matters during the caretaker period. I double-checked the caretaker conventions. It is very clear that the caretaker conventions explicitly try to differentiate between party political matters and operational matters. I go to paragraph 4.5 of the "Caretaker Conventions", which states —

During the caretaker period, Ministers and agencies should restrict any media releases to administrative or operational information of high public interest and of a time-sensitive nature ...

The "Caretaker Conventions" document basically goes on to state that of course the government and ministers need to continue to operate, but media releases and other types of documents produced by ministerial offices at that time should be of an operational or time-sensitive nature; they should not be party political. Therefore, the argument put forward in the government's submission is absolutely false.

The second point put forward by the government in its submission is that both the Metro Area Express light rail and the airport rail were products of the party, not of the government. That is completely false. MAX light rail was a commitment made in December 2012. It was part of the Bigger Picture campaign in early January. It was a government commitment; government resources were used to make that election commitment. It was certainly not produced by the Liberal Party; it was produced by the government. So all documents relating to that should be made public, caretaker period or not. I want to go to the airport rail. Again it was put forward that this was somehow a creation of the Liberal Party and that government resources and government agencies were not involved. Information provided in the upper house completely contradicts that. It shows that in December 2012, the Public Transport Authority was doing costings for the airport rail and that information was being communicated to ministerial offices about the airport rail. Money was spent to develop campaign material for the airport rail. Government agencies were involved in the production of that material. It was not something produced by the Liberal Party; it was produced by the government.

I want to go to the airport costings document—the Treasury costings. It must be remembered that the government did not submit the airport rail project to Treasury for formal costing because it had already been costed by the PTA. If it was not a government commitment, how could the PTA be costing it? Let us go to the Treasury costings relating to the airport rail. Advice had been derived from information provided by the Liberal Party through the Public Transport Authority and Main Roads Western Australia. The PTA was involved in the production of costings for the airport rail, so claiming that these were not products of government and that government agencies had nothing to do with that is completely false. Clearly, with MAX and airport rail, that is completely false.

The third key point is that the government is refusing to release documents. Even if we put aside all of the government's absurd, ridiculous and false claims about the caretaker period and look at those documents produced outside the caretaker period, we see that the government is not even releasing those. It is setting a new standard. Basically, it is saying that ministerial offices are branches of the party for political campaigns. Every other party has been held to different standards, but that is what the government is saying.

I want to go to the issue of secrecy. Why does the government need to go to the Supreme Court? What is in those documents that the government needs to go to the Supreme Court to hide? What did the government do that it had to go to the Supreme Court to try to hide? What is in those documents that the government is so desperate to hide? It must be explosive.

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In relation to the secrecy, we heard about the stadium. A budget was produced that did not show the monthly service payments, even though they commence in early 2018. That money is going to leave the government, yet it failed to show the impact of a government decision on its forward estimates. In relation to Hale House and the 500 Club function, I pursued an FOI request but I could not get any information. Do members know why? It was because apparently Hale House is not owned by anybody. It is an entity unto itself, and the Premier's office can make bookings and hold functions completely separate from the rest of government. That is what the government claimed. Even today the member for Warnbro got an answer from the government. This goes to the extent of the secrecy of this government. He asked: for each calendar year from 2008 to 2014, how many people were incarcerated in police lockups solely for the purpose of cutting out fines; how many were male; and how many were female? The answer he was provided was that the information was not readily available, and that if he had a specific question, he was to put it on notice. It was a question on notice! The member put a very specific question on notice and the answer he got was that if he had a specific question, he was to put it on notice! That just demonstrates that these guys will stop at nothing. They will deny the truth, lie about the truth, and when it is uncovered, say that it was a long time ago and that we should all move on.

**The SPEAKER:** I just want to warn you about your language in respect of lying about the truth, and all the rest of it. Just do not stretch it too far.

**Ms R. SAFFIOTI:** Sure, Mr Speaker.

That is the government's method of operation again and again—secrecy. Just hand over the documents. What is in there that the government is so desperate to hide? Just hand them over. It is not worth going to the Supreme Court. Hand them over and let the public be the judge.

**MR C.J. BARNETT (Cottesloe — Premier)** [3.30 pm]: That was quite a wideranging discourse. I just want to respond first to some of the extraneous points raised. This is the same Labor Party that, when in government, did a raid on *The Sunday Times* using the police. This is the Labor Party —

*Point of Order*

**Ms R. SAFFIOTI:** The Premier said that the Labor Party did a raid on *The Sunday Times*. I ask him to withdraw that because that is a complete falsehood.

**The SPEAKER:** I think the Premier said “ordered a raid” on *The Sunday Times*.

**Mrs M.H. ROBERTS:** Mr Speaker, the fact of the matter is that the Labor Party did not order a raid. My point simply is that this is an adverse reflection on people here. The Labor Party—or the government, for that matter—does not have the power to order the police to do a raid. It would be inappropriate under the separation of powers.

**The SPEAKER:** I understand the point of order. This is a debating point, so you can take it up further in the debate.

*Debate Resumed*

**Mr C.J. BARNETT:** I remind members opposite that, if they like, there was during their term in government a raid on *The Sunday Times*. How proper was that? I remind members that during the 2005 election campaign—the canal campaign—the Labor Party had Treasury, during the caretaker government period, cost the canal. How proper was that? I remind members that during the 2005 election campaign, the then Premier placed signs outside schools that had polling booths, advertising school maintenance programs, and they were forced to be removed. My voice seems to have gone. I remind members that the now Leader of the Opposition publicly denied contact with Brian Burke when Brian Burke was contacting him and sending him email messages through his wife's phone. That is the Labor Party's standards.

Several members interjected.

**The SPEAKER:** Thank you, members!

**Mr C.J. BARNETT:** That is the background to the Labor Party's lack of character and lack of propriety. Let me address the particular issue of the freedom of information application, which I will do in some detail, if members like.

Several members interjected.

**Mr C.J. BARNETT:** Sleaze, is it? I am happy to be called a sleaze, if that is the opposition's standard.

Several members interjected.

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**The SPEAKER:** Member for Cannington, member for Forrestfield, I call you both to order for the first time.

**Mr C.J. BARNETT:** With respect to this issue, West Australian Newspapers Ltd filed an FOI application to the Department of the Premier and Cabinet and the former Minister for Transport's office relating to documents—communications, essentially—between the Premier's office and the Liberal Party relating to the MAX light rail project and the airport rail link, now the Forrestfield–Airport Link. Most of the time reference for that FOI application was during the caretaker period of the 2013 election. It started on the twenty-sixth, because I think that is the date I launched the Liberal campaign and announced that we had basically gone into election mode, which was a few days earlier —

**Mrs M.H. Roberts** interjected.

**The SPEAKER:** Member for Midland, I call you to order for the first time.

**Mrs M.H. Roberts** interjected.

**The SPEAKER:** Member for Midland, I call you to order for the second time!

**Mr C.J. BARNETT:** I indicated that we were starting to release policies and were into our campaign.

**Mrs M.H. Roberts** interjected.

**The SPEAKER:** Member for Midland!

**Mr C.J. BARNETT:** I just went through your standard on convention—appalling.

**Mrs M.H. Roberts:** What did you say?

**Mr C.J. BARNETT:** I am addressing the Chair.

*Point of Order*

**Mrs M.H. ROBERTS:** The Premier is attacking my character. I have nothing to do with this, so I would like to know what he is actually talking about. He cannot just attack my character without spelling out what his issue is.

**The SPEAKER:** What I understood was that the Premier was attacking the Labor Party, saying that he had set out what “your” standards are—not yours, but the Labor Party's. Premier, please do not attack the member for Midland.

*Debate Resumed*

**Mr C.J. BARNETT:** Almost all the documents in that period related to communications between the Premier's office and the Liberal Party. They related primarily to campaign matters—announcements, timing, location and that type of thing. They related to the campaign itself. The Department of the Premier and Cabinet —

Several members interjected.

**The SPEAKER:** Member for Butler, you will be taking the high road! I call you to order for the first time.

**Mr C.J. BARNETT:** In response to the FOI application, the Department of the Premier and Cabinet said that these documents should be exempt from FOI because most of them related to the caretaker period. They did not relate to another agency of government; they related simply to communications between the Premier's office and the Liberal Party, and they were not to do with government business as such—and that is conventional. These were campaign matters as permitted under the caretaker provisions, and I can tell members that they are trivial matters. They are not documents on policies and they are not questions to departments; they are matters about when we are releasing this, where this is going to be, and who is going to participate—just run-of-the-mill campaign organisation. They were not to do with other ministers, they were not to do with other agencies, and they were not to do with the workings of government; they related to caretaker behaviour, as is permitted under the conventions.

The law, the act, and the way FOI applies relate to documents that are in the control of a minister. A lot of these communications were not for me; in fact, probably none of them were for me. They were for the staff on a whole range of myriad matters to do with local campaigns. They also must relate to the affairs of another agency, and these did not. They were communications of the Liberal Party about the election campaign, as the Leader of the Opposition would have been doing from his office, and as he is allowed to do from his office. The DPC was very much of the view that the documents related to campaign matters, and that was it. Again, can I say that they were trivial matters of detail, timing and campaign facts. That is what they were. Members opposite might find it salacious, but I can tell them that there is nothing of any importance or interest in those communications.

Several members interjected.

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**The SPEAKER:** Members! Member for Girrawheen, I call you to order for the first time. If you wish to make a contribution, put your name down.

**Mr C.J. BARNETT:** The Department of the Premier and Cabinet rejected the FOI application on that basis—that these were caretaker provisions, not related to other agencies and not ministerial control, but just day-to-day campaign communications between my office and the Liberal Party, as has been the normal convention in campaigns for as long as anyone can remember. WA Newspapers appealed that decision, as it was entitled to, to the Information Commissioner. The commissioner overturned the DPC decision, saying that these communications were related to affairs of an agency because they referred to MAX light rail and the airport rail link. The Department of Transport had been involved in previous announcements about those projects, which had been announced well before the campaign period. They “referred” to it; they were not “about” it. They were not to the agency. They just simply referred to MAX light rail. That interpretation by the Information Commissioner—that they simply referred to MAX light rail or to the airport link, so those words appeared—extends the application of FOI beyond the act and beyond the intent of Parliament.

**Mr W.J. Johnston** interjected.

**Mr C.J. BARNETT:** I am speaking.

**The SPEAKER:** Member for Cannington!

**Mr C.J. BARNETT:** It extends it into the caretaker period in a way that has never been envisaged before, and it extends FOI to any document that merely mentions the affairs of government. By merely referring to MAX light rail, it is now the case that, under that interpretation by the Information Commissioner, even a reference makes it FOI-able. Mr Speaker, that is a divergence from previous Supreme Court decisions and it extends the Freedom of Information Act beyond what was intended by Parliament. If it is the intention of Parliament to extend freedom of information, it should be a decision of Parliament, not of the Information Commissioner. If people believe such a wideranging extension of FOI is a good idea, it is something that should be determined by Parliament. I do not particularly think it is, but it should be a parliamentary role.

The Department of the Premier and Cabinet, on advice from the State Solicitor, decided to appeal the FOI decision to the Supreme Court. I agreed with that decision, but I was not particularly involved at all in that whole process.

**Mr D.J. Kelly:** Oh yeah?

**Mr C.J. BARNETT:** I was not. I am not particularly interested in it. It was handled by the DPC and obviously my staff, but I played no other role than to say, “Yes, I think it should be appealed to the Supreme Court”, as the State Solicitor had recommended and the DPC then acted upon.

What are the implications of the appeal? That is where the issue is at; it is before the Supreme Court. It will be interesting to see whether this debate prejudices the Supreme Court hearings; nevertheless, we will carry on. Can I again say that there is nothing sensitive in those documents—nothing at all! The appeal to the Supreme Court on the advice of the State Solicitor is not over the content of those documents; it is over the principle of whether FOI should be widened to ministerial and LOOP offices and other areas. The appeal is a matter of principle; it is not over the documents, because they are innocuous.

**Mr D.J. Kelly:** Then give them to us.

**Mr C.J. BARNETT:** I will address that matter.

**Ms M.M. Quirk** interjected.

**The SPEAKER:** Member for Girrawheen, you are testing me.

**Mr C.J. BARNETT:** To prove a point, my office made inquiries whether the documents could be divulged to *The West Australian* or even more widely. The advice from the State Solicitor is that they would not be able to pursue the case if that was done, because it would immediately mean that the documents were no longer in dispute and the appeal to the Supreme Court would be dismissed immediately. That is the advice that we are acting on.

**Mr D.J. Kelly** interjected.

**The SPEAKER:** Member for Bassendean, I call you to order for the second time. If you want to say something, put your name down!

**Mr C.J. BARNETT:** The Supreme Court appeal is not about the content of the documents—they are innocuous; it is about whether FOI should extend through the caretaker period and to any reference to anything in government. The appeal to the Supreme Court is on principle alone. If the appeal were to fail and the

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Information Commissioner's ruling were to prevail, it would mean that the part of the act that relates to exemptions would no longer serve any purpose. There would be effectively no exemption provisions under the Freedom of Information Act. That would be the consequence if the FOI ruling —

Several members interjected.

**Mr C.J. BARNETT:** I am trying to make a point and I will finish shortly. It would mean that any document with any vague reference to an agency or project could be subject to FOI.

**Mr B.S. Wyatt** interjected.

**The SPEAKER:** Member for Victoria Park!

**Mr C.J. BARNETT:** For example, all documents sent to a minister's office or the Premier's office would be subject to FOI. As a hypothetical example, if a member of Parliament were to write to a minister or the Premier on a matter of concern to a constituent on health, housing or criminal activity —

**Mr W.J. Johnston** interjected.

**The SPEAKER:** Member for Cannington, I call you to order for the second time.

**Mr C.J. BARNETT:** If a member of Parliament were to write to a minister on behalf of a constituent and refer to any government agency, program or agency, it would be FOI-able if the Information Commissioner's ruling were to prevail. In other words, our constituents would lose their right to privacy and confidentiality. If someone wrote objecting to MAX light rail because it might affect their property's value, their health or whatever else, it would be liable to FOI and they would lose their confidentiality and their unique relationship with their local representative. That is why, under State Solicitor's advice, we are pursuing this appeal. It is not about the content of the documents, and if the documents ever come out, members will see that they are totally innocuous. They are about simple campaign management arrangements. As I said, any correspondence to ministers' offices would be fair game under FOI and I do not think that is the intent of FOI; it is about government decision-making, government policy and government accountability to the Parliament and the public. It is not about eavesdropping on campaign planning or divulging or making subject to divulging the details of constituents as they make inquiries. It is not about innocuous communications from one office of government to another, and it will impact on the LOOP office as well. If this decision stands, the whole nature of our campaigning will change. I thought today that the Liberal Party has an office in Parliament House and I might get carrier pigeons on the balcony to fly backwards and forwards—this is absurd; it is FOI going way, way beyond what is intended. I suggest that if what is being mooted before the Information Commissioner were presented in this chamber as an amendment to the Freedom of Information Act, most of us would reject it because it would destroy the confidentiality of our relationships with our constituents when we act on their behalf, whether it be about health, mental health, housing, social conditions or whatever else. We will not stand to have the confidentiality of constituents expunged.

*The West Australian* is pursuing this, and good luck to it because it is entitled to pursue it. But if these documents ever become available to it, it will find that it has been absolutely following a rabbit down a hole, because there is nothing of any interest in this at all.

Has the Leader of the Opposition been discussing this with *The West Australian*?

**Mr M. McGowan:** Have I been discussing it?

**Mr C.J. BARNETT:** Yes, with *The West Australian*.

**Mr M. McGowan:** I received a call and I provided a comment the other day.

**Mr C.J. BARNETT:** Did the Leader of the Opposition?

Several members interjected.

**Mr C.J. BARNETT:** I just want to know whether the Leader of the Opposition is acting in support of or with *The West Australian* on this.

**Mr M. McGowan:** You would have to ask them.

**Mr C.J. BARNETT:** The Leader of the Opposition did not tell the truth about Brian Burke. He denied that Brian Burke communicated with him, because he had it go through his wife's phone. That is the Leader of the Opposition's standard. Anyone who would go to such lengths to conceal the truth about his communications with Brian Burke cannot be trusted.

**MS J.M. FREEMAN (Mirrabooka)** [3.47 pm]: I, too, want to speak on this matter of public interest. I remind the house that this matter of public interest is in the interest of open and accountable government and ask for the

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immediate release of the documents sought by *The West Australian* under the Freedom of Information Act relating to MAX light rail. I listened with some interest to the Premier's speech because I have read the Information Commissioner's decision, which states at paragraph 69, on page 23 —

Applying the ordinary meaning to the words in clause 4(2) and having regard to the objects and intent of the FOI Act, I am of the view that the disputed documents each relate to the affairs of another agency

...

The Premier's idea that "relates to" will suddenly become much greater and grander and go across all those things he outlined is simply not in the decision. The commissioner goes through the case law —

**Mr C.J. Barnett:** That is not the view of the State Solicitor.

**Ms J.M. FREEMAN:** I am not the State Solicitor, but I have been taken to the Supreme Court by the State Solicitor on a workers' compensation matter, and can I say that I was successful against the State Solicitor's Office. I have had some dealings with the State Solicitor's Office and the way that it interprets acts. I know that the State Solicitor's Office perhaps takes things a bit too far sometimes. But they are all good people who are trying to do their jobs. The State Solicitor's Office's job should not be protecting this information. This information should have been provided; the agency should have given the information in the first place. This issue would not have got to the Office of the Information Commissioner if the agency had given the information in the first place. The agency chose not to do that because it was being secretive. The agency chose not to do that because it did not want to deliver to the community what it needed to know—that is, the transparent information.

I really want to talk about why these documents should be released for the residents of Mirrabooka, because Metro Area Express was supposed to be delivered to the people of Mirrabooka. Page 18 of the Information Commissioner's decision states —

As I understand it, since the MAX project was first announced by the State Government in September 2012, it has at all times been a project administered by the Department of Transport. This includes the period before, during and after the caretaker period.

The Information Commissioner found that the documents should not be substantially exempt. I knew that even before the announcement in September 2012 because I walked out to some surveyors on Mirrabooka Avenue and asked them what they were doing there, and they said that they were taking measurements for the new light rail. I thought that was interesting and wondered when it would happen. Do not tell me that there were not government workers out there doing work on this project. It is clear to me and the people of Mirrabooka that the MAX light rail was a commitment of government that was reaffirmed through the election process and should continue to be delivered.

In seeking access to the documents, *The West Australian* is right; it is a government policy decision, not a party political commitment as claimed. For the government to rely on legal technicalities to be secretive and deceptive is completely wrong. What is worse for the people of Mirrabooka is the rewriting of history. The Minister for Transport was quoted in the *Eastern Reporter* two weeks ago as saying that the electorate was already made aware of the delay in the MAX light rail in 2013.

**Mr W.J. Johnston** interjected.

**The SPEAKER:** Member for Cannington!

**Ms J.M. FREEMAN:** The way that was put to the *Eastern Reporter* was that even though the government went into the election with these grand commitments, constituents were aware of the delays then. The minister did not say that, actually, it was after the election and after the government had made promises and all that sort of stuff. The minister was dismissive: "I don't know what everyone's worrying about; they were already made aware of it." That is an outrageous distortion of the truth, as they were not made aware until after the election, and not before, that the light rail would not go ahead. It is time to be truthful to the people of Mirrabooka, Morley, Mt Lawley and Dianella, and to release the documents to put some light to something that has been a sad indictment of government processes. It has been terrible, sad and pointless. In September 2012, Mr Barnett came to Polytechnic West in Mirrabooka and said that he would build MAX—the Mirrabooka light rail. He said, "I'll give you the tip. Go and buy property around this area." He went on to say that it would literally take tens of thousands of vehicles off the road and cause a redevelopment and revitalisation of the inner northern suburbs. What it did is delay it—there was an 18-month delay to the revitalisation and the Mirrabooka redevelopment project because of the Premier's MAX light rail that he has not delivered. That is an 18-month delay to a town planning scheme. It did not go ahead because the Premier threw a furphy. He threw that out to the council and it had to be taken back and a whole town planning scheme had to be gone through again. It is outrageous that the Premier denied the people the Mirrabooka revitalisation project in the City of Stirling. There was an 18-month

Mr Mark McGowan; Mr Rob Johnson; Mr Nathan Morton; Speaker; Ms Rita Saffioti; Mr Colin Barnett; Mrs Michelle Roberts; Ms Janine Freeman; Mr Dean Nalder; Mr Bill Johnston; Dr Tony Buti

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delay because of this. The failure to deliver the promise caused delays to the development. The release of the document is necessary not only for the purposes of media commentary, but also so the people in the area can understand why they had to suffer delays in a needed development and the failure to deliver. The City of Stirling had to go back to the drawing board. The Mirrabooka redevelopment town structure goes all around those areas. We need to know about these delays. Why were the people of Mirrabooka lied to? That is what we need to know.

**MR D.C. NALDER (Alfred Cove — Minister for Transport)** [3.54 pm]: I think the Premier outlined quite succinctly the challenge for the Parliament and the basis on which the Department of the Premier and Cabinet wishes to challenge the decision of the Information Commissioner. I will refer to the original matter of public interest, which states —

We condemn the ... government for its secrecy and refusal to release information on key projects including Metro Area Express light rail ...

I would like to remind members —

*Point of Order*

**Mr W.J. JOHNSTON:** My understanding of the standing orders is that we are now speaking to the amendment.

**The SPEAKER:** We are speaking to the amendment.

**Mr J.E. McGrath** interjected.

**The SPEAKER:** Thank you for the guidance, member for South Perth. I will repeat that. Something can be referred to, but we are talking to the amendment.

*Debate Resumed*

**Mr D.C. NALDER:** There has been a lot of talk about information and a lack of information coming out. In my hand I have all the press releases I have done on the Forrestfield–Airport Link, and there are many. They come out about at least once a month with information we are providing on the Forrestfield–Airport Link. When it comes to the airport link, I have said in this house before that this commitment was also made by Labor, which is what I was trying to share with the member for Hillarys. It committed to delivering the Forrestfield–Airport link. I will quote something that the Leader of the Opposition said at the time.

**Mr R.F. Johnson:** That was part of Metronet.

**Mr D.C. NALDER:** But it does not matter.

**Mr R.F. Johnson** interjected.

**The SPEAKER:** Member for Hillarys!

**Mr D.C. NALDER:** Labor was committed to delivering an airport rail line. Here is the quote from the current Leader of the Opposition —

“WA Labor’s airport rail line will allow them to make the journey within 40 minutes, creating a major incentive to leave cars at home.”

**Mr P.B. Watson** interjected.

**The SPEAKER:** Member for Albany!

**Mr D.C. NALDER:** I came back to this place and acknowledged that the commitment we made on the route during the election and the commitment that Labor made on the route during the election were both more expensive than the current option we have.

**Mr W.J. Johnston:** How do you know?

**Mr D.C. NALDER:** I know based on the information and the development work that has since gone on by the Department of Transport. Part of the difficulty with Labor’s route was all the work going on for the Gateway project around Horrie Miller Drive, making it very difficult to deliver a rail line, which would still be one kilometre away from the airport. On the Labor Party route, there was a 40-minute travel time and it stopped one kilometre away from the airport—a 40-minute route. The current route the government is talking about, which we have declared, will deliver people to the CBD —

*Point of Order*

**Dr A.D. BUTI:** I wonder what this has to do with the amendment or even the original motion. We are talking about the release of certain information, not about government policy in regards to the airport link.

Mr Mark McGowan; Mr Rob Johnson; Mr Nathan Morton; Speaker; Ms Rita Saffioti; Mr Colin Barnett; Mrs Michelle Roberts; Ms Janine Freeman; Mr Dean Nalder; Mr Bill Johnston; Dr Tony Buti

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**The SPEAKER:** A point of order has been taken that the minister is not addressing the motion or the amendment, so can the minister please keep this in mind. We are talking about the making available of documentation.

*Debate Resumed*

**Mr D.C. NALDER:** The motion referred to the secrecy around these projects and I am referring to the motion. The comments made by the member for Hillarys and members opposite were about information regarding MAX and the Forrestfield–Airport Link, so I am referring to them in the information I have provided along the way—lots of information. I have acknowledged that the project has been deferred. I have just heard about MAX being deferred from members opposite, but we have come out and said that it was. We were not getting federal funding. However, we have also brought projects forward. The Gateway project will finish well in advance—12 months ahead—of the promised end date. We have been able to bring forward the Mitchell Freeway extension by nine months on what we had promised. Some projects have been delayed and some have been brought forward. This is an absolutely great project. We will deliver people —

*Point of Order*

**Mrs M.H. ROBERTS:** Both the motion and the amendment deal with the release of documents under FOI. They do not canvass all the options available for MAX or whatever. They are about whether or not the government should be open and accountable and release documents under FOI. Further to my point of order, the minister keeps saying that he is speaking to the motion—he repeats that over and again. I am holding the motion and it is not currently before the Chair. What is before the Chair is the amendment. So, if the minister is going to say that he is speaking to something, he should be speaking to the amendment, and I highlight that the amendment is about the release of documents under FOI, not the right or wrong of Liberal policy.

**Mr C.J. BARNETT:** Further to that point of order, the amendment is as it is, but the topic is the documents in the FOI decision, and indeed, Mr Speaker, you and we on this side tolerated speeches by members opposite that went into all sorts of issues such as stadiums and the like. The minister is addressing the substantive issue.

**The SPEAKER:** Do you want to take a point of order?

**Mr D.C. NALDER:** Thank you, Mr Speaker, because I will quote what this motion states.

**The SPEAKER:** We are not speaking to the motion; we are talking to the amendment.

**Mr D.C. NALDER:** Mr Speaker, I am still talking to the motion.

**The SPEAKER:** We are talking to the amendment that was moved by the member for Hillarys. Have you got a copy of the amendment before you?

**Mr D.C. NALDER:** Yes, I do.

Several members interjected.

**The SPEAKER:** Members! You can talk on the amendment to the motion. We will put the amendment and then we will go back to the motion, so you can have two bites of the cherry. If you want me to put the amendment, I will put the amendment. You have to address now what is in that amendment. The Premier is right; we have had some latitude. Member for Mirrabooka, I have given you a lot of latitude. Now, minister, can you please come back to the amendment.

*Debate Resumed*

**Mr D.C. NALDER:** I will put the amendment then, Mr Speaker.

**The SPEAKER:** The question is that the words to be deleted be deleted. Does the member for Cannington want to speak on the amendment?

**MR W.J. JOHNSTON (Cannington)** [4.00 pm]: Yes, thank you very much, I do. The minister cannot put the amendment; it is the debate.

**The SPEAKER:** You can speak.

**Mr W.J. JOHNSTON:** Thank you, Mr Speaker. This is a very easy thing.

Several members interjected.

**The SPEAKER:** Members!

**Mr W.J. JOHNSTON:** This is about the government not being honest. The government is not honest with the people of Western Australia. That is the problem here. The government went to the election on a lie. The lie was that the Metro Area Express and Forrestfield–Airport Link were fully funded and fully costed. That was a lie because we know it was a lie.

*Point of Order*

Mr Mark McGowan; Mr Rob Johnson; Mr Nathan Morton; Speaker; Ms Rita Saffioti; Mr Colin Barnett; Mrs Michelle Roberts; Ms Janine Freeman; Mr Dean Nalder; Mr Bill Johnston; Dr Tony Buti

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**Mr D.C. NALDER:** What has that got to do with the amendment, Mr Speaker? The member has just made reference to what I was saying.

**The SPEAKER:** I am going to allow the member for Cannington to lead into his debate. Can you address the amendment, please.

*Debate Resumed*

**Mr W.J. JOHNSTON:** Thank you very much. What we need to see is the government being honest today. The Liberal Party was not honest at the election, but the government should be honest today. The government does not get this transparency thing. What was it? Ninety media releases between 26 January and 8 February. The important reason for that was, as the Premier said, that the caretaker period started on 26 January. No, it did not; it started on 8 February. There were 90 government media releases; the government was using taxpayers' money to put releases out in the name of the government, not in the name of the Liberal Party. That is 90 media releases. That was the taxpayers' money helping the Liberal Party in the lead-up to the election. That is the problem that we are trying to deal with today. That is why the Premier says, "Oh, well, I called the election on 26 January." Who cares what he says he did? The writs were issued on 8 February and that is the day the caretaker period started. I do not care about any of these nonsense arguments about, "Oh, we are going to rewrite the Freedom of Information Act." What a load of rubbish! There is still going to be the personal information exemption and there is still going to be the cabinet confidentiality exemption. They do not get changed. It is just the nonsense that has been invented by this Premier and this departmental head that has never happened before, that is reinterpreting the act, and is being rejected by the Information Commissioner. That is what this is about; the absolute outrageous secrecy of that Premier. I invite the media to continue their campaign of FOI. Accountable government includes FOI—freedom of information. Telling the community what its taxes have paid for is fundamental to open government. This Premier does not understand that. He does not understand that Hale House is not his; it is the taxpayers' facility.

*Division*

Amendment put and a division taken with the following result —

Ayes (20)

Ms L.L. Baker	Mr R.F. Johnson	Ms S.F. McGurk	Ms R. Saffioti
Dr A.D. Buti	Mr W.J. Johnston	Mr P. Papalia	Mr C.J. Tallentire
Mr R.H. Cook	Mr D.J. Kelly	Mr J.R. Quigley	Mr P.C. Tinley
Ms J. Farrer	Mr F.M. Logan	Ms M.M. Quirk	Mr B.S. Wyatt
Ms J.M. Freeman	Mr M. McGowan	Mrs M.H. Roberts	Mr D.A. Templeman ( <i>Teller</i> )

Noes (33)

Mr P. Abetz	Ms W.M. Duncan	Dr G.G. Jacobs	Mr J. Norberger
Mr F.A. Alban	Ms E. Evangel	Mr S.K. L'Estrange	Mr D.T. Redman
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr J.E. McGrath	Mr M.H. Taylor
Mr I.M. Britza	Mr B.J. Grylls	Ms L. Mettam	Mr T.K. Waldron
Mr G.M. Castrilli	Dr K.D. Hames	Ms A.R. Mitchell	Mr A. Krsticevic ( <i>Teller</i> )
Mr V.A. Catania	Mrs L.M. Harvey	Mr N.W. Morton	
Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan	
Mr J.H.D. Day	Mr A.P. Jacob	Mr D.C. Nalder	

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Pairs

Mr P.B. Watson	Mr P.T. Miles
Mr M.P. Murray	Ms M.J. Davies

Amendment thus negated.

*Division*

Question put and a division taken, the Acting Speaker (Mr P. Abetz) casting his vote with the noes, with the following result —

**Extract from Hansard**  
[ASSEMBLY — Tuesday, 16 June 2015]  
p4359f-4371a

Mr Mark McGowan; Mr Rob Johnson; Mr Nathan Morton; Speaker; Ms Rita Saffioti; Mr Colin Barnett; Mrs Michelle Roberts; Ms Janine Freeman; Mr Dean Nalder; Mr Bill Johnston; Dr Tony Buti

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Ayes (19)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook  
Ms J.M. Freeman  
Mr R.F. Johnson

Mr W.J. Johnston  
Mr D.J. Kelly  
Mr F.M. Logan  
Mr M. McGowan  
Ms S.F. McGurk

Mr P. Papalia  
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Ms M.M. Quirk  
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Mrs L.M. Harvey  
Mr C.D. Hatton  
Mr A.P. Jacob

Dr G.G. Jacobs  
Mr S.K. L'Estrange  
Mr W.R. Marmion  
Mr J.E. McGrath  
Ms L. Mettam  
Ms A.R. Mitchell  
Mr N.W. Morton  
Dr M.D. Nahan  
Mr D.C. Nalder

Mr J. Norberger  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.H. Taylor  
Mr T.K. Waldron  
Mr A. Krsticevic (*Teller*)

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Pairs

Mr M.P. Murray  
Mr P.B. Watson  
Ms J. Farrer

Ms M.J. Davies  
Mr P.T. Miles  
Mr R.S. Love

Question thus negatived.