consideration. It will allow the member for Scarborough and the deputy leader of the National Party to discuss their amendments with the responsible Minister to see if some compromise or agreement can be reached to expedite the passage of this Bill through the Parliament.

I thank those members opposite who were gracious enough to acknowledge that this is important legislation. I thank them for supporting the work of the volunteer fire brigades in Western Australia.

Question put and passed.

Bill read a second time.

FREEDOM OF INFORMATION BILL

Committee

Resumed from 11 November. The Chairman of Committees (Dr Alexander) in the Chair; Mr D.L. Smith (Minister for Justice) in charge of the Bill.

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

Progress was reported after the clause had been partly considered.

Dr CONSTABLE: I move -

> Page 49, line 21 to page 50, line 9 - To delete all words after "made".
>
> Page 50, after line 9 - To insert the following subclause -
>
> > (5) If a decision is made under subsection (3), the Premier may appeal to the Supreme Court within the time prescribed or allowed under Rules of Court.
> >
> > (6) The provisions of sections 86, 89, 90, 91 and 92 apply to an appeal under subsection (5) as if the appeal is a review proceeding referred to in Division 6 of Part 4 and wherever "agency" is referred to it is deemed to be a reference to the Premier.

It is worthwhile trying to understand what clause 76, as it stands, will do. I understand that under this clause the Premier may issue exemption certificates and an applicant may appeal to the commissioner against the exemption certificate being issued by the Premier. The commissioner may, in some circumstances, deem it necessary to overturn the exemption certificate. The exemption certificate will cease to have effect after 28 days. However, before the expiry of 28 days the Premier may confirm the certificate and must give notice of confirmation to the commissioner and to the Parliament. The situation will arise where, if the commissioner decides the exemption certificate issued by the Premier is not justified, the exemption certificate will cease to have effect unless the Premier notifies the commissioner to the contrary. The Premier actually has the power of veto and I believe it gives too much power to the Premier. If a document is politically sensitive to the Premier it would incur less damage by the Premier confirming an exemption certificate. Members can only imagine what would have happened during the 1980s if the then Premiers had had this power to exempt information. We have had many instances where a Premier would have overruled the commissioner. Why should the Premier be able to veto the commissioner's decision? Surely we must trust the person appointed to the position of commissioner to be sensitive to issues which, if exposed, might be damaging to the State's economy or are not in the public interest.

If this clause is passed the Premier will be able to issue exemption certificates for many documents and by doing that it removes the applicant's right to review. My amendments will provide that if the Premier overrules the commissioner removing the exemption certificate, the applicant will have the right of appeal in a court. That is the case in New South Wales and the applicants in this State also should be able to appeal through the court system.

Mrs EDWARDES: This clause, as it stands, does not provide for any appeal mechanism on the Premier's notification. If there is any concern in respect of the Premier's notification - whether it is confirmed or allowed to lapse - it is important that the applicant has the opportunity to appeal to, perhaps, the Supreme Court. At the present time the decision by the

Premier will be based on fact; although under the Act only matters of law are available to go to the Supreme Court. I know there are various ways to get reviews of decisions based on fact to fit within the question of law, depending on the judge who is hearing the case. For that reason, the wording of this clause should be a little tighter.

The member for Floreat has clearly identified that the clause, as it stands, does not provide for any appeal mechanism by the party to the decision to the Supreme Court.

Mr D.L. SMITH: The member for Floreat was unfair in saying that these certificates could be issued in respect of any document. The capacity of the Premier to issue the certificates is provided for in clause 35(1) of the Bill which states -

> The Premier may sign an exemption certificate stating that a document mentioned in the certificate contains matter that is exempt matter under a specified provision of clause 1 or 2 of Schedule 1.

Clauses 1 and 2 of schedule 1 relate solely to Cabinet and Executive Council and to intergovernmental relations. In effect, the Premier would issue a certificate saying that those particular documents come within the exemptions and they are not covered by the limits on the exemptions provided for in these two clauses. This is the only category of documents where the Premier would have this capacity. It is not on a ministerial basis. If it is felt it is too important for the Minister responsible to take responsibility, the Premier must take responsibility for it.

When the certificate is issued by the Premier, the Bill provides, under clause 76, for the commissioner to review the situation where the exemption certificate has been issued. It is true that it is a more limited form of review than that provided for in other clauses. All the commissioner has to do is determine whether there are reasonable grounds for claiming that the document is exempt, rather than finding it is actually exempt. He does have to make a determination and give reasons. It would be open to him to find there are not reasonable grounds for claiming the exemption or issuing the certificate. Alternatively, he may say there are reasonable grounds. In either case the Premier has the opportunity to advise that he or she insists on the exemption certificate remaining in effect and, currently, that is the end of the matter except that the Premier is obliged to report to the Parliament the reasons for the issue of the exemption certificate. In effect, the Premier is left to take the political responsibility for the decision on an accountable basis to the Parliament. The reason for that is the preservation of the normal Westminster system; that is, by tradition the documents of Cabinet and Executive Council, and those dealing with intergovernmental relations, were not the sort of documents available by any means, except in the main to Ministers and senior chief executive officers who had responsibilities in those areas. We do not want to maintain the strict Westminster system. The Government wants a more accountable system whereby it provides information to a greater extent than allowed for traditionally under the Westminster system. It has tried to include access to a range of documents covered by the limitations on the exemptions which are expressed in the clause. Should the Premier of the day for reasons of State interest - not personal interest - make a decision that a document should not be released she must make it a political decision and she must be accountable for that decision by reporting to the Parliament that she has given the exemption. She must also explain her reasons for giving that exemption. No attempt will be made to hide what has been done. It will be made public and will be explained.

The amendments proposed by the member for Floreat would allow the Supreme Court to review the decision of the Premier; that is, it would allow an appeal to take place to the Supreme Court to review the decision of the Premier. In my view, a person who strictly adheres to the Westminster system would say that is tantamount to allowing the courts to start to interfere with the innermost council of the Executive and, through the Executive, the Parliament. The provision and method the Government propose are not unique. I understand this system operates in the Commonwealth - despite what the member for Floreat said - and in New South Wales, South Australia and Queensland. I am not sure of the position in other States which introduced FOI legislation at a later date. It is not the position in Victoria. The Government has also excluded the notion of ministerial certificates. It has decided it is too important a matter for Ministers to have the opportunity to issue that exemption willy-nilly and it should be given in very limited circumstances by the Premier alone, in case the Minister is seeking to protect his or her personal position rather than looking after the

Government and community interest. The Premier will take that personal responsibility. I do not have copies of the Eastern States' legislation before me but I am advised that we have done the same as the Commonwealth, New South Wales, South Australia and Queensland. However, some of those places have ministerial certificates rather than Premiers' certificates and they do not have a system of review that is more extensive than the system proposed in this Bill, and in those cases they do not go as far as requiring the Premier to provide an explanation to the Parliament for the issue of the certificate.

Despite the Royal Commission and the desire of the public and the media to know all the inner workings of Government, we must recognise that on some occasions it is in the community and public interest that certain documents not be revealed. Clearly, that is what the schedule of documents and exempt agencies is all about. The Government recognises there are some limits to the power to know, and when talking about documents which are as sensitive to the interests of the State and the community as Cabinet documents, Executive Council documents, intergovernmental relations and the categories in support of those, which are nominated in the schedule, there is a real public interest that must be preserved. However, there must be a degree of accountability to the Parliament by the Premier's taking political responsibility for the decision made to issue the certificate.

Mr DONOVAN: It is worth reminding members from the outset that last night the Committee accepted the proposition - although some members had concerns about it - of the Government's unilateral right to appoint the commissioner. An amendment was proposed by the member for Kingsley that would have allowed the matter to be dealt with by the Parliament. However, having accepted the Government's right to appoint the commissioner, it then becomes important not to give the Premier of the day the unfettered powers that the existing Bill tends to give. Although I accept the argument the Minister is mounting, the public interest is not necessarily always served by the simple proposition that the Premier of the day in any event accepts the political responsibility. That might be a proposition that in practice may occur three months before an election, but I doubt whether it would apply three months after an election where the political responsibility - as the Minister expresses it - becomes much easier to carry. Therefore, before these amendments are dismissed out of hand - and I hope they are not - these amendments should be considered quite seriously.

The other point worth noting in the Minister's argument is that, although clause 76(5) requires the Premier to provide a copy of a subclause (4) notice to both Houses of Parliament within five sitting days, that does not give the Parliament the capacity to overturn it in any way. Members will recall that yesterday we had a protracted debate in this place about a motion to disallow an amendment. Earlier in the week a report was made by the Standing Committee on Delegated Legislation which has among its functions the capacity to recommend to either or both Houses that a particular regulation be disallowed. The thinking behind that power to disallow something is precisely the thinking reflected in the amendment proposed by the member for Floreat. Indeed, the opposition to that power to disallow - without being unkind to the Minister - is conversely reflected in the Government's insistence on keeping this clause as it is. I am not suggesting we should amend the member for Floreat's amendment to make it a function of Parliament to disallow such an exemption certificate. I think it is reasonable that in areas of contest that are likely to be serious an applicant ought to be put on more of an even footing with the Premier or the Government of the day. The amendment moved by the member for Floreat will achieve that. I am concerned at the potentially prohibitive costs, and I am referring now to the consequential amendment. If any appeal were made by the Premier to the Supreme Court presumably that would entail the capacity of an applicant to make representations to that court. The expense would be considerably more difficult for the applicant to meet than for the Premier with the resources of Treasury behind him or her. Nonetheless, the objective that the member for Floreat seeks to achieve is a worthy one and certainly in keeping with the spirit of the Bill, as members have referred to it throughout the debate, enshrined as they are in clause 4. We are about assisting the public to obtain access to documents, allowing access to documents promptly at the lowest reasonable cost, and meeting the matters related to personal information. I fear that the application of the clause as it stands may, under certain circumstances, place the Premier of the day back into the situation that has been much criticised in this place; that is, where a simple political expedient can be applied in relation to the continuation of a certificate provided under this clause. The proposed amendment goes a long way towards overcoming that problem.

Mr D.L. SMITH: I repeat that under this provision we are dealing with certificates issued under clause 35. Those certificates are limited to Cabinet and Executive Council documents and documents relating to intergovernmental relations. I emphasise that the limits on the exemptions under these provisions are expressed in relation to the Cabinet and Executive Council documents as matters that are merely factual or statistical and are not exempt matter under subclause (1) unless its disclosure would reveal any deliberation or decision of an executive body where that deliberation or decision had not been officially published. The matter is not exempt under subclause (1) if at least 20 years have passed since the matter, or matters referred to in subclause (1)(f) came into existence.

With relation to intergovernmental relations, the limit on the exemption is that the matter is not exempt matter under subclause (1) if its disclosure would be, on balance, in the public interest; so there is a public interest limitation on that exemption. I repeat that decisions of the Premier to issue a certificate are reviewable by the commissioner although, as I have said, that review is limited to the question of whether there are reasonable grounds for claiming that a document is exempt. It does invite the commissioner to make a decision on that basis and to publish that decision and the reasons for it. If the Premier then decides to withdraw the certificate she has the power to do so under subsection 7. If that is not done, it is presumed after 28 days that the document can be released, or the Premier has the opportunity to, in effect, reissue the certificate saying she wants to maintain the exemption notwithstanding the decision of the commission.

The Premier is then obliged to table her reasons for doing that in this place. Clearly the tabling of reasons and documents here is not done simply with a view to notifying the public or members about what is happening and what are the reasons for that happening. The object is that if we in this place disagree with the Premier's reasons it is open to the Parliament, especially as the numbers are in this place at present, to move to, if one likes, censure the Premier for not revealing it or giving her a certain time to withdraw her certificate or do any of the other things that are available to her. This is not a Claytons explanation in the sense that the documents are not revealed by tabling in this place. If they were there would be no point in the certificate because the documents would have been tabled. Nonetheless, if there is a smell of suspicion that some personal self interest or political interest is involved -

Dr Constable: How would you know?

Mr D.L. SMITH: People using this process would have had the information commissioner make a decision whether there were reasonable grounds for the Premier to claim the exemption and issue a certificate. If he finds that in his view there are no such grounds, that will be on the public record. In relation to both the reasons the commissioner will give and the reasons the Premier will give, there will be an opportunity for people to form an opinion as to whether there is any suspicion. Clearly, if the document seems to relate to some matter of great political importance at the time, and the Parliament is of the view that the document should be released, it has the capacity to take action by threatening the Premier with censure or a no confidence motion if she continues to maintain her certificate. We also have other powers.

Mr Wiese: What other powers do we have?

Mr D.L. SMITH: Unlike the Americans and the Europeans who have Executive Government running the country and no-one in the Parliament being responsible directly for what they are doing, under the Westminster system the Premier and Minister are members of this Parliament and subject to its discipline and supervision.

Mr Wiese: That is marvellous, but look at the practice over the past six or seven years.

Mr D.L. SMITH: The truth of the matter is that for the past 90 years the Government introducing the legislation has never had a majority because of the gerrymander in the upper House.

Several members interjected.

The CHAIRMAN: Order! I suggest the Minister return to the amendment before the Committee.

Mr D.L. SMITH: It is important to the amendment. If one is looking at the Government's introducing this legislation it is always open to the conservative parties in this State to move

the appropriate motion in the other place. It provides the absolute check. However, it will not do that when the conservative parties are in Government. That may concern the member for Morley as it concerns me.

In our system we must be careful that, notwithstanding the findings of the Royal Commission and whatever it may recommend tomorrow, whatever our personal views may be of the events surrounding the commission we do not allow it to begin the destruction of the Westminster system. I believe we have the best system of government where those controlling the Executive are not outside this place but in here subject to the discipline of this place and to being removed if they lose the confidence of this place, which is the ultimate check.

When we as members of this place and believers in the Westminster system start to say that whether Executive Council, Cabinet minutes and intergovernmental relations should or should not be disclosed in the public interest, should become a question to be answered by the Supreme Court, then we are beginning to threaten the Westminster system. The amendment moved by the member for Floreat is an unconstrained appeal; that is, the Supreme Court is not only considering a question of law but also a matter totally de novo on the basis that the court can execute its own decisions on what is in the public interest in place of the Premier. That is placing in judicial hands not only how the Executive should behave but also what it should provide and it places the judiciary in a superior position to us. The Royal Commissioners, all being judges, may think that is a great view of the world. I believe that we, as parliamentarians, should be careful about adopting such a view.

Progress

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

Sitting suspended from 1.00 to 2.00 pm

[Questions without notice taken.]

MATTER OF PUBLIC IMPORTANCE - UNEMPLOYMENT

THE SPEAKER (Mr Michael Barnett): Earlier today I received a letter from the Leader of the Opposition seeking to debate as a matter of public importance the number of unemployed people in Western Australia.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

Mr Pearce: Perhaps the Leader of the Opposition will tell us how the Simcoa project might have helped in his view of unemployment.

Dr Gallop: How about Hepburn Heights?

Mr Ripper: And Port Kennedy?

The SPEAKER: How unusual for members of the Government not to know the Standing Orders which state that while I am on my feet ready to give them information, they will be quiet and wait. In accordance with the Sessional Order, half an hour will be allocated to each side of the House for the purposes of this debate. I will also allow up to 10 minutes for the Independents to debate this matter.

Motion

MR COURT (Nedlands - Leader of the Opposition) [2.40 pm]: I move -

> That this House expresses grave concern at the record levels of unemployment in Western Australia with the Australian Bureau of Statistics showing that 11.6% of the work force, or 99 400 people, are unemployed, and calls on the Government to -
>
> (i) tackle the issues of labour market reform;
>
> (ii) ease the burdens on small business including the abolition of payroll tax to enable them to employ more people; and
>
> (iii) introduce a debt management plan that will enable taxes and charges to be reduced,