

**FREEDOM OF INFORMATION AMENDMENT BILL 2003**

*Introduction and First Reading*

Bill introduced, on motion by Hon Jim Scott, and read a first time.

*Second Reading*

**HON JIM SCOTT** (South Metropolitan) [10.33 am]: I move -

That the Bill be now read a second time.

The Commission on Government report No 1 of August 1995 states -

The Western Australian *Freedom of Information Act 1992* confers upon persons a legally enforceable right of access to information held by agencies in both State and local government.

...

The right of access to documents is qualified by specific exemptions and the fact that certain agencies are exempt.

This Bill proposes a small amendment that will have a significant affect on the application of the Freedom of Information Act 1992. Clause 5(1)(b) of schedule 1 of the Act provides an exemption when a disclosure could reasonably be expected to reveal the investigation of any contravention or possible contravention of the law in a particular case, whether or not any prosecution or disciplinary proceedings have resulted.

In her annual report of 2000-01, the Information Commissioner stated -

One exemption in particular puts Western Australia out of step with all other FOI jurisdictions throughout the world. The exemption for law enforcement documents is designed to ensure that current and unsolved investigations conducted by law enforcement agencies are not prejudiced by disclosures under FOI.

The approach taken in the WA FOI Act is that the exemption applies to documents that would *reveal* any investigation conducted by any agency involving a contravention or possible contravention of the law. A contravention of the law includes a breach of, or a failure to comply with regulations, as well as local government By-laws, Codes of Ethics and human resource management standards made under the *Public Sector Management Act 1994*.

The documents of law enforcement bodies are adequately protected under FOI legislation both nationally and internationally. However, the existence of the exemption in clause 5(1)(b) in its present form in WA, provides a convenient and ready justification for a myriad of agencies to hide behind a cloak of confidentiality, often without good reason. Based on the complaints made to me, discretionary disclosures ... of documents relating to investigations made by regulatory agencies are few and far between, even when the documents only relate directly to the applicant and there is no clear or readily apparent prospect of any harm or injury resulting from disclosure.

Clause 5(1)(b) of schedule 1 of the Act continues to prevent the provision of documents and can be instrumental in preventing just resolution of complaints within the public sector. In the 2002 case of Kasprzak and Department of the Premier and Cabinet, the Information Commissioner found that requested documents were exempt under clause 5(1)(b), despite the documents sought directly relating to Mr Kasprzak. The denial of access to documents and the time involved in a change of review officer was instrumental in Mr Kasprzak's being denied an opportunity to pursue a claim for a breach of the Public Sector Management Act 1994. That Act prescribes that claims must be lodged within 15 days after a decision is made or action taken. Without making judgment about the legitimacy of the complaint, it is clear that departments can avoid proper scrutiny and prevent just resolution of complaints by using clause 5(1)(b), either on its own or in combination with other Acts.

It should be noted that it was my intention to deal with this issue by simply deleting clause 5(1)(b), as I was informed that this was the most effective way to deal with the problem. However, the Information Commissioner has indicated that although she would support such an amendment, she would prefer that the Act be amended in line with other jurisdictions, and I have acceded to that position. This has the additional benefit of making the Bill identical in wording to a private member's Bill put forward by the member for Nollamara in 1988 when he was in opposition.

The Information Commissioner in her annual report of 2000-01 notes -

... that Bill was defeated along party lines in the Legislative Assembly. I remain hopeful that the enthusiasm for change exhibited then by the Member and his parliamentary colleagues has not been dimmed by the reality of being the Government.

That is also my hope. I note that Hon Peter Foss recently made a public statement in support of such a change and therefore, I am hopeful of support from this Chamber in progressing the Bill. I commend the Bill to the House.

Debate adjourned, pursuant to standing orders.