Legislative Assembly

Tuesday, 10 November 1992

THE SPEAKER (Mr Michael Barnett) took the Chair at 2.00 pm, and read prayers.

PERSONAL EXPLANATION - BY THE LEADER OF THE OPPOSITION

Petition Presented by Hon John Halden Allegations

MR COURT (Nedlands - Leader of the Opposition) [2.04 pm] - by leave: I thank the House for the opportunity to make this personal explanation. Last Thursday, a petition was presented in the Legislative Council, alleging that I had given highly confidential information to a Mrs Penny Easton and that this had been put to the Corruption Commission for investigation. It correctly stated that this information had no influence on some Family Court proceedings. It stated also that Mrs Penny Easton and Mrs Margaret McAuley perjured themselves in a court proceeding.

I became aware of that petition at 3.00 pm on Thursday, after it had been tabled in the other House. By 4.00 pm, the media were in a frenzy. I spoke to some of the media in my office, and I spoke to most of them outside in a doorstop interview. I was not only questioned about the Exim dealings which were referred to, but also asked a range of outrageous personal questions which questioned my relationship with one of the people involved. To the credit of the media, they did not report the despicable mud that was being thrown around. I found out later that a Government staffer working for the member for Wanneroo, a Mr Darren Ray, was acting as the go-between for Mr Easton and Hon John Halden in this matter. On Friday, he arranged interviews for the media with Mr Easton and Hon John Halden. Hon John Halden then went out publicly on Thursday afternoon and Friday morning and made outrageous allegations.

Points of Order

Mr PEARCE: Mr Speaker, I seek some advice from you about what constitutes a personal explanation. My understanding of a personal explanation is that a member can ask the House to put aside all of its other business in order to listen to some matter which personally concerns that member which he or she wishes to explain. It seems to me that in the course of the last moment or two, the Leader of the Opposition has made allegations under parliamentary privilege apparently against a public servant and apparently also against a member of the Parliament. That does not seem to me to be a proper use of the personal explanation time, which, as the Leader of the Opposition knows, has no right of parliamentary reply. It would be appropriate for the Leader of the Opposition to raise these issues under some more substantive matter, and I seek your ruling on whether a member's getting the call for a personal explanation enables him to make allegations of this kind or, indeed, to seek to raise any matter which he sees fit to raise, without relating it clearly to the explanation which he is proposing to give.

Mr C.J. BARNETT: The Leader of the Opposition, in my view rightly, regards himself as being impugned by what has happened, and I believe and respectfully submit that he should have the opportunity to explain the circumstances which make it necessary for him to now explain his position.

Mr CLARKO: Mr Speaker -

The SPEAKER: I am not sure that I need an awful lot more help, but the member for Marmion has been here for a long time and I would appreciate some from him.

Mr CLARKO: Thank you, Mr Speaker. Standing Order No 117 states that, "By the indulgence of the House, a member may explain matters of a personal nature although there be no question before the House; but such matters may not be debated." The Leader of the Opposition has been given leave of the House to explain matters of a personal nature. Those matters relate very much to the Parliament, and in no way does this Standing Order curtail what may be said in respect of that explanation.

Mr Pearce: To accuse other people is not a personal explanation!

The SPEAKER: Order! It is incumbent upon a member who is giving a personal explanation to this House simply to explain the circumstances surrounding the matter which is being put to the House. It is not an opportunity to debate the issue. I have not heard enough yet to determine whether the Leader of the Opposition is debating the issue or simply explaining it. When I have heard a bit more, I will be in a better position to be able to judge that.

Personal Explanation Resumed

Mr COURT: Hon John Halden then went public on Thursday and Friday morning and made those outrageous allegations, including that I was under police investigation. Wrong! He stated also that he had full documentation to back up the allegations. Wrong! On Thursday morning I rang the Commissioner of Police to find out what was the situation, because I was not aware that I was under police investigation. The Commissioner for Police reported that a complaint had been made by Mr Easton in November 1989, that the matter had been investigated and that it had been closed in March 1990, some two and a half years ago. I had been totally exonerated in relation to the matter about which Mr Easton had complained. When Mr Halden said that he had all the facts, the truth was that three facts were not available; that is, the three parties - Mrs Penny Easton, Mrs Margaret McAuley and myself - had been subjected to the investigation and cleared. The last clearance came through on 10 November for Mrs McAuley. No doubt she will explain her concerns about the delay in making that aspect public.

After the matter was settled on Friday morning I asked for an apology from the people who had gone out and done the fishing around for these outrageous allegations that were proved to be incorrect. Of course that apology did not arrive. I am a public figure and as much as it hurts to have one's name flashed around in the newspapers I can use the Parliament and the law to handle this type of gutter tactics. Sadly, Mrs Penny Easton and Mrs Margaret McAuley were in a different position. It is now public knowledge that Mrs McAuley is doing a professional job in protecting the interests of women who have lost money in the Western Women fiasco. She and her family had to go through Thursday, Friday, Saturday, Sunday and Monday without knowing what the situation was in relation to the matters that had been brought up in this petition. It has now been established that she also had been cleared. Of course that placed intolerable pressure on a number of people and the totally false allegations promoted by members of the Labor Party in such a disgraceful way, had a tragic consequence. It resulted in someone taking her life.

We will continue to pursue the scandals surrounding the Exim deals, which is what my involvement amounted to in this case. Mrs Easton was a constituent who came into the office - or she lived at Claremont -

Mr McGinty: Is that in your electorate?

Mr COURT: She lived in Claremont.

Mr McGinty: In your electorate?

Mr COURT: No.

Mr McGinty: Then she is not a constituent.

Mr COURT: She came into my office and quite rightly asked for information that we had been using in Parliament. All of the documentation she received was the documentation and information that was recorded in *Hansard*; and that was what I had been investigated for and completely exonerated about.

Over the years, particularly in relation to WA Inc deals, I have realised that once one starts uncovering the truth, one receives personal attacks. I am accustomed to that behaviour. The Premier said the other day that the mudslinging should stop. The only way it can be stopped is by the maintenance of standards. Silence denotes consent.

Point of Order

Mr PEARCE: I raise the same matter previously raised. If the Leader of the Opposition is using a personal explanation in Parliament he should be explaining his role in this matter -

Mr Clarko: In your opinion.

Mr PEARCE: It is not an opinion; it is the point I put before to the Speaker. The Leader of the Opposition is making a speech about issues which go beyond his role in this matter. He is making an attack on the Government. The Parliament often sees attacks on the Government but the forms of Parliament allow for the Government to reply to those attacks. The Leader of the Opposition should be asked to draw his remarks to a close or to bring them back to the point about which he is making a personal explanation.

An Opposition member: The truth hurts.

Mr PEARCE: There is much more to the truth than the Leader of the Opposition is putting. If the Opposition wants to raise a debate, let it raise a debate; it should not seek to use the cowards' castle to attack other people in a way that cannot be replied to.

The SPEAKER: Order! Before addressing the point of order I indicate to members that I have a very strong feeling about members in this place calling the Parliament a cowards' castle. If members call this place the cowards' castle we can hardly expect people outside to call it anything else. I would prefer at least that we should respect this place, even if we are the only 57 people in the whole State to do so, and perhaps we can convince some other people to do the same. I hope that I never hear that term again in this place.

The Leader of the Opposition is beginning to debate the issue rather than make his personal explanation. I am not of the mind to ask him to draw his comments to a close; I ask him to bring his comments back to the explanation.

Personal Explanation Resumed

Mr COURT: The Premier was silent when Mr Halden made his outrageous allegations not only against me but also against other people last week.

Mr Pearce: You are doing it again!

Several members interjected.

Mr COURT: If the Premier remains silent today and fails to discipline those members, she will be condoning their actions.

Several members interjected.

Mr COURT: We will not give up investigating the Exim scandals. We will be moving a motion shortly in this Parliament -

The SPEAKER: Order! It is proper for the Leader of the Opposition to take some notice of my earlier comments. I do not hear him making any attempt to move back to his explanation.

Mr COURT: Today it is the Government's behaviour that is in the spotlight. I appreciate the opportunity afforded to me, Mr Speaker, to be able to spell out in this House that the matters raised last week and promoted by a member of the Government were totally false. They were shown to be so, but for all three people concerned sadly the allegations had a tragic consequence.

PETITION - VICTIMS OF SEXUAL CRIME SAFETY AND WELFARE

Ban and Prohibition of Indecent Material

DR GALLOP (Victoria Park - Minister for Fuel and Energy) [2.19 pm]: I present the following petition -

> To: The Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned being concerned for the safety and welfare of innocent victims of sexual crime, do urge the Assembly to:
>
> - ensure that crime-incitement, demeaning or degrading material is banned in a mandatory publications process
> - prohibit the possession of all forms of child pornography and paedophilia in videos, films, publications and advertisements
> - prevent State censorship rights from being usurped by Federal control but rather give the public a say in deciding their own attitudes to taste and decency.

Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

The petition bears 4 590 signatures and I certify that it conforms to the Standing Orders of the Legislative Assembly.

The SPEAKER: I direct that the petition be brought to the Table of the House.

[See petition No 131.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - FISHERIES AMENDMENT REGULATIONS (Nos 5 & 6) 1992 REPORT

Tabling

MR P.J. SMITH (Bunbury) [2.24 pm]: I present the report of the Joint Standing Committee on Delegated Legislation into the Fisheries Amendment Regulations Nos 5 and 6 and I move -

That the report do lie upon the Table and be printed.

The Fisheries Amendment Regulations - No 5 - flow from the extensive public consultation process involved in the framing of the Ningaloo Marine Park management plan, which was approved by the Ministers for Fisheries and the Environment. The plan sets down the guiding principles for the management of fish resources within the Ningaloo Marine Park, but does not set controls or limits.

The regulations - the subject of this report - relating to recreational fishing within the park, are the second stage of the process and introduce the following provisions: Regulations 12EC and 12ED relate to bag and possession limits for certain species of fish; regulation 12EC stipulates that fish may be gilled and gutted but not filleted; regulation 12EF involves the specific manner of labelling of fish and rock lobsters; regulation 12EG relates to the presumption of possession in the absence of certain identification by a fisheries inspector; and regulation 12EH relates to the exemption of professional fishermen and bait fish from the provisions of the regulations.

The Joint Committee on Delegated Legislation examined these regulations and had concerns, as did many other members of Parliament. Firstly, in relation to the possession of fish within the Ningaloo Marine Park, it was stated that a trial period of 12 months would be held. The report states that these proposals should be implemented, and the possession limit within the park was recommended on the clear understanding that it was to be a trial period only, particularly for the first 12 months.

On examination of the regulation, it did not indicate that this was to be a trial period. On discussion with departmental officers, it was clear that the operation of limits would be subject to an internal review after 12 months; however, the officers did not consider the possibility of formally including the requirement of review of the regulations. Therefore, the Joint Committee recommended that the facility for a review after 12 months of regulations 12EC, 12EF and 12ED - relating to possession limits - be formally included as part of the regulations, as recommended to the Minister by the Executive Director of Fisheries.

Secondly, the question of the enforcement of possession limits has highlighted an area of ongoing concern to the Committee; that is, the extent of fisheries inspectors' powers. An inspector's powers are all encompassing and unduly trespass on established rights, freedoms and liberties, and this was one of the majors reasons for the committee's recommending disallowance of the regulations. The committee recommended that the regulations dealt with matters which should be dealt with by an Act of Parliament. Also, the committee recommended that the regulations unduly make rights which are dependent upon administrative and not judicial decisions. These are the three main areas requiring further consideration.

The committee approached this issue from two aspects: Firstly, the extent of inspectors' powers and, secondly, the proposal to appoint honorary inspectors. It found the inspectors' powers to be intrusive, and without question were capable of trespassing on individuals' rights, freedoms and liberties. The powers given to fisheries inspectors go way beyond those normally given to the Police Force.

Section 7 of the Fisheries Act gives inspectors the right of entry "to all lands whatsoever for the purpose of giving effect to or carrying out any of the provisions of this Act or the regulations." Under section 8 an inspector may requisition a boat from any person. Under section 40, inspectors have the power to arrest any person with or without a warrant, provided that he has reason to believe that that person has committed an offence against any provision of the Act. Section 42 of the Act provides the power to search for and seize fish. Section 49 gives inspectors general powers to enter and search any premises at any place at any time without warrant, and to stop, detain and search any vehicle, boat or aircraft. It also allows the inspection of any fish, net, rock lobster pot or other such things used for fishing. An inspector may also secure any fish he believes has been taken in breach of the Act or regulations.

The committee is aware that the introduction of possession limits within the Ningaloo Act will not extend the powers of inspectors, as, the powers of entry and search already exist. However, the need to enforce the possession limits prescribed under regulations 12EC, 12EF and 12EG is likely to give rise to more frequent use of the powers to search residences, including temporary camp sites within the Ningaloo Marine Park. As such, the committee is concerned about the fisheries inspectors' powers, which go too far.

The committee has drawn this matter to the attention of the Minister for Fisheries, who has undertaken to take them into consideration within a current review of the Fisheries Act. The committee draws this anomaly to the House's attention in order to highlight the extent of statutory powers of fisheries inspectors in the pursuit of undersized or otherwise illegal fish, compared to those of police officers in pursuit of drugs and stolen goods.

The committee is also concerned about the appointment of honorary inspectors under section 5(1d) of the Fisheries Act 1905, which states -

> The Minister may appoint persons to be honorary inspectors of fisheries or honorary licensing officers to carry out such of the duties of an inspector of fisheries or licensing officer, respectively, as the Minister determines in relation to any specified part of the State.

The committee's concern is aggravated by the possibility that the exercise of the powers may be delegated to unskilled or inappropriate persons by virtue of section 5(1f) of the Act. This was also brought to the attention of the Health Department in connection with emergency powers and Health (Asbestos) Regulations and others under the Health Act. The committee has also drawn this concern to the attention of the Minister for Fisheries who has undertaken to take the committee's concerns into consideration in the current review of the Fisheries Act 1905. Therefore, recommendation 2 of the committee is that in the review and redrafting of the Fisheries Act, the fundamental legislative principle of protection of individual rights and liberties be paramount; that the power of entry and search without warrant be permissible only in certain defined circumstances; that inspectorial powers be delegated only to persons specified in the primary legislation; and that the powers delegated to honorary inspectors be qualified in the legislation.

The committee also had some concern about minimum penalties. The provisions of section 47(2) of the Fisheries Act provide for minimum penalties for offences against the Act. The committee feels that the effect of such a provision is to deny the courts the discretion to impose less than the minimum, or no penalty at all, in circumstances in which they might otherwise have considered that appropriate. The committee has drawn its concerns to the attention of the Minister for Fisheries who has undertaken to take those concerns into consideration in the current review of the Fisheries Act. Your committee draws this matter to the attention of the House. Recommendation 3 of the committee is that in the review and redrafting of the Fisheries Act consideration should be given to the removal of the facility for imposing minimum penalties.

The Fisheries Amendment Regulations (No 6) were gazetted on 5 June 1992 under the Fisheries Act. These regulations implement a number of recommendations of the Recreational Fishing Advisory Council formulated after extensive public consultation which attracted some 1 400 submissions on the need for recreational fisheries management. The council's recommendations included the introduction of a recreational fishing licence, the provision for an umbrella licence and revised fees for the remaining recreational fishing licences. The advisory council considered that the most critical issue of the future

management of recreational fishing was the availability of funds for management programs. The majority of public submissions supported the principle of a recreational fishing licence provided that the revenue gained from the licence fee was held in a trust fund exclusively for the use of recreational fisheries management. The council's report, after consideration of public submissions and of the situation in other States and Territories, included recommendations 57 and 59. Recommendation 57 is that all revenue collected from recreational fishing licences should be placed in a special trust account dedicated to recreational fishing management in Western Australia. Recommendation 59 relates to funding priorities and the committee identified that education and research should receive first priorities for funding.

Having considered the regulations and the explanatory memoranda supplied by the Fisheries Department, members of the committee were concerned that no trust fund "dedicated to recreational fishing management in Western Australia" appeared to have been established, although the establishment of such a fund appeared to be the premise on which the majority of public submissions were prepared to support the concept of recreational fishing licences. The committee was already aware that revenue must be paid into the Consolidated Revenue Fund unless an alternative fund had been set up by the Act; therefore, the committee took its concerns to the Fisheries Department and to the Minister for Fisheries. Members of the committee were informed that a recreational fishing trust account had been set up by agreement between the Executive Director of the Fisheries Department and the Assistant Under Treasurer of the Treasury Department. The committee has drawn the attention of the Minister for Fisheries to its concern at the introduction of fees conditional on the revenue being utilised for a certain purpose without the fulfilment of that prerequisite by the necessary statutory amendment. These fees have been implemented without that amendment coming before the Parliament. The committee stated its opinion that the fund should have been established before the regulations implementing the licence proposal were gazetted and that an estimated two years' delay before the necessary statutory amendment would be effected was unacceptable in the light of the condition upon which imposition of a recreational licence was approved. The committee took its concerns to the Minister and he gave it his assurance that the necessary amendment to the Fisheries Act would be introduced in this session of Parliament. The committee notes the assurance given by the Minister for Fisheries that the required statutory amendment to establish a trust fund as the depository for revenue from recreational fishing licences will be introduced during this session of Parliament. The committee has recommended that recommendations 57 and 59 of the Recreational Fishing Advisory Council be implemented as soon as possible by amendments to the Fisheries Act. That brings me to a common concern of the Joint Standing Committee on Delegated Legislation.

Members of the committee have noted that sometimes regulations are promulgated before amendments to the Act are before Parliament. This often leads to problems - as it has on both of these occasions - where there are regulations in action, where money is being collected and enforcement carried out. That often means that fines or gaol terms do not have the backing of amendments before Parliament. A disallowance can mean that the regulations are technically illegal and there is some debate about whether people could challenge regulations if they have been disallowed but action is proceeding. We realise plans for amendments can be delayed, but the need to introduce these regulations and the amendments to control a sector of activity, if this is necessary, should proceed at the same time. We are concerned that no regulations should be introduced into the Parliament without the necessary Bills or amendments and the Joint Standing Committee on Delegated Legislation will be looking more closely at this concern in the future.

MR WIESE (Wagin) [2.38 pm]: I totally support the remarks made by the previous speaker, Mr Phil Smith, in bringing forward the report. I found the matters referred to in this report, which has been tabled by the Joint Standing Committee on Delegated Legislation, to be of great interest as a person who is approached on many occasions by people having an interest in the fishing industry and also as a member of Parliament seeing some of the extraordinary powers which are in place and to which the previous speaker has referred to in tabling the report. The Fishing Amendment Regulations (No 5) are very extensive and are included in the report for members to examine and to look at the implications. Basically, they set a bag limit on possession of fish and recommend quite new and radical requirements

that the fish must be gilled and gutted but not filleted before they are brought ashore within Ningaloo Marine Park management plan area and that all of those fish and rock lobster be labelled in a specified manner. All of these are quite radical recommendations, but quite necessary if one accepts the intent and purpose of the regulations. However, in introducing these requirements the Minister and the department have set the scene for some infringements of what have generally been accepted as very basic rights by both the Parliaments of Australia and the people of Australia, in particular of Western Australia. Those are the matters referred to by the previous speaker.

I refer specifically to the recommendations of the Joint Standing Committee on Delegated Legislation on the way in which the changes in amateur fishing controls recommended by the Recreational Fishing Advisory Council have been selectively implemented. The first recommendation on which I wish to comment is that a review be carried out 12 months after the implementation of these regulations. The report makes a very clear and unequivocal statement that the implementation of matters such as possession, limits and the like should be "on the clear understanding that it is a trial period only, particularly for the first 12 months". That recommendation of the fishing industry advisory council has not been implemented. The delegated legislation committee report to Parliament recommends that the review should be formal and included as part of the regulations as recommended by the Executive Director of the Department of Fisheries to the Minister. I sincerely hope the Minister will take note of that and carry out a review of the workings of the regulations after an appropriate period. That should probably be some time after July or August next year, which would allow for review of two of the busiest times for fishing within the Ningaloo Marine Park. The May-July period is one of the busiest times when a great number of people move from the southern parts of the State into the warmer, northern areas, particularly the Ningaloo Marine Park area. If, as I suggest, the review were carried out after July or August of 1993 the Fisheries Department would be able to carry out a very realistic review of the regulations and their impact on people using the park, during two peak seasons. That would provide an opportunity for the general public and the people involved in amateur fishing in that area to respond to the operations of both the regulations and the inspectors.

I hope every member in this Parliament will take note of the comments in the report about the extraordinary powers given to the fisheries inspectors under the Fisheries Act. Some of those powers relate to the right of entry. For example, the Act provides that "Every inspector shall have the right of entry on all lands whatsoever for the purpose of giving effect to or carrying out any of the provisions of this Act or the regulations". Under section 8 of the Act, the inspectors have extraordinary powers enabling them to requisition boats, engines or rowlocks for the purpose of carrying out their duties or enforcing the provisions of the Act. The House should question why fisheries inspectors have been given such extraordinary powers. Section 40 of the Act provides that "Any inspector may, with or without warrant . . ." - I emphasise, without warrant - ". . . arrest any person who the inspector has reason to believe has committed an offence against any of the provisions of this Act or the regulations". We are talking about fishing offences, not grievous bodily harm or people being attacked on the streets. The powers of arrest without warrant have been given to fisheries inspectors but not to law enforcement agencies. Members must ask why on earth such powers have been provided. I believe the power to search for and to seize fish is justifiable. However, the powers provided to the fisheries inspectors in carrying out their search and seizure of fish should be of concern to all members. Included in the general powers of the inspectors under section 49 of the Act is the ability to enter and search any premise or place at any time, again, without warrant. They can also stop, detain, inspect and search boats or aircraft. Quite understandably - I can accept this power - they can inspect fish, lobster pots and the like. They can also seize, take, secure, or cause to be removed any fish etc. That is also quite acceptable. However, the ability to search, enter, stop and detain at any time, without warrant, are extraordinary powers given to people who, after all, are only fisheries inspectors enforcing the Fisheries Act. This is one of the most important matters the report puts before the House, and I hope members will take note of it.

The previous speaker, the member for Bunbury, made comment on the fact that the Act provides for a police officer to act as an ex officio fisheries inspector. A policeman will have far more power acting as an ex officio fisheries inspector than he has in the normal course of his duties as a police officer. That should ring alarm bells for members. Another

extraordinary power is the Minister's ability to appoint persons as honorary licensing officers or inspectors to carry out the duties of an inspector of fisheries or a licensing officer. It is not necessary for an honorary inspector to have training, ability or experience, or anything of that nature, before he is appointed. That person has the ability to exercise all these extraordinary powers. I hope that recommendation No 2 dealing with these matters will be very closely examined by the Parliament. I also hope that when the Fisheries Act is reviewed and perhaps redrafted, as I understand it will be, every member of this Parliament will examine it closely and ensure that those powers are severely modified. I will not dwell any further on the issue of minimum penalties which was dealt with by the previous speaker.

I turn now to the section of the report which deals with the Fisheries Amendment Regulations (No 6); that is, the recommendation put forward by the Recreational Fishing Advisory Council about several matters, specifically revenue gains from licence fees and the recommendation to set up a trust fund. The advisory council stated that it supported recreational fishing licences -

> *. . . provided that the revenue gained from licence fees was held in a trust fund exclusively for the use of recreational fisheries management.*

That proviso was made by the council about the greatly widened powers for the introduction of new licences dealing with abalone, trout and redfin perch, and with the provision of an umbrella licence. The advisory council realises that a substantial gain will be made to the revenue of the State from the expansion of licences to cover those extra areas.

My understanding is that under the previous licences, which covered only three areas of licensing - marron, rock lobster and the use of gill nets - licence fees in the vicinity of around $700 000 would have been raised from amateur fishermen. The new regulations and licences being introduced are expected to raise approximately $1.2 million in the initial year. In a full year it is envisaged that approximately $1.6 million will be raised from the new licences and from the increased fees that applied to the old licences. The committee agreed with those new licences being introduced and with the increasing of fees for all of the licences on the proviso that all of the revenue gained be placed in a trust fund and used exclusively for recreational fishing. Of course, that is not occurring.

It was of great concern to the committee that the recommendations on which the new provisos within the Fisheries Amendment Regulations (No 6) were introduced did not, in fact, implement the recommendations of the committee for how those funds would be used. I believe strongly that the Minister for Fisheries should accept that recommendation and put into place that trust fund. Further, he should ensure that all of the revenue raised from fisheries licences are paid into that trust account and used wholly and solely for the purpose of promoting recreational fishing throughout Western Australia. The amateur fishing population of Western Australia is very disappointed that the Minister has not accepted that recommendation in total and implemented it. I hope that we will see a change in the Minister's thinking about those recommendations.

I strongly commend the report to all members of the House because it deals with an issue which is of great importance to many people throughout Western Australia. It is of great importance to all of those who are involved at some stage during the year in some form of recreational fishing pursuit, whether it be people who cast a line from one of the groynes along the coast, fish from a boat in the Ningaloo Marine Park management areas, dive for rock lobster or lower their own pots into the water, or those involved in inland fishing on an amateur basis. Additionally, it is important to all of those who obtain their marron from inland waters during the marron season and those involved in throwing a line into some of Western Australia's rivers and streams in an attempt to catch trout and redfin perch. The regulations on which the Joint Standing Committee on Delegated Legislation has reported cover all of those areas of recreational fishing. They especially affect families who travel to the coast from the inland areas of the State for a couple of weeks a year. Those people will be required to purchase a licence, especially for abalone fishing, to cover mum, dad and the two or three children they will take with them. They will have to pay $75 odd to get a licence to indulge in something which they have been doing free for a long period.

MR BLOFFWITCH (Geraldton) [2.57 pm]: As a member of the Joint Standing Committee on Delegated Legislation which prepared the report on the Fisheries Amendment Regulations 1992 Nos 5 and 6 I make the overriding point that some very important changes

are being introduced with these regulations. The whole question of regulation and what should be primary legislation must be considered; that is, whether things which affect us as citizens and the types of natural resources which we are allowed to take should be covered by legislation or regulations. Far too much licence is given to Ministers to use regulations. Some of those regulations which are perhaps not ultra vires go a little too far and should be encompassed in legislation. However, I understand the complexity of the problems which have occurred with the Fisheries Act. Of course, the Government is endeavouring to redraft the entire Act, which is proving a pretty monumental task. Consequently, I can understand why it is trying to push through these regulations. It is interesting to examine these regulations, bearing in mind that they deal primarily with the Ningaloo Marine Park and will limit the amount of fish and resources that are taken out of that unique section of the coast. The Opposition can understand the Government's wanting to protect a beautiful resource such as the Ningaloo Reef.

The committee looked at bag and possession limits for a specified species; requirements that fish may be gilled and gutted but not filleted; labelling of fish in a specified manner; presumption of possession in the absence of certain identification by a fisheries inspector; and the exemption of professional and bait fishermen from the provisions of the regulations. Clause 12EH dealt with the impracticalities of tagging catches of professional fishermen.

I urge the Minister to consider the various recommendations made in the report. The committee which considered this matter was concerned about the introduction of these limits. Nobody is quite sure of the effect of the limits, which is the reason for the trial period. It is interesting to note that the trial period recommendation has been ignored against the wishes of the committee. However, this seems to be a very common practice for the Minister, who has ignored the recommendations of advisory committees, including the rock lobster advisory committee.

Amateur licence holders operating on the Ningaloo Reef may take only four rock lobsters whereas amateurs operating elsewhere on the coast can take eight. It needs to be seen whether licensing will protect the numbers taken. I have a little difficulty with the four lobster limit on the Ningaloo Reef. I am sure the Minister will give me an explanation.

Mr Gordon Hill: Do you think it should be a uniform eight across the board?

Mr BLOFFWITCH: As an amateur crayfisherman who exercises his right, I have never yet caught eight crayfish. I do not think we have to worry too much about my exploiting the situation. I am grateful when I get four crayfish from my pots. I am sure that 95 per cent of amateur fishermen would feel the same. I find it difficult to understand why this limit of four has been imposed in the Ningaloo Reef area. I am sure there is a reason, but I am not aware of it.

I support the powers given to the fisheries officers, no matter how draconian they may appear to be. It is impractical not to give them such powers to search for and seize fish, to arrest offenders and to enter property. There are shacks from one end of the coast to the other, and it would not be easy for fisheries officers to apprehend people who had a contraband store in an isolated shack. By the time a magistrate or a justice of the peace could be found to issue a search warrant, the offender responsible would have absconded. The committee brought the Parliament's attention to the fact that these powers can be viewed as an invasion of our rights as citizens, and the Parliament needs to take notice of the recommendations put forward in relation to the powers of fisheries officers.

It has already been mentioned that the revenue from licensing and funding fees will be paid into the Consolidated Revenue Fund, from which an amount will be allocated for research into the industry. The committee's report suggested that part of the sales tax on fishing gear, outboard motors and recreational fishing items should be allocated to research into preserving the resources on our coast. Although we have no power over the Commonwealth Government, I urge the Minister to take note of that recommendations of the committee. The State allocation would be approximately $2.5 million a year if we were to receive a proportion of the sales tax levy on fishing gear and associated expenditure.

Mr Kierath: We have a very impressive front bench at the moment!

Mr BLOFFWITCH: Those in the Government are taking a lot of notice of the report. Fortunately, a few of us will be on the front bench in February or March. We are taking

some notice of the report. In many cases the tax on items such as outboard motors is collected by officers from the Australian Customs Service. In the United States a large proportion of the tax on boat fuel goes to enhance the marine national parks. Some of the marine parks in Hawaii are first class and are to be admired.

I urge members of Parliament, particularly the Minister, to read the report on the fisheries amendment regulations. They make a lot of sense, and they should be adopted. I commend the report to the House.

Question put and passed.

[See paper No 558.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION - DEPARTMENT OF LANDS ADMINISTRATION REGULATIONS 1992 REPORT

Tabling

DR EDWARDS (Maylands) [3.07 pm]: I present the tenth report of the Joint Standing Committee on Delegated Legislation on the Department of Lands Administration regulations 1992. I move -

That the report do lie upon the Table and be printed.

The report is in two parts, both of which deal with four regulations. The first part again examines the surcharge of $2 000. The regulations were gazetted in July 1992 and tabled in August. After detailed examination by the committee and correspondence with the Minister, the committee resolved that a notice of motion of disallowance be given in the Legislative Council, which occurred on 21 October. Disallowance has been viewed by our committee consistently as a last resort. On this occasion we have satisfied ourselves that it was consistent with one or more terms of reference of our committee and they had been discussed by the department and the Minister. Following that, we felt that the regulations should be disallowed.

The background to these regulations goes back one year to when we tabled our seventh report dealing with the surcharge. At that stage we put forward the view that it was ultra vires. We also considered the court modernisation fund and the Attorney General agreed to dismantle this fund. As a result disallowance of that regulation was withdrawn. This year, though, following correspondence with the Minister and after obtaining a legal opinion of our own, we have come to the conclusion that the imposition of the Register 2000 surcharge is ultra vires and that the four regulations under discussion in this report should be disallowed. We also recommend that the statutory authority to incorporate an amount to cover the cost of the Register 2000 computerisation program be included by amending the parent legislation.

The second part of this report deals with the abolition of the Transfer of Land Act assurance fund and the concern that the committee has with the imposition of fees in anticipation of an amendment. That was referred to previously by the member for Bunbury when he spoke of other regulations in the ninth report. In this instance, part 8 of the transfer of land regulations 1992 gives details of an assurance fund that is to be set up. The committee has looked at the explanatory memorandum and has sought clarification from the Minister. The committee has also had discussions with the department. As a result of all this, though, and after considerable discussion, the committee makes the following recommendation: That the regulations increasing the fees be disallowed; that the legislative amendments to abolish the assurance fund be introduced without delay, if abolition of the fund is still sought by the Department of Land Administration; and, that the practice of gazetting regulations in anticipation of, and dependent upon, statutory amendments which are not subsequently introduced, cease forthwith. I commend the report to the House.

MR D.L. SMITH (Mitchell - Minister for Lands) [3.13 pm]: I will respond briefly to the report because, unfortunately, the disallowance motion has been moved in the other place. In my view, the report highlights the attitude of the Joint Standing Committee on Delegated Legislation to its task. Its task has moved away from the question of whether the regulations are within the regulating making power or whether there are any other matters which would concern the community. It tried to determine whether fees imposed by regulation are cost recovery for the service provided or whether they are something more than just cost

recovery. If it is something more than cost recovery, the committee adopts the view that the fees are in the nature of a tax rather than a fee and for that reason the fees should be disallowed.

Firstly, the basis upon which those assessments are made is faulty in that no allowance is made for the capital cost of equipment which is installed to provide the service for which the fee is being charged; secondly, the legal basis upon which the distinction between a tax and a fee is based is nonsense. It has been clearly shown to be such by all of the legal opinions available to me. I question members of these committees being subjected to advice from executive officers and advice obtained from the private legal profession and, where there is a difference between that private legal advice and the opinion of the Crown Solicitor, they are not prepared to accept the Crown Law view. When there is a difference they should simply permit the doubt to prevail and allow the regulation to stand, not move to disallow. In this case, the cost to the Consolidated Revenue Fund will be in the order of $600 000 to $800 000. That is a major problem for the Government's Budget. That is revenue that will not otherwise be available and savings will have to be made elsewhere to reduce Government expenditure to make up for the loss of revenue.

The basis upon which the committee has made its recommendations is faulty in reasoning and faulty in law. It is time that the committee began to direct itself to its proper function and not to the excessive function that it seeks to take to itself.

MR WIESE (Wagin) [3.12 pm]: I had intended and I still intend to make very brief comments on the report tabled by the member for Maylands. However, following the comments made by the Minister for Lands, it is appropriate that I say a little more than I intended originally. The Joint Standing Committee on Delegated Legislation is a joint committee of members of this House and of the other place. I will bring to the attention of all members that which our Standing Orders requires the committee to do and then ask them to judge whether the comments of the Minister for Lands are appropriate. His comments are based on a misunderstanding of what is the role of the committee. The committee's role is spelt out in the Standing Orders: Firstly, that we consider and report on any regulation that appears not to be within the power or not to be in accord with the objects of the Act pursuant to which it purports to be made. That is very relevant to the comments made by the Minister because the committee has been asked by this House to look at all of the regulations that come before the Parliament under that requirement. The committee considered the regulations and came to a judgment based not only on its own deliberations, but also based on discussions with departmental people who were brought before the committee to find out exactly what was happening and what was the background to the introduction of the regulations. It also acted upon independent legal advice as outlined by the member for Maylands. Following the advice given to it, it came to the conclusion that the regulations imposing those fees were not in accordance with the objects of the Act. This Parliament needs to look very closely at the report and at the background material in that report and then make its judgment -

Mr D.L. Smith: How can a question of whether a fee is reasonable be taken as being outside the objects of the legislation?

Mr WIESE: I am not talking about a judgment or a finding of the committee on whether a fee is reasonable. The report clearly relates to whether the fee falls within the objects of the Act and is pursuant to the powers of the Act. On that question, the committee judged that it was not and the report before the House includes the background material for that judgment and the reasons for the committee making its recommendations. It is now up to the House to judge whether the committee's findings are correct. It is then up to the House, if it believes the findings of the committee are correct -

Mr D.L. Smith: Why don't you table the decisions from the department?

Mr WIESE: That is possible. However, I believed it was not necessary, quite frankly.

The recommendation is the most important thing to consider when looking at the report. It states -

> That the statutory authority to incorporate an amount to cover the cost of the Register 2000 computerisation program be included by amending the parent legislation.

Mr D.L. Smith: How can we amend the parent legislation this session?

Mr WIESE: The Minister has had two chances.

Mr D.L. Smith: It is not necessary within the legislative time.

Mr WIESE: The Minister asks, by way of interjection, what chance he has had to react to the report. The Joint Standing Committee on Delegated Legislation brought this same issue to the attention of the House in one of its reports about 12 months ago. The Minister and the bureaucracy have had 12 months in which to react to the committee's previous report and they have done nothing. For that reason, the committee believes that it is necessary for the matter to be brought again to the attention of the Parliament. The committee has performed its role and it is now up to the Parliament and the Minister to act on its findings. I sincerely hope that the Minister does act on the committee's recommendation that the parent Act be amended to impose a fee similar to that imposed for the Register 2000 computerisation program. Members should be aware that I am not talking about a peanuts-type expenditure, but about the expenditure of approximately $10 million on a computerisation program.

Mr D.L. Smith: Money very well spent.

Mr WIESE: Nobody is arguing about whether the money was well spent; I am trying to bring to the attention of the House that, although the money may have been well spent, the committee believes that it is highly probable that the money was raised illegally. This House has the ability to investigate this issue. If any member of the public agrees with the committee's findings he already has the ability to take this issue before another court of this land, probably the Supreme Court. If the committee is correct, it may well be that the Minister and this State will be placed in an invidious position if it is found by the Supreme Court that the money was raised illegally. The Minister and the department may then have to find a way of repaying the money to the people from whom it was illegally raised. The Parliament should take note of that and should respond to this situation.

Mr D.L. Smith interjected.

Mr WIESE: I cannot answer that question. The committee resolved that it would be done in the other place.

Mr D.L. Smith: To avoid any response.

Mr WIESE: The Minister does have the ability to respond. The Minister has a responsibility to address the problems which have been brought to the Parliament's attention by way of this committee's report and he has several mechanisms available to him to do that.

The committee's terms of reference have been approved by both Houses of this Parliament because the committee is a joint committee and not a committee of one or the other House. As I have said, the first of the committee's terms of reference is to make a judgment on whether the regulation before it falls within the power of the relevant Act. The second term of reference requires the committee to consider regulations on the basis of whether they unduly trespass on established rights, freedoms and liberties. The third term of reference requires the committee to examine regulations to ascertain whether they contain matter which should properly be dealt with by an Act of Parliament. Again, that is pertinent to the report which is before the House. The committee's recommendations reflect the work it undertakes in examining regulations to ascertain whether they should be dealt with by an Act of Parliament.

The committee believes that the major fee increases and expenditure associated with the Register 2000 computerisation should have been dealt with by an Act of Parliament. Another very important term of reference of the committee is to ascertain whether the regulation before it unduly makes rights dependent upon administrative and not judicial decisions.

Having brought the terms of reference under which this committee operates to the attention of the House, I hope that members now have a better understanding of the work of the Joint Standing Committee on Delegated Legislation. The role performed by this committee is of vital importance to the workings of this Parliament. Members in this House and in the other place must be extremely vigilant about what is being done within the legislative framework under which this State operates. The Joint Standing Committee on Delegated Legislation is often made aware of measures which are being implemented by the bureaucracy. I am sure I am correct in saying that all members of the committee believe that the bureaucracy, in many cases, tries to bypass the requirements of the Parliament for scrutiny.

Mr D.L. Smith interjected.

Mr WIESE: The Minister is talking about primary legislation; I am talking about delegated legislation. This Parliament has delegated some of its legislative powers to the bureaucracy, but has retained its ability to scrutinise delegated legislation because it is required to be tabled in this Parliament.

Mr D.L. Smith: It should be scrutinised by this House.

Mr WIESE: It can be scrutinised in this House. The Minister is not prepared to accept that it is not possible for every member of this Parliament to scrutinise all the delegated legislation laid on the Table of this Parliament. It is not physically possible for the Parliament to deal with all delegated legislation and that is the reason that the joint committee was established. It is carrying out its role on behalf of the Parliament. That is exactly what the Joint Standing Committee on Delegated Legislation is doing, and what I hope it will continue to do with a great deal of vigour. If that occasionally upsets members of the bureaucracy, or Ministers in this House as it appears to have done in this case, then those bureaucrats and Ministers should look at what they are doing. They should consider whether they are exercising a proper role in trying to remove the powers of this Parliament by de facto means. The committee is aware of many instances where that is occurring. The Joint Standing Committee on Delegated Legislation has one set of regulations before it at present which endeavour to take other regulations out of existence so that they can become directions or notices. If that is done, this Parliament should be aware of it.

If the bureaucrats are prepared to pass regulations which attempt to remove the power of the Parliament to scrutinise regulations then the Parliament should ask clearly what they are trying to do. The Parliament should be vigilant in ensuring that its powers are not taken away by that means. I believe I am stating the opinion strongly held by the majority of members of the committee, including me, that we are now seeing a great increase in the amount of material being handled by notice, direction and myriad other mechanisms which bypass the scrutiny of this Parliament. I do not believe that is happening by accident but by design and deliberate intent.

Mr D.L. Smith: That is nonsense.

Mr WIESE: The Minister is entitled to his opinion, but this Parliament must look closely at many of the things being done by way of notice, direction and other means, which are, in my opinion, in many cases being done to avoid the need to table documents in this Parliament for its scrutiny.

Mr D.L. Smith: We are changing the level of a fee here.

Mr WIESE: I am not talking about changing the level of a fee but about serious matters which have penalties associated with them.

Mr D.L. Smith: In this case we are talking about changing the level of a fee.

Mr WIESE: Does the Minister believe that one should be able to impose by notice an instrument of delegated legislation not required to be tabled in the Parliament which contains matters including strong fines, and in some cases imprisonment penalties, on the people of Western Australia? Does the Minister believe those sorts of things should be able to be done by the bureaucracy or the Minister by way of a notice which never comes before this Parliament?

Mr D.L. Smith: They come before the Parliament in the sense that they are tabled here.

Mr WIESE: The notices and directions to which I refer are not tabled in this Parliament, so they are not subjected to its scrutiny. Notices, directions, codes and many such things containing provisions for substantial fines and in some cases imprisonment are being imposed on the people of Western Australia without the requirement for their tabling in this Parliament. If the Minister believes that that is okay, I wonder what he is doing in this Parliament. The bureaucracy of this State should not be able to impose penalties and legislation on its people without the requirement for it to be tabled in the Parliament so that it is subject to its scrutiny. If such documents are not tabled then they are not subject to its scrutiny, and if that is happening the Parliament is not performing the role for which the people of Western Australia elected it.

I do not apologise to the House for not dwelling entirely upon the contents of the report in my speech this afternoon because the matters I have raised are as a result of the Minister's comments in relation to my remarks on the report and are of great importance to members of this Parliament. I recommend that all members read this report.

MR BLOFFWITCH (Geraldton) [3.35 pm]: During my time on the Joint Standing Committee on Delegated Legislation it has considered several matters that were ultra vires or fell outside existing guidelines. This Register 2000 is one of the classic examples of that. I remind members that it was the recently completed Royal Commission that said too many things have slipped through the scrutiny of this Parliament. The member for Wagin mentioned, for instance, notices that never come before the House. Much of the new legislation contains provision for the use of notices instead of legislation.

Mr D.L. Smith: This report deals with a change in the level of a fee.

Mr BLOFFWITCH: The committee has moved to disallow this regulation because it believes that capital items to the value of between $10 million and $20 million should be subject to primary legislation related to their purchase as a capital item and not simply be purchased by using a regulation which moves to increase a fee structure within a department to do so, because that is fundamentally wrong. Fees can be increased at the stroke of a pen. If, for instance, we wished to buy a new fleet of vehicles using that approach we could just add their cost to the fee. The committee has decided quite rightly that that should not be done with major capital items, which should be the subject of legislation and not regulation. Money to be allocated for such purchases should come from the normal tax base of the State, and that suggestion has been put to the Minister.

Mr D.L. Smith: Why should capital equipment which is to be used to provide a service to the public be supplied from the Consolidated Revenue Fund rather than on a user pays basis?

Mr BLOFFWITCH: Because of the amounts involved.

Mr D.L. Smith: Tell us how much it is. Tell me how much is the fee the member's committee is disallowing?

Mr BLOFFWITCH: I do not have it in front of me.

Mr D.L. Smith: That shows the level of knowledge of the committee.

Mr BLOFFWITCH: The committee is moving for disallowance in this matter because the Minister has for 12 months totally ignored its instructions and not bothered to listen to the committee.

Mr D.L. Smith: The committee has not invited the Minister to appear before it. It did not give the Minister notice it was publishing this report today, or that it was moving a motion of disallowance.

Mr BLOFFWITCH: The fact of the matter is that the chairman of the committee is a member of the other place and it is customary for the chairman of such committees to bring forward these reports. There was no need for the insulting remark the Minister has just made about the committee. I believe that the chairman of that committee has spoken to the Minister on many occasions and told him of the committee's opinion on this matter and about legal opinions showing that not only his fee increase, but any fee increase for capital equipment, should be paid out of taxes. It is a way around having to increase general taxes at departmental level. That is the ruling, and that is the legal advice.

Mr D.L. Smith: That is not the advice from Crown Law Department.

Mr BLOFFWITCH: No, but as we have done on many occasions with motions to disallow, we have asked for other opinions. Strangely enough, they differ from the Crown Law Department opinions. Bearing that in mind, we bring the matter to the House and ask the House to consider the situation. If the Minister has not already done so, I ask him to read the report.

Mr D.L. Smith: The House can look forward to many hours of debate about the level of fees. If that is the level of debate here, God help the future of democracy.

Mr BLOFFWITCH: If it is the Minister's point of view that due to a backlog of legislation we should circumvent this process - that is, put it through as regulations because it is too hard

for legislation - is it any wonder we end up with Royal Commissions or that Parliament does not know what is going on? Members of the committee support the report, and will also support the motion when it is moved in this House.

Question put and passed.

[See paper No 559.]

MOTION - BUSSELTON SHIRE COUNCIL, REPORT OF THE PANEL OF INQUIRY

Publication Authorisation

MR D.L. SMITH (Mitchell - Minister for Local Government) [3.42 pm]: I move -

> That this House authorises the publication of the report to the Minister for Local Government of the Panel of Inquiry into the Busselton Shire Council.

The report of the panel of inquiry into the Busselton Shire Council was tabled on Tuesday, 20 October 1992. In the course of a short ministerial statement the next day, I sought to have the report published. The Speaker rightly drew my attention to his concern about the frequent requests now made for publication of reports. He suggested that the matter be the subject of a substantive motion. I can understand the reluctance of the House to order that reports generally be published, because of the privileges attached to the reports as a result of publication. However, in this case the report emanates from a request by the Minister for Local Government to a panel of inquiry under section 635(2)(c) of the Local Government Act. Obviously that provision was inserted by Parliament with a view to ensuring that if there is any question of impropriety in the conduct of affairs of a local authority we should have a mechanism for an inquiry to be held into the affairs of that local authority and for a report to be produced. A report in this sense emanates from a decision of Parliament to include in the Local Government Act a provision enabling those inquiries to be undertaken.

After the panel of inquiry report into the Shire of Busselton was received I sought advice from the Crown Law Department as to whether the report could be published, and if it were published without coming to the Parliament whether any liability might be attracted for defamation. The advice received was that with the delivery of the report to me - that is, the publication of the report by the panel of inquiry to me as Minister - that was a privileged situation. Similarly if the report were simply tabled, if there was a fair report of the report itself, again that report would attract privilege. The problem arises where people in the community, whether through the media or otherwise, wish to debate the contents of the report or to pass on their view of the report to other members of the community. That is critically important in this case because the recommendation of the panel of inquiry was that despite the various findings of misconduct by some councillors, the council should not be dismissed but rather the matter should be left to the electors of the Shire of Busselton to rectify any problems that they perceive as a result of the report, through the ballot box, in the next local government elections.

Mr Blaikie: Or the one after.

Mr D.L. SMITH: Or the one after that, or the one after that. The problem with that is that unless the report is published with the approval of Parliament there can be no frank and open debate about the contents of the report in the public arena; so that people who want to make a decision about how to vote at the next election - or the one after that, and so on - will not be able to discuss the matter in the free manner that we expect in a democracy. In this case clearly a number of findings of the committee would harm the reputation of individuals; they would normally seek to protect themselves by actions of defamation or by seeking injunctions against the publication or discussion of some of the issues. It is critically important for the Parliament to recognise that if there is to be free and open debate about these issues in the public arena - whether it is a report of the Royal Commission into the conduct of WA Inc deals, or whether it is a report of a panel of inquiry into the activities of the important sphere of local government - the same freedom should be available to people to access and discuss reports, and to discuss them in the community, so that they can make a proper judgment about whether the findings in the report are substantiated and whether, as a community, people should take action against the individuals who may still be on the local authority and seeking re-election at some stage in future.

Mr Strickland: Have you protected the rights of all?

Mr D.L. SMITH: Their rights have been protected by providing a summary of the recommendations that the panel of inquiry intended to find, and by giving the people named in those findings the opportunity to respond to the report. I also took the opportunity to ensure that the council received a copy of the report so that before it was published the individuals who were named in it and the council itself would be aware of the findings and could respond publicly immediately the report was obtained.

Mr Strickland: Have they been given the opportunity to respond to the report?

Mr D.L. SMITH: The panel of inquiry indicated the adverse findings likely to be made. The panel gave those people the opportunity to respond by providing argument as to why the findings should not be made. Secondly, since the report was received I provided a copy of it to the council ahead of its publication in order to give the opportunity to councillors to prepare themselves for the publicity that would be attached to the release of the report. I understand that I will be receiving a submission from the local authority in the near future, as a result of a meeting the other night in general response to the report. On matters of this kind, where findings of this type are made, it is critically important that we as parliamentarians acknowledge the need for the public to know and to debate the issues. We should acknowledge that the local community should be fully informed about the issues prior to the next local government election in order to make a judgment about the individuals named in the report or about the general conduct of the council. It is not my role to dictate their reaction; however, I stand by the three members of the panel. They were selected mutually by the Western Australian Municipal Association and myself. The chairman of the panel is a person of substance in local government circles and is well qualified to chair the panel, and the people assisting him are also well qualified. The way in which the members of the panel conducted themselves in taking evidence from witnesses, giving witnesses the opportunity of rebuttal of what other people may have been saying about them, and then formulating the report, does them great credit. We do not want the report, or a newspaper report giving a fair report of what is contained in the report, to be the end of the matter. In this case we are not contemplating dismissal and the panel has recommended that remedies lie with the council and with the electors. Unless the electors have the opportunity of debating the report in the community the whole object of this recommendation will not be fulfilled. Parliament saw the need for panels of inquiry. It would make a nonsense if the outcome of this panel of inquiry were the release of the report to the Minister and no more. Similarly, it does not take it much further simply to have the report tabled and for a report of the report to be published in a newspaper.

An opportunity must be provided for those named in the report or those concerned about what is commented on in the report to express opinions about those matters on the basis of the findings of the panel and for the local community to make its own judgment. We must remember that those public discussions would include the opportunity for those people who feel that their reputation has been harmed in any way by the findings of the report to be involved in those public debates and to put forward a defence for what they perceive to be incorrect findings. I do not perceive them to be incorrect findings. I stand by the panel and the way in which it has been conducted. Where the decision of the panel is not to dismiss, it is critical that the report be available for full discussion and no-one be constrained by some fear that because he is simply repeating findings contained in the report that somehow or other he will run the risk of defamation action against him on matters which are clearly of public interest to the local community of Busselton.

I have nothing but praise for the Busselton council's response both prior to and since the report's public release. I made that comment in response to a journalist's question that was put to me only today. Nonetheless, the findings in the report are very serious and are not ones that can be swept under the carpet. They need to be out in the open and be discussed by the community of Busselton in a free and open way. As is usual in these matters the electors of Busselton can decide what action if any they should take through the ballot box or through other mechanisms available to them.

Mr Strickland: It would be a very serious and unfortunate situation if matters in contention were subsequently found to be in error.

Mr D.L. SMITH: It would, but in the case of panels of inquiry or Royal Commissions, they

do their job as best they can with the resources available to them and with their own experience and skills. This panel has done its job properly. It is composed of people who are properly appointed because of their past experience, reputation and standing in local government circles. What should not happen now, because the legislation does not make provision for the report to be made available for full publication in the community, is that that opportunity should not be lost. The Parliament put into the legislation the power to have these panels of inquiry. The Parliament provided for the reports and for the action to be taken or not taken on the recommendations of the panel. It would be a nonsense if we were placed in a position where, because of some fear of a defamation action, the contents of the report could not be freely and fully debated. It would be a nonsense, for instance, for anyone in the Opposition to put that position about the report of the Royal Commission.

Mr Strickland: I am not aware of the details of the report or if there are problems that must be addressed. I do not know how far the report goes in blaming individuals for any problems that may exist. However, if the report blames someone and it turns out to be in error, problems can arise.

Mr D.L. SMITH: The report has been tabled and four individuals are named for alleged breaches of disclosure of pecuniary interests. A number of other matters have been mentioned as being improper, including the keeping of minutes and the conduct of meetings, which in a way impinge on the reputation of the clerk and the president. Nonetheless, the public need to be aware of those things. Those persons who feel they have been adversely reflected upon in the report need to have the opportunity to respond to the report; otherwise we will finish up with the ridiculous situation of the Press being able to publish what is considered to be a fair report of the report, but the persons who have been adversely named and who might want to respond to the report do not get the opportunity to discuss all of the report and their relationship with other individuals who may also be named in the report. In this case there is a very substantial public interest that outweighs the usual rules of defamation. It is a situation that has not been developed by the initiative of the Minister alone or by the panel alone. It has been initiated by this Parliament by the inclusion of these provisions into the Local Government Act. Where we impose upon this sort of panel the obligation to carry out investigations and make a report, and to do so in a courageous way without fear of any retribution, this House should not leave the possible threat of some defamation action being taking against the panel members because some part of the report is published in circumstances where the panel may be quite innocent but, because they are the authors of the report, may in some way be attributed some primary responsibility.

Mr Omodei: The Minister messed it up.

Mr D.L. SMITH: This motion should have been moved on the day of the tabling. As the member for Warren knows, the tabling was done by the Clerk and that situation arose in unfortunate circumstances, but it does not get away from what we are debating here today; that is, the question of whether reports of this kind should be published by the Parliament in order to attract the protection that gives them.

Mr Strickland: That is protection for all. We do not want to retread what happened over the weekend where people were named in a paper tabled in this House and it subsequently turned out to be unfair and untrue.

Mr D.L. SMITH: It is in the nature of a final report of a panel of inquiry. I do not think it is any different from a report of a Royal Commission. No-one in this Parliament would seriously say that we should not have published the report of the Royal Commission. Exactly the same principles apply to reports of this kind which are not about a State Government but about local government, but concern the very same issues of propriety and the conduct of elected and non-elected officials of the local authority. It is impossible to say that reports of this kind should not be published. The matters must be made public and discussed in the public arena so that members of the Busselton community can make up their own minds about what flows from the report.

MR BLAIKIE (Vasse) [3.59 pm]: I support the motion, which the Minister for Local Government should have proposed on 21 October when he made a ministerial statement to the House. At the conclusion of that statement he sought to move a similar motion. At that stage I expressed some indignation because the Minister was making a ministerial statement about the inquiry into the Busselton Shire Council, which prohibited any member from

making any comment whatsoever. The Minister was quite wrong in his actions, and he will be proved wrong by the events which subsequently unfolded.

Although I am supporting the motion that the report be published I will also be writing to you, Mr Speaker, requesting that a committee of the House examine further the question of privilege to ensure that the House understands the real purpose of privilege and the difference between the tabling and the publishing of papers. Mr Speaker, you correctly drew the attention of the House to what you believed to be the inappropriate action of the Minister when he made his ministerial statement. It is not correct for a Minister to say that a report has been brought together by the Parliament, using the obtuse reason that the Local Government Act is a product of the Parliament and that he, as the Minister, has agreed to having a report, and because he has done so, under the Local Government Act that report is a product of Parliament. The report is the product of the Minister and the Minister alone. It was requested and it was agreed to. The Minister could have taken a series of actions had he decided to do so. However, the Minister has made a very serious blunder and I hope individuals will not suffer as a result of that ministerial incompetence.

Mr D.L. Smith: You will invoke a few interjections if you continue in that manner.

Mr BLAIKIE: The Minister may understand the argument, to which I will return. The Busselton Shire Council requested a report into the activities of the shire over a period. That was subsequently agreed to by the Minister, who established the terms of reference.

Mr D.L. Smith: Along with the shire and others.

Mr BLAIKIE: The shire and others may have indicated what were the terms of reference, but the Minister in due course established those terms of reference in consultation with them. The Minister established the panel which would make the report. That panel and the inquiry was the province of the Minister and the Minister alone.

Mr D.L. Smith: There was consultation with the Western Australian Municipal Association.

Mr BLAIKIE: The Minister could have had consultation with everybody else, and I am pleased he did. However, the report was the Minister's; it has never been the Parliament's.

At the conclusion of the inquiry the panel reported back to the Minister and gave him the report. Having received the report it was then up to the Minister to determine what he was going to do with it. He could have put it on the back shelf, which has occurred with a number of ministerial reports.

Mr D.L. Smith: Not this time.

Mr BLAIKIE: The Minister could well have done that if he had decided to do so.

Mr D.L. Smith: The Minister would be failing in his duty if he did.

Mr BLAIKIE: Notwithstanding the duty of the Minister, he could have followed a series of scenarios. The Minister could have, rightly or wrongly, decided that the report would not be released for publication. It would then remain in the province of the Minister's office. The Minister could have decided to release parts of the report. A series of options existed as to what he could have done. However, the Minister brought the report to the Parliament and had the report tabled under the mistaken view that its tabling gave that report absolute privilege.

Mr D.L. Smith: It was not a mistaken view; it was on the advice received by the Crown Law Department on 21 September.

Mr BLAIKIE: The Crown Law Department may have to argue that matter in another arena. I believe that the comments made by the Speaker were absolutely correct in that a paper tabled in the Parliament has the privilege of circulation within the Parliament but it does not have absolute privilege outside the Parliament; however, the publication of a paper under the direction of Parliament, in fact, does. Section 354 of the Criminal Code under the heading "Protection: Reports of matters of public interest" states -

> It is lawful -
>
> (2) To publish in good faith, for the information of the public, a copy of, or an extract from or abstract of, any paper published by order or under the authority of a House of the Parliament or Legislature of the Commonwealth or a State or Territory of the Commonwealth;

I emphasise those words. That very clearly indicates that a requirement exists for the House to give authority to order the publication so that that paper may receive protection, and the people involved in it may then have the absolute protection of Parliament. A Select Committee of Privilege conducted by the Legislative Assembly of Queensland produced a report which was laid on the Table and ordered to be printed on 5 December 1991. It provides yet another view in part 3.7, which states -

> The scope of protection provided to documents by Parliamentary privilege was limited by the decision in *Stockdale V Hansard* to reports published for the use of Members, Lord Denman in his judgement, making a distinction between material which the House may order to be printed for the use of its Members and material published "indiscriminately".

That House operates under the same code as does this House. The ruling referred to was given in 1839.

Mr D.L. Smith: That is the basis of advice to me from the Crown Law Department.

Mr BLAIKIE: The basis for advice from the Crown Law Department is that a tabled paper does not have privilege -

Mr D.L. Smith: That was the advice given to me in September.

Mr BLAIKIE: - but a published paper does have privilege. The report continues in part 6.3.7 -

> A similar argument was expressed by the Clerk of the House of Representatives, New Zealand, Mr D G McGee in his submission to the Committee:
>
> > Most documents tabled in the New Zealand House of Representatives are not in fact ordered by the House to be printed (perhaps less than a quarter are). It follows that the House does not confer any protection on the remainder. Anyone using them would have to rely on any other defences that may be available in law (such as justification or fair comment in a defamation action).

That is really what members could be faced with in this situation. The submission continues -

> For my part I do not see this situation as being undesirable. The first point to make is that there is no liability in respect of the tabling in the House and subsequent use in the House. So the House's operations themselves are not interfered with. Secondly, if such a document is quoted from in debate and therefore read into the record, a report of that occurrence will be protected by the provisions referred to above in respect of Hansard. So a report of the use that is made of such a document in Parliamentary proceedings is also protected.

That is in relation to documents used in Parliamentary proceedings. It goes on -

> What carries no special protection is a report of the contents of a document that is simply tabled in the House. And why should it be? If it contained highly defamatory and prejudicial material this could be repeated within impunity by the simple expedient of its tabling. The House should not allow itself to be used in this way to give protection to defamatory material. Simply tabling a document (which no one has had the chance to examine in advance) -

That was the circumstance when the Minister raised this matter on 21 October -

> - does not make it the House's document and it is difficult to see why this should give it any special status. The position is different if the House makes an order in respect of the document for in that case the House makes the document its own document and lends it the House's prestige and authority. I believe that the House should be discriminating in doing this, taking care to do so only where this is warranted by the importance of the document. It should not indiscriminately confer protection on documents that come before it. They should stand or fall on their own merits.

I return to the observations that you, Mr Speaker, made when this matter was introduced by the Minister into the Parliament on 21 October. You warned the House of giving absolute

privilege to a document that not only had the House not ordered, but also of which the members had no knowledge. While I disagreed with the Minister about what I believed were his inflammatory comments, my subsequent review of the circumstances and the motion that is before the House today - which I support - vindicate my concern and my lack of understanding of the points that you, Mr Speaker, raised in October.

I have indicated already that I support this motion. However, I believe that the House should examine this issue further for a number of reasons. The document was tabled on 20 October. The Minister made his ministerial statement on 21 October. The House then sat on 22 October, and on 3, 4 and 5 November. Today is 10 November. It is incredible that the Minister has taken so long to reach the stage of moving that the House authorise publication of the report. My concern after reading the report is that certain matters in it are inflammatory. I have no intention of defending indefensible acts. I share the panel's view and the Minister's view that there should be widespread comment and understanding by the Busselton community so that it can draw its own conclusions. As the panel indicated, it will have the opportunity at the ballot box to judge whether people were right or wrong. The next local government election, therefore, becomes very important. The lead-up to that process is also very important because there must be free and unfettered discussion on this report.

The major concern that I have today is that the Parliament is debating the publication of this report and that only from today onwards will it receive absolute privilege. The people who have been involved in its production, including the panel, will also receive absolute privilege. However, because the Minister's office supplied people with copies of the report on 21 October, I question whether it has absolute privilege in the preceeding three weeks. It may then have had the privilege of a tabled paper, but I question whether it had absolute privilege.

Mr D.L. Smith: They had limited privilege.

Mr BLAIKIE: They may have had limited privilege, but I question whether they had the privilege provided for in the Criminal Code. I do not know; I am not a lawyer and I cannot make a judgment. However, I have cautioned people who have spoken to me in the intervening period about what they may or may not say publicly. As I said, I am not a lawyer, but I have advised people to seek legal advice before they comment publicly on the report.

Although today the House is discussing giving the document absolute privilege so that it can be discussed in a free and open manner, comments about the document have been circulated in the community and calls have been made for the resignations of certain people in the shire. That is reprehensible. It goes back to what I said earlier: The Minister has failed in his responsibility to ensure that the document has absolute privilege if that was the Minister's and the Government's intention.

I support the motion which will give the report of the panel of inquiry into the Busselton Shire Council absolute privilege by the authorisation of its publication. However, I again request you, Mr Speaker, to establish a committee of members of the Parliament to consider specific matters to see what level of privilege is now provided to the document and what level of privilege has been provided until now. That committee should also consider whether any action taken against the panel and others involved in the preparation of the documents -

Mr D.L. Smith: You should remember that I attempted to move for publication on 21 October.

Mr BLAIKIE: These matters should be addressed. All members of Parliament should look on this as a salutary lesson on the difference between privilege and absolute privilege. The Minister can say as often as he likes that he attempted to move for publication on 21 October. Mr Speaker, on 21 October, or on whatever day the Minister sought to move the motion that he should have moved, you gave the Minister the opportunity to discuss the matter with the Clerks of the House to make some other arrangements. We are now three weeks down the track and I hope it will not be a question of too little too late. However, it is a question of ministerial competence. I support the publication of the report, but I have some serious concerns for the people who may have been harmed inadvertently, but harmed nonetheless. I hope that I will be proved wrong, but only time will tell.

MR OMODEI (Warren) [4.09 pm]: The Minister described the circumstances surrounding

the tabling of the report to the Minister as unfortunate. I prefer to describe them as an absolute blunder of mammoth proportions. The report was called for by the Busselton Shire Council in 1988 and I think the way this has been handled will mean that this is the last time that a local authority -

Mr D.L. Smith: It was not 1988.

Mr OMODEI: The council requested this inquiry and the investigation goes back to 1988. I think it will be the last time any local authority will ask for an investigation into its own workings because the actions by the Minister in tabling the document with privilege under the Criminal Code and the Parliamentary Papers Act will allow the report to be circulated far and wide. Many reports have already appeared in the newspapers and they have been very damaging not only to the credibility of the Busselton Shire Council but also to individuals on that council. It is a most unfortunate situation. In the main, local authorities and councillors work in a voluntary capacity for the good of the community.

Mr D.L. Smith: Too true, but you need to highlight it when that is not the case, as occurred in this instance.

Mr OMODEI: The report states -

> In respect of the specific matters included in the Terms of Reference for this Inquiry:
> . . .
>
> b) Apart from the conflict of interest matters, the Panel has found no evidence to support the view that any councillor failed, in any illegal way, to advise Council that they were engaged as an agent or representative in respect of a matter before Council.
>
> c) The Panel found no evidence to support the view that a councillor received any direct or indirect reward as an inducement to vote for or against any matter before the Council.
>
> d) The Panel found no evidence to support the view that a councillor had been offered any inducement or reward by any person so as to influence that councillor on any matter before Council.

It goes on. If the Minister had any experience in local government, he would know that from time to time a councillor may inadvertently fail to sign minutes and attend to other trivial matters.

Mr D.L. Smith: I have some idea of what goes on in local government.

Mr OMODEI: I hope so, since the member for Mitchell is the Minister for Local Government! If the Minister had a good knowledge of the day to day workings of a shire council, he would know that matters of a trivial nature are not always adhered to strictly according to the letter of the law.

Mr D.L. Smith: They are not my findings, they are the findings of the panel.

Mr OMODEI: If this action by the Minister set a precedent, in any future investigations into local authorities people could make allegations in the knowledge that they would be given parliamentary privilege, and that could be to the detriment of private individuals. This panel has failed in its duty -

Mr D.L. Smith: It has not failed. You should be upholding the panel. Are you criticising it?

Mr OMODEI: I am certainly criticising the panel because it has failed to establish deliberate intent by the councillors and the shire. Is that the precedent to be followed in other inquiries? I suspect it is and that the Minister has deliberately tabled the paper as a forerunner to the tabling of similar documents. It will be interesting to see how the Minister handles another document to be released in the future.

Mr Pearce: What is the other document?

Mr OMODEI: An inquiry into another local authority.

Mr D.L. Smith: There is only one other yet to be released.

Mr OMODEI: The Opposition will watch the Minister's actions in the future with great interest. The integrity of the councillors of the Shire of Busselton has been impugned and

the reputation of the shire has been damaged. The Minister will know how important it is for a local authority to have integrity and to be beyond reproach within the community, particularly in smaller communities.

Mr D.L. Smith: That is why it is very important that inquiries such as this take place.

Mr OMODEI: Is the Minister suggesting that an inquiry should be undertaken into every local authority?

Mr D.L. Smith: No.

Mr OMODEI: Should that be the case, I am sure that anomalies would be found in many local authorities. I went to the Institute of Municipal Management conference last week, and a number of shire clerks told me there could have been oversights in many local authorities in this State. I am not saying they are all managed inefficiently or that the Busselton Shire has been. I know the individuals - the shire clerk, the shire president and the councillors - and I think they acted within the bounds of the Act and had all the right intentions. I am concerned that the Minister may have been mischievous in tabling this document. I will watch with great interest to see whether he tables the report to be released on the Wanneroo City Council.

MR BRADSHAW (Wellington) [4.27 pm]: Mr Speaker -

The SPEAKER: I seek the guidance of the House and an indication of which members wish to speak in this debate. I can find very little precedent for this course of action, and I am reluctant to spend a lot of the time of the House discussing it. I am keen to know the intent of the House and, if I cannot see any other members indicating that they want to speak on this matter, the member for Wellington will be the last speaker on the subject.

Mr BRADSHAW: I believe the members for Kingsley and Marmion wish to speak in this debate.

There is very little precedent for this debate and that is the key to this motion. I certainly do not support the motion because we are not debating a parliamentary report. Under those circumstances I do not believe the motion should be debated in this Parliament or supported in any shape or form. Investigations have been carried out into local authorities in the past and none of the reports on those investigations has been tabled. This year an inquiry was conducted into the Harvey Shire Council, and five or six years ago when Jeff Carr was Minister for Local Government an investigation was carried out into the Wanneroo local authority. That report was not tabled and neither was a move made to publish the document.

I find it quite ironic that suddenly this report should be tabled and published. As I said earlier, it is certainly not an investigation authorised by Parliament and, therefore, I cannot understand how the Minister has the gall to move this motion. With regard to giving privilege to those people who assisted in the inquiry, surely in future investigations that could lead to people making all sorts of allegations which may or may not be true. That has occurred in the evidence heard by the Pike committee where a person made allegations about another without any proof or evidence to back it up. The events in that situation are quite scandalous. It is wrong to accord parliamentary privilege to this document. I have spoken to a number of people in local government and they are not aware of any need for this course of action. I oppose the motion.

MR CLARKO (Marmion) [4.29 pm]: The report of the Busselton Panel of Inquiry touches on a matter I have raised in this Parliament on many occasions. It is important that the Minister is aware that I have tried for many years, particularly with his predecessors, to get the matter of the pecuniary interests of councillors put on a much firmer basis. I have told the story three times before in this House, but I hope members will forgive me for repeating it. Several years ago I went to a meeting of the Institute of Municipal Management at Scarborough and sat next to the person who was then deputy head of the Department of Local Government. I raised the problems then occurring in local authorities, and said I believed it was necessary for councillors to be given more guidance. He said that, in respect of pecuniary interests, one cannot write a general tome for the advice of councillors because they are legal matters and one cannot generalise about them. We discussed the matter for about half an hour. Several months later, I received in the mail a copy of the "Local Government Pecuniary Interest Handbook" which is referred to on page 85 of the report, and he said, "I told you it could not be written, but here it is!" I still believe it is necessary to

give more advice and guidance to local government councillors. The report refers at page 85 to the fact that, on some occasions, councillors gave notice at the committee stage of a pecuniary interest, and when the matter went to full council, they voted on the issue. A person who acted in that way would be a fool and not dishonest. I cannot imagine that a person who was dishonest and wished to gain a pecuniary advantage would declare it in committee and then vote the other way in council. Such a person would not be a very clever crook. That would be a case of error and omission on that person's part, not of dishonesty.

That situation arises partly because the staff of local authorities should have a better system in regard to the reporting of people who declare a pecuniary interest. I would go so far as to say that, when a matter came up on the agenda, a good town or shire clerk should walk around the table and say to the councillor involved, "Do you recall that on item 6(a), you declared an interest in committee? This matter is now coming up again, and you may feel that you need to declare that interest again." It is vital that a system at least of that strength, or stronger, be introduced, because if we do not do that we will get a situation where people through an oversight and not dishonest intent can get themselves into what appeared to be the case at Busselton.

The report states at page 85 that, "The public expect councillors to be 'whiter than white' and above reproach when dealing with matters in which they have a personal interest." I am not sure that the public do expect councillors to be whiter than white. I have read numerous articles in which people who were interviewed by the media said that they formed the opposite impression; they did not think councillors were whiter than white at all. There is a tendency to denigrate councillors, in my view mostly unfairly. The report that was produced a few years ago by one of the Minister's predecessors, which is the only comprehensive study I have ever seen in this State which deals with pecuniary interest, and particularly with the pecuniary interest of councillors, pointed out that in the three years prior to its inquiry, it found only three cases of people who were convicted in regard to not declaring their pecuniary interest. That is only one case per year, and that is a pretty small number when we consider the fact that there are about 1 400 councillors in Western Australia. Some of those three cases were not what we would conventionally regard as cases of pecuniary interest in the sense that a person received a monetary advantage by his or her taking a particular course of action.

The Minister would know that, over the years, there have been some stupid decisions about whether councillors should vote about road speed inhibitors. I have mentioned in this House on a number of occasions a situation that occurred in the City of Stirling where a councillor was advised not to vote on a roundabout that was proposed for her street because she lived in that street and, therefore, had a pecuniary interest. I do not believe that is a pecuniary interest. Everyone who lived in that suburb supported the idea of putting in roundabouts to reduce the amount of traffic going through that otherwise quiet residential suburb as people sought to avoid the main road. I put it to the Minister that in addition to this report, he should get together a group of people, either from his department alone or mixed with people from local government and get them to look at what is a pecuniary interest.

Mr D.L. Smith: That has already been done and will form part of the new Local Government Act to be introduced next year.

Mr CLARKO: Will a person's living on a road on which it is proposed to put a speed inhibitor still be regarded as that person's having a pecuniary interest?

Mr D.L. Smith: That will be in the legislation and in the final report.

Mr CLARKO: I am not here to trade words with the Minister. There is a serious deficiency in what has traditionally been regarded as a pecuniary interest, and it has been the practice for clerks to say to councillors that if they are in doubt, they should declare an interest. However, that gives rise to a situation that we had in the City of Stirling, where about eight out of 10 councillors were not able to vote in regard to a matter involving a market gardener because he used to give away free tomatoes and they had received some tomatoes from that market gardener at some time. Those tomatoes were not worth a song -

Mr D.L. Smith: There is far too much trivia, and as a result many of the important cases of interest go unnoticed.

Mr CLARKO: I have had a close and keen interest in local government since I became a

Councillor of the City of Stirling in 1969, which is a long time ago - close to a quarter of a century ago. From what I can tell, there are extremely few cases of a councillor who is advantaged financially by his or her acting in a particular way.

Mr D.L. Smith: There are very few, but we are concentrating upon those few, and not upon the trivia which seems to preoccupy much of the concern about pecuniary interest.

Mr CLARKO: I do not think we should spend a great deal of time in this Parliament on matters which may be due to the administrators not properly recording the situation and giving councillors advice one way or another by their saying, "Do you realise that in committee on this item you declared an interest, and do you still have an interest?", but it would overcome many of these difficulties.

Mr D.L. Smith: You cannot shift the primary responsibility from councillors to the staff. The primary responsibility lies with the councillors.

Mr CLARKO: Yes, but in a collaborative and cooperative situation in council, where there is harmony between the councillors and the council officers, I put it to the Minister, because I have experienced this situation, and I have also experienced the reverse, that is the sort of advice which councillors should receive, because that makes for good local government, and good local government is what we should be about.

Mr D.L. Smith: That is right, but the primary responsibility nonetheless lies with the councillors and not with the staff.

Mr CLARKO: I said a moment ago that if a councillor stood up in committee and said, "I have a pecuniary interest", yet one week later, through an oversight, did not say he had a pecuniary interest, it would be highly unlikely that his action had anything to do with corruption or dishonesty, otherwise he would not have said a week earlier that he had a pecuniary interest. Unless that person had had two lobotomies, he would not do such a thing because it would not make sense.

Mr D.L. Smith: But the mistake would be his and not that of the staff.

Mr CLARKO: I do not question that. However, good officers work with their councillors. In my council the officers would advise the councillors of these sorts of things. That is done all the time. Councils are extremely busy places. They are a bit like this Parliament. I bet that the next member of Parliament who walks through that door is likely to not know what we are debating at present because of the great mass of things with which we deal. Councillors similarly need support and advice, in the same way that we receive support and advice from our Clerks. Over time, there have been serious deficiencies on the part of the Government; firstly, in the way in which the Government opened up the question of pecuniary interest when Hon Jeff Carr, who I thought was an extremely good Minister for Local Government, was responsible for putting through this Parliament legislation whereby councillors who had a pecuniary interest were entitled to participate in debate with the approval of the committee. In fact, if a councillor owed me $5 000 and I had a pecuniary interest, I could sit and stare at him when it came to the vote; in other words, potentially intimidate him. That is what the Labor Party did in this State. It widened the situation to make it easier for people to abuse the pecuniary interest provisions. I hope when we return to Government that my colleague the shadow Minister for Local Government will agree with me and that we will adopt a position whereby a councillor who declares in committee that he or she has a pecuniary interest must retire from the meeting place until the matter is disposed of.

Mr D.L. Smith: That is provided for in the proposed legislation.

Mr CLARKO: The Minister's predecessors provided the opposite and weakened the situation. A pecuniary interests inquiry was held, but the Government never acted upon it. I disagree with certain parts of the report, but I agree with approximately 80 per cent of the recommendations.

In conclusion, pecuniary interest is an important issue for this Parliament in the light of recent events, and a great deal has been said about it in the community. It is an important matter for members of Parliament as well as local government.

Question put and passed.

FREEDOM OF INFORMATION BILL

Second Reading

Debate resumed from 1 September.

MRS EDWARDES (Kingsley) [4.41 pm]: I am pleased that at last we have the opportunity to debate the Freedom of Information Bill, and that pleasure does not relate to the preceding debate this afternoon. This legislation has been a long time coming, and given the comments of the Leader of the House, and those of the Opposition's business spokesman, I am not sure whether this legislation will be dealt with to its conclusion this sitting. It is unclear whether we will just pass the second reading and not reach the Committee stage; obviously, we shall wait and see. However, this situation indicates the Government's commitment to this important legislation. The Labor, Liberal and National Parties have all been committed to this legislation for a long time; it is long overdue. The first piece of freedom of information legislation was introduced by Senator Durack - a Western Australian - of the Fraser Government. Also, the former member for Cottesloe, Mr Bill Hassell, introduced his Freedom of Information Bill in 1989 on behalf of the Liberal Party. However, the Government refused to debate that Bill by refusing it a message. I refer all members to Mr Hassell's second reading speech on that Bill, in which he details the Labor Party's promise for such legislation.

However, we are considering this legislation today during the third and last term of this Government. Interestingly such legislation was introduced last year, but it was withdrawn earlier this session and another Bill was introduced incorporating a few amendments. In passing, I thank the Minister for taking notice of many of the Opposition's recommendations of that time. Nevertheless, freedom of information legislation was a 1983 election platform of, and promise by, the Labor Party. On 12 January 1985 the Attorney General was quoted in *The West Australian* as saying that the Government had been keen to investigate the Victorian legislation and the then proposed South Australian legislation to iron out any loopholes. He also indicated that the Government's commitment to the introduction of the legislation would be honoured.

On 13 August 1990 Premier Carmen Lawrence announced twin legislation; namely, freedom of information legislation and privacy legislation. She said that both were being considered for drafting and would be available in the following spring session of Parliament. However, that legislation ran into trouble. In announcing the twin legislation she said the Government would introduce both Bills, but that only the privacy Bill would be retrospective. She said that the freedom of information legislation would cover only documents drawn up after the legislation was proclaimed. However, when this matter arose at a Caucus meeting, the Premier was questioned on Cabinet's decision to limit the legislation to official papers created after the proclamation of the Act. The Premier consulted with the Minister for Justice, Mr David Smith, and the lack of retrospectivity within the legislation was dumped. Now we are considering the legislation before us.

What is freedom of information legislation all about? Interestingly, and perhaps quite rightly, we are debating the freedom of information legislation following the tabling of the Royal Commission report. Freedom of information legislation is all about openness, accountability and responsibility. In that regard, I take members back to the former member for Cottesloe's second reading speech outlining the Opposition's views on openness, accountability and responsibility. This is important when reflecting upon the Government's attitude and new-found understanding of those three words. Page 2438 of the 1989 *Hansard* reads -

> Freedom of information legislation is an instrument of democracy and accountability because the fundamental aim of the legislation is to increase the rights of citizens at the expense of the Executive and of the Government's claim to secrecy and its further claim to the right to secrecy. Freedom of information legislation is directed to enhancing and increasing the powers of the individual as against the State in the battle for openness and accountability in Government.

The speech continues on page 2439 of that *Hansard* -

> The instruments of accountability under the Westminster system include question time in Parliament, the existence of Parliament itself, parliamentary control of the

> Executive - ultimately exercised through the control of the budget and the allocation of moneys -

Further down the page the speech continues -

> To continue the list of instruments of accountability, there is the Ombudsman, an instrument administering accountability which is grafted onto the Westminster system, although its origins are Scandinavian and not the British system; the office of the Auditor General, who is an officer of the Parliament and not the Government and reports directly to the Parliament; also, there is the parliamentary committee.

The speech later reads -

> The parliamentary committee should be much more active in cross examining the administrative arm of Government. I do not know why we cannot get used to the idea of having parliamentary committees call public servants before them and examine them as a matter of course, as they do in Canberra without terrifying consequences for the Government of the day.

The speech continues on page 2440 -

> The freedom of information legislation is then placed in the context of a system that needs new instruments of accountability, a system that needs to be reformed. It needs to be recognised at the end of the day that there is a struggle for power in politics and that struggle for power often overlooks the rights and interests of the individual citizens.

These words are quite prophetic in relation to last week's debate and the issues which are likely to be the subject of the second report of the Royal Commission. The former member referred to access to Government documents, and his speech is premised on the view that members of the public have a right to access to Government documentation. In that light we must consider the definitions of "agencies", "documentation", "records" and others within the Bill, as these will define the public's actual access under this legislation. If history is anything to go by, many people will believe that they have access to documentation, but in fact will fail to obtain that access as the documents may have an exempt status. Some cases may be successful by taking the matter to court.

I will relate exactly what can happen in the first six months after the proclamation of this legislation. For example, in New South Wales in 1990, in the first six months after the proclamation of its freedom of information legislation, more than 700 applications, mainly to the police, were made for information. A breakdown of the applications showed that 73 per cent were granted in full, 15 per cent in part and 11 per cent were turned down, usually on the ground that the information requested was exempt from access. A further breakdown of New South Wales agencies is as follows: The police received 76 requests; the Department of Education, 57; the Central Sydney Area Health Service 54; the New South Wales Department of Housing, 48; health, 46; and family and community services 27.

The phrase "freedom of information" originated in America in the 1960s when its freedom of information Act was introduced. Laws relating to openness have existed in Sweden since 1776 and where a freedom of the Press Act was proclaimed in 1949. Debate on the issue did not take place in Australia until the legislation was introduced in America in the 1960s. The first article which referred to freedom of information was written by Enid Campbell in the *Australian Law Journal* in 1967. She analysed the American legislation and discussed the need to balance the people's right to know with the necessity for official secrecy. She highlighted areas such as defence, foreign affairs and privacy. An increased call for the right to know and to gain access to Government information occurred in Australia in the 1970s. The extreme argument for freedom of information was put by Earl Warren when he said that secrecy in government is the incubator of corruption. However, at that time a more moderate view was put in Canada by the former Ontario Chief Justice, James MacRuer who said -

> We start with the constitutional principle. Free public discussion of public affairs is the breath of life for parliamentary institutions. But public discussion of public affairs cannot be carried on in a vacuum. Public discussion must necessarily be discussion based on information.

In 1976, when the legislation was introduced by the Government the Prime Minister,

Malcolm Fraser, said that if the Australian electorate was to be able to make valid judgments on Government policy, it should have the greatest access to information possible.

With the disclosure of Government documents comes the question of the protection of individual privacy. Those two issues must be treated together. I am disappointed that the Government has not introduced this legislation at the same time as a privacy Bill. Those two pieces of legislation, together with the data protection legislation, are essential when considering the right of an individual to privacy. The Government has indicated that, although it has made some changes to protect private information which could be disclosed under the freedom of information legislation, a privacy Bill will not be introduced until next year. In 1988 the Liberal Party introduced a data protection Bill. It behoves this Government to consider both that and a privacy Bill as soon as possible. The Government is responsible to the community to ensure adequate protection from the danger of release of private information. However, that protection must be balanced against proper disclosure of information in the public interest.

The importance of freedom of information was emphasised by Mr Fitzgerald, QC, in his report on the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct in which he stated -

> Secrecy and propaganda are major impediments to accountability, which is a pre-requisite for the proper functioning of the political process. Worse, they are the hallmarks of a diversion of power from the Parliament.
>
> Information is the lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in a political process with any real effect.

At about the same time the Catholic Justice and Peace Commission of the Archdiocese of Brisbane also commented on freedom of information -

> For democracy to be "government by the people" an informed electorate is essential. This can only happen if people are guaranteed access to information of government - what decisions are made, how they are made and why they are made. For citizens to believe in the democratic process, they must believe they are part of the process. For citizens to believe that the process is just, it must be seen to be just. Fundamental to this is for a citizen to have access to information.

Our own Royal Commission report tabled several weeks ago states at paragraph 27.2.7 at page 27 - 4 of volume 6 -

> The absence of effective public record keeping has dogged this Commission in its inquiries. Records provide the indispensable chronicle of a government's stewardship. They are the first defence against concealment and deception.

It also states on page 27 - 5 at paragraph 27.2.11 -

> But when Government seeks to "live by concealment", to adapt a phrase used in evidence by Mr David Parker, it can be anticipated that instances will occur where official power and position are both misused and abused.

I refer now to two recent discoveries. It is excellent to have freedom of information legislation, but if documentation is to be shredded or destroyed or pages ripped out in any way, that freedom of information legislation is irrelevant because people will be denied access to those very vital Government documents. When I was examining subpoenaed documents held by the Standing Committee on Constitutional Affairs and Statutes Revision, which is currently investigating the involvement of the Women's Information and Referral Exchange in Western Women Financial Services Pty Ltd, I discovered a document. I have raised this matter in this place before and no satisfactory answers have been forthcoming. An original document - a letter - from the Minister for Planning to the Minister for Women's Interests, the Premier at the time, was placed on a Government file of the Office of Women's Interests. It was then placed on another Government file with WIRE. The original letter had on it two folio numbers, one of which was crossed out and replaced by another. It was clearly marked on the top right hand side in pencil "shred?" What was the meaning of that and how has that happened? Perhaps the scenario is something like this: It is a duty of a person in the department to examine files or documents - those files relating to sensitive

matters - and to mark in pencil on the top right hand side "shred?" Those files could then be handed to someone to assess the possibility of shredding the document. Once the document has been shredded, the folio numbers of the remaining files or documents are rewritten to disguise the fact that a document is missing. That is absolutely fundamental to what may have happened and what is potentially happening now. Until Parliament is provided with a satisfactory answer to why an original document placed on two Government files was marked with the words "shred?" Parliament can believe only that the systematic shredding of Government documents is taking place now.

Mr P.J. Smith: Do you shred anything in your office?

Mrs EDWARDES: Not Government documents on Government files.

Mr P.J. Smith: Do you shred your own documentation?

Mrs EDWARDES: Those documents are kept on a Government file and are protected.

Mr P.J. Smith: Do you think there is any parallel?

Mrs EDWARDES: Do not tell me that Government documents can be put through a shredder in the same way as the member can dispose of documents in his office. That is absolutely wrong. If the member believes that a Minister, a Government head of department, has the ability to shred documents, he does not understand what this freedom of information legislation is all about.

The Royal Commission discovered that people went into the Ministry of the Premier and Cabinet records office. When he gave evidence to the Royal Commission, the former Premier said, "I had no control. People came in from the department and ripped stuff out of the files." That is not permitted by law. That is an illegal act. It cannot be compared with the member for Bunbury shredding documents in his office.

Until we get a satisfactory answer as to why the Western Women letter which was held on a Government file had "shred?" endorsed on it, we are entitled to believe that systematic shredding of Government documentation on Government files is continuing. It suggests that this freedom of information legislation has no meaning for those on the Government's side, including the member for Bunbury.

The Fremantle Gas and Coke Co Ltd deal highlighted the fact that when new volumes of a file were made, the previous file was thin, even though the folio numbers were in sequence. It is obvious that a new volume was started, papers previously held on a preceding volume having been ripped out and the folios renumbered. For all intents and purposes it looked as though the files were in order.

On 15 August 1990 *The West Australian* newspaper reported how the Victorian Government got around freedom of information legislation. The article said -

> Perhaps more expert at obstructing the powers of freedom of information legislation are the thousands of Victorian public servants who deal with sensitive documents every day.
>
> Since the legislation was introduced new ploys have been developed, such as:
>
> . The now-you-see-it-now-you-don't approach -

That is where pages in a file are not numbered so that damaging or embarrassing documents can be removed without leaving a trail -

> . Simply not filing documents, especially letters and memos criticising Ministers.
>
> . Keeping two sets of files, a censored version for public consumption and an uncensored version.
>
> . Splitting up files documenting a controversial issue and spreading them across a multiplicity of headings so that it is virtually impossible for an outsider to make sense of them.
>
> . Instead of writing frank comments on the borders of documents, using sticky yellow note paper which can easily be removed.

I will refer to that again in the Committee stage. I also refer to the comments of the Royal

Commission about a Government living by concealment. We have just had another prime example of that in relation to the level of Government assistance given to the Simcoa smelter.

In September 1989 in his speech in the second reading debate the then member for Cottesloe, Mr Hassell, referred to the Horgan matter - another instance of government by concealment. He said -

> Let me tell members what happened this week in relation to information and its freedom. I asked the Premier a series of questions about the enormous payout to Mr John Horgan; reportedly $800 000 was paid out . . . After he was paid millions of dollars signing up fees 18 months ago which this Premier, when it suited his political convenience -

I am talking about Peter Dowding -

> - allowed to be reported to be something he did not quite approve of, but he was locked in by what his predecessor had done. Those were the reports. I asked the Premier a follow-up question to one asked by the Leader of the Opposition as to the payout to Mr Horgan. I discovered that, not only had the Premier personally approved the payout for Mr Horgan in writing, but in connection with that payout an agreement had been made that it would be kept secret of which the Premier was aware and which he necessarily approved.

What did we hear from the Deputy Premier last week? There is a box marked "Media Release" on documents. On this document it was indicated that there would be no media release about it. It was meant to be kept secret and it was approved to be kept secret. The Simcoa deal was also approved to be kept secret. Mr Hassell went on to say -

> The Premier knows full well that, had he told the Western Australian Development Corporation he would not accept the payout except on the basis that it became public, it would have been made public. The Premier had a duty to notify the public that Mr Horgan was receiving an improper payment, one that was totally indefensible. The Premier sought to cover it up by refusing to answer questions in this House.

Exactly the same situation is happening with the level of Government support being given to the Simcoa smelter project. If the project was so good, the Government would have had no difficulty in bringing that information forward. There must have been a problem by approving the secrecy of the level of support that had been granted.

In commenting on some important effects of freedom of information legislation, I will refer to an article by John McMillan entitled "Effects of Freedom of Information Legislation." He talks about the outlook of politicians and public servants and the interrelationship between the bureaucracy and Ministers. The article said -

- It will force them to the realization that members of the committee have a right to inspect government documents;
- It will force them to accept that they have the onus of justifying secrecy, and that this onus can be discharged only by quite specific reasoning that explains the particular interest that would be affected by disclosure;
- It will force them to alter existing administrative procedures and practices so that they are attuned to or can accommodate the needs of members of the public, not just internal convenience or demands;
- It will force them to accept greater scrutiny of their own work by members of the public, the result of which must be a measure of accountability that does not presently exist; and
- It will force them to accept public participation in Government decision-making as a developing phenomenon.

To John McMillan's mind those are the most important effects of freedom of information legislation. The Government took up several responses to the initial 1991 legislation. One of the most significant omissions from the 1991 legislation, in its original form, was the failure to provide mechanisms for the amendment of incorrect information recorded on documents which are subject to access under the legislation. That is very important when it

pertains to documents of individuals. Under this Bill persons should, and do, have a right to amend incorrect information.

I would like to foreshadow another amendment which I believe is equally important. We are talking about this Government which in its third term is about to appoint an Information Commissioner. With an election on the horizon, this Government should neither be making major appointments such as an Information Commissioner nor entering into some of the contracts that it is entering into now.

Mr D.L. Smith: We have said that the appointment will be made with the approval of the Leader of the Opposition, the Leader of the National Party and the Independents. It will not be approved by the Government, but by that consultative group.

Mrs EDWARDES: In the past we have had other legislation in which it was stated that the Leader of the Opposition and others would make decisions of this kind, but they have been presented with the Government's choice and have been told to like it or lump it. No consultation has taken place previously and, unless the Government is about to change that process -

Mr D.L. Smith: There will be every consultation.

Mrs EDWARDES: - the Leader of the Opposition and others will be presented with the name of one person and his curriculum vitae and be asked to approve the appointment of that person.

Mr D.L. Smith: I am happy to sit down and talk to you about the process.

Mrs EDWARDES: The Minister will have the opportunity to do that during the debate.

Mr D.L. Smith: I have said you will be able to sit down with me and talk about the process.

Mrs EDWARDES: We have been sitting down with the Minister's staff for a long time and the process for approving the appointment of the Information Commissioner will be no different from what has occurred with similar appointments in the past. If the Minister has additional information he and his staff would have been welcomed at the briefing sessions -

Mr D.L. Smith: Ye of little faith!

Mrs EDWARDES: That brings me back to the point that this Government should not be making significant appointments like this so close to an election and the Opposition will move an amendment along the lines that such appointments should not be approved by the Government, but by both Houses of Parliament.

Freedom of information is an essential part of a modern, democratic State. The taxpayers of this State have paid out a lot of money by way of the Royal Commission to find out that a democratic State should operate openly and be accountable. This money was paid out simply because this legislation was not put in place earlier. If this Government had introduced it when it came to power in 1983 - it was one of its election promises - maybe some of the events of the 1980s would not have occurred. However, I make the point that we cannot legislate for honesty. The freedom of information legislation will not ensure the overturning of unfair, incorrect, improper or unjust decisions. I conclude with a quote from the Coombs Royal Commission on Australian Government Administration -

> Information is power. It gives distinctive strength to those who possess it.

DR CONSTABLE (Floreat) [5.13 pm]: Although I support the principles of freedom of information I have a number of concerns about the Freedom of Information Bill which is before the House.

The SPEAKER: Order! I will have to ask members to be quiet while the member for Floreat makes her presentation. I ask the member to speak up and I offer her the opportunity, if this does not work, to make her presentation from the Table of the House.

Dr CONSTABLE: Thank you, Mr Speaker.

Although I am an advocate of this legislation I have some serious concerns about it and, as members will be aware, I have a number of amendments on the Notice Paper. My general concern about the legislation is that it is more restrictive than similar legislation in other jurisdictions in this country.

Mr D.L. Smith: That is not true.

Dr CONSTABLE: We will see whether that is the case.

The member for Kingsley made the point very clearly that it has taken a long time for this Parliament to be presented with freedom of information legislation. This legislation was first promised by this Government prior to the 1983 election and, although there have been a couple of attempts along the way, it has taken 10 years for the Government to introduce it into this place.

The main purpose of freedom of information legislation is to give citizens access to information held by Government departments and agencies. It is very important not only that individuals have access to their personal records, but also that all of us have knowledge of and access to the dealings and workings of Government. The quote referred to by the member for Kingsley from the Fitzgerald Royal Commission sums up the need and desire for freedom of information legislation.

During the debate last week on the Royal Commission report several members referred to the secrecy surrounding Government dealings in the 1980s. A test for this legislation will be for members to ask themselves whether, had it been in place during the 1980s, the excesses of the 1980s would have occurred. I suspect the legislation is not good enough for some of those excesses to have been avoided, but as this debate proceeds we will be in a position to ascertain whether that would have been the case. We now know from the Royal Commission report the extent of the secrecy surrounding Government dealings in the 1980s. The conclusion of the first part of the Royal Commission report is worth thinking about. The commissioners state -

> The processes of decision making, but more importantly the very reasons for decision in many of the matters inquired into, were often shrouded in mystery.

That is very important. To continue -

> If a basic principle of good administration is that governmental decisions should be taken by officials who are known to be responsible for, and accountable for, those decisions and who can provide considered, documented reasons for those decisions -

In other words, giving people access to information to assist them in the decisions they make. To continue -

> - then that principle has been disregarded systematically at the highest and most important levels of government.

In the 1980s, when many of the deals were being drawn up, there was no desire to provide people with information to form the basis for their decisions. The opposite was the case; the desire was to keep people uninformed of those decisions. The Royal Commissioners continue -

> Unless quite significant changes are made to the institutions of this State, to its laws and to the manner in which government is conducted, we can provide no reassurance whatever to the people of Western Australia that events of the type into which we have inquired . . . will not occur again.

We must make sure that this legislation covers those conclusions of the Royal Commissioners. I am sure one of the changes the Royal Commissioners will report on in the second part of their report will be the introduction of comprehensive freedom of information legislation. This Bill is far from comprehensive. To be effective, freedom of information legislation must be based on the premise of openness. We should not start with restrictiveness and see how much we should let people know; we should start with openness and look at the three areas where it is important to have secrecy with regard to documentation and inquiries. There should be very few exceptions to freedom of information.

The member for Kingsley referred to freedom of information legislation in Sweden and the United States of America. It is worth noting that in Sweden there are only three exemptions and they are national security, diplomatic activities and police matters related to crime. In the United States there are four exemptions and nondisclosure applies to foreign policy, national defence, trade secrets and certain aspects of law enforcement. Apart from these areas, people have access to information.

We have already heard the history of freedom of information legislation in this State and it is sad that Western Australia is the last Australian State to be debating this type of legislation. This legislation should have been promulgated a long time ago.

Having made these introductory comments I will comment on two or three aspects of the legislation which are worthwhile. The appeals process outlined in the legislation is commendable. It is also commendable that an Information Commissioner will be appointed if this Bill is passed. Such a position does not exist in other States.

The other commendable aspect of the legislation is that no time restriction is placed on people seeking information and they can go back 10 or 30 years; it is limitless in its retrospectivity. The Minister is to be commended for that.

I have two major concerns about this legislation. The first relates to exemptions and the second to costs. It seems that this legislation is based on the premise that with few exceptions most documents should be available. This Bill contains many broadly worded exemptions to that premise, the result being that almost any Government document can be slotted into an exemption area if one wishes to do so. Therefore, any Government document can be withheld from scrutiny. Had this legislation existed and been used when looking at the Government's acquisition of Northern Mining Corporation NL in 1983, exemption could have been granted from providing the documents sought on at least six grounds: That the document affected the State's financial or property affairs; that it revealed the deliberative processes of a Government agency; that it involved confidential communications between Government agencies; that it affected the State's economy; that it contained recommendations prepared for a submission to Cabinet; or that it was a communication between Ministers on a matter related to Government policy. That test of this legislation is important when it is applied to some of the things that happened during the 1980s.

The exemptions contained in schedules 1 and 2 are broader than those in any other jurisdiction in Australia. That gives one reason to question the legislation. For example, we have an unacceptably broad exemption period of 20 years for Cabinet and Executive Council documents. In every other jurisdiction that exemption is for 10 years. We must therefore ask ourselves why this Government has brought legislation to us containing an exemption period of 20 years. What is so special about this State that that exemption period should be twice as long as that in every other jurisdiction?

There are a number of other ways in which this legislation is regressive when compared with that of other States. The freedom of information legislation in Queensland was passed in August this year and its exemptions cover three main areas; that is, some Cabinet matters, the deliberative processes of Government, and law enforcement. If one looks at our legislation, which we will do in detail during Committee, one sees that it is far more restrictive. We must continue to ask why that is so.

Schedule 2 of the legislation contains blanket exemptions for 16 Government agencies. It is not easy to see the reason for the inclusion of many of those agencies in the list of exemptions. For example, the Houses of Parliament are included in the list. One would have thought that they are already protected by privilege anyway. The R & I Bank is included in the list, and this is the only jurisdiction in which a State bank has been included. The State Government Insurance Office is also included in the list. I think that at a later stage we should scrutinise that exemption carefully. Presumably the R & I Bank and the SGIO have been included in the exemption list in the name of commercial confidentiality. However, they would be covered by the schedule 1 exemptions, which protect sensitive commercial documents. For example, one would have thought the R & I Bank and the SGIO would be included under the exemptions for documents affecting an agency's financial affairs or confidential communications and would not need to be included in schedule 2.

During his second reading speech last year the Minister said that in the past access to information had been at the discretion of the Government. Under this legislation I believe that many decisions are still at the discretion of the Government and decisions still lie, at least initially, with Government agencies. Members should look at the steps an individual would have to go through to gain access to a document. Certain things can happen along the way. The person applies to a Government agency for access and if refused can apply for an internal review. If access is still refused the person can then appeal to the commissioner, which may or may not result in his being granted access to the documents. If the

commissioner grants access it is possible for the Premier to issue an exemption certificate for which no explanation is required and which would prevent access. That effectively blocks out a right of appeal. I do not believe Premiers should have that right of veto over the Information Commissioner at that point. Rather than the Premier having that right of veto, an individual should have access to the courts when there is disagreement at that level. I have a strong question in my mind about how effective this legislation will be. Government officers and politicians will still be deciding under this legislation whether people are granted access to information.

My second major concern relates to costs. Many commentators in other jurisdictions, and people looking at the legislation in other States and the Commonwealth, have commented on the costs involved in this procedure. An example which shows how far this can go is a recent application made by *Choice* magazine to the Commonwealth for access to the safety records of airlines in Australia, including both major and minor airlines. The result, at a cost of over $30 000, was that *Choice* magazine was granted access to that information. However, all the information it wanted about the safety records of those airlines had been blacked out, so the magazine spent more than $30 000 and gained no information. We have to be careful we do not fall into the same trap as occurred in relation to that Commonwealth legislation.

I believe all members are well aware of concerns held by the media and the Australian Journalists Association regarding costs in such matters. One of my major concerns about this legislation is that it is left to regulation to determine fees and charges. I believe we should be following the example of Victoria and Queensland by setting guidelines for charges for accessing information in the legislation. That is a major area for discussion later and my proposed amendments attempt to address that situation. Freedom of information is about ensuring that decisions are fair and consistent, and letting people know about and have access to decisions of Government and their own records. It is also about encouraging maintenance of accurate records, improving communications between the Government and its agencies, and accountability of our public services.

Cost is a major aspect of freedom of information legislation. Sometimes one cannot weigh the costs of obtaining such information against the more intangible benefits of such legislation. In 1986, the Commonwealth Public Service Board commented to a Senate committee that "these benefits, such as a more careful weighing and recording of decisions, or a community which is better informed and better able to play a part in the process of Government administration, were intangible and could not be priced". It continued that "they were nevertheless considerable and highly valued by both the individuals concerned and the community at large". We want to ensure that people have access to information and that the costs involved are not prohibitive. There are a number of other areas where this legislation needs to be scrutinised carefully and amended.

[Questions without notice taken.]

Sitting suspended from 6.00 to 7.30 pm

Dr CONSTABLE: I want to touch briefly on a number of other areas. However, they will be dealt with in detail in the Committee stage. My first concern relates to individuals who seek personal information. The Bill states that information of a personal nature "may be considered" as a factor in favour of disclosure. I would like to see that strengthened so that it states that it "must be considered" as a factor in favour of disclosure. It must be considered if individuals are to have proper access to their own information. My second concern relates to the right to apply for amendment of records. That should be strengthened also. That right must be freely available to everybody. My third concern is that there is no right to legal representation in proceedings before the commissioner. Therefore, an individual could find himself dealing with a Government agency or department which can draw on the full strength of its advisers in proceedings before the tribunal whereas he will be disadvantaged. Individuals should have a right to legal representation in any proceedings before the commissioner.

I referred also today to another area of concern - the power of the Premier to issue exemptions. That should be limited. I do not believe the legislation should give the Premier a power of veto. I will seek to add to the Bill in Committee some sort of deterrent to the destruction of documents. Given the debate last week and the information given to the Royal Commission, the destruction of documents is of grave concern to everybody. It reflects on

the behaviour of officials during the 1980s and the Bill should include deterrents against documents being destroyed.

I have tried to point out a number of shortcomings in the legislation. To a large extent, this legislation is far more restrictive than the legislation in other jurisdictions. The Government, through the Minister's second reading speech in November last year, made a commitment to openness and accountability of Government. The second reading speech stated -

> The time has gone when Government was shielded from public scrutiny, when the principles of democracy were principles rather than practice. The Freedom of Information Bill sets the scene for a real and meaningful level of accountability.

We should test that statement in this legislation to its fullest extent and make sure that that occurs.

In conclusion, the Minister may be interested in clause 42 of the resolutions and rules approved at the Labor Party's national conference in 1986. It states -

> Ensure effective freedom of information legislation granting the public full entitlement to the disclosure of government and administrative decision making, subject only to strictly limited requirements of essential security and individual privacy, and that the legislation is administered in keeping with its spirit and its objectives.

The statement "subject only to strictly limited requirements of essential security and individual privacy" should be underlined in everybody's mind. This legislation falls short. I hope that the Committee will amend it so that it falls more within the framework of that statement from the Minister's party.

MR WIESE (Wagin) [7.37 pm]: I rise to indicate the National Party's attitude to freedom of information legislation in general and to the Freedom of Information Bill that has been brought to this Parliament.

Mr Pearce: Will you advocate a freedom of information tax?

Mr WIESE: If the member for Armadale can find any way of raising money on behalf of the Government - he has been one of the greatest proponents of helping this Government - he will do it. He has a vivid imagination which he can use in trying to help this Government out of its financial mess. Undoubtedly, it has crossed his mind that there may be a means in this legislation of doing exactly that. I will comment on that further at a later stage in my remarks because I believe that the costs applied in this legislation will be a major factor with which the Parliament will need to deal.

The National Party totally supports the concept of freedom of information legislation. I support the right of the people of this State having access to private information on them that is stored in various departments and bureaucracies. They should also have the opportunity to amend that information, having obtained access to it if it is incorrect. Western Australia is one of the last of the Australian States to adopt the concept in legislative form. The introduction of this legislation is long overdue and it will enable the public of Western Australia to have access to much of the information relating to Government and the way in which Government performs its role. The public will have access to information that is variously stored and hidden away at present from the general public, the media and all those who should have access to it. Like previous speakers, I believe it is very important that the public of Western Australia have access to this information.

The real heart of this legislation is outlined in the objects and intent clause of the Bill, clause 3. Very important also are the principles of administration outlined in clause 4 of the Bill. One of the objects of the Bill is to enable the public to participate more effectively in governing the State. There may be some doubts about that, but if that clause means that enabling the people of Western Australia to find out what is actually going on in Government will enable them to participate more effectively in governing the State, then it is very important and something we should aim for. The second object of making the persons and bodies that are responsible for State and local government more accountable to the public is again a very important aspect of the legislation. For far too long many of the departments of Government within this State - and perhaps to a lesser degree in local government - have hidden behind their refusal and unwillingness to make information about their activities

freely available to the public. This legislation will ensure that real accountability is introduced into both Government and local government in this State. Should the legislation achieve that, it will be a great improvement in government in Western Australia. The legislation before us has the potential to go some way towards achieving that. I agree with previous speakers in this debate that many aspects of this legislation indicate that it will not go as far as it should. There are a number of exclusions and exemption clauses within the Bill which ensure that many Government departments will not be required to open their records to the public of Western Australia. That causes me some concern: Firstly, because it is there; and, secondly, while this Government is claiming that the freedom of information legislation is a great step forward towards the goal of accountability, the reality is that because so many departments will be protected and will not be required to make information available to the public, there is some doubt about how far the legislation will go in achieving the Government's much trumpeted aim of accountability.

Mr D.L. Smith interjected.

Mr WIESE: A sufficient number of amendments are coming through the system. I am sure the Minister will be kept busy dealing with those amendments and perhaps revealing to the Parliament in his usual frank way and with his very accountable answers the exact intent of some of the clauses which are a little hazy at the moment. I look forward to the Committee stage of this Bill to learn how much information is made freely available by the Minister.

Mr P.J. Smith: I can see us being here all night with you two debating it.

Mr WIESE: As to whether we shall be here all night, I understand we shall not proceed beyond the second reading debate of this legislation during tonight's proceedings. However, given the way the Minister has handled legislation in the past, I am sure we can look forward to an occasional late night in the course of the passage of this Bill.

Mr Ripper: You will not be contributing to that?

Mr WIESE: Plenty of other people will be involved. I can perhaps sit back and play a watching and supervisory role. Time will tell. It depends on how the Minister handles the Bill.

I move beyond the earlier clauses of the Bill to which I have referred and which I believe are very important in achieving the Government's aims. I do not intend to dwell on the clause dealing with the principles of administration because I am sure that will be debated at the Committee stage. One of the principles behind the administration of this Bill is to assist the public to obtain access to documents. That is a very important principle. As I have said before, there have been many shortcomings in the way the Government has made information available to the public of Western Australia in the past. If that principle is to the fore in the administration of this Bill, it will certainly go a long way towards opening up the processes of government to the public. That is a very desirable aim. The second principle of administration is to allow access to documents to be obtained promptly and at the lowest reasonable cost. That will be an extremely important principle. Several amendments are listed on the Notice Paper already aimed at tightening up and ensuring that the legislation is administered in that way. It is very important when a person lodges an application for information under the Freedom of Information Act that access be granted as quickly as possible. The legislation provides for 45 days in which to supply the information. I hope that many of the departments to whom applications will be made will provide the information sought much sooner than 45 days after the application is lodged. I would be very disappointed if 45 days became the accepted length of time between a person lodging an application and the information being provided. Reasonable cost is an important consideration, and I share the opinion of the member for Floreat in this regard. I understand that in those States which already have freedom of information legislation, in many cases the cost of making an application and obtaining the material is a very severe deterrent to people considering lodging applications. I hope we will not see that situation develop in Western Australia when this legislation is in place, because it is important that our having installed freedom of information legislation with the aim of making information available quickly and freely, we do not by an administrative measure, such as making access expensive, preclude people from obtaining access to information under this legislation. We will look closely at those clauses and at the amendments on the Notice Paper with a view to ensuring that the administrative aim that is outlined in the principles of administration is achieved.

The third item listed under principles of administration will be very important; namely that this Bill will assist the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading. Access to personal information under freedom of information legislation should be provided, if not at no cost, at least at the absolute minimum cost, because people have a basic right to ensure that the information about them which is held by various Government departments is accurate, complete, up to date and not misleading. The only way that we can ensure that the information which is on record meets all of those criteria is to make available that information as quickly as possible and at the lowest possible cost so that people are not in any way prevented from accessing the material which relates to them. We must ensure also that mechanisms are in place within this legislation so that people can easily and appropriately adjust or amend the information that is contained on their files so that any other person who accesses those personal files is made aware about their disagreement with certain aspects of the information by their attaching to their file a memo to that effect. We will certainly look closely at that important aspect of the freedom of information legislation.

I will touch briefly on some other aspects of this legislation because the real debate will take place during the Committee stage. This is complex, new legislation, and the Parliament should look at it as closely as possible to ensure that we get it right the first time. We should be able to do that in light of the fact that a range of freedom of information legislation is in place around Australia. In saying that, I have a degree of disappointment, and I can almost go so far as to say a degree of disapproval, that we are dealing with legislation of this complex nature at this stage of the sitting, when not only are we getting close to the end of this session, but also we are getting close to the completion of the term of this Government because we will face an election within the next three or four months. The Government is making a poor judgment in bringing before the Parliament at this stage of the sitting legislation of this type.

Mr Lewis: It is blatantly political and hypocritical.

Mr WIESE: I am charitable by nature and I could not possibly make a remark like that. The people of the State will perhaps make that judgment. One must wonder whether we will be able to give this legislation the scrutiny which it deserves as it goes through the Parliament and allow the public of Western Australia to react to that scrutiny and to the report of that scrutiny, because despite the fact that the concept of freedom of information legislation has been floating around Western Australia for perhaps eight or 10 years, and that the draft legislation and the Bill introduced into the Parliament at the end of last year have certainly been available to the general public, the reality is that the great majority of the public would not have the foggiest notion that this legislation is in the Parliament and what it will do for them.

The Minister stated by way of interjection during an earlier stage of the debate that he was happy to discuss the process of the appointment of the Information Commissioner. We need to do a bit more than just discuss the process of the appointment of the Information Commissioner.

Mr D.L. Smith: The process was to enable you to participate in the selection of the commissioner.

Mr WIESE: We need to look closely at the people who will be considered for appointment to the position of Information Commissioner. If that is what the Minister meant when he referred to our discussing the process, then we certainly should be involved. However, I believe that the appointment of Information Commissioner should be left until after the election. There is just a vague possibility that a different Government will be in place and will make that decision, and it is a trifle impudent of the Government at this stage, when it is perhaps at the end of its life, to make a decision about who shall be appointed to that position. Were the existing Government to win the election, I would have no problem with its making that appointment, because that would then certainly be its prerogative, and the same would apply were this side of the House to win Government. I hope that if that were the case and we on this side made that decision, we would follow exactly the same process in respect of the Opposition; namely, we would discuss who should be appointed to that position with a view to taking on board any comments made by the Opposition and reflecting in the appointment the opinion of both sides of the House. I hope that which ever way it goes, that will be done.

Mr D.L. Smith: I hope so too, but we will probably never know.

Mr WIESE: We will see. I have some reservations also about the fact that the term of the appointment will be seven years. I wonder whether we should be making an appointment of that nature. I have no problem with the concept of making a shorter term appointment. If the person appointed is doing a good job in the manner we would expect, he can -

Mr D.L. Smith: He or she.

Mr WIESE: Indeed, he or she; I am not sexist in any way. I am glad the Minister is listening to my comments, and I hope he takes account of them. Seven years would have to be the longest term of appointment of which I can think.

Mr D.L. Smith: It seems a long time to a politician, but it is not a long time really!

Mr WIESE: In anybody's terms it is a long time. It is 10 per cent of a lifetime, as an actuary would tell one - who am I to argue with them!

I referred previously to the potential problem with exemptions. Also, this legislation contains too many exemptions. I can see no reason for the exemptions for many of the organisations detailed within the schedule. If information in the hands of those departments requires protection, the legislation has the scope to allow that to happen; that is the route which should be taken. It could be said that the number of exemptions embodied in this legislation gives the impression that the legislation does not go as far, and the Government is not trying as hard, as it could to ensure accountability.

In conclusion, I reiterate that the concept of freedom of information legislation in Western Australia is long overdue, and has the support of the National Party. We have some reservations regarding certain aspects of this legislation, which we will endeavour to change during the Committee stage.

MR OMODEI (Warren) [8.04 pm]: Unfortunately, I do not share the same confidence as the member for Wagin regarding the Government's motivation in introducing the Freedom of Information Bill. I refer members to the example of the local government legislation which has been around for many months.

Mrs Edwardes: Is that the old or the new one?

Mr OMODEI: I refer to the new Local Government Bill, and the Minister for Justice is of a similar mind with the Freedom of Information Bill.

Mr D.L. Smith: It will be interesting to see whether you implement our local government legislation.

Several members interjected.

Mr OMODEI: It certainly will not take us as long as it has taken the Government.

Several members interjected.

Mr OMODEI: It will be a gross waste of the time of this House if we pass the second reading of this legislation and it does not proceed further at this sitting. Today we have received a personal explanation from the Leader of the Opposition, and have had a bungled tabling of the Busselton report by the Minister for Local Government; we should pass this legislation through the Committee stage today. The Government is very good at making second reading speeches which are written by staff members; however, it does not proceed to the third reading of the Bills.

Mr Ripper: Get on with it then!

Mr OMODEI: We want to get on with it. I challenge the Leader of the House and the Minister for Justice to pass this Bill through its Committee stage this evening - the Liberal and National Parties are more than ready. In that way the Government can say to the community that it has passed one piece of legislation, because to date very little legislation has been passed. A number of Bills must pass through this Parliament before the end of the year; nevertheless, the way we have started this week indicates that we will not achieve that, especially with this very important legislation.

This legislation was promised by an incoming Labor Premier in 1983 - he gave a clear commitment. However, the Bill did not materialise during Burke's two terms in

Government, and the Bill has been going slow ever since. The member for Bunbury well knows that the 1986 ALP conference in Hobart reaffirmed the party's position; that was, to ensure an effective freedom of information legislation which granted the public full entitlement to the disclosure of Government and administrative decision making; this involved the regular tabling in Parliament of details of the full operation of Government and semi-government agencies.

The second reading speech states -

> The Freedom of Information Bill 1992 retains the key features of the Freedom of Information Bill 1991, namely: The creation of a right of access to documents held by State and local government; unlimited retrospectivity; and provision of a comprehensive means of review, including the creation of the independent office of Information Commissioner.

Members on this side of the House have no argument with those points. The speech continues -

> The most significant amendment is the inclusion in the Bill of a new part which provides a means to ensure that personal information held by the State and local government is accurate, complete, up to date and not misleading.

It further reads -

> Clause 44 gives people the right to apply for amendment of personal information which is inaccurate, incomplete, out of date or misleading.

I agree with the sentiments expressed here.

This Bill has a long history. In 1989 the former member for Cottesloe, Mr Bill Hassell, introduced a Liberal Party Freedom of Information Bill. The *Daily News* on 19 July 1989 carried an article headed "Take off the muzzles!" The article states -

> A little knowledge, if the WA public get hold of it, is a dangerous thing apparently.
>
> The State government continually reneges on freedom of information, despite the solemn vow which helped sweep it to office six years ago.
>
> Too hard, muttered the newly-enthroned Premier Burke. Not needed, says Mr Dowding.
>
> The muddied Rothwells affair and the unsavoury dredgings of the Fitzgerald Report indicate otherwise.
>
> In the light of Labor's "accountability" commitment, continuing to cultivate the electorate as mushrooms is inexplicable.

This legislation will not uncover any of the WA Inc type information which is available in Government departments. I will confirm that in a later statement. *The West Australian* of 15 August 1990, under the heading "Let's see FOI fine print first" reads in part -

> The Government should keep exemptions to a minimum. Dr Lawrence says papers affecting law enforcement and public safety, the State economy, those contained in commercially sensitive information and documents subject to legal professional privilege would be restricted. But those categories are open to wide interpretation. Virtually every document on the official record could be barred under such guidelines.

What kind of freedom of information legislation are we getting? The article continues -

> Information should not be withheld merely because it has the potential for embarrassing the Government. Applicants should have to pay for the information they want, but fees should not be so high as to deter legitimate inquiries.

Those are some of the comments I have seen in my investigations. I took the time to examine the South Australian, Victorian, American and Canadian legislation. Much of what is in this Bill is also contained in those Bills. It is interesting to see what the Minister for Justice said from time to time on freedom of information legislation. An article in *The West Australian* of August 1990 headed "WA Inc 'not reason for FOI curb'" reads -

> Justice Minister David Smith, who is in charge of the Bill, denied yesterday that the

> non-retrospective element of the FOI legislation was an attempt to prevent WA Inc documents from getting into the public domain.

We have seen an about face by the Minister; he is now a great champion of unlimited retrospectivity. It is good to see that the Minister has had a change of heart. People in local government have not always been happy about retrospectivity, for their own special reasons, to which I will refer later. Another article under the heading "Anger at WA Inc Escaping New Bill" reads in part -

> A spokesman for Justice Minister David Smith said it was pointless to argue for retrospectivity in relation to WA Inc documents as most of them would be exempt under the Bill.

From the Minister's own office we hear that WA Inc documents will be exempt under this Bill. The exemptions are based on legislation in other States and will include Cabinet and Executive Council documents as well as those containing commercially or economically sensitive information. Enough said about the changes we have seen over the years. Interestingly, the former member for Cottesloe, Bill Hassell, can take some credit for introducing freedom of information legislation; in September 1989 he introduced a Bill which probably pre-empted much of the action taken by this Government.

I refer now to some of my concerns about freedom of information in relation to local government. It is certainly not all bad news. Local governments in New South Wales are receiving a better flow of information and are better handling their internal affairs. It has made council officers much more aware of those aspects. It has also made councillors make decisions about being more open, for example, in the way committees and forums are held. The implementation of freedom of information legislation in New South Wales has had a positive influence on local government. Contrary to expectations the FOI legislation in that State has not caused a flood of inquiries into local government councils. Of the 2 368 applications in the first 12 months of the New South Wales legislation only 13.5 per cent were directed at local government. As I mentioned earlier, it has assisted them to make better decisions and to provide the public with greater access to local government. Interestingly, one of the shires which received the most applications was the Shire of Byron with 185, the highest of any council in that State for 12 months. Most applications took less than 10 hours to process and were finalised in less than 30 days - well under the statutory period of 45 days. If that occurs in Western Australia, local government will not be too concerned.

I am concerned about the cost of obtaining information from local government. As members will be aware, that could be passed on to ratepayers going about their normal business who will not be seeking information. Someone who is a little hyperactive in trying to seek information from councils could make it costly for local authorities. In New South Wales the total cost for all applications to all State and local government authorities for six months to December 1989 was $77 379, whereas only $24 769 was received in fees. That is a fair indication that ratepayers will foot part of the bill for FOI legislation. The Western Australian Municipal Association and local authorities with which I have contact are not concerned about the FOI legislation. They have no problem with it provided local government is treated the same as Government departments and other agencies. Local government has had some difficulty supporting the retrospectivity aspect of the Bill. Members will know that many councils have existed for over 100 years. With today's technology, information can be properly kept on computer or microfiche. However, information held for many years may be difficult to locate. A subcommittee of Western Australian Municipal Association members has examined the unresolved issues, the most contentious of which is fees. The Minister for Local Government, whoever he is, must monitor that area from time to time because it may place a great burden on the local authority. Alternatively, if individuals seek information that has some exempt status they may pay for access to some documents to find that only part of the information they require is available. In other words, as the member for Floreat said earlier, a person may pay a considerable amount of money and not find what he set out to locate. As far as I can gather, the fees have not yet been finalised, even though a lower limit of $25 has been mentioned. During the Committee stage the Minister must make a commitment to ensure that local government is not adversely affected by this legislation.

As I mentioned earlier, another question concerns the availability of information and what effort will be required by local authorities to seek information they may have held in storage over a long period. To put all that information into up to date technological machinery could be very expensive. If one seeks information from a Government department it is usually of a significant nature. On the other hand, much of the information given to councillors is given anonymously; for example, information on unregistered dogs or other incidental matters. That kind of information would be difficult for a local authority to deliver. The legislation must make provision to protect that anonymity.

The other anomaly in schedule 2 of the Bill is that State Government departments will be protected by freedom of information legislation - correspondence between departmental heads and officers within a department will be protected - but the same protection will not be afforded to local government authorities for correspondence between shire presidents and councillors, shire clerks and shire presidents, and so on. The experience in New South Wales has been that local government has benefited from freedom of information opening up the information of councils and their committees. Local government is already far more accountable under the triennial election system. If the constituent ratepayers of a local authority are not happy with the delivery of service or information, they can change one third of the council on an annual basis.

The estimate of charges appearing in clauses 16 and 17 of the Bill concerns me and should be further discussed. The certificates whereby exemption can be given by the Premier for a great deal of information that comes out of Government departments require further debate as does the deletion of exempt material. If people were to go to a local authority or Government department seeking information, only to find that some of the information they had received had been exempted, it would render that information absolutely useless.

The amendment to clause 44, which I have mentioned, is of vital importance. The ability of a person to change his or her records or the records of a deceased person is of vital importance, particularly if the information is inaccurate. This could lead to unfair divulging of information about an individual who would have the right of redress under common law.

About 10 pages in the legislation relate to the matter of exemption and I would like to have a full debate on it during the Committee stage of the Bill. The Bill is not before time. It needed to be introduced into this Parliament. The Government will be put to the test well and truly with the way in which it deals with the passage of this legislation.

If the Minister for Justice thinks he can get away with proceeding with the second reading stage of the Bill and not following up with the Committee stage, he will find that will reflect badly on the Labor Party.

MR DONOVAN (Morley) [8.23 pm]: It is with some qualified pleasure that in the last weeks of the last Parliament in which I will sit I have an opportunity to speak in support of a piece of Labor policy. It is ironic, as the member for Warren reminded the House, that this matter has been debated on several occasions. I am disappointed because I have not seen members of the Government rise and speak proudly about the achievement of the freedom of information legislation reaching the second reading debate stage. It is one of the articles of faith of the traditional platform of the Australian Labor Party and one for which I have a very strong commitment and a sense of joy.

I wondered whether some Liberal Party Opposition members might have spoken with tongue in cheek when they were talking about the delays in the arrival of this legislation into the Parliament. I thought I saw the member for Kingsley touch her nose when she was talking about the delays that had occurred. It cannot go without notice that those delays have been precipitated by members of the Liberal Party.

Mr Lewis: Explain it. The Liberal Party introduced the Bill in 1989.

Mr DONOVAN: When this Bill was first introduced in November 1991 I recall an insistence that there be more room for discussion, compromise and amendment. The Bill was then withdrawn so that consultation could occur.

Mr Lewis: It was the Government's Bill that was withdrawn.

Mr DONOVAN: I ask the member to bear with me for a moment. My next recollection was in the last weeks of the autumn sitting this year. I have been critical of this Minister on

matters about which he and I have disagreed, but not that this Bill did not see the light of day in this Parliament in the autumn sitting. It was not for want of the best efforts of the Minister; it was because of the lack of support from the Opposition.

Mrs Edwardes: That is nonsense.

Mr DONOVAN: That is the case.

Mrs Edwardes: That is not the case. It is nonsense that has been perpetrated by you people.

Mr DONOVAN: That is the case. The member for Kingsley will remember that the implementation committee commenced in May this year.

Mrs Edwardes: Who is in charge of the Notice Paper and the agenda?

Mr DONOVAN: I do not think the matter relates to who is in charge of the Notice Paper; I think it is a matter of getting this legislation into the Parliament in the autumn sitting. We then had an episode on ABC Radio when Verity James interviewed both the Minister and Hon Phil Pendal from the other place in which Hon Phil Pendal was scathing of the Government's inaction and reluctance to deal with freedom of information legislation.

The Minister was trying most unsuccessfully, against the Opposition's efforts, to have this legislation debated in the last sitting.

Mrs Edwardes: No. That is the way you may have seen it, but you were not privy to the conversations that took place. Do not presume.

Mr DONOVAN: One of the things I have found since occupying an Independent seat in this place is that I see issues from a slightly different perspective, from more of a bilateral, rather than a unilateral, point of view.

Mrs Edwardes: How many pieces of legislation were left over from the last sitting?

Mr DONOVAN: There were a number. I have absolutely no quarrel with that. However, I do quarrel with the simplistic accusation that the Minister concerned with this legislation has dragged his feet in getting it to the Parliament. I just do not think the facts add up to that, and we ought to be fair about it.

Mrs Edwardes: Could we have brought it in in the first, second, third or fourth weeks of this sitting?

Mr DONOVAN: Whilst it is convenient and expedient a few weeks before an election to try to trip a Government on its own articles of faith - this piece of legislation fits into that category - I can understand an Opposition wanting to do that. The facts do not meet that criticism and we ought to be honest enough to acknowledge that proposition.

It is very encouraging to me that we are dealing with this legislation because it is fundamental to any posture of accountability of, and open, Government. It will be a substantial challenge to Governments of this State, of whichever political colour, to oversee the carriage of this legislation. In a sense, I have some sympathy with the member for Kingsley because it is a pity that, as a means of getting around the problem of the absence of a privacy Bill, the Government had to include part 3 which covers privacy provisions. Nonetheless they have been included and I know they will be something of a burden to public servants in this State, but they will have to deal with them. I recall my days as a social worker in the Public Service of this State and the number of notes, opinions and assessments made about a number of people. That practice will now be done with much more caution and circumspect consideration than might have been the case in the past.

Mr Lewis: You have got wiser.

Mr DONOVAN: Very much wiser.

We have waited for a long time for the accountability and openness which will come from the exposure to records, and that is to be applauded. The question of the accuracy and completeness of personal records now posed for public servants across a great range of service delivery systems in this State will serve this State well.

Like other members I am very concerned about the range of exemptions the Government has seen fit to include in this Bill. It seems, as other members have mentioned, that one could mount a substantial argument that many of the agencies and matters which will be exempt

from the provisions of this Bill are precisely those agencies and matters one might be most concerned about. A quick scan of schedules 1 and 2 will draw out some of those concerns. I note the member for Floreat has posted some amendments on the Notice Paper in respect of these schedules. I will give very careful consideration to not only her arguments, but also the Minister's arguments in defence of the retention of some of those agencies. I have a great deal of concern about some of the agencies and matters which are listed for exemption.

I know this is not a popular view to take in this State at present, but what concerns me is that under schedule 2 any Royal Commission or member of a Royal Commission will be exempted from the provisions of this legislation. I am strengthening in my view that the Royal Commission, along with other agencies of this State, created by the State in the service of the people of the State and not above them, should be as accountable as any other Government department or statutory authority. I do not think the Royal Commission and similar agencies should be held any differently in that regard. It would give me cause for concern if the Royal Commission could not confidently expose itself and its workings to those who may have an interest in scrutinising its workings. It is a healthy concern for one to have. As I said last week in another debate I would be unwilling to unreservedly, and in an unqualified way, say yes to every pronouncement the Royal Commission makes. I have some real concerns about the agencies and the range of matters which will be exempted from the provisions of this Bill. I urge the Minister to consider very carefully the reasons behind the amendments proposed by the member for Floreat. He should not simply dismiss them on the basis that they present a difficulty or are an embarrassment to the Government.

In concluding, I return to my starting point; that is, it is with some pleasure that I support a piece of fairly basic Labor Party policy. I must admit this will cost me later, because I understand that tonight or tomorrow this House will debate the SGIO Privatisation Bill, which I will not support. I do not accept the arguments which have been put forward about the delay in presenting this legislation to the Parliament. I accept that the Bill has a great deal of merit for the conduct of Government business in this State. I have serious reservations and concerns about the agencies and matters which will be exempted from the provisions of this Bill, but by and large I will support the second reading of this Bill.

MR LEWIS (Applecross) [8.37 pm]: I am astounded at the hypocrisy of this Government in introducing the Freedom of Information Bill. It is important for me to remind the House that in 1989 the then member for Cottesloe, Mr Bill Hassell, introduced similar legislation into this Parliament, but the Government would not afford it an appropriation message. To that extent it was ruled out of order by the Speaker.

Since 1989 a lot of water has passed under the bridge and the Liberal Opposition has worked very diligently to bring to this Parliament and to the public of Western Australia the in-depth truth of the nefarious WA Inc affairs. Of course, I am referring to this Government's business dealings which it very carefully and scrupulously hid from the Parliament and the public of Western Australia. In the run-up to the 1989 election I recall that the Labor Party was fearful that it would lose office and it was well known up and down St George's Terrace that the shredding machines were operating day and night. At the time this position was put to the Government in debates in this House Premier Dowding and Deputy Premier Parker said it was a nonsense and was not true. Since then we have had the revelations of the Royal Commission and one of its findings was to the effect that its inquiry had been hampered by the lack of access to Cabinet minutes. It appeared to the Royal Commission that the Cabinet minutes had been deliberately removed so that the determinations of Cabinet could not be placed on the public record and could not be provided to the Royal Commission which was inquiring into these dreadful dealings by this Government.

What sticks in my craw is that at the eleventh hour of this session the Government has the audacity to come into this place with its holier than though attitude proffering this legislation on the basis of the Premier's statement about the Government's new found morality on the afternoon the report of the Royal Commission was tabled. The Government has discovered a new morality and says all these things will now be done. We heard the same thing prior to the 1989 election. I can well remember the cynical political exercise of the Burt report. I do not in any way reflect on former chief justice and Governor Sir Francis Burt because I think his report was absolutely spot on. It spelt out to the Parliament and to the public what should have happened. However, that report was used by the Government in the run up to the 1989 election by then Premier Dowding - "a future we can believe in" - along with the other lies

and dishonesty which occurred in the run up to that election, particularly to do with the Petrochemical Industries Co Ltd deal.

At that time this Government pursued a subterfuge, going to the extreme of introducing legislation into this Parliament to ratify the biggest scam this country had ever seen, the $400 million up front profit made by two entrepreneurs solely to bail out a failed financial institution - not even a failed financial institution, but a failed broker or doer of deals who had no credibility and had the Government in his pocket. The blatant dishonesty exhibited by the Government prior to the 1989 election included $6 million obtained by this Government from the "four on the floor" entrepreneurs in this town. It used that political largess to promote this dishonest Government so that it could trip over the line at the last election. We have now sat through three and a half years of this Government since that time and at the eleventh hour of this Parliament the Premier, with her new found sense of morality, has trotted out this Bill saying that she will do everything right in future. What gets to me, and where I violently disagree with the member for Morley, who had the temerity to reflect on the Liberal Opposition saying that it was not dinkum or keen on this legislation and had shillyshallied around and that is why the Government did not bring on this legislation, is that he is totally misled about this matter. Unfortunately, the political bias he tried to shed is still with him.

Mr Donovan: Is it not a fair example of what I am saying that here you are tonight with seven proposed amendments to this Bill? If you were serious, why did you not produce those amendments earlier?

Mr LEWIS: The member for Morley does not understand the political tactics of this place. The last thing one does is flag to the Government what one will do because it then goes off and does deals.

Several members interjected.

The DEPUTY SPEAKER: Order! The member for Applecross should address his remarks to the Chair.

Mr LEWIS: As soon as legislation hits the Notice Paper one does not put on record what one's amendments will be. How stupid does the member think we are?

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr LEWIS: I do not attach much notice to the rabble behind me because of the place in which they are sitting. However, one does become rather frustrated with the hypocrisy of this Government.

Several members interjected.

Mr LEWIS: How many drinks have you had?

Mr Cunningham: None at all. You cannot cop it!

Mr LEWIS: I am sick of the member for Marangaroo sitting in his place and denigrating people when he does not have the guts to make a speech.

Several members interjected.

The DEPUTY SPEAKER: Order!

Mr Cunningham: You have lost your cool.

The DEPUTY SPEAKER: Order! For a small number of people in the Chamber there is an incredible amount of noise. If, as the member for Applecross says, the people behind him are irrelevant, I suggest that he ignore them. I also suggest that the members behind him tone down their interjections so that we can get on with the debate, which is about freedom of information.

Mr LEWIS: I think I have made my point because I have got members opposite out of their holes. Members opposite know how shallow is their argument and very well that the only reason that the Government has brought on this legislation at the eleventh hour is to give some credibility to a discredited Government and Premier. The one thing behind which we on this side of the House can stand proud is that we introduced this legislation in 1989. This

Government, with its new found sense of morality which it forgot for a day or two last week, now seeks to claim the kudos for this legislation. The Opposition is not prepared to accept that. This is Opposition legislation which we are proud to support and sponsor. The Government will not fool the public of Western Australia by coming into this place at the eleventh hour trying to claim that this legislation was its idea.

MR BLOFFWITCH (Geraldton) [8.49 pm]: One of the most sought after things in all democracies of the world is freedom of information. Such legislation is probably one of the most important vehicles available, if used properly in a democracy, to allow people access to information. The Bill includes a number of exemptions. It puts any future Premier in a particularly onerous position by giving him or her the right to exempt any document from disclosure as he or she sees fit. I wonder about the flexibility of that. However, the responsibility will rest entirely with the Premier.

It is interesting to read the various articles written about freedom of information. Part of the rationale for freedom of information legislation is that it brings about changes in the cloak of secrecy in the Public Service and the Ministry. In theory it removes the cloak of secrecy in Government departments. Like the member for Applecross, I wonder why we are dealing with this legislation during the last two weeks of this session when the Government has been in power for 10 years. Freedom of information is one of the most important aspects of a democracy. We have had the need for freedom of information for the past 10 years but now, with the chance of a change of Government, it has been decided that this is an appropriate time to pass such legislation. This is one of the most hypocritical acts I have seen in the parliamentary system. However it is better late than never.

Mr Clarko: Do you know that FOI legislation was one of the key promises by the Government at the election in 1983?

Mrs Edwardes: And 1986 and 1989.

Mr BLOFFWITCH: I have heard that on many occasions, not only in Parliament but also in the public sector and elsewhere in the community where demands have been made that a Bill be introduced. I am led to believe that this debate will be adjourned tonight. Once again, that makes me wonder about the sincerity of the Government.

I read with interest the exemptions contained in the Bill. Why should we give exemptions to such bodies as the State Government Insurance Office and the R & I Bank Ltd in order to protect confidentiality of accounts? It also contains protection for the third party involved, for trading statements and such other things. What is the reason for these exemptions? Why should they not be subject to public disclosure? After reading a fair proportion of the Royal Commission report I can understand why many of the deals went on within the R & I Bank and the SGIC. When I consider the property portfolios I can understand the great deal of reluctance of the Government not to include these provisions in the legislation. I see no reason for any exemption for these bodies. The Bill already contains safeguards to protect the persons concerned from such information being released.

It is important to understand that in many cases the people affected by the legislation will be public servants and shire and city councils, but from experience and from what I have read about the world scene, if anything, such legislation improves the system of government and also improves the efficiency of the various departments. If we can make such people think harder about any decisions they make we may not experience again the sad situation where five senior public servants have been stood down as a result of activities outlined in the Royal Commission report. That is probably the saddest indictment of a system that went wrong when cloaked in secrecy.

I have considered the objectives and intent of the Bill. They effectively cover everything that I would want to see in such legislation. I note the provisions relating to access to documents, covering what may be applied for and what may not. Examples are given of cases where an agency may refuse to deal with an applicant; the nature of the information to be considered; refusals to access, and documents which may be exempt. The Premier has the right to exempt some documents; for example, to a document which is not a document of an agency, or where access to a document will contravene clause 7 which mentions such things as third parties and the various subjects.

It will be interesting to try to overcome the apprehension of people who work within

departments and who fear public access to information. In my business all my staff have access to everything. They are aware of the finances at the end of each month; they are aware of the profitability of the place, the expenses and the deals done. Apart from confidential customer information such as debtors, the staff have access to everything. It makes the team perform better. It gives staff an incentive to know what is going on in the business and an understanding of how the business works. Generally, by opening up departments, people will be encouraged to have more trust and faith in the departments. This legislation is desirable. My only disappointment with the Bill is its introduction at this time, at the end of a session. However, I will be extremely sad if it does not go through.

Mr Donovan interjected.

Mr BLOFFWITCH: The point is that we have seen newspaper articles on freedom of information throughout the 1960s, the 1970s and the 1980s. It has been the catchcry of all democracies. Not only in this State but also on the Federal scene we have heard Governments scream that this is the answer, that they will be bringing in such legislation. This Government has been in power for 10 years; so why is this legislation being handled in the last two weeks before the end of the session? During past elections we heard many promises about how vital and important is this legislation, but it seems to be very low on the priority list of the Government.

Mr Donovan: The member said exactly the same thing during the autumn session.

Mr BLOFFWITCH: Did we refuse to bring in the legislation? Do we control how the House works? Are we the people who say whether legislation comes forward? That is not the way it works.

Mr Donovan: I cannot understand that argument when the member was not willing to deal with it last time. Now he is saying the same thing. Does the member know that a commissioner's position was advertised at the beginning of September? Does he know that a committee has been working since that time? That is not evidence that the Government does not want the Bill to pass.

Mr BLOFFWITCH: That is evidence of a Government that does not want the Bill. Why has it taken the Government 10 years to get the Bill together?

Mr Donovan: I cannot answer for the past 10 years, only the past 12 months.

Mr BLOFFWITCH: Why do we get the Bill some three weeks before the end of a parliamentary session? I can remember many members in this House saying that they wanted to see it brought on. I can remember questions during question time about when the Bill would be brought forward. The member for Floreat raised the matter in her maiden speech. The Opposition has not shown a lack of interest; there has been a lack of performance by the Government to get the Bill into this place. I do not let that diminish my enthusiasm for the Bill or my hope that the freedom of information laws will improve the quality of decision making in the Government sector. The general agreement is that the people of Western Australia have little to fear from what is happening in the Government sector or in local authorities. I commend the Bill to the House and I hope it is dealt with as quickly as possible.

MR D.L. SMITH (Mitchell - Minister for Justice) [9.01 pm]: I thank the members opposite, members of the National Party and the Independents for their support of the legislation. As I said in the original second reading speech on 28 November 1991, freedom of information legislation represents a fundamental reform of the relationship between State and local governments and the community they serve. It enshrines in legislation rights which are at the very heart of the democratic processes. The time has gone when Government was shielded from public scrutiny, when the principles of democracy were principles rather than practice. The Freedom of Information Bill sets the scene for a real and meaningful level of accountability. Without information about the processes of Government, members of the community cannot fully participate in Government and exercise their rights as citizens. Freedom of information legislation strengthens democracy, promotes open discussion of public affairs, ensures the community is kept informed of the operations of Government and opens Government performance to informed and rational debate. That still lies very much at the heart of what this legislation is about.

I have listened to the members of the Opposition talk about the delay in the legislation. It

was introduced in the Budget session last year. It did sit on the Notice Paper and the Government hoped it would be brought on during the autumn session, but the Government was waiting for notice of the amendments which the Opposition was intending to move - but that did not happen. No amendments were placed on the Notice Paper by the Opposition. They were never given to my staff in any written form. The legislation has been available since November 1991 and could have been brought on at any time had the Opposition so wanted - considering the state of the numbers in this place. What I find more than passing strange is that although this Bill was introduced in September and it is now November, it was not until the closing of the second reading debate that the Liberal Party proposed any amendments to the legislation. As will become obvious during the debate in the Committee stage those amendments are either technical or simply add things like magnetic tapes and electronically stored material to the categories of documents which can be provided. I frankly was expecting that, like the member for Floreat and members of the National Party, the Liberal Party would have been seeking to look at the list of document exemptions and perhaps to limit either those document exemptions or the agency exemptions. That is not the case at all. One gets the impression the Opposition has smelled victory in the air and suddenly interest in freedom of information legislation is waning because it does not want to be saddled with it. The Opposition is not willing to get locked into a debate about that list of exemptions or agency exemptions.

The position of the member for Floreat on the other hand has been quite different. As has been said by the member for Geraldton, the member for Floreat in her maiden speech very much emphasised that one of her primary objectives in her period as a member of Parliament would be freedom of information legislation. Certainly if one looks at the way in which she has approached the legislation, one gets the impression she is a person who is very committed to the principles of freedom of information. Most of her comments sought to broaden the effect of the legislation. As we move through the amendments I will indicate to the House that the Government will agree to a fair number of them. Make no mistake, the Government is fully committed not just to the principle of freedom of information but also to having the most effective legislation that it can possibly have, certainly more effective than in any other State or in the Commonwealth. The member for Floreat in the course of her speech, however, has made a few comments to which I must respond. One deals with the question of why the Parliament should be exempt. Clearly the reason the Parliament is exempted is because it is the Legislature and not the Executive. Freedom of information is primarily aimed at the Executive. In any event the Parliament would not want to waive any of its privileges and allow, for instance, the Freedom of Information Commission to be intruding into the processes of the House or any of its committees and making rules about what the public can have access to. Parliamentary privilege is something we must have; it is an essential part of our democracy and there should be no suggestion of the intrusion of anyone in the operation of the Parliament other than our own Presiding Officers.

Some mention was made about the appointment of the Information Commissioner - firstly, by the member for Kingsley and later by other members - and the processes which would be adopted. The Government is very keen to get this legislation up and running as soon as possible - that is despite the delay in getting any amendments out of the Opposition or information that it was ready to deal with the legislation. The Government has sought to expedite the implementation of the legislation by making sure an implementation committee was set up as early as May. It has been meeting regularly and is producing fortnightly bulletins and starting the education process to ensure that everybody is ready to deal with the legislation as soon as it becomes effective.

The Government has also proceeded to advertise for applications for the position of Information Commissioner because most of the legislation cannot begin to be implemented until that person is appointed. The Government regards that position as important as the Ombudsman and the Auditor General. I have noticed, for instance, that the Ombudsman believes that he should be given the task. However, my view is that the Ombudsman has enough to do with his own legislation at present and with the resources which he has. If the freedom of information legislation is to work appropriately it is critically important that the person who is vested with the powers of the Information Commissioner can involve himself or herself in the education process of the departments, and ensure that the public are aware of their rights and that the Government complies with the legislation, or in cases where it does

not, that an opportunity exists for complaints to be made and for the Information Commissioner to determine those complaints in accordance with the legislation. I will be more than happy to discuss with the Leader of the Opposition, the Leader of the National Party and the Independents as soon as the Government has a short list recommended to it by the interviewing panel, those persons who are being considered for the final interviews to ensure that the person who is appointed meets with the approval of everybody in this place.

The question was also raised about the destruction of public records. Members will be aware that the falsification of records by a public officer is already a criminal offence. That offence extends to destroying, altering or damaging any record. Section 85 of the Criminal Code states -

> Any public officer who corruptly -
>
> (a) makes any false entry in any record;
>
> (b) omits to make any entry in any record;
>
> (c) gives any certificate or information which is false in a material particular;
>
> (d) by act or omission falsifies, destroys, alters or damages any record;
>
> (e) furnishes a return relating to any property or remuneration which is false in a material particular; or
>
> (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,
>
> is guilty of a crime and is liable to imprisonment for 3 years.

The Government thinks that is the appropriate place for such an offence to be inserted and that it is not appropriate for that kind of offence to be included in this legislation. Of course, there also exists the Library Board of Western Australia Act which deals with the question of the destruction of archival records. Again, that is an appropriate place for that to be dealt with and the Government does not believe that it is appropriately dealt with in this legislation.

Although the document exemptions may appear broad, most have a public interest test or other test which clearly shows the limits of the exemptions. The member for Floreat attempted to say that only four broad categories were recognised in most countries which had freedom of information legislation. She omitted to say that although there are only four broad headings a number of subdivisions of those various headings exist. Indeed, the categories of document exemptions are simply subcategories of those four principal categories which are recognised in other places. The fact that more of them are in the total list is not an indication that the list of exemptions is broader than elsewhere, but that the Government has taken the trouble to break down the various categories into its subheadings to ensure that people clearly understand all of them so that different tests can be applied for limits of exemptions for each of those subcategories. Therefore, the Government is not dealing with only four categories and then trying to limit the limitations on the exemptions in a way that is too broad. Generally, most of the availability of documents in our legislation is broader than anywhere else. Certainly, it is broader than was the case when legislation was first introduced elsewhere. The retrospectivity and the role of the Information Commissioner will ensure that that is the case. In some small categories the exemption is slightly broader and the limits are slightly narrower. I am happy to discuss each of those issues during Committee.

I correct the member for Floreat's comments on the issue of Cabinet document exemptions. She indicated that in most other jurisdictions - in fact, she may have said all other jurisdictions - the limit on Cabinet documents was 10 years. That is certainly not the case. In the Commonwealth and Queensland no limit is set in the freedom of information legislation; it is simply a matter of convention or archival legislation, and those documents are not released in the Commonwealth or in Queensland for 30 years. In South Australia a 30 year limitation exists in the freedom of information legislation. In New South Wales, Tasmania and Victoria a 10 year limit exists; that 10 years operates from the commencement of the legislation. Therefore, it applies only to documents as they are created which become available in 10 years and not to documents which were created 10 or 11 years ago, which were available under their legislation. Clearly, under Western Australia's legislation, the opportunity to have a look at Cabinet documents will be wider in the main.

The member for Wagin raised the question of the length of the commissioner's appointment and suggested that seven years was a long time. I do not think that it is; but in any event I point out that the appointment is for a maximum of seven years and, from memory, when the Government advertised it indicated that the offer would be available for five years and not the full maximum of seven. Members will be able to discuss that further when they discuss the appointment of the Information Commissioner in committee.

I am very pleased with the tenor of the debate and the small number of amendments which have been moved by the Opposition parties. As political as I was being earlier, that simply reflects that what I have been trying to say is true; that is, this legislation is very broad and by its retrospectivity and the creation of the office of the Information Commissioner it has the opportunity to be broader in its effect than legislation anywhere else. The fact that such a small number of amendments has been proposed from Opposition members reflects in part that the Government has been willing to consult with them and has tried to incorporate their wishes where they have expressed orally some of their concerns, and some of those amendments which have been suggested, that the legislation was very broad when the Government began. As will be indicated during Committee, I am more than willing to see whether we can broaden it as long as we do not adversely impact on the operations of some of the agencies or intrude into some areas where, for reasons of principle, all other jurisdictions have allowed the document exemptions to exist. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Dr Alexander) in the Chair; Mr D.L. Smith (Minister for Justice) in charge of the Bill.

Clause 1: Short title -

Mrs EDWARDES: I confirm our commitment to the freedom of information legislation before the Committee. A lot of political comments were made earlier. However, the Minister stated that he accepted many of the amendments that were made through verbal discussions with his staff at an earlier stage. I was pleased that he admitted that was the case rather than our having to go through the formal process of putting amendments on the Notice Paper. On 4 June 1992 there was no time to deal with the freedom of information legislation; the Opposition did not hold up the Bill at that time because we all remember the duck Bill, the 0.08 Bill and the Financial Institutions Amendment Bill. In fact, on that day we dealt with the Health Services (Conciliation and Review) Bill, the Town Planning (Old Brewery) Bill, the Mines Regulation Amendment Bill, a ministerial statement on the Crime (Serious and Repeat Offenders) Sentencing Act, the Nurses Bill, Fire Brigades Superannuation Amendment Bill, the Land Amendment (Transmission of Interests) Bill, the Education Amendment Bill, the Rates and Charges (Rebates and Deferments) Bill, the Industrial Lands Development Authority Bill, public and bank holidays legislation - we all remember the debate on the Australia Day holiday - the Guardianship and Administration Amendment Bill, the Retirement Villages Bill, the Acts Amendment (Confiscation of Criminal Profits) Bill, the Acts Amendment (Sexual Offences) Bill and the Western Australian Land Authority Bill. The Government has control of this House and we had a very full agenda in that last week, let alone the last day.

Mr D.L. SMITH: I do not wish to delay the House unnecessarily by getting into a political debate about this matter. We all know the numbers in this place and the way in which we are preoccupied with private members' legislation and matters of public importance. We spend very little time on legislation. The list of legislation dealt with in the final weeks by the member for Kingsley reflects the quantity and quality of the legislation that we have to pass. I have said a number of times that one of my great concerns as a Minister and one who believes very much in legislation, is that currently we have something like 300 Bills approved for drafting. That amounts to about three years of legislation. If by some miracle the Opposition were elected at the next election, it could earn itself a reputation of being the most reformist Government ever to come into the Parliament on the basis of passing legislation that we have already in the pipeline.

Mrs Edwardes: As I have said, you might have talked about it; we will implement it.

The CHAIRMAN: Order! I realise the Minister is responding to a point raised by the member for Kingsley. However, we are discussing the short title of the Bill. It is not a good idea to embark on a regurgitation of the points made in the second reading debate. Therefore, I will not allow further comments.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Objects and intent -

Mrs EDWARDES: The very important aspect of this clause is the extension to the local government area. Victoria has not extended its freedom of information legislation to local government. I am aware that local government associations expressed a number of concerns about this extension, concerns which were expressed by the member for Warren. One of their concerns is the retrospectivity aspect because many of their documents go back a number of years, even to the last century, and it would be an enormous task to have to consider those documents in the light of this legislation. I believe still that it is an important feature of the Bill that we are debating.

Why did the Minister delete from subclause (2)(c) in the 1991 Bill the words "policy statements and administrative guidelines and other documents" and round it off to state "requiring that certain documents concerning State and local government operations"? It should be spelt out in more detail so that it includes policy statements and administrative guidelines.

Mr D.L. SMITH: The documents which are to be made available under this provision are included in part 5 of the Bill. The reference to "certain documents" is an attempt to embrace all of the documents that are referred to in part 5. Under part 5, clause 93 deals with information statements, clause 94 with internal manuals, clause 95 with publication of information statements, and clause 96 with information statements and internal manuals to be made available.

Mrs Edwardes: Does it refer to policy statements and administrative guidelines?

Mr D.L. SMITH: It certainly refers to administrative guidelines. Generally speaking, the policy documents are always available because they are more in the nature of political documents rather than administrative guidelines on how to operate those policies.

Mr OMODEI: I understand that in most councils in this State, constituent ratepayers would have ready access to local government records, either through the minutes or through the documents held by the council. Is the Minister suggesting in clause 3(1)(b) that local government is not responsible or does it make it more accountable?

Mr D.L. SMITH: Clearly, the expression is not there to indicate that local government is not accountable, but we all know that part of what we are about as a Government is to try to broaden the responsibility of local government, both by devolving downwards some of the responsibilities currently performed by State and Federal Governments and by providing local government with general competence powers. Local government has been happy to accept that the price of those competence powers and greater responsibility is a greater degree of accountability. Nothing in the legislation is meant to detract from what has been done in the past as a matter of practice. That is clear in the legislation. In the past many local governments have provided a great deal of information to their ratepayers and electors. However, the practice varies from one local government to another, and this legislation establishes that what may have been a practice in the past is a right for every person to obtain access to documents. It also broadens the categories of documents which are available so that there is a right to access from all local authorities and not just from those who in the past made it available while others did not.

Mr OMODEI: The same requirement would mean an additional cost to local government. Why should one local authority that has acted efficiently be subjected to an additional cost because of the inefficiency of a small percentage of local authorities which are not able to keep good records or give access to them to their ratepayers? Is there any provision in the Bill to provide compensation to local authorities for the additional costs imposed by the accountability provisions of the Bill?

Mr D.L. SMITH: It is inevitable that the provisions will impose additional costs on local government and on the State Government. For the State Government the general estimate of cost ranges between $800 000 and $1.5 million. That obviously will depend on the volume. With regard to local government, as indicated by one speaker in the second reading debate, in the New South Wales legislation where the local government provisions are much more limited, not much use has been made of those provisions. Clearly, any use of the legislation by electors or ratepayers is likely to add to the administrative costs of individual local authorities. We must simply monitor the extra costs. We do not propose that local government should be treated any differently from the State Government in making sure the costs are kept to the least possible. Either by the regulations or the legislation, depending on what we do with the amendment proposed by the member for Kingsley, provisions will be included which reduce the costs to various categories of persons in certain circumstances and which make the service free in some instances. Inevitably, the local government providing the information will have some cost to bear which will not be recoverable from the applicant in those circumstances. In that sense there will be additional cost to the local government, but it must be weighed against the benefits that freedom of information legislation brings in terms of accountability to the electors and ratepayers.

Mr WIESE: I am particularly concerned about personal information and its availability to any individual. One of the main problems we come across is that people are not always aware that a Government department or instrumentality has a great deal of information on file about them. They often do not become aware of this file until some conflict arises which brings it to their notice. Therefore, a file on an individual could be in existence for 15 or 20 years without that person being aware of it, and that file may contain incorrect information. The only way a person could ascertain whether a department had a file on him would be by making an application. Has the Government given any consideration to departments advising people on an annual or five yearly basis that it holds a file containing information about them that may or may not be correct? Such a file could contain misleading information or may not contain all the facts. Has the Government tried to address this in any way?

Mr D.L. SMITH: I agree that it is a problem. The problem always is the administrative cost of notifying all the people about whom information is held and having a database which makes it reasonably simple to do so. It is not possible to do it at present because of the administrative cost and the workload involved in achieving that. Currently a person must approach the agency and ask whether any information is held in the department about him. The former member for Cottesloe introduced a Bill which, frankly, appealed to me, in relation to access to the databanks of not just the Government but also private enterprise. That legislation would appeal to me and I hope it will be included in the privacy legislation when it is eventually brought to the House. It is a question of balancing the desirable outcome of advising people that information is on file about them and the administrative cost of notifying them about that information.

Mr WIESE: Following the implementation of this legislation, does the Minister anticipate that there will be a rush of applications to a great number of Government agencies from people seeking some knowledge of the information the Government is holding about them and that they will endeavour to correct any wrong information on those files? Is the estimated cost of between $800 000 and $1.5 million the overall total cost or is it anticipated that part of that cost will be recouped from the charges imposed under this legislation?

Mr D.L. SMITH: The intention with regard to information about oneself is to minimise the cost, so there will not be an attempt at full cost recovery. Should the amendment proposed by the member for Floreat be accepted - which I am inclined to do - there would be no charge at all.

I expect that there will be a reasonable flood of applications in the first 12 months of operation, but obviously once the novelty and the opportunity to access for the first time passes, it will level off and be the same level as in other States.

Mr OMODEI: In the case of a local authority which has records which go back for a number of decades, is the onus on that local authority to delve into those records, bearing in mind that they may not be kept along the lines of current day records and that a great burden may be placed on that local authority in its having to dig up that information? What will be the

ramifications of such an authority's saying that the information is not available when in actual fact it is, but at a huge cost?

Mr D.L. SMITH: Clause 19 provides a limit in respect of the amount of work involved or the accessibility of the record. That is obviously one area where the Information Commissioner would act as an umpire to ensure that the authority was not just using that as a generalised excuse for its not doing something which it perhaps should.

Mrs EDWARDES: Subclause (3) provides the first opportunity whereby personal information can be amended. This is one of the amendments which we put to the Minister at an early stage. It was one of the most significant omissions from this Bill, and was included in both the Federal and other State Acts. It is an important right that a person be able to amend incorrect information held by Government agencies or departments on his or her behalf as an adjunct to the accessibility to those documents, and without this provision there might be a significantly less effective mechanism for the redress of individuals aggrieved by their records being incorrect. It is to the Government's credit that it has picked up this suggested amendment, and I am pleased to see this amendment.

Mr D.L. SMITH: I emphasise that the access to personal information and the ability to amend was intended to be part of the privacy legislation. I still hope that at some stage in the future we will have a single document which will broadly outline all of the elements of privacy, one of which is access to information about oneself and the ability to correct it. Some debate has taken place tonight about the delay in this legislation's getting to the Chamber before November last year. It was not the politicians who seemed to find problems with this legislation, but rather the various agencies which will have to deal with the responses. In the end result, the resolving of the concerns of the agencies meant that we were not able to get on with the privacy legislation with the haste that we had hoped, and I hope that we can do it next year and that it will be as comprehensive as originally planned.

Clause put and passed.

Clause 4: Principles of administration -

Mrs EDWARDES: In respect of subclause (b), the Opposition again proposed an amendment to the 1991 Bill to include the words "lowest reasonable cost", because there is no such thing as freedom of information if access to documents cannot be obtained at the lowest reasonable cost, because the cost could act as a deterrent to a person's accessing those documents. I thank the Minister for including in this Bill our proposed amendment.

Mr D.L. SMITH: That was impressed upon us not only by the Opposition, but also by the Australian Journalists Association and a range of other people, and we were happy to accept that proposed amendment.

Mr WIESE: Can the Minister indicate whether regulations have been drawn up which will give the Chamber some indication of what we are talking about when we talk about "lowest reasonable cost"? If regulations have not been drawn up, can the Minister indicate when the Government intends to proclaim this legislation and bring it into effect?

Mr D.L. SMITH: This legislation will be proclaimed and brought into effect as soon as we can complete the drafting of the regulations and the various forms that are required, and ensure that the responsible officers are properly educated and that the Information Commissioner is in place. The implementation committee has been working since May this year, and I hope that the legislation will come into effect approximately three months after the appointment of the Information Commissioner. I would like to see it come into effect earlier than that, but a number of formalities have to be gone through, and certainly in respect of ensuring that departments and local authorities are ready to handle the applications, a degree of education and a number of processes have to be determined, and in some cases it may also involve the adjustment of administrative manuals to ensure that they are not as offensive to the public as some of them are currently.

Mr Wiese: Have the regulations been completed?

Mr D.L. SMITH: No.

Mr Wiese: Do you know what will be the cost of various applications so that the Chamber can have some idea of the costs that we are talking about?

Mr D.L. SMITH: That will depend upon the agency concerned and the remuneration of the staff in that agency, but, by and large, the cost will approximate the hourly cost of employing a level one public servant, which is currently about $10 or $15 an hour. In respect of personal information, the cost would be much lower than that, and there is an understanding that at least part of that cost will be borne by the agency concerned and it will not all be a user pays system. To that extent, I expect it will be something less than the full cost of the time of the public servant involved, and I hope that by the time we finalise the regulations, it will be something substantially less than that so that it will get into the category of the lowest reasonable cost.

Mr Wiese: Will the fee differ from department to department or from agency to agency?

Mr D.L. SMITH: Yes, it could, depending upon the qualifications of the staff in that department or agency and who will need to conduct the search.

Mr Wiese interjected.

Mr D.L. SMITH: I make no comment about that, other than that I support all public servants, including those in the Department of State Services.

Mr OMODEI: Will the penalties also be set under regulation?

Mr D.L. SMITH: The penalties which are not provided for in the legislation will be provided for in the regulations. However, this legislation is not in the main about penalties. It is really about access and conciliation, and processes by which the right to access can be determined and acted upon as quickly as possible.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Access procedures do not apply to documents that are already available -

Dr CONSTABLE: At present, many agencies provide information free of charge. What within the legislation stops an agency from making a charge for the provision of information which is currently provided free of charge?

Mr D.L. SMITH: The legislation makes no direct reference to that, but clause 3(3) stipulates that nothing in the Bill is intended to prevent or discourage the publication of information, or the giving of access to documents - including documents containing exempt matter - or the amendment of personal information, otherwise than under this legislation if that can properly be done or is permitted or required by law to be done. The general philosophy of the legislation is to ensure that information currently available at no cost will continue to be made available that way. We will not suddenly find people relying on the strict letter of the legislation and moving away from what has been the case previously.

Dr Constable: Can you assure us of that?

Mr D.L. SMITH: Yes, because I say so during this Committee debate, and it is indicated in the legislation.

Mr OMODEI: Under this legislation, if a local authority is approached by a ratepayer for information, would it not be fair for the shire to make a charge for the information for which a charge does not currently apply? Would the shire not be within its rights to do so to recover the cost of providing the extra information this legislation will entail?

Mr D.L. SMITH: I hope that that is not the case, considering that the shire was not making a charge prior to the legislation. I do not see why a shire would need to make up for the extra costs imposed by this legislation by charging people for information previously provided for nothing.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Effect on other enactments -

Mrs EDWARDES: Subclause (3) refers to clause 14 of schedule 1 and relates to information protected by certain secrecy provisions. Will the Minister explain why it was felt necessary to include this provision? I would have thought it would be covered in any event.

Mr D.L. SMITH: The clause has been redrafted to ensure that nobody misunderstands the intention of the clause.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Access applications -

Mrs EDWARDES: Clause 11(2) has had the words "if the circumstances of the applicant require it" added from last year's Bill. The provision is that agencies must take reasonable steps to help a person to make an access application in a manner which complies with the legislation. Subclause (3) refers to agencies taking "reasonable steps" under subclause (2) to help an applicant change the application so it is in compliance. Why have the words been inserted at the beginning of subclause (2), as these have made the provision much more restricted? It will mean that an applicant will be helped only in circumstances in which the applicant requires assistance. Other circumstances will arise in which an applicant will need assistance, and the 1991 Bill would have required that the agency must take reasonable steps to help persons in any event.

Mr D.L. SMITH: This provision was intended to be limited. Some agencies took the view that people may seek assistance in the making of an application, and under the previous draft of the Bill the agency must help in all circumstances. Under this amended provision some indication must be provided that the person needs assistance. Therefore, it will not apply to every applicant, especially to those who have the ability to lodge the application.

Mrs Edwardes: What are the types of circumstances to which that will apply? It could be broad and involve the person on the front desk taking a dislike to a person because he or she has been seen every day for the past two weeks.

Mr D.L. SMITH: If that person was dissatisfied with the conduct of the person at the front desk, he or she would relay it which would lead to an internal review of that decision. The view of the agencies is that if people are able to assist themselves the agencies should not be required to provide assistance. The agencies want the capacity to differentiate between someone who is in obvious need of assistance - be it mental or physical handicap, a lack of sophistication and means, or a lack of understanding about completing the form - rather than someone approaching the front counter and saying, "You must help me because the legislation says so."

Mr WIESE: What will happen if a person is in need - or has that belief - of assistance and it is not forthcoming? I accept that the Minister has attempted to explain that, but it is still unclear. Does the person then have the right to go to the commissioner, or somebody else within the agency, seeking that assistance? Bearing in mind that the whole of this legislation is aimed at making things as easy as possible for people - as indicated in clause 4 - what will the procedure be? What guidance will be given to someone who believes he has not been given sufficient help and where the agency has told that person to fill in the application himself?

Mr D.L. SMITH: The general thrust of the legislation provides that the right of access exists and that the agency should assist that person in obtaining whatever information he requests. There are two ways in which people will need assistance: One is in identifying the nature of the document or the information, and the other is when someone has a physical, mental or other handicap which does not enable that person to do what the rest of us can normally do. This clause is intended to provide some limitation so that the agency does not become only the provider of information, but in effect becomes the applicant, completes the form and provides all other necessary help. Provision is included for internal review and review by the Information Commissioner. Various education manuals will be available and seminars will be held for staff to make sure they clearly understand that they have a primary duty to provide assistance if a person requires it. However, there must be some indication of that requirement.

Mrs EDWARDES: I am constantly reminded that some people do not have the same high level of literacy as others. To all intents and purposes they are usually people like us, with families, who do not generally receive the support they should receive from Government departments when filling out application forms. In this situation they will be put off and will try to help themselves. As a result, they will be unable to complete the application form

when they have a real need to obtain that information. Those people will be unlikely to know about the right of review. What provisions will enable those people to gain some knowledge of their rights if they are refused assistance or if they feel the agency has not taken reasonable steps to assist with their applications?

Mr D.L. SMITH: Clause 62 deals with the functions of the commissioner. Under subclause (2) one of the functions of the commissioner is to provide assistance to members of the public and agencies on matters relevant to this Act. Under subclause (3) agencies will be aware that, if they do not provide the assistance required of them by the legislation and that becomes evident through a complaint, they can expect that to be referred to the commissioner or the chief executive officer of the agency. However, that will not always apply if a person simply walks away from the counter and does not make a complaint. As with the Equal Opportunities Commissioner, part of the role of the Information Commissioner will be to provide public education through advertising and pamphlets to ensure people clearly understand their rights. Some amendments are on the Notice Paper by the member for Floreat which I am inclined to accept and which may assist in a person's rights being notified to them at the time of the decision by the agency.

Mr OMODEI: At the risk of being pedantic, some people in the community are illiterate; they can neither read nor write - far more than I thought existed before I became a member of Parliament. Would the onus be on the agency to assist a person in that position? That will no doubt impose a cost on that agency. A State Government agency would be far more capable of meeting that added cost, whereas a local authority will spread the burden to the ratepayer, which may not be justifiable. Should the person go to the commissioner and will the commissioner assist that person to make the application in writing as proposed under clause 12? What is the responsibility of the agency to the person?

Mr D.L. SMITH: There is no question that an illiterate person would need to be identified as requiring assistance. The real issue will arise when, to all intents and purposes, a person appears of normal intelligence and capacity, but advises the counter staff that he does not understand the application form and, consequently, asks for an officer to fill it out or sit with him and identify the necessary words to ensure the information he is seeking is what he required in the first place. Ultimately, those are matters for internal review or review by the commissioner. Under the legislation the commissioner will have the capacity to report to the town clerk or shire clerk or chief executive officer of a department or agency. My experience is that most staff, under a legislative provision requiring formal referral of that sort, expect that some disciplinary action will be taken by a CEO in response to that referral. That will be a reasonable means of ensuring that staff understand their responsibilities and that if they do not comply with them, some disciplinary action will flow if the commissioner comments on that in the course of determining the complaint.

The real problem will be the one raised by the member for Kingsley about people who are dispirited by not being able to complete the form or by a lack of assistance and who do not seek an internal review or review by the commissioner. We will try to overcome that by ensuring that the public education process is as thorough as possible.

Clause put and passed.

Clause 12: How the application is made -

Mr D.L. SMITH: I move -

> Page 6, line 9 - To insert after "regulations;" the word "and".

This is simply to correct a small drafting error and achieves nothing other than to correct grammar.

Mr WIESE: Is the Minister trying to tie together paragraphs (a) to (e)? In other words must the application go through all those paragraphs from (a) to (e) as part of the application?

Mr D.L. SMITH: Yes. It was always intended that those items be tied together. The omission of the word "and" from the end of (d) does not achieve that. It was always intended they be cumulative requirements rather than individual requirements.

Amendment put and passed.

Mr OMODEI: Will clause 12 provide that a person must put that application in writing? It seems to be confusing. If an agency is to provide information, as it has in the past on a

verbal basis, and the Bill now requires that should be in writing, what is the delineation point for when it should be in writing and when it should be verbal?

Mr D.L. SMITH: The Bill makes provisions where it has not been customary in the past to provide that information. I understand in most of the other States, formal applications are not required and most of the information is provided without that. To this extent the official statistics for the number of applications is usually less. In fact, as much as 80 per cent of applications are made and satisfied orally. The only thing we have to be careful about is that when an internal review or approach to the commissioner is sought, there is a formal, written application rather than an oral complaint which has not been recorded.

Dr CONSTABLE: I move -

Page 6, after line 14 - To insert the following new subclauses -

(3) An application may be lodged by delivery by hand, post or facsimile at an office of the agency to which it is directed.

(4) If an application is lodged with an agency by post it is to be regarded as having been lodged with the agency at the end of the fifth day after it was posted.

(5) If an application is lodged with an agency by facsimile it is to be regarded as having been lodged with the agency on the day on which it is transmitted.

The reason for this amendment is that I believe this clause is incomplete. Clause 99 of the Bill deals with service of notices by post, but no clause deals with how applications are to be lodged and when they are deemed to have been lodged. This could be dealt with in the regulations, but it would be easier if the total process were dealt with in the legislation. The other three subclauses are straightforward.

Mr D.L. SMITH: I am happy to accept the amendment.

Amendment put and passed.

Mrs EDWARDES: In relation to applications lodged by facsimile has the Minister given some consideration to whether it is intended that it be produced in a court of law? If so, that will need to be in accordance with the Evidence Act. Further, every detail except the name of the applicant is required.

Mr D.L. SMITH: I have not given attention to amending the Evidence Act. The process for oral applications to the Information Commissioner is to be a conciliatory one and not too legalistic. In most cases I hope that sufficient evidence will be produced as would confirm the application having been sent and which would satisfy everybody that it had been received.

Mr OMODEI: I have some concern that although the intention may be for a conciliatory process, many people will be making application to a State Government or local government agency with the specific intention of some litigation down the track. Perhaps the concerns of the member for Kingsley might be overcome by accepting the facsimile and then applying in writing to ensure a hard copy is available.

Mr D.L. SMITH: The purpose of the amendment is to make certain that the date on which the time starts to run is in compliance with the legislation. In a court of law we may need some amendments to the Evidence Act. However, at this early stage we are dealing with an administrative procedure to ensure that dates are set from which the time will run. We do not need to be concerned with the court process at this time.

Mrs EDWARDES: I am happy to support any amendments to the Evidence Act to take into account technology that is available. I ask the Minister to review that matter bearing in mind that we will have facsimile applications, the date of transmission of which will be evidence of the date on which the application was made. If an application goes to the Supreme Court receipt by facsimile may cause a problem so the Evidence Act should be looked at and amended, if and where appropriate.

Clause, as amended, put and passed.

Clause 13: Decisions as to access and charges -

Mrs EDWARDES: Clause 13(4) deals with an amendment we put to the Minister earlier this

year. It relates to an application having been made and the possibility that the information could have been made available far sooner than within the 45 day period. It crossed my mind that an applicant dealing with a controversial political matter could purposely take all of the 45 days and the redress under the old 1991 Bill would not be available. I wonder whether this amendment will allow the commissioner to redress the time available to the agency to comply with the provision and consideration of the application.

Mr D.L. SMITH: I am happy to agree to this amendment on the basis of equity. It is good enough to extend this power in appropriate places.

Mr WIESE: Under clause 13(2) where an applicant lodges an application and waits for a response from the agency to which he has applied, which is not forthcoming within 45 days, is the applicant to take it that he has received notice of a refusal to reply? It is extraordinary that if an agency has not replied within 45 days it is deemed that the applicant has received written notice. He has not received a damn thing. All it means is that the agency has not responded. The agency should be required to respond regardless of whether it is unable to supply the information, refuses to supply it or is unable to supply it within 45 days.

Mr D.L. SMITH: The purpose of this is simply to facilitate the taking of the next step - an internal review or the lodging of a complaint with the Information Commissioner. I wish that in planning legislation there were a provision for deemed refusal because planning procedures could be implemented much more quickly than currently is the case.

Mr Wiese: It would suit the bureaucrats.

Mr D.L. SMITH: It would not because it means if they do nothing in relation to an application they can expect the next step in the process to be taken by the applicant. The applicant does not have to keep writing to the agency seeking a response to his application. He can say that the application was lodged on a certain date and a response has not been received and, therefore, it is deemed that he can take the next step in the process.

Mr Wiese: It is not unreasonable to expect the agency to respond.

Mr D.L. SMITH: It is not. However, in an imperfect world agencies may not, for their own reasons or for unknown reasons, respond to an application. In this case, the agency dealing with the application cannot blow out the time in which the information can be provided.

Mr Omodei: The time could be blown out because the commissioner will have a heavy workload as a result of this legislation.

Mr D.L. SMITH: It does not blow out the time at which the next step in seeking the review can be taken by the applicant. As part of the amendment to this provision, we have already agreed to give the applicant the opportunity to apply to the commissioner to have the time reduced to the minimum possible and the agency must then comply with that order.

Mr WIESE: I am very disappointed that a provision is not included in the legislation to require agencies to respond. I accept that we live in an imperfect world. Subclause (7) deals with what happens when the 45 day period expires. The commissioner, on application of the applicant, can grant the agency an extension. Will the agency do exactly the same thing again; that is, not respond within the extended period? A provision should be included in the Bill to require the agency to respond.

Mr D.L. SMITH: The intent of subclause (7) is that if a person does not obtain a response within the 45 day period, it is deemed a refusal. The person can then go to the commissioner and say that there has been a deemed refusal. Rather than become involved in a formal complaint process the commissioner may choose to write to the agency saying that there is a deemed refusal and he is directing it to provide the required information within seven days of a certain date. The information may then be provided to the satisfaction of the applicant without going through a formal complaint process.

It is not the intent to give the agency more time, but to direct the agency to provide the information within a certain time. If for any reason the agency believes it is an exempt document or one to which a person cannot have access, it can give the reasons and start the formal process from that point.

Clause put and passed.

Clause 14 put and passed.

Clause 15: Transfer or notification of applications -

Mrs EDWARDES: Subclause (6) provides that the agency to which the access application is transferred under subclause (2) - that is, where the agency holds the requested documents, but the documents may have originated from another agency - is required to make decisions as to access in respect of the documents of which it receives copies but not in respect of other documents that it holds which may fall within the scope of the documents requested in the original application. What happens to the other information which is held on the file?

Mr D.L. SMITH: It is simply to ensure that the applications are dealt with by the agencies which have the documents. The process starts when an application is made to one agency and it has the documents per favour of another agency and, in that case, it may only have copies of those documents. In that situation it is felt that the agency from which the documents originated is in the best position to decide whether access should be given. The question of whether access should be given to other information that agency may have is an issue for the person to determine when he has that copy. It is hard when the application really comes to the agency because another agency had one of its documents if it must treat that application as an application for all the documents which that agency may hold. Once the applicant is given the particular document which is part of a series of documents or a file, he may go back to the agency which is the originator of the document and, by further application, seek that further documentation.

Mrs EDWARDES: I note in the clause that that agency may send a copy of the document to the originating agency. However, if the originating agency does not have the originals or the same documentation on its file, does the originating agency use the copied documents or does it send it back to the other agency?

Mr D.L. Smith: It uses the copied documents.

Mr OMODEI: Is it possible under this clause for an agency which is not exempt from the provisions of this Bill to transfer documents or information to an exempt agency with the intention of keeping that information from being released?

Mr D.L. SMITH: I would not like to say no without thinking about it, but it is certainly not the intention. The intention is that if the document is not exempt and it originates from a non-exempt agency, the applicant may request the exempted agency which has the document to give it to him on the basis that it belongs to a non-exempt agency rather than an exempt agency.

Mr Omodei: The applicant might have to prove to which agency it belongs.

Mr D.L. SMITH: I do not think he would have to prove that. It would be obvious to the agency holding the document. Certainly, the intention is not that if a document for some reason came into the possession of an exempt agency that should of itself make the document exempt. If the exempt agency receives application for a document held by it from a non-exempt agency I would expect it to deal with that. The real problem is the other way round where an application is made to a non-exempt agency holding documents which belong to an exempt agency. We do not want that exemption to be lost by the exempt agency because its document has found its way to a non-exempt agency.

Mr AINSWORTH: I have a problem with subclause (6). Where an applicant makes an application to an agency which transfers that application to another agency which holds other documents on that inquiry in addition to those transferred to it there is no requirement, as I read the Bill, for the second agency to inform the applicant that it holds that additional information. I accept that an agency should not be required to provide every piece of information it has in addition to that transferred from the primary agency, but in the case of sensitive personal information where a person is trying to find out what is held in the files of a Government department or instrumentality, an individual would have no way of knowing that additional information is being held by the second agency. There needs to be scope there not to provide that information directly on the first application but for the agency to inform the applicant when providing the information first requested that additional information is available, and to give the person a brief outline of what that might entail and an opportunity to request that information from the second agency. The way the Bill reads at the moment the initial application is transferred from one agency to another and that is as far as it goes. The applicant may never know that the second agency has additional information.

Mr D.L. SMITH: The object is to ensure that if a non-exempt agency holds documents belonging to an exempt agency which wants to argue the point about those documents it is not left to carry the can of rejection rather than the agency currently holding the documents. The question whether that leads to other information known to be held by the second agency placing it in a position where it must make a judgment whether the applicant would like that information is a difficult one. There is not quite a penalty involved, but at least disciplinary action is involved for not providing documents in accordance with the Act. In my view, it simply adds another link in the chain. Quite clearly, a person referred to an exempt agency who gets hold of one document which does not seem to provide the information that person is seeking will go back to the same agency with a formal request seeking the documentation in general terms, which is likely to result in the other information becoming available.

Mr AINSWORTH: I was not particularly looking at exempt agencies as opposed to other agencies. However, it seems to me that it is the natural right of any individual to be informed that a Government agency has information of a certain nature held in its files, particularly when an application of this nature is transferred from one department to another, because if that information is not given to the applicant there is no way he will ever know that a second agency has additional personal information, which is one of the sensitive parts of the Freedom of Information Bill. It seems to me not only courteous but also something that would be regarded as essential by most applicants; that is, that they be given access to facts that an agency has a file on them - not be given information directly without a second application, but at least be put in a position where they are aware that there is other information for which they can apply. It is every person's right to have that knowledge.

Mr D.L. SMITH: There is an obligation to assist persons with their applications, but in this case the application has already been made in specific terms to the other agency. It then goes to the second agency to be dealt with because it is the originator of the document. I do not believe it is fair to require that agency to treat the application as being broader than the application on its face because the result would be to close that obligation. Although omission or lack of decision making on its own does not do that, it can be subjected to the reporting mechanisms provided for under clause 62. It would be apparent to most people that once they have got the documents from the second agency - if those documents do not seem to cover all the things that might be there about the issue - they should simply make another request to the second agency. The member may argue, as the member for Kingsley argued, that it is an unnecessary step to require that second application. That is simply to avoid, if one likes, heavy discipline being exerted against the second agency because it did not understand that the application was broader than it was on its face value.

Mr AINSWORTH: I accept what the Minister is saying to a point. He should put himself in the position of a person who applies initially to an agency for a specific piece of information and that application is transferred to a second agency. On receipt of their information from the second agency I believe most people would be under the impression that they had gained all the information available and would not suspect that the fact their application had been transferred from one agency to another meant that supplementary information was being held by the second agency. Many people are not particularly au fait with dealing with Government departments and may, as other members have said in relation to other clauses, also have difficulty with literacy skills; or they may not be confident enough or sufficiently informed to make that assumption and then make that second application. They may believe that what they are being given is all that is available. It is reasonable that such people are informed in a brief manner to the effect that the agency holds additional information and that the person may need to lodge a second application. That does not mean they must make that second application, but they would then be aware that extra information was available if requested.

Mr D.L. SMITH: The furthest I am willing to go at this point is to say that I understand the problem raised by the members for Roe and Kingsley, and I am prepared to request the Information Commissioner to monitor the matter to ascertain whether this provision requires amendment. For the reasons I have outlined I do not want disciplinary action taken against an officer dealing with an application on the basis that his agency held similar information and the officer did not refer to it. We need to be aware that is a problem. The information needs to be monitored. If some amendment is required in future we can deal with the matter at that time.

Clause put and passed.

New clause 16 -

Dr CONSTABLE: I move -

Page 9 - To insert after clause 15 the following new clause to stand as clause 16 -

Charges for access to documents

16. (1) Any charge that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given, must be calculated by an agency in accordance with the following principles or, where those principles require, must be waived -

(a) a charge must only cover the time that would be spent by the agency in conducting a routine search for the document to which access is requested, and must not cover additional time, if any, spent by the agency in searching for a document that was lost or misplaced;

(b) the charge in relation to time made under paragraph (a) must be fixed on an hourly rate basis;

(c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the matter to which access is granted;

(d) no charge may be made for providing an applicant with access to personal information about the applicant;

(e) a charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents or in providing a written transcript of the words recorded or contained in documents;

(f) a charge must not be made for the time spent by an agency in examining a document to determine whether it contains exempt matter, or in deleting exempt matter from a document;

(g) a charge must not be made for producing for inspection a document referred to in sections 93 or 94;

(h) a charge must be waived if the request is a routine request for access to a document;

(i) a charge must be waived or be reduced if the applicant's intended use of the document is a use of general public interest or benefit or if the applicant is impecunious;

(j) a charge must be waived if the applicant is a member of the Legislative Council or of the Legislative Assembly of Western Australia; and

(k) a charge must not exceed such amount as may be prescribed by regulation from time to time.

(2) Subject to section 17, payment of a charge will not be required before the time at which the agency has notified the applicant of the decision to grant access to a document.

It is very important for us to consider this matter because it has been a bone of contention for freedom of information legislation around the country. In some jurisdictions it is left entirely up to regulations to set down the principles and guidelines for the calculation of costs. That has caused problems, particularly in the Commonwealth sphere where few limits are placed on charges. It would be wise for us to follow the Victorian and Queensland models and to set down guidelines in the Bill. If we are serious about minimising costs, it is important to do that. By having the guidelines only in the regulations we may face some problems in future with costs running out of control.

The proposed new clause details the charges for access to documents. They could be left to regulations but that would not be in the best interests of individuals seeking access to information. With the acceptance of this provision we will have some control over the

operations of freedom of information. In the Queensland and Victorian jurisdictions it was deemed important enough to set down guidelines in legislation, and that is the measure we should follow. Paragraph (a) sets down guidelines for the calculation of costs relating to time, and that charge should cover the time spent by an agency in conducting a routine search and it will not cover the additional time spent by an agency in searching for lost or misplaced documents. That should not be a charge to the applicant. This paragraph also provides that any charge should be made at a fixed hourly rate, and that a charge may be incurred if there is additional cost in supervising an inspection by the applicant of the matter to which access is granted.

Paragraph (d) has been inserted because it relates to a comment by the Minister reported in *The West Australian* of 2 September where he indicated that the intention of information of a personal nature should be available free of charge. That is not provided for elsewhere in the Bill. Under paragraph (e) a charge should be made only for reasonable costs incurred by an agency in the supply of documents or for making arrangements for the viewing of them or a written transcript. In several areas, charges should not be levied. There should not be a charge where time is spent by an agency in examining a document to determine whether it contains exempt matter. That is a cost which should be incurred by the agency. There should be no charge where an applicant wants to inspect a document - and that is referred to under clause 93, information statement, and clause 94, internal manuals. That should be freely available to those who wish to receive information. Where a routine request is made for access to a document a charge should be waived when no real time is incurred by the agency. We should place in the guidelines the fact that the charge should be waived or reduced if the applicant's intended use is for the general public interest or to benefit the applicant who is unable to meet the cost. There should be no charge for members of the Legislative Council or the Legislative Assembly. If members wish to apply for information that information should be available to members without cost. A charge should not exceed any amount prescribed by regulation from time to time; that is obvious.

The intention of subclause (2) is that there should not be any payment unless it is subject to clause 17 which allows for advance deposits. There should be no charge required before the time the agency has notified the applicant of a decision to access a document. The purpose is to set down guidelines so that we can at this stage minimise costs as far as we can, and not leave that to be sorted out by regulation.

Mr D.L. SMITH: The Government prefers these matters be dealt with by regulation. On the other hand, we do not necessarily want to be obstructive. Rather than these subclauses being numbered (1) and (2) we would prefer that they follow through as clause 16(4) and (5). I have no problem with paragraphs (a) to (e) of the proposed amendment. As to paragraph (f) we must remember that the request for searches for information is caused by a request of the applicant and on some occasions it will be necessary for the agency to examine documents in its possession to attempt to make a determination whether the document contains exempt matter. If it is exempt matter where a refusal will be made, it will be covered by the proposed clause 16(5); that is, subclause (2) of the amendment.

In order to facilitate an application, it is reasonable to charge for time spent time deleting exempt matter from a document before providing the full document. In some cases that may be extensive. That is a flow-on from the application and in order to consider the application one must look at the document and make a decision about whether it contains exempt matter. If one can delete the exempt matter, again with a view to providing the document to the applicant, as it is additional work required to satisfy the application it is fair that a charge should be levied. If the member is happy to delete paragraph (f) I will look at it as it relates to regulations. I do not seek to sweep it aside altogether; but on face value it is not the sort of thing that should not incur a charge. It is a natural part of the process.

Dr Constable: It should be looked at because it seems that the amount of time to do that could become unreasonable.

Mr D.L. SMITH: I will keep that matter under review with the regulations. I have no problem with paragraph (g) which relates to manuals and other matters.

Mr Omodei: Are we to leave out paragraph (f)?

Mr D.L. SMITH: Yes. The Government wishes to delete paragraph (f), but it can look into

that to see whether it can help meet the concerns that the member for Floreat has. Paragraph (h) is incapable of definition because it refers to a "routine request" and I do not know what that is. The member may be referring to the sorts of applications that are already being satisfied without a formal application. The legislation already provides for that without changing access arrangements.

Dr Constable: That would be requests that do not take any more than a few minutes - something that is easily accessible by the agency.

Mr D.L. SMITH: I do not think that any agency will encumber itself with the administrative cost of charging a fee and having to account for it throughout the accounting process for something that it can do in a couple of minutes. Again that is something I would be happy to leave off. I have no problem with paragraph (i) where a charge must be waived if an applicant is impecunious, but I am concerned that the charge must be waived if the applicant's intended use of the document is one of general public interest or benefit. The media would be in a position to make numerous requests in the belief that they are in the public interest and to do so at no cost. That would put the media in a position where they would be utilising the legislation for research which journalists in the past have done for themselves. Paragraph (j) refers to members of the Legislative Council and the Legislative Assembly. It sounds like parliamentarians would be given access that other people do not have. We already have access through the Parliament and the right to ask questions without notice or on notice. I am in two minds as to how it would be perceived by the general public and whether it would be seen as another example of parliamentarians making life easier for themselves.

Mrs Edwardes: They would give us all their requests.

Mr D.L. SMITH: The member for Kingsley's point is quite valid. Everybody could come to a member of Parliament. Our electorate secretaries would become full time information seekers. I do not think any of us would want that to occur. We would find it difficult to refuse because they would point out that we can get the information for nothing so why should they have to pay for it. I do not have any problem with paragraph (k) which sets a maximum charge under the regulations. It is simply a question of what that maximum charge should be. I would not like to think about that until I have had advice of the situation in other States.

Mr DONOVAN: I have no difficulties with paragraphs (a) to (e). Could the Minister go through (f) to (k) and advise the Committee of the Government's position?

Mr D.L. SMITH: I have no problem with paragraphs (a) to (e); I would like (f) deleted; I have no problem with (g); I would like (h) deleted; I would like (i) changed so a charge would be waived if the applicant is impecunious, not if the applicant's intended use of a document is a use of general public interest or benefit.

Mr Omodei: How do you work out if a person is impecunious? I have 5 000 acres of land and I have no money. The Minister should wipe that paragraph.

Mr D.L. SMITH: It is a question of judgment. Paragraph (j) should be deleted because members of Parliament would become an avenue by which everybody else got their information. I have no problem with paragraph (k).

The DEPUTY CHAIRMAN (Mr Watt): A suggestion which is possibly worthy of the member for Floreat's consideration is that consideration of this proposed new clause be postponed to provide an opportunity for the member to get together with the Minister and to perhaps work out an acceptable form and to consider that at the end of the Bill. However, if members wish to debate it further that is fine.

Dr Constable: I am happy to do that, but I would like to make a couple of comments in response to the Minister.

The DEPUTY CHAIRMAN: I remind members that they are limited to three opportunities to speak and the member for Floreat would almost certainly want to reserve one of those opportunities in order to revise her amendment.

Dr CONSTABLE: I am happy with the Minister's suggestion to delete paragraphs (f) and (h). However, there should be more discussion about paragraph (i). In at least two other jurisdictions that opportunity is available to members of Parliament and we must consider it.

In the 1980s many examples arose where members of Parliament would have liked to scrutinise and have access to documents. It is important that members of Parliament are able to get that access to do their jobs. The argument that it can be used by everyone to get free access is a spurious one. It is extremely important to look at that paragraph.

Mrs EDWARDES: The sentiment that the costs are kept as low as possible is important. There was never any intent to have full recovery of the costs of providing the information by the agency. That has been discussed over a number of months during briefings from the Minister's staff and other jurisdictions. The problem with which I am faced and which was highlighted when the Minister readily agreed to a fixed hourly rate being charged is that under the regulation the Government can make sure that a fair amount of time which has been spent by the agency in conducting the routine job of sifting information can be recovered by the set hourly rate. However, the hourly rate probably would have been one of those issues covered under the regulations. I want a commitment from the Minister on the setting down of an amount for the hourly rate. Will there be charges and how will they be established for services such as photocopying and correspondence? How will the charges be highlighted? Even with the setting down of wording in the Bill which, although it may be limiting, could also quite easily have been extended, what could have been the case under proposed regulations that would have been considered whereby it was never intended to be full recovery?

Mr OMODEI: The further members debate the Bill the more concern I have that this legislation does not allow for free information; certainly, a charge is applied. I presume that freedom of information means freedom of access to information. I understand the reasons for the member for Floreat's moving these amendments. In a similar way to the Minister I am concerned with paragraphs (f), (h) and (i) of the amendment. I differ slightly from the Minister's point of view on impecuniosity, because that is an issue which could be debated. Who is going to be the judge of whether one is nearly broke or broke? Is it related to assets?

A few members seem to have lost sight of the fact that although freedom of information may be a good thing, there is an associated cost, particularly with local government. I understand the situation of many State Government agencies which are funded by the Consolidated Revenue Fund or by other means. However, many cases exists of small local authorities which would have documentation available to them. For example, a small country shire could have documentation in connection with the Department of Land Administration, the Department of Conservation and Land Management, the Western Australia Water Authority and a number of other agencies. If they were inundated with inquiries for information it could be to the great cost of their ratepayers. The Shire of Manjimup, with which I was involved before I became a member of Parliament, had a rate revenue of only $9 000 for every one per cent increase in rates. It will not take long for local authorities such as that to be incurring an imbalance should they go down the line of getting out information to constituent ratepayers at a very low cost.

The member for Floreat seems to have lost sight of the fact that a cost is associated with that information's becoming available. I do not agree with paragraphs (f), (h) and (i) of her amendment; however, I have no problem with the others. I reiterate that, although it may be in the spirit of the Bill to try to get out information at a low cost, the cost for local government should be as near to cost recovery as one can possibly get. Bearing in mind that many people would have had access to information in previous days for no cost, the same people can seek information by issuing litigation under common law by subpoenaing that information which is so important. From that point of view, if they are low income people they should have access to legal aid to obtain that information. I am concerned that the further the Chamber goes with discussions about this Bill, the further that local government will be severely impacted upon.

The CHAIRMAN: Does the member for Floreat have any plans to negotiate this matter further and to debate it later?

Mr DONOVAN: I think the member for Floreat will have something to say after my contribution. The view of members on these benches is that this matter can be resolved this evening quite easily without any subsequent meeting.

This is something of a coup for which the member for Floreat should be congratulated. Respecting the Minister's arguments about the usual place for these matters, which is indeed

in the regulations - I have no quarrel with the Minister about that - it is a very progressive move that the question of charges for these sorts of matters has been dealt with in this place tonight in a constructive and productive way. I commend the Minister for his accommodation of the mover's amendments in large part; it is to his credit that he has seen fit to do so. I understand that the mover of the amendments, the member for Floreat, will have something to say in a moment about her reciprocal accommodation of some, if not most, of the Minister's concerns. At the end of this debate there will remain only one outstanding matter; that is, the question of whether a charge should be waived for applications by members of the Legislative Council or the Legislative Assembly of Western Australia, as contained in paragraph (j).

In addressing myself to the comments made by the member for Floreat I again take on board the concerns of the Minister; they are real and members should not dismiss them. People can use the political immediacy of their local member to waive what otherwise would be a quite legitimate charge. However, that in itself is a challenge and a lesson to members of both Houses. They must think very seriously about the sorts of approaches that may be made to them. In a similar way to other members I receive the same sorts of approaches which are appropriate and which members may meet in different ways. Although paragraph (j) poses the problem suggested by the Minister - I have no doubt that he is right - equally it will then be up to members to look at approaches that are made to them by constituents and to make their own judgments about whether that is a valid use of a waiver.

On balance, the member for Floreat's viewpoint is the greater viewpoint. It does not take away one iota from the Minister's concerns. Her viewpoint has the greater merit because it should be the case that members acting on behalf of their constituencies, as opposed to individual constituents, should be able to ensure the availability of information that might be on record in Government departments and statutory authorities which are covered by this Bill. Of the two situations, I accept that the Minister is correct about the one that imposes an additional burden on members. However, the greater issue is whether members should have possible obstacles removed in the conduct of their duty as the local member. This paragraph goes a long way towards removing such an obstacle and making it possible for members to do their jobs better, although they will certainly have to be more thoughtful about how they do so.

Finally, in underscoring that point, in serving their constituents in this way by making use of this Bill, members should not on the other hand incur an additional cost. That is the point of paragraph (j).

Mr Omodei: Are you talking about the members?

Mr DONOVAN: Yes, they should not incur an additional cost. Paragraph (j) seeks to ensure that. There is a difference between a legitimate function of a member on behalf of a constituency, group or even an individual constituent. A member in the performance of his or her duties should not bear a cost in getting access to that information. As the Minister said, there is a risk that people will use the politics of the electorate in which they live, for instance, in campaigns, to attempt to advantage themselves through their local member of the provision of paragraph (j). Of the two arguments, the greater is the one made by the member for Floreat. Therefore, paragraph (j) should remain in the amendment.

Mr D.L. SMITH: The Government will continue to oppose paragraph (j). However, I undertake to keep the matter under review and to try to find some words at a later time which might appropriately limit it to using it for parliamentary purposes rather than constituency purposes. The member should also understand - I am sure she does - that there is both an application fee and a charge. The proposed section deals only with a charge. An application fee would have to be paid in any event unless some regulation allowed it to be waived in certain circumstances.

Dr CONSTABLE: I no longer wish to proceed with my amendment and seek to move a new amendment.

Amendment, by leave, withdrawn.

Dr CONSTABLE: I move -

Page 9 - To insert after clause 15 the following new clause to stand as clause 16 -

Charges for access to documents

16. (1) Any charge that is, in accordance with the regulations, required to be paid by an applicant before access to a document is given, must be calculated by an agency in accordance with the following principles or, where those principles require, must be waived -

(a) a charge must only cover the time that would be spent by the agency in conducting a routine search for the document to which access is requested, and must not cover additional time, if any, spent by the agency in searching for a document that was lost or misplaced;

(b) the charge in relation to time made under paragraph (a) must be fixed on an hourly rate basis:

(c) a charge may be made for the identifiable cost incurred in supervising the inspection by the applicant of the matter to which access is granted;

(d) no charge may be made for providing an applicant with access to personal information about the applicant;

(e) a charge may be made for the reasonable costs incurred by an agency in supplying copies of documents, in making arrangements for viewing documents or in providing a written transcript of the words recorded or contained in documents;

(f) a charge must not be made for producing for inspection a document referred to in sections 93 or 94;

(g) a charge must be waived or be reduced if the applicant is impecunious;

(h) a charge must be waived if the applicant is a member of the Legislative Council or of the Legislative Assembly of Western Australia; and

(i) a charge must not exceed such amount as may be prescribed by regulation from time to time.

(2) Subject to section 17, payment of a charge will not be required before the time at which the agency has notified the applicant of the decision to grant access to a document.

Mr D.L. SMITH: The Government is still not able to agree to paragraph (f). The easiest way of dealing with this paragraph would be to put it to a separate vote.

Mr OMODEI: I share the concerns of the Minister. There are 97 members of Parliament in the Legislative Assembly and the Legislative Council. They could be faced with a rush of claims. Their offices could be used for purposes that are not in the spirit of the Bill and members of Parliament could be used by constituents to place an inordinate burden on Government and agencies and, from my Opposition portfolio's point of view, local government authorities. A local authority will not be in a position to recover the costs incurred in providing the requested information if the aggrieved person requests the information through a member of the Legislative Assembly or the Legislative Council. On that basis I cannot agree to the amendment proposed by the member for Floreat. I know she has moved this amendment with the best of intentions. However, on close examination of it one realises that it is unworkable.

I remind members of the impact this legislation will have on local government. This amendment will place a huge burden on local authorities and many of them will not have the facilities to provide individuals with information from their records. An unreasonable constituent may use a member of Parliament to gain access to the information he requires.

The CHAIRMAN: I wish to clarify a point raised by the Minister earlier. If he wants to accept the amendment moved by the member for Floreat with the exception of paragraph (h), I suggest he move a further amendment to delete that paragraph. If the Chamber agrees to

his further amendment it will be far better because, at this stage, we cannot break up the amendment moved by the member for Floreat because I have put it as a total question.

Mr D.L. SMITH: I am happy to do that, Mr Chairman. The member for Floreat agreed that subclauses (1) and (2) of her amendment should read subclauses (4) and (5). In other words her amendment will be an addition to the existing clause and will not precede it.

The CHAIRMAN: I will suspend the Committee to provide the members involved in this amendment with the opportunity to sort out this problem otherwise we will be confused for sometime. It is far better to confine the confusion to a small group.

Sitting suspended from 11.24 to 11.28 pm

Amendment on the Amendment

Mr D.L. SMITH: I move -

That the amendment be amended by deleting paragraph (h).

Dr CONSTABLE: I am mindful of the comments made by the Minister and his concern about this becoming a free for all, with every citizen going to his member of Parliament to seek access to documents free of charge. I am sure people will act more responsibly than that and that will not be the case. This provision is contained in legislation in two other jurisdictions and problems with it have not been anticipated by those relevant Ministers. Therefore, this provision should remain in the new clause.

The comments by the member for Morley were very pertinent in that if members of Parliament do not have access to documents in the way suggested by paragraph (h), they may well be impeded in their work as members of Parliament. We should not put any impediments in the way of members doing their work for their constituencies or in the Parliament. We shall potentially be impeding the work of members and we must make sure that in all circumstances they have access to and are able to scrutinise those documents they need to scrutinise in Government agencies. For that reason, I do not support the Minister's amendment.

Mr D.L. SMITH: I maintain my opposition to the members of the Legislative Council and the Legislative Assembly being free from these charges. However, I am prepared to give an undertaking that I will consider the matter to determine whether a formula could be used which would enable the member for Floreat's concern to be met in relation to members doing their jobs properly, without constituents seeking to get access to documents free of charge.

Mr DONOVAN: I am a bit stunned that members of the Liberal Opposition have taken this view. Although I appreciate members accommodating the bulk of this amendment, I am stunned at what will be a vote of no confidence in members of Parliament by members of Parliament. That will be the effect of voting against the inclusion of that clause. It will be a vote of no confidence in members of Parliament to exercise their responsibilities responsibly. Members may live to regret it.

Mrs EDWARDES: The Royal Commission report has just been handed down and it demonstrated that one of the most serious matters over the past few years has been that much Government information was not readily available. As has been pointed out, many devious ways could be found of denying access to that information by members of Parliament. I accept the principle that members of Parliament through this House should have access to all information. Members are able to collect information in question time, grievances, motions and Select Committees. If the fee were waived for a member who required the information for parliamentary business that would go a long way towards assisting a member of Parliament. However, I am concerned that such a system could be open to abuse. I recognise that it is not intended that the full costs of providing this information will be recovered but in order to avoid the enormous costs that could be incurred, we must properly regulate the situation to ensure that the costs are kept to the lowest reasonable amount. If members of Parliament were given free access to information it could be argued that full and free access should be given to the media which needs such information to do its job. It is appropriate for members to have that access for parliamentary purposes but it could be extended far and wide when dealing with constituents. Members of Parliament should not be put into the position whereby they could be used by constituents to defeat the legislation by

providing free access to Government documentation. It is not a question of members of Parliament voting against members of Parliament. The cost of providing this access to information will be met from the public purse. Therefore, if any constituents wanted to abuse the system through their members of Parliament, those costs would be borne by the taxpayers. I am prepared to accept the Minister's undertaking to consider this as a worthwhile suggestion and to determine whether some means can be found to temper the proposed amendment to allow members of Parliament to have access for their proper and appropriate parliamentary business.

Mr OMODEI: I agree with the member for Kingsley and I welcome the commitment by the Minister to look at ways and means of allowing members of Parliament to properly gain access to information. If the member for Morley were absolutely right, we should not need an information commission because we could use our local member. It would render that part of the Bill useless. The provision proposed by the member for Floreat could be abused by either the member of Parliament as an individual or a constituent using his member of Parliament unfairly.

Mr WIESE: Although I have enormous sympathy for the intent of the amendment proposed by the member for Floreat, we must make a very difficult decision in balancing all factors. We must take the Minister's word that he will consider some mechanism whereby members of Parliament have access to this information for parliamentary purposes at minimum cost. I am aware of too many instances in which freedom of information legislation in other jurisdictions has resulted in such high charges that many people are denied access. I have a feeling that members of Parliament will be the major users of these provisions because it is their role to scrutinise the bureaucracy and Government. Under the provisions of this legislation they will have access to a great deal of material to which they have previously been denied access. Of course, that will especially apply to Opposition parties. In the majority of cases the Opposition will need access to information and will use the freedom of information legislation. I understand the concerns expressed by some members and that should the current Opposition be in Government in the next session of Parliament it will be wearing the charges. It will be the present Government which will, in Opposition, utilise this information. The potential exists for misuse or overuse of freedom of information legislation. It is important that the Minister go away and look closely at some mechanism whereby members of Parliament are not prevented from performing their role because of the charge imposed for information obtained under freedom of information legislation. The potential exists for members of Parliament to be able to access information at no charge, but this legislation has the potential for a severe impact on local government. There will be many occasions, as there are already, on which people wish to get information on the workings of local government or what it is doing behind closed doors or at its committee meetings and are unable to do so.

Local government as a whole will be severely affected financially by the passing of this freedom of information legislation. I believe local government has accepted that fact. It has voiced its concerns to some degree about that aspect of this legislation. From my discussions with local government it has accepted that there is a down side to this legislation but has also accepted that the concept of freedom of information is a worthwhile one so it accepts the need for it and agrees with the Parliament's bringing local government under the requirements of the legislation.

On balance, we must accept that for the moment we cannot pass paragraph (h). We do this on the understanding that the Minister will go away and look at all the possible mechanisms that could be implemented to enable members of Parliament to utilise freedom of information legislation and not be prevented from doing so because of the level of charge imposed. Ultimately the power will come back to the Parliament as it will have the ability to closely scrutinise the level at which fees are set by examining the regulations tabled in this place setting out the details of those charges. The fact that paragraph (h) is removed from the amendment will make it even more important for us as members of Parliament to use our ability to scrutinise regulations closely when those setting fees under this freedom of information legislation are introduced.

Dr CONSTABLE: I am astonished at some of the things I have just heard. First, that we can access this information through the Parliament when it sits for only 20 or 21 weeks a year, which is my experience since I have been here. There is not an awful lot of time, or many

opportunities, to do that in this place. A member may get to ask one question a day for 20 weeks of the year if he or she is lucky. One should look at the answers that members get. It is not a good argument to say there is wonderful access to this information through the Parliament, because there is not great access to documents or information through this place at all. I am surprised that that approach was used as an argument to support the Minister's amendment.

I also find astonishing the suggestion that members of Parliament cannot be trusted. How many people will put in 200 or 300 applications for information? I appreciate what the Minister said in this regard, but do not believe that would happen. Not having this requirement in the legislation will restrict members of Parliament in their work and in accessing documents and understanding what is happening in government. We seem to be tied up with this notion that we will be overly influenced by people seeking to use members of Parliament as a way of getting a freebie. I do not believe that would be the case as members of Parliament are more responsible than that. I agree with the member for Morley that one can say no to a constituent who asks one to do something one does not want to do.

Mr Omodei: And then they go to the next member.

Dr CONSTABLE: That member should be responsible too. That is a strange argument under the circumstances. Given the debate over the Minister's amendment, I would like him to add to his undertaking that he will look at Queensland and Victoria to ascertain their experience in this area. The Queensland legislation was passed in August this year and is a good example for him to look at. If he finds that the arguments presented here today do not hold up, I ask him to review this legislation to ensure that members of Parliament have good, proper and free access to documents and the workings of government.

Mr OMODEI: The member for Floreat still does not seem to grasp the point that local government will be seriously affected by this legislation. State Government agencies can probably well afford to provide this information because the cost is passed on to the general taxpayer. But in local government the cost is passed on to ratepayers. Many local authorities have a small rating base. The member for Floreat does not seem to understand that. Maybe she should take a trip and look at some country shires to see the burdens they face. They will face a negative situation because they will not get cost recovery under this legislation anyway. To give the 12 shires in the south west open access to their seven members of Parliament would place a great burden on them. As I said earlier, it would impact on later clauses in the Bill relating to the information commission.

Mr DONOVAN: I did not intend to speak until the member for Warren rose and drew a giant red herring across this debate. My experience with three local authorities is that they would prefer that members of State Parliament bought out of their business. It raises the question whether councillors on local authorities are required, under the provisions of the motion moved by the Minister, to pay for the information they seek as that is not resolved in this legislation.

Mr Omodei: You are saying that we should just have members of Parliament in this system, are you?

Mr DONOVAN: The member for Warren raised an issue relating to local government. I understand his concern about that. What will he do about councillors who do not receive an electorate allowance? Will they have to pay for information they seek in the exercise of their function as councillors? My experience of local government as a State member is that I actively encourage my constituents in Morley to use their appropriate councillors and see me as the last resort on local government matters -

Mr Omodei: Then why is this clause necessary?

Mr DONOVAN: - or in the next step, where an appeal against a local government decision goes to the Minister, then of course I join that, as no doubt do other members. Surely we should say to people in respect of local government matters that they go to their councillors, but the member for Warren has now raised the obvious dilemma that this poses. Far from throwing out proposed subparagraph (h), perhaps it should be amended yet again to include members of the Legislative Council and Legislative Assembly and councillors of local government authorities, because they will have, by the member's argument, a much bigger problem than will members of Parliament, and they do not have the resources to pay for information.

Mr Omodei: Are you saying that local shire councils do not have access to their own information?

Mr DONOVAN: The member is saying that local authorities will pick up the cost involved in information applications, so what would happen were a person to ask his local councillor to get this information for him?

Mr Omodei: It would be up to the councillor.

Mr DONOVAN: That is what the member for Floreat and I have been saying for the last hour. It is up to members of Parliament in this case to exercise responsibly their responsibilities. It is okay to say no. We can say no to constituents and it will not necessarily cost us 100 votes every time we do it.

Mr Omodei: But a councillor has open access to the record.

Mr D.L. SMITH: I repeat the undertaking which I gave previously. I am prepared to make it as broad as the member for Floreat sought and to include the question of councillors, but I must say in respect of councils that it is worth bearing in mind that the City of Bunbury's revenue is greater than the total of the revenue of the South West Development Authority, the Department of Planning and Urban Development and the Department of Local Government, and I do not think we should treat councils as being as impecunious as the member for Warren sometimes indicates.

Amendment on the amendment put and passed.

Mr WIESE: I am pleased that the member for Floreat was able to put this amendment before the Parliament because it dealt with one of the major factors about which I made strong remarks during the second reading debate. It is important to take note of the cost implications of an individual's trying to access and utilise freedom of information legislation. The amendments moved by the member for Floreat will go a long way towards addressing those problems. Let me say also, because I do not often do it, that I am happy to acknowledge the Minister's role in accepting these amendments in the spirit in which he has. I appreciate his comments about the attempt to waive the charges for Legislative Council and Legislative Assembly members. I have a great deal of sympathy for what he is saying, and he did finally persuade me to agree with him. However, we have had that debate and I will not prolong it.

New clause, as amended, put and passed.

Clause 16: Estimate of charges -

Dr CONSTABLE: I move -

Page 9, line 30 - To insert after "application" the following -

and notify the applicant of the requirement of section 18(1)(b)

Amendment put and passed.

Clause, as amended, put and passed.

Clause 17: Advance deposits -

Dr CONSTABLE: I move -

Page 10, line 18 - To insert after "rights" the following -

(c) the requirements of section 18(2)(b)

Amendment put and passed.

Mr WIESE: I have not had the opportunity of thinking through the requirements of this clause now that we have passed the amendments to clause 16, but I have a suspicion that those amendments may impact upon this clause because, as I understand it, we are looking at an agency's getting a deposit in advance of work being done to provide information under this legislation. The previous amendment to clause 16 provided that there was no requirement for payment unless there was an indication that the information could be provided, and, in that case, many of the matters which are now dealt with in clause 17 may be superfluous. However, despite the fact that that may be the case, I accept the need for some sort of advance deposit to ensure that the agency is paid. I am not sure that by

incorporating into the legislation the requirement that a deposit be paid we are not detracting from the principles outlined in clause 4 of the Bill, which are to allow easy access to documents and to assist the public to obtain access to documents. I have some reservations about this requirement, and I would be happy if the Minister could persuade me, in the way that he did last time, that my fears are groundless.

Mr D.L. SMITH: The effect of subclause (2) of the new clause discussed earlier provides that, subject to section 17, payment of a charge will not be required before the time at which an agency has notified the applicant of a decision to grant access to a document. That new clause is subject to section 17, but my understanding is that, to comply with the intent of the new clause, deposits will be required only in cases where we decide that access will be given. Even though it is subject to section 17 we cannot be in a position to charge a deposit when we cannot grant access. An agency must decide whether access to documents can be granted, and set a deposit fee on the basis of it being some security for part payment of the amount eventually required for access to a document.

Mr Wiese: Is the deposit for the work done first of all in finding out whether access can be given?

Mr D.L. SMITH: No. The intent of the member for Floreat's clause, even though it was subject to section 17, and the intent of the two clauses read together is that a deposit must relate only to anticipated fees for documents for which access is given; we should not be including in the deposit any calculation for documents where access is questionable.

Mr Wiese: What is the basis on which the prescribed rate will be set for charges in those cases that require a deposit?

Mr D.L. SMITH: The first rule is that it is only a deposit. It is not a total fee. Secondly, a deposit would be required only in those cases where there is some suggestion that a person might not pay the charges when the information was available to be provided. That would need to relate to something about an individual.

Mr Wiese: It could relate to the way a person wears his clothes or cuts his hair.

Mr D.L. SMITH: It would be a question of judgment. It would not be on the basis of a person being an impecunious person; impecunious persons are not to be charged. As to those who can afford to pay and there is a reason to believe a person may not pay, whether it is as a result of a past record, the agency will have discretion. If a deposit sought seems to be excessive, the applicant can seek a review by going to the commission.

Mr OMODEI: If a deposit is required on an application, the information being sought would be substantial, or alternatively, as the Minister mentioned, a judgment by an officer might be that a person looks as though he could not afford to pay; but I suspect the amount would be substantial. My concern is that if the applicant were seeking information and part of the information was exempt for any reason, the applicant could finish up with information that was of little relevance or use.

Mr D.L. SMITH: I cannot take the matter further other than to say a deposit is not full payment and the prescribed amount is either a fixed amount or a percentage of the charge. It is only a capacity to request a deposit. Obviously in the case of people who are either regular users or clearly have the means to pay there is no question of a deposit being sought. In some cases where a person may request information and the agency does all the work, and at the last moment the applicant says he does not want the information even though it is available, we must have some means to discourage that sort of situation.

Clause, as amended, put and passed.

Clause 18 put and passed.

Clause 19: Agency may refuse to deal with an application in certain cases -

Mrs EDWARDES: Can the Minister identify what will be regarded as "a substantial and unreasonable portion of the agency's resources" referred to in subclause (1)? Subclause (3) states that if the agency refuses to deal with the access application, it must give the applicant written notice of the refusal without delay, giving details under subclause (4). What is the relationship between this subclause and clause 29(f)?

Mr D.L. SMITH: It is not possible to clearly define a diversion of a substantial and

unreasonable portion of the agency's resources. For example, in the case of a local authority such as the Shire of Boddington, someone could ask for information contained in the minutes relating to the subdivision of land in the east ward. That could mean going back through 110 years of minutes to find reference to such an application regarding land; obviously if the shire has only four staff and it will take two to three staff God knows how long to comply, that would represent a clear case where this clause would come into force. On the other hand, with an agency such as the Health Department where it could take three people to carry out comparable work, one could not say that was an unreasonable diversion of the resources of that department. It is a question of judgment, remembering that it is another matter that can be reviewed by the commission if a decision is thought to be made improperly.

Clause 29(f) deals with decisions to refuse access to documents, the reasons for the refusal and findings of any material questions of fact. It refers to the material on which findings were based. In this case if a reason for refusal was a substantial diversion of resources we would have to detail the resources likely to be diverted and what led one to the conclusion that it was unreasonable.

Clause put and passed.

Clause 20: Nature of information may be considered -

Mrs EDWARDES: The Minister took notice of Opposition recommendations to include the provision that personal information about the applicant may be considered as a factor in favour of disclosure. When an applicant requests access to a document about himself, it relates to personal information, and that should be considered as a factor in determining whether that person should gain access to the document. The Opposition is pleased that the Minister picked up the recommendation.

Dr CONSTABLE: I move -

Page 12, line 17 - To delete "may" and substitute "must".

The word "may" is too weak and leaves too much to the discretion of those making a judgment on whether a person seeking access to personal information would be granted that access. The word "must" is much stronger and would compel the agency to ensure that it considered the application.

Mr D.L. Smith: The amendment is not opposed, although in modern language we would prefer the expression "have to".

Dr CONSTABLE: Surely something is wrong with the provision then?

Mr Wiese: "Shall" is the parliamentary term.

Mr D.L. Smith: I am happy to accept "must".

Dr CONSTABLE: Then I need say little more than, I thank the Minister.

Mr WIESE: The Minister is prepared to accept the word "must", but "shall" would be a much more appropriate word. I see the shaking of heads opposite, and I would like an explanation why the Government is not prepared to consider the word "shall", which is a more parliamentary term. The word "may" gives a degree of flexibility within a requirement, and this applies to many pieces of legislation. When a definite requirement is involved, legislation always refers to "shall" - it is a definite term. A parliamentary explanation of the word "shall" is available, which I am sure I have seen within an interpretation of the differentiation between "may" and "shall". The member for Floreat indicated she wanted a much stronger term, and "shall" will achieve her intent.

Mr D.L. Smith: We are happy to accept either.

Amendment put and passed.

Mr WIESE: I am puzzled by or misunderstand this. It deals with an applicant seeking personal information; however, it indicates that even though the information is personal - they are his or her own files or records - modifiers apply in regard to access. If a person wants access to his or her information, nobody should make a judgment, regardless of the provisions within paragraphs (a) and (b), about that access. It is not a matter of public interest when a person is seeking the disclosure of personal information; that person requires information on himself. It is not appropriate for some bureaucrat to make a judgment on that

person's own file on the basis that the information may have some effect somewhere within the system. After all, we are discussing freedom of information.

Mr D.L. SMITH: This clause is designed to assist in the definition of some of the clauses within schedule 1 dealing with exempted documents. For example, in cases involving intergovernmental relations, exemptions would apply when it is reasonably expected that access could damage the relationship between two governments. Clause 20(a) applies a limit on exemptions with a view to balancing the public interest.

Mr Wiese: For goodness' sake, it is a matter of making available personal information!

Mr D.L. SMITH: Usually the document is made available, but if it were thought that making a document available would interfere with intergovernmental relations, an exemption would apply. An example would be local authority A dealing with local authority B, when authority A held a meeting at which adverse full and frank comments were made about authority B and its personnel; if that document became public as personal information, it might seriously jeopardise the relationship between the authorities. The member may claim that because an individual is seeking that information, it should be made available. However, this clause balances an individual's access with the possibility that such access may militate against the public interest. It is in those cases that an adjudication is made.

Mr Wiese: Does the Minister refer to the personal information of a shire? I would not have thought that personal information would be contained within documentation regarding one shire and another.

Mr D.L. SMITH: It comes down to personal conduct at a meeting. If a person belongs to authority B, but the records of a meeting of authority A mention that person, and an application is made for access, a decision would have to be made about putting the document into the public arena as it may jeopardise the relationship of the authorities. It is a matter of determining what is in the public interest. We must try to balance that up.

Mr WIESE: If that is the case, how will the Government achieve its principle of enabling a person to find out if the information is not misleading if the Government will not make the information available?

Mr D.L. SMITH: The emphasis is on trying to give that person access through the public interest provisions. The information is about him and in a public interest sense he should be given that information. That must be balanced against the general exemption of whether it would be damaging to intergovernmental agencies, although that is probably a poor choice.

Mr Wiese: I would have to agree with the Minister there.

Mr Omodei: Could the Minister consider the point the member for Wagin raised about correcting information that is held by an instrumentality if one cannot get access to that information?

Mr D.L. SMITH: The document exemption exists for some good public policy reason. Where that relates to an individual and the individual is seeking access to information, much greater weight must be attached to the public interest exemption.

Mr Wiese: Despite the fact that the information may be misleading and not accurate?

Mr D.L. SMITH: Yes, there will be some occasions.

Mr Wiese: If that is freedom of information, I am shattered.

Mr D.L. SMITH: I suggest the member for Wagin go through some of the other exemptions and look at those sorts of things.

Mr Wiese: The Opposition has expressed concerns about exemptions.

Mr D.L. SMITH: Yes, and we will deal with those later.

Mr WIESE: The explanation that the Minister has given has probably been one of the most unconvincing I have heard in all the time I have been in Parliament. The Minister has not addressed the matter I raised; in fact, he has reinforced my fears about this clause. It is absolutely staggering that a person can seek information on his own application about his own files held by a bureaucracy and concerning him, and that someone within that bureaucracy can make a judgment that it is not in the public interest that that information be disclosed. The only effect of this clause on a public body is that if it is found that the

information is totally wrong and misleading there may be egg on the face of the bureaucracy which has been required to make the information available. That clause is dangerous because it gives a great many agencies an opportunity to refuse making information available. It defeats the purpose of the legislation to a substantial degree and it goes against the principles that we have all agreed are so important and that are detailed in clause 4. I refer specifically to allowing people to have access to information to ensure that it is accurate, complete, up to date and not misleading. If a bureaucracy can use the provisos of clause 20(a) and (b) as a mechanism to refuse the application of a person, we are going a long way to defeating the purpose of the freedom of information legislation.

Dr ALEXANDER: This is a central point because one of the difficulties I see with this legislation is that, while it promises a lot, it delivers a lot less. If one thinks of the number of State agencies that might hold information that individuals would be concerned about, it does not take long to compose a list of a half dozen, including the Health Department, the Department for Community Services, child and at risk services and several others in that area, which might hold very personal information to which people have a right. If somebody decides it is not in the public interest for those people to have access to information about themselves, I would have thought that would go against one of the fundamental tenets of this type of legislation - and I am cynical about the whole thing, particularly when one reads clause 3 - that is, to allow people access freely and unfettered to information which State agencies may have collected, firstly in the mistaken belief that it was necessary to collect that information, and secondly, they are somehow arguing it is against the public interest to release it. I cannot see the circumstances under which this public interest provision would be justifiable.

Mr D.L. Smith: This clause is about enabling disclosure. It is not about restricting greater disclosure. For goodness' sake do not take the legal advice of the member for Wagin!

Mr DONOVAN: It is not legal advice that I am coming from.

Mr D.L. Smith: The member for Morley should simply read the clause; it is about facilitating disclosure, not restricting disclosure.

Mr DONOVAN: It does not say exactly that.

Mr D.L. Smith: It does say exactly that.

Mr DONOVAN: It says -

> If an applicant has requested access to a document containing personal information about the applicant, the fact that matter is personal information about the applicant may be considered as a factor in favour of disclosure for the purpose of making a decision as to -

The member for Floreat has proved that. The clause continues -

> (a) whether it is in the public interest for the matter to be disclosed; or
>
> (b) the effect that the disclosure of the matter might have.

It does not state upon who or what. The kinds of concern that have been expressed here have been heard several times in the course of the debate.

Mr D.L. Smith: The time to have that debate is in the schedule of exemption not in the clause limiting the schedule of exemption.

Mr DONOVAN: In relation to a child at risk, or a handicapped child, where decisions were made that that child would not be returned to its family for all sorts of reasons based upon assessments by a number of people, including perhaps a social worker in the field, a group worker in the institution, a psychologist's report and perhaps a police report, often times the parents of the child concerned would seek access to their child's file to determine what was being said about them that seemed to have these quite substantial effects. That clause enables the department to say that the effect of disclosure on this matter may have an adverse effect on the child. It may have an adverse effect and it may not. It may also be embarrassing for a member of the Department for Community Development to have the nature of the opinion disclosed. Unless I have totally misunderstood what the clause requires, it seems to me that whereas that parent could certainly establish that the matter was personal, the department could say that it may have an effect, in this case, on the child.

Mr D.L. Smith: That is precisely what the clause does not do.

Mr DONOVAN: The Minister must be the only person in the Chamber who can see that.

Mr D.L. Smith: That is not so.

Mr DONOVAN: If the Minister can convince me of the fact that under no circumstances can this clause be used by an agency or department to make a decision to not disclose, I will have another think about it.

Mr D.L. SMITH: I repeat, the intent of clause 20 is to expand opportunity for people to obtain information about themselves. I refer to exemption 5 under "Law enforcement, public safety and property security", where it states that a matter is exempt if its disclosure could reasonably be expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law. Clearly, if an authority is investigating an offence, and a person writes a report about the conduct of an individual who that person believes has been committing an offence, the intent of exemption 5 is to prevent access for that reason. If information is about an individual in the course of his committing an offence or the investigation affects that individual, exemption 5 prohibits the individual from having that information. The limits on that exemption provide that a matter is not exempt under subclauses (1) or (2) if it consists merely of one or more of three categories and that its disclosure would, on balance, be in the public interest.

The effect of clause 20 is that if the information sought is personal, that should throw the balance in favour of disclosure under that public interest exemption through the security of law enforcement provisions. In that sense, the public interest relates only to limits on various exemptions contained in the schedule. I am afraid the member for Morley has just been misled by the member for Wagin who interpreted the clause as though it were public interest in the general sense.

Mr Donovan: There is no reference in clause 20 to the schedule. It does not say "subject to the application of schedule 1" or anything of that nature. It is a stand alone clause.

Mr D.L. SMITH: The member for Morley must accept the natural meaning of the words.

Mr Donovan: Can it be guaranteed that the Chief Executive Officer of the Department for Community Development will apply that every time according to the way the Minister is explaining it to us? Can the Minister show me the exemption which deals with the Department for Community Development in relation to the custody of children?

Mr D.L. SMITH: It has only the effect of limiting the exemptions where that limit to the exemption is based on a public interest consideration.

Mr Donovan: The clause is a stand alone clause.

Mr D.L. SMITH: It is not. It is a part of a Bill of Parliament and of the schedule of application. The member for Morley should read it. It says that if the applicant has requested access to a document containing personal information about the applicant, the fact that that matter is personal information about the applicant may be considered as a factor in favour of disclosure for the purpose of making a decision as to whether it is in the public interest for the matter to be disclosed. The only way in which the public interest becomes a factor in these matters is in limiting exemption.

Mr Donovan: Should the clause not then say that if the applicant has requested access to a document that may be an exempt matter under schedule 1 which this clause governs -

Mr D.L. SMITH: No. It is apparent on its face that that is what it is about. It is about not only the schedule, but also the whole Act. It is a clause in favour of disclosure. If the member for Morley has concerns about some of the exemptions in the schedule, the time to debate those will be when we debate the exemptions, not in relation to a clause which is meant to limit those exemptions in favour of disclosure.

Dr TURNBULL: This is the first time I have spoken on this very important issue. It is essential that individuals have the right to see their personal information under this freedom of information legislation.

Mr D.L. Smith: That is not so if it is about an investigation of an offence or if it concerns

security where a nutter is running around with explosives and wants to know whether the cops know he has them.

Dr TURNBULL: I have experienced a number of incidents about which I am very concerned in relation to how information is placed on a person's records. The other day I received a telephone call from an officer of the Australian Taxation Office. He said that he was going to request the police investigate a person whom the Taxation Office knew had been in contact with my office. When I asked why, the officer said that a threat had been made to blow up the Family Law Court. That surprised me and I asked why the officer thought that would happen. The reply was that it was on record that the gentleman had threatened to blow up the Family Law Court. After more discussion I ascertained that the day on which he had allegedly threatened to blow up the Family Law Court, he had in fact said, "It is no wonder people say that they will blow up the Family Law Court." One of the most drastic things that is happening with the computerised information service is that statements of which people would rarely have taken any notice are now being recorded.

A similar thing happened the other day. When we tried to find out why a person had no further contact with the taxation department we discovered that it said on his file that he would go bankrupt. In fact, the man did not say he would go bankrupt; he said, "What if I go bankrupt?" However, his record stated that the situation would not progress any further because he would go bankrupt. In both those cases the recorded information was totally false. I know that this takes place in the Department for Community Development because I have been involved in many of the case conferences. Members should see the number of pages of information which, in previous times, would not have been recorded. These days a great many facts on individuals are recorded. The two examples to which I referred are a good indication of the direction in which the Minister is going. I know that nutters are running around, because I must deal with them. However, we also know that innocent people have facts placed on records which they may not know about and which they have no way of finding out. I am not sure that the word "must" is quite strong enough. I am glad that the amendment has been placed in there. However, I am not sure that it will protect people or that it will prevent a police investigation of the kind to which I referred earlier. Therefore, the individual is severely disadvantaged in the recording of material now that any departmental officer can go into a computer and place statements on that computer that have been made in their judgment but are not true.

Mrs EDWARDES: I know the Minister gave several examples, but I will give an example of an abuse under legislation in another State. Prison officers were putting onto prisoners' records full and complete information. It is important to do that particularly when that prisoner will have to go before the Parole Board. The Parole Board is an exempted body, but the Department of Corrective Services is not. Therefore, the documentation was readily available for access by the prisoner through freedom of information legislation. That prisoner was getting former prisoners and, when he got out, he also bashed prison officers and in one instance the family of a prison officer was abused and harassed. That is the type of situation that the Minister is trying to suggest fits within that public safety area.

Mr Wiese: There are already powers within the legislation for portions of that document to be removed so that evidence which will endanger somebody can be removed, but the basic substance of what is recorded can still be made available.

Mrs EDWARDES: I understand what the member is saying. He is testing my powers of being able to link all of the clauses of the Bill. However, there are provisions in the Bill which allow for the editing of information. There have been examples of abuse. The Everett case was one of those examples. If information is refused on the basis of public interest or because of the effect that disclosure will have, and if that refusal is inappropriate or is an abuse of the assessment provision, the applicant can use the internal review sections to have the Information Commissioner properly assess the case. I have great faith that that person will be able to make the right decision, as does the Ombudsman presently in favour of the applicant if an abuse or unfair or unjust decision has been made.

Mr D.L. SMITH: This clause expands the opportunity for disclosure. The idea is that there are various exempted lists of documents, but the limit to some of those exemptions is based on public consideration. This clause ensures that, where the information is personal, extra weight is given to the public interest exemption in favour of disclosure rather than relying on

the primary exemption, whether it is law enforcement, a Parole Board consideration or a mental health-type application. For example, legal practitioners will often be told by their clients that a spouse has threatened to kill them. A legal practitioner can do two things: He can say, "Every wife or husband who comes to see me says that", or he can take it seriously, ring the police, and tell them that Mrs Jones has told him that her husband has threatened to shoot her with a shotgun. The police note the information and go to the home to see whether there is a shotgun, and the husband might want to know where the information came from, what was the information, and what was the basis for the police searching his house for a shotgun. For public interest reasons in terms of the police doing their job and the legal practitioner taking proper security measures on behalf of my client, that information should not become available. If it did, instead of the wife getting shot, the legal practitioner would get shot.

Mr Wiese: Don't you believe that the clause that allows for deletion of exempt matters covers that situation so that you are able to give access to the fact that the information is made available, but the identity and the source of the information can be deleted?

Mr D.L. SMITH: Clauses 20 and 23 are both about increasing disclosure. Clause 20 enables extra weight to be given to personal information that has to be used in favour of disclosure using the public interest exemption. Clause 23 is about broadening disclosure on the basis that, if all of the exempt material can be deleted, the document should still be provided even though the document is nominally exempt because of the other material contained in it. Those clauses are about trying to expand disclosure, notwithstanding the exemptions in the document list in the schedule. If the members for Morley and Collie are concerned about a list of exemptions, the time to deal with those is when we get to the schedule, not under a clause which actually seeks to limit the exemptions in a general way where those exemptions are limited by public interest considerations.

Clause, as amended, put and passed.

Progress

Progress reported and leave given to sit again, on motion by Mr D.L. Smith (Minister for Justice).

MEMBERS OF PARLIAMENT (FINANCIAL INTERESTS) BILL 1989

Returned

Bill returned from the Council with amendments.

House adjourned at 12.51 am (Wednesday)

QUESTIONS ON NOTICE

EDUCATION - FOUR YEAR OLDS
Teachers' Minimum Qualifications

1313. Dr CONSTABLE to the Minister for The Family:

(1) What minimum qualifications are required for teachers of four year olds in Government educational programs in 1992?

(2) What will be the minimum qualifications in 1993?

(3) If the minimum qualifications are to change for 1993, why?

Mr RIPPER replied:

(1)-(2)

Degree or diploma in early childhood care or education from a recognised Australian university or college of advanced education or overseas equivalent as determined by the Child Care Services Board; two year certificate in child care studies or associate diploma in child care or equivalent as determined by the Child Care Services Board; registered mothercraft nurse or holder of a mothercraft nursing qualification, or equivalent as determined by the Child Care Services Board.

(3) Not applicable.

SCHOOL BUSES - BUDGETED EXPENDITURE

1341. Mr McNEE to the Minister representing the Minister for Education:

(1) With reference to question on notice 1204 of 1992, would the Minister provide the balance of the information requested in question 1 parts (a) and (b): that is, provide a detailed breakdown of the major elements of the budgeted expense on the transport of school children for each of the years -

(a) 1990-91;

(b) 1991-92;

(c) 1992-93?

(2) Would the Minister answer my original question part 2 with regard to the budgeted expense for transport of school children, and explain why such a meagre increase in school transport funding was decided upon?

Dr GALLOP replied:

The Minister for Education has provided the following reply -

(1) Expenditure on transportation of school children funded by the Ministry of Education budget is as follows -

	1990-91 Actual	1991-92 Actual	1992-93 Estimate
Item - Contract Payments	32 723 900	34 006 177	34 650 000(1)
Transperth Special Hire	960 603	789 006	600 000
Fare Concessions RPTs	1 548 829	2 478 103	2 700 000(1)
Conveyance Allowance	382 306	381 444	380 000
Salaries	537 005	525 896	530 000
Other	137 974	95 965	93 000
Total	36 290 617	38 276 591	38 953 000(2)

(1) Increased expenditure on new public services correspond with reductions to contract payments.

(2) Fare concessions for Transperth are funded through Division 12 - Miscellaneous Services of the Consolidated Revenue Fund Estimates.

(2) The allocation for 1992-93 is based upon the ministry's estimate of the cost of providing existing services and new services, excluding the additional costs associated with implementing the voluntary full time preprimary program which will be funded from a separate allocation.

HOMESWEST - REGIONAL CENTRE ESTABLISHMENT
Broome Location in Preference to Derby

1371. Mr COURT to the Minister for Housing:

(1) Has Homeswest chosen Broome in preference to Derby to establish its regional centre?

(2) If yes, for what reason was Broome chosen when Derby offers more suitable facilities as a backup to the establishment of a regional centre?

Mr McGINTY replied:

(1) Yes.

(2) In considering the locality for its Kimberley regional office, Homeswest has not overlooked the location of regional offices of other Government departments. Both Broome and Derby offer attractions to Government and business alike. There are a number of reasons for Homeswest choosing Broome and they include the fact that Homeswest controls some 766 tenancies in Broome as opposed to 508 in Derby. The demand and growth for public housing in Broome is indicated by the resulting building program for 1991-92 of 17 in Broome and eight in Derby, and the proposed 1992-93 program of 48 in Broome and 11 in Derby.

SCHOOLS - PRIMARY
Library Automation Program

1409. Mr HOUSE to the Minister representing the Minister for Education:

(1) Is the ministry undertaking a program to automate libraries and resource centres in primary schools?

(2) Which primary schools will be upgraded?

(3) What is the total cost of this program?

(4) How many years will this program take to be implemented?

(5) Will the ministry be fully funding the above automation program?

(6) If no -

(a) where will the additional funds come from;

(b) what proportion of the above total cost will the ministry's contribution be?

Dr GALLOP replied:

The Minister for Education has provided the following reply -

(1) Yes.

(2) Primary schools which are scheduled for new library buildings and those which make a school decision to participate in the program.

(3) The total cost of the program for the ministry comprises the following -

An allocation of $13 130 for new primary school library buildings for automation equipment and training.

Central costs for the school library automation project of $1 178 326, plus annual support costs of approximately $140 000 over a period of five years.

Moneys deployed by schools from the school grant for the purchase of hardware, installation, maintenance and training.

(4) The implementation timeline is decided by schools. The free supply of software to schools through the school library automation project will be available until June 1996.

(5) Refer answer to question (3) above.

(6) Not applicable.

[See tabled paper No 557.]

GOVERNMENT EMPLOYEES SUPERANNUATION FUND - CHANGES

1441. Mr STRICKLAND to the Minister assisting the Treasurer:

(1) Is the Government considering any changes to the Government Employees Superannuation Fund which are similar to changes introduced in New South Wales?

(2) If so -

(a) what matters are being considered;

(b) when is legislative action likely?

Dr GALLOP replied:

(1)-(2)

No. The New South Wales Government's initiatives have been made in response to the superannuation guarantee charge and need to be considered in the context of that State. The cost to Government of superannuation in NSW is significantly higher than in Western Australia due to a higher cost of contributory superannuation per member and greater employee participation in contributory superannuation. The application of the SGC to the Western Australian public sector raises a number of significant administrative issues, including scheme design, and it is from this aspect that the Government is considering the SGC arrangements rather than a change to the general policy approach. To implement the SGC arrangements will require legislation in the next session of Parliament and before 15 August 1993.

SWAN VALLEY POLICY PACKAGE - PURPOSE; ASSISTANCE

1474. Mr HOUSE to the Minister for Agriculture:

(1) What was the purpose of introducing the Swan Valley policy package?

(2) What type of assistance was made available under this package?

(3) What was the eligibility criterion for this assistance?

(4) For each year that the package has operated, can the Minister outline the following -

(a) the number of applicants for assistance;

(b) the number of successful applicants;

(c) the average amount of assistance per applicant;

(d) the total amount of assistance provided?

Mr BRIDGE replied:

(1) To assist eligible growers in the Swan Valley policy area to increase the production of table grapes for export.

While primary targeted at increasing production for export, financial assistance will also aim to improve the competitiveness of Western Australian table grapes on export markets and the overall viability of growers.

To assist eligible growers in the Swan Valley policy area to develop more efficient irrigation systems which will also encourage groundwater conservation in the Swan Valley.

(2) Loans at a concessional interest rate of nine per cent for -

The installing, upgrading or purchasing of planting material, trellising, reticulation and water supply, and cool storage facilities to produce table grapes for export markets.

The introduction of more efficient irrigation systems.

(3) Applicants must demonstrate that the proposed improvements to be installed under the policy will create sound prospects for long term commercial viability.

Applicants must demonstrate that financial assistance provided under the policy will contribute to the applicant becoming a significant producer of table grapes, wine grapes or dried fruit.

The eligibility of an applicant for assistance for one form of improvement will not necessarily be affected by his application or assistance already received for another form of improvement under the policy.

Additional eligibility criterion for irrigation improvements - ·

Applicants must be grape growers who rely primarily on income from the production of fruit grown in the defined policy area.

Additional eligibility criterion for increasing production of table grapes for export -

Applicants must be table growers relying primarily on income from the production of grapes grown in the defined policy area.

Applicants must demonstrate an ability and an intent to supply a minimum of 1 000 cartons of table grapes to export markets in future seasons or such other minimum as determined by the Rural Adjustment and Finance Corporation on advice from the Department of Agriculture.

(4)

ar	Received	Approved	Average Assistance per Applicant	Total Ye Assistance
1989-90	3	3	$32 333	$97 000
1988-89	1(+2BF)*	3	$27 800	$83 000
1987-88	9	9	$31 089	$279 800
1986-87	7	6	$25 500	$153 000
1985-86	14	10	$19 674	$196 740

* BF - Applicants brought forward from the previous year.
(Scheme opened 21 October 1985).

WATER AUTHORITY OF WESTERN AUSTRALIA - WINDICH ROAD, BULLCREEK, FIVE YEAR CAPITAL WORKS PROGRAM LISTING

1477. Mr MacKINNON to the Minister for Water Resources:

(1) Is the area around Windich Road, Bullcreek, listed on the five year capital works program for the Water Authority of Western Australia?

(2) If so, when is this work expected to commence?

(3) If it is not listed, why not?

Mr BRIDGE replied:

(1)-(2)

This area is not on the Water Authority's sewerage five year capital works program.

(3) This area is not listed because of limited funds.

SENIOR CITIZEN CENTRES - NUMBERS AND LOCATIONS

1488. Mr COWAN to the Minister for Seniors:

(1) How many senior citizens centres are there in Western Australia?

(2) Where are they located?

Dr WATSON replied:

(1) The Office of Seniors' Interests has information on 80 Senior Citizen Centres in Western Australia.

(2) They are located in -

Metropolitan -

Armadale/Kelmscott	Heathridge	Perth
Balga	Innaloo	Queens Park
Bassendean	Inglewood	Quinns Rock
Bayswater	Kalamunda	Riverton
Belmont	Kwinana/Medina	Rockingham
Bentley	Langford	Scarborough
Canning Bridge/Mt Pleasant	Lockridge	Shenton Park
Applecross	Mandurah - two	South Perth
Cannington	Manning	Subiaco
Carlisle	Maylands	Two Rocks
Cottesloe	Melville	Victoria Park
Dianella	Midland/Swan Districts	Wanneroo
Duncraig/Sorrento	Morley	Warwick
East Perth	Mundaring	Wembley
Forrestfield	Nollamara	Westfield
Fremantle	North Beach	Whitfords
Girrawheen/Koondoola	Osborne Park	Willetton
Gosnells	Palmyra	Willagee
Hamilton Hill		

Country -

Albany	Esperance	Moora
Australind	Geraldton	Morawa
Boddington	Harvey	Narembeen
Broome	Kalgoorlie	Narrogin
Bunbury	Karratha	Northam
Busselton	Katanning	Pinjarra
Collie	Kojonup	Waroona
Corrigin	Mandurah	
Derby	Merredin	

BUDGET PROGRAM STATEMENTS - ACHIEVEMENTS FOR 1991-92
Feasibility Study in the National Call for Registrations of Expertise

1490. Mr McNEE to the Minister for Water Resources:

With reference to the 1992 Budget Program Statements, page 632, Achievements for 1991-92 -

(a) exactly what was specified to be examined by the feasibility study in the national call for registrations of expertise;

(b) will the feasibility study be examining only these matters;

(c) how many registrations were received;

(d) would the Minister provide a list of the areas of expertise that have been registered to date?

Mr BRIDGE replied:

(a) An information paper was prepared to assist individuals, companies and institutions interested in submitting registrations of interest regarding the feasibility study. That paper identified the primary objective as set by the management and advisory board, namely -

"To recommend to Government actions to maximise the value to the community from development of the Kimberley Water Resources".

In addressing that objective, the board determined the study's initial phase will -

research market opportunities for water and water related purposes;
review population and economic growth projections;
determine the impact of water resource options on decentralisation;
review and investigate alternate water sources;
compare water from the Kimberley with alternate sources;
examine transport options;
consider energy requirements;
identify capital and operating costs.

(b) Although a flexible approach to the feasibility study is being maintained by the board, the first stage of the study will concentrate on the areas identified at (a) above.

(c) Sixty nine.

(d) Due to the multi-disciplinary nature of the feasibility study and excellent response received, a broad spectrum of expertise has been registered. Key areas of expertise include engineering and project management, agriculture, planning, resource development, water management, mapping and surveying, environmental science, management, statistics and computing, communications, finance, the law and accountancy.

BUDGET PROGRAM STATEMENTS - PROGRAM DESCRIPTION
Water Resources Development Areas

1491. Mr McNEE to the Minister for Water Resources:

With reference to the 1992 Budget Program Statements, page 631, program description -

(a) would the Minister provide a list of the other areas of Western Australia which the Kimberley Pipeline Management and Advisory Board will be considering for development with the water resources of the Kimberley region;

(b) would the Minister provide a list of the alternate water supply options which the Kimberley Pipeline Management and Advisory Board will be addressing;

(c) (i) to what extent will the underground water resources of the Canning Basin be explored;

(ii) will any exploratory drilling be undertaken?

Mr BRIDGE replied:

(a) The board has not set any geographical or regional limitations in approaching its task of identifying potential market opportunities for water and water related purposes.

(b) All alternate water supply options will be considered after potential market opportunities have been identified. These water supply options are -

surface
underground
desalination
waste water reuse.

(c) (i)-(ii)

It is not within the feasibility study's scope of work or budget to undertake exploratory drilling.

SCHOOL BUSES - QUESTION ON NOTICE 1204
School Transport Funding

1493. Mr McNEE to the Minister representing the Minister for Education:

(1) With reference to question on notice 1204 of 1992, would the Minister provide the balance of the information requested in number 1, parts (a) and (b), that is, provide a detailed breakdown of the major elements of the budgeted expense on the transport of school children for each of the years -

(a) 1990-91;

(b) 1991-92;

(c) 1992-93?

(2) Would the Minister answer number 2 and explain why such meagre increase in school transport funding was decided upon?

(3) Is there sensitivity of the operational costs of the school bus industry to fluctuations in the Australian dollar which affects fuel prices and the cost of replacement vehicles and parts?

(4) Has the Minister taken into consideration the fact that despite the record low inflation rate for the preceding period, the transport index for the 12 months ending 30 June 1992 was 4.2 percent?

(5) Although the Minister admits the Minister's department does not yet have accurate details on the numbers and locations of students that will be participating in the full-time five year program, has any provision been made in the budget to cater for additional students and increased distance travelled as a consequence of 5 year olds being eligible for school transport on a full time basis?

Dr GALLOP replied:

The Minister for Education has provided the following reply -

(1)-(2),(4)
See reply to question 1341.

(3),(5)
Yes.

SALMON - CATCH FOR PROFESSIONAL FISHERMEN

1498. Mr HOUSE to the Minister for Fisheries:

For the years 1989-92 (inclusive) can the Minister provide the House with the salmon catch for professional fishermen for the -

(a) south coast;

(b) west coast?

Mr GORDON HILL replied:

(a)	1989	1 147 tonnes	
	1990	1 392 tonnes	
	1991	1 277 tonnes	
	1992	852 tonnes	(preliminary estimate)
(b)	1989	29 tonnes	
	1990	201 tonnes	
	1991	484 tonnes	
	1992	350 tonnes	(preliminary estimate)

HERRING - CATCH FOR PROFESSIONAL FISHERMEN

1499. Mr HOUSE to the Minister for Fisheries:

For the years 1989-92 (inclusive) can the Minister provide the House with the herring catch for professional fishermen for the -

(a) south coast;

(b) west coast?

Mr GORDON HILL replied:

(a)	1988-89	1 061 tonnes
	1989-90	1 0927 tonnes
	1990-91	1 371 tonnes
	1991-92	Not available

(b)	1988-89	211 tonnes
	1989-90	101 tonnes
	1990-91	90 tonnes
	1991-92	Not available

QUESTIONS WITHOUT NOTICE

STATE GOVERNMENT INSURANCE COMMISSION - INDUSTRIAL DISEASES FUND

Outstanding Claims Liabilities; Actuarial Report Tabling

436. Mr KIERATH to the Minister assisting the Treasurer:

I refer to the State Government Insurance Commission and the industrial diseases fund. In his Press statement the Minister said that $6.9 million had been allocated to outstanding claims liabilities.

(1) Who calculated the outstanding claims liability?

(2) Was an actuary employed?

(3) Will the Minister table the actuarial report?

Dr GALLOP replied:

(1)-(3)

The accounts of the State Government Insurance Commission were tabled in Parliament earlier this year. They outlined the general details of the outstanding claims of the SGIC, and of course the assets of that body. I have been advised that the difference this year was that a 10-year projection was made to discover what the appropriate claims would be so that allowances could be made in the books of the SGIC. That was properly calculated. I will take the question on notice and find out for the member how the calculation was carried out and who performed the calculation.

SICK LEAVE PROVISIONS - REDUCTION PLANS

437. Mr RIEBELING to the Premier:

Does the Government plan to reduce sick leave provisions for Western Australian workers?

Dr LAWRENCE replied:

The Government has no such intention. It has no intention at all to reduce, remove or in any way diminish sick leave provisions for Western Australian workers. It is clear from recent material that there is some serious cause for suspicion of the Liberal Party's intentions in this matter. We have seen a lot of ducking and weaving, particularly by the shadow spokesman and particularly since Mr Kennett announced his very punitive industrial relations proposals. Many people - employees particularly - have been looking with anxiety at what is going on in Victoria and wondering whether the Liberal Party might have plans in other States and Federally to move on those provisions.

I am sure members are aware that about 100 000 people made their views very clear in Victoria today about the proposition that a Liberal Government would in a punitive way reduce the provision that had formerly applied to them. The story we hear in this State is, "Don't worry about it. That won't happen here. That is for the Leader of the Opposition and the member for Riverton. Don't worry; I am not Jeff Kennett. I will not do it. Not here!"

Mr MacKinnon: Are you Joan Kirner?

Dr LAWRENCE: Absolutely not. As I said before, I am not Joan Kirner; this is not Victoria, and the Eagles are not Geelong, but we must know from the Liberals their intentions. Dr Hewson does not want to know about Jeff Kennett either, and says he is not Jeff Kennett. Looking at Jeff Kennett one could wonder

whether he knows he is Jeff Kennett; given the Liberals' ritual of disowning him and his policies, everyone is running in every direction. I was very interested to note an advertisement in a regional newspaper by the Liberal candidate for Northern Rivers. Here is the true agenda emerging. The candidates are being told this is their policy. Mr Dudley Maslen, a former member of this House and candidate for Northern Rivers, who I presume is receiving material from the Liberal Party, said -

> I hope Western Australians will be mature enough to realise that the privileges of 17.5 per cent loadings, penalty rates on weekends, sickies and the like are no longer affordable, and accept the fact that early self-discipline and self-sacrifice is far better than inevitable depression, if such luxuries are further squandered.

That is the agenda - leave loading, penalty rates, sick leave, the sorts of provisions that the Opposition is telling us it will not apply.

Several members interjected.

Mr Kierath: Who said that?

Dr LAWRENCE: He is a Liberal candidate, a former member of this House. This is a paid advertisement.

Mr Kierath interjected.

Dr LAWRENCE: I see. He is a Liberal candidate and he is running his own policy. I have seen that happen before but in this case I do not believe it.

Several members interjected.

The SPEAKER: Order! During question time I will adopt a new policy for the next three weeks. It will be a 12 question policy, and in order to deal with that number of questions the members on either side of the House who simply ignore my reasonable requests for order will not get the call during that question time. I will not see them.

ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT AND OTHER MATTERS - FEES PAID TO LAWYERS

Premier's Letter and Response

438. Mr TRENORDEN to the Premier:

Further to the answer that the Premier gave to this House relating to question without notice 397 on 22 October when she undertook to write to the Royal Commission asking it to release details of the individual fees paid to lawyers employed to assist the Royal Commission -

(1) Can the Premier confirm that she sent the letter?

(2) Can the Premier outline the response she received from the commission on this matter?

(3) Can the Premier table both her letter and the commission's response?

Dr LAWRENCE replied:

(1)-(3)

It is fairly obvious that I do not carry the letter in my pocket but I am happy to supply a copy of it. I have sent a letter in those terms to the commission; at this stage I have not had a formal response across my table. Therefore I am not in a position to oblige the member in relation to the second matter; I can in relation to the first.

STRIKE, VICTORIA - IMPACT ON LABOR'S RECORD INDUSTRIAL PEACE

439. Mr P.J. SMITH to the Minister for Productivity and Labour Relations:

How will today's strike in Victoria impact on the record industrial peace achieved by Labor Governments over the past nine years?

Mrs HENDERSON replied:

It is unfortunate indeed that having achieved a 65 per cent reduction in time lost as a result of industrial disputes over the last 10 years that 100 000 Victorians today felt moved by the lack of fairness in industrial relations legislation introduced in that State to take to the streets and march in protest. People are gradually becoming aware of some of the issues raised in Victoria; for example, if a person injures himself travelling to or from work he will no longer be eligible for workers' compensation. That was wiped out by the stroke of a pen in a piece of legislation which was put through that House in the middle of the night. In addition, leave loadings have been slashed, penalty rates are to be slashed, and the award system is to be totally overturned. As more and more ordinary people find out the true extent of the industrial relations policy that the Victorian Government is enacting, more and more people are aware that the Government is cutting into the base rate of pay for the average working person. One hundred thousand people took to the streets in Victoria today to show their anger against that kind of industrial relations system. They have the right to do that.

Following the comments by the Liberal candidate for Northern Rivers about sickies being a luxury, he went on to say that the causes of the general strike in Victoria against measures to rationalise the labour market are almost treason. That is, it is almost treason to walk in the streets and express disaffection with measures designed to reduce the living standards of ordinary Australians. It is about time the Liberals in this House came clean on this issue. The Liberals have been trying to put a softer face on their policies. Interestingly, last week's *Northern Guardian* stated that Mr Kierath conceded that the thrust of the Western Australian Liberal Party's industrial relations policy was in the same direction as that of the Victorian Liberal Government's.

PETITION PRESENTED BY HON JOHN HALDEN - PREMIER'S PRIOR KNOWLEDGE OF

440. Mrs EDWARDES to the Premier:

Did the Premier have any knowledge of the petition tabled in the other place by Hon John Halden, tabled Paper No 552, prior to its tabling at 2.35 pm Thursday 5 November and, if so, when?

Dr LAWRENCE replied:

This is a matter that must be dealt with extremely carefully and I hope all members of the House will do so. I did not see that in evidence earlier this afternoon. It is the case that Hon John Halden presented a petition to the House. As I understand it he has made a clear and detailed statement this afternoon of the processes involved in that.

Mrs Edwardes: Did you know about it prior to the petition being tabled?

The SPEAKER: Order!

Dr LAWRENCE: Just a minute, member for Kingsley. After discussions with the petitioner and on the advice of the Clerk of the Legislative Council, Hon John Halden adopted the appropriate processes and tabled the petition at a time of his choosing. I was informed that he was to do that and I learned the detail of the petition and its general thrust upon its tabling. That is the way it is, and that is the way I have explained it; that is the position.

Mr Lewis: Do you think people will believe you?

Dr LAWRENCE: This is a very significant matter because a member in this case, has acted according to, in his eyes, the responsibilities he had as a member of Parliament.

Mr Court: Outside of the House he has a problem.

Dr LAWRENCE: That is another matter, and I know that members opposite are

litigious. We have had the member for Kingsley with a couple of writs and at this stage it is 3:1. The Opposition is winning in the suing stakes, but members need to be very careful not to take advantage of the very sad and tragic circumstances that have faced a family today, or to attempt to malign an individual or a party as the Leader of the Opposition attempted to today. I was extremely surprised at the attitude that he took in his statement, and very disappointed that he should have sought in this moment of tragedy for the family to attempt to apportion blame and responsibility in the way that he did. That is in my view -

Mrs Edwardes: That is gutter politics.

Dr LAWRENCE: The member for Kingsley should speak for herself. That is a most improper way to behave in this matter. As I understand, Hon John Halden has outlined the matters today and the Government in the upper House has agreed to a Select Committee of Privilege to determine whether the petition was correctly put forward and correctly put together. For the Parliament to ask that question is a quite proper course of action but one should not, as the Leader of the Opposition has done, rush to judgment in the most unfortunate manner.

PETITION PRESENTED BY HON JOHN HALDEN - PREMIER'S STAFF PROVIDING INFORMATION TO MEDIA

441. Mr KIERATH to the Premier:

Did any of the Premier's staff, advisers or officers including the media officers, provide information or assist in any way any member of the media in relation to the petition signed by Brian Easton and presented to the Legislative Council?

Dr LAWRENCE replied:

Obviously once the petition became public knowledge members of my staff, I presume media staff particularly, would have been approached.

Mr Lewis interjected.

Dr LAWRENCE: Of course the member sees - once it became public knowledge, that is the case. I presume they were approached and I can check exactly what approaches were made to them and under what circumstances. Again, it is important for members opposite to recognise the role of a parliamentarian and his rights and responsibilities. They are the subject of scrutiny in the upper House. Members opposite may feel they can make political capital out of this. They are doing so in a most unpleasant and unfortunate way and I believe that it will rebound on them.

FISHERIES, DEPARTMENT OF - ESPERANCE PROCESSING LICENCES APPROVAL

442. Mr AINSWORTH to the Minister for Fisheries:

Could the Minister advise whether the applications currently before the Fisheries Department for two processing licences at Esperance have been approved and, if not, why not?

Mr GORDON HILL replied:

The member for Roe would probably be aware that these matters are usually dealt with by the Executive Director of the Fisheries Department without reference to me. I am not aware of the applications and I will investigate and advise the member.

AUSTRALIAN LABOR PARTY - DONATION FROM STATE SUPERANNUATION BOARD
Repayment of Funds and Interest

443. Mr LEWIS to the Treasurer:

I refer the Treasurer to her undertaking that the improper donation of $75 000

from the State Superannuation Board to the Australian Labor Party will be returned and ask -

(1) Will the Australian Labor Party also repay to the Superannuation Board the $79 043 that has accrued in interest compounded at 10 per cent in the seven years since the date of the improper donation?

(2) If not, will the Government take the necessary action to recover at law the interest moneys that have been foregone by Government superannuants and, if not, why not?

Dr LAWRENCE replied:

(1)-(2)

On the day the Royal Commission report came down I made it very clear that it was my view that the Australian Labor Party had a moral obligation to repay those funds. I said also at the time and repeated subsequently - indeed in answer to questions - that the ALP's legal advice was that since it had been unaware of the source of the donation it could in fact argue the case quite successfully in court that it was not required to repay it, and that was its view. Nonetheless, I believed it had a moral obligation to repay it and it took the view that was appropriate as well and has already done so. To suggest there should be additional penalties when the ALP unknowingly received those funds and had legal advice that would allow it to challenge any repayment is going too far, and the member for Applecross knows it.

GNURAREN ABORIGINAL COMMUNITY - INQUIRY

444. Mr BLAIKIE to the Premier:

It is now some three weeks since I asked the Premier a question without notice about a request made to her to have an inquiry into the Gnuraren Aboriginal community. Can the Premier advise what action is to be taken or has she forgotten?

Dr LAWRENCE replied:

I have not forgotten and immediately upon leaving the House I inquired as to the progress of that matter and asked that I be informed. At this stage I have not had a reply to that request, and again I undertake to inform the member as soon as I have a reply.

SCHOOLS - PRIVATE COMPANIES FINANCING, BUILDING AND OWNING SCHOOLS TO BE LEASED BY GOVERNMENT

Kirner Government Leasing Agreements

445. Dr CONSTABLE to the Premier:

I refer to the Premier's recent announcement that private companies would finance, build and own schools to be leased by the Government. Can she reconcile this decision with the recent comments by Alan Wood, economics editor of *The Australian*, that such leasing agreements were one of the several devices used by the Kirner Government to understate its deficit and debt?

Dr LAWRENCE replied:

That is a matter that the member for Floreat should examine very carefully. It is not the fact of leasing that is the problem, it is the way that was undertaken by the Kirner Government to avoid falling within the general provisions of the Loan Council, to avoid apparently disclosing the extent of some of those liabilities. At the last Loan Council meeting, and this has been confirmed by Treasury in recent guidelines to all departments and agencies, all such arrangements, of which there are very few in Western Australia, are required to be carefully discussed before they are undertaken and approved by Treasury. They must as a matter of course be added up when we are considering our total allocation for global borrowings. The guidelines were agreed by all the Premiers and the Treasurer at the last Loan Council meeting. It is not inconsistent with those agreed provisions and it is not similar to what

occurred in Victoria where there was apparently a quite systematic attempt to bring those leasing arrangement provisions outside the global borrowings provisions required under Loan Council arrangements.

EDGELL BIRDS EYE - GOVERNMENT ASSISTANCE

446. Mr HOUSE to the Deputy Premier:

(1) Has Edgell-Birds Eye been provided with or promised financial or other assistance by the Government arising out of the Department of State Development's report to the Minister regarding the potato industry?

(2) Has he or the Government received a written or any other guarantee that the Edgell-Birds Eye factory will remain in Western Australia should the Marketing of Potatoes Act be amended as suggested by the Deputy Premier?

Mr TAYLOR replied:

(1) Edgell-Birds Eye has already ordered $1 million of additional equipment for that factory, including water cutting knives. No requirement exists for Government assistance for that part of the package. However, I expect that Edgell-Birds Eye will be putting forward a proposition to the Government to support that important expansion in the food processing industry in Western Australia.

(2) I certainly have received a letter from Edgell-Birds Eye indicating that it is prepared to invest $10 million to $11 million, if I recall correctly, in the expanded plant at Manjimup. That would be on the basis of doing away with the Western Australian Potato Marketing Authority as a precondition to that investment.

LEADER'S ACCOUNT - PREMIER'S ELECTION CAMPAIGN 1986 FUNDS
Bank Cheque Payment - Question Out of Order

447. Mr SHAVE to the Premier:

(1) Will the Premier inform the House what expenses relating to her 1986 election campaign were paid for by bank cheque purchased with funds provided by the leader's account by the then Premier, his staff or any other authorised party?

(2) If not, will the Premier inform -

Mr Pearce: Do you ever talk to the Leader of the Opposition about not throwing mud?

Mr SHAVE: It is a legitimate question.

Mr Pearce: They are legitimate questions when you ask them; not when we ask them.

Mr SHAVE: I know it is a sensitive issue. To continue -

If not, will the Premier inform the House of the amounts which were paid by bank cheques purchased with funds provided by the leader's account for her campaign expenses?

The SPEAKER: Before I call on the Premier to answer that question I would like to see it. At this stage, I am not convinced that it is appropriate to ask that question of the Premier in her position as Premier.

WESTERN AUSTRALIAN TOURISM COMMISSION - RELOCATION OF REGIONAL OFFICES

448. Mr WATT to the Minister for Tourism:

(1) Given the Premier's statement in Albany on Friday concerning regional offices of the Western Australian Tourism Commission, can the Minister give the House an estimate of additional costs that will be incurred in reopening offices and relocating staff who have already moved back to the regions?

(2) When will the final decision be made on the future of those offices?

Mrs BEGGS replied:

(1)-(2)

The decision to relocate regional offices into the biggest marketplace for tourism was made in absolute good faith. The Premier and I still support that decision and think it is the best way for the Western Australian Tourism Commission to market regional areas from Perth.

Mr Cowan: Shouldn't we be marketing Perth from Sydney?

Mrs BEGGS: The Government does market Perth from Sydney, and it also markets Perth from Melbourne and Singapore. However, owing to the fact that the biggest market for regional tourism is Perth - 76 per cent of all bed stays in regional areas are from metropolitan based people - the policy is absolutely correct.

Several members interjected.

The SPEAKER: Order! I want to hear the Minister's answer.

Mrs BEGGS: In responding to concerns from some shire councils which said that my decision flew in the face of the commitment that the Government had given about the "Save Our Towns" people in removing some public servants from various regional towns, the Premier rightly gave a commitment that she would look at it again. The Premier and I have discussed this matter at length. I have no problem with the review. However, the Premier and I are convinced that the number of public servants in those towns, particularly in Albany, compared with the number in 1983 has increased dramatically. The same also applies to Bunbury and Kalgoorlie where the number of public servants compared with the figures in 1983 has increased.

Mr Watt: The number in Albany was also much higher in 1983 than it was in 1974; that is a silly argument.

Mrs BEGGS: Yes, it was higher. However, if the member is saying that it is more important to have one public sector paid person in a town compared with the economic benefit if there is a threefold increase in the number of tourists who go to a particular town, the member for Albany has it wrong.

Several members interjected.

Mrs BEGGS: Do members opposite want to hear my answer or do they just want to yell? A case exists, one which the Premier has reflected in her statement to review the decision where some local authorities are saying not enough tourism expertise exists in those towns to encourage and foster the development of tourism infrastructure. As I have said publicly, that is now a role, in the case of Albany, for the Great Southern Development Authority; in the case of Bunbury, for the South West Development Authority; and in the case of Geraldton, for the Geraldton Mid-West Development Authority. It may be necessary to give a specific role to those development authorities to take an interest in the development of tourism infrastructure.

The Premier and I do not often disagree on matters. However, I think the maturity of the tourism industry in regional areas has reached a stage, particularly with the sort of expertise that occurs in the local authorities, where the local authorities in arguing against this issue are underselling themselves.

The SPEAKER: The question posed by the member for Melville to the Premier a moment ago is out of order.

POLL TAX - GOVERNMENT CONSIDERATION

449. Mr RIEBELING to the Premier:

Is the Premier aware that the State National Party is considering a poll tax, and will her Government consider a poll tax?

Dr LAWRENCE replied:

I am always entertained by the Opposition's attitude to Press statements -

An Opposition member: That wasn't a Press statement.

Dr LAWRENCE: - or the reporting of members' comments.

Mr Wiese: I was misquoted!

Dr LAWRENCE: It was not misquoted. The issue is one of significance. Members have seen an example of what occurred when a Government tried to introduce a poll tax, effectively a head tax, in the United Kingdom to replace various forms of local government rates. I was mightily surprised -

Mr Cowan: So were we!

Dr LAWRENCE: - that this appeared to be a proposition being entertained by the National Party. The article in *The Karratha Guardian* on 4 November 1992 headed "Nationals to consider poll tax" states that the community will have the opportunity to comment on the poll tax. As the story states -

> The National Party has committed itself to a public inquiry to alternatives to rates as a source of local government funding.
>
> Party spokesman on local government, Bob Wiese said the inquiry was needed given the desperate financial straits with which most municipalities were contending.
>
> "Obviously some sort of poll tax is one option which is bound to be raised . . .

Therefore, that is an option which the National Party wants this State to consider at some time if it has the opportunity to raise it. It is all very well for National Party members to say now that they are being misquoted and that the headline does not represent their position, but the member concerned clearly raised it and I am astounded that he did so given the reception of a poll tax in the United Kingdom. It is an indication of the secret agenda which has been seen from the Liberal Party.

Several members interjected.

The SPEAKER: Order!

Dr LAWRENCE: With due respect to Bob Wiese, the member for Wagin, it is a crackpot idea and should be put back in the bottom drawer.