timing and pricing issues will be taken to ensure that we get a proper return for the people of Western Australia. As I said, once that price is set the underwriters carry the market risk. This is historic legislation based on the premise that the time has come to privatise this aspect of our Government insurance industry by the creation of a new company which then can be floated and can become part of the Western Australian private sector.

Mr C.J. Barnett: No, it will become part of the Australian or international private sector. We will be lucky if it lasts more than five years - three years if we are lucky!

Dr GALLOP: That is the view of the member for Cottesloe. The Government believes it has a responsibility to ensure that in that float process it gets the best possible price for the people of Western Australia and that it sets up a company that will have within its framework incentives for good performance and a disincentive to bad performance.

Mr C.J. Barnett: GIO Ltd couldn't have written a better speech for the Minister.

Dr GALLOP: The best way to do that is to guarantee that the normal market processes will occur after the two year period of restriction has expired. I thank the Opposition Liberal Party for its support of this legislation and I trust that the Legislative Council will also carry the Bill when it arrives there.

Mr C.J. Barnett: You are helping sell out Western Australia. You have been taken for a big ride.

The SPEAKER: Order!

Question put and passed.

Bill read a third time and transmitted to the Council.

FREEDOM OF INFORMATION BILL

Committee

Resumed from 12 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 on the clause after the following amendments had been moved -

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.

Dr CONSTABLE: The Minister has said nothing to convince me that the Premier should have power of veto over the commissioner's ruling on exemption certificates. The buck should not stop with the Premier in this situation.

Mr D.L. Smith: It stops with the Parliament.

Dr CONSTABLE: The Parliament might have some vague notion of what the Premier is vetoing but certainly the substance of that will not be known and the Parliament will not be able to do anything to overrule that veto.

Mr D.L. Smith interjected.

Dr CONSTABLE: For what would the Parliament be censuring the Premier? It would not know the substance of the matter; it is a secret matter. We must either trust in the independence of the commissioner or allow for a further step for a person to take rather than leaving it with the Premier. Imagine what would have happened in the 1980s if Brian Burke had had this power of veto over exemptions. I do not think in this age of accountability and in the light of part II of the Report of the Royal Commission into Commercial Activities of Government and Other Matters that we can leave this clause as it stands. The amendment is

essential if we are to have accountability of the Executive. The idea is to try to improve and protect the system, not to give a Premier that sort of power. I do not believe the Minister has answered the question of why the Premier is better qualified than the commissioner or the Supreme Court to make an independent assessment in the public interest. It is quite clear that any Premier's judgment could be clouded by personal or political matters. The Opposition is looking for independence in making such a decision. This amendment improves and protects our system. If we leave it with a Premier to veto, the system will be left wide open for abuse.

Mr D.L. SMITH: The starting point in this matter is to look at the nature of the appeal system suggested by the member for Floreat; that is, the right of appeal should be to the Supreme Court. This amendment offers no criteria for the Supreme Court to use, so its approach would be to consider the matter de novo, and to exercise the same kind of judgment on the question as the Premier would have done already. In essence, that means that we as a Parliament would be agreeing to a judicial body substituting for a decision of the Executive its opinion about what may or may not be in the public interest.

In my view, to simply allow that issue to be decided judicially would leave that court completely unconstrained and would result in a further erosion of the balance between the Legislature, the Executive and the judiciary. As a result of the errors of some people in the past members seem to be seeking to have not simply accountability to the people, but also are upsetting a traditional balance between the Legislature, the Executive and the judiciary. In essence, whenever a Minister makes a decision one presumes that that decision is made in the public interest. The tradition of the Westminster system is that because the Minister or the Premier is a member of the Legislature, the Minister or the Premier should be accountable to that Legislature. Of course, if the Legislature forms the view that the decision of the Minister or the Premier is incorrect, it has the power of the Parliament to censure or seek to overturn that decision. Of course, it also has the power to change the legislation.

The question of whether the Parliament would be in a position to assess the matter without the documents overlooks the fact that by the time the matter reaches the Parliament a decision will have been made by the Information Commissioner that the particular document or agency was not exempt, and there would have been reasons for that, or, that it was exempt. The decision confirms the Premier's additional use of the certificate. I do not think that we as a Parliament would be interested in the matter beyond that. If the Information Commissioner's decision were different, the Parliament would have the benefit of that decision. The Government will be incorporating in legislation the question of the reasons given by the commissioner in reaching a decision. At present, the legislation provides for such reasons to be given on a discretionary basis.

As a result of one of the recommendations of the Royal Commission's report the Information Commissioner will have an obligation to provide reasons. The Government will be amending legislation to ensure that that occurs. By the time the matter reaches Parliament the Premier will have given a detailed explanation and a reasoned decision will have been provided by the commissioner. That is the proper balance which enables the Parliament, as a Legislature, to make the decisions about what was or was not in accordance with the public interest.

If one looks at the situation in other jurisdictions one finds that in the Commonwealth the provision is exactly the same as in the Western Australian Bill, except that the Administrative Appeals Tribunal has the role of the Information Commissioner. The situation in Queensland, New South Wales and South Australia is the same except that in the latter two States the District Court has the role of the Information Commissioner. In Tasmania the Ombudsman may report to the Parliament on a refusal to supply a document by the issue of a certificate, but the Ombudsman may not require the document to be provided. Victoria is the only State which has a different approach to this matter. In that State the Administrative Appeals Tribunal has a review function, and it may decide to release a document subject to the certificate if it decides that the document is not properly classified as exempt.

Dr Constable: In all other jurisdictions can the Premiers overrule?

Mr D.L. SMITH: In all other jurisdictions except Victoria the Premier can overrule in the way that is provided for in this legislation, either in the sense of the certificate's being final

or its being final after consideration by one of those bodies about which I have spoken. The Premier is, of course, a member of this Legislative Assembly. He or she will have the record of the reasons, and if the Information Commissioner has made a decision which is different from the Premier's decision that will be public knowledge, and this Parliament should have the power to decide that matter. If it does not, members are abrogating to the Supreme Court the question of deciding what is or is not in the public interest. That will not be a judicial function; it will simply be an evaluative function in the same way as the Premier will have evaluated it. Members should be careful as parliamentarians about giving the courts the right to decide on a question of judgment, balance and value about what is in the public interest, and not to have that solely decided by the Executive under the supervision of the Parliament. I urge members to reject these amendments and support the clause as it stands.

Amendments put and negatived.

Clause put and passed.

Clause 77: Reference of questions of law to Supreme Court -

Mrs EDWARDES: I compare the clause in the 1991 Bill to that in the 1992 Bill. The Minister has picked up two of the major recommendations which the Opposition highlighted at that time about subclause (2) whereby previously a question could be referred to the Supreme Court only where all parties agreed to its being made. The Opposition believed it meant that the commissioner or a particular party could object to and stop a party from having a question referred to the Supreme Court and that the commissioner would not be able to refer a matter of law to the Supreme Court. Clause 77 of this Bill has deleted reference to all the parties having to agree.

The question arises of the costs to be borne by a party where a matter is referred to the Supreme Court and a party does not want to be involved in the application. Subclause (5) provides that a party, other than the commissioner or a party that has requested the reference, does not have to appear, be represented or participate in the hearing. A party which does not participate in such a reference to the Supreme Court will not be liable for any costs. Therefore, the 1992 Bill picks up the concerns of the Opposition about the 1991 Bill. The Opposition supports this clause.

Clause put and passed.

Clauses 78 and 79 put and passed.

Clause 80: Restrictions under other laws not applicable -

Mr WIESE: This clause appears to ensure that there will be no obligation to maintain secrecy or restrictions on the disclosure of information obtained by or given to agencies. Will this clause interfere with the secrecy provisions which apply to proceedings of the Family Court of Western Australia?

Mr D.L. SMITH: This clause deals with the question of the commissioner not being restrained by some of the restrictions imposed by other legislation or traditions. The clause will prevent agencies from relying on provisions in other Acts or common law to refuse to disclose information to the commissioner or, on legal professional privilege, to refuse to produce documents or give evidence to the commissioner. The commissioner cannot be restricted by some of the traditional rules of evidence or the provisions in other legislation which prevent him from having access to documents so that he can make judgments on them. It would be foolish and quite contrary to the intent of the legislation if that were allowed to happen. It is for the commissioner's purposes in determining whether the objection raised by the agency is appropriate.

Mr Wiese: Will this overrule the secrecy provisions of the Legal Aid Commission and other agencies?

Mr D.L. SMITH: Yes, but only so far as the commissioner is concerned.

Mr Wiese: Therefore, he has access to documents, but they must remain within his possession?

Mr D.L. SMITH: Yes.

Clause put and passed.

Clause 81: Secrecy -

Mr WIESE: This clause deals with confidential information obtained by the commissioner or his staff. Generally I am opposed to the level of fines imposed in legislation, but in this case I believe the maximum fine of $2 500 and imprisonment for six months for the release of confidential information by the commissioner or his staff is inadequate. This offence would be one of the most serious breaches of confidentiality.

Mr D.L. SMITH: Clause 81 is intended to provide protection in relation to matters that may come under the knowledge of the commissioner or his staff. It is true that the penalties provided are a fine of $2 500 and imprisonment for six months. It is also true that they are in the nature of maximum penalties and there is no obligation on the court to impose the maximum; it will always be a question of judgment. I believe the penalty of $2 500 with the risk of imprisonment for six months is adequate for an offence of this kind and it should ensure that the information which is provided to the commissioner and his staff remains confidential. It is something we can monitor and if there are any breaches of or concerns about the level of confidentiality in the future and we find that inadequate penalties are being imposed, we can increase the fine. Given the nature of the offence, the positions that will be held and the fact that there is the alternative of imprisonment for six months, I believe this penalty is a deterrent which is sufficient to ensure the confidentiality for which we all hope.

Clause put and passed.

Clause 82: Failure to produce documents or attend proceedings -

Mr D.L. SMITH: I move -

> Page 53, line 3 - To delete "this Division" and substitute the words "Division 3 of this Part".

The purpose of this amendment is to correct a drafting error. This clause comes under division 4 and the division which was meant to be referred to is division 3.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 83 put and passed.

Clause 84: Appeals to Supreme Court -

Mrs EDWARDES: I move -

> Page 53, line 23 - To delete the word "a" where it first appears and substitute "any".
>
> Page 53, line 24 to page 54, line 16 - To delete all words after the word "application".

The effect of these amendments is that any appeal on a question of law arising from a decision by the commissioner may be taken to the Supreme Court without the restriction to the narrow areas defined in this clause. I ask the Committee to support these amendments.

Mr D.L. SMITH: The whole intention of having an Information Commissioner and legislation of this kind is to make sure that the access being offered under this legislation is reasonably simple to obtain and is not complicated by undue legalism or access to the courts. One must remember that appeals may be brought not just by the person seeking the access, but also by the agency or any person who thinks he or she may have an interest in the subject matter. As the member for Kingsley said, the effect of the proposed amendments is to very much widen the opportunity for departments to go to court and to appeal to the Supreme Court on a whole range of preliminary matters and, thereby, very much delay the provision of the information. I refer the Committee to subclause (2) which specifically lists a number of matters on which there is no right of appeal. Frankly, if all those matters became questions of appeal as of right, should a department or agency want to frustrate the application it could simply appeal to the Supreme Court on any of those preliminary matters. That would effectively prevent the application being processed further until the appeal had been determined. Clearly, in terms of the objectives of this legislation the important matters are the three elements referred to in subclause (1); that is, the questions of whether to give access to a document or an edited copy of a document or to refuse access to a document. Those are the three critical areas and under these provisions there is a right of appeal to the Supreme Court on any question of law arising out of a decision by the commissioner on these

matters. In my view, if the Committee really wanted to ensure reasonably speedy compliance and did not want to give the opportunity to the agency or others to delay access, the way to do that would be by limiting the right of appeal on questions of law to the three critical matters and excluding the preliminary matters. If for any reason the decision of the commissioner is thought by an applicant to be wrong in respect of these preliminary matters, all the applicant must do is require the commissioner to proceed to make a decision as to whether he or she will give access to a document or an edited copy of the document or refuse access to a document. Then, any question of law which arises in relation to those matters can be taken to the Supreme Court. If it were done in any other way, instead of the whole system being relatively simple and governed in an appropriate way by the commissioner, we should be in the expensive hands of lawyers and open to the long delays that can occur if too many appeals in respect of one matter are made to the Supreme Court.

Mrs EDWARDES: As the Minister well knows, if an agency or department wanted to go down that path it could do so by other means, such as injunction or prerogative writ. Therefore, it could seek judicial review of the commissioner's decision and that would be a far less satisfactory way of proceeding if a question of law arose from the commissioner's decision. It would be far better for the appeal on a question of law to be heard in the Supreme Court. Therefore, the Minister's argument does not hold up because the agency or department could follow that course if it chose to. If a question of law arises in the course of a commissioner's decision and it is of sufficient importance, that person or agency should be given the opportunity to take the matter on appeal to the Supreme Court.

Mr WIESE: I support the comments of the member for Kingsley. I am certainly not in the game of assisting lawyers to earn a dollar because they do not need assistance from me or anybody else in that regard. If a matter of law is called into question and it needs to be clarified, it is quite untenable to include a clause in the Bill making it impossible for that question of law to be clarified in the Supreme Court.

Mr D.L. SMITH: The member for Kingsley is not often wrong, but she is on this occasion. Under clause 101 of the Bill there is no right of review of decisions by the commissioner by the means she suggested, except to the extent that it is provided for under this legislation. In respect of the concerns of the member for Wagin, I emphasise that the provision does not apply to the key questions of whether or not access is to be given. In those cases there is a right of appeal on any question of law. By limiting the right of appeal in the way this clause does, the Government is seeking to prevent appeals being made at the interim decision stage; that is, at the processing stage of the application rather than on the key issue at the end. Where there is the uneven match of a person in the street being confronted by an agency which wants to take him or her on appeal on some of those preliminary matters, then obviously the cost of a Supreme Court appeal will be very much a disadvantage and in most cases will prevent people from using this legislation. The Government is not excluding the courts on the three critical questions of whether or not to grant access. There is a right of appeal on any question of law in those cases but the Government is trying to reduce the number of appeals so that they are not taken at every preliminary step but only at the final stage. That is the way to reduce the cost, prevent the delay, make the system work and give us the maximum benefit of having an Information Commissioner as distinct from a court or other means of resolving disputes that may arise under the legislation.

Mrs EDWARDES: Subclause (2) states that there is no appeal under subclause (1) in relation to a decision of the commissioner as to the refusal of the agency to deal with the access application, etc. The Minister stated that this clause is aimed primarily at giving individuals the right to appeal to the Supreme Court on any question of law arising out of a decision of the commissioner if the effect of that decision is to give access to a document or to an edited copy of a document, or to refuse access to a document. According to subclause (2), the decision about whether there will be an appeal is still a decision of the commissioner. According to the flow chart which has been submitted, we are still dealing at that stage with an individual rather than with the agency. I am trying to determine the distinction between subclauses (1) and (2) and whether the Minister is still excluding individuals from appealing to the Supreme Court on any question of law arising out of a decision of the commissioner.

Mr D.L. SMITH: I do not follow the question. Clearly under this clause the right to appeal is given to any party which has an interest in the complaint, and the appeal is from the decision of the commissioner. After a person has gone through the initial part of that flow

chart and through the various preliminary steps where the agency may have refused access, etc, there is a reference to the commissioner and then a decision by the commissioner. The key decision by the commissioner is whether to grant access to the particular documents which are being sought. That comes under subclause (1). Subclause (2) seeks to exclude appeals in respect of some of the preliminary steps, which range from the payment of a deposit, to the level of fees to be paid.

Mrs Edwardes: How do the payment of a deposit and the level of fees come to be a decision of the commissioner?

Mr D.L. SMITH: Whether the charges are as low as practicable and whether they are reasonable in all of the circumstances are the sorts of issues which could be referred to the commissioner by way of complaint.

Mrs Edwardes: Therefore, subclause (2) deals not only with agencies; it also covers individuals who want to appeal on a question of law?

Mr D.L. SMITH: Yes, but were we to give to the applicant the right of appeal, we would also have to give that right to the responsible agency. We are simply saying in this provision that we do not believe in respect of the preliminary matters - and this is confirmed by the legislation in other States - that there should be a right of appeal. We believe we should try to limit the appeals in order to increase the access to and use of the legislation by ordinary citizens. The appeals should be limited to the critical question of whether to grant access to a document or to an edited copy of a document. Subclause (3) provides the additional right of appeal to the Supreme Court on any question of law arising out of a decision of the commissioner in relation to an application to amend personal information. Subclause (5) clarifies the question of who may be a party to an appeal, because it states that an appeal may be brought by any party to the complaint. Clearly, that will be the applicable agency or a third party who may be interested in the information. This clause is not intended in any way to restrict people's ability to obtain access. It is really intended to speed up the process, and to try to keep down the costs in a way where people will not be frightened to use the legislation because they fear that there will always be appeals to the Supreme Court on questions of law arising out of the preliminary matters in addition to the final question of whether the commissioner will grant access.

Mr WIESE: I understand what the Minister is trying to say, but I do not believe it. Subclause (2)(c) refers to documents referred to in clause 27, which deals with medical and psychiatric information, and which seeks to protect a person if it appears that the release of that information may have a substantially adverse effect on that person's physical or mental health. It is all very well for the Minister to say that a person will have a right of appeal at the end of the process, but if a person wanted to appeal on a question of law in respect of medical and psychiatric information, by the time he had reached the final stage and started to exercise his right of appeal, that information might have been released and it would be too late to appeal because the damage would already have been done. For that reason, what the Minister is saying is quite wrong and does not stand up to close inspection, and I repeat my initial support for the amendment moved by the member for Kingsley.

The CHAIRMAN: Members must keep the conversation level down. When the Chamber is quiet almost everything said can be heard here and at the Hansard table.

Mr D.L. SMITH: As the member for Wagin said, under proposed section 27 if the opinion of the principal officer of an agency is that a document may have a substantially adverse effect upon the physical and mental health of an applicant, it is in compliance with the legislation if access to the document is given to a suitably qualified person nominated by the applicant. The question is not whether access should be given to the document but whether the document should be given to the applicant directly, or access should be given to a third party acting on behalf of, and nominated by, the applicant. It is whether it will have any adverse effect on the physical and mental health of the applicant.

The law relates to the interpretation of the substantial adverse effects on the physical and mental health of the applicant. If the applicant is aggrieved by the decision of the principal officer of the agency, the right of appeal to the commissioner is available. The commissioner can then determine the complaint in the ordinary manner. If the principal officer of the agency determines that access is likely to have substantially adverse effects on the health of

the applicant, and a similar decision is made by the commissioner, the amendment would allow the applicant, or someone else with an interest in the matter such as an author of a report, to appeal on a question of law to the Supreme Court. This would create problems: It would generate costs and would open the gates too widely. The matter would have been considered by the principal officer of the agency, who would normally act impartially.

Mr Wiese: The decision will be made on health grounds.

Mr D.L. SMITH: Or on various other grounds. If the commissioner comes to the same conclusion, and the Opposition wants a third party to give an interpretation to the same words, it is introducing a chain which becomes too long.

If we begin with the principle that we are satisfied that the commissioner will act independently and in accordance with the principles of granting access to documents, seeking a third decision in the courts cannot be justified. The inclusion of this amendment is unnecessary and would result in no positive outcomes. The chances are that if the principal officer says that access will have an adverse effect upon the applicant's health, and the commissioner acting independently comes to the same conclusion, I doubt whether the decision of the Supreme Court will be any different. People will be put through the expense of an appeal for no effect.

Mr Omodei: It is their decision.

Mr D.L. SMITH: Yes, but the costs are not just to the applicant, as they apply to the State in running the system. I have already indicated that it will cost about $800 000 in the first year to run this system, and adding the right of appeal to the Supreme Court in every case will add approximately $5 000 for each appeal. The right of appeal is necessary on some issues relating to law, but issues of the kind referred to in subclause (2) are excluded by implication under subclause (1). The critical issue is whether access should be given to the document, to an edited version as opposed to the complete document, or whether access should be refused. These are the three key matters and the right of appeal upon matters of law on these issues is available.

In the end the question of whether access will have an adverse effect upon the applicant's physical and mental health is not a question of law, but is a personal judgment. True, it is a question of law regarding the words and interpretation, but the chief executive officer and the commissioner would make a personal judgment in accordance with the objectives of the legislation. In taking the matter to a third party the hope would be that, somehow or other, the chief executive officer or commissioner made an error of law. The likelihood of that happening is so small that the appeal right should be excluded.

Mrs Edwardes: It is dealing with a question of law, not a question of fact.

Mr D.L. SMITH: But if the right of appeal exists, they will go to the court to argue that question - that is where the delay and costs will arise. We must try to restrict these matters. If concerns arise regarding proposed section 27, I may be willing to look at those in the future.

Mr Wiese: There is no time like the present, Minister.

Mr D.L. SMITH: Without further consideration, we must limit the right of appeal, as is correctly done through the provision as it stands. If some concerns arise in relation to paragraphs (a) to (f), and somehow or other we have gone too far, I am happy to review them at that stage. Nevertheless, I am not prepared to make this change at this stage.

Mr OMODEI: Proposed subclauses (2)(a) to (2)(f) would not involve people making frivolous appeals to the Supreme Court as costs in such actions are substantial. The Minister mentioned $5 000 for each appeal. Therefore, surely few people would take a matter to the Supreme Court without a strong case.

Mr D.L. SMITH: Although costs and the difficulty of proving a case will always be a restraint on taking action, people and agencies are willing to do so in certain circumstances. The critical issue regarding the right of appeal relates to the question of access and not to other preliminary questions which, in the end, boil down to a question of judgment. Ultimately, questions which depend upon judgments and evaluations should not be opened up with the opportunity of appeal on a question of law. This will lead to further delay and cost.

Regarding paragraphs (a) to (c), or (f) for that matter, in some rare circumstances it may be possible and reasonable to make an appeal. I am prepared to give an undertaking to keep these under review, but I am unwilling to allow the member for Kingsley's amendment. To pass this amendment will open up the appeals not only relating to these matters, but also to any preliminary steps.

Using the member for Kingsley's flow chart, and applying her amendment, if a written application to an agency results in a claim of an inadequate application for denying access, will the applicant have some right of appeal at that stage?

Mr Wiese: Does the agency not have an obligation to help the person get that application in the correct form?

Mr D.L. SMITH: If the words "giving assistance where necessary" are used, one can imagine the question of law being put before the Supreme Court as to whether adequate assistance had been given. The methodology under this legislation is that where an agency has not given that assistance, or has acted unreasonably, or a person in an agency has not given that assistance, that person can be named by the decision of the commissioner and referred to the chief executive officer of that agency. I believe that is the appropriate way to deal with those issues, rather than invite appeals at every preliminary step. The critical issue is at the end of the preliminary steps where there is a decision to grant or refuse access.

Mr Wiese: How can the Minister say the refusal of the agency to deal with an application is a preliminary step? That is the end of the course.

Mr D.L. SMITH: At that stage the applicant is given the opportunity to complain to the Information Commissioner.

Mr Wiese: The appeal would be in relation to the decision of the commissioner.

Mr D.L. SMITH: I am saying that is where the matter should end. If an agency refuses to deal with an application and a complaint is made to the commissioner about that refusal and the commissioner decides that the refusal is reasonable it should not be necessary to have a right of appeal on that decision.

Mr Wiese: It would be on a question of law.

Mr D.L. SMITH: The structure of this, in the same way as the Small Claims Tribunal and elsewhere, is to try to keep things relatively simple. The reverse would happen. If an agency refused to deal with an applicant and the complainant took the matter to the commissioner who decided that the agency should deal with the complaint the agency could make an appeal to the Supreme Court on that decision. That is where the delay and extra cost would come in. At each stage of that process, referrals would be able to be made to the commissioner and if his decision were in favour of the applicant, appeals could be made by the agency. For the reasons outlined by the member for Warren, such as costs and advantages to the agency caused through delays, it would be much more likely for the agency or the third party to appeal against any of those preliminary decisions than it would be for the applicant. That would certainly be so if one were prepared to trust the commissioner to make decisions under his or her oath of office relevant to the objectives of this legislation. The commissioner's role would be no different from an internal review. If we accept the member for Kingsley's amendment, every time the commissioner makes a decision in favour of the applicant, the agency will go to the Supreme Court causing months of delay and thousands of dollars in cost to the applicant for the hire of a lawyer. Those matters should not be approached on the basis that there will be a right of appeal only by the complainant.

Mr Wiese: It seems like a good suggestion.

Mr D.L. SMITH: That is not what the legislation provides and would certainly not be the effect of the amendment moved by the member for Kingsley. It would provide for both the agency and the applicant to appeal to the Supreme Court. The amendment would be inviting a chain reaction. At a later stage, we may want to look at whether some of those issues under clause 84(2) should be left open for an appeal by only the applicant. However I am not prepared to consider that amendment tonight because the basic thrust of this legislation is to have a relatively uncomplicated, cheap, expeditious system of review. The moment rights of appeal to the Supreme Court are introduced on every decision of the commissioner on any of those preliminary steps it becomes a very legalistic and bureaucratic mess which would

cause most applicants to give up, but which most agencies would use to their full extent if they did not want to give out a document.

Mr WIESE: I do not accept what the Minister is saying. The situation is very one-sided.

Mr D.L. Smith: Quite the reverse; it could become very one-sided if an open right of appeal is given to the agency.

Mr WIESE: Under clause 84(1)(a) a right of appeal would be retained by the agency on a question in relation to the giving of access to a document.

Mr D.L. Smith interjected.

Mr WIESE: The agency is not prohibited from appealing under that provision.

Mr D.L. Smith: Once only, not seven or eight times.

Mr WIESE: The provision for giving access to an edited copy of a document could be utilised by both parties. Subclause (1)(c) provides that if the effect of the decision is to refuse access to a document, the applicant has a right of appeal on a question of law. It appears to me that the majority of those matters in subclause (2) will not affect the agency. The individual trying to utilise the legislation will be prevented from having access to an appeal on a question of law. Subclause (2)(a) relates purely to the applicant; it does not affect the agency. The deferral of the provision of a document is denied to the individual seeking to use the freedom of information legislation. He is denied the very basic right of appeal on a question of law. Subclause (2)(c) could apply to both the agency and the applicant. It could also have far wider provisions and affect far more individual applicants than agencies. Again, the applicant would be disadvantaged, not big brother, the agency. Paragraphs (d), (e) and (f) which is a very important matter, will provide for exactly the same thing; the applicant will be denied appeal to the Supreme Court. I do not believe what the Minister is saying is correct. All those matters, especially those under subclause (2) will adversely affect the applicants using this legislation. By denying the applicant the ability to appeal on those grounds, the freedom of information will be denied, in a great number of cases, on questions of law. It will be one-sided; the applicant will always be disadvantaged.

Mr D.L. SMITH: It is paramount that people bear in mind the nature of the oath of office of the commissioner and his duties under this legislation and the objectives of the legislation. The commissioner's role is to ensure access in all cases where access should be given. The next thing that should be borne in mind by the member for Wagin, in particular, is that he is just viewing these applications as simple ones. That is, an applicant applies for access, there is a decision by the agency, and it is then brought before the commissioner by way of complaint. In many cases the documents will contain information about third parties. Some of those third parties, such as major companies that may have an interest in preventing information being given, will be very wealthy. The third parties would then have the right to be involved in the complaints and to take them on appeal to the Supreme Court. For instance, if an agency seeks to delay, or if applicants apply for, access and are told by the agency that they will be charged $25 an hour for the time involved and a deposit of $1 000 is required, the applicants can complain to the commissioner about the delay or that the charges are excessive or the deposit should not be imposed. The commissioner may decide that the complainant is right, that too high a charge has been levied and too high a deposit has been set by the agency. The commissioner can reduce those costs. It is then open to the agency or the third party to appeal that decision of the commissioner to reduce the charges in the Supreme Court.

The whole objective of seeking a reduction in the level of charges would be lost because the complainant would finish up paying $5 000 or $10 000 to lawyers to enable the matter to go before the Supreme Court when the whole application, in terms of a reduction of charges or deposit, might have involved only a few hundred dollars. That is the sort of complication of which a determined agency or a determined third party named in documents using every vehicle available to it could take advantage. Costs will not be of concern to the agency or the third party in an appeal to the Supreme Court when those parties want to shake off an applicant through delays and escalating costs, or the threat of them. We all know that the moment people see a lawyer for advice it costs $200. When documents are lodged at the Supreme Court there is a filing fee of $200. Further, if a lawyer lodges the documents at the Supreme Court the cost is about $1 000. We are not talking about the man off the street

involving himself in these appeal processes; we are talking about an agency which is using taxpayers' money or about the third parties nominated in documents who might be in much better circumstances than is the applicant. It demonstrates that the Opposition is starting with the premise that the decision of the commissioner - not of the agency - is being appealed, and that the commissioner's decision will be given recklessly, or in the interests of the agency, or in the interests of secrecy, when the very nature of the commissioner's office is to avoid that. We would have lost all the advantages. We may as well make the process require the applicant to go to the Supreme Court in the first place. We are trying to avoid costs and delay by introducing a relatively simple process of internal review, a complaint to the commissioner when people are not happy with the internal review, and a decision by the commissioner.

Those opposite are seeking to add to every stage of the process the additional right of people to appeal to the Supreme Court. The other States do not allow that to happen and we should not allow it to happen. If, after the implementation of the legislation, some concerns arise that there ought to be a right of appeal by the complainant only or by both parties for some of these matters, let us come back and amend the legislation. But let us not muck up the basic thrust of the legislation in the first place by giving the right of appeal to the Supreme Court in every instance, as the member for Kingsley would do, instead of limiting it to those matters in subclause (2).

Division

Amendments put and a division taken with the following result -

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Ayes (18)

Mr Ainsworth	Mrs Edwardes	Mr Omodei	Mr Watt
Mr C.J. Barnett	Mr Grayden	Mr Shave	Mr Wiese
Mr Bloffwitch	Mr MacKinnon	Mr Strickland	Mr Bradshaw *(Teller)*
Mr Clarko	Mr McNee	Mr Fred Tubby	
Mr Court	Mr Nicholls	Dr Turnbull	

Noes (25)

Dr Alexander	Dr Edwards	Mr Leahy	Mr Troy
Mr Michael Barnett	Dr Gallop	Mr McGinty	Dr Watson
Mrs Beggs	Mr Graham	Mr Pearce	Mr Wilson
Mr Catania	Mr Grill	Mr Read	Mrs Watkins *(Teller)*
Dr Constable	Mrs Henderson	Mr Riebeling	
Mr Cunningham	Mr Gordon Hill	Mr D.L. Smith	
Mr Donovan	Mr Kobelke	Mr P.J. Smith	

Pairs

Mr Lewis	Mr Ripper
Mr Minson	Mr Marlborough
Mr Kierath	Mr Taylor
Mr Blaikie	Mr Bridge
Mr Trenorden	Dr Lawrence

Amendments thus negatived.

Clause put and passed.

Clauses 85 to 90 put and passed.

Clause 91: Restrictions under other laws not applicable -

Mrs EDWARDES: Will the Minister advise how subclause (1) relates to clause 89 where the court in hearing and determining review proceedings must avoid disclosure? Clause 91 relates to part II of the Royal Commission report which recommends that the Commission on Government review the secrecy laws of the State. Given the fact that the review has not taken place and there is no indication as to which enactments or other laws are referred to, will the Minister clarify the situation?

Mr D.L. SMITH: It is a repeat of clause 81 in relation to the commissioner. It simply provides that in proceedings before the Supreme Court the same situation applies; that is, no agency or person can rely on any other Statute, rule of law or practice which would enable there to be an argument about whether a document should be produced. The Legal Aid Commission legislation is one example and legal and professional privilege are specifically covered. There are similar provisions in relation to adoption and child welfare legislation.

Mrs Edwardes: They are exempt?

Mr D.L. SMITH: The agency cannot rely on those secrecy provisions or rules of law in relation to evidence or otherwise in order to preclude the document being given to the court so that the court can make a determination as to whether the exemption was rightfully granted.

Mr WIESE: I want to be clear about this matter and I want it on the record. The Minister mentioned the adoption legislation and said the provisions of that legislation and other similar legislation could be overridden by this Bill. Between 12 and 18 months ago this Parliament passed the in vitro fertilisation Bill in which the provision for maintaining secrecy was one of the most important aspects. Is the Minister now saying that this legislation can override legislation as sensitive as the in vitro fertilisation legislation which provided the strictest confidentiality and secrecy provisions?

Mr D.L. SMITH: I will highlight for the member for Wagin the problem encountered in this type of legislation. The primary objective of the legislation is to ensure access is given to certain documents. We have a range of exemptions which deal with the question of personal information, such as that relating to adoption, child abuse, and so on. Normally where that happens the document would be referred to the third party involved so that person can advise whether or not the document should be provided. If that person refuses to allow access a complaint is made to the commissioner about that refusal on the basis that the information excluded is not of a kind that should be excluded. Under clause 81 the commissioner can obtain the document in order to make a determination as to whether it fits into the category in which access should not be given. If the commissioner were constrained by all the other secrecy provisions, he would not be able to get hold of the document. We are allowing the commissioner to get hold of the document, subject to the provision in clause 81 that he or his staff may not disclose it. Under clause 89 the court is not allowed to provide the information to anyone else. Unless the court gets the document, it cannot work out whether it is of that character. The only people to get access are the commissioner, in the initial process of the complaint, and the court in respect of the appeal aspect. There may be procedures whereby counsel to the parties may in some cases have access to the document. I cannot envisage them, but it may arise on occasions in order to ensure fairness. Counsel are then bound by their own professional obligations of secrecy and non-disclosure. The Government is seeking to give access to the content of the document so that the commissioner or the court can determine whether it fits into the category of exemption but, having done that, contrary to the secrecy provisions in other legislation, we must constrain the commissioner and the court from being able to pass the information to anybody else. It is no different from what happens in the courts. Ultimately, an allegation of child abuse must come before the court, but we try to protect the parties by saying there cannot be publication of the proceedings before the court. In this case the court or the commissioner cannot make an effective decision without access to the document and we must ensure the information is not passed on unless the commissioner determines access should be given because the document does not fit into the category under which exemption is sought.

We cannot have freedom of information together with general secrecy laws because they would enable us to erode the whole content of FOI. Freedom of information stands by itself; there are various categories of exempt agencies and documents and, despite the provisions of other secrecy legislation, the commissioner and the court can at least get hold of the document to make various determinations. In some examples that does not happen and they are dealt with in the schedules and the like. We will deal with those when we get to them. The legislation will not work unless the commissioner and the court can get hold of the document to determine whether it fits into the category of document exemption being alleged by the person or agency trying to refuse access.

Clause put and passed.

Clauses 92 to 96 put and passed.

New clause 97 -

Mr D.L. SMITH: I move -

Page 63 - To insert after clause 96 the following new clause to stand as clause 97 -

Applications on behalf of children and handicapped persons

97. Without limiting the ability of persons to make applications on behalf of other persons generally, an access application or application for amendment may be made -

(a) on behalf of a child by the child's guardian or the person who has custody or care and control of the child;

(b) on behalf of an intellectually handicapped person by the person's closest relative or guardian.

This amendment does not exclude the right of a child to make an application. It does not constrain the right of an intellectually handicapped person to make an application. It simply allows a limited range of people who can make application on their behalf where it is thought appropriate. Clearly in the case of a child of three, or an intellectually handicapped person with the mental age of a three year old, the need exists for the right for someone else to make an application on their behalf. I am keen to ensure these people have that right and such applications are made by the persons referred to in this clause.

New clause put and passed.

Clauses 97 to 99 put and passed.

Clause 100: Burden of proof -

Mr WIESE: This clause, and specifically subclause (3), is an important part of this legislation. It gives people such as the media and those not directly affected potential access to information. This clause seems to impose upon those people an onus to prove they should have access to certain information and that that information should be able to be made public. However, they have to prove that is in the public interest. It seems to me that that disclosure must, on balance, be in the public interest. Can the Minister give the basis upon which such a decision would be made? What will be expected of an independent agency such as a media body or consumer group? What will they have to do in relation to the burden of proof to prove disclosure of a matter is in the public interest?

Mr D.L. SMITH: This subclause does not deal with the question of public interest. I would rather deal with that provision later. All this subclause seeks to do is ensure that the onus is not on the person trying to get a document but on the person refusing access. That onus of proof is on the balance of probabilities. That is a civil onus. Nonetheless, it is placed on the person trying to exclude access to prove their case and not the person seeking access. As of right, the person making application can have that access. If the person wishing to refuse access gives a reason for doing so it is up to that person to prove on the balance of probabilities, according to civil proof, that they are right and the applicant is wrong.

Mr Wiese: I do not believe that is correct. Subclause (1) deals with agencies, (2) deals with a third party and (3) quite specifically deals with the onus being on the access applicant and not the agency.

Mr D.L. SMITH: In relation to the public interest provision under subclause (3) the member is correct; that is, where the onus sometimes shifts in relation to the list of documents exempted on the basis of public interest. The onus is then on the applicant to prove it is in the public interest, on the civil onus of proof, for that information to be provided. There are certain categories of exempt document. Those documents are not exempt if the person seeking to have them alleges it is in the public interest that they not be exempted. In that case the onus falls on the applicant to show it is in the public interest that a document be released and that onus is to the civil standard on the balance of probabilities.

Generally speaking, the onus is on the person trying to exclude the document. Once that person proves the document falls into a certain category the onus shifts to the applicant because under certain categories the applicant can have access only if he shows it is in the

public interest for that access to be given. The initial stage of proving document or agency exemption rests upon the agency. Once it has done that the onus shifts to the applicant to say that, notwithstanding that it is an exempt document under the legislation, it can be given because, on balance, there is a public interest in its being given. The person must then demonstrate that there is, on balance, such an interest.

Clause put and passed.

Clause 101: No review of decisions etc. except under this Act -

Dr CONSTABLE: I oppose this clause. It limits the rights to justice of citizens. I do not believe we should be doing that under this Bill. Why restrict people's rights under this Bill when others would normally be available to them? I will give an example. The way in which it is drafted rules out an action in mandamus to force the commissioner to make a decision he should make. That is one example of where a citizen's rights might be restricted or limited. If an agency or commissioner decided not to hear or take up an application someone has applied for then this may well be restrictive. There is no such limitation in New South Wales, Victoria or Queensland, so I do not see why we should have that limitation here.

Mr D.L. SMITH: The reason for this clause is the nature of the right of review conferred by the legislation; that is, there is a right of review by the commission. For that reason the normal prerogative writs are not required. Once the commission has made a decision there is a prescribed right of appeal limited in the way we were discussing a while ago. To allow all of the prerogative writs to be available, for instance, to the agency or a third party, would simply mean that they could seek to quash the decisions of the commissioner in the same way as we were discussing before with someone appealing on any question of law. This is merely a companion to the earlier provision. If we do not have this we will see attempts by agencies or third parties to frustrate access by the use of prerogative writs, which are very expensive. They are heard in the Supreme Court, are complicated, and are very expensive. While there can be expedited hearings, they often result in a delay. If one is at all unhappy about the opportunity for applicants in particular to seek to have decisions reviewed by a court then the way to do that is by amending the provision we dealt with earlier. I do not close my eyes to the concerns expressed by the members for Floreat, Kingsley and Wagin. I have asked Parliamentary Counsel to consider whether in the previous division we could broaden the rights of appeal but limit them to the applicant and not to the agent. That would be one way to reduce it. I am not sure if we can do that here or in the other place, but I am concerned about it. To open up all the prerogative writs would just raise again all the questions discussed previously.

Clause put and passed.

Clause 102: Protection from defamation or breach of confidence actions -

Dr CONSTABLE: I move -

Page 65, line 12 - To delete "involved in, or".

Page 65, lines 14 to 19 - To delete all words after the word "person".

Subclause (1)(b) needs to be somewhat narrower than it is presently. All that is required is that there be no action for defamation or breach of confidence as a result of access being given; that is, the act of giving access is not in itself a publication. If a document is inherently defamatory it should not prevent the author being subject to defamation. It is too broad as it is written. We need to narrow it down and be more specific. The clause should not prevent the author being subject to defamation action if the giving to the agency of the document is an act of defamation. If someone has defamed a person by giving a document to an agency, that should be subject to defamation. The amendment seeks to limit subclause (1)(b). Subclause (2) appears to be unnecessary because it is covered by clause 105. I seek clarification on that. Under division 3, part 2, it is a requirement to consult third parties. Clause 105 provides that failure to consult does not give rise to an action unless malice or unreasonableness are involved. It is important to recognise that if clause 102(2) is allowed to remain, an officer would be untouchable even if he acted unreasonably or with malice.

Mr D.L. SMITH: Clause 105 does not apply to the author of the document. It is limited to the officer of the agency. The words "involved in" are included to make sure that it is not

just the final giving of the access where publication may occur; it may occur in preliminary steps such as where a third party is involved. We are talking about two contrary things: One, to seek to restrain any right of action against any person by reason of that having happened. On the other hand, the member is seeking to limit the occasions when that applies. The words "involved in" were intended to cover the steps in the process rather than merely the giving of the access of documents. Crown Law advice was sought which indicated that it is difficult to follow the intent of the amendments. It may well be that the deletion of the words "by reason of the author to an agency" especially in conjunction with the deletion of "involved in" would broaden the scope of the provision so that any publication of material obtained under freedom of information would be protected from any defamation or breach of confidence whatsoever.

The deletion of subclause (2) stands on a different footing. Division 3 referred to by that subclause consists of the third party consultation provisions. As I understand it, the proposed deletion is for the purpose of ensuring that there can be a defamation or breach of confidence action in certain circumstances if the person giving access has not complied with the relevant consultation provisions. I am not certain that the amendment would have this effect as it is at least arguable that subclause (2) spells out explicitly what would already be the effect of subclause (1). The effect of the amendment appears to be twofold: First, it may broaden the scope of protection under clause 91 so that any subsequent publication, not merely publication of the document to the agency or the publication of the document as required under freedom of information provisions, could be protected.

It is an extraordinary result and would have the effect of negating the provisions of the law relating to defamation and breach of confidence in relation to documents held by public agencies. The other consequence is to arguably preserve some liability where third party consultation provisions have not been complied with. For policy reasons this is clear enough, although one can argue that in the circumstances where the need for consultation may be overlooked or thought not to be applicable, harsh results could ensue in some cases. However, if it be the intended effect it can be achieved merely by the deletion of subclause (2). Without information as to what end is intended by the amendments I cannot assist further.

The principal concern is that by the deletion of subclause (2) and the deletion of the words at the end of subclause (1)(b) we are not just protecting the person who is given access to the document but we are then protecting the person who gets hold of the document and can use it in any way he likes. I am sure that was not the intention.

The reason for the addition of the words "by reason of the author or other person having supplied the document to an agency" is to make clear that that person is protected. For instance, if I wrote a letter to the Department for Community Development alleging that a person had been abusing his children in a particular way, and the document eventually was released to the person named in the document, the agency, the officer of the agency or the commissioner would be free of any defamation but the author of the document would not be. The words at the end are added to make sure that the author of the document makes what is considered to be a proper complaint based on proper information, even if it turned out to be not proved -

Dr Constable: That is not the way I read it. I misunderstood subclause (1)(b). I thought it did not do that. The Minister has explained about the author of a letter, and that author could be subject to defamation. I accept the explanation.

Amendments put and negatived.

Clause put and passed.

Clauses 103 to 106 put and passed.

Clause 107: Offence of unlawful access -

Mr WIESE: Again I believe that the penalties in this clause are far too low. This relates to a blatant misuse of the freedom of information legislation where a person knowingly uses the legislation to deceive or mislead in order to gain access to information whether it be personal, as in paragraph (a), or business, professional or commercial information as in paragraph (b). Those offences are extremely grave and I do not believe the penalties reflect the severity of the offences outlined.

Mr D.L. SMITH: The question of whether penalties are adequate is always a vexed one. My view is that they are adequate, especially imprisonment for six months.

Mr Wiese: We cannot put a body corporate in gaol.

Mr D.L. SMITH: The penalty for the body corporate is $10 000.

Mr Wiese: That is chickenfeed.

Mr D.L. SMITH: Not all bodies corporate are Broken Hill Proprietary Co Ltd or Westpac, although Westpac may be a bad example.

Mr Wiese: It is a good example, because $10 000 is chickenfeed to a company like Westpac.

Mr D.L. SMITH: We will continue to review the penalties, but I would like specific examples of inadequacies before I agree to any change.

Clause put and passed.

New clause 108 -

Dr CONSTABLE: I move -

Page 67 - To insert after clause 107 the following new clause to stand as clause 108 -

Destruction of documents

108. A person who conceals, destroys or disposes of a document or part of a document or is knowingly involved in such an act for the purpose (sole or otherwise) of preventing an agency being able to give access to that document or part of it, whether or not an application for access has been made, commits an offence.

Penalty: $5 000 or imprisonment for 6 months.

I acknowledge the Minister's comments in his second reading speech referring to section 85 of the Criminal Code and to the Library Board of Western Australia Act which refer to the destruction of documents. I do not agree that either piece of legislation adequately deals with the matter. Specific attention must be given in this Bill to the destruction of documents. Those existing Acts did not deter unlawful shredding and document disposal in the 1980s which has been well documented in the report of the Royal Commission into Commercial Activities of Government and Other Matters.

Mr D.L. Smith: I will not oppose the new clause.

Dr CONSTABLE: It must be made clear that such behaviour will not be tolerated again in this State. The Criminal Code is limited to an offence of corruptly falsifying documents; that is too limited. In part II of the Royal Commission report the commissioners emphasised proper record keeping in Government. On page 4 - 6 of the report the commissioners stated that without proper record keeping the end purposes of FOI legislation can be thwarted. It is important to note at this stage that the Royal Commission recommended that a new archives authority be established and that section 85 of the Criminal Code be reviewed because it is inadequate and too narrow in scope. I thank the Minister for his interjection that he will support this amendment and I will conclude with a quote from page 4 - 10 of part II of the report of the Royal Commission to put this matter in context. It says -

> In the light of concerns raised in Part I of the report, we consider it necessary to emphasise that this review consider the inadequacy of section 85 of the Code, the provision which deals, amongst other things, with the destruction of records. As with other offences in chapter XIII of the Code, we are of the view that the use of the word "corruptly" in section 85 unduly limits its scope in practice. The deliberate destruction of public records without lawful authority, whether or not it is tainted with corruption, cannot be tolerated.

Mr D.L. SMITH: I was initially inclined to rely on the provisions of the Criminal Code and the Library Board of Western Australia Act and other legislation, but I have been persuaded by the member for Floreat's articulate arguments that this legislation should contain a penalty that deals specifically with attempts to destroy documents with the intent to avoid this provision. On that basis I agree with the amendment, but I am concerned that the penalty of $5 000 is inconsistent with the level of $2 500 set in most other offences.

However, where the object is to avoid the intent of the legislation, perhaps a heavier penalty is warranted and it might go some way to meeting the concerns of the member for Wagin.

New clause put and passed.

Clause 108: Report to Parliament -

Mrs EDWARDES: This clause sets out what should be contained in the report of the Information Commissioner. Part II of the Royal Commission report states that the Information Commissioner should be obliged to publish reasons for decisions in an appropriate form so that the public is adequately informed of the basis of all decisions made under the legislation. I am aware that under clause 75(5) the commissioner must include reasons for the decision in the findings. Part II of the Royal Commission's report goes further than that in stating that the commissioner is obliged to publish reasons for decisions in an appropriate form so that the public is adequately informed. When a decision is made by the commissioner which would amplify the public's awareness about what is occurring in the Information Commissioner's decision making, it would assist the public on matters such as fees, the level of access available, the reasons for access in some instances not being permitted, and the likelihood of that occurring. However, other than being a party to an application to the commissioner, the public per se will never know the reasons for the decision of the Information Commissioner. The Minister has probably given consideration to this matter since part II of the report was released. Obviously, given the large number of decisions which the commissioner would be making, it would probably be too onerous to expect the Information Commissioner to publish the reasons for all decisions in an appropriate form so that the public is adequately informed in the report that is brought to Parliament. Has the Minister considered that recommendation and has he identified another form of access?

Mr D.L. SMITH: It is my intention to recommit the Bill at the end of tonight's proceedings to achieve the amendments which were sought by the Royal Commission. It is important to bear in mind that some of the criticisms of the commissioners relate to the earlier draft of the Bill. It would be best if we left this debate until we get to that stage of tonight's proceedings.

Clause put and passed.

Clause 109: Regulations -

Dr CONSTABLE: I move -

> Page 69, line 15 - To insert after "(1)" the words "and subject to section 16".

It is important to take cognisance of the earlier amendments that were made in section 16.

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

Amendment put and passed.

Mr WIESE: Clause 109(3)(a) contains an extremely important matter to be considered in the drawing up and scrutiny of the regulations. Paragraph (a) states -

> the need to ensure that financially disadvantaged persons are not precluded from exercising their rights under this Act merely because of financial hardship;

That matter must be borne in mind when the regulations and charges are drawn up. I guarantee that if I am around they will be scrutinised closely on those grounds when they become before Parliament. The possible complications of clause 109(3)(b) concern me. I understood that applications relating to personal documents and information were to be provided free of charge. Is that correct?

Mr D.L. Smith: Yes.

Mr WIESE: If that is the case, why is this clause contained in the legislation? It deals with the making of regulations in regard to the setting of fees and charges and relates quite specifically to personal documents and information which, in fact, are already exempt. I cannot see a need for this clause.

Mr D.L. SMITH: A difference exists between fees for lodging applications and the charges for dealing with access applications themselves. Two different situations relate to clause 109(3)(b). One relates to an applicant who is making an application for personal information about the applicant. The Government has dealt with that matter by making that exempt.

However, it has not dealt with situations where the application may not relate to direct information about the applicant but to perhaps a child or a spouse or someone of that kind. This clause simply enables the Government to have special regard for that kind of example where clearly an application is made out of a genuine family interest, although it may not be about a direct applicant. It is to assist a person with whom the applicant has a direct relationship. This provides the power to frame the legislation in such a way as to ensure that those fees are less in those cases than in the norm.

Clause, as amended, put and passed.

Clauses 110 and 111 put and passed.

Schedule 1 -

Clause 1: Cabinet and Executive Council -

Dr CONSTABLE: I move -

> Page 72, lines 6 to 26 - To delete the lines and substitute the following -
>
> (1) Matter is exempt matter if -
>
> (a) its disclosure would reveal the deliberations or decision of an Executive body or its members other than a document by which a decision of an Executive body was officially published;
>
> (b) it was created expressly for the consideration of an Executive body; or
>
> (c) it is an extract from or a copy of, or of part of, matter referred to in paragraphs (a) or (b).

It is worth beginning this part of our discussion by considering what the Royal Commission said on page 2 - 6 of its second report. It said -

> . . . FOI legislation, although indispensable to open government, is by its nature limited in what it can achieve. It is an open question whether a number of documents of critical importance which have been adduced in evidence during our inquiry, would have been disclosed under the provisions of the FOI Bill had it been in force at relevant times.

The next sentence is crucial to that which we are now discussing. The Royal Commission continued -

> The range of exempt documents should be confined as much as is reasonably possible.

This clause includes the broadest possible exemptions. Given the Royal Commission's statement, we must give this clause very serious consideration before we grant carte blanche exemption for documents. The exemptions in subclause (1) are far too wide and we need a very good defence from the Minister if we are to accept them. I cannot see how the Minister will defend them. Why does it have to be so wide? We want the Government to be accountable. Will it be accountable if the Executive is protected by the first clause? It is also worth quoting from a comment in the *Canberra Bulletin of Public Administration* on the Commonwealth experience. It stated -

> . . . the Senate Standing Committee on Constitutional and Legal Affairs (1979) concluded that to protect everything that is submitted or proposed to be submitted to Cabinet would go far beyond what was reasonably necessary to protect the viability of the Cabinet process. It is only those documents which if released would reveal the deliberative processes of Cabinet, not those which provide the "raw material" for those deliberations, which deserve protection as Cabinet documents.

My amendment seeks to adopt that policy. I hold the view that only if a document is created expressly for consideration of Cabinet or reveals the deliberations of Cabinet can it be exempt. We should be aiming for the least restrictive options and I believe that my amendment does that.

Mr D.L. SMITH: No-one disagrees with the principle as enunciated by the member for Floreat. If the clause were amended as she suggests, it could be said to have exactly the same effect as the current provision because the basic intent of the Cabinet and Executive

Council exemption is that a matter is exempt "if its disclosure would reveal the deliberations or decisions of an Executive body". The member for Floreat's amendments would extend that to exclude not only the Executive body but also its members. I suspect that would also exclude deliberations of a Cabinet subcommittee, although when I look at the definition of "Executive body" in subclause (4), an existing exemption would extend to committees of Cabinet. I am not sure what the addition of the words "or its members" adds. However, if it is left in the form the member for Floreat proposes, it is relatively uncertain what is covered by the exemption.

All that is intended by paragraphs (a) to (f) is to make obvious some of what is covered by the exemption. While it is not limited to these, it is worthwhile looking at what they are. Paragraph (a) refers to "an agenda, minute or other record of the deliberations or decisions of an Executive body". I do not think the member for Floreat would argue that that is not the sort of material that is intended to be covered by the preliminary words. Paragraph (b) states -

> contains policy options or recommendations prepared for submission (whether submitted or not) to an Executive body;

That covers what often happens when one gets one's agenda or minutes and lodged with that minute will be a range of reports or policy options for consideration by Cabinet in conjunction with the minute. I do not think we could exclude any of those matters under the amendment moved by the member for Floreat except that it refers to whether they are "submitted or not". Therefore, the existing clause would mean that, if documents had been prepared to accompany a minute and for some reason did not actually accompany the minute, they would also be exempt. It seems strange to me that if the intent is to prevent disclosure of deliberations or decisions of an Executive body, we would exclude material that was prepared for consideration by that body but for some reason or another was not actually submitted, because they are clearly prepared with that in mind. One of the things we must ensure is that when people are preparing documents which may or may not accompany Cabinet minutes they should feel unconstrained in what they say in those drafts. My view is that if they have been prepared for the purposes of submission and they are strong in their language and are not submitted, not to exempt them would defeat the primary objective which is to prevent the disclosure of deliberations or decisions because, if the document is not submitted, it would still reveal the fact there was a Cabinet minute and basically what the Cabinet minute was about and some discussion about what it contained.

When Cabinet minutes are first submitted, a copy of them is sent to other Ministers who may, if they wish, refer them to the agencies under their control for the preparation of comment sheets for the Ministers. In some cases, when those comment sheets come back from the agencies, the Ministers differ from the opinions of their agencies and may then decide not to pass on those minutes to Cabinet. If he did not specifically include them, then other people would have access to them. That would reveal that a Cabinet minute existed, what it was about and what the comments of a particular agency were about that minute. That would clearly breach the provision. Similarly, in communications between Ministers, that is clearly what the comment sheets are meant to be.

A Minister may receive a Cabinet minute from one of his colleagues on a matter about which he has strong personal views and may decide to write a letter or minute to that colleague urging him to withdraw the minute or change it in some way. Clearly that communication would reveal what the Cabinet minute was about. It would be a pity if the result of the letter was that the Cabinet minute was withdrawn or amended and as a result of the letter's availability the original content of the minute was revealed in some way or the letter was evidence of what was the reason for the change in the minute. That really goes to the heart of the deliberations. Less and less concerns would then be committed to paper and more and more would be done by telephone and other means. That would, in effect, limit the record rather than expanding it, or access to it.

One has to be careful of something which on its face seems to be an attempt to narrow these exemptions, but which in the end result may discourage the most frank and open exchanges of correspondence, Cabinet correspondence sheets or other documentation between Ministers may be constrained simply because there is a feeling that people may not know whether they will be exempt under this provision. In the interests of good Government not only should

advisers be able to be as frank and open as they desire in ensuring their views are heard, but also so should Ministers one to another. For that reason those sorts of exchanges should be exempt.

It is not unusual for a Minister to receive a draft of a Cabinet minute accompanied by some advice from the department dealing with its content and giving reasons why a Cabinet minute should be prepared, what the timing of its referral to Cabinet should be and what other things the Minister should consider in relation to that minute. Alternatively, it may be that after the minute is prepared, and to assist the Minister with his argument at Cabinet, he is given a reminder sheet by the department outlining the various points he needs to raise in his argument. I do not think that in either case those documents would be excluded by the member's amendment.

We need to ensure that they are excluded so that when offering advice to a Minister people can be as frank as they wish in minutes especially as quite often the advice given is framed in the alternative. The advice in the minute may say that the adviser thinks that the Minister should do something and if he wishes to do that the Cabinet minute enabling him to do so is supplied, but that if he wishes to continue with what the adviser thinks is a wrong decision a Cabinet minute is supplied setting out how the Minister can achieve that. I believe both those documents would be exempt under the general principles because they would again relate generally to material which would eventually come before Cabinet and would therefore reveal some of the deliberations that had taken place prior to the Cabinet minute being submitted.

The drafts of proposed enactments frequently accompany Cabinet minutes. Where Cabinet approval is given to draft a new piece of legislation a requirement exists that drafting instructions be approved and accompany that document. Alternatively, after an enactment is drafted and goes back to Cabinet for approval to print they would accompany those documents. Good reasons exist why in some cases early advice leaking out about what legislation is intended, or the particular form of that legislation, would not be in the public interest.

The final matter deals with the question of the extract. It also excludes words being taken from minutes and published as distinct from documents being published in full. The only reason I go through this is to illustrate that in relation to each of those one could argue quite successfully that they would be covered by the words used by the member for Floreat. In my view one could use her words and the same effect would be achieved. All we are seeking to do by highlighting (a) to (f) is give the Parliament the opportunity to say that a particular phraseology used in interpreting a matter may disclose or reveal deliberations or decisions of the executive body. Alternatively, if there were some amendment to one of the points from (a) to (f), by those amendments we would know exactly what the Parliament intended because it would be said that it did not agree with all the words in (d) or (e) and wished to limit them in some way.

If we simply accept the amendment moved by the member for Floreat the intent and outcome will be the same as if we included the existing words but the Parliament will have lost the opportunity to say whether it agrees or disagrees with the words used in any of (a) to (f). I am prepared to accept the amendment and leave it to the judgment of those later left the task of deciding whether (a) to (f) should remain. By doing that we will lose the opportunity to go through each of those points and say whether we think particular words should be included.

Mr WIESE: I have some reservations about the amendment moved by the member for Floreat. I also have some reservations about the fact that the original clause exempts anything and everything I can think of in relation to the performance of Cabinet, Cabinet committees, subcommittees or Executive Council. The reality is that the original clause probably spells out a little more clearly what is exempt. Will the member for Floreat give the reasons why she has worded her amendment in the way she has and say how that amendment will achieve things better or more clearly than existing clause 1 of the schedule? Clause (1)(d)(i) of schedule 1 refers to documents prepared for submission to an executive body. I serve on the Joint Standing Committee on Delegated Legislation which relies enormously on explanatory memoranda submitted to it along with the regulations to help its members understand the purpose and background of those regulations. I hope nothing in this clause

will prevent that from happening, because that committee performs an important role for this Parliament. It is the only body which scrutinises delegated legislation. The report of the Royal Commission acknowledges the role played by that committee, and it mentions the fact that there is under discussion at present a move to expand the scrutinising role either of that committee or of some other body to better ensure that subordinate legislation is looked at effectively on behalf of the Parliament.

Dr CONSTABLE: It may be, as the Minister suggests, just a matter of opinion. However, I believe that my proposed exemption is narrower than the exemption which the Minister has presented, because it would exempt only official records of a deliberation or decision, or documents which would disclose a deliberation or decision, and documents prepared by a Minister for submission to Cabinet. Only matter which was brought into existence for and submitted to Cabinet for that purpose, or which would disclose any deliberation or decision of Cabinet, would be exempt. The Minister's proposed exemption would cover matter which was brought to Cabinet for another purpose. Can the Minister clarify whether his exemption would include documents that were created for other purposes?

Mr D.L. SMITH: I will deal first with the concerns of the member for Wagin. It is not the practice that explanatory notes for regulations be provided for submission to either Cabinet or Executive Council. They are prepared after the regulation has been approved by Executive Council for submission to the member's committee, and it is not usual for them to be prepared prior to a matter being dealt with by Executive Council. To that extent, they would not be exempt because by that time they would have been made public as regulations, and that is about all that goes before Executive Council, other than the agenda note that accompanies Executive Council items.

In respect of the concerns of the member for Floreat, were we to limit the definition in the way which the member proposes, it would be left to the courts to decide what constitutes a matter which would reveal the deliberations or decisions of an executive body or its members. My view is that all of the items in paragraphs (a) to (f) would be included, even if we left it where the member for Floreat proposes to leave it. The Parliament should make up its mind about whether paragraphs (a) to (f) should be in or out. To simply leave it to the discretion of the court would leave it up in the air, and the record of the Parliament would show that the member had a view that it may not include all of those things and that I had a view that it does. Neither of those expressions would be helpful to the court in interpreting the matter. My preference would be for the Parliament to reject the member for Floreat's amendments and to deal with paragraphs (a) to (f) so that the Parliament can express a view about whether they are properly included in the exemption That would be a clear expression of the view of the Parliament and give some guidance to the court in its interpretation.

I repeat that often documents which are prepared to advise a Minister or which are prepared for other reasons will reveal in a post event case the deliberations of Cabinet or will prospectively disclose the future deliberations of Cabinet because the documents are of the kind referred to in paragraphs (a) to (f). The reasons for Cabinet confidentiality, notwithstanding the findings of the Royal Commission, are well known, and we do not need to have a debate about them. We want to arrive at a situation where an executive body such as Cabinet can be advised in the most open and frank way and where Cabinet Ministers can express their views at that meeting as strongly as they wish and not run the risk that at a later stage those deliberations will be disclosed by the means that is proposed, remembering that we are proposing that after 20 years all of this material will not be exempt anyway, and the member is proposing that it be after 10 years.

Mr DONOVAN: I seek the advice of the Minister because when I compare the proposition contained in the Bill with that proposed by the member for Floreat, it seems to me - I may be wrong, and the Minister may want to comment about this - that the proposition of the member for Floreat imposes a tighter discipline upon executive bodies and on the flow of communication to members of executive bodies. I would have thought that was desirable in the context of the second report of the Royal Commission and the attempts, which everyone seems to support, to tighten up the processes of Government accountability at all levels.

The second point, which is also partly a question, is that I understand the Minister is concerned about perhaps leaving it to a court to decide. However, is it not the case that before that could ever happen, the commissioner has a role? It seems to me that an

additional advantage of the proposition put by the member for Floreat is that, from time to time, the commissioner may be required by one or other of the parties to decide whether a document reveals the deliberations or decisions of an executive body. While that may impose upon the commissioner a somewhat arduous task, it again imposes a certain discipline which does exist at the moment but which is not as tight, nor is it tightened by the proposition within the Bill.

Over the past 12 months, with other members of the Public Accounts and Expenditure Review Committee, I have considered a wide range of Cabinet minutes, communications, handwritten notes of telephone discussions, and notes of meetings in conducting an inquiry. Such documents have been extremely important to the committee's work. The point is that very important public documents may be the subject of access, and paragraphs (a) to (f) appear to exempt documents relating to deliberations or decisions of an executive body if "it is an agenda, minute or other record . . ." What are "other records"? Is that a handwritten note which may contain "a policy option"? What is a policy option? If a Minister or an officer of the Government is expressing an opinion to a Minister regarding the desirability of an undertaking in a handwritten note form, is that a policy option?

As this material is now tabled in the House I can refer to the Notre Dame inquiry. A guarantee was discussed, which, it seems, then Treasurer Parker did not make known to his Cabinet colleagues. Would the communications between the officers of the department and then Treasurer Parker have constituted policy options? If they did, would they be exempt matters under this provision? The same would apply to any briefing provided to a Minister in relation to a matter prepared as a submission to Cabinet, or as a subject of consultation among Ministers. I have concerns as to the nature of the existing provision. The member for Floreat's amendment appears to impose a tighter discipline as the commissioner may be called upon to consider documents. At the moment, subject to the Minister's response, I find the discipline within the amendment, including the role of the commissioner, to be stronger than the Minister's proposal because of its catch-all nature.

Mr D.L. SMITH: We need to go back to basics: Under the provisions of the Interpretation Act the courts are able to refer to the debate in this place for the purpose of interpreting any legislation we pass. If we simply adopt the expressions within the member for Floreat's amendment, the exemptions will be broader than those within the legislation as it stands. Currently the clause reads -

> Matter is exempt matter if its disclosure would reveal the deliberations or decisions of an Executive body . . .

The member's amendment refers to disclosure which would "reveal the deliberations or decision of an Executive body or its members . . ." This adds the expanding reference of "members". Also, the Government sought to give the Parliament an opportunity to debate exemptions (a) to (f), and if we accept the member's amendment, all the matters outlined in these paragraphs would be included but not stipulated for debate.

The member for Morley referred to Notre Dame. If the exchange between the Minister and his staff or Treasury was in relation to any matter he was putting to Cabinet, the exemption would depend upon the provision and whether any written record was kept of what was exchanged. Of course, if no written record is kept, obviously no document exists. Oral exchanges would not be covered by these provisions. If we want to deal with the issue of the words used in paragraphs (a) to (f), we should not pass the member for Floreat's amendment. Passing the amendment would deny Parliament an opportunity to discuss these matters. If members wish to consider each paragraph, the clause should be left as it is.

I shall now run through the wording used in the paragraphs. Paragraph (a) raises no doubts at all about what would be included. Paragraph (b) refers to "policy options or recommendations prepared for submission - whether submitted or not - to an executive body". Little doubt would arise about what would be included in that exemption, although if the material had not been submitted to Cabinet it may be open to some small doubt.

Paragraph (c) is a little broader than some people may regard as necessary. It refers to "communication between Ministers on matters relating to the making of Government decisions or the formulation of Government policy". This may be a wider definition than matters being discussed by Cabinet, and it may involve matters preliminary to the

presentation to Cabinet - it may also include matters which never reached Cabinet, although such matters would need to go to Cabinet in due course. Paragraph (d) relates to similar material as the previous paragraph as it refers to material prepared to brief a Minister prepared as a submission to an executive body or relating to Government decisions or the formulating of Government policy. That is a repeat of what was included in paragraphs (b) and (c), but it extends to not only documents which are prepared to go to Cabinet, but also those which do not reach Cabinet. It also relates to briefing notes which a department may prepare to enable a Minister to discuss a matter in Cabinet or in order to make a representation to Cabinet.

Clause 1(1)(e) of schedule 1 relates to a draft of a proposed enactment. Clearly that would be constrained by the reference to the deliberations or decisions of an executive body. Every draft which comes into existence would not necessarily be exempt, but it would be if it were intended to go to Cabinet. Subclause (1)(f) simply relates to the extracts. Out of all of that, ultimately there would be an argument concerning only (b) as to whether the words "submitted or not" should be left in. There may be some argument about (c) and there would be some argument about (d) only if we were unsuccessful in convincing members of the need for (c). Subclause (1)(f) would be taken almost ipso facto as being included in the words and (f) confirms that one is unable get access to not only the document but also extracts from it. That is clearly the intention. Ultimately, I do not think a great deal hinges on whether we stick with the words suggested by the member for Floreat or we work our way through the clause. The Parliament would have lost the opportunity to give a clear message to the courts as to its view about whether those items will be included in those words. Certainly, all of those matters would be included if we left the matter as the member for Floreat intends.

Mr DONOVAN: As I understand it the intention is to do what is quite proper; that is, to protect deliberations and decisions of an executive body, especially Cabinet, from publication. That is a reasonable and normal practice, although we could argue about for how long it should be protected. The test as to what should be exempt is whether a matter reveals the deliberations or decisions of an executive body. I note the Minister has pointed out, and I understand him perfectly, that the member for Floreat has added the words "or its members". She has extended the clause to include not just the executive body but also any of its members, or some of them. If all paragraphs (a) to (f) were deleted the Minister's proposal would have tighter prescription in the sense of the test I have just put, than would the amendment moved by the member for Floreat. In either of those cases, what role would the commissioner play in determining whether a matter potentially revealed the deliberations or decisions of an executive body?

Mr D.L. SMITH: If someone applied for a document and received a reply that giving that document would disclose or reveal the deliberations or decisions of an executive body - if that were the beginning and end of it - that document would be available to the commissioner to enable him to make a determination on whether it did that. If someone disagreed with his decision an appeal could be made to the Supreme Court in the ordinary way. The commissioner or the court would have access to the documents for the purposes of deliberations. On the other hand, if the Premier chose to issue a certificate saying that the matter was exempt, the only avenue open would be the process by which those certificates were challenged. There would be two alternatives: One would ensure that the document went to the commissioner or the court to enable them to determine the issue by the certificate, and the other would see the issuing of a certificate to indicate that the document would not be available. I was concerned earlier when the member for Morley said he believed that the member for Floreat's amendment would encourage some discipline on what went before Cabinet. If that were the outcome of freedom of information legislation it would be disastrous. We must ensure that discussions at Cabinet and minutes, or comment sheets which go to Cabinet should be as strong as they can possibly be and that we do not encourage a situation where Ministers or agencies feel constrained in commenting about another Minister's minute because they might be made available under FOI. That is not the objective. Discussions at Cabinet level should be as robust as we all want them to be and as well informed as we want them to be. That is the reason for the exemption and why the greater public interest is in having those robust discussions and the documentation required to enable Cabinet to reach the best decision. That is of bigger public interest than giving people the opportunity to know what goes on in Cabinet. I cannot take the matter much

further than that. Either the Committee leaves the matter as proposed by the member for Floreat, on which basis we do not know whether these exemptions are included, or we work our way through as a Parliament for the guidance of both the Information Commissioner and the court and have some exchange about whether we think any of these expressions are too wide. Some of the matters referred to in clause (1)(a) to (f) of schedule 1 are also the subject of late exemptions.

Amendment put and negatived.

Dr CONSTABLE: I move -

> Page 73, line 2 - To delete "or statistical" and substitute the words ", statistical, scientific or technical".

This amendment is straightforward and adopts the recommendation of the Victorian Legal and Constitutional Committee.

Mr D.L. SMITH: I have no problems with this amendment to subclause (2). However, I am a little concerned that, having defeated the amendment of the member for Floreat, we have not debated paragraphs (a) to (f) which I had hoped could occur. Perhaps that could be done by recommittal.

I suggested we should take the broader definition, as opposed to adopting the words used by the member for Floreat, because it would give this Parliament the opportunity to debate paragraphs (a) to (f). We seem to have jumped over those subclauses and progressed to clause (2).

The CHAIRMAN: We are taking the schedule sequentially. We are still on the areas relating to Cabinet and the Executive Council. Once we have dealt with the amendments my intention is to ask whether members want to raise any further matters in part 1. If you want to raise any matters, you may do so at that stage.

Mr D.L. SMITH: I have no objection to the amendment.

Amendment put and passed.

Dr CONSTABLE: I move -

> Page 73, line 9 - To delete "20" and substitute "10".

This may be just a matter of opinion but it defies my addled brain as to why we have to wait 20 years to see the deliberations of Cabinet. I would have thought 10 years, or even less, would have been adequate. Ten years should be the limit for any democracy to see what happened inside a Cabinet meeting.

In his second reading speech the Minister noted that New South Wales, Victoria and Tasmania have a 10-year limit, but that is not retrospective. I commend this legislation as it is retrospective. That does not take away from my opinion that 10 years is quite sufficient for people to wait to find out about these deliberations and other things that are exempt under this schedule. The fact remains that other States see 10 years as an appropriate time and I would like to know why the Minister thinks that Western Australia should be different.

Mr D.L. SMITH: The convention in relation to Cabinet documents is 30 years. That has been maintained by the Commonwealth, South Australia and Queensland. In part, Victoria, New South Wales and Tasmania have reduced the time to 10 years, but only for documents created after the Freedom of Information Act came into force. Therefore, that time limit does not apply retrospectively.

I have never quite understood why we need the 30-year protection that we have insisted on in the past. I am happy to reduce this period to 20 years, as this legislation does, for all documents created before the passing of this legislation. It is quite plausible that people can remain in Parliament and Governments can remain in office for 10 years. From memory, the Menzies Government was in office for nearly 23 years. Some of the Liberal Governments in the States remained in office for at least nine years and this Government has been in office for nearly 10 years. If the period covering documents were 10 years, documents prepared by people who are still in Cabinet and serving in Parliament could be accessed. Indeed, in the case of the member for South Perth, we could talk about 45 years.

We must be careful about matters being revealed which are still recent enough to be

influential or which could have some impact upon the State's interests. Ten years is too short a period. I think 20 years is appropriate. Perhaps we could compromise.

Dr Constable: Could I have an example?

Mr D.L. SMITH: If the amendment is moved, a matter would cease to be exempt after 10 years. When a matter relates to the business affairs of the State, it might be able to be used to the disadvantage of the State in some way if contracts were still in being. For example, a State agreement Bill might come before the Parliament. The Cabinet Ministers might discuss at length the effect of the legislation. A dispute might occur 15 years down the track as to the meaning of the agreement.

Dr Constable: Would that be covered by aspects in this subclause?

Mr D.L. SMITH: They may or may not be. I am just citing that as an example. Some special circumstances may need to be discussed by Cabinet in respect of pardons or releases for prisoners. If the individual concerned were still in prison 10 years later, he or she could access those documents while the people involved were still in office.

Dr Constable: Would that be covered by other aspects?

Mr D.L. SMITH: The member for Floreat is saying that they may be; I am saying that it is not certain. Many Cabinet decisions will continue to have some impact upon individuals or the State for some time after they are made. It is not in the interests of the State for the Cabinet documentation to be available and used, in effect, against the State's interests. The fact of the matter is that the State these days quite often enters into commercial arrangements which go beyond the period.

Mr Wiese: Surely you have the Premier's veto which should take care of just about any other thing you would like to think of?

Dr Constable: There are other exemptions to do with the State's economy, and so on, in the schedule.

Mr D.L. SMITH: The certificate relates only to documents which are exempt. Once they are no longer exempt the Premier cannot issue a certificate. If there was a clear provision saying that the Cabinet minute was available after 10 years, the Premier's certificate would not be valid.

We are talking about affairs of the State and the affairs of individuals that might be considered. Bringing the period back to 10 years gives more opportunity for the interests of the State to be harmed by the premature disclosure of what might, or might not, have been discussed by Cabinet or what might, or might not, have been said in advice accompanying Cabinet minutes. I believe 20 years is the appropriate period. I am not prepared to reduce it to 10 and give full retrospectivity. Perhaps a 15 year period would make people happy.

Dr Constable: Maybe we could have 10 years and not have retrospectivity for Cabinet documents. We could commence the 10-year period upon the implementation of this legislation as other States have done.

Mr D.L. SMITH: It would be a pity to lose retrospectivity.

Dr Constable: Perhaps we could agree to 15 years for existing documents and 10 years for those which are yet to be created.

Mr D.L. SMITH: I believe it should be 20 years and we should put it to the vote to see what happens.

Division

Amendment (figure to be deleted) put and a division taken with the following result -

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Ayes (23)

Mr Ainsworth	Mr Cowan	Mr McNee	Mr Fred Tubby
Dr Alexander	Mr Donovan	Mr Nicholls	Dr Turnbull
Mr Bloffwitch	Mrs Edwardes	Mr Omodei	Mr Watt
Mr Clarko	Mr Grayden	Mr Shave	Mr Wiese
Dr Constable	Mr House	Mr Strickland	Mr Bradshaw *(Teller)*
Mr Court	Mr MacKinnon	Mr Trenorden	

Noes (22)

Mr Michael Barnett	Mr Grill	Mr Pearce	Mr Troy
Mrs Beggs	Mrs Henderson	Mr Read	Dr Watson
Mr Bridge	Mr Gordon Hill	Mr Riebeling	Mr Wilson
Mr Cunningham	Mr Kobelke	Mr D.L. Smith	Mrs Watkins *(Teller)*
Dr Gallop	Mr Leahy	Mr P.J. Smith	
Mr Graham	Mr McGinty	Mr Thomas	

Pairs

Mr Lewis	Mr Ripper
Mr Minson	Mr Marlborough
Mr Kierath	Mr Taylor
Mr Blaikie	Mr Catania
Mr C.J. Barnett	Dr Lawrence

Amendment (figure to be deleted) thus passed.

Division

Amendment (figure to be substituted) put and a division taken with the following result -

Ayes (23)

Mr Ainsworth	Mr Cowan	Mr McNee	Mr Fred Tubby
Dr Alexander	Mr Donovan	Mr Nicholls	Dr Turnbull
Mr Bloffwitch	Mrs Edwardes	Mr Omodei	Mr Watt
Mr Clarko	Mr Grayden	Mr Shave	Mr Wiese
Dr Constable	Mr House	Mr Strickland	Mr Bradshaw *(Teller)*
Mr Court	Mr MacKinnon	Mr Trenorden	

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Mr Graham	Mr McGinty	Mr Thomas	

Pairs

Mr Lewis	Mr Ripper
Mr Minson	Mr Marlborough
Mr Kierath	Mr Catania
Mr Blaikie	Dr Lawrence
Mr C.J. Barnett	Mr Taylor

Amendment (figure to be substituted) thus passed.

Progress

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

BUSHFIRES AMENDMENT BILL

Committee

The Chairman of Committees (Dr Alexander) in the Chair; Mr Gordon Hill (Minister for Fisheries) in charge of the Bill.

Clauses 1 to 4 put and passed.