clause will break new ground it places a fair amount of responsibility on the Government. I have been criticised recently because of my decision on tourism in these areas. I do not see that as having much social and economic impact on those towns. The Premier said she would review the decision, not on the basis of putting people back into the towns but of considering how the task done previously can be done by the development authority. This is a much broader aspect which affects not only the electorate of the Leader of the National Party but also the Kalgoorlie electorate. The Deputy Premier has made representations on behalf of the people who will be affected in that area.

I have made a commitment that the industrial agreements will be laid on the Table of each House. We have been working very hard on the relocation package and I have previously advised members of Westrail's point of view on this matter. It is a very generous relocation package and that should be some comfort to the members of Parliament representing their constituents. The Government will do everything in its power to satisfy the needs of those people who do not want to move. At the end of the day, if there is no job available they must be relocated. The redundancy issue is still being negotiated. We have put offers on the table which I understand have not been accepted in the most recent negotiations. The employees are seeking a bigger package which is more generous than is normal, and the outcome is yet to be determined. Overall, I accept that this is a good compromise on the original amendment proposed by the Leader of the National Party.

New clause put and passed.

Title put and passed.

Bill reported, with amendments.

FREEDOM OF INFORMATION BILL

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Dr Alexander) in the Chair; Mr D.L. Smith (Minister for Justice) in charge of the Bill.

Clause 24: Deferred access -

Progress was reported after the clause had been partly considered.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Ways in which access can be given -

Mrs EDWARDES: I move -

Page 16, after line 5 - To insert the following paragraph -

(g) in the case of electronically, mechanically or magnetically stored information, by giving a written expression of the information in the form in which it is commonly available in the agency, or if there is no such common form, then in a form no less comprehensible than could be made available to the persons in the agency.

This amendment will provide for access to a document and the format in which that document will be made available. We are dealing in this case with computer storage, and computer information obviously involves electronic, mechanical and magnetic devices. One of the concerns about this information is the way in which it will be produced. On a screen, information may actually make some sense in some instances, but it is not meant to come off in a printed format. It can be quite garbled unless there is a program to assemble it in a printed format. Therefore, we are providing here that if the information were actually stored in this way, at least the form in which it should come out should be the form which is commonly available in the agency, or if there were no such common form - that is, it did not come off in hard copy - then it should be in a form which is no less comprehensible and which could be made available to persons in the agency.

To recount an example which was highlighted to us, a man was picked up by a police officer with a radar who tailed him on Mounts Bay Road, and it turned out that that was not permissible because only police officers who are especially trained can use radar in that type of instance.

Mr D.L. Smith: The amendment is not opposed.

Mrs EDWARDES: That man later made a complaint to the Commissioner of Police, and his complaint was overturned. It was interesting that when the Ombudsman investigated the matter, he came across, through the computer records, a field note that was on the file, but which would come up only on screen and was not in a format which could be printed out, and which all of the police could read if they tapped into that computer information, which stated that this man was a trouble maker and complained about the police. Therefore, it is important that if people do receive access to documentation about them, that information is available to them in a format which they can make sense of. I thank the Minister for his comments.

Mr D.L. SMITH: The Government believes that this matter is covered already by subclause (1)(f) because of the wide definition of the words "document" and "record" in the glossary. However, I do not wish to have an argument simply on the basis that it is duplicated or to discuss the exact nature of the drafting, and I am prepared to accept the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27: Medical and psychiatric information -

Dr CONSTABLE: I move -

> Page 17, line 11 - To delete "suitably qualified person" and substitute "registered medical practitioner".

This matter is of considerable concern because the term "suitably qualified person" is far too uncertain because it operates in cases where sensitive medical or psychiatric information is being sought. It is important that the information that is being sought be dealt with and interpreted properly by a registered medical practitioner and that it be kept confidential. I believe that only a registered medical practitioner can guarantee that that will be so. The legislation in Victoria, Queensland and New South Wales has a registered medical practitioner as the person who is given access in these situations. I believe also that there is no need for the agency to approve the nomination of a practitioner because the person nominated, in the case of a medical practitioner, would be a person with whom the applicant would need to be happy, and provided that person was a registered medical practitioner, the agency should be satisfied with that person.

Mr D.L. SMITH: This amendment is opposed. The intention of this clause is to define in the regulations what is a suitably qualified person so that it can be changed from time to time. Clause 109(4)(b) states that without limiting subsection (1), regulations may be made "as to the nomination of persons for the purposes of section 27 and as to the qualifications of such persons for nomination." The initial intention is that the qualified person would include a medical practitioner, a psychiatrist, a psychologist, a marriage guidance counsellor, or a social worker, and we really wanted it to be broader than simply a medical practitioner. In my view, the medical profession, with all due respect to it, does take a tight attitude to the question of the disclosure of information of this kind.

I remember that a constituent came to see me - and please understand that I was not responsible for the insertion of this provision - who was suffering from stress and went to see his local doctor. The doctor thought the stress was having an impact on his heart, so he referred him for specialist treatment at Sir Charles Gairdner Hospital. While that person was in Sir Charles Gairdner Hospital for his heart, someone decided that he was a paranoid schizophrenic and referred him to someone within Sir Charles Gairdner Hospital for assessment in that regard. He was then placed for a short time at Graylands Hospital. That person always argued that he was never a schizoid and that he should have had the opportunity of accessing the medical records which indicated what were the opinions of the specialists about him in order to correct those words. He particularly wanted access to the information that passed between the heart specialist at Sir Charles Gairdner Hospital and the psychiatrist to whom he was referred, between Sir Charles Gairdner Hospital and Graylands, and then between Graylands and his own medical practitioner.

His view was quite correct in the circumstances of that time. If people are to provide an interchange of opinions about a person which go to the very question of his sanity, he should

have the opportunity of seeing the basis on which that is being said. In that case he may try to correct the impression that he was unbalanced.

Dr Constable: I would certainly not argue with that.

Mr D.L. SMITH: In my example, this person kept running into a brick wall. Despite my support, he was unable to obtain access to those records on the basis that in the opinion of the medical profession it was in his best interests not to have access to the information. If the medical profession forms that opinion, another person should be nominated who can be provided with the facts to act as a buffer. This could be a suitably qualified person other than a medical practitioner; for instance, a counsellor or a social worker could form the view that the person required counselling prior to receiving that information and should not, therefore, receive the information. It should be possible to use such persons in that way so as to not rely solely on the opinion of the medical profession, which can tend to operate as a closed shop.

As a legal practitioner I remember a medical practitioner writing to me in relation to a workers' compensation claim. He told me that my client was a malingerer, and he told me not to pass that information on to my client. This placed me in an impossible position: When a lawyer receives information of that kind in that way, he cannot explain to the client why he will not call the medical practitioner to give evidence. If such private opinions are given, some mechanism should be in place to allow access. This situation is not covered by the freedom of information legislation, but should be covered by privacy legislation at least. When the privacy legislation comes before the Parliament it will be possible to consider that. We need to include categories of persons within this provision much wider than the medical practitioner suggested by the member for Floreat's amendment. My experience, and that of the community, is that the medical profession takes a narrow view to what is in the patient's best interests by allowing access to reports between the specialist and the medical practitioner.

Mrs EDWARDES: I support the member for Floreat's amendment. I listened carefully to the Minister, and although I can understand the concerns he raised regarding his example, it is equally important to recognise that if one is dealing with family law counsellors and others, these people do not have a medical background. Therefore, they cannot interpret what is on the medical record. It is a matter of interpretation rather than whether the individual should receive the information.

For the interest of the Chamber I refer to a letter from the Australian Medical Association. I do not refer to this letter because I took on board every comment within it; however, regarding the association's position on this clause, I quote -

> The Association's specific concerns is what does the Government mean by "a suitably qualified person".

That is where I come in. I have no amendment to this point, but I intended to query the matter with the Minister. I have concerns about counsellors and the like dealing with medical and psychiatric information. The letter continues -

> If the applicant wishes access to medical information and nominates a non-medical practitioner to review the information, the Association would be extremely concerned as to how that medical information is interpreted. The Association believes that access to documentation detailing medical information should be given to medical practitioners, as they are the only suitably qualified person capable of properly interpreting that information for the applicant. It would be totally inappropriate and unwise for other health care professions to be nominated for that task.

The association's view related to only health care professionals, and was not as encompassing as the Minister's comments. The association may have self-interest in the matter, but as solicitors we would not want other people writing wills. It is a matter of interpretation. When dealing with medical and psychiatric information, the person who has the ability to make an appropriate interpretation of that information must be a suitably qualified person; namely, a medical practitioner and not a medically qualified person which could extend to a counsellor.

Mr D.L. SMITH: The Government opposes the amendment. I note the inconsistency of the comments of both the members for Floreat and Kingsley on this issue in comparison with

what they said about intellectually handicapped persons. Let us be clear about the nature of this clause: This provision is designed to give access to documents, but if that document contains information of a medical or psychiatric nature, it is the principal officer of the agency who then expresses the opinion about the disclosure of the information to the applicant; that is, whether it may have substantial adverse effects on the mental and physical health of the applicant. We do not know the nature of the agency holding the information; therefore, we do not know the qualification of the principal officer of that agency or whether he is a medical practitioner.

In effect, it would be possible for a person with no medical qualifications and no counselling experience to look at the information to form an opinion that the information would have substantial adverse effects on the mental and physical health of the applicant. Why in that situation should we limit the provision solely to a medical practitioner? The material would already be interpreted by a lay person; namely, the applicant who reads the document must understand enough from the document for the substantially adverse effects on his mental and physical health to be caused. It is incorrect to suggest that it is only a medical practitioner who can look at medical and psychiatric reports and interpret them or to make a determination on whether it would cause such adverse effects on the applicant. It could be said that medical practitioners are not always in a good position to decide whether such information would cause depression or a loss of self-esteem. Social workers and psychologists would be in a better position to make a determination on such things as medical practitioners may have no experience in this area.

The member's amendment would provide obstacles in the way of an applicant testing information. The applicant nominates a person, but if that person can only be a medical practitioner, the entire issue is left in the hands of the medical profession. This is far too paternalistic and narrow. We should not allow the situation in which the medical profession or the Health Department, or one of its institutions, is trying to protect itself. We should make opportunities to access information as broad as possible.

If it simply goes to the applicant's medical practitioner, in many cases the applicant will not have the opportunity to correct that information. However, if it went to a social worker or a psychologist those persons would be in a position to determine whether it would have an adverse effect on that person or whether that adverse effect might be overcome by appropriate counselling. We should not be simply caving in to the traditional limited view and introspection of the medical profession in the way that the member for Floreat's amendment proposes. I find it passing strange that, in a way, we all criticise the Government and public servants in these matters, but we tend to presume that the professions such as the medical profession always make their determinations about what people have access to in the best interests of a patient rather than that of the medical profession in general or of the medical practitioner treating the patient.

Dr CONSTABLE: As a member of this Chamber and as a past clinical psychologist, I am rather disappointed that the Minister expresses such a poor view of the medical profession. I agree that on some occasions the medical profession may come up with the narrow view he has expressed, but that would be unusual. He is expressing a view of a medical profession of the past rather than that of the 1990s. Most people I know who are clinical psychiatrists have a very enlightened view of these issues. In his scenario, the Minister runs the risk of social workers and psychologists being unable to do the job we will expect of them. They will be making decisions without sufficient expertise. We must trust the judgment of the people with the training and the expertise in this case. As a psychologist, if I were given someone's records to examine, I would feel confident about very few cases to make such a decision. I would probably err on the side of caution and recommend the person should not have access. We have no option but to stay with the expertise of the medical profession and to trust its members' judgment. There is the risk that people who do not have medical and psychiatric training will make a very superficial assessment of the information. Very few people will be able to make a professional judgment which will be asked of them. It will be a real risk; I stand by my amendment.

Mr D.L. SMITH: While I appear to have expressed a lack of confidence in medical practitioners, the member for Floreat is expressing a vote of no confidence in the psychiatry, psychology, counselling and social work professions.

Dr Constable: I am talking about expertise.

Mr D.L. SMITH: In the same way as I am expressing a lack of confidence which is borne from the concrete example I gave concerning the health ministry and the Government hospitals concerned. They were able to not provide information on the basis of what they regarded as the established codes of ethics and practice of the medical profession and hospitals generally. It is a question not only of knowledge or expertise, but also of principles and codes under which those professions operate. Those principles provide that it is not in the interests of the patient to have those exchanges between psychiatrists, for instance, and the general practitioner or between Sir Charles Gairdner Hospital and Graylands Hospital. To accept that will simply leave us with the current rules which govern the conduct of the medical profession in relation to medical records. It will mean there will be no advance in the ability of patients to seek information which any other agency would be required to provide in ordinary circumstances. This is one of the few categories in which we seek to limit the information to be provided in relation to a perceived impact on the applicant. It is necessary to have a broader range of people who can receive the information than the medical profession because the medical practitioner who will receive it will feel he is bound by the same code of ethics and established practices that have governed medical practitioners in the past; that is, not to disclose in most cases.

Dr Constable interjected.

Mr D.L. SMITH: It will be making a judgment about it and the member for Floreat is saying that social workers, counsellors and psychologists are not in a position to make that judgment. That is simply an incorrect reflection on those professions. The critical issue is not so much the expertise to be able to understand every word expressed in the opinion, but the expertise to grasp, by and large, what the opinion is about and to make a professional judgment on whether that information can be passed to the applicant in some form; that is, not in the express form it is contained within the document, but at least in the form that will avoid an adverse impact on the individual. If we simply narrow it to the medical profession alone we will reinforce existing standards, codes, ethics and other principles under which the medical profession operates. This legislation will not provide any advance on the current situation if the definition is left as narrow as that suggested by the member's amendment.

Mr DONOVAN: The member for Floreat said that I probably would not agree with her amendment to clause 27. She is absolutely right; I do not agree with it. On the other hand, it is my preference - I have a feeling that if I look across the benches for an indication of support, I will not receive it - to drop the whole of clause 27. We have come too far along the path of leaving in the hands of professional services decisions which probably belong more appropriately in the hands of consumers of their service. It is time we got past that position. I have had both in practice in the field and in politics, as have other members, the argument advanced by medicos, particularly psychiatrists - I do not want to be unkind to anybody in particular - about the problems associated with patients not quite understanding the implications of diagnoses, prognoses and treatment plans which might be made in their best interests. When I was in practice it was put to me ad nauseam that the problem with most psychiatric patients was that they lacked insight into their condition. The most oft quoted phrase in my experience as a psychiatric social worker and practising psychotherapist, by my psychiatric colleagues, was that I should not forget that most of these people share a lack of insight into their problem. I found that not only offensive, but also unhelpful in the treatment and recovery process. That attitude depowers the person whom we are supposed to be empowering and making some progress with.

My preference would be that clause 27 should not exist. It ought to be the responsibility of the agency concerned to show just cause to the commissioner why a patient or applicant on behalf of a patient should not have that information. If we do that, an awful lot of people would be scurrying for their pharmacopoeias and their MSS manuals to work out how they would deal with this new challenge to their supremacy.

Mr Omodei: Would the commissioner have to get expert advice?

Mr DONOVAN: The commissioner would. We need to understand that there is a power relationship involved here. The power relationship between the Information Commissioner and an agency is substantially different from the power relationship between a patient and a medical or psychiatric service deliverer. In the case of psychiatric patients, which is more

my area of expertise, the comments of psychiatrists deal with the problems of insight. A far more prevalent problem is that of powerlessness. This area was discussed when I worked with the Minister for Health when dealing with reforms to the Mental Health Act, which reforms have yet to come into this place. The weekly committee meetings discussed not only the need and the rights of patients to have more power - I do not mean that in an aggressive way; I mean the ability to act on their own behalf - but also the problem of psychiatric confidentiality and the need that the mental health service deliverers saw for a certain amount of professional autonomy. I would have hoped that we would progress that discussion about the proposed reforms of the Mental Health Act when we dealt with this freedom of information legislation. That is not to say that we did not make some progress; we certainly did, but when this Bill was mooted I was optimistic that we could make more progress.

My preference - I would like some indication of support, if there is any - is that clause 27 not exist. If I thought I could be successful, I would oppose the clause. My next best position on the amendment of the member for Floreat is that which the Minister put so articulately. This at least represents some progress along the path of devolution of information, along the path of power sharing, whereas the amendment proposed by the member for Floreat would take us back to the information remaining within the exclusive control of the medical profession. I appreciate the Minister's contribution, notwithstanding my preference for the abolition of clause 27 as it stands.

Mr AINSWORTH: I have some concerns about the clause as it stands and the ability to get information. Under paragraph (a) the process for obtaining information is that the agency concerned will make a decision to give the information to the applicant. Where the information is of a medical or psychiatric nature, the principal officer of the agency, in his or her judgment, will make the decision whether the disclosure of the information to the applicant might have an adverse effect. That person, irrespective of whether he or she is qualified in the medical sense, will make that decision. Following on from paragraphs (a) and (b), the Bill states -

> it is sufficient compliance with this Act if access to the document is given to a suitably qualified person nominated in writing by the applicant.

For whatever reason, if the principal officer in the agency does not believe the nominated person is suitably qualified, the applicant can be denied access to the information forever. It is not at all clear that there is any way of overcoming the continued denial of information to an applicant. There is no appeal process in place. Could the Minister tell me the process if the initial person whom the applicant puts forward as a suitably qualified person is rejected by the agency and a subsequent person is also rejected. Is there an appeal process? How do we determine "a suitably qualified person"? That is left solely to the judgment of the agency in the first instance. There may be reasons, other than psychiatric or medical, for the agency to believe the provision of the information will cause damage.

Mr D.L. SMITH: As I indicated earlier, the intention is to define what a "suitably qualified person" is via the regulations. Clause 109(4), the regulation making power, provides -

> Without limiting subsection (1), regulations may be made -
>
> (b) As to the nomination of persons for the purposes of section 27 as to the qualifications of such persons for nomination.

If the regulations provide the various qualifications and a nomination is made by an applicant saying that that person has those qualifications and the agency says that it does not believe that that the nominated person does have the qualifications, that matter can be referred to the Information Commissioner for determination according to the provisions of the regulations.

I have a great deal of sympathy for the views of the member for Roe and the member for Morley; however, we should be looking at getting access to medical or psychiatric records even if some people have the view that it may be adverse to the physical wellbeing of the applicants. The minimum position we should take is that the legislation should provide the same provisions as those provided by the Commonwealth legislation.

Most of the other States limit the provision of information to a qualified medical practitioner but the Commonwealth recently amended its provisions to include those categories I referred to earlier: A medical practitioner, a psychiatrist, a psychologist, a marriage guidance

counsellor and a social worker. I have no problem at all with the notion of increasing the range of those persons at some stage in the future by widening the scope under the regulations. However, we should remember that if the regulations come into this place and the Parliament is of the view that we have extended the suitably qualified definition too widely, we can disallow those regulations. That categories of suitably qualified persons are the same as those in the Commonwealth legislation.

While I have a great deal of sympathy with the view of both members, in the interests of the arguments presented by the medical profession we should ensure that our legislation is as broad as that of the Commonwealth and that we have the capacity to broaden those categories in the future.

Mr AINSWORTH: The principal officer of the agency must make a decision that a suitably qualified person has been appointed by the applicant in meeting this requirement. Is the onus on the suitably qualified person to pass on that information? Is this covered in another clause or will it be regarded as a separate matter by the applicant?

Mr D.L. SMITH: What a suitably qualified person does with the information given to him is left to the professional judgment of that person. That person may make a decision to give the document directly to the applicant on the basis that he or she does not agree with the opinion formed by the principal officer of the agency, or that person may decide that, rather than give the information directly, he or she will provide it in some interpreted form which will not have the effect feared by the agency. The person may form the judgment that with counselling and support the person could be prepared to avoid the adverse effect on the physical and mental health of the individual. It comes down to the professional judgment of that person. I agree with the medical profession and the member for Kingsley that there should be some limit on the persons to whom the information is provided so that we have some confidence that they are in a position to make those sorts of judgments. The Commonwealth has gone as far as the list I outlined and I can see some capacity for extending it. I cannot see why a parish priest or other people in positions of trust in the community should not be in that position.

Dr Constable: Who chooses the suitably qualified person?

Mr D.L. SMITH: He is chosen by the applicant.

Several members interjected.

Mr D.L. SMITH: It is in compliance with this Act if access is given to a suitably qualified person, nominated in writing by the applicant. In the member for Morley's position, the applicant has the opportunity of nominating who that person will be. Under the member for Floreat's amendment only a medical practitioner can be nominated. My concern is that the medical practitioner would then be governed by the current standards, codes and ethics of the medical profession. In many cases that would prevent the provision of that information. I would like this legislation to be broader than that; it should be as broad as the Commonwealth has suggested.

Mr OMODEI: If the suitably qualified person is rejected by the agency and the applicant is forced to go to the Information Commissioner, who foots the bill for the expert advice the commissioner will take? I presume the commissioner will require a suitably qualified person. As the member for Floreat outlined in her amendment, a suitably qualified medical practitioner with expertise in psychology, psychiatry, medicine or whatever field would surely alleviate the need for the applicant to go to the Information Commissioner and for him to nominate a person and meet the costs associated with it.

Mr DONOVAN: Will a list of potentially suitably qualified persons be available and, if so, will it be in the form of a regulation?

Mr D.L. SMITH: The Bill provides that a list of suitably qualified persons will be in the regulations. At this stage I am intending to make it at least as wide as the Commonwealth definition, which is medical practitioner, psychiatrist, psychologist, marriage guidance counsellor or a social worker. I will not exclude the prospect of widening that through the regulation process, remembering that the regulations will be tabled in this place.

In answer to the query raised by the member for Warren my advisers have pointed out that under clause 64(1)(f) a complaint may be made against an agency's decision to give access

to a document in the manner referred to in clause 27 or withhold access under clause 27. If the agency makes a determination to do it this way, the applicant may appeal to the commissioner. If the commissioner seeks legal opinion or medical advice to assist him in making a determination, regardless of whether it is in the interests of the applicant, the associated costs will be borne by the office of the commissioner and will not be attributed to the applicant or the agency.

Mr Omodei: Would it not be better for the applicant at the initial stage to appoint a suitably qualified medical practitioner who would bear the cost?

Mr D.L. SMITH: If the agency makes the determination under clause 27 the applicant will have to nominate a suitably qualified person. If that person is a medical practitioner he will no doubt want to be paid for receiving a report, passing an opinion and making a determination on what the applicant should do with the information. If it is a private matter between the applicant and a nominated person, it comes down to whether the applicant is dissatisfied with the decision that the information can be provided to a suitably qualified person. The applicant may then refer the matter by complaint to the commissioner for a decision which says that it can be provided directly to the person and not through an intermediary. In that case the additional cost of engaging a medical practitioner or other person would be avoided. Any advice the commissioner may seek in the course of his determination on an issue will be borne by the commissioner's office and not by the applicant.

Dr TURNBULL: The Minister said that the arrangement between the suitably qualified person and the applicant would be a private arrangement and the costs associated with it would have nothing to do with the agency. The Freedom of Information Bill does not designate any mechanism for payment. It is a very unusual situation if the applicant is allowed to request a suitably qualified person to read his document and transfer to him any information which the suitably qualified person judges the applicant should have. It involves an important decision. The officer of the agency who makes the original decision that an applicant will have access to a file should be involved in explaining the contents of the file to the applicant. The applicant would then have a suitably qualified person with him. If a medical or psychiatric problem is left to be explained by a person who is not a medically qualified person, we are running the risk that the information transferred to the applicant may be distorted.

Last night I spoke about the problem that many people have access to all sorts of people's files nowadays who are not over particular or careful about the accuracy of what they are reporting or transmitting. By having this wide definition of "suitably qualified person" the Minister is running the risk of getting a distorted explanation to an applicant.

Mr Donovan: It is up to the medico and the psycho to get their act together and record things accurately.

Dr TURNBULL: Yes, and there is not a lot of that around. It will be a difficult position for a social worker or a marriage guidance counsellor who has to take responsibility for explaining to an applicant what is going on, especially if the Minister is concerned about the person receiving that information. I would be inclined to support the amendment that a suitably qualified person should be a registered medical practitioner or at the very least a qualified psychiatric person. The description "suitably qualified person" will leave matters very open, particularly if there is no provision for them to be paid a fee for assuming responsibility and contracting with the applicant regarding the information they transfer.

Mr D.L. SMITH: The member for Morley eloquently expressed the reasons why we want the definition to be broader than a "medical practitioner". I do not have a great deal to add to what I have said other than to repeat that I want the capacity to access information to be as broad here as it is in any other State or the Commonwealth, which includes those categories of persons to whom I have referred. The question of the fee to be charged by those persons is interesting. Clearly in most cases social workers and marriage guidance counsellors are not likely to charge for their services. However, a medical practitioner, psychiatrist or psychologist may wish to charge somebody for their services. Obviously nobody will pull a hat out of a ring or a name out of a phone book to nominate a person. An approach will be made and the person making the application will seek the agreement of the person they approach to be the nominated person who will then be able to say they are happy to do the work but will charge their usual fee on an hourly basis for the service they will be providing.

Members must remember that the primary intent of this clause is not necessarily accurately interpreting information; it is about providing information which may have an adverse effect on the physical or mental health of the person concerned. In many cases I think social workers, psychologists and counsellors are in a much better position to judge that than is a general practitioner who may have no involvement in counselling people or preparing them for shock or tragedy that may impact on them, or in managing people through a crisis that may be precipitated by the provision of information coming as a shock when it is conveyed to the applicant because of the type of information conveyed or its impact upon the person's self esteem.

Mr Donovan: It is a matter of having appropriate people.

Dr Turnbull: I am concerned about the interpretation of the information in the document.

Mr D.L. SMITH: That is the matter raised by the member for Floreat and the member for Kingsley, which I understand. My experience with medical practitioners is that they do not make a decision based solely on what is in the best interest of the applicant but on what they think is their code of ethics which is, generally speaking, not to provide the information, especially in relation to psychiatric conditions.

Amendment put and negatived.

Dr CONSTABLE: My next proposed amendment was consequential on the one which has just failed, so I will not be moving it.

Clause put and passed.

Clauses 28 to 30 put and passed.

Clause 31: Documents containing personal information -

Mr D.L. SMITH: I move -

> Page 20, after line 10 - To insert the following subclause -
>
> (4) If the third party, or the closest relative of a dead third party, is an intellectually handicapped person, the views of the person's closest relative or guardian may be obtained for the purposes of subsection (2).

This clause is required because I want a provision that allows the parent of a child or the persons standing in various relationships with intellectually impaired persons to be able to make an application on their behalf. All we are doing under this clause is moving to another stage of the process where it is not the applicant who is intellectually impaired but the person about whom the personal information in the document is contained. We have a consultation process related to that and if a person is intellectually impaired the consultation process may not, in the end result, lead anywhere. This provides an opportunity for the consultation to be with the category of person named; that is, with the closest relative or guardian to ascertain their views on whether the information can be provided in the manner outlined notwithstanding it is personal information.

I foreshadow that I intend to move a further amendment to this clause by adding a subclause (5) to ensure that it is understood that clauses 31 and 32 are not to be read in a way which prevents clause 23 being given full effect. Members will recall that under clause 23 it is possible to provide access to a document by deleting some of the exempt material. What it is hoped would happen as a matter of practice is that the applicant would seek the information, the agency would advise that the document contained exempt material because there is personal information in the document, and the applicant could then ask that the document be supplied after deleting that material. On receiving that document, in many cases that may be the end of the matter. However, the person may feel that they want access to the personal information deleted from the document. If that happens the person will follow the processes outlined in clauses 31 and 32 which require the agency to consult with the third party whom the personal information on the document is about. That person may agree to that information being provided to the applicant notwithstanding that it is personal information about that third party. While it is a very convoluted description of what is proposed, I hope members understand it and will support both the amendment on the Notice Paper and the two amendments to clauses 31 and 32 which I have foreshadowed.

Mr DONOVAN: Without canvassing the argument that we had last night about handicapped

people, and I accept that this is a substantially different matter, I raise for the Minister's consideration a problem that might be posed in the application of this clause in respect of both third party living persons and deceased persons. It is becoming more common for intellectually handicapped people to move towards independent living and to also enter into marriages or de facto relationships. That may present the situation where the closest relative of such a person is also an intellectually handicapped person. If that were the situation, how would this clause have application, bearing in mind the Minister's doubtless intent to not remove from the widow or widower of such a person the quite proper and natural justice that would be due to that widow or widower?

Mr D.L. SMITH: The difference between an intellectually handicapped person and someone who is certified under the health legislation is that an intellectually handicapped person is not certified in any way but has simply been assessed by social security, parents and teachers, or by someone else, as being intellectually handicapped and in effect not able to manage his or her affairs in the ordinary way. To that extent, a person who does not disclose that he or she is not mentally handicapped would be treated as an ordinary applicant. The problem also arises that if the personal information that is being sought is information about a mentally handicapped person, the agency would not be aware whether that person was mentally handicapped unless that was picked up in the course of its discussion or it had knowledge by some other means. In a way, this provision would only come into play where the agency either picked it up from its own observations or had some other confirmation from another source that the person was intellectually handicapped. Therefore, it does not really ensure the opportunity for it to be done through a third party, nor does it involve any implicit disrespect for the intellectually handicapped person initially; it is only if there appears to be a lack of understanding or the like which concerns the agency which is seeking to discuss the matter with that person.

I fully endorse and understand that not only are intellectually handicapped persons not certified in any way, but also there are a great variety of capacities in persons whom we would generally describe as intellectually handicapped. A person in some cases may only have the mental age of a three or four year old. In other cases, a person may have the mental age of a 15 or 16 year old when he or she is 60 or 70. In that sense, it is wrong for us as a community to convey some stigma to all persons who are intellectually handicapped as if they all had the same level of disability. Some of those persons would be able to cope within the community quite well and, in effect, to enter into marriages and the like; others would not be able to do so.

I want to ensure that a person who has an intellectual handicap will be able to obtain assistance to process his or her application, or if it came to the question of whether information about that person should be disclosed to another applicant and there was a third party in that situation, and the agency formed the opinion that the person was really not in a position to comprehend fully what was involved in disclosing that information, that there would be an opportunity for the agency to get the advice or counsel of some other person on behalf of that person about whether that information should be provided. The member may perceive this as being in some way disrespectful to persons who are intellectually handicapped in respect of the normalisation which we are trying to achieve. On the other hand, there is a public interest in ensuring that persons who are not institutionalised and who are living a normal life are not taken advantage of by allowing information about them to be disclosed in circumstances where a person of normal capacity would not want that information disclosed.

Amendment put and passed.

Mr D.L. SMITH: I move -

> Page 20, after line 13 - To insert the following subclause -
>
> > (5) This section does not apply if access is given to a copy of the document from which the personal information referred to in subsection (1) has been deleted under section 23.

The intention is not that there is an alternative to going through the process. It really is to ensure that there are steps in the process, as I outlined previously, so that under proposed section 23, if the applicant were told that the document contained personal information about

another person and was, therefore, an exempt document under the various categories, that person could then say that he wanted that information to be deleted, and could then make a decision to accept the document in that non exempt form or to seek to have included in the document the personal information. If that were done, the agency would have to follow the consultation process provided for in proposed section 31.

Mrs EDWARDES: I support this amendment, which addresses many of the concerns about what could seemingly be incidental information which could be included as personal information on letters. Proposed section 23 would permit that information to be deleted and for the person to still have access to the documents. I take this opportunity to again thank the Minister for including subclause (3), which relates to what I would refer to as the "next best friend" clause, because that is important when we are dealing with a person who is under age. However, I note that it goes to the age of 16, and the Minister may like to address that in his comments.

Mr D.L. SMITH: The age of 16 is the mature age under common law, not to enter into contracts but to deal with issues of this kind. We had to choose an age, and 16 was thought appropriate in this case.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 32: Documents containing commercial or business information -

Mr D.L. SMITH: I move -

Page 20, after line 29 - To insert the following subclause -

(4) This section does not apply if access is given to a copy of the document from which the information referred to in subsection (1) has been deleted under section 23.

This amendment has the same effect as achieved by the amendment to section 31.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 33 to 38 put and passed.

Clause 39: Application for review -

Dr CONSTABLE: What are the costs on application for review? Will they be similar to an initial application?

Mr D.L. SMITH: Section 33 provides that no application fee or other charges are payable in respect of an application for review under this division.

Clause put and passed.

Clauses 40 to 43 put and passed.

Clause 44: Right to apply for information to be amended -

Mrs EDWARDES: I move -

Page 27, lines 7 to 11 - To delete the lines.

Under Victorian legislation it is not necessary to satisfy the two requirements being put here. I wish to delete the words "out of date" because when seeking to amend personal information that information need not necessarily be out of date. It is about whether the information is currently available. A person should not need to satisfy the two requirements under paragraphs (a) and (b) in order to have the right to apply to an agency for an amendment. It should be a right on the basis that the information is inaccurate, incomplete or misleading.

Mr D.L. SMITH: Paragraph (a) is not a restrictive requirement. It seeks to make clear to the information commissioner and/or the courts that it is not just information which is provided under this Act which is covered by this provision. It is whether one gets information under this Act or by any other means that enables one to correct the record. The intent of subclause (1)(a) is not to provide a requirement to limit the opportunity to correct but to make it clear that the right to correct exists whether the information was provided under this legislation or by any other means. Otherwise we would run the risk that the courts and the commissioner

would interpret this provision as applying only to information provided under this legislation. The only intent of paragraph (a) is to enshrine the fact that it is not only information provided under this legislation that can be amended. It does not matter how one gets the information, one can apply for it to be corrected under this clause. It is an enabling, not a limiting provision.

Paragraph (b) which provides that the information has been used, is being used or is available for use by the agency for an administrative purpose, is simply to limit the cost and the circumstances in which one can require the agency to take responsibility for the amendment of that information. To take an extreme example, a reference book held in the library of an agency may contain information which a person believes to be incorrect about himself or herself. That book may have been authored in the wider community by private enterprise, for instance. It may happen to be a reference book as part of a library and may not be used for any purpose in the functions of the administrative agency. It seems unjust that the agency - not being the author of the document and the book not being used by the agency in any direct way - should have the responsibility to provide a mechanism for someone to use the process of correction. In the same way as the Commonwealth seeks limitation in that way, that is the intention. If the agency is holding information for any function or purpose that may affect a decision of any person who accesses a document at the agency, clearly the person should have the right to correct the information; but if it only incidentally comes into the hands of the agency, and is not being used by the agency either regularly or occasionally for any purpose relating to the functions of the agency, it is considered unjust to impose on the agency the normal provisions in relation to documents being used by the agency.

Frankly I do not feel especially strongly about that. The provision is aimed at limiting the costs of these procedures and to make them more realistic in order to ensure it is used for the maximum benefit and not for silly situations. I remember an academic in a local institution for whom I do not have a great deal of respect writing a book about certain events in Western Australian political history recently. He made a number of statements about the destruction of records, and who was responsible for them. He was erroneous, and a certain member of this place who is present at the moment should institute defamation proceedings against that person. It is possible that all libraries in Western Australia hold copies of that book. Theoretically, this could relate to all libraries in Western Australia. A person could say, "I want to go through the process to correct that book because the information is false and damaging to me."

Mrs Edwardes: One would not have the ability under the legislation to amend library books.

Mr D.L. SMITH: One would if this provision were not included.

Mrs Edwardes: I do not see that.

Mr D.L. SMITH: It could certainly be done at the State Library or any library within an agency to which this legislation applies. As members would be aware, many agencies have internal libraries. We want to avoid such situations when an agency is not actively using that information, and is never likely to do so; in such cases the information just happens to be on file and was authored elsewhere. We do not want this provision to become an occasion for imposing an enormous workload unnecessarily. We are primarily concerned that any information used by any agency can be accessed; in that way, it operates as a safety valve so that if people find out what is being said about them they can correct it.

Dr CONSTABLE: How does a person know that the information is inaccurate if he or she does not have access to it already? If such information did not exist, people could go on fishing expeditions which would make the operation of this provision unworkable. I was uncertain of the definition in this regard and I think it was clarified in the Minister's comments; however, I am still concerned regarding restricting a person's access to information held for only administrative purposes, because inaccurate information could be contained in information which is not for administrative purposes. The example the Minister gave was a little extreme, but such information could be requested by others. Can the Minister give a definition of "administrative purposes"?

Mr D.L. SMITH: Administrative purposes is defined neither in this nor the Commonwealth legislation. Loosely put, it simply means some functional purpose of that agency; that is, it is not just incidental information which happens to be in a library or elsewhere. It is

information held for some purpose of the agency in relation to the functioning of that agency. "Administrative" means not just related to the administration of the department, but all of the department's functions.

Dr Constable: So it is a broad and not a narrow definition?

Mr D.L. SMITH: Yes. Every agency should give this provision the broadest possible definition. The intent of this measure is to apply a small limit in extreme cases like the one to which I referred.

Mrs EDWARDES: Regarding the points made by the Minister and the member for Floreat, it may be that a person has been told about information contained by an agency in relation to that person.

Mr D.L. Smith: They may have received it by letter from the agency.

Mrs EDWARDES: Would that situation be covered?

Mr D.L. Smith: Not under this legislation. The advice could be freely given without request under this legislation.

Mrs EDWARDES: To apply this provision, one would need to have access to the document, or have gained access to the document by some other means.

Mr D.L. Smith: It can be by any means, be it in writing, or by asking for it without using the provisions of this legislation. The legislation could not restrict any current means of obtaining the information. Any information obtained concurs with this clause, regardless of whether the legislation is obtained by traditional means or, indeed, by illegal means.

Mrs EDWARDES: Could it be by means of a telephone or other conversation? Could a person be told that the information is being used at an agency, despite the fact that the person who is the subject of the information knows it to be incorrect? If that person wants to amend the information, would that process be restricted under this legislation?

Mr D.L. Smith: It intends to make it possible to do so without going through the process outlined within the legislation.

Mrs EDWARDES: It would be necessary to ask for the documents first before that person could seek to amend it.

Amendment put and negatived.

Dr CONSTABLE: Having received the explanation from the Minister, I do not intend moving my amendments.

Mrs EDWARDES: I move -

Page 27, line 12 - To delete the words ", out of date".

This amendment is so that the information just has to be inaccurate and misleading. I do not think that the out of date qualification is required.

Mr D.L. SMITH: The intention is to give a broader definition in that information could be accurate at the date it was written. For example, it may be said that David Smith is married to Tresslyn Smith and has three children, but later on - I hope not - it may be that I am married to someone else. The information was accurate at the time it was written, but is no longer up to date. It may be argued that such a situation is covered by inaccurate or misleading information, but clearly it is not just about correcting a mistake which was inaccurate or incomplete at the time the document was made. This provides a chance to update the document to ensure that it reflects the current situation rather than a past situation.

Amendment put and negatived.

Mr D.L. SMITH: I move -

Page 27, line 18 - To delete "applicant" and substitute "person".

The amendment is simply rectifying a drafting error. In this case there is no applicant in the strict sense, simply a person involved in the process. The amendment would make this clause consistent with other provisions in the Bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 45 and 46 put and passed.

Clause 47: Agency may amend information -

Mrs EDWARDES: I have the same difficulty with this clause as I had with one contained in the Royal Commission (Custody of Records) Bill. Documentation can be destroyed, perhaps after notifying the Library Board of Western Australia, but the board cannot necessarily follow through on that notification because section 30 of the Library Board of Western Australia Act does not apply to a document under subclause (1). That states that the agency cannot destroy or obliterate documentation unless it is impracticable to retain that information. Reference to section 30 of the library board Act is being deleted and that is not appropriate. We have argued sufficiently long in this House and the Opposition has taken a different line from the Government on the destruction of documentation. The Library Board of Western Australia Act should apply to Government documentation. We are talking about Government documentation that has been requested to be amended because of the personal information that is contained in it or because the continued existence of the information might cause prejudice or disadvantage to the person which might outweigh the public interest. That should be done with the archivist's consent and not just notification to the Library Board.

Mr D.L. SMITH: That is a similar situation to the Royal Commission (Custody of Records) Bill where we had one very strong public and private interest and another very strong public interest. The very strong public interest was in keeping records and that no records should be destroyed because for archival and historical purposes they should be available in perpetuity. On the other hand, a very strong public and private interest exists in making sure information contained on the records of any agency is accurate, complete, up to date and is not misleading. The object of these provisions is to ensure that a person has the opportunity to apply to an agency to have such information corrected. In some cases it will be impossible to achieve that correction because it will occur only when the agency acknowledges there is inaccurate, incomplete or misleading information, or the commissioner so decides after a complaint is made to him about the decision of the agency. When we start on the premise that the record is inaccurate, incomplete, out of date or misleading the public interest of preserving a record is very much depreciated. To that extent the personal and public interest we are trying to achieve in this clause is more important than the retention of that depreciated record. In some cases, such as where that information is stored on a computer system and that computer system does not allow for the amendment by notation in the margin, the only way to correct that record is to use the ordinary facilities of that system to amend the record by a deletion. That is all that is intended by the use of the words "unless it is impracticable to retain the information."

The second element is where the agency - not the applicant - considers the prejudice or disadvantage that the continued existence of that record would cause the person outweighs the public interest in maintaining a complete record. If the agency is of that view, it is wrong that the person who then makes a decision about the destruction is a person whose primary task in life is trying to preserve records rather than change or destroy them; that is, the Library Board. In that context section 30 of the Library Board of Western Australia Act is not appropriate. Nonetheless the Government feels there is a sufficient public interest in the preservation of the record that at least the agency should have to advise the Library Board of Western Australia of its intention to do something. Clearly the purpose of that is to give the opportunity to the Library Board to object to that destruction or change.

Mrs Edwardes: What if they do that?

Mr D.L. SMITH: Then it becomes a decision for the agency based on the balance of its judgment that its continued existence would outweigh the prejudice or disadvantage caused to the person by the preservation of that record. It is a very difficult area and I, as much or more than perhaps some people in this place, believe in the preservation of records and in what section 30 of the Library Board of Western Australia Act is all about; but where we are trying to prevent prejudice or disadvantage being caused to persons there must be some capacity, but away from a person whose primary interest is in the preservation of the record, to destroy the document as provided for under this section.

Mrs EDWARDES: I am not convinced. I understand the balancing act between the public interest and that of the individual is one of the reasons for this clause; in other words so that the individual can have the opportunity to amend and correct information. There is a Library Board of Western Australia Act and a State Archivist who is trained to deal with these matters on a daily basis. It is unacceptable that an agency of any description can make a decision by itself that documents may not be of public interest. They will have a different concept of the public interest when weighing that against the prejudice of disadvantage to the individual from that of the State Archivist. The amendment will provide that that can be done only with the written consent of the Freedom of Information Commissioner along the same grounds. That will provide some form of consistency in the balancing argument of personal information being destroyed. The Minister may then find that the commissioner will consult more regularly with the State Archivist. Before giving that written consent, the commissioner should gauge what will be the public interest. I move -

> Page 30, line 12 - To insert after "unless" the words "in the opinion of the Commissioner".

Mr WIESE: Will the commissioner have an understanding that it will be reported in writing and reported that that is happening?

Mr D.L. SMITH: There would need to be a consequential amendment to subclause (4) so that section 30 of the Library Board of Western Australia Act did not apply to the destruction of documents under subsection (1)), but the commissioner must notify the Library Board of Western Australia in writing of his intention.

Mr WIESE: I am sure it was not by design, but I do not believe my question was answered. Is it implicit in this amendment that there will be written notification by the commissioner that the information will be removed? This process should be specifically in writing so that everyone has a record of what is happening.

Mr D.L. SMITH: I hope the member for Kingsley is listening. It seems I was wrong. The amendment is not required to subclause (4) because subclause (4) applies only to processes provided for in subclause (1). The actual destruction takes place in subclause (3).

Mrs Edwardes: Perhaps what we are wanting to do is in the amendment we are referring to at the moment; that is, in the "written" opinion of the commissioner.

Mr D.L. SMITH: I do not think we need to do that at all.

Mrs Edwardes: How do we satisfy the member for Wagin's concern and insert "the commissioner having to provide his permission in writing"?

Mr D.L. SMITH: There will need to be some evidence held by the agency before it will proceed to destroy. The destruction is done by the agency, but the decision as to whether it can be done is made by the commissioner. No agency in those circumstances will proceed unless it has a written record that the consent of the commissioner has been given. In most cases it will probably be a fax or something from the commissioner's office.

Mrs Edwardes: Would you consider a regulation for a form?

The DEPUTY CHAIRMAN (Mr Marlborough): Order! I suggest I leave the Chair for two or three minutes and give the parties time to accommodate each other with this amendment.

Sitting suspended from 11.52 pm to 12.01 am

Further consideration of the clause postponed, on motion by Mr D.L. Smith (Minister for Justice).

Clause 48: Notice of decision -

Mr WIESE: Subclause (5)(a) states that if the agency decides not to amend the information in accordance with the application the notice must give details of the reasons for the decision and the findings on any material questions of fact underlying those reasons. Does this mean that the agency will have to undertake an investigation on whether the material in question is correct before it reaches its decision? I can think of a number of cases where that exercise will be long and expensive. Who will pay for it?

Mr D.L. SMITH: The agency provides for that except in relation to the things the applicant may need to provide in convincing it of the inaccuracy of the information. The information

may relate to an event and the person may believe that the description of the event in the document is wrong. He may wish to enlist the support of people who were present at the event to give evidence of what occurred. The applicant will be involved in some inconvenience and expense in finding these people and presenting them to the agency. One cannot exclude the fact that some cost may be involved for the applicant. It is difficult for the agency to do that without at least obtaining the names and addresses from the person concerned and he may not know the names of the people until he has interviewed them. It may be a drawn out and costly procedure for the applicant, but we want to make sure that before records are amended there has been a real investigation of the accuracy of the information. Evidence must be provided to show that the information is wrong and that evidence may be provided by the applicant or by the applicant directing the agency to the people who can provide the information. I cannot guarantee in these circumstances that there will not be more cost incurred by or inconvenience imposed on the applicant.

Clause put and passed.

Clause 49: Request for notation or attachment disputing accuracy of the information -

Dr CONSTABLE: I move -

> Page 32, line 6 - To delete "irrelevant,".

It is unnecessary to have this word in subclause (3). If an agency makes a notation and believes it to be irrelevant it can state that to be the case. It is a subjective matter and for that reason the opinion of the applicant should be respected.

Mr D.L. SMITH: Although I am concerned about what that implies in cost, I have no objection to the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 50 and 51 put and passed.

Clause 52: No charge for application or request -

Mrs EDWARDES: My question follows the question asked by the member for Wagin on clause 48. Under this legislation the applicant has the right of review and appeal. The opportunity to amend documentation is provided for in clause 48. If an applicant wanted to exercise his right of review or appeal would the applicant be subject to a charge?

Mr D.L. SMITH: I refer the member to clause 83 which deals with the costs of parties to complaints. It states -

> The costs incurred by a party to a complaint are payable by that party except that the Commissioner may order a party to pay any costs of another party that the Commissioner considers to be attributable to exceptionable or unreasonable conduct of the first party.

In other words, there is a capacity for the commissioner in those circumstances to order costs against a person who is guilty of that sort of conduct and that includes the agency.

The CHAIRMAN: Order! I cannot see any reference to the words the Minister is referring to in clause 52.

Mr D.L. SMITH: A question was asked about the costs that might be payable. The commissioner has the power under clause 83 to impose an order for costs in certain exceptionable circumstances. There is also a provision in clause 53, in relation to the right to review, for the provisions of clause 43 to apply to that clause. It is clear from that clause that no charges will be imposed by the commissioner in relation to this matter, but the commissioner can order some costs to be borne by the other party in exceptionable circumstances.

Mrs EDWARDES: Does that mean administratively that in order for a review to be carried out of someone's personal information under this division, it would be necessary for that person to pay up-front before the commissioner ordered otherwise?

Mr D.L. SMITH: Clause 43 provides that no charge is payable for a review under this division. That relates to the exemption certificates.

Mrs Edwardes: Does it relate to the prior division?

Mr D.L. SMITH: Yes, division 5 - Internal review of decisions as to access - provides in clause 43 that no application fee or other charge is payable in respect of an application for review under this division.

Mrs Edwardes: That does not relate to part 3.

Mr D.L. SMITH: Clause 53 on page 33 deals with division 2 - Internal review of decisions as to amendment of information. It provides in subclause (2) -

> Sections 38(3), 39, 40, 42 and 43 apply with any necessary modifications to an application for review under this Division.

Mr WIESE: Is the Minister telling the Committee that clause 83 on page 53 will overrule clause 52?

Mr D.L. Smith: No.

Mr WIESE: There is absolutely no doubt that under division 1 of part 3 there will be no charge for any application?

Mr D.L. Smith: I am prepared to give that assurance.

Clause put and passed.

Clauses 53 and 54 put and passed.

Clause 55: Appointment and terms and conditions -

Mrs EDWARDES: I move -

> Page 34, line 7 - To delete "The" and substitute the following -
>
> Subject to the approval by both Houses of Parliament, the

This amendment is consistent with the Opposition's approach to these very important positions which are independent and deal with the public in this way. Such appointments should have the approval of both Houses of Parliament.

Mr D.L. SMITH: The amendment is opposed because it is not required in any similar office in this State, such as the Parliamentary Commissioner for Administrative Investigations or the Auditor General, and in my view it would be an impractical situation. In political terms it would also be quite unfair. As we all know, one political party in this State has never had a majority in the upper House; such is the nature of our electoral system. It would simply be a means by which the Liberal Party, sometimes in conjunction with its coalition partners and sometimes with the support of the National Party when they are not in coalition, would control the appointment. In my view that is an improper objective, until the Liberal Party and National Party are willing to amend the electoral system to give an equal opportunity for each side and, more importantly, it is simply impractical. Before the Cabinet could make a recommendation to the Governor - this is done on the recommendation of the Minister through Cabinet - it would be necessary for the Minister to come to this House and formally move that a particular person be appointed to the office of Information Commissioner. If Parliament were not sitting at the time it might involve a delay of between three and six months before achieving that. Also, a resolution at that time would nominate a particular person and if by some mischance under a Labor Party the upper House opposed the resolution, it would be necessary to include more names and come back with another resolution. Not only would there be a delay in coming to Parliament when it is not sitting and giving the appropriate notice, but also if the matter did not go through the Legislative Council - I do not know why we submit ourselves to the whims of that House - we could have a number of months' delay in making the appointment. The whole Act would cease to function during that period and that is not in the interests of achieving the objectives of this legislation. The Government will follow what has now become the accepted process; that is, before appointing any person - I hope the Opposition when in Government will follow this course - the Government will consult with the Leader of the Opposition, the Leader of the National Party and the Independent members before making a recommendation to Cabinet and to the Governor. That contains the protection required. It certainly goes further than has been past practice in relation to a number of other important positions and avoids any concern about the sorts of delays that occur when there is a vacancy.

Mrs Edwardes: Will the Minister provide more meaningful consultation this time than in the past?

Mr D.L. SMITH: I assured the member yesterday that consultation would not be about a particular person but about a range of nominated persons approved by the panel which did not involve anyone from the Government being considered or revealed the recommendation of the panel. The member would have the opportunity of knowing the names of all those whom the panel had considered, what its recommendation was, and whether the panel felt that the person recommended should be appointed or we should consider someone else lower down on the list, in which event we would advise the panel of the suggestion and have it reconsider its recommendation and advise of the outcome. That provides sufficient protection. If when the Opposition is in Government at some distant time in the future the member chooses to make all of these sorts of positions subject to that parliamentary approach, before doing so she needs to deal with the question of how one deals with casual vacancies when the House is not sitting and what she will do when the recommended applicant is rejected by one or other of the Houses.

Mr WIESE: I support the amendment. I think the Minister has backed away from a couple of comments he made yesterday on the subject. He was a lot more forthcoming then than he is today. That is what happens when one goes away and sleeps - it changes one's opinions.

I suggest that the solution to appointing a person while the House is not sitting or while going through the process of accepting a name and getting both Houses to agree to a suitable person appears later in the Bill with the ability to appoint an acting commissioner. The Minister will have to do this whatever the circumstances may be if a person holding this office dies, for instance, because in that circumstance the Government would immediately appoint an acting commissioner to fill the position while the advertising and appointment processes are gone through. As the Minister has said, it would be totally unacceptable for the whole process of freedom of information to come to a halt during the period required to fill the position. I do not think the perceived problems are valid.

Mr D.L. Smith: What if during the advertising period the House is not sitting?

Mr WIESE: The Minister would have an acting person performing the job. Without an acting commissioner the Minister would be in a difficult situation and would face exactly the situation he talks about of having the whole freedom of information process come to a halt for the period it takes to appoint a new person.

Mr D.L. SMITH: The member is correct; clause 58 provides for the appointment of an acting commissioner for a period not exceeding 12 months when the office of commissioner is vacant. I would be very concerned about the parliamentary process being used to appoint this person when it is not required for the office of Ombudsman or Auditor General.

Mrs EDWARDES: That is not unknown. We do not want to go to the extent we have seen on television in relation to appointments to positions in America; they were exceptional circumstances. That is not something that happens on a regular basis.

Mr D.L. Smith: When one starts doing this sort of thing the personal lives of individuals become the subject of debate in this place.

Mrs EDWARDES: I do not think so. Members of this place generally deal with these sorts of issues with a great deal of goodwill. It certainly is not, and has never been, the intention by the use of numbers in the Upper House to ensure that a particular party has the say all the way along the line. We are talking here of all members of Parliament having an opportunity to approve the appointment of the person to the important position of Information Commissioner.

Mr Wiese: Surely the reality is that the appointment will be sorted out before it is ever brought before the Parliament.

Mr D.L. SMITH: We all know the experience in America, that where these appointments are made by the Legislature or its committees the end result is that it provides an opportunity for anybody in the public arena with an axe to grind related to the applicant to start petitioning the House about the personal affairs of that person and making submissions to members of Parliament. For the political process to be used in that way would discourage any person whom we wanted to have the job from applying for it in the first place. That is not the track I

think the Westminster system should start going down, as it has all the worst elements of the American system with all the problems it creates.

Division

Amendment put and a division taken with the following result -

		Ayes (17)	
Mr Ainsworth	Mr Lewis	Mr Strickland	Mr Wiese
Mr C.J. Barnett	Mr McNee	Mr Trenorden	Mr Bradshaw *(Teller)*
Mr Blaikie	Mr Nicholls	Mr Fred Tubby	
Mr Bloffwitch	Mr Omodei	Dr Turnbull	
Mrs Edwardes	Mr Shave	Mr Watt	
		Noes (24)	
Mr Michael Barnett	Dr Edwards	Mr Leahy	Mr Ripper
Mrs Beggs	Dr Gallop	Mr Marlborough	Mr D.L. Smith
Mr Catania	Mr Grill	Mr McGinty	Mr P.J. Smith
Dr Constable	Mrs Henderson	Mr Pearce	Mr Taylor
Mr Cunningham	Mr Gordon Hill	Mr Read	Mr Thomas
Mr Donovan	Mr Kobelke	Mr Riebeling	Mrs Watkins *(Teller)*

Pairs	
Mr Kierath	Dr Watson
Mr MacKinnon	Mr Wilson
Mr Minson	Mr Troy
Mr Court	Mr Bridge
Mr Grayden	Dr Lawrence
Mr Clarko	Mr Graham

Amendment thus negatived.

Clause put and passed.

Clauses 56 to 58 put and passed.

Clause 59: Oath or affirmation of office -

Mrs EDWARDES: This clause deals with the oath or affirmation of office. We have the Executive appoint, the Legislature approve and the judiciary administer, but in this instance the Speaker or the President will be able to administer the oath or affirmation. Why is it not more appropriate to have the Chief Justice administer the oath in this instance?

Mr D.L. SMITH: We wanted to make it very clear that the primary responsibility of the Information Commissioner is to the Parliament and not just, as the member implied, to the Executive. That is emphasised by the Speaker's being in a position of administering the oath. It is the same position as that of the Parliamentary Commissioner.

Clause put and passed.

Clauses 60 and 61 put and passed.

Clause 62: Functions of Commissioner -

Dr CONSTABLE: I move -

Page 40, after line 10 - To insert the following paragraph -

(b) if the person is the Minister - the Parliament; or

In the definitions in the glossary, a Minister is defined as an agency, so Ministers should be treated in the same way as the officers of other agencies. The clause as it is printed leaves no option for a complaint against a Minister. I seek the Minister's comment on that.

Mr D.L. SMITH: I am advised that I need to leave this provision until we deal with clause 47 because it will require one of the functions of the commissioner to be the issuing of certificates under clause 47.

Further consideration of the clause postponed, on motion by Mr D.L. Smith (Minister for Justice).

Clauses 63 and 64 put and passed.

Clause 65: How and when complaints can be made -

Mr D.L. SMITH: I move -

Page 42, line 2 - To insert after "regulations;" the word "and".

Amendment put and passed.

Mr D.L. SMITH: I move -

Page 42, lines 11 to 13 - To delete the lines and substitute the following subclause -

(5) Subject to subsection (6), if internal review of a decision is available under Part 2 or 3 a complaint is not to be made in respect of the decision unless internal review has been applied for and completed.

It appears that this amendment is simply for the purpose of correcting a drafting error.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 66 to 68 put and passed.

Clause 69: Procedure -

Dr CONSTABLE: I move -

Page 44, lines 25 and 26 - To delete ", with the approval of the Commissioner,".

The central issue which must be addressed is whether a person should have legal representation and whether that should be allowed before the commissioner. It seems in a situation where an applicant is before the commissioner that person would be arguing against an agency that would have full resources at its disposal. It is important that any applicant in this circumstance should be able to have legal representation because he or she may be seriously disadvantaged otherwise. This is a central issue, and my amendment serves that purpose.

Mr D.L. SMITH: I do not oppose the amendment.

Amendment put and passed.

Mrs EDWARDES: I move -

Page 44, line 25 to page 45, line 2 - To delete all words after the word "may" and substitute the following -

be represented by a legal practitioner or by any other person.

Mr D.L. SMITH: I do not oppose the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 70: Conciliation -

Mr WIESE: The clause introduces the concept of a conciliator. While I accept that there may be a role to be played by such a person, what will the conciliator's powers be, apart from the power to require parties to attend compulsory conferences - which could be done by the commissioner anyway? Does the conciliator need any other powers?

Mr D.L. SMITH: Consistent with the approach in the legislation to provide a quick, cheap and effective means of review, the clause aims to promote the early settlement of issues by conciliation or negotiation. The clause allows the commissioner to suspend his or her investigation at any time to allow attempts at conciliation, and to give a direction he or she thinks fit to promote the resolution of the complaint. The commissioner is not precluded from being the conciliator but may appoint another person. It is proposed that the commissioner's staff include specialist conciliators. This is not dissimilar to the way in which the Equal Opportunity Commissioner operates, and demonstrates that in most cases

problems can be resolved by bringing together the applicant who is dissatisfied and the agency in an attempt to work through the issue. This will be without requiring the formal process of a determination by the commissioner. In most cases the conciliators would be the persons nominated by the commission staff, and they will make the process more effective without necessarily utilising other clauses of the legislation.

Mr Wiese: So they will really have no power?

Mr D.L. SMITH: No. When I say no, obviously they will have the power under subclause (4) to compel parties to attend compulsory conferences, but that is it.

Clause put and passed.

Clauses 71 to 74 put and passed.

Clause 75: Decisions of the Commissioner -

Mrs EDWARDES: In making amendments to the 1991 Bill to produce the 1992 Bill, the Minister took up our suggestion to provide for a time limit on matters contained in subclause (3). This relates to the commissioner being compelled to make a decision within 30 days. However, and the Minister may say it is unnecessary, variations in the time limit are not provided for when these become necessary. The clause refers to only the 30 days limit after the complaint is made. The provision requires the power to change the time limit where necessary.

Mr D.L. SMITH: This time limit is not a strict one. The clause reads that the commissioner must make a decision on the complaint within 30 days after the complaint is made unless the commissioner "considers that it is impracticable to do so". Therefore, an out is provided if it is not practical to make the determination within that limit.

Mrs Edwardes: Therefore, the commissioner may not make a decision for as long as he decides.

Mr D.L. SMITH: Mandamus and other procedures can be followed if a person is sitting on a matter and not providing reasons why it is impractical to deliver the decision.

Clause put and passed.

Clause 76: Review where an exemption certificate has been issued -

Progress

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

JURIES AMENDMENT BILL

Receipt and First Reading

Bill received from the Council; and, on motion by Mr D.L. Smith (Minister for Lands), read a first time.

House adjourned at 12.55 am (Thursday)