INTEGRITY (LOBBYISTS) BILL 2011

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 4: Term used: lobbying —

Debate was adjourned after the amendment moved by Mr C.J. Barnett (Premier) had been partly considered.

Mr W.J. JOHNSTON: Before the debate on this amendment was adjourned, I had been seeking some clarification about what the Premier is attempting to achieve by this amendment. I apologise if that makes me slow or whatever, Premier; I am happy for the Premier to call me any name that he desires. But the Premier had raised the issue of how lobbying includes the question of advertising. The Premier gave the example of a full-page advertisement in *The Australian*. However, we are told that under subclause (3)(i) of clause 4, the making of a public statement will be exempt and will not be covered by the term "lobbying". However, if a grassroots organisation were to hire a lobbyist, the grassroots campaign itself would be exempt, but the paid lobbyist would not be exempt. I will explain that again. A grassroots campaign is not classified as lobbying and therefore would not be bound by the terms of the act. However, if that grassroots campaign were to hire a private lobbyist, that person would be covered by the term "lobbying". Therefore, to put it back in as an inclusion means that it is an exclusion to an exclusion, if I can put it that way. However, we also have this question about what is meant by the words "making a public statement". The paid lobbyist might be attempting, on behalf of the grassroots campaign, to influence government indirectly. The example that the Premier raised with us was an advertisement. Is an advertisement that does not directly address the government a public statement; or is it not a public statement and therefore is it also excluded, even though we have a provision that would otherwise include what otherwise would have been excluded? Is that type of advertising in or out in terms of the word "lobbying" that we are currently discussing?

Mr C.J. BARNETT: My advisers have provided me with a summary of what was a confused situation, and I admit my contribution to that confusion. To try to clarify it, advertisements that are published to the public, or to a section of the public, will be excluded from the definition of "lobbying" by virtue of clause 4(3)(1).

Public statements are statements made either orally or in writing to the public at large or to a section of the public, for example, to a local community or gathering open to the public. Public statements can be made by any person, whether or not they are a registered advocate to government, without being required to be registered under the act. Public statements can be made with the purpose of seeking to influence government decisions, so long as they are public statements. The bill does not seek to regulate free speech.

Mr J.C. Kobelke: I think the Premier was referring to clause 4(3)(i) not (4)(3)(1).

Mr C.J. BARNETT: Thank you, member.

Ms A.S. CARLES: As I understand this amendment, the Premier is trying to remove the exemption for grassroots campaigners where they employ a lobbyist. However, the language of the amendment to insert subclause (3A) does not explicitly say this, and in my view it is ambiguous, so I will not be supporting it. This provision will create more problems than it solves.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Purpose —

Dr E. CONSTABLE: Clause 5 refers to the purpose of the bill, and I think it is worth taking a moment to consider this. Subclause (1) reads —

> The purpose of this Act is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives and people who undertake lobbying on behalf of others.

Subclause (2) goes on to present three main purposes. Subclause (2)(a) reads —

> provides for the registration of people who undertake lobbying; and

That is no different to what we have already and what already happens within the commissioner's office.

Paragraph (b) reads —

> provides for the issuing of a code of conduct for registered persons in their dealings with government; …

That also already happens within the commissioner's office. Paragraph (c) is the only new thing that will be happening in Western Australia with lobbyists. Paragraph (c) reads —

> prohibits registered persons from agreeing to receive payments or other rewards that are dependent on the outcome of lobbying activities.

There have been some celebrated instances—which created headlines in newspapers and other media interests—for which lobbyists have been paid success fees. Paragraph (c) provides the one step forward from what already happens in Western Australia by preventing lobbyists from receiving success fees if they achieve what their client requires. I do not think this bill takes us very far at all, if this is the only step forward in this legislation. Lobbying is a legitimate activity, but it is a billion-dollar industry, and we want far more than what is contained in this bill if it is to take us forward so that the gruesome headlines we have seen in the past do not happen again. I do not think this legislation goes far enough. For instance, there is no requirement for lobbyists to report on their activities. There are two amendments on the notice paper that will cover that.

I am not sure that this bill will enhance public confidence in this area at all. There are amendments coming up that propose to require lobbyists to pay a registration fee. Every profession I can think of is required to pay a registration fee, but not lobbyists. Why should the taxpayers of Western Australia cover the costs of this scheme when teachers, doctors and others have to pay registration fees? This bill is a very minor attempt at taking Western Australia forward when it comes to lobbying. We want to make sure that some of the mistakes of the past do not happen again. I think this legislation is weak in that it does not enhance to any great degree the area of lobbying, and nor will it enhance public confidence in this area.

Mr W.J. JOHNSTON: I want to seek some clarification from the Premier. In the second reading speech the Premier stated —

> Prior to the last election, in the Liberal Party's government accountability and public sector management platform, the government pledged to legislate to register and monitor the activities of consultant lobbyists.

The Premier goes on to say —

> This bill seeks to strike the right balance of allowing communications between lobbyists and government representatives on behalf of clients, while at the same time ensuring that all parties to those communications remain appropriately accountable …

That is not the purpose set out in subclause (1), which states —

> The purpose of this Act is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives and people who undertake lobbying on behalf of others.

I make the point that the Premier said in his second reading speech that he wanted to legislate to register and monitor the activities of consultant lobbyists. However, there is no provision in this bill for the monitoring of lobbyists. I am trying to square the circle here, because clearly if the second reading speech is taken at face value it is not reflected in this clause. I am seeking to understand why it is that the government is not proceeding with the intention outlined in its election commitments and in the second reading speech for the bill and why that is different from the purpose of the bill that has been presented to us. I would appreciate it if the Premier could provide some clarification to the chamber because it would be worthwhile to understand why it is that the bill does not do what both the Premier's election commitment and his second reading speech said it would do.

Mr C.J. BARNETT: If the member wants to find some distinction between election policy and what ends up in a bill, he might have a point. But there is certainly monitoring, because lobbyists have to update their registration details, including any new clients, so that is always there; and, indeed, within the public sector people are advising the Public Sector Commissioner of contact. That is monitoring; that is continual reporting on a quarterly basis. I can assure the member that in this government—I do not know what happened under the Labor government—there are very strict requirements about recording and notifying any contact by lobbyists. That is why there have not been any scandals under this government.

Mr W.J. JOHNSTON: It is interesting that four ministers have been sacked, but there are no political scandals.

Mr C.J. Barnett: Name me one; you can't, can you?

Mr W.J. JOHNSTON: I can—the member for Hillarys!

Mr C.J. Barnett: Where is the scandal?

Mr W.J. JOHNSTON: I can draw a line: Jack Lang, Gough Whitlam and the member for Hillarys! The three of them were sacked by the use of reserve powers.

Mr C.J. Barnett: No scandal.

Mr W.J. JOHNSTON: So competence is not a question; that is fair enough!

Mr C.J. Barnett: No scandal, whereas in the Labor Party five ministers were sacked under scandalous conditions.

Mr W.J. JOHNSTON: So, for the Premier, competence is not an issue.

Several members interjected.

Mr W.J. JOHNSTON: There was only one minister —

The DEPUTY SPEAKER: Member for Cannington, get on with it, now!

Mr W.J. JOHNSTON: Thank you very much, Mr Deputy Speaker, if you want to assist the debate in the house; that would be very good.

There is no provision in this bill that requires public servants to notify the commissioner of anything.

Mr C.J. Barnett: But they will administratively if that happens.

Mr W.J. JOHNSTON: The Premier is saying that, and even though it was in his second reading speech that this bill is intended to monitor the activities of the lobbyists, that is not actually in the bill, so the second reading speech was in error.

Mr C.J. Barnett: It is in the bill, because the lobbyists have to report quarterly; they have to update registrations and their client list administratively within the public sector. This is something that would be foreign to a Labor government —

Mr W.J. JOHNSTON: I have never been a member of a Labor government.

Mr C.J. Barnett: — but I assure the member that there are the most strict and rigid requirements on this government; they are self-imposed.

Mr W.J. JOHNSTON: This is my first term in Parliament and you have been Premier the entire time I have been in this chamber. Every single day I have been in this place, you have been Premier; we all understand that!

I want to clarify this. There is no provision in this bill about monitoring, except what the Premier said about the client list, which is already a provision in the current Register of Lobbyists. No other provision monitors anything. The Premier is saying that that is the monitoring that is occurring. The client list is being monitored. When reference to monitoring is made in the second reading speech —

Mr C.J. Barnett: It's clear the Labor Party is going to oppose this bill.

Mr W.J. JOHNSTON: Here we go again.

Mr C.J. Barnett: You've got a little bit of time to express your support; otherwise, we will not proceed. It is as simple as that.

Mr W.J. JOHNSTON: I would appreciate some protection from the constant inane interjections.

The DEPUTY SPEAKER: Now you can ask your question and we will move on.

Mr W.J. JOHNSTON: I am making a statement; I am not asking a question. I do not have to ask questions. I get five minutes to talk on this issue. I am trying to do that, but I keep being interrupted by the inane and irrelevant interjections of the Premier. I would appreciate it if you could help by making sure that that does not occur, Mr Deputy Speaker. Could I have some protection from the inane and constant interjections?

The only issue that is being monitored is the client list. There is a speech by the Premier; there is an election commitment. People think there will be something different in this legislation from what occurred in 2007. But these are exactly the same provisions. The only difference is that they are included in the bill. There is no substantial difference between the legislation that is before us today and the administrative arrangements that preceded it. The government is adopting the Labor Party's proposal and implementing it by way of a law. When the Premier stood in the chamber and said in his second reading speech that the government pledged to legislate to register and monitor the activities of consultant lobbyists, he did not tell the people of Western Australia that when he talks about monitoring the activities of lobbyists, he means monitoring their client list. That is all he talked about. I do not know that the people of Western Australia understood that when the Premier said those

things, that is all he meant. That is why when we get to some later provisions, the Labor Party will move some amendments, because that monitoring is not enough. That is very, very weak. It is not sufficient. If the Premier had gone to the public and said all these things about how he was going to behave in government and then came here and did nothing different from what had gone beforehand, there is a word for that that is sometimes used. The word for that would be hypocrisy, where the Liberal Party makes all these statements in opposition but in government does nothing to change what has already occurred. That is called hypocrisy, and that is what we have in this legislation.

Mr M.J. Cowper: What's the question?

Mr W.J. JOHNSTON: The minister interjects from the other side. This is my contribution. I do not have to ask a question. I am making a very important point about the total framework of hypocrisy represented by this bill.

Ms L.L. BAKER: I am quite interested in what the member for Cannington is saying and would appreciate hearing some more.

Mr C.J. BARNETT: I am not particularly interested in what the member for Cannington might say but I will answer his question and make a point. This legislation now gives statutory power to the code. We made that very clear. We are adopting the code that was introduced by former Premier Geoff Gallop when faced with the prospect of a number of his ministers appearing before the CCC. That is the harsh reality. That is the simple reality of the Gallop government that no-one in the Labor Party will concede; it was faced with a number of inquiries before the CCC into members of Dr Gallop's cabinet.

Mr M.P. Whitely: The Gallop government?

Mr C.J. BARNETT: Yes, that is the truth. Yes, the code is there and it is now enshrined in legislation. There are some differences. Success fees are now banned. That ban is new. There are also penalties for offences. They are under clause 24. They are new penalties. Also, there is nothing that would prevent the commissioner from seeking and getting more detailed information from a lobbyist if the commissioner thinks that is appropriate. There are differences. I am not suggesting they are monumental but there are differences.

Mr W.J. JOHNSTON: We need to come back to the nub of this issue that I am raising. The purpose that is in the bill is different from the purpose that was in the second reading speech and in the Liberal Party election commitments. We still do not know why that is. Who lobbied the Premier to back down on his election commitments? The Premier said that Geoff Gallop had ministers investigated by the CCC. I ask him to name me one minister under the Gallop government. I am inviting an interjection from the Premier. I ask him to name me a minister in the Gallop government who was investigated by the CCC.

Mr C.J. Barnett: Go through the list of the CCC reports.

Mr W.J. JOHNSTON: Can the Premier name one single person who was investigated by the CCC when Geoff Gallop was Premier of this state? He cannot do it.

Mr C.J. Barnett: The CCC reports came out after Dr Gallop had resigned as Premier.

Mr W.J. JOHNSTON: I ask the Premier to name one occasion on which a minister of the Gallop government was investigated by the CCC. There is not a single person who was a minister in the Gallop government who was investigated by the CCC. It is a fabrication to suggest otherwise. It is an untruth. The reason the Premier will not interject on me on this matter is because he knows I am telling the truth.

Mr C.J. Barnett: Do you think the corruption in the Labor government miraculously emerged when Alan Carpenter became Premier? I do not think so.

Mr W.J. JOHNSTON: The Premier said on a number of occasions today in this chamber that there were investigations of ministers while Geoff Gallop was Premier. I am asking him to tell me who those ministers were. I ask him to name me one minister. That is all I am asking. He talks about all these dozens. I am asking for the name of a single minister who was investigated by the CCC when Geoff Gallop was Premier. He should just say, "I'm sorry; I didn't mean that." That is all he has to say. He should just be honest and 'fess up. He should show some courage—I know that that might be a foreign concept to him—and admit that he made a mistake. The Premier is known for his arrogance. Everybody in Western Australia knows that the Premier is arrogant, and this is an example of why they know he is arrogant. He is going to speak at a Committee for Economic Development of Australia meeting soon. What are his two great achievements? They are James Price Point and Oakajee, neither of which has happened. We all know what he is like.

Point of Order

Mr C.J. BARNETT: Earlier today we debated James Price Point and Oakajee and anything else the member wanted to bring on for debate. That is not relevant to the lobbyist legislation. This is just tiresome repetition by the member, who is clearly in here to frustrate the passage of this bill on behalf of his leader.

The DEPUTY SPEAKER: Member for Cannington, come back to the point, please.

Debate Resumed

Mr W.J. JOHNSTON: I am indeed. I am speaking about the purpose of this bill, which is to regulate lobbyists. There are lobbyists in this state who are lobbying on behalf of the issues related to Oakajee and James Price Point. We all know that. The Premier promised to the people of Western Australia that he would do more than this bill is doing. Indeed, in his second reading speech, he said he is going to do more. Then we get to the purpose, which is the clause we are dealing with—clause 5. The purpose in clause 5 is not the purpose that is set out in his second reading speech. It is natural that when the courts and others come to interpret the legislation, we have to understand why the Premier says one thing in his second reading speech but the words in the bill are different. It will be very difficult for a Supreme Court judge to assess what was actually meant when there is this confusion—perhaps deliberate—between the words of the Premier in the second reading speech and the terms of the bill. We need to see why there is a difference between those two so the courts can have that opportunity to properly interpret the legislation because they are not going to get much help from the second reading speech. All the Premier has to do for us is stand up and explain why this bill does not do anything more than the current arrangements. He has acknowledged that it does not do anything more, and I appreciate that.

Mr C.J. Barnett: Success fees.

Mr W.J. JOHNSTON: I am talking about the issue of monitoring; we will get to success fees when we get to the relevant clause.

Mr C.J. Barnett: No, you won't; you'll run out of time.

Mr W.J. JOHNSTON: I am not going to run out of time.

Mr C.J. Barnett: Yes, you will.

Mr W.J. JOHNSTON: Why has this bill not reflected in its terms the purpose given in the second reading speech?

Mr D.A. TEMPLEMAN: I am very interested in the line of debate that the member for Cannington is pursuing.

Mr W.J. JOHNSTON: The Premier has a very easy job tonight; all he has to do is explain why he is not doing what he promised the people of Western Australia at the time of the election. It is very simple. I do not know why he is not implementing his election commitment. I cannot possibly know that. I do not know why he does not want to do what he talked about in his second reading speech. I cannot answer that question; only the Premier can. We are going to the question of the purpose of the bill, which is set out very simply in this clause. I will read clause 5(1) for you again, Mr Deputy Speaker, just so you are not confused —

> The purpose of this Act is to promote and enhance public confidence in the transparency, integrity and honesty of dealings between government representatives and people who undertake lobbying on behalf of others.

Nothing in that clause goes to the question of monitoring activities. It refers to "transparency", which we will get to later in the bill when we examine other provisions. I want to know why the Premier is relaxed about not wanting to implement his election commitment. There might be a perfectly good reason. I am interested to know what that reason is. I think the people of Western Australia would also like to know why he does not want to implement his election promise.

Mr M.P. WHITELY: I gather from the Premier's interjections that at some stage he is going to sever or gag this debate. Clause 5 deals with the purpose of the bill. The Premier said by way of interjection that one of the purposes of the bill is to prevent success fees, but having read ahead and having looked at the provisions that relate to success fees, I do not see that it does. There are no civil or criminal penalties for success fees. The Premier said that we will not get there because there is not enough time to debate it, so I have to bring it on now. The Premier cannot have it both ways.

Mr C.J. Barnett: We are on clause 5.

Mr M.P. WHITELY: I am talking about the purpose of this bill. The Premier said that the purpose of this bill is to prevent success fees. The Premier has also said that we are not going to get to debate success fees because he will not allow us to get there.

Mr C.J. Barnett: I did not say that at all. I said that one of the changes in this bill compared with the previous code is that it now outlaws success fees.

Mr M.P. WHITELY: It does not, because clause 21 provides that there are no civil or criminal liabilities attached —

The DEPUTY SPEAKER: Member for Bassendean, come back to clause 5.

Mr M.P. WHITELY: Clause 5 outlines the purpose of the bill and the Premier has said that the purpose of the bill is to prevent success fees.

Mr C.J. Barnett: No, it is not.

Mr M.P. WHITELY: The Premier said that one of the things this bill achieves is to prevent success fees, but it does not, because the relevant provisions state that there are no civil or criminal penalties; the bill only provides that a contract may be voided. The reality is that despite the fact that a contract may be technically null and void, people will still pay lobbyists success fees when they deliver a successful outcome, because in this state people will go back to lobbyists when they want to deal with them again. Nothing in this bill achieves that desired purpose.

Mr C.J. Barnett: They will not be a registered lobbyist. If they have success fees, they will be prevented from dealing with government. They will not have a business.

Mr M.P. WHITELY: Clause 21(4) states —

> No civil or criminal liability attaches to a person only because the person has committed a breach of the —

Mr C.J. Barnett: They will be dead in the water commercially.

Mr M.P. WHITELY: We will not even know about it. "A provision of a contract that breaches that prohibition is void and unenforceable", except that it will not be enforceable because of that shake-of-hand practice that takes place, which means that in a small business environment such as Perth it will go ahead. This is important legislation and one of the duties of this Parliament is to adequately scrutinise legislation. It concerns me greatly that one of the problems we are seeing here today is that because of the lack of depth in the Premier's government, he has to take on an incredible workload. This is the sort of stuff that should be delegated to a minister. Clearly, the Premier has not got his head around the legislation. He is clearly frustrated because he is the Premier of the state and he has busy and important things to do. As a result, we are going to be robbed of the opportunity to debate this thing thoroughly.

Mr C.J. Barnett: No, you're not.

Mr M.P. WHITELY: The Premier has indicated by way of interjection that he is going to cut off the debate because we are filibustering.

Mr C.J. Barnett: The Labor Party has a simple position. Your leader indicated you were supporting it, but you are not. You are not supporting it at all. We are at clause 5 after how many hours?

Mr M.P. WHITELY: That is not true, Premier. I am sitting here and listening. Of course we support the basic intention of the bill if the intention of the bill is to tighten up provisions for lobbying, but we would be failing in our duty as members of Parliament, let alone opposition members, if we did not thoroughly investigate the detail of this bill.

Mr C.J. Barnett: Most of your comments have been drivel.

Mr M.P. WHITELY: They have not been drivel at all. I have heard stuff from the Premier in this debate—I did not enter into the earlier debate—that has been contradictory. The Premier is a very impressive operator when he has his head around the detail of an issue, but the reality is that in this government the Premier has to pick up so much that so often he does not have his head around it.

The DEPUTY SPEAKER: Member for Bassendean, please come back to clause 5.

Mr M.P. WHITELY: I refer to the purpose of this bill. The member for Cannington said the bill does not achieve much. By way of interjection the Premier said that it prevents success fees, but it does not.

Mr C.J. Barnett: I was explaining the differences between the previous code, which did not have statutory powers, and that is one of them.

Mr M.P. WHITELY: There are no civil or criminal liabilities attached.

Mr C.J. Barnett: No, but the person would not be a lobbyist anymore and the state could recover the success fee.

Mr M.P. WHITELY: All that happens is that the contract becomes legally unenforceable. We know that in a town such as Perth, people will pay the success fee or they will not get to deal with those lobbyists anymore. That person's name would be mud.

Mr D.A. TEMPLEMAN: I am very interested in the line of questioning. I would love to hear more.

Mr M.P. Whitely: I am actually finished.

Mr C.J. Barnett: You have just demonstrated that you're dragging out the debate by giving the call to a member who does not want to speak anymore.

Mr D.A. Templeman: He has not finished.

Mr M.P. Whitely: No, I have not.

Mr C.J. Barnett: It is an absolute farce and you know it.

Mr M.P. Whitely: I want to speak again, but apparently we will not get to that point in the debate.

Mr W.J. JOHNSTON: I am still not sure whether the Premier has answered the simple question of why. I do not understand what is so complex about answering questions. I urge the Premier to tell us, even just by interjection, why this bill does not reflect the election commitments that he took to the people of this state. It is not a difficult thing, I imagine, for the Premier to answer. Why does the bill not reflect the second reading speech? Again, it is not a particularly complex issue to explain. The Premier says we are filibustering, but with due respect, when we were debating clause 4, the Premier gave answers that were 100 per cent opposite to each other. The Premier said to me that if a person was doing work paid on behalf of the NGO, they were covered, and then he gave the opposite answer to the member for Fremantle. The Premier has acknowledged some of the confusion that he has generated by his answers. If the Premier had a better understanding of the legislation that he has brought to us, we would probably get more straightforward answers and get through it much faster.

It would be great if, instead of sitting in his chair and swivelling backwards and forwards and complaining about filibustering, the Premier gave an answer about why the purpose of the act is different from the promise he took to the election campaign and from the second reading speech. It would be very helpful if the Premier could do that now by way of interjection. If the Premier could explain to us why those differences are there, we could move to the next clause and deal with other issues. As we know, we want to deal with a number of amendments from the Labor Party and others. We understand the Premier intends to reject those amendments. It would be quite easy for the Premier to let us know what has led the Premier to change his position from the election campaign and the second reading speech.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Lobbying by unregistered persons prohibited —

Mr W.J. JOHNSTON: This clause contains a penalty provision. I wonder what standard of proof will be required to prove a charge under this provision. Where will it be dealt with and who will bring a charge?

Mr C.J. BARNETT: If it is a criminal charge, I am advised that it will be investigated by the police and pursued by the Director of Public Prosecutions.

Mr W.J. JOHNSTON: The Premier said "if it is a criminal charge". That is what I am asking: is it a criminal charge?

Mr C.J. Barnett: Yes, it will be.

Mr W.J. JOHNSTON: So it will need to be proved beyond a reasonable doubt.

Mr C.J. Barnett: Yes.

Mr W.J. JOHNSTON: Is there a particular reason that the government has chosen not to use a civil penalty rather than a criminal penalty?

Mr C.J. Barnett: It is a criminal act.

Mr W.J. JOHNSTON: It could be but the government could have made it a civil penalty.

Mr C.J. Barnett: We chose not to because it is a criminal act. We are serious about regulating lobbyists. Unlike you, we are actually serious about it.

Mr W.J. JOHNSTON: Blah, blah, blah, he says.

Mr C.J. Barnett: We on this side of the house are not protecting people. We are actually dealing with corrupt behaviour or the threat of corrupt behaviour. There is a huge difference between the Liberal Party and the Labor Party, as embodied in this legislation.

Mr W.J. JOHNSTON: That is why I am investigating this provision.

Mr C.J. Barnett: Who are you protecting?

The DEPUTY SPEAKER: Order, members!

Mr W.J. JOHNSTON: Thank you very much, Mr Deputy Speaker; I appreciated all the protection I got then. I am very glad that nobody was allowed to interject on me. I appreciate the protection that I am getting. It is making this go much more quickly because you are being so disciplined in the way you are handling the chamber. I compliment your behaviour.

I want to point out that if this is made a criminal standard, it will make it much harder to get a conviction. That is why most modern regulatory frameworks now use civil standards, because that makes conviction easier. It means that someone is more likely to be penalised. The problem is that if the government makes it a criminal standard, it makes it much harder for the police and the DPP to get a prosecution and more complex for the courts. It also provides a much broader range of protections for the accused. Rather than making it easier to discipline registered advocates to government—we are not talking about lobbyists, because there are no lobbyists—it makes it easier to protect the affairs of a registered advocate to government. This is actually making it easier for them by having a higher standard. For this very reason, prosecutions under the Corporations Act have moved away from criminal prosecution to civil prosecution. The commonwealth government wanted to make the enforcement of the Corporations Act more effective and make it easier to get penalties, so it did not make the matter a criminal conviction; it made it a civil matter. That means that the courts have far greater opportunities to record convictions. Rather than the Premier's inane and blusterous interjection, the opposite is true. He says that the Labor Party is protecting people. That is not right; the Premier is the one providing protection. For example, the police will have to give a caution and there can be a right of silence. A person will not have to answer questions. Let us understand this: if the Commissioner for Public Sector Standards suspects someone is involved in a breach of the act, the commissioner will not be able to investigate the matter. The commissioner will have to refer it to the police and when the police interview the registered advocate, the registered advocate will have to be given a caution because the matter is being made a criminal matter. That is why no modern, contemporary regulatory body does it like this and why this provision is in the past. I have raised the Corporations Act, which are all civil matters, and because they are civil matters —

Mr C.J. Barnett: No, it is not. There are criminal penalties under the Corporations Act.

Mr W.J. JOHNSTON: Of course there are.

Mr C.J. Barnett: You just said there weren't!

Mr W.J. JOHNSTON: What are the prosecutions that are brought forward? They are brought forward as civil matters. It is that same as industrial law; union officials are not prosecuted for criminal offences.

Mr C.C. Porter: Are you saying there is no beyond reasonable standard for prosecutions under the corporations law?

Mr W.J. JOHNSTON: No, I am not saying that. I am saying that this provision would be better if it were a civil matter so that —

Mr C.C. Porter: You just told me that the only prosecution in the courts was a civil prosecution. That is just nonsense.

Mr W.J. JOHNSTON: No. If I said that, that was incorrect. I am happy to clarify that because unlike the Premier, I am happy to admit when I am wrong.

Mr M. McGOWAN: I am interested in hearing the member for Cannington clarify his remarks.

Mr W.J. JOHNSTON: The point I am making is that members should go through all the prosecutions under the Corporations Act because they will see that the overwhelming majority of them are tried as civil matters. It the same for industrial relations: the overwhelming number of prosecutions for industrial relations matters are civil prosecutions; they are not tried as criminal matters because it is easier to get a conviction for civil matters. I do

not have a problem if the Premier wants to give all these additional protections to people accused of breaching this legislation when it is enacted, but I believe these provisions should be made to a civil standard so that it is easier for the prosecuting authorities to get a conviction. We are more likely to get enforcement action if it is done to a civil standard. I am not a lawyer but I know the simple fact that if a civil standard is used, we will get more effective enforcement action than if the matter is made a criminal matter. That makes it unnecessarily complex and harder for the prosecuting authorities to get a successful outcome. If that is the government's intention, which I assume it is because the government is doing it, it will be successful. It will make it harder for the prosecuting authorities and more difficult for the Commissioner for Public Sector Standards to administer. The government has given him responsibilities that he is not familiar with because at the moment he does not deal with criminal matters; he deals with civil matters in his normal day-to-day work. If the government wants to make things more difficult and complex and make it easier for the lobbyists to get away with breaches, that is fine, because that is what it is doing. However, if the government wanted to make it easier for the government administration, it would have made these matters civil matters so that they could be dealt with by the civil courts to a civil standard, which would result in a much greater likelihood of success.

Mr C.J. BARNETT: I note that the Queensland and New South Wales legislation have criminal penalties. I wonder why the Labor Party does not want criminal penalties in this legislation. Is the Labor Party trying to excuse the conduct of Messrs Burke and Grill? That is what it is trying to do. It is trying to rewrite history to show that Labor members of Parliament were not guilty of criminal activity when everyone in this house and in Western Australia knows that they were. The Labor Party is trying to excuse and rewrite history, and we will not cop that.

Mr W.J. JOHNSTON: Let us all rewrite history! Burke and Grill would have been covered by these provisions. We will get to the success fee later. The Corruption and Crime Commission went through their behaviour. They did not get prosecuted for their behaviour; they got prosecuted for not telling the truth to the CCC. Do not come in here and rewrite history and reinvent the past.

Mr C.J. Barnett: You are defending Burke and Grill.

Mr W.J. JOHNSTON: I do not have to defend anybody; all I have to do is look at what actually happened. Only one minister had a finding of corrupt behaviour by the CCC—only one. Does the Premier know who that was? Does he remember? Tell me who it was.

Mr C.J. Barnett: Norm.

Mr W.J. JOHNSTON: Norm Marlborough did not have a finding of corrupt behaviour by the CCC; it was the member for Kalgoorlie, relating to his behaviour as a chairman of a committee.

Mrs L.M. Harvey: He wasn't the chairman.

Mr W.J. JOHNSTON: Relating to his behaviour as a member of a committee—whatever. He is the only one. Do not rewrite history. We had this discussion before the dinner break.

Mr C.J. Barnett: How long are you going to continue? You can continue this for a period of time.

Mr W.J. JOHNSTON: Mr Deputy Speaker, if I could have some protection from the inane and constant interjections from the Premier.

The DEPUTY SPEAKER: Member for Cannington, I am protecting you. Will you carry on?

Mr W.J. JOHNSTON: Thank you very much.

The Premier can rewrite history as often as he wants.

Point of Order

Mr P.T. MILES: I have been following this debate using the actual lobbyists bill. The member is not even talking about the bill right now and I ask you to bring him back to it.

The DEPUTY SPEAKER: Member for Cannington, come back to clause 8.

Debate Resumed

Mr W.J. JOHNSTON: Indeed I am. As I was saying before I was interrupted, I do not care how often the Premier wants to rewrite history. I am never going to accuse the Premier of lying because every time he opens his mouth, he believes what he says! I understand that. But that does not make it the truth. I am happy for people to go through and look at what actually happened in these matters. That is why I am saying this provision would be much better if it was not in the form that it is currently in. The Premier can rant and rave and do all these

things that he is very good at, but if he wants a bill that is more effective, he would listen to the member for Churchlands and the Leader of the Opposition and accept the proposed amendments. They are very sensible amendments that will strengthen the bill. The Labor Party does not want weak legislation; it wants strong legislation.

Clause put and passed.

Clause 9: Certain persons not required to register —

Mr W.J. JOHNSTON: I refer to clause 9(d) and (e). I must say that when I originally read these paragraphs, I did not interpret them in the way that they appear to be written. I now understand that I was wrong. When we were having a discussion before, as an example, about a graphic designer, I did not believe that this provision applied to them. The reason is that when the original lobbyist arrangements were entered into by the previous Labor government, there were people excluded. For example, lawyers and accountants were excluded. People who belonged to professions that had a professional body were excluded on the basis that those persons have to comply with the standards provided by their professional body. The Law Society of WA has a whole set of rules that apply to lawyers and their behaviour. That meant the government did not have to put another level of bureaucracy on them because they already have their own standards; likewise accountants et cetera. I did not realise that this provision is to apply to all technical people. Even if a person does not belong to a professional body but is a technical professional person, the lobbying act does not apply. That is a ridiculous provision. This is the gate through which all the trucks will be driven—"I did not register as a lobbyist because my business is an advertising agency. There are only 12 lobbyists out of 100 employees in my business so I am not a lobbyist. I didn't have to register." That is the truck. We found the gate! I did not realise where it was until the Premier pointed it out to me.

I thought the provision the Premier included reflected the provisions introduced by the Labor Party which said a person is exempt only if they belong to a professional body that has its own rules, such as lawyers and accountants. But now we find that this provision is actually the gate for every single person who wears a suit to work—"You're all exempt so long as there's not more than 49 per cent or 37 per cent of you." I do not know; the Premier will have to explain what percentage of activity is lobbying before a person becomes a lobbyist. A graphic designer or an advertising executive is not covered. A professional something or other is not covered because lobbying is only incidental to their work. This is an unbelievable provision. I did not realise it was broad, Premier. I am glad the Premier pointed it out to me. I thought he had adopted the Labor Party's position, which is that a person is exempt only if they belong to a professional body that enforces its own standards, such as lawyers and accountants. But apparently I am wrong. I did not realise that the Premier had put this gate on the side of the building for all the lobbyists to drive their trucks through. I do not understand why the Premier has done that.

Firstly, why has the Premier done it? Secondly, what percentage of activity has to be lobbying that is "occasional only and incidental to the provision of services"? If I run an advertising agency, and I have 100 people in that agency—it is a massive organisation—and my clients come to me and I spend a bit of time lobbying on their behalf, but it is only two, maybe five, 10 or 18 per cent of my business, why am I exempt? I do not understand. Premier, why are we doing it and what is the percentage a person would have to be doing before this provision applies or does not apply?

Mr C.J. BARNETT: If a graphic artist from an advertising agency prepares an ad and they do it as a simple business transaction, that is not lobbying. No-one would suggest it is. However, if an organisation, whatever it might be, becomes the lobbyist and starts to make contact and influence government, it needs to be registered—as simple as that.

Mr W.J. JOHNSTON: I am sorry, all the Premier has done is tell us what the words on the paper say. The Premier has not explained the important issue, which is: when does a person stop being "incidental to the provision of the technical or professional service"? Let us take the example of an advertising agency. Many advertising agencies lobby government—it is a fact. Many of them do not just do it indirectly through the newspaper, they do it directly. What percentage of activity has to be there before it is no longer incidental? If a business comprising 100 people has five lobbyists, clearly it is only incidental to their work. It is five per cent of their activities. Ninety-five per cent of the time they do something else. Is it a percentage that ceases to be incidental? If a full service agency provides every service, such as the graphic design, the TV production, the sourcing of on-air talent and the placements, and takes the risk of the advertising buy, if that is all done and there is a bit of lobbying on the side, is that person exempt? If they are, I do not think that is what the people of Western Australia thought the Liberal Party promised at the last election. It is a very, very much lower standard than the existing provision that was introduced by the Labor Party when we were in government.

Mr M.P. WHITELY: The member for Cannington made a very good point. Clause 9(e) states, in part —

> ... to the extent that lobbying by that person is occasional only and incidental to the provision of the technical or professional services;

If the area of lobbying applies to medical technology and a medical technologist, employed to provide technical advice to the organisation, meets the Minister for Health as part of that and provides technical information to the minister to convince him of the merits of the argument put forward by the body, is that lobbying or not?

Mr C.J. Barnett: If he is an employee of the company, that is who he represents.

Mr M.P. WHITELY: I am talking about a person who provides technical professional services as part of the business.

Mr C.J. Barnett: That is not lobbying. If a technical expert in medical equipment is an employee of a medical company, that is not lobbying—that is an employee.

Mr M.P. WHITELY: They may have some expertise in medicine. They may not be employed by the business. We are talking about the extent to which they provide services to the business. We are not talking about whether they are employed by them.

Mr C.J. Barnett: If they are paid as a third party, they can be a lobbyist.

Mr M.P. WHITELY: Since the Premier raised the issue of employees, I want to turn to paragraph (f). What is "the employer" defined as? In debate between the Premier and the member for Balcatta before the dinner break, it was said that for the purposes of this bill a consultant who works with a business may be defined as an employee. The Premier said that in those cases a consultant doing lobbying work may be exempt from the operation of this bill. The Premier was using that argument to justify a point he was making earlier. It left me confused because I thought that if a person consults to one business and has had 100 per cent of their business tied to one company for five years, for the purposes of this bill, they may be regarded as an employee, but many people consult across a number of businesses. Whilst the Premier referred to what constitutes an employee, I ask him to clarify whether an employee means someone under the direct employment of a business. Does it mean—this is a key point, Premier—someone who simply works as a pay as you earn employee of a business for which they do some lobbying work? Are they exempted or is it the consultant, and if it is the consultant, is it the consultant whose business with that enterprise constitutes 100 per cent, 30 per cent or 10 per cent of their time? The Premier raised the issue of what constitutes an employee, and I would like him to clarify that. I go back to the point of the member for Cannington—I think it is incredibly important that we take these issues one by one, as I do not want the points made by the member for Cannington lost—about clause 9(e), which states —

> the extent that lobbying by that person is occasional only and incidental to the provision of the technical or professional services.

We need some guidance from the Premier about what constitutes "incidental" and "occasional". The example I gave was in the area of medicine and medical expertise. If we engage a consultant who may provide services to the organisation 90 per cent of the time and who then spends 10 per cent of their time lobbying members of Parliament and ministers about the provision of those services, is that incidental and occasional? How will it be measured? I suggest that 10 per cent of time spent lobbying indicates a far heavier part of the workload than incidental or occasional. Frankly, that level of contact indicates to me that one is almost a full-time lobbyist because, obviously, they do not have that sort of access to members of Parliament. We need clarification of that. What is meant by an employee and what constitutes, in real language, occasional and incidental provision of technical and professional services?

Mr C.J. BARNETT: In the case of, say, a company, if a person is employed full time or part time or as a consultant, that consultant is a contractor and in that capacity they are not required to register.

Mr M.P. WHITELY: If a person is consulting to a business and has three clients and the business represents 30 per cent of the person's work, and that work involves providing internal services to the enterprise but 50 per cent of their time involves engaging with members of Parliament and ministers, how is that different from being a lobbyist? How is being a consultant employed to provide services, half of which may be internal with the organisation, and the other half involved in lobbying and effectively trying to sell the message to government, different from being a lobbyist? I cannot see the difference. A person is running an enterprise and operating as a consultant on behalf of their client, the person to whom they send an invoice every month—they are not a PAYE taxpayer—for the time spent consulting with them and lobbying members of Parliament. How is that different from being a lobbyist? I cannot see the distinction.

Mr C.J. Barnett: The ATO does.

Mr M.P. WHITELY: I understand it if an employee is working full time, paying tax through that employer on a weekly or monthly basis, even if they are working 100 per cent of the time for an individual business. If we say that this consultant works full time for BHP Billiton or full time for the Conservation Council, I can understand that, but when consultants are presumably moving across a number of businesses and providing a variety of services, some of which may be lobbying by consulting with members of Parliament to influence them on a particular issue, how is that different from being a lobbyist? I cannot for the life of me understand the difference. I hope the Premier can provide a better explanation.

Mr C.J. BARNETT: If the member for Bassendean watched the media reports over the past few weeks on some of the job losses from, for example, Fortescue Metals Group, he would have seen that many people are employed by companies as consultants or contractors, generally full time in that role, but they are not permanent employees; they come in, do a job and move on. That is the reality of the modern workforce and the member needs to be up to speed on that.

Mr M.P. WHITELY: I accept the point that if someone is working full time—the reality of the modern workforce, regrettable as it may be —

Mr C.J. Barnett: Even part time, it doesn't matter.

Mr M.P. WHITELY: If someone is working full time as a consultant for a particular enterprise, they may be exempt. They are consultants who do all their work for FMG or the Conservation Council or the save the fuzzy bear organisation or whatever it is, but what if the person is working for a variety of businesses as a consultant, and part of their work involves lobbying and dealing with members of Parliament, how is that different from what Brian Burke and Julian Grill did, and Noel Crichton-Browne on the Premier's side did? Let us not begin to talk about meetings in car parks and how that would be caught in this legislation and whether that precludes a person from being a lobbyist, a member of Parliament or, indeed, a minister; I will not talk about that sort of stuff. I do not want to talk about that sort of stuff!

Several members interjected.

Mr M.P. WHITELY: Let us not talk about car parks and Noel Crichton-Browne and the Corruption and Crime Commission. Let us not talk about the CCC, car parks and Noel Crichton-Browne and ministers of the Crown and all the rest of it. Please, stop trying to make me talk about it! I do not want to talk about it!

Mr C.J. Barnett interjected.

Mr M.P. WHITELY: That might be because we did not have any listening devices in a car that was parked in the car park at that time, the night before someone went down to present at the CCC, so let us not pretend this legislation applies only to Labor governments and Labor members. Let us not talk about corruption unless we want to talk about some of the ministers who might be in the other place.

Mr C.J. Barnett: Give me an example.

Mr M.P. WHITELY: I think I already have, Premier, and I think I spent a day away from this place on holiday because I gave a very specific example of someone who may or may not be a fit person to be a member of Parliament or a minister of the Crown, all of which was discovered before they became one, so I will not give an example; I will not mention them by name because I have only a few short months left here and I do not want to be on suspension again, so I will not talk about the honourable dishonourable. I will not mention his name.

An opposition member interjected.

Mr M.P. WHITELY: No; I will not. In any case, going back to my fundamental point, what is the difference between a lobbyist and somebody who consults to a number of businesses and does lobbying as part of their consulting work? For the life of me, I do not get the difference. They send them an invoice and on their invoice they say, "I am charging you for services rendered, including X thousands of dollars for this and X thousands of dollars for meeting with members of Parliament and ministers of the Crown to convince them of the merits of their argument." What is the difference? I do not get it. When I sat down previously, the Premier gave me an example and said that due to the nature of work these days, many people work full time. That is okay. If the Premier means that a consultant works full time for one client, I accept that; that is fine, but that is not what is in the legislation. Give me a specific answer to the question. What about the consultant who works 30 per cent of their time for a particular client and spends half that time trying to convince members of Parliament of the merits of a particular argument? They are consultants; why are they not lobbyists who need to be registered? I do not get it. The business is fundamentally the same. They are selling their services. They are selling the fact that they

have influence. What is the difference between a consultant and a lobbyist? I simply do not understand, so if the Premier can illuminate us on that, I would be —

Mr C.J. Barnett: The public sector definition of a consultant in this sense would be a contractor and would be in-house.

Clause put and passed.

Clause 10: Register —

Mr M. McGOWAN: I move —

Page 12, line 5 — To delete "may" and substitute —

must

I will explain to members what this amendment is about. As I have said, clause 10(3) provides —

> Without limiting subsection (2), the register may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken, lobbying.

This amendment basically reflects the current state of the lobbyist register, which is on a website that anyone can access. That website lists all the clients of lobbyists. So we can look at each lobbyist and see just who their clients are. There is a requirement that lobbyists list all the clients who are paying them money to lobby on their behalf. Some lobbyists have many, many clients. That may include major corporations and businesses, and sometimes even local councils and associations and representative bodies and the like. Other lobbyists have very few clients. But in any event, under the current rules, which are not legislative, there is a requirement that all the clients of lobbyists be listed. That means that people can know exactly who is lobbying on behalf of whom. I think that is a good system. It is quite transparent. People are able to know the clients for whom lobbyists are working. So if a government decision is made in relation to a certain business or association, people are able to determine whether that business has engaged a lobbyist, because they can look at the website. That is quite a good system, brought in in 2006 or 2007, and it seems to be quite effective, because we can look, as I have on occasion, at who are the clients of various lobbyists. The problem with this clause is that it says the register "may" record information relating to persons for whom registered advocates to government are undertaking lobbying. It is not compulsory. That means that not all of the businesses that engage lobbyists will necessarily be on the list. I think that is a significant oversight.

The purpose of this amendment is to toughen up the bill by ensuring that if people engage a lobbyist, their name will be on the register and the website. It is not an optional extra. This will make lobbyists more accountable. This will ensure that businesses, associations and other entities that engage lobbyists are registered. I want everyone to understand that this will be a toughening of the law that the government is bringing in. There is no doubt about that. This is one of two major areas in which I think reform should take place. The other area—to which I note significant amendments have been moved by the member for Churchlands—surrounds the issue of reporting of contact between government ministers and lobbyists. That is significantly more important than this. But this is still important. I believe that this toughening up of the law will make it far more sensible and far more reasonable. It will remove any doubt. It will mean that the critics of this law, who say it is not tough enough and not good enough, will know that it is tough enough and it is as good as what exists currently.

Mr C.J. BARNETT: The government will not be accepting this amendment. I know what the Leader of the Opposition is suggesting. However, this amendment would make the register quite unwieldy and lengthy. It would mean that it would have to include all clients, present and past. Presumably it would extend to meetings between lobbyists and their clients. That could raise speculation about what the meetings are about. It is not necessary. This is regulation of lobbyists, not regulation of the clients of lobbyists. The clients of lobbyists do not need or deserve to have all their details, whatever they might be, put on the register.

Mr M. McGowan: They are put on there currently.

Mr C.J. BARNETT: Only if they are registered and if the commissioner decides that is appropriate. Their name is there. They are listed. But there are no details about their company, or about the issues or about meetings or whatever else might go on the register. That would make the system completely unwieldy and cumbersome, and therefore irrelevant.

Mr M. McGOWAN: Frankly, that is just a complete misreading of the amendment. Subclause (3) of clause 10 states that the register may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken, lobbying.

Mr C.J. Barnett: "May".

Mr M. McGOWAN: Yes, "may".

Mr C.J. Barnett: You are saying "must".

Mr M. McGOWAN: Yes. That is why it is a failure.

Mr C.J. Barnett: No, it is not.

Mr M. McGOWAN: They must have their names on there. They should have their names on there.

Mr C.J. Barnett: They will have their names on there.

Mr M. McGOWAN: Not necessarily, because it says "may". The Premier is also suggesting that all these other details should be on there. That is not what this clause says. It says who they are, and what their name is. What is wrong with having their name there? The Premier is extrapolating beyond what I am suggesting. I think there should absolutely be a requirement in the law that the details of these lobbyists—who they are; their name—be on the register. For the Premier to say that is not what I am suggesting is wrong.

Mr C.J. Barnett: All the current clients of lobbyists should be on the register. That is the current situation, and that will remain.

Mr M. McGOWAN: Yes, but the Premier is changing it.

Mr C.J. Barnett: No, I am not.

Mr M. McGOWAN: The Premier is saying, "No, I am not", but he cannot explain why he is not.

Mr C.J. Barnett: Because subclause (3) says the register may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken, lobbying. So the commissioner may require further information, if he wishes to.

Mr M. McGOWAN: So let us make it certain.

Mr C.J. Barnett: No. It is further information beyond the name of the client, if he wants to do that for whatever reason.

Mr M. McGOWAN: But that is not how it reads.

Mr C.J. Barnett: Yes, it does. The names must be there.

Mr W.J. JOHNSTON: This goes to the heart of the purpose of the lobbyist register. The purpose of the lobbyist register is so that when a lobbyist talks to a government representative, the government representative knows who that lobbyist is representing. If we do not have that, the lobbyist register is a complete and utter sham. There is no place in the world in which registered lobbyists do not have to register their clients, otherwise there is no purpose in having a register. We know who the lobbyists are because we can look them up in the *Yellow Pages*. That is not the purpose of the register. The purpose of the register is so that we can know who their clients are. If we do not know who their clients are, it is just like the *Yellow Pages* and we are just doing a favour to the lobbyists by listing them all in the one place. What the Premier needs to do is have their clients listed on the register. That is why the Leader of the Opposition has moved this amendment. This is just so fundamental to the bill that it is an extraordinary position for the Premier to argue against. If the Premier argues against this amendment, or does not propose an amendment of his own, this bill has no purpose, and not only has the Premier breached his election commitment, he has wasted the time of the Parliament. This is it, Premier—this is it. If lobbyists do not have to disclose the names of their clients, the register is worthless.

Dr E. CONSTABLE: I support the amendment moved by the Leader of the Opposition. The Premier should just look at the three lines in this amendment. They are very straightforward. They are fundamental to the legislation. All this amendment is doing is stating what is happening now and making it stronger. In fact, the Premier used the words that they must already do that. He said that himself. The Premier said that under the current system of the register, they must do this. This amendment is just seeking to strengthen the clause by replacing the word "may" with "must". This is a small but very significant amendment. It is an amendment that I think deserves serious consideration and one that this house should pass.

Mr J.C. KOBELKE: I do not see the basis for the Premier's argument against the amendment moved by the Leader of the Opposition. Subclause (1) reads —

> The Commissioner must establish and maintain a register for the 27 purposes of this Act.

I assume it is not going to be an empty book and that something has to go into it. Subclause (2) reads —

> The register records —
>
> (a) information relating to —

(i) registrants; and

(ii) registered advocates to government;

That is, the register has to have the names of the lobbyists. The Premier can correct me if I am wrong, but I take the wording of subclause (2) to be a must. The clause continues —

(b) any other information the Commissioner considers necessary or desirable for the purposes of this Act.

Clearly, the register must contain the names of lobbyists, and there may be other information that the commissioner considers necessary or desirable. Then we come to subclause (3), which reads —

Without limiting subsection (2), the register may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken, lobbying.

We have to complete the other half; we have to have in the register the names of the people for whom the lobbyists are working.

Mr C.J. Barnett: That is right; it is in there. It is required by the code.

Mr J.C. KOBELKE: It is in the code, and this is what the Premier is doing all the time. The Premier is talking about another world and we are debating the bill. The Leader of the Opposition has moved an amendment to put what the Premier has just said into the bill. What the Premier has just said supports the amendment.

Mr C.J. Barnett: The bill gives statutory basis to the code and empowers the code. That is what the bill is doing.

Mr J.C. KOBELKE: Exactly, and the Premier has said that is how the code works now, and that is what the Leader of the Opposition says, so let us put it in the bill. We want to put it in the bill because under this bill the commissioner has incredible power. Subclause (4) reads —

The Commissioner may —

(a) keep the register in any form the Commissioner considers appropriate; and

(b) make any changes to the register that the Commissioner considers necessary or desirable to ensure that the register is accurate and up-to-date.

In this clause, and in other clauses in the bill, the commissioner has considerable power. That is in part due to the fact that, as we have gone through the debate, the wording in the bill is not as clearly defined as we would like. A lot of things are unclear. The Premier has built into the bill considerable executive power for the commissioner to try to sort through and give decisions on this issue, but the Premier has left open this critical issue of maintaining the register. However, as indicated through the Premier's interjection, that is clearly not his intention, as he has left it open for the commissioner to decide that he will not record the names of some of the people who are employing lobbyists and he can just leave them out, because the wording currently is that the register may record information relating to the persons for whom the lobbyist is undertaking work. The point is that the Premier has acknowledged that the current system is not a "may"; he says that it is a "must". All the Leader of the Opposition is saying is: let us not water down the existing system. Clearly, all the Premier's language, and his sell on this, is that this is a new and better standard, but in this provision the Premier is seeking to water it down and make it weaker so that a commissioner, at any given time, may have a different point of view and simply not record the names of some of the people whom the lobbying is being done for. From the Premier's interjection, that is the way it is currently done, so what is his objection to saying that the register "must" record that information? It does not go on, as the Premier suggested in his earlier response, to say that it has to record their phone numbers and who they had breakfast with; it simply says that the register must record information.

The next subclause states that the commissioner can decide which part of that information is recorded. If we adopt the recommendation of the Leader of the Opposition, it will be absolutely clear that the commissioner, in keeping the register, has to not only put in the names of lobbyists, but also record information—not specify exactly how much—to identify the people whom the lobbying is done on behalf of. I cannot see any reason why we cannot have this to maintain at least the standard we have now.

Mr M. McGOWAN: Obviously, the Premier is not going to respond, but if he goes to page 11 of the bill, he will see that clause 10(2) states that the register records information relating to registrants and registered advocates to government. It is obviously mandatory that it contains the names of the lobbyists, and we would expect that it would contain those names. That is quite clear. We know that the register must contain the names

of lobbyists, because subclause (2) says that. But subclause (3) states that it "may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken, lobbying". That is quite a different provision from the first part of the clause, which indicates that the lobbyist must be registered. Basically, it says that the lobbyists must be registered, but their clients have a different arrangement. My view is that both should be registered. It is as important—in fact, it is more important that we know who the clients are. In that way, we can potentially track government decision making back to the client, who might be the beneficiary for whom the lobbyists were lobbying a government minister or agency. I would have thought that it is fundamental to this bill to make that clear. The fact that the Premier will not even answer these questions —

Mr C.J. Barnett: I just did!

Mr M. McGOWAN: — when people like the members for Churchlands, Cannington and Balcatta have presented this argument quite strongly, means he either does not understand what we are saying or does not actually think that that is a fair point and should be mandatory in this bill. We will divide on this issue because this is very important; this is one of the most important components of the bill. The public should know as a matter of fact, and as a matter that is absolutely going to be in place into the future, who the clients of lobbyists are.

Mr C.J. BARNETT: As I say again, this bill is about the regulation of lobbyists; it is not about the regulation of the clients of lobbyists. The bill requires that lobbyists must have their names and details on the register. The code, which is given statutory powers through this bill, requires that the lobbyists also list their current clients. This amendment, presumably, will require a list of all clients, no matter how long ago that may have been. That would be cumbersome and unwieldy. Can members imagine the situation of a client, a company, that may, for example, have engaged the services of Mr Burke—perhaps in all good faith—and forever would be on the register as a client of Brian Burke! That is not fair and reasonable.

Mr M. McGowan: That is not a reasonable point.

Mr C.J. BARNETT: I think it is absolutely reasonable!

Mr M. McGowan: Would he be registered?

Mr C.J. BARNETT: Not any more.

Mr M. McGowan: Then it will not apply, so your point is ridiculous.

Mr C.J. BARNETT: Former clients could well be in this position. The code requires all current clients to be backdated three months and to be registered; it does not state that all clients in history remain to be listed on the registration. This bill is about regulating lobbyists, not their clients.

Mr W.J. JOHNSTON: I seek further clarification of the Premier's comments. I seek two pieces of information. The first is that the code of conduct is not part of this legislation.

Mr C.J. Barnett: It is empowered by it.

Mr W.J. JOHNSTON: That is right. Will Parliament be given a copy of the draft before it completes consideration of the bill? If, as the Premier says, that code of conduct deals with the issues that we are raising, that might be satisfactory information if we have access to the code. But, at the moment, all that we are dealing with is the bill. The Premier says the amendment moved by the Leader of the Opposition is in fact covered elsewhere—that is, of course, not a criticism of the Leader of the Opposition's amendment; it is just saying that these issues are dealt with elsewhere—but we do not know that, because we do not know what is in the code of conduct, and we cannot know because the Premier has not given it to us. Given he is the responsible minister, until he gives it to us, none of us can ever know.

The second point I raise is: is it intended to have the code of conduct referred back to Parliament in any way? Given this higher standard that the Premier promises the people of Western Australia —

Mr C.J. Barnett: Which they have!

Mr W.J. JOHNSTON: That is what was promised. We will see whether we get it or not. At the moment this provision is weaker than the current arrangements. It is of a lesser standard than the current arrangements. Will it be a disallowable instrument? Is the government intending to have it come back to the Parliament so we can have a look at it? Is it intended that there be some public accountability? What are the arrangements for negotiations of its final terms? I personally do not expect to deal with the detail of the code of conduct, but I do want to deal with the question of making sure that there is a purpose to this lobbyist register. There is no purpose to the lobbyist register if we do not know who the clients are. That is the fundamental issue.

If the Premier says that by this provision we would have people forever tarred by their former clients, he should come back with a provision that would allow some flexibility so that former clients are not included. We are trying to make the point that if we do not have legislation that requires the disclosure of clients, we are going to a much lower standard than is currently enforced in this state. There would have to be a compelling reason for us to go backwards in the regulation of lobbyists before we would agree to that.

Mr J.C. KOBELKE: I refer to the Premier's response to the Leader of the Opposition. Frankly, what he said is nonsense; it does not hold water. He was saying, "What about the people who got caught up with Brian Burke as a lobbyist?" He keeps making up these stories that are totally at variance with the bill before us. We are talking about the registration of lobbyists. They are called registrants or registered advocates to government. They are the lobbyists we are talking about. They are registered. Clause 3 is the register to record information relating to persons for whom the lobbyist is undertaking work. Brian Burke would have to be registered as a lobbyist for his people to be on the list. If the Premier wants him registered, surely he would want the people he is working for on the register as well. I am assuming they would not get registration. The Premier's idea that he put forward in response to the Leader of the Opposition is a total nonsense. Further to that, clause 4 allows the commissioner to keep the register in any form the commissioner considers appropriate, so he can put in place procedures for cleansing the register if there has been no activity for a certain period. Clearly, he has the power to do that sort of thing. It does not really help when the Premier puts forward suggestions to try to counter the amendment moved by the Leader of the Opposition and raises issues that are clearly nonsense.

The point is that if someone is a registered lobbyist, they go on the register. Why should they not also have to declare who their clients are? That is fundamental to the whole process of transparency that the Premier says he is putting in place. He has already admitted that that is how it currently works. If it currently works, why should that not be the way it is carried forward with the actual provisions in this statute? He does not have a case for changing "may" to "must"; leaving it as "may" leaves it open to be watered down and to be less than what he is telling people he is proposing to do.

Mr C.J. BARNETT: I refer members opposite to clause 17(1) of the bill, which states —

> Registrants —

That is, the company —

> and registered advocates —

That is, the individual —

> to government must comply with a code of conduct.

This bill says that they must comply with the code.

Mr W.J. Johnston: We don't know what's in the code.

Mr C.J. BARNETT: The member for Cannington says he does not know what is in the code. I suggest that if he looks on the website of the Public Sector Commission —

Mr W.J. Johnston interjected.

Mr C.J. BARNETT: That is the existing code.

Mr W.J. Johnston: No, it's not.

Mr C.J. BARNETT: Of course it is. There is a code. It is on the Public Sector Commission website. It is available for anyone to see. Clause 5.1 of the code states —

> There shall be a Register of Lobbyists which shall contain the following information:
>
> (a) the business registration details of the Lobbyist, including names of owners, partners or major shareholders as applicable;
>
> (b) the names and positions of persons employed, contracted or otherwise engaged by the Lobbyist to carry out lobbying activities;
>
> (c) the names of third parties for whom the Lobbyist is currently retained to provide paid or unpaid services as a Lobbyist; and
>
> (d) the names of persons for whom the Lobbyist has provided paid or unpaid services as a Lobbyist during the previous three months.

Lobbyists must comply with the code. The code is on the Public Sector Commission website as public information and the code makes it very clear that lobbyists must provide details of their current clients, backdated three months. I would have thought that was pretty straightforward.

Dr E. CONSTABLE: I am not clear why we need the words on line 7 "or have undertaken". The Premier has disappeared. What is the purpose of having those words in this clause? If they were deleted, this clause would be tightened up and it would be absolutely in keeping with the code, as I understand from what the Premier has just read. I propose that the Premier seriously consider the deletion of the word "may" and insert the word "must" and delete the words "or have undertaken". He objected to the notion of having some historical record of clients of lobbyists. This would solve that problem and it would mean that this clause will strengthen and is in keeping with the code of conduct.

Mr W.J. JOHNSTON: I want to introduce a concept to the Premier. That is called Parliament. Until this bill is passed by this chamber and then goes to the other chamber and gets passed by it and then gets signed by the Governor, this is just a bill; it is just a thought. The code of conduct that is on the website today is not related to and has nothing to do with the legislation we are debating. It cannot because it already exists. This is only a bill, not an act. Until it becomes an act, it does not exist at law. That is just the way the system works. When the Premier says that we can read the code of conduct today, yes, I can read today's code of conduct. The one thing I know I cannot read is the code of conduct provided by clause 16 because until the bill becomes an act, it does not exist. When it does exist, the Commissioner for Public Sector Standards will comply with the act and publish a code of conduct. At the top of that code of conduct, I bet anyone $100 it says "Code of Conduct Integrity (Lobbyists) Act" or whatever the short title of the bill is.

Until the bill becomes an act, it does not exist and it does not have legal force. That is why I am saying to the Premier that this is pretty easy. If he does not like our amendment, he should bring in his own because the current wording stinks. It is a pile of the proverbial. It is a get-out clause. It says that the Public Sector Commissioner will decide whether clients' names go on the lobbyists register. The Premier has already said in this chamber that this is about registering lobbyists, not dealing with their clients. He gave us this fear that there will be some exemptions. It is a reasonable fear because he has said that it should not be about the clients. It should be about the clients. Lobbyist registers all around the world are about the clients. It is about seeing whether there is a line between the activities of the lobbyist on behalf of their clients and a decision of government. They do not make the decision of government to benefit the lobbyist; they make the decision of government to benefit the client. If we do not know who the client is, it does not matter who the lobbyist was because we are never going to know whether there has been a favour.

Mr C.J. Barnett: The client has to be registered on the register and you know perfectly well that's the case.

Mr W.J. JOHNSTON: Today they have to be listed on the register.

Mr C.J. Barnett: And they will be under this act.

Mr W.J. JOHNSTON: When this bill is passed, we will have no clue and no control over whether the lobbyists will be included because the Public Sector Commissioner will make that decision, not the people in this chamber.

Mr C.J. Barnett: Only on additional information.

Mr W.J. JOHNSTON: No, he makes the decision based on his own views because that is what we are empowering him to do.

Mr C.J. Barnett: Only if he requires further information.

Mr W.J. JOHNSTON: No. I am reading the bill. I am not quite sure what the Premier is reading. The bill is clear: we are giving the authority to the Public Sector Commissioner to decide whether clients' names are published. That is what this bill provides. The Leader of the Opposition says that Parliament should say that it should be public. The opinion of the Public Sector Commissioner will not matter then because Parliament will have told him what to do. It is so fundamental to what we are doing that everybody, probably including the Premier's own backbench, cannot understand why the Premier is having an argument.

Mr C.J. Barnett: Okay; put it to a vote and let's divide and deal with it.

Mr W.J. JOHNSTON: It is so transparent.

Mr C.J. Barnett: Have a vote. Let's get on with it.

Mr W.J. JOHNSTON: If the Premier is going to vote to emasculate this provision —

Mr C.J. Barnett: We disagree, so let's have a vote.

Mr P. Papalia: Are you too tired for the job?

Mr C.J. Barnett: No, I'll be here at midnight—even longer if it takes it.

Mr P. Papalia: You're looking pretty tired.

Mr C.J. Barnett: I am tired. I work hard—something you would find refreshing.

Mr W.J. JOHNSTON: The Premier works hard on Oakajee; he works hard on James Price Point.

It is so fundamental to what we are doing here that it is extraordinary that the Premier cannot understand it. How can there be a lobbyists register that does not include clients? The Premier says, "Well, that'll be in this other instrument." Fine! Bring the instrument to us, because it is not the one the Premier read from.

Mr C.J. Barnett: Look on the website; look on the web.

Mr W.J. JOHNSTON: It cannot be anything to do with this because this is not a law. That is the way it works. Until the other chamber and the Governor have had their bit to say, it is not a law; it is just a thought.

Mr P. PAPALIA: I stand to support this amendment because I feel that Western Australians reading *Hansard* following this debate might rightly question the motivation for the Premier in refusing to countenance a quite reasonable suggestion that actually tightens the legislation. The amendment reinforces the power of this legislation to ensure that the people of Western Australia are provided with information not only about lobbyists, but also most importantly about whom they represent. If, as the Premier asserts, the intent of the amendment is completely in accordance with later clauses in the bill, clauses 16 and 17, I can see no reason for the Premier refusing to acknowledge that changing the wording from "may" to "must" is a reasonable suggestion. It is not a great demand on the Premier or on this Parliament, on the government indeed, to change one word to ensure a more stringent reading of this clause and to ensure that people in the future can rest assured that the details of clients of lobbyists will be included and will be publicly available. That the Premier would refuse to countenance the amendment raises the question: why would he do that? It is not because it is not in accordance with the intent of the bill, because he suggests that is the case later on in the bill. In fact, he is suggesting in the worst case that it is necessary because it is repeated. But we on this side believe it will strengthen the bill. Therefore, we can only ask: why would the Premier refuse to countenance the amendment? Is it because it is late and he is getting grumpy? Is it because really he is feeling the weight of not having the previous Attorney General in this chamber to back him? The intellectual power in the lower house for the government has been removed from his role. Is it because the Premier is starting to feel the absence of the member for Bateman in his front bench? Is that why, Premier? We have to wonder why—or is it because really the Premier does not want to enforce a more stringent rule? Is it because the Premier's integrity is in doubt? Is it because the integrity of his government may come under scrutiny if we make this a little more rigorous? Is that the motivation? What is the motivation for the Premier refusing to make this clause stronger? That is the only question that can be raised by the Premier's refusal to countenance the amendment. It is a reasonable amendment. It has been supported by Independents and supported by a number of people on this side of the house, and it has been argued in a reasonable and considered fashion by the Leader of the Opposition, and the only response from the Premier is that he does not believe it is necessary. If it is not necessary, do it! If it is not necessary and it is not going to do any harm to the legislation, and in fact if the only outcome that could possibly come from this is to enforce a more rigorous oversight of the clients of lobbyists in this state, do it. Be done with it. Get it over and done with. Concede the belief that it is unnecessary, but do it anyway. In that way, the Premier will refute any future claim that his integrity may in some way be in doubt or that he has some other motivation for refusing to ensure that the clients of lobbyists "must" be listed. If that is the case, just do it. Why would the Premier not do it? Is it obstinacy? Is it just because it was suggested by the Leader of the Opposition? Is the internal polling that bad? I do not know what it is. What is the motivation? Is it because it is late and the Premier is just too tired for this job and maybe he should be considering departure?

Mr M. McGOWAN: The Premier left the chamber for a little while when the member for Churchlands made what I thought was a particularly good contribution. I will let him know what she said so that he can consider this as one of the ideas that might resolve the issue that he has raised. I suggest that in the third line of clause 10(3) we delete the words ", or have undertaken,". The subclause would then read —

> Without limiting subsection (2), the register must record information relating to persons for whom registered advocates to government are undertaking lobbying.

That would remove any capacity for it to be taken as referring to past clients, which was one of the concerns the Premier raised. If the government would agree to remove those words, I have an amendment here with me that

would achieve that exact outcome. We would then ensure that past clients are not listed and that present clients are, and that there would be no discretion around the matter. That would simply resolve the issue, which the member for Churchlands pointed out before. We have an amendment here that would achieve that outcome if the government is so minded to agree to it. We will potentially move that amendment depending on the outcome of the first amendment.

The Premier said that the code of conduct resolves all these issues and that there is nothing to worry about. Clause 16, which creates the code of conduct, states "The Commissioner may issue a code of conduct"—there again is the same issue—"for registrants and registered advocates to government." That code of conduct, therefore, may be issued by the commissioner. Obviously the existing one by definition in this clause is not the code of conduct, although it may well be subsequently issued and become the code of conduct. Clause 16(2) indicates that the capacity to amend that code of conduct is entirely within the hands of the commissioner. I have the view that Parliament is paramount, not the commissioner. Parliament is paramount. It is we in this room who determine what the law should be. It is we in this room who determine whether or not clients should be listed on any code of conduct or register or the like. It is we, not the commissioner, who should determine that. Our amendment will ensure that Parliament's paramountcy is affirmed. Our amendment will ensure that Parliament decides these things, not a decision on the whims or nuances of the commissioner, whoever that may be at any point in time. As I said, it is entirely open for the commissioner not to issue a code of conduct if he or she so desires, according to clause 16. There is therefore a significant hole here. The amendment that we have suggested, and certainly the one suggested by the member for Churchlands, would fix the whole issue and we would resolve what is potentially a significant problem for the state in that information on clients may not be able to be observed by members of the public with the law as it is currently proposed.

Mr C.J. BARNETT: I do not believe it is a significant hole in the legislation. The legislation requires that lobbyists comply with the code, and the code quite specifically details that information of clients—current clients and clients back to three months—must be on the register, so I do not see any problem with that. However, I do agree with the Leader of the Opposition, and obviously with the member for Churchlands, that if the words ", or have undertaken," in subclause (3) are deleted, the word "must" to me does not make a great deal of difference, other than the fact that I guess it makes a point and makes it very clear in the legislation that the names of clients must be listed on the register, as they are required to be listed right now. The government will therefore accept an amendment to delete "may" and replace it with "must" and to delete ", or have undertaken,".

Mr M. McGOWAN: I thank the Premier. This is a joint effort. An amendment, which I moved, is already on the notice paper to remove "may" and replace it with "must". That is what this debate is about. There is an amendment that I drafted, but I assume the member for Churchlands has a second amendment. Would the Premier like to deal with the first one first and then have the —

Mr C.J. Barnett: I would like one amendment to deal with both.

Mr M. McGOWAN: He would like one amendment to deal with both.

Mr C.J. Barnett: That is right.

Mr M. McGOWAN: I will have to withdraw this amendment and then a second amendment will need to be drafted. Does the member for Churchlands have an amendment that contains both?

Dr E. Constable: No, not both.

Mr M. McGOWAN: Therefore, I need to withdraw my amendment and another one will need to be drafted, member for Churchlands. As it currently stands, we could deal with my amendment immediately, the member for Churchlands could move hers and it would be over in a second. I withdraw my amendment so that no doubt the member for Churchlands' amendment will prevail over mine. Maybe there is a reason for that. I am not sure what that reason might be; maybe the Premier is trying to butter up the member for Churchlands. Obviously, he has not succeeded in buttering me up over the past 16 years. In any event, we are pleased that we have been successful in our request to tighten these laws and that the opposition's move, in conjunction with the member for Churchlands, has been successful in ensuring that the clause will be significantly enhanced.

Amendment, by leave, withdrawn.

The SPEAKER: Leader of the Opposition, I believe you have had appropriate time to gather your thoughts on this.

Mr M. McGOWAN: Yes, I have had some time to consider this matter and I have put considerable effort into drafting this amendment! I move —

Page 12, lines 5 to 7 — To delete "may record information relating to persons for whom registered advocates to government are undertaking, or have undertaken," and substitute —

must record information relating to persons for whom registered advocates to government are undertaking

I think this satisfies the issue presented by the member for Churchlands and me and agreed to by the Premier.

Mr C.J. Barnett: I think the last bit needs to be there.

The SPEAKER: "Lobbying" remains in there.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 11: Publication of information on register —

Dr E. CONSTABLE: Clause 11 refers to the publication of information on a register. Clause 11(1) reads —

The Commissioner must make the information on the register publicly available free of charge.

I am sure we all agree with that. I note the election commitments of the Liberal Party state that the register will be published on the internet and kept up to date and will include details of all lobbyists, their clients and their activities. We have covered some of that already tonight, but I think a part should be added to this. I move —

Page 12, line 16 — To insert after "free of charge" —

and on the internet

That will make it perfectly clear that this information must be published on the internet. It is also important to say that information should also be available in other forms free of charge to the public, because some people do not have access to the internet. Modern communication is through the internet. I think it should be in the legislation to make perfectly certain that it is communicated in that way. It would also be in keeping with the election commitment of the Liberal Party.

Mr C.J. BARNETT: I do not disagree at all with the sentiment of that amendment. Of course, it should be on the internet, but that should not be included in the legislation. Who knows what sort of technologies will be around in 10 years? I do not think we should specify the medium by which the register is made available free of charge to the public. It is quite obvious. The code of conduct is on the website. Obviously, any information will be on the website. Who knows what other new technologies will become available. I do not agree with it, but I do not think it is required; it is superfluous to the bill. Therefore, the government does not support that amendment.

Mr W.J. JOHNSTON: That is an interesting contribution from the Premier. I draw the house's attention to clause 18, "Publication of code of conduct", which states —

The Commissioner must —

(a) publish a code of conduct in the *Gazette*; and

(b) make a code of conduct publicly available free of charge on a website.

I find it a bit of a surprise that the government does not want to have the register available on the internet, but the code of conduct is to be made available on a website. Perhaps, if the Premier wants to use "website" rather than "internet" to make it consistent between the two clauses, I could understand that minor adjustment to the member for Churchlands' amendment, but it is a bit extraordinary to argue against the inclusion of "internet" or "website" when the government proposes to use that very same word in clause 18. It begs the question: why does the government not want to have a requirement that the code be available on the internet? I do not know the answer to that; only the Premier knows the answer to that. Clearly, it is not because in 50 years the internet will be dead. There must be some other reason, because the Premier has brought the bill to us with clause 18 in that form —"make a code of conduct publicly available free of charge on a website". I do not understand why we would make the code of conduct available on the website—that is not a discretionary matter for the commissioner and a requirement of Parliament if we pass this bill—but we are leaving it up to the discretion of the commissioner whether he publishes the register on the internet. The register is where the meat of this bill sits. There is no similar provision for that. It is an extraordinary position. If the Premier does not like "internet", use "website" as it is used in clause 18, because the member for Churchlands' amendment is very worthy.

Mr C.J. BARNETT: I thank the member for Cannington for drawing that to my attention. That is an error in drafting and when we get to clause 18, the government will move to delete reference to the word "website"

because it is a mistake and should not be in the bill. The code of conduct should be free of charge and be required to be published in the *Government Gazette*. That is normal government practice. It will be on the website but we will not specify that in the bill.

Mr A.J. WADDELL: I think the Premier might be living in the Dark Ages if he believes that the internet is about to be replaced. I do not think he understands what the internet is. It is a series of interconnected computers and data networks. It will continue to exist well into the future simply because it is an evolving technology that changes as time goes on. The web is an innovation on the internet. Before the internet there was Gopher. There have been a series of technological advances, but it continues to be the internet. The internet will be the primary form of information collection and retrieval for quite some time. To suggest that we will not put it in our bills simply because it might change in the future is an absolutely ridiculous statement. I seriously think it demonstrates a lack of understanding of contemporary culture and of where our society is going. If there is any place this information needs to be published, it is on the internet. It does not need to be published in the *Government Gazette* because no-one reads that and nor does it need to be published in *The West Australian* because that is dying on the vine. It should be published on the internet. To suggest that we need to be media-neutral on the topic is ridiculous. Every bill is written in the context of the time in which it is written. It makes sense now to have references to the internet. It is about time the government got on board with the twenty-first century.

Mr C.J. BARNETT: Reference is made to the *Government Gazette*. That is quite proper because the *Government Gazette* has legal status under the Interpretation Act. That is why there is a requirement for government's announcements to be in the *Government Gazette*. There is no sensible requirement for them to be published on the internet. Obviously, the Public Sector Commissioner will use the most efficient and modern communication available at the time, and that is the internet and its web page. That will continue to be used but we do not need to specify it in the bill.

Mr W.J. JOHNSTON: It is extraordinary that the Premier says the *Government Gazette* is the principal means of efficient communication by the government and yet there is no requirement for the *Government Gazette* to be included in the publication of the register. It is so important that it is left out of the clause! That is how important it is; it is irrelevant to the clause. This is extraordinary. The Premier should just deal with it as it is. Everybody in the state expects that there will be a website available with the information.

Mr C.J. Barnett: There will be.

Mr W.J. JOHNSTON: If there is a member of Parliament who does not expect that, they should put up their hand. If they are of the view that it is not a requirement to be on the website —

Mr C.J. Barnett: I did not say that at all.

Mr W.J. JOHNSTON: If it is a requirement to be on the website, support the member for Churchlands' amendment.

Mr C.J. Barnett: We will not dictate from here how the Public Sector Commissioner does his job.

Mr W.J. JOHNSTON: Of course we will. That is the exact purpose of the Parliament. Our purpose is to dictate to the Public Sector Commissioner what should happen. That is the reason Parliament exists. That is what we are here to do. We are passing a law directing the commissioner to act in certain ways. That is why the government is bringing in this legislation. If that were not why the government was doing it, the government would not make any changes and the Labor Party's existing register would continue. The Premier is the one who says that the register in its current form needs to be brought into the Parliament. That was the Liberal Party's election promise. Every time the Premier is put under pressure about the details, he backs down. He is giving us a lower standard than the one that currently exists. He is making it easier for the lobbyists and hiding their clients. The Premier is doing things that are not in the interests of openness. I have been fortunate to go to the state of Florida where they have the "Sunshine" act. That act provides all information to be made publicly available, and that is the direction we should be heading in. Instead, we have a provision that says we will not worry about twenty-first century technologies and that we will go back to the time of *Pac-Man*. That is what we are doing. We should be going forward to the relevant current period in which the web is ubiquitous. The Premier is embarrassed because the code of conduct will be made available on the website. He does not acknowledge the error he is making here in clause 11. He says, "Don't you worry about that. I'm going to climb down in clause 18 and put it back in the past." It is ridiculous.

Mr C.J. Barnett: I am taking it out of the bill because it will be publicly available information.

Mr W.J. JOHNSTON: The way people get information today is through the internet.

Mr C.J. Barnett: And they will get it.

Mr W.J. JOHNSTON: If it will be published on the internet, the only way we can guarantee that it will be available is if that is included in the bill. That is the only way.

Mr P.T. Miles interjected.

Mr W.J. JOHNSTON: The member for Wanneroo made one of his usual inane interjections. He never speaks in Parliament but is happy to interject. The fact is that if it is not a provision of the bill, it will not be a requirement of the law. That is just the way the system works. There are no requirements that are not in a bill. If words are left out of a bill, it is not a requirement. That is the way the world works. That is what we are doing.

Mr J.M. Francis interjected.

Mr W.J. JOHNSTON: The member for Jandakot made one of his inane interjections. Again, another silent member of the chamber who never makes a real contribution.

Mr J.M. Francis: What a load of rubbish! You are the most disgraceful member who has been in this place. All you do is slam people, left, right and centre.

The SPEAKER: Members!

Mr W.J. JOHNSTON: That is the way the system works. Words are passed on a piece of paper, it goes off to the Governor who signs it and it becomes law. If a provision is not written in the legislation, we cannot say that it will happen. All we can say is that if the commissioner decides it should happen, it will happen. Why not say that the Parliament demands it happen and that Parliament wants the twenty-first century to be part of the laws of this state? I do not understand why members opposite are opposed to the twenty-first century. They can oppose the twenty-first century but I will support it.

Amendment put and negatived.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Who may be listed as registered advocate to government —

Mr W.J. JOHNSTON: Later on we will get to the disqualifications et cetera, but I want to make sure that, subject to clause 14, it is intended that no other criteria will provide for a person who may be registered.

Mr C.J. Barnett: No.

Mr J.C. KOBELKE: My question appropriately goes to clause 13 but also right back to clause 8. In all these clauses we have established the register and we are now looking at the process of registration and who goes on it. This is important because back in clause 8 a person who is involved in lobbying without going through this register is liable for a penalty of up to $10 000. If a person feels aggrieved that the registration process is not accurate or has not clearly reflected what they are doing, what avenue is open to them to appeal to the Public Sector Commissioner? Does he have to go to the civil courts or the State Administrative Tribunal? There is no mention of SAT in the bill. It may be that in another act there is the ability to appeal because it is a minister's decision and an appeal might be automatic, but what avenue of appeal is there if someone who is a potential registrant believes the commissioner has got it wrong with respect to their particular circumstances?

Mr C.J. BARNETT: If someone feels aggrieved by the way their registration is shown, they can go to the Public Sector Commissioner and make their point, which he may or may not accept. But the decision of the Public Sector Commissioner is final; there is no appeal to his decision.

Clause put and passed.

Clause 14: Certain persons disqualified from registration or listing —

Mr W.J. JOHNSTON: Clauses 14(1) and 14(2) lists members of Parliament and provides that people cannot be registered if they cease to hold the relevant office for a period of less than one year. But clause 14(3) is extraordinary because it reads —

> However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a registered advocate to government.

In other words, despite these provisions, everyone can still be registered. It is such a wide provision. Given there is an act of discretion, it is probably capable of being reviewed by a court because if the commissioner were to

give a reason for refusing to give the discretion, that would almost certainly become subject to review. I do not understand why that enormously wide provision is there. There is no guidance for when the Public Sector Commissioner should exercise the discretion. What circumstances will lead the commissioner to ignore the provisions here? It is incredibly wide; there is absolutely no limit. This is one of these political issues that allow the government to stand up and say, "We've banned members of Parliament from being lobbyists for 12 months", but in fact it has done no such thing because there is this incredibly wide discretion to the commissioner with no explanation of when he should use it. If he grants one person an exemption, it will be very difficult for him not to grant exemptions to others. I wonder why this provision has been included in the manner it has been.

Mr C.J. BARNETT: The intent of clause 14(2)(b) is that anyone who has held a public office, including as a member of Parliament, or a senior position with the government, should not and cannot be a registered lobbyist for a period of 12 months. I think that is entirely appropriate. Subclause (3) is simply to allow some discretion to the Public Sector Commissioner if there is an extraordinary circumstance. For example, an individual might fill a public sector position for only a couple of months and then would be precluded from doing any work for 12 months. It is only in extreme situations that the Public Sector Commissioner would have that discretion. Anyone who has been a member of Parliament or a minister or held a senior position in government or some sort of other public office under the detail cannot be a registered lobbyist within that 12-month period. It is difficult to think of examples but the provision is in the bill in case there is a very unusual situation so that the Public Sector Commissioner can at least take that into account.

Mr M.P. WHITELY: This points out the obvious weakness with so much of this legislation because that is not what the legislation says. Where in the legislation is there an indication of that? I fear my employment opportunities may be limited after I finish my term in the Australian Senate! There is nothing in this legislation that indicates that is the case.

Mr C.J. Barnett: It is in subclause (2)(b).

Mr M.P. WHITELY: Subclause (3) reads —

> However, even though subsection (2)(b) applies to a person, the Commissioner can decide to register the person or, as the case requires, list the person as a registered advocate to government.

Nothing there indicates that. If that is the Premier's intention and it relates only to public servants who served a month out of the past 12 months, we need some sort of guidance in there. Just saying Colin Barnett has a thought bubble does not make it so.

Mr C.J. Barnett: The intent of the government is that anyone who has held a position cannot be a lobbyist within a 12-month period. That is a fair policy that this government has included. In drafting this legislation, I guess a caveat has been put in the bill because there may be extenuating circumstances. If the member for Bassendean thinks it is a good thing to take away that discretion, I would not be particularly upset about that. But I think he will find very quickly that there will be an unreasonable circumstance and the Public Sector Commissioner will not be able to deal with it.

Mr M.P. WHITELY: I go back to the earlier point I made about what can preclude someone who leaves the Parliament, works as a consultant and has a number of clients and, as part of their consulting services, from approaching members of Parliament on behalf of their clients to influence their decisions on certain matters.

Mr C.J. Barnett: They could.

Mr M.P. WHITELY: Why is that not lobbying?

Mr C.J. Barnett: That is a different matter. We have been through that.

Mr M.P. WHITELY: Why? I do not get it.

Mr C.J. Barnett: We have been through that. A person can leave Parliament and join the RAC or whatever else and as an employee in that role promote road safety or whatever the organisation wants to do. A member of Parliament cannot put up a shingle as a registered advocate to government or lobbyist. They cannot work for third parties for money.

Mr M.P. WHITELY: I could leave and put up a shingle as a consultant and I could be approached by Eli Lilly Pty Ltd which would want to put Strattera or some other drug in the water supply and I could advocate —

Mr C.J. Barnett: You would be a contractor.

Mr M.P. WHITELY: — on their behalf.

Mr C.J. Barnett: You could be employed.

Mr M.P. WHITELY: I could advocate on their behalf and give them advice within their operation.

Mr C.J. Barnett: That is correct; you could be a public affairs officer for a company. You could work for BHP and be in charge of government relations. You can do that.

Mr M.P. WHITELY: I am not talking about being employed; I am talking about being a consultant. I could have a drug company as one of my three clients and come and lobby my good friend the Minister for Health and say we need to put dexamphetamine in the water supply because all these kiddies need it to make them better. Because I am a consultant and not a lobbyist, I would be able to do that. This is the bit I could not get earlier on.

Mr C.J. Barnett: Delete it and take the discretion away. Stay unemployed; I don't mind.

Mr M.P. WHITELY: I am not talking about that. Let us talk about subclause (2)(b). A person who has retired as a member of Parliament could hang up a shingle as a consultant and part of that consulting work could be advocating to members of Parliament and that would be okay but they cannot be a lobbyist. I do not get the difference. I am not an unintelligent person; I just cannot understand the difference. If the Premier could explain it to me, that would be wonderful. What would preclude a member of Parliament from hanging up a shingle as a consultant working for a number of clients, one of whom is whatever, and lobbying members of Parliament on behalf of whatever to achieve goals for whatever. They are not an employee; they are a consultant; they are not working full time as a consultant; they are working part-time as a consultant. What is the difference between that person and a lobbyist? I do not get it.

Mr C.J. Barnett: We dealt with that in an earlier clause.

Mr M.P. WHITELY: I still do not get it.

Mr C.J. Barnett: You may not get it, but we have dealt with that. We have moved on.

Mr M.P. WHITELY: The point is we have not dealt with it. The Premier has not explained it.

Mr C.J. Barnett: If you want to take away the discretion from the Public Sector Commissioner, do it.

Mr M.P. WHITELY: I am not talking about that; I am talking about subclause (2)(b). What is to stop a member of Parliament from doing exactly what I said?

Mr C.J. Barnett: You can be employed by a company; that is fine.

Mr M.P. WHITELY: I can be a consultant and I can lobby government on behalf of my client?

Mr C.J. Barnett: If you are an in-house employee.

Mr M.P. WHITELY: But they are not in-house because they are a consultant, a contractor.

Mr C.J. Barnett: If you are employed as a consultant working in-house, you can.

Mr W.J. JOHNSTON: There is always a middle path and we learnt that earlier tonight when the Premier accepted amendments from the opposition and the member for Churchlands. The Premier is saying that if we do not agree, we can delete the clause. Nobody has a problem with the commissioner having some discretion. But people have a problem with the idea that the commissioner can have 100 per cent discretion. If the Premier is saying there might be some extraordinary circumstances, and he gave an example—I agree that that would be an extraordinary circumstance—why not say, "Blah, blah, blah even though blah, blah, blah, the commissioner in extraordinary circumstances can decide blah", and then go on because then he would be giving some direction to the commissioner? Can the Premier tell me why we cannot do that? If there is a reason, tell me what the reason is because this is giving carte blanche to a person who never has to talk to us again. We will never have influence over how they operate. The Premier says that this is the government's policy. Quite frankly, the government's policy is irrelevant because, firstly, there are two filters—the bill, which has nothing to do with government policy but is about the expression of the will of Parliament, and the decision of the commissioner, who, as the Premier said in the second reading speech, is independent of government. It does not matter; the government's policy has two levels of irrelevance. We are dealing only with the words in the bill, and those words give the commissioner total discretion, regardless of government policy. That is what the Premier is doing. This government's policy is to give complete discretion, without any limitations, to the commissioner. That is the government's policy; it is not what the Premier said. I do not understand why the Premier would do that. As I said, I am not asking the Premier to get rid of the provision; I am asking for a reason why the Premier does not want to provide some guidance for the commissioner. That is what I would do. Can the Premier give us some words that make it clear that it is an extraordinary case and not an ordinary case?

Mr C.J. BARNETT: The Public Sector Commissioner operates independently of the executive of government. I happen to trust the current and any future Public Sector Commissioner to be allowed that degree of flexibility to deal with an extraordinary circumstance, whatever that might be. We could probably sit here for hours trying to think of what extraordinary circumstance might arise, and inevitably we will not come up with the one that will arise. That is a bit of a safety valve: if they find some extraordinary or very unusual situation, at least that would happen. I do not know whether this is a good example, but let us say the government employs someone to undertake an inquiry like the Blaxell inquiry or something else. That person might work on the inquiry for a couple of months and then they would be barred for 12 months from registering as a lobbyist. I do not think that would be a reasonable situation. Someone may well take on a position on a temporary or short-term basis for government and that should not bar them if they wanted to pursue a future as a lobbyist. The member is not listening, so there is no point.

Mr W.J. Johnston: I am listening, Premier. I was seeking clarification about something you said.

Mr C.J. BARNETT: I make the offer to the opposition: if the member for Cannington wants to remove that clause —

Mr W.J. Johnston: You have already said this.

Mr C.J. BARNETT: I am making the offer. If the member wants to remove that clause and take away any discretion from the commissioner, I will accept it, but it will be on the member's head. If the member wants, he can move to delete the clause and I will agree. But members opposite will have to account when that situation arises, because one day it will.

Mr W.J. JOHNSTON: The problem with talking to the Premier is he does not listen.

Mr C.J. Barnett: I just made an offer.

Mr W.J. JOHNSTON: I made it very clear that I think it is appropriate to have discretion for the commissioner. Nobody has said that it is not appropriate. This is a debate about whether it should be an extraordinary circumstance, because this provision does not talk about extraordinary circumstances; it gives complete 100 per cent discretion to a person who never comes back to talk to us. He does not even talk to the government for that matter, so the government can say anything it likes about the policy. When the Premier was carrying on in his two-bob sort of way, I was seeking clarification from the member for Girrawheen about the example he gave because the problem with the example is that the person he referred to is not covered by the provisions of this bill because they are a lawyer and they are exempt from every single provision of the bill. That is the problem. Of course, Premier, it is hard to come up with an example. There will always be another example that we do not know about. That is the way the world works. That is why I am saying that if we want to give the commissioner an extraordinary power, we should give him that. But that is not what this bill provides; this bill provides total discretion. I do not understand why the Premier wants a provision that says that notwithstanding the previous provision, the previous provision does not apply! This is a real problem in the United States; it has happened in the US. Senior members of the Legislature in the United States have come in as lobbyists. It is a major problem. They get into this definitional issue, and there are special counsels working for lobby firms. They say, "I'm not a lobbyist; I'm special counsel", and they use these types of provisions to get around the intent of the lobbyist legislation. I hope that this second major loophole in the bill is not used in the future by people to get around the intent of the Parliament. We have that already in the provisions regarding technical staff and now there is another provision in this bill that provides a truck-sized loophole, which is another example of the weakness of the legislation.

Clause put and passed.

Clause 15: Commissioner makes decisions on registration and listing and related procedures —

Dr E. CONSTABLE: I just have one question for the Premier about clause 15. This clause gives the commissioner the power to make decisions on registration, listing and related procedures. In this legislation, we give the commissioner a great deal of power; in fact, we give him powers that several people have suggested should be kept within this Parliament and placed within the act. I want to know whether the commissioner is able to delegate these functions; and, if so, who would they be delegated to?

Mr C.J. BARNETT: I would imagine that if the commissioner decides to delegate some powers for some reason, it would go to the deputy commissioner. There are two Deputy Public Sector Commissioners.

Dr E. CONSTABLE: It is normal in legislation to give a power of delegation, but we are not giving that. Therefore, what we are saying is that this commissioner with wide powers will be able to delegate if he wants to.

I just want to be sure that that is the case. I would have thought it would have been better to give that power of delegation within the legislation.

Mr C.J. BARNETT: Apparently, there are three Deputy Public Sector Commissioners, and I would imagine if the commissioner delegated any powers it would be to one of those three. I think that would be normal. I do not think we need to dictate in this Parliament how a Public Sector Commissioner conducts himself; he is, after all, an independent officer.

Ms M.M. QUIRK: This clause deals with the powers of the commissioner to make decisions on registration, listing and related procedures. This provision empowers the commissioner to decide when and on what grounds or in what circumstances a person's registration is to be suspended or cancelled or a person's listing as a registered advocate to government is to be removed from the register. This has financial implications for a person who is conducting the business of a lobbyist. I think the common law position is that if financial interests are involved, there needs to be some level of natural justice afforded that person. That does not seem to be the case in this legislation; it seems as if it can be just on the commissioner's fiat that someone can be suspended. There is no provision, for example, for the commissioner to have to write to the person he proposes to suspend and ask to give reasons why this should not occur, which is a standard provision in many of these sorts of legislation. I am just wondering how it is that in this instance no natural justice is afforded and what are the appeal mechanisms to the commissioner's decision.

Mr C.J. BARNETT: I am no lawyer and I will not pretend to be one, but I have been advised by one that the common law provisions would require that the commissioner act fairly and that there can be appeal to the Supreme Court.

Ms M.M. QUIRK: I just wonder why there is not some basic standard of fairness incorporated into the legislation. I dredge back many years to one of the first cases I can remember learning in my first year at law school. It was a case called Heatley v Tasmanian Racing and Gaming Commission, which I think involved deregistration of someone as a trainer. Because that had some financial implications, it was ruled by the court that the standard of natural justice needed to be afforded was a lot greater. I am concerned that there is not some bare minimum standard in here; for example, notification and giving the person 14 days to respond, and why are we leaving it to the common law when effectively this is a statutory instrument and we could impose the relevant standards within that statutory instrument?

Mr C.J. BARNETT: I am advised that it is an implied obligation from the Public Sector Commissioner; in this case, to act fairly. We are essentially talking about the most senior person in the public service.

Ms M.M. Quirk: I am asking the Premier why that is not expressed. Why does it have to be implied?

Mr C.J. BARNETT: It is there; it is implicit in roles undertaken by the Public Sector Commissioner—to act fairly in administrative matters.

Mr W.J. JOHNSTON: I do not intend to be very long on this. Let us say that person X applied for registration. We have been through all the provisions about the requirements to be registered et cetera. Where is the provision that says that a person who, for example, had a criminal charge was not successful? Is there any provision that would say that that person could not be registered as a lobbyist? Let us say a person was a high-profile journalist who ended up in politics and became a controversial person in the community. Can the Premier point to a particular provision that allows the commissioner, when making his decision under clause 15(1), to prevent a person like that from being registered? Is controversy something that prevents a person being registered or is there some higher standard that has to be fulfilled?

Mr C.J. BARNETT: The short answer to that is that part 8 of the code, which relates to registration, lays down the criteria or the circumstances in which the commissioner might deregister someone.

Mr W.J. JOHNSTON: I am none the wiser because that code does not apply to the provisions of this bill. We have been through this already. If the Premier wants to table for us the code of conduct that is provided for by clause 16, I would be very happy to see it.

Mr C.J. Barnett: It's on the internet. Go and have a look.

Mr W.J. JOHNSTON: It is not. It cannot possibly be there. It is impossible. The code of conduct that is provided by this bill cannot come into force until after this bill becomes an act and is signed by the Governor. That is just a fact of the law of Western Australia. That is what we are doing. The Premier is saying that the code will have certain criteria. That is what I am getting to. Is there a provision that says notoriety prevents a person's registration or is there a higher test? If there is a higher test, what is that higher test?

Mr C.J. BARNETT: The current code will have some minor changes as a result of this bill passing but substantially the current code reflects what the code will be once this bill is enacted.

Mr W.J. JOHNSTON: What is the answer?

Mr C.J. Barnett: I just gave it to you.

Mr W.J. JOHNSTON: I am terribly sorry, Mr Speaker; I had no intention of getting up again. I just want an easy answer.

Mr C.J. Barnett: I just gave you one. It is straightforward.

Mr W.J. JOHNSTON: The straightforward question is: Is notoriety sufficient to be refused registration or is it a higher standard? If it is a higher standard than notoriety, what is that higher standard? If the Premier says he has the code of conduct in his hand, all he has to do is read it out and put it on the record and get it in *Hansard*.

Mr C.J. Barnett: Go and have a look. It's on the website.

Mr W.J. JOHNSTON: With respect, that is not relevant. The code of conduct that is currently on the internet is not the one that will apply.

Mr C.J. Barnett: It will have some minor amendments to reflect this bill.

Mr W.J. JOHNSTON: It is different. In other words, it is not the same. My God, I thank the Premier for agreeing.

Mr C.J. Barnett: Don't blaspheme in this chamber; it's unparliamentary.

Mr W.J. JOHNSTON: The Premier is talking about being unparliamentary! Let us get back to it. I feel like pacman trying to go out there and swallow things. We have been trying to protect the furry koalas.

I want to know what the provisions are. Put it on the record in *Hansard* so that we all know and everyone for the future will know, because this is very important. The Premier says these provisions will prevent Brian Burke and Julian Grill being registered. I have not seen any provision that would prevent a person who has been charged and not convicted being registered. So far as I am aware, Brian Burke has been convicted. I am not quite sure, but I do not think Julian Grill has been. What is the standard? Is Julian Grill going to be entitled to be registered or not? I have not seen Julian Grill for a long time. Everyone in Western Australia is entitled to the protection of the law, even people we do not like. I want to know what the standard for registration is. It is a very straightforward question, and it is extraordinary that the Premier is not capable of giving a simple and straightforward answer.

Mr C.J. BARNETT: The member seems to want to do the work of the commissioner. I happen to trust senior public servants to interpret the law and to have some discretion. Take the example of Brian Burke. He was convicted of a criminal offence. He served time, I think, twice. There is nothing in this bill that would prevent Brian Burke from applying to be a registered advocate to the government. However, I would suggest that a Public Sector Commissioner would be very unlikely to accept Brian Burke as a registered lobbyist.

Mr M.P. Whitely: Noel Crichton-Browne—would he work out?

Mr C.J. BARNETT: Yes; same thing.

Mr W.J. JOHNSTON: I understand that in relation to a person who is convicted of a crime, but I am talking about a person who is not convicted of a crime. Say a person has a profile in the community. Maybe they have a profile as a car dealer who deals in drugs. Would they be able to get registered? They are not convicted of something, but they have a notorious reputation in the community. Are they allowed to be registered or not? This is the Premier's bill. Is the Premier capable of telling us whether a person in that position gets registered or not?

Mr C.J. BARNETT: Neither I nor anyone in this chamber should be dictating to an independent officer such as the Public Sector Commissioner how he behaves.

Ms M.M. Quirk: We are not. We are asking him how he does his job. We want information, Premier.

Mr C.J. BARNETT: He will do his job professionally according to this bill. He will interpret this bill and act accordingly.

Ms M.M. Quirk: He doesn't need guidance at all, Premier. That is the problem.

Mr C.J. BARNETT: I think the last thing anyone in this Parliament would want is members of Parliament dictating who can be accepted as a registered lobbyist and who cannot, because members could just imagine

what would happen. The last thing we would want is members of Parliament having a decision-making authority in that regard. That is why it is quite properly left to the Public Sector Commissioner, who is independent of the executive government, who is accountable to Parliament and who operates professionally and independently. I should not be dictating that and certainly the member should not be.

Ms M.M. QUIRK: The Premier has nailed the issue that we are getting at—that in fact the commissioner is independent and in his words Parliament should not be dictating how he performs his job. That is all the more reason why in this chamber we need to inquire how he will perform his job and what sections in this bill he will use as guidance; what are the criteria he will use? For example, in relation to the last clause, the Premier just said that the implication for dismissal will be read into that clause that the commissioner will act fairly. This is all stuff that we need to tease out, because this is what provides guidance to the courts down the track when they are interpreting the application of this legislation.

The Premier would not say that it is illegitimate to ask such questions when the DPP legislation went through this place. The Director of Public Prosecutions is an independent officeholder. The Premier would not think that it was improper for us to ask questions about how the DPP will exercise his decision to prosecute, to nolle prosequi or to undertake other processes that a DPP exercises independently. Why is this bill any different?

Mr C.J. Barnett: I have nothing to add.

Mr W.J. JOHNSTON: I draw to the attention of the house that this is the problem that the Premier constantly has: his rhetoric and what he actually does are two different things. I will quote again from his second reading speech. He stated, in part —

> … it is important that the commissioner has the power to restrict registration in appropriate circumstances and to act quickly if unethical conduct is detected.

That is what the Premier said in his second reading speech, but those provisions do not appear in the bill. The Premier cannot continue to grandstand all the time on these sorts of issues, and then do nothing in his legislation. That is his problem. His problem is that he talks big and carries a little stick, and this bill is a clear example of that. This bill does not do any of the things that the Premier said in public that the government would do, and that is the problem. The bill might be reasonable on its own terms, and in dealing with that particular provision I could go through how I think the government could improve it, but it is not what the Premier said he was going to do.

There is a word for that, I am sure; I am not going to use it, but I know what the word is. That is the problem. The Premier is going to have to get off his high horse and start behaving like a leader; like a person who listens, communicates and participates, instead of being an arrogant Premier who does not listen, does not participate, and says one thing and does another. The fact that the Premier cannot answer a simple question is a demonstration of the weakness of his position.

Clause put and passed.

Debate adjourned, on motion by **Mr C.J. Barnett (Premier)**.

House adjourned at 10.42 pm

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